

FIGHTING CORRUPTION OR TILTING AT WINDMILLS?

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Anna Hazare and the group of his supporters, some at least of whom are rank opportunists, launched a campaign for enactment of a Jan Lokpal Act in accordance with a Bill drafted by them. The demand of the agitators is that either government accepts every word they dictate or else they will continue to agitate, including by a threat of attempted suicide through fasting. The agitation has touched a chord amongst a large section of society which is absolutely fed up with bad government in which corruption at all levels has begun to pervade our entire polity and government. In urban India at least there is a visible ferment, with evidence of spontaneity, the government's response has been weak to the point of being pathetic and there seems to be a general lack of direction in government.

There are certain shibboleths mouthed by Anna Hazare and his supporters which must be laid to rest. Under Article 361 of the Constitution there is only the President and the Governors of States who are immune from criminal and civil proceedings and from arrest. No one else in India, neither the Prime Minister nor the Chief Justice of India, enjoys such immunity. The Prevention of Corruption Act refers to sanction of prosecution being a condition precedent before a court can take cognizance of an offence committed by a public servant, but it does not say that a Judge, the Prime Minister or anyone else is above the provisions of the Prevention of Corruption Act or that he cannot be prosecuted if a prima facie case is established against him after due investigation. Similarly, in Chapter XII, Criminal Procedure Code which deals with the investigation of offences, section 154 which opens the doors to investigation does not state that if a Prime Minister or the Chief Justice of India is alleged to have committed a cognizable offence a First Information Report (FIR) cannot be lodged against him in a police station. I am aware of the fact that the Supreme Court has ruled in a case pertaining to the Chief Judicial Magistrate, Nadiad that the police must not record a FIR against a judicial officer without the approval of the High Court, but this does not alter the position as prescribed in section 154. In other words, anyone who is alleged to have committed an offence in India, other than the President or a Governor, is liable to investigation under Chapter XII, Cr.P.C. It is another matter that before persecution is launched sanction from the competent authority may be necessary. Even the proposed Lokpal will have to follow this procedure.

To insist that the Lokpal should have jurisdiction over the Prime Minister and the higher judiciary is unnecessary and uncalled for. It is also fraught with danger. The Prime Minister is required to take urgent executive decisions which in hindsight may appear to be improper. However, he cannot be accountable to a Lokpal or any other authority for his decision. Under Article 75 he and his Council of Ministers are accountable to the House of the People and it is only the House which can take a decision on whether a person enjoys its confidence or not. In a parliamentary democracy in which the people through the Preamble of the Constitution have constituted India into a democratic republic, no authority, no Lokpal can replace Parliament. If the Prime Minister commits an act of corruption then, like any other citizen, he will be held accountable under law. We do not need a Lokpal for this.

Let us take the judiciary. The Supreme Court, the High Courts and every court down to the level of the court of first instance is required to adjudicate on issues of law and fact. Is it the purpose of Anna Hazare and company to give the Lokpal the power to intervene in judicial proceedings? In an adversarial litigation obviously one party will be aggrieved because of the decision of a court. Indians being what they are, they have a tendency to attribute motives even to judicial decisions. Can the Lokpal send for the case file of a court to decide whether the judge has ruled correctly? This would be a total negation of every principle of jurisprudence which applies to India and cannot be countenanced

under any circumstance. If we want the Indian judiciary to be independent, then it must be accountable to the judicial pillar of the State and not to the Executive, the Legislature or a fourth organ, the Lokpal who stands outside the other three organs of the State. Surely a lawyer such as Prashant Bhushan understands this.

Government's handling of the situation has been most inept. The agitators have lost sight of the real substance of the fight against corruption. Corruption is a necessary concomitant of bad government, that is, a government which does not operate according to laws, rules and regulations, but permits individual ministers and government servants to act willfully, in a corrupt manner and with bias which may be political, personal or greed induced. The Constitution mandates good government in the Preamble itself, in Article 14, which provides for equality before law, in the Chapter on Fundamental Rights, under the Directive Principles of State Policy and in all the other provisions which prescribe how India is to be governed. Why are the agitators not emphasising the need for good government which by definition, will be an honest government?

It is unfortunate that the Prime Minister did not candidly accept that there is a great deal which is wrong in India and that there is corruption and there is downright bad government. Every Chief Minister and every Minister in the Centre and the States believes that he is anointed with holy oil and can ignore the law and extend patronage and favours at will. That is why contracts are given against rules, land is allotted to favourites, orders are passed contrary to laid down policy in order to give benefit to individuals and postings and transfers have become the most lucrative industry in the country. Civil servants have stopped doing the duty which is laid down in the Rules of Business of Executive Government framed under Article 77 for the Centre and Article 166 for the States. In fact many of them have become partners in wrongdoing. This leads to corruption, which permeates down to the lowest level. What the Prime Minister should have announced and then enforced is that whereas the Ministers and Legislatures have power to amend laws and rules, so long as they are in force they will apply to everyone. This means that no Minister can pass an order or give a favour contrary to rules and thus equality before law will be assured to every citizen. So far as the officers are concerned, they will not carry out orders of Ministers, which are willful and contrary to law or the principles of good governance and that for civil servants there will be interlocking accountability. Every officer will be held accountable for the misdeeds of his subordinates, which means that he has to supervise them properly or else pay the price for their wrongdoing. Every officer would then act as a Lokpal, every procedure which encourages delay or leads to interface between government and people will be reviewed so that the system becomes transparent, nonintrusive and people-friendly. It is this which will radically alter the manner in which government functions and will restore purposive and honest government to India. The present agitation will further paralyse government and, like the Sampoorna Kranti of J.P. , will ultimately fail.
