

Systemic Failure or Organ Failure?

■ Dr. M.N. Buch

The Chambers Twenty-first Dictionary, which is quite an authoritative lexicon, describes 'system' in the following words, "A set of inter-connected or inter-related parts forming a complex whole". The word 'systemic' is defined as "referring or relating to a whole organism. 'Organ' is defined as, "A part of a body or plant which has a special function, e.g. a kidney, a leaf". Therefore, when an organ fails it is an individual part which becomes inoperative and, perhaps, with proper treatment the organ, or part, can either be repaired or made functional, or it can be replaced. A systemic failure, however, would be much more serious because in such a situation the entire system, or the complex whole consisting of individual organs, begins to give way and this can lead to what can only be called termination which is irreversible. Here all the organs either seriatim or collectively fail. The situation can still be retrieved by repair or replacement. The question which faces India today is whether our body politic is facing organ failures or is it that we are looking at a system failure?

The total system under which India operates is what is provided in the Constitution. The body politic consists of three major subsystems, the Executive, the Legislature and the Judiciary which together constitute the whole system called the Indian State. Within the overall system and the sub-systems there are a number of organs which are required to perform specific functions. Schools and colleges are required to impart education, medical institutions are meant to look after the health of citizens the Income Tax Department is supposed to collect taxes levied by the Legislature, the Agriculture Department is meant to promote agriculture and the Police are required to create an overall environment of security and for that purpose to maintain law and order, prevent, detect and prosecute crime, guard the country against externally sponsored acts of terrorism and generally reassure people that they can go about their normal vocations in peace. This functional distribution or responsibility applies to all the organs of the State and to all levels of public servants, elected or appointed. Sometimes a particular organisation or department fails to live up to our expectations. Some civil servants do not carry out their duties faithfully. Quite often even at subsystem level there is failure, such as the virtual lock out of Parliament that we have witnessed for the last few months. Sometimes the citizens themselves are so annoyed with a particular organ of the State that they react strongly and, therefore, there is a hiatus between public servants and people at large. These are aberrations which will crop up from time to time in any system, but the system itself has to be resilient enough to apply self-correcting measures so that the organ which is faltering is brought back on track. Organ failure is correctable but when the self correcting mechanism fails it can have a cascading effect on the functioning of organs and an unchecked failure of one organ can cause other organs to come under stress and fall. This can lead to systemic failure, which has to be avoided at any cost.

How sound are our systems? Because the republic is founded on democracy and the fact that every five years people do exercise their franchise in an environment which is basically free of fear means that democracy has taken very deep roots in India. Democracy, therefore, becomes the very base, the very foundation on which the system rests and this foundation cannot be destroyed. This does not mean that the superstructure, which corresponds with organs of a system, cannot be damaged, but systemic failure cannot take place unless the foundations

themselves crack. The foundations of Indian democracy are stable and safe and this can be categorically proved by the failure of the State of Emergency which Indira Gandhi declared in 1975 and had to hastily withdraw in 1977. This is one side of the story, but the other side is that if organs fail and corrective measures are not taken in time, cumulatively this can lead to a system failure. There are many critics, many pessimists, who say that this is beginning to take place increasingly and that we are in danger of systemic failure. People with extremist views go to the extent of saying that the systems themselves are rotten and we should scrap them and create new systems. In Russia the Tsarist Government and the Tsarist system had become rotten and, therefore, the Russian Revolution took place and Imperial Russia became the Communist ruled Soviet Union. Every organ of the old regime was destroyed.

The problem with revolutions is that they quite often go against the established nature of things and, in turn, they themselves fail. Two glaring examples of this are Russia today and the modern Peoples Republic of China. Within seventy years of establishment the Soviet Union broke up and disappeared, to be replaced by the Federated Russian Republic which has moved away from one party rule of the Communist Party of the Soviet Union to something which is attempting to resemble western multi party democracy. The Eastern Republics have broken away from the Soviet Union and its successor State, Russia, as have Ukraine, Belarus, Latvia, Estonia, the Caucasian Republics of Georgia and Armenia. The system failed and the country split. The second example is of China, where Mao's revolution transformed a rotten Kuo Min Tang governed China by the Peoples Republic, which consolidated the country but also brought it under harsh one party rule. Today, however, the picture has changed and is continuing to change. Under Deng Tsiao Ping and his successors China has moved away from an extreme Left Wing form of communism and instead wholeheartedly embraced the capitalist economic system. Politically China has remained under one party rule and the tension is apparent between an economic system which is liberal and a political system which is still rooted in the shibboleths of Marx, Lenin and Mao. Yet this country has accepted Hong Kong and Macau, former British and Portuguese colonies, as part of China but following their old political systems. Here revolution has turned to evolution, which has kept the country intact and will probably drive it closer to liberal ideas of political organisation, though not necessarily the Westminster or the American model of democracy. This country is to be watched very carefully, not so much because it is now an economic powerhouse but because political changes are taking place which may have very far reaching effects globally.

It is in the context of what the holders of extreme views on how the Indian State functions have to say about scrapping the system that I have brought up the position prevailing in Russia and China. The Indian system of change is evolutionary rather than revolutionary and, therefore, the change tends to be seamless, painless and very long lasting. For those with short memories I would like to draw their attention to what Jawaharlal Nehru and S.K.Dey achieved through the Community Development Programme. Colonial India with its highly regulatory administration was launched on the path of development, especially rural development, by co-opting the people of our villages into an effort to galvanise rural society and unleash people oriented, people driven rural development. Without anyone realizing it India evolved the system of development blocks, each headed by an officer specifically dedicated to the development agenda. The regulatory mechanism of the tehsil and district remained, but a new unit of administration, the block which was coterminous with tehsils in States which had small tehsils and with more than one block per tehsil where the tehsil was large and could be segmented into more than one block. Extension officers in various disciplines were posted in each block. The

BDO was equivalent in rank to the Tehsildar, but because the development administration structure was separated from revenue administration, which could be called coercive to an extent, we had a new cadre of officials who were accountable to the people at block level and whose only agenda was improvement of the rural economy. Setting up a parallel development administration without reducing the importance of the regulatory administration was a remarkable achievement and India can take great pride in this. It is on this foundation that the subsequent panchayat Raj system has been created. This evolutionary form of passing real power to the people through the Panchayats is the an achievement of which India can be justifiably proud. Had we abolished the tehsil and had created only a development administration we would probably have had the chaos that now prevails in Pakistan where half baked reforms which virtually destroyed the district administration without a parallel Panchayat system to take over, disconnected the police from accountability to the Magistracy and converted the Deputy Commissioner of a district to a District Coordinating Officer with virtually no coordinating powers, has led to administrative chaos. Our method is better.

The recent debate has originated from the unfortunate rape of a young woman in a moving bus in Delhi and her subsequent death, which has led to an outburst of horror and rage against the manner in which the Indian State is functioning. People are absolutely fed up with crime, especially against women and the rape of the young lady has led to widespread public revulsion and demand for action. People want modified lynch law to apply, they are attacking the police, the judiciary and the legislature for failure to enact tough laws and to enforce them and they want sweeping changes in the organs of the State which would amount to systemic changes. Any attempt to tell people that whereas the anger is justified it is the law which must take its own course, not only because people demand it but because the law is on the statute book and it is the duty of the Executive to enforce the law. The anger of the people is understandable, but what is not understandable is the manner in which government has handled the whole matter. What the people needed was reassurance from the highest officials of the State, including the President and Prime Minister, that in the instant case there would be swift justice, in general there would be a tightening of security and law enforcement in such a way that law breakers begin to have fear of the law and that the general security environment would be improved so that everyone in India, especially women, has the right to protection of laws. This demand is absolutely justified and had government taken steps immediately which could convince the people that government is serious, the things which happened in Delhi when the protests started would not have taken place. If the President, the Prime Minister or the Home Minister, as also the Lieutenant Governor of Delhi had not sheltered behind police barricades and had come to Vijay Chowk to talk to the protesters, not only the would the people be reassured but the agitation itself would have ended. None of these functionaries thought it fit to meet the people, not within the four walls of their own office but in the open where people could congregate around them. A little courage shown by the leaders would have defused the situation immediately, but then we are ruled by insensitive people who are also cowards. This is a prime example of the executive organ of the State not performing its duty and to some extent this amounts to an organ failure. However, it is remediable if for the future the lesson is learnt and the administration goes out of its way to meet people, hear them and then provides suitable remedy and takes suitable corrective steps.

There are a few signals about organ failure or at least organ stress on which I would like to comment. The first goes beyond an organ and forms a sub-system which is a vital constituent of the Indian State. I refer here to the Legislature. Whether it be Parliament or a State

Legislature, the legislative organ of the State is really the most important constituent of the democratic system because the House is elected by all the people and, collectively and individually, it and its members represent the people of India. The representatives of the people have at all time to be accountable to the people and, therefore, behave in a responsible manner. The people's mandate to the Legislature is to deliberate and legislate, that is, give us a system of laws which makes India a society based on law rather than arbitrariness or whimsicality of the ruler. It is the custodian of the public exchequer in that it votes grants and the budget in its totality, which authorises the Executive to draw funds from the Consolidated Fund of India and make accruals to it through revenue and capital receipts. The Executive can neither impose a tax nor an impost, nor can it spend even a single naya paisa without the approval of the Legislature. In turn the Legislature can call the Executive to account on how the money has been spent and in this it is assisted by the Comptroller and Auditor General of India. The Executive has to account for every expenditure and, therefore, the parliamentary convention is that if government is defeated on a Money Bill and, in particular the Appropriation Bill, it must resign.

The Legislature also calls the Executive to account in its executive functioning through questions, call attention motions, adjournment motions, motions of no confidence, debate, discussions and resolutions. This can only be done if the Legislature meets for extended periods of time, each day's session lasts the whole day and discussions and debate take place in an environment of peace and normal give and take. If the Legislature meets for just 50 to 60 working days in an year, as is the case with most State Legislatures, or proceedings are held up for days and months because the opposition and the ruling party do not see eye to eye on issues and nonissues, then the legislative subsystem comes under more stress. This can affect the working of the Executive and then there is a real danger of a systemic failure.

There are remedial measures which can be adopted. India does need more than more party and, as I have written in the past *in extenso*, ideally we should have a centrist party, a left of centre party and a right of centre party in which the centrist party becomes a pivot, but also a role model which prevents an excessive swing either to the Left or to the Right. Splinter groups and purely regional outfits should either have no presence in Parliament or a very subdued presence. If we adopt one single political reform, that is, no independent candidate stand for Parliamentary election unless he has won at least one local government election and one assembly election, with a condition applying to regional parties or splinter groups that unless they, as a party, hold at least five seats each in the Legislature of three States, they cannot contest an election to Parliament. The smaller parties would then either have to merge into larger parties, or they would have to expand beyond the narrow confines of their State boundaries, or they would have to confine themselves to State Legislatures only. They would then not be able to exert pressure in Parliament which would be far more in proportion to their numerical strength. If the larger parties are no longer at the mercy of these small groups one can definitely expect more responsible behaviour by them, both in government and in opposition.

Moving from a whole subsystem to organs of government within subsystems, I would like to comment on three of them. The first is government. As a part of the Executive organ of the State the government is required to function within the mandate given to it by the people, that is, the approval given by the people during elections and the agenda and programmes of the party which is voted to power. The party manifesto, the party ideology and the party agenda cannot and must not be altered case by case and government must adhere to the policy guidelines provided to them by the manifesto and agenda of the ruling party. This will guide future

legislation and it will certainly guide policy formulation on specific issues. Within these parameters, however, those instrumentalities of the State which are responsible for implementation of policy will take the orders from the law, the people's mandate and the decisions of the Council of Ministers. The problem in India is that government itself vacillates and dithers, with the result that its officers do not have clear-cut orders or a clear-cut policy which they are supposed to implement. This is an organ failure, but if it enlarges itself to encompass the whole range of executive action, then organ failure here can lead to failure of the subsystem and this must be guarded against. The Constitution in Part XIV already gives the Civil Services protection against arbitrary action, the Preamble, Articles 14, 19, 21 and 38 of the Constitution lay down the fundamental duty of government to promote a welfare state and the Rules of Business framed under the Constitution categorically provided for the manner in which public servants will function, impartially and without fear or favour. If we can go back to a system in which every functionary is not only allowed but actively encouraged to do his duty according to the mandate given to him, we would be able to stop the downward slide of the efficiency and efficacy of our public servants. This is well within our means and if there is to be public protest, it should not be confined to an individual case of rape but must take the form of insisting that government functions effectively.

The second organ I would like to pick up is the judiciary, which is one of the constituent organs of the State and forms a complete subsystem. People talk of judicial reforms. Even the Supreme Court keeps emphasising this, but no one has really articulated what they mean by judicial reforms. Any reform which aims at reducing or in any way curbing the independence of the judiciary enshrined in Chapter 5, Part V and Chapter 5 and 6, Chapter VI of the Constitution has to be firmly rejected. If the judiciary, from the court of first instance upto the Supreme Court, becomes in any way amenable to pressure by the Executive or the Legislature, it can neither function independently nor can it be a guardian of the Constitution and the rights of the people against Executive or Legislative highhandedness. Having said this one has also to recognise that there is a great deal of inefficiency and even corruption in the judiciary today and that this has to be cleansed with a heavy hand. The cleansing process, however, must be a part of the judicial system, with no say of the Executive or the Legislature. The judicial reforms should take the following form.

1. An objective assessment of the strength of judges and magistrates from the court of first instance upto the Supreme Court which should be approved to deal with the huge number of cases now pending or likely to be instituted in future.
2. A process of selection of judges which safeguards the independence of the judiciary, but is transparent, open to examination and time bound in the matter of selection and appointment.
3. A clear-cut understanding by the judiciary at all levels that the provisions of section 309, Cr.P.C, which call for speedy disposal on a day-to-day basis will be applicable to every court in India and every judge and magistrate will be held accountable for delays. In this the High Courts and the Supreme Court must interact with the Bar Council of the State and Bar Council of India to ensure that these Councils lean hard on their members to help in speedy disposal of cases rather than act as obstructions which indefinitely delay trials.

4. The High Courts and Supreme Courts must exercise self-restraint in the admission of appeals and petitions so that trivia is thrown out at motion hearing. Today many petitions are entertained, especially Public Interest Litigation, where the issue is high profile that the judge can garner free publicity. This hits at the roots of the anonymity of judges. Today a normal petition or appeal before a High Court or the Supreme Court remains unheard for years at a time, but Public Interest Litigation gets priority. The Supreme Court must take a good hard look at what really constitutes public interest and must issue suitable directions to the High Courts so that normal cases received due attention. Of course in order to achieve speedy trial there has to be the cooperation of the prosecuting agency and of the police in ensuring that process is served and presence of witnesses ensured.

The third instrumentality I would like to speak about is the police. At one level it is the coercive arm of the State because it is utilised for putting down public violence and maintenance of law and order. This is a legitimate role, provided that the police is not used selectively. We need to strengthen the Executive Magistracy and the Police in tandem so that, faced with a particular law and situation, the Police and the Executive Magistracy will react in an uniform and predictable manner. Minimum necessary force will be used at the first instance of a law and order situation developing, with the emphasis on preventive action, followed by physical force when that becomes necessary. Neither government nor any other functionary should be allowed to interfere in this part of the duty of the Police, that is, immediate intervention to prevent a law and order situation spiralling out of hand. If such a philosophy has been built into the Gujarat Police and Maharashtra Police the post Ayodhya riots in Maharashtra would have been brought under control very quickly, as would the post Godhra riots in Gujarat. The coercive arm of the State, in exercising force, must do so in the interest of the people at large, which means that necessary force will be used to curb lawlessness at the earliest juncture, with no one having the power to stop the police from doing its duty.

Another area in which the Police operates is in the prevention of crime, its detection, investigation and prosecution without delay and in maintaining surveillance over criminals, which would prevent them from indulging in criminal activities. Under Chapter XI of the Code of Criminal Procedure the Police is not only authorised but is required to take preventive action so that cognisable offences may be nipped in the bud. Under Chapter XII of Cr.P.C the Police is required to investigate every cognisable case and to carry the investigation forward upto the stage of filing a challan before a competent court. Under law the power of the investigating officer to investigate a cognisable offence is unlimited. His superior in the police hierarchy can guide him or even take over the investigation himself, but he can neither order him to drop an accused against whom a prima facie case is made out nor order him to falsely implicate someone against whom no case is made out. However, as we have seen in innumerable cases investigated by CBI, interference at political levels in the investigation of offences is quite frequent and this is one reason why CBI has such a dismal record of conviction. If the Police is unable to investigate offences or is unwilling to do so, it is inevitable that lynch law will prevail, as happened at the time of the infamous Bhagalpur blinding case. If we are to be a society of laws then lynch law has no place in India. This means that for our own sake we have to make the Police an effective instrument of crime control and for this purpose we must give the police freedom of action. I do not agree with a great deal of what Prakash Singh says in the matter of details of police autonomy, but I am in total agreement with him that the operational freedom of the Police must

be restored, strengthened and enhanced. Whatever legal changes are necessary in this behalf should be brought on the statute book with great speed.

There is no doubt that the superstructure of the State is under considerable stress. Different organs are distressed and weakened and there are signals about current or potential organ failures. As yet there is no danger of systemic failure, but it is about time that we took note of what is happening to the organs of the State and to apply remedial measures now.
