

Handling Public Agitations And Movements

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India is witnessing a situation in which a group of people claiming to represent the civil society have launched a movement whose stated objective is to eliminate corruption but whose focused objective is to make government legislate a Bill to create the institution of Lokpal, or a people's watchdog. There is nothing very original about the concept of a Lokpal because in the Scandinavian countries, in particular Sweden, the office of ombudsman has been in existence since the early twentieth century. In Britain the ombudsman is called Parliamentary Commissioner for Administration. The role of the ombudsman is to investigate complaints against public authorities, government departments and their employees. In India most States have a Lokayukt, or People's Commissioner. Whereas vigilance against corruption is one of the functions of the ombudsman, his basic function is to ensure that people who have complaints about how government departments are functioning or how their own cases have been dealt with are provided a forum before which they can go for remedy. The ombudsman stands outside the executive government, but he is accountable to Parliament. The so-called representatives of civil society are demanding a Lokpal Act in India in which the Lokpal virtually stands outside and beyond all the three organs of the State, the Executive, the Legislature and Judiciary. This omnibus authority, whose own accountability is a gray area in the draft prepared by the so-called civil society, would then act as an extra constitutional authority which, in some ways, would be prosecutor, judge, jury and executor. Can such an authority really eliminate corruption, which has arisen in India not necessarily because our politicians and civil servants are intrinsically venal, but because government itself has become ineffective, thus enabling individuals to milk the system. The present offensive of the so-called civil society is silent on how it would tackle the broader question of good governance and instead concentrates on creating a weapon of vengeance, as it were, whose thunderbolts would strike the ungodly.

The group which is spearheading the movement and has adopted Anna Hazare as its mascot and symbol, is a motley collection of former civil servants, lawyers and social and political activists. The strength of the group lies in the fact that the repeated reports of wrong doing in government on a large-scale have disgusted the people of this country and raised a very real cry for good, honest government. One harks back to the days of the J.P. Movement, or Sampoorna Kranti. There, too, the objective of the movement was to uproot a corrupt government and to induct in its place an honest government, almost as if one were replacing a defective part in a motor car by one whose seller claimed that this was a much better part. That movement failed because it was never able to really define what is meant by Sampoorna Kranti. When we compare this with the Bolshevik revolution we find that its clear-cut objective was to destroy the Tsarist regime in Russia, establish the dictatorship of the proletariat and revolutionise the State, government, possession and use of economic assets and the means of production and to generate an entirely new social structure. Because the objective was clear the revolution succeeded. It collapsed seventy years later because it failed to address certain inherent defects in the new system, some of them generic and others which were created by the system itself during the period of operation. However, as a revolution it was successful and many of the ideas of social justice to which it gave rise are followed even today in the free market world.

This brings us to how the movement has been allowed to build up and has been tackled by government. Even a fool would have been able to read the signal that the people are fed up of corruption

and ineffective government and want action. The very judicial activism of which the political parties now complain was a signal that the executive government was not functioning properly, leaving an administrative vacuum. Since the Legislature itself was emulating the Executive in not performing its proper function of guiding the government, there was a legislative vacuum also. The victimized citizen had per force to turn to the judiciary for remedy and the judiciary stepped in both to remedy the ill done to the citizen and to force the Executive and the Legislature to either function or to obey the directives of the judiciary even in individual cases. A wise statesman would have read this as a diagnostic signal and would take urgent steps to ensure that both the Executive and Legislature started functioning in a manner that would deliver good government to the people. That would have restored the balance between the three organs of the State. Because good government cannot be delivered without honest government, tackling corruption would have been one of the principal goals of the Executive government.

Another signal was the arbitrary behaviour of politicians. In any society of laws every citizen is entitled to expect that government will rule according to rules, regulations, etc., which apply equally to all and which totally eliminate indiscriminate discretionary powers or arbitrariness in decision making. Instead we see escalating whimsicality, arbitrariness and arrogance and disregard for rules, all of which is justified either under claims of political superiority over civil servants, the compulsions of a coalition or even the argument that a minister can do no wrong. Civil servants, who are servants of law and not of individual politicians, soon fell in line to obey every order of a minister, however, wrong it might be and however contrary to rules it might be. Subsequently the civil servants have become partners in such wrongdoing and from this has emerged the nexus to which N.N. Vohra referred in his report on corruption.

A government which fails to read such strong signals naturally would soon become remote from the very people whose government it is. This, in turn, engenders a feeling of helplessness on the part of citizens, followed by frustration, despair, anger and, if anger can be focused, a mass movement. That is precisely what has happened in India. Upto this point the justification for a mass movement is undeniable because it is as yet only an effort by the people to awaken the government to ground realities and to force it to become responsive to the people's need. However, the movement engineered by the so-called civil society has now gone beyond this. It is not a revolution aimed at replacing the system; it is now an agitation whose principal objective is to force government and the legislature to carry out the commands of its leaders, bypassing the democratic process and endangering the very fabric of constitutional government in India. This effort should be met head on by government. There should have been an impartial, professional and bold review of how government is functioning, with specific steps being spelt out to bring government back on the rails. There should have been a very quick establishment of real interlocking accountability whereby every government servant knew his responsibilities, had to account for the way in which he functioned, with his immediate superior being held equally accountable for the performance of his immediate subordinate. The rules and procedures which encouraged delay and harassment should have been drastically changed so that a citizen could expect an immediate response to his applications to government, with quick remedy being available for any injustice meted out to a citizen. There should have been put in place a system of swift justice and punishment to government servants who indulged in wrong doing so that a heavy price had to be paid by a government servant who deviated from prescribed norms. Unfortunately government did none of these and bad governance continued to be the order of the day.

Reform is also needed in the political field because today a Prime Minister can justify inaction on the ground that the compulsions of coalition prevented action from being taken. What are the

compulsions of coalition? To allow corrupt ministers to behave in an anti social and anti national manner by garnering personal profits, under threat of quitting the coalition if this were not allowed? This is no compulsion; it is a surrender to blackmail. If the Prime Minister refuses to countenance a corrupt or an arbitrary minister and the coalition partner then withdraws support, the worse that can happen is that government will collapse and new elections will become necessary. So what? After all, the essence of parliamentary democracy is the choice given to citizens to elect their government from time to time. If the lead party in a coalition is bold enough to state that it will not permit wrong doing and this causes the government to fall, one can state with confidence that the lead party would gain much public appreciation and would certainly do better at the next election. By not following this path the present government has made itself extremely vulnerable to blackmail by coalition partners on the one hand and virtual blackmail by so-called civil society on the other. This is not a government, at best it can be described is as a pair of pyjamas without a drawstring.

This brings us to the handling of the agitation proper. When the movement started making demands on government it should have conceded that there was much that was wrong and that government was prepared to take all necessary measures to improve the situation. The measures should have been spelt out in public so that they could be of general knowledge to the people. This would include proposed legislative measures. People at large, including the leaders of the so-called civil society, could have been engaged in a debate which would not be confined to two or three ministers of government and half a dozen leaders of so-called civil society. The debate should have been widespread and should have been ongoing. Government should have been very firm in stating that it would not accept dictation on how and on what Parliament should legislate because this is the ultimate prerogative of Parliament in a democracy. No democratic institution would be permitted to be bypassed. Within the broad framework every one was entitled to give his own views and opinions, which would be considered with due seriousness by government and Parliament. Public agitation would not alter this situation, would not prejudice the government against agitators, would not harden views and would leave government open to ideas without necessarily succumbing to them. At no stage has this been done by design and at every stage that government has offered dialogue with the so-called civil society it has been in a state of panic. A government cannot afford to panic and every one of its responses has to be measured.

Reasonableness on the part of government is not necessarily always met by reasonableness on the part of those who have set themselves up in antagonism. The response to such antagonism is still to be measured. How has the government behaved in the present case? Let us go back to the Baba Ramdev incident in which a panicky government forced Ramdev and his supporters out of Delhi and in the process used undue and unnecessary force against people who were certainly not violent or indulging in deeds of lawlessness. When others, including Anna Hazare, protested and threatened direct action the panicky government continued to respond like a herd of elephants rampaging around a sugarcane field. First it tried to impose a ban on the venue of agitation, then it tried to impose a limit on the number of days for which a fast could be allowed. In all this the Centre used the Delhi Police as its front man. Under the Delhi Police Act it is the Lieutenant Governor of Delhi in whom the superintendence over the Delhi Police vests. It does not vest in the Union Minister of Home Affairs. In a normal district the Superintendent of Police has the District Magistrate on whom he can fall back for advice and direction. The Delhi Police Commissioner has no one to whom he can turn, except the Lieutenant Governor who, in the instant case, seems to have abdicated all responsibility.

A scenario which unfolded then was that Anna Hazare and company insisted on following an agitational mode and government reacted by arresting Anna Hazare and his followers under section 151

Cr.P.C. read with section 107. The preventive sections of the Code of Criminal Procedure are meant to prevent a major or minor break down of law and order and to keep the public peace. These provisions of law cannot be used to prevent an agitation which is not ipso facto illegal. Because the so-called civil society was not threatening riots there was no real cause to issue a prohibitory order under section 144 Cr.P.C. , or make preventive arrest under section 151/107 Cr.P.C. In any case such arrests are manna from heaven for agitating leaders because it projects them as martyrs facing a tyrannical government. The ensuing public uproar caused government to quake in its boots and it hastily ordered the release of Anna Hazare, who refused to avail of this offer. Ultimately government backed down, allowed Anna Hazare the use of the Ramlila Maidan and said that he can fast for fifteen days. In the process government has been made to appear like a bunch of cowardly poltroons, incapable of a single clear thought. The Police Commissioner of Delhi has repeated his stupidity first exhibited while dealing with Baba Ramdev. In that case the police was accused of use of undue force. Therefore, B.K. Gupta, the Police Commissioner of Delhi, so help us Lord, ordered that the police will carry no weapons whatsoever, not even a baton, lathis or shields, so that no one can accuse it of a lathi charge. Any one who had witnessed the crowd in Delhi on 17.8.2011 would have found that the agitators carried stick-mounted flags, which sticks would be used as a weapon in case the movement went out of hand. The police would then have no option but to run away in self-defence because not a single policeman carried any weapon with which he could retaliate. One recalls 1969 when Deboo, the Police Commissioner of Ahmedabad, totally disarmed the police and when Ahmedabad witnessed the worst communal riot in history, the police stood by and watched Ahmedabad burn and became a charnel house. What sort of policing is this, what sort of police chief is this?

How should the agitation have been dealt with? If Anna Hazare wanted to fast he should have been allowed to do so without let or hindrance. When the fast reached the stage where his life became endangered he should have been forcibly removed to a hospital and under medical supervision he should have been force-fed. If the crowd took to violence the police should have taken all necessary measured steps to contain the violence. This did not preclude the use of force to disperse the assemblage, which would have become unlawful by then. The doors of government for dialogue should remain open, but it would be for the leaders of the so-called civil society to take the initiative and go to government, requesting dialogue. Meanwhile government should have continued vigourously with its measures for ensuring good government so that people would know that government is serious. Had government acted in this manner the agitation would have died down, the anger of the people would subside and faith in government would be restored by its open demonstration of a determination to provide good government. On all these counts government has failed. What is most painful is that if politicians have floundered what were the senior civil servants doing? What advice was being rendered by the Cabinet Secretary, the Home Secretary, the Director, Intelligence Bureau, the Lieutenant Governor of Delhi and the Chief Secretary of Delhi? What were the State Governments doing in either backing up the Central Government or suggesting to the Central Government on how to tackle the situation? None of these civil servants deserve to be on the posts they hold. In fact they do not deserve to be in the All India Services.
