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CORRUPTION

**Effective Lokpal not in sight
People determined to root out corruption**

Rajindar Sachar

AS expected, the government and Anna Hazare's team have disagreed on vital points relating to the institution of Lokpal. The question of inclusion of Prime Minister within the ambit of the Lokpal is being falsely blown out of proportion by government apologists. The Prime Minister, though head of the government, is only the first among equals. In a democratic country, a political vacuum does not arise as the Cabinet has a collective responsibility. Also, our past experience does not show that all our Prime Ministers have been angels. Serious credible accusations have been made against them. The regret always was that in the absence of an independent mechanism like the Lokpal to enquire into these allegations, the ruling party was able to successfully scuttle any honest independent enquiry.

Prime Minister Manmohan Singh has in public consented to being included within the jurisdiction of the Lokpal as had his predecessor A.B. Vajpayee — the supposed concern of the ministers is puerile, being more loyal than the king.

The stand of ministers for the exclusion of Prime Minister is so incongruous when it is noted that the Standing Committee on Law and Justice, headed by Congress spokesperson Jayanthi Natarajan, has said that the Bill should cover Prime Minister also.

This cynicism is increased when we find that Mr Digvijy Singh, the self-proclaimed alter ego of Mr Rahul Gandhi, supports the Lokpal having jurisdiction over the Prime Minister — people are legitimately hoping that Mr Gandhi would also indicate his position on a matter which is causing such a division in society.

The suggestion to exclude the Prime Minister is sought to be justified by ministers by taking the puerile plea that the Prime Minister continues to be under the jurisdiction of the Prevention of Corruption Act. It is surprising that ministers are comfortable for the Prime Minister being prosecuted at the report of junior police officials but not at the instance of a high-powered body like the Lokpal. Is this not the unspoken premise that under the Corruption Act the CBI will have to get sanction from the government? But which subordinate will dare to sanction the Prime Minister's prosecution? For heaven's sake, do not play joke with the people and be reminded of what John Adams, one of the founding fathers of the US Constitution, said, "The people have a right, an inalienable, indisputable, indefeasible, divine right to that most dreaded and envied kind of knowledge — I mean, of the character and conduct of their rulers."

Another laughable justification by ministers is that the exemption will not be applicable after the Prime Minister has remitted office — this is like locking the stable after the horses have run away. Incidentally, even the discredited toothless draft Lokpal Bill, 2010, included the Prime Minister and members of Parliament.

The inclusion of the higher judiciary consisting of judges of the Supreme Court within the purview of the Lokpal is undesirable. I am conscious of the shame that some in the higher judiciary have polluted the institution. I am only suggesting a separate National Judicial and Accountability Commission. Call it the Lokpal (Judicial) Commission with the same powers as the Lokpal. This will serve the purpose and still keep the distance between the executive and the judiciary as mandated by the Constitution.

The rhetoric of Mr Kapil Sibal challenging anyone to give an example that "which PM in office anywhere has been prosecuted in the world", I am sorry at this ignorance. Possibly, this is due to Mr Sibal not being assisted by his usually competent juniors who were with him when he

was appearing in courts. Now, possibly, he is being ill served by his public relations officer — otherwise he would have been told that the present Prime Minister of Italy is being prosecuted before a magistrate on charges of corruption, having mafia links and deviant sexual behaviour. In France, proceedings were started against the then President Chirac for misappropriation of public money. Also in Israel, a former President has been sentenced to imprisonment for his deviant sexual behaviour by a magistrate.

The near contempt of the masses protesting at the scourge of corruption is shown by Mr Sibal comparing Anna Hazare to “Pied Piper of Hamelin”. Mr Sibal cautiously did not complete the story because those who were said to have followed the Pied Piper were rats, and following the Piper they just drowned in the sea. I need not comment on such crude and insulting comparison of the masses who are waging a struggle against corruption.

The government’s spurious claim by purporting to project Parliament as the real sovereign is fallacious. Dicey, the British constitutional authority, says, “Electorate is, in fact, the sovereign of England and the conduct of the legislature... should be regulated by understandings of which the object is to secure the conformity of Parliament to the will of the nation.”

Another heresy put forth against the holding of protest meetings by people to force the government to pass worthwhile legislation is that it is undemocratic and the only resort people have is to try to persuade the legislators to pass a particular law, and if they do not agree, then they should try their chance during elections. This is sheer heresy and negated by the Supreme Court (1960) in Dr Lohia’s case, who was arrested for asking farmers not to pay the increase in canal water rates to the UP government.

Ordering the release of Dr Lohia, the court said, “We cannot accept the argument of the learned Advocate-General that instigation of a single

individual not to pay tax or dues is a spark which may in the long run ignite a revolutionary movement destroying public order. We can only say that fundamental rights cannot be controlled on such hypothetical and imaginary considerations. It is said that in a democratic set-up there is no scope for agitational approach and that if a law is bad the only course is to get it modified by democratic process and that any instigation to break the law is in itself a disturbance of the public order. If this argument without obvious limitations be accepted, it would destroy the right to freedom of speech, which is the very foundation of democratic way of life.”

A restrained approach by the government alone can prevent a collision with the masses, who are determined to vigorously pursue their struggle for an effective Lokpal.

The writer is a former Chief Justice of the Delhi High Court.

TRIBUNE 4.7.11 CORRUPTION

MAKE CBI TRANSPARENT

B. R. Lall

THE Union Government's decision to place the Central Bureau of Investigation (CBI) outside the ambit of the Right to Information Act has come under sharp criticism. They do not seem misplaced either.

However, bonafide protection in the field of investigation already exists under section 8 (h) of the Right to Information Act that provides “...there shall be no obligation to give any citizen information which would impede the process of investigation or apprehension or prosecution of offenders...” That applies not only to CBI or other central investigating agencies, but also to similar agencies of all the state governments as well.



The decision to exempt the CBI from the RTI Act is sought to be justified on the grounds of national security and possible impact on intelligence gathering. It must be made clear in no uncertain terms that the CBI is neither an intelligence gathering agency nor a security organisation. It is an investigative agency assigned legally the job of exposing rather than concealing.

By the very nature of its work, the CBI has to be an open organisation notwithstanding the sensitive cases that it may be dealing with. The sensitivity in the context of the CBI is when it deals with cases against the high and the mighty “...in the investigations of which one was expected to conceal more and expose less...” It is precisely for this

requirement on the ground, as against the legal or operational requirement of the CBI, that such secrecy is needed.

Functionally, as against an intelligence organisation that requires total protection from transparency, investigations actually require complete transparency after a certain stage. It is only the premature disclosure of information during the investigation that usually gives undue advantage to the accused, who may cover his tracks, destroy the evidence and scuttle the investigation.

Transparent investigation

But once the charge sheet has been filed, there is no requirement for any further protection. Incidentally, all the evidence to be relied upon is communicated to the accused person so that he may prepare his defence. Once it is filed in the court of law, the charge sheet also becomes a public document.

Some of the information collected during investigations and contained in the case diaries of the agencies may not be shown in the charge sheet as that may be related to the security of the witness or of the accused and, therefore, not advisable to be brought in the public domain. Such information and documents, on which the prosecution does not rely, are already protected under the Criminal Procedure Code and the Evidence Act.

However, to meet with the ends of justice and to ensure that nothing is held back, the court trying the case has a right to look into all these documents and to use them as per its discretion.

The prevalent laws are quite adequate. Further secrecy, particularly for the CBI in corruption cases, is designed only to protect the people in high places. As such there is no necessity for any further privilege for any investigating agency in the country under the Right to Information Act. As a former CBI officer having fought the corrupt system from

inside the government, I concluded that the CBI under the control of the government has to conceal more than reveal, against its lawful role of collection of facts truthfully and impartially without any fear or favour.

The exemption given to the CBI is an extremely retrograde step; it is going backwards and is completely undesirable and redundant. This will only encourage criminality and corruption in the government and may not leave even the CBI untouched as more you keep things under wraps, the more liable the process is likely to be misused by everyone.

Tradition to protect the powerful

This will only create another class of privileged people who would be beyond the operation of laws. Coming to the experience of other countries, such kind of protection has never been given to any agency in those countries that boast of the Rule of Law or uphold Human Rights.

Are we going to negate the rule of law that our constitution enshrines? In India, however, such steps by the governments to protect the high and mighty have been fairly common.

I am tempted to cite two instances. First, the directive that was issued in the eighties to protect politicians and officers beyond the rank of Joint Secretary against any inquiry or investigation. The direction was quashed by the Supreme Court as discriminatory and illegal in the famous Jain Hawala case in December 1997. But lo and behold, in 1998 itself it was placed back on the statute book through an ordinance and later enacted into the CVC Act in 2003. (Significantly, the NDA government was in power in both 1998 and 2003)

The other instance is an investigation abroad that was to be conducted against a highly placed accused. That required a Letter Rogatory from the Indian Court to the court of the country where the investigations were intended to be conducted.

Under section 166 of the Criminal Procedure Code, any officer in charge of a police station can apply for such a letter. In 1993, a VVIP was to be protected, so the government modified the procedures by an executive order that the CBI should apply to the court for the LR only after obtaining permission from the government, thereby the possibilities of investigation abroad against any influential person were virtually closed, as the government could deny and did deny such permission indefinitely.

Requests were made to the government in this case for issue of LR in May 1993, but the Government of India did not give the permission till December 1996, when this writer left the CBI. (It was of course the Congress which was in the saddle in 1993)

So, there could be no investigations abroad, though the VVIP was accused of receiving kickbacks, keeping huge balances in banks abroad and acquiring a number of firms, in India and abroad. So much so, that power to apply for letter rogatory, vested in the SHO under the Code of Criminal Procedure, was withdrawn from the CBI and concentrated in Government of India and that too in the PMO (as was informally learnt), leaving nothing to chance.

Though the papers were pending with the Union Government for years but still this fact could not be made public by the CBI, as that would have amounted to censuring the Government, which the CBI under the control of the government itself could not afford.

The writer is a retired DGP of Haryana and former Joint Director, CBI

Life of contradictions

Sitaram Yechury

The universal reassertion by the all-party meeting, convened by Prime Minister Manmohan Singh on the lokpal legislation, upheld our republic's basic constitutional scheme of things where the Parliament and Parliament alone can make laws of the country.

The government of the day can have the widest possible consultations, but in the final analysis it has to bring before the Parliament a Cabinet-approved draft legislation for its consideration and adoption. Eventually, this is what the all-party meet decided. When the government brings this draft legislation to the Parliament, the political parties will reflect on it and give their opinion on the contentious issues.

One can't escape from the reality that there is widespread public outrage against the mega corruption scams that are unfolding by the day. This is reflected in the support being received for the articulation of the need to combat corruption at high places by sections of 'civil society'. While such concern has received support from political parties across the board, the government has to rise to the occasion by urgently undertaking measures to comprehensively combat corruption. This requires not only the creation of the lokpal and the lokayuktas in states but also the constitution of a National Judicial Commission to address the allegations of corruption in the judiciary and serious electoral reforms that are aimed to contain the exponentially rising influence of money power. Unless such a holistic approach is taken, corruption can't be seriously combated.

In the process, some outrageous comments by some of the “civil society” leaders are being heard in the electronic media, questioning the right of the MLAs and MPs to represent the vast millions of Indians. This is simply unacceptable.

According to our constitutional scheme of things, the sovereignty of the people is exercised through their elected representatives to the legislatures and Parliament. The executive (government) is both answerable and accountable to the legislature and, through them, to the people. Questioning the right of elected representatives to represent the people is tantamount to undermining this very scheme. At the time of Independence, when we adopted our republican Constitution, India took a bold and courageous step in granting universal adult suffrage. Many an advanced democracy had taken decades, if not centuries, to grant this right to its people. The strength of India’s freedom movement ensured such equality through a Constituent Assembly whose members themselves weren’t elected on this principle but had to have certain criteria like property ownership etc. The supremacy of the sovereignty of the people in our republican Constitution was ensured through this principle of one person-one vote-one value.

It will do well to remember that it is these common voters who, through their electoral verdicts, defeated the authoritarian streak in Indian democracy in 1977. It is this very electorate that in 2004 ensured the defeat of the communal forces to uphold the fundamental secular democratic tenets of our republic. In the final analysis it is this very electorate that has created conditions for ‘candle light processions’ and ‘hunger strikes’.

While upholding the need to combat corruption effectively through our constitutional scheme of things, the country needs to heed Dr BR Ambedkar’s warning when he commended the draft Constitution for adoption: “On the 26th of January 1950, we are going to enter into a life of contradictions. In politics we will have equality and in social and

economic life we will have inequality. In politics, we will be recognising the principle of one man-one vote and one vote-one value. In our social and economic life, we shall, by reason of our social and economic structure, continue to deny the principle of one man-one value.

“How long shall we continue to live this life of contradictions? How long shall we continue to deny equality in our social and economic life? If we continue to deny it for long, we will do so only by putting our political democracy in peril. We must remove this contradiction at the earliest possible moment or else those who suffer from inequality will blow up the structure of political democracy which this Assembly has laboriously built up.”

This inequality that Dr Ambedkar has warned about has, in fact, sharply widened rather than narrow, during these decades of neo-liberal economic reforms. On the one hand, 69 billionaires in the country have an asset value that equals a third of our GDP. On the other hand, over 80 crores of our people are barely surviving on less than R20 a day.

The figures of the latest National Sample Survey (66th round) on the employment situation in the country conducted during July 2009 and June 2010 do not paint a rosy picture. Compared to the 2004-05 survey findings, both the labour force participation rate and the voter's population ratio have shown a decline while the unemployment rate has shown a marginal decline as well. This, clearly, is due to the Rural Employment Guarantee Scheme that was put in place due to the Left parties' insistence.

However, among all the workers in the country, 51% are characterised as self-employed while 33.5% are casual labour. This means, 84.5% of our workforce continue to remain victims of economic insecurity.

The fight against corruption must be seen in the context of this larger picture. If the huge amounts being looted were instead deployed to create greater job opportunities and provide health and education for our

youth, maybe we could have begun addressing the ‘life of contradictions’ that Dr Ambedkar has warned us about. The political parties and ‘civil society’ must, together, mount popular pressure on the government to adopt policies aimed at removing these growing inequalities rather than widening them.

Sitaram Yechury is CPI(M) Politburo member and Rajya Sabha MP

The views expressed by the author are personal

GOOD GOVERNANCE

Matter of Governance

Role of civil society

Sudhanshu Ranjan

Countries like Switzerland, have three levels of guaranteed people's participation—initiative, referendum and recall.

The all-party meeting held on the Lokpal issue damned the civil society and a one-line resolution said that the government should bring before the next session of parliament a strong and effective Lokpal bill following established procedures. Opposition parties are also peeved that their space has been occupied by the activists though they wanted to derive political mileage out of the movement led by the civil society against the government.

Earlier, Union human resources minister Kapil Sibal emphatically said that there would not be any more involvement of the representatives of civil society in the law making in future and that the constitution of a joint drafting committee for the Lokpal bill should not be taken as a precedent. However, the National Advisory Council has approved a framework for pre-legislative consultation which if adopted by the government would mean people's participation in framing laws. So, it will be proper to appreciate the term 'civil society' in the correct perspective.

All of a sudden, civil society has become a buzzword or a catchword nowadays. On the issue of corruption and black money, it has taken the government head on. Thomas Hobbes used the term 'civil society' in his Leviathan in which he propounded the theory of social contract that men could contract together in order to lift themselves from the state of nature to civil society.

He believed it was necessary for self-preservation as the “war of every man against every man would destroy the society.” For him, the life of man was ‘nasty, solitary, brutish and short’. Thus, man always lived in the fear of death, and he found the remedy in the appointment of a sovereign, and a trade of personal freedom in return for personal safety. He held that individuals had a legitimate right to choose their ruler, but once having exercised that right, they did not have any role, and the ruler, whether monarch or assembly, is alone authorised to think and act for the community in matters of public concern.

In sharp contrast, John Locke believed that men were naturally peaceable and sociable, and that rulers must not enjoy untrammelled powers which should be limited by conditions imposed by those who delegated the power. Thus, he wanted the civil society to restrain the powers of the sovereign. Jean-Jacques Rousseau also held that citizens could rebel against the sovereign if the latter broke the contract.

In fact, in 1689, the Convention declaring the English throne vacant accused James II of ‘breaking the original contract between King and people’. According to Friedrich Hegel, the evolution of society is marked by three stages- the family, the civil society and the State.

This conflict between the elected government and the civil society goes on and on. The government feels and asserts that it has got the mandate of the people to act in their interest. Most governments do sincerely believe that they are working for the welfare of the people. The Emergency reminds how parliament and the Supreme Court can also trample citizens’ freedoms when even the right to life was suspended and the Supreme Court upheld it in the Habeas Corpus case.

When Mahatma Gandhi launched his non-cooperation movement, a person no less than Rabindranath Tagore protested and refused to take part in it. He felt that it would lead to anarchy and so the right way was

to spread education among the masses. Gandhi went to Shantiniketan to convince him but he was not. Similarly, Hasan Imam, a leading barrister of Patna and Congress leader was also opposed to the idea of non-cooperation. Gandhi went to Patna and had an extended discussion with him but he could not be convinced either.

Civil disobedience

Annie Besant's opposition to civil disobedience is well-known. Every government questions the credentials of those who speak up against it. Indira Gandhi had questioned the legitimacy of the JP movement and had dubbed him a fascist who did not believe in democratic institutions. The British government had questioned the credentials of Gandhi and his claim to represent the whole country. So, Gandhi was not the sole but just one of the representatives of India in the Round table Conference.

Some countries do provide for people's participation in governance. Switzerland has three levels of guaranteed people's participation-- initiative, referendum and recall. Under initiative, a fixed percentage of people can initiate the process of legislation by signing the paper that a particular law should be enacted. Under referendum, people vote on a particular issue or bill. And under recall, they have a right to recall their representatives.

Whatever political parties say about the civil society, nobody can gainsay the fact that it is only because of the pressure of the civil society that the creation of the Lokpal is now a certainty. The idea was first mooted by C D Deshmukh, the Union finance minister in 1950s and then president Rajendra Prasad supported it but Jawaharlal Nehru suspected the motive of Rajendra Prasad.

The Lokpal bill has been pending for 42 years but could not be enacted. It goes to the credit of the civil society that it galvanised the public opinion in its favour.

12-digit pin to Nirvana, claims government

Ajith Athrady

In the season of corruption, pressure is mounting on the Government to plug the leakages in its welfare schemes.

With an appalling over 65 per cent of the total money spent on welfare schemes meant for the poor not reaching them, the mandarins of the government are now looking at the magic number, “Aadhaar”, or unique identity number issued by Unique Identification Authority of India (UIDAI), as a quick fix solution.

As the UIDAI is celebrating the successful issue of one crore Aadhaar numbers as on June 30, 2011, officials of various departments are knocking on the door of the Authority, seeking a linkage between UID numbers and welfare schemes rolled out by them.

Though applying for an Aadhaar number is optional, the government is keen to bring all poor under its ambit to plug leakages in delivering benefits of welfare schemes. This means, a person eligible to draw subsidised foodgrains under Public Distribution System (PDS), must possess an UID number which will be linked to his ration card.

When the ration card holder draws rice or wheat from the ration shop, he must provide his biometric data (unique physical traits collected while issuing UID) which can be cross checked with his biometrics stored in a central data depository (CDD) of the UIDAI. Only if the CDD gives the nod, the ration shop owner will issue foodgrains to the beneficiary.

Plugging leakage

“This will prevent non-PDS card holders siphoning off foodgrains in the name of genuine beneficiaries,” said Union Food Minister K V Thomas, who has been holding meetings with UIDAI chairman Nandan Nilekani to link ration cards with UID numbers.

With the Planning Commission considering direct cash transfer in place of foodgrain and fertiliser subsidy, government agencies may insist on beneficiaries opening a bank account by citing UID number.

According to Nilekani, Aadhaar is working with Reserve Bank of India and Ministry of finance to ensure that banks can use UID to assist citizens even in the remotest parts of the country get financial inclusion. Sikkim and Tripura state governments have already started accepting UID as official identification.

Thus, Aadhaar is taking centre stage as a means to deliver good governance and ensure financial inclusion of the poor, say officials. The UIDAI is already conducting a pilot disbursement of funds under the Mahatma Gandhi National Rural Employment Guarantee Scheme (MNREGS) to Jharkhand through Union Bank, ICICI Bank and Bank of India branches, where micro-ATMs will be deployed for payments.

Huge savings

A McKinsey report on Inclusive Growth and Financial Security, published in October 2010 noted that an electronic platform for government payments will save the exchequer around Rs one lakh crore.

The idea of issuing an Aadhaar number to every citizen was first mooted by the Planning Commission as an answer to plug leakages in welfare schemes. Around the same time, the Registrar General of India (RGI) was also involved in the process of creating a National Population Register and issuing Multipurpose National Identity cards to all citizens.

In 2006, an Empowered Group of Ministers (EGoM) was constituted to collate two schemes — Population Register under the Citizenship Act, 1955 and the Unique Identification Number project.

In January 2009, UIDAI under the Planning Commission was constituted to provide a 12-digit unique identification number dubbed as Aadhaar. The scheme was launched on September 29, 2010 by Prime Minister Manmohan Singh at Thambali village of Nandurbar district in Maharashtra.

The Authority has enrolled 3.5 crore people till June 30 and issued one crore numbers. Enrollments are in progress in more than 25 States and Union Territories by more than 30 registrars with the help of over 11,000 operators.

Nilekani is confident of meeting the target of generating 60 crore UID numbers by 2014. “Enrollment will accelerate in the coming weeks as more registrars will be deployed, he said.

JUDICIARY

Judiciary flogs the executive again

Hiranmay Karlekar

The Supreme Court has struck another blow for the cause of integrity in public life by appointing a Special Investigating Team to monitor and probe the accumulation of illegal money by Indian nationals and entities operating in this country and abroad. The committee, as constituted by the order issued by Justice *B Sudershan Reddy* and Justice *SS Nijjar*, is adequately comprehensive in its composition. It includes all agencies that can possibly play a role in probing the accumulation of money abroad, their use and those culpable.

Equally comprehensive is its mandate, which includes “investigation, initiation of proceedings and prosecution” involving civil and criminal proceedings, arising not only from the case relating to that of Hasan Ali and Kasinath Tapuriah but also from any other investigation pending, already commenced or waiting to be commenced in respect of unaccounted for money in foreign banks. The investigation will also cover the “criminality or unlawfulness of activities that may have been the source of such money, the criminal or unlawful means used to take such money out of the country and the use attributed to such money in India and abroad.”

The designation of two distinguished former judges of the Supreme Court, Justice BP Jeevan Reddy and Justice MB Shah, as chairman and vice-chairman respectively, is calculated to ensure that the powerful SIT does not go the way of the High Level Committee earlier probing the matter. Taking serious note of its lack of seriousness, the two learned judges observed, with specific reference to the possible use of such money in undermining national security, “The fact remains that with

respect to factors that were within the powers of the Union of India, such as investigation of possible criminal nexus, threats to national security, etc, were not even attempted.”

Everyone who values India’s security and integrity and is apprehensive of the growing nexus among criminals, terrorists and sections of the police, administration and the political establishment, will welcome the Supreme Court’s move and observations which were made in connection with a petition filed by the former Union Law Minister and leading advocate, *Mr Ram Jethmalani*, and others.

The SIT-led investigation it has ordered is especially important since punishment of those, particularly the over-mighty, guilty of flouting the law and indulging in activities prejudicial to national security, would send a powerful message down the line. While lauding the court’s action, one also needs to remember that there are limits to what the already-overburdened judiciary can do in redressing the executive’s prodigality and criminality and the ubiquitous and all-pervasive corruption in the country.

Mechanisms like the Right to Information Act have doubtless helped. The move to remove the Central Bureau of Investigation from its ambit and the gruesome murder of several activists using it to unearth and halt corruption, testify to its potency. But, as the murders indicate, conditions in which people can extract and use information as a weapon, are increasingly threatened. Here the guilt lies primarily with the State Governments that have undermined or deliberately subverted their administrative and criminal justice machineries to further the illegal financial and other activities of people controlling them.

The argument that mass movements should be launched to cleanse the system ignores several critical questions. Who will organise such movements and set up the massive organisational infrastructure needed

for the purpose? Where will the funds and volunteers come from? Attending a single demonstration or even many of them serves a limited purpose. An organisation needs whole-timers to sustain its activities, literature and communications tools to spread its message and mobilise support, and a battery of lawyers to defend activists threatened, assaulted and/or arrested, halt illegal moves of the Government as well as projects, cleared through corruption, threatening the environment and the lives and livelihoods of people.

It is a Herculean task. Corruption has become so all-pervasive that it threatens national security. It facilitates the inflow of funds for terrorists and enables them to obtain passports and other identification documents with the utmost ease. After all, three of the hijackers of Indian Airlines (now Air India) Flight IC 814 to Kandahar, all Pakistani citizens, got Indian passports from Mumbai in a day. Corruption was a major cause of the defeat of the Kuomin tang Army at the hands of the Communists in China. Is anyone listening?

POLITICS AND GOVERNMENT

**Refurbishing govt's image
PM should face the nation more often**

Kuldip Nayar

GOVERNMENTS are out of steam after traversing some distance. It happens all over the world because the enthusiasm with which they start functioning peters out, the promises which they make become remote and the schemes which they take up lack push. This is the most charitable explanation of the Manmohan Singh government's non-performance. It has no sense of direction. How can it direct the nation? This comes out clearly as the government reaches midway to its five-year tenure.

Yet, it does not realise how strong the groundswell of public opinion against it is. The agitation by Anna Hazare gave evidence of that. People came out in the open in his support throughout the country. The government assessed the mood at that time correctly and sat with the representatives of civil society to draft the Lokpal Bill. The issue is corruption and the government has to attend to it.

By reshuffling the Cabinet, people's anger is not going to go away unless they see some concrete steps to eliminate corruption. The battered government has to come up with the answer to explain why the system does not function. The government's ham-handedness can be judged by the way even the Finance Minister's office in the secure North Block was broken in to bug and leave chewing gums to mock at the entire exercise of security.

By changing portfolios the Prime Minister does not improve the efficiency of departments or quicken the pace of decisions. And what do

you do about integrity? Practically all ministers of Prime Minister Manmohan Singh are mixed up with a magnet in the corporate sector or the other. Ineptness has, in fact, become the hallmark of the government.

Even if you were to leave out corruption, which has been the maximum since Independence, you would find numerous examples of sloth and slovenliness strewn all over the administration. Maybe, there is a purpose behind it, probably to cover up the fallout of an unholy alliance between ministers and bureaucrats. The government seems to live under the illusion that the subsidies and pro-poor yojanas (plans) keep the aam aadmi happy. Half of the allocation does not reach him and what reaches him tends to make most among the indolent and hopelessly dependent. Punjab and Haryana are two examples where agriculture labour prefers to draw a dole than work.

What depresses me is the Prime Minister's belief that nothing is wrong with the government and that its image has been damaged by the media and the judiciary in that order. He should realise that both are the consequence, not the cause. The cause is the series of scams which would have remained unexposed if journalists had not brought them before the public, and judges had not pulled up the administration. Dr Manmohan Singh goes by what the bureaucrats tell him or the senior ministers suggest. They are cut off from the public and do not know about its thinking. Having been a bureaucrat for most of his life, Dr Manmohan Singh should have known how to make the administration function quickly and responsive.

My feeling is that time is running out. The Prime Minister does not realise that he has no leeway and must act now if he does not want the situation going out of hand. He should compare his last tenure with the present one. Then it looked as if he had thought over the steps he was taking. Despite the pressure of coalition partners, he had his way. True, he performed less than expectations, but did not seem out of depth as he looks today.

In the current tenure, he does not seem to get anything right. Understandably, he feels uncertain because he has to manage some 24 parties and does not have the chunk of 60-odd members from the Left to depend on. (They themselves have been reduced to 16). But the coalition dharma does not mean that he should connive at the corruption involving its members. The correspondence between him and ex-Telecommunications Minister A. Raja shows that he knew about the corruption among DMK members in the Cabinet and still he did not do anything about it. Dr Manmohan Singh should have at least warned DMK chief K. Karunanidhi instead of placating him. True, Congress president Sonia Gandhi dictates the terms and she was not willing to disturb the applecart in the beginning of the second term.

The issue of price rise is a serious one. There must be something wrong somewhere to allow it to go haywire. By saying that inflation is “causing worry,” the government does not mollify the angry nation. I get the impression that the rulers have no idea of coping with the ever-increasing prices. “We have no magic wand,” is the stock reply when pressed to explain why prices are inordinately high. Why did the government let the situation reach such a pass in the first instance? No economist is required to tell the government that it is a question of demand and supply. What is required is productivity. The government has no immediate plans to do so. Probably, it has referred the matter to the Planning Commission, which will tell us in good time what steps to take. By that time inflation would have risen still further.

Has the government ever tried to cut its expenditure? One no longer hear the word “austerity” in official circles. Almost 75 per cent of petrol and diesel is utilised by vehicles of government and the public sector undertakings at the Centre and in the states. Why doesn't the government reduce the cavalcade of cars and security personnel with a minister or a VIP? I thought BJP leader L.K. Advani would have been sensitive enough to voluntarily cut the number of cars and security men when he travels at least within New Delhi, a protected area. In fact, all

opposition leaders in the country should unilaterally surrender all vehicles that follow them except the one which carries the security men. This may be one way to shame the government.

The Prime Minister and the Congress president are now engaged in an exercise to refurbish the image of the government. They should recall how Jawaharlal Nehru and Lal Bahadur Shastri stressed on economising the government expenditure. Shastri even gave a call for “miss a meal” since food was in short supply. That spirit in leadership is lacking.

Concrete steps are required to convince people that the government is serious about eliminating corruption as well as avoiding wasteful expenditure. A government which appears out of steam cannot prove its dynamism by the Prime Minister’s briefing to some editors. He should come out of purdah more often and face the nation.

For the people, by the people

Ashok Malik

Governance in a democracy is propelled by two factors: delegation and accountability. Citizens choose their representatives (MPs or MLAs), delegate constituency responsibilities to them, and hold them accountable in the next election. In turn, legislators delegate authority to ministers, who are accountable to Parliament (or the state assembly).

In practice, the system does not work perfectly. The process of accountability is not always adequate. Public impatience with the quality of governance is often high, as with the UPA administration in the past year. Nevertheless, this template of delegation and accountability is non-negotiable. The alternative would be for every policy action to be referred to the people. This is not practicable.

How does this 'delegation and accountability' equation play out in the context of recent civil society activism? There are those, such as the lawyer Prashant Bhushan, who have suggested that technology now allows us to access public opinion in real time. It is appropriate, therefore, to use this feedback while framing laws and policies.

What does this mean? Does it suggest opinion polls and use of text-message or internet-based surveys? Does it involve referendums? As a device, the referendum is much used in Switzerland. Even laws passed by Parliament can be challenged and nullified. In the Swiss system, an individual citizen can force a plebiscite if he collects 50,000 signatures. [Switzerland](#) has a population of eight million. If its standards are applied to India, one is looking at collecting signatures of 7.5 million people.

Clearly the 'go to the people' method is not feasible. How then can

policy making and legislation be made more consultative? Civil society groups claim one route is to involve them in the process. They argue that they work among grassroots communities and represent popular opinion. As such, they bring to policy shaping a humane heart, while civil servants and political administrators only contribute a clinical mind. Broadly, this has been the contention of both the [Anna Hazare](#) camp as well as members of the National Advisory Council (NAC).

It is apparent a certain populism and emotiveness is built into this civil society argument. Whichever way one considers it, it ends up undermining technocratic specialisation, not to speak of elected government. To be fair, the Congress-led UPA administration has been guilty of encouraging this.

If the UPA wanted civil society activists to be part of its regime, why did it take recourse to an unaccountable body such as the NAC? Why couldn't it, for instance, nominate Aruna Roy and Harsh Mander to the Rajya Sabha - using the 12 seats set aside for eminent persons perhaps - make them ministers and have them defend or answer questions on, say, the [Communal Violence Bill](#) or the Food Security Bill in Parliament?

There are other examples. A little over a year ago, the environment minister reduced the debate on Bt (transgenic) brinjal to 'public hearings' in select cities. These meetings were dominated by anti-GM activists. The verdict was a foregone conclusion. Scientific counsel, including from state-appointed bodies, was ignored.

It is possible the minister believed the scientists were wrong and that Bt brinjal was dangerous. Fair enough. If so, doesn't this merit reviewing the mechanism by which governments in India receive science and technology advice? Has that mechanism been altered? No. So were the scientists right or wrong? Were they honest or compromised? You cannot have it both ways.

Another case is of civil society litigants, supported by members of the Planning Commission, challenging the national vaccination programme. They say recommendations of the [Indian Council of Medical Research](#) and of the government's technical advisory group on immunisation are incorrect. This may or may not be true - but are civil society groups, with the same set of lawyers jumping from the Lokpal Bill to vaccine delivery, perennial and all-purpose arbiters of the public good?

There is one other point to consider. What happens when civil society groups have opposite views? Are they both right? It is sobering to consider that at the end of the day, such groups are accountable not to an undifferentiated society but to specific stakeholders and - dare one say it - ideologies. After the Japan earthquake, some civil society groups demanded India scrap nuclear power plants and focus instead on hydroelectricity. Yet, many projects have been stymied by other civil society groups that have made hydropower - rather than nuclear power - their object of hate. So if every thread of civil society is handed a competing veto, how is India expected to give its people electricity?

An analogy would help here. The [United Nations Framework Convention](#) on Climate Change (UNFCCC) has over 500 NGOs accredited to it. There are so many of them that they are now classified as BINGOs (business and industry NGOs), ENGOs (environmental), RINGOs (research and independent), TUNGOs (trade union), YENGOs (youth) and IPOs (indigenous people).

Is a climate change treaty that satisfies all such categories and all these NGOs ever possible? Is it easier for 500 civil society groups to agree or for 200 nation states or, better still, for the 25-odd countries critical to the carbon emissions issue? The answer goes beyond accountability and delegation. It is about governance, whether global or domestic, and who can deliver it and who cannot.

The writer is a political commentator.

Lacking transparency

Kuldip Nayar

Many more scandals are going to come out in the open. People expect the government not to drag its feet on these issues.

How do you relate the Emergency imposed some 36 years ago this week to the new generation? I have been asked this question many a time. The Congress government will not talk about it as long as the Indira Gandhi-Sonia Gandhi dynasty, the guilty party, is in power. It considers the attack on Mrs Gandhi's autocratic rule during that period an affront to the family.

The BJP which too went through the rigours of the autocratic rule then does not understand the ethos of liberalism. The party's religious identity is an anti-thesis of what India stands for. Scholars of Mrs Gandhi's munificence are not objective enough to tell the truth. Some interpret the emergency as a measure to tackle anti-Left forces. Even otherwise, only a few dare to point out the excesses of those days because the impression is that when you do so, you are tagged anti-Congress, and will be out of favour with the rulers. The entire story is yet to come out. In fact, the demand for making papers of those days public, raised again and again, goes unheeded.

What happened during the emergency, which lasted from June 1975 to January 1977, is a shameful story of a takeover by a prime minister to save power and her skin. Prime minister Mrs Gandhi suspended the constitution, gagged the press and imposed the personal rule to overcome the handicap of disqualification from parliament. The Allahabad high court had debarred her from the Lok Sabha membership for six years. She had used the government machinery in her election.

Leftist Supreme Court judge Krishna Iyer gave her reprieve through a stay order on the high court's judgment. Once she was off the hook, she showed her hand and extinguished the lights of democracy that had distinguished India from the other third world countries. With the help of her son, Sanjay Gandhi, an extra-constitutional authority, she changed laws and destroyed the institutions. She became law unto herself, concentrated all authority in her office and did whatever she and her son fancied.

First she detained more than one hundred thousand people without trial. They were her critics. Then she broke the steel frame of civil service so as to reduce it to mere rubber stamp to endorse her illegal orders. She created so much fear in the minds of people that they stopped differentiating right from wrong and moral from immoral.

The new generation must understand that today's non-governance or mis-governance is the fallout of what Mrs Gandhi did by destroying the established order, a natural corollary. Scams from the Bofors guns to 2G Spectrum are only a tip of the iceberg. Many more scandals are going to come out in the open. People expect that the government will not drag its feet, as it has done before, when they become part of the public domain. In a democratic society, the nation expects the state to assure that vital links of the government will not be subjected to strain. But the situation is the opposite.

It all started with a by-election in Orissa in 1972. Nandini Satpathy was elected to the state assembly after spending lakhs of rupees. Gandhian Jayaprakash Narayan raised the matter of corruption with the prime minister. Her defence was that the Congress had no money even to run the party office. When he found no response, he took the issue to the nation. One thing led to another until JP gave the call that the battle was between the people who wanted the government accountable and the government which was not willing to come clean.

Return of same problem

The same problem has returned after 36 years. The entire debate before the country is on corruption. The government wants to do little to eliminate it. The public is determined to end corruption once and for all, particularly when one minister after another is found involved in either the 2G spectrum scandal or some other like the Krishna-Godavari basin gas scam.

The Comptroller and Auditor General has indicted the Union petroleum and natural gas ministry for allowing irregularities and bending rules to 'oblige' Reliance Industries Ltd, resulting in an 'unquantifiable' loss to the exchequer. This shows how powerful politically the corporate sector has become. People want more and more transparency while the government sees to it that the avenues for public knowledge are lessened.

To pay homage to JP, who launched a movement to challenge the central government on issues relating to corruption, I went to Patna. June 5 was the day when he gave the call to bring about Sampurna Kranti (total revolution). There were only a handful of people at the JP house, where he lived and died, to hark back on the memory of that day. The place wore a lonely look. Once it was a hub of political activities that resulted in the defeat of Mrs Gandhi at the polls in 1977.

What disappointed me was the absence of Bihar chief minister Nitish Kumar, a product of JP's movement. There was not even a meeting called by the government to talk about the Sampurna Kranti or fight for transparency. Karl Marx correctly said: "The philosophers have only interpreted the world; the point however is to change it."

MORE EQUAL THAN MOST

- Many Indian politicians still like authoritarian democracy

Ashok Mitra

A dose of cynicism is in order. The corporate sector already occupies all the commanding heights in the polity. Hullabaloo over the contents of the lok pal bill cannot but be only a *divertissement*: let controversy rage over the modalities of fighting corruption in high places, the interregnum will provide enough breathing space to plan new strategies to cover up shenanigans-by-courtesy-of-neo-liberalism. Most of the Supreme Court judges smitten by the activism bug are also bound to retire meanwhile. Once the judicial passion gets spent, anti-graft crusaders too will return to their cloister. Calm, too, will automatically return to the nation's capital which is the centre of the Indian universe.

The debate on the modalities of tackling corruption in high places has nonetheless yielded one useful by-product: we now have a clue to how some minds that matter are working. A major issue apparently dividing the government and the motley crowd of so-styled civil society warriors is whether the prime minister should or should not come under the purview of the lok pal's surveillance. *Prima facie*, there is no reason why he/she should not. He/she may be *primus inter pares*, but is still a minister; if other ministers come under the lok pal's scanner, the prime minister too ought to. The government and the party that heads the government coalition are not willing to go along; they abhor the idea of treating the prime minister on a par with other ministers. As points and counterpoints fly across the television channels, the heavyweight of a cabinet minister who has emerged as the principal spokesperson on behalf of the government shot a rhetorical question: is there any country in the world where its prime minister has ever been charged with

corruption? The minister was confident there was none. It is therefore, he concluded, ridiculous — and demeaning to the country by implication — to introduce any legal provision to prosecute our prime minister on grounds of corruption; the lok pal must not be allowed to embark on a fishing expedition to find out whether the prime minister has or has not deviated, in the conduct of public affairs, from the straight and narrow path.

Rhetoric deserves counter-rhetoric. Can the official super spokesperson cite the instance of any other country where a prime minister admits that he had been presiding over a bunch of ministers some of whom were corrupt to the core but he/she will not take responsibility for their misdeeds and feels no reason to resign? Do not certain other facts stare at our face too? In Japan, it is standard political practice for the prime minister to seek forgiveness of the people for any major or minor dereliction of duty on the part of the government or any individual minister and vacate office without further ado. In Britain, Harold Macmillan stepped down as prime minister owning responsibility for some sexual dalliance on the part of one of his junior colleagues. Once the convention is firmly established that under circumstances which embarrass the regime the prime minister resigns, no occasion arises to prosecute him/ her. The person elected president is both head of state and head of government in the United States of America. In not too distant a past, one such president, Richard Nixon, had to resign from his august office on the eve of his impeachment in accordance with procedures spelled in the nation's constitution.

Caesar's spouse may be above suspicion, but Caesar himself is not in most parts of what is known as the democratic world. The obtuseness embedded in the argument that the prime minister is no ordinary mortal, therefore, provides food for some thought. Democracy means freedom of choice. Is that freedom being availed of to contribute a new definition of democracy itself? Perhaps the intent is to drop the hint that if there could be such a phenomenon as popular democracy or guided

democracy, why not accept the notion of authoritarian or totalitarian — or, for the matter, dynastic — as well; others might abide the question, but the prime minister — conceivably belonging to only one particular family — would be free, the ordinary laws of the land would not apply to him/her. Since, exception supposedly proves the rule, the exceptional treatment of the office and person of prime minister would confirm India's standing as the world's largest democracy.

Much of this, though, is not original thought and has a distinguished antecedent. Let there be a flashback to the year 1975. Indira Gandhi was peeved no end by that silly judgment of the up-to-no-good Allahabad High Court holding her guilty of electoral malpractices. The judgment, how annoying, imperilled her tenure as prime minister. Poor she; in the event, declaring an Emergency alongside suspension of the fundamental rights granted by the Constitution was the only alternative left to her. It is however an ill wind that does not yield somebody at least some good. The congenial ambience of the Emergency made it easy for Indira Gandhi to ram through a constitutional amendment. The Constitution (39th Amendment) Act of 1975 introduced a special proviso concerning the election to Parliament of the prime minister and the Speaker of the Lok Sabha; no court in the country was permitted to question, on any ground whatsoever, the validity of the election of these two eminences. The amendment was made retroactive, thereby rendering the Allahabad High Court's verdict on Indira Gandhi's election *ultra vires* of the Constitution; it was like waving a magic wand. Another point is also worth noticing. An authoritarian approach to things does not amount to abandoning a sense of aesthetics: it was a bit inelegant to treat the prime minister as a *sui generis* case; to keep her/him company, the Speaker of the Lok Sabha was tagged on to constitute the duet the validity of whose election to Parliament would be beyond the reach of the legal process.

Indira Gandhi's experiment with totalitarian democracy met a sorry end in 1977. The Janata regime that followed could at least take time out from its unending internal squabbles to pilot the Constitution (44th

Amendment) Act of 1978 which got rid of the 39th amendment; the prime minister (and the Speaker of the Lok Sabha) re-entered the earth and were once more at par with one billion or thereabouts of other citizens who make up the nation.

It is given to human beings to learn from experience. Since democracy grants freedom of choice, it is equally the privilege of human beings, or any collection of human beings, not to learn from experience. Maybe decision-makers in the country's largest political party have not ever been able to forsake their passion for authoritarian democracy. Was it not sheer bliss to be ruling during those two heavenly years between 1975 and 1977? The wishes and whimsies of an urchin from you-know-which family had the imprimatur of law, thousands of recalcitrant and potentially recalcitrant elements could be locked up without trial in prison, encounter deaths could take care of cheeky, restless youth, the wretched inmates of ramshackle slums besmirching the texture of metropolitan beauty could be loaded like cattle in trucks and dumped in a wilderness fifty or a hundred kilometres away.

Possibly the memory of that paradise still haunts and the blueprint of a new edition of authoritarian democracy is firmly etched on the subconscious. The occasion of the ersatz debate over the nitty-gritty of the lok pal bill is being put to excellent use. It is a sort of a preview of the re-touched dream: the prime minister is no ordinary citizen, she/he is the be-all and end-all of Indian democracy, not just holier than holy, but the holiest; how can anyone even dare to suggest that he/she should be the target of dirty investigation for this or that piffling alleged misdemeanour while in the pursuit of official duties?

If the incumbent prime minister assumes that such solicitude is to protect his dignity and honour, he was born yesterday.

URBAN DEVELOPMENT

Boost for urban development

It would be unfair and pessimistic to scoff at the proposed bullet train project linking [Delhi](#) to towns around the National Capital Region. While the project is an ambitious one, there is no reason to doubt its fruition. The Delhi Metro bears testimony to the success of rapid mass transportation projects if they are implemented in the right manner. It is welcome that the proposed high-speed rail corridors - Delhi-Meerut, Delhi-Panipat and Delhi-Alwar - will be implemented along the lines of the Delhi Metro Rail Corporation. This should free the project from bureaucratic red tape and reduce delays. Once operational, the project would yield massive economic benefits for the entire region.

Given the demographic pressures on Delhi, it is impossible for the city's current infrastructure to sustain such a large resident population - estimated at around two crore. Urban planning demands a hub and spoke model of transporting goods and people quickly between Delhi and surrounding areas. Just as in [China](#) and Japan, fast bullet trains can reduce the travelling time by half. This way Delhi could continue to be the regional economic hub with the [satellite towns](#) easing pressure on the city. Also, such a virtuous link would distribute the fruits of development to the outlying region. Just as the construction of an expressway stimulates economic activities along the route, the bullet train links could spawn prosperous industrial corridors.

Another area where bullet trains score is environment. Research has shown that high-speed rail travel emits a fraction of the greenhouse gases emitted per capita in other modes of travel over the same distance. The number is as low as one-tenth when compared to air travel. For Delhi itself, the construction of state-of-the-art bullet train stations

would help integrate the other modes of travel, moving towards a quality multi-modal public transportation network. Taken together, the bullet trains would be a massive boon.