

## **THE LAW IS NOT AN ASS – ONLY PEOPLE ARE**

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There is a monumentally assenine serial called “The Bold And The Beautiful” which has been shown on the television for several years now. Each time an episode ends one feels that we shall now be spared any further infliction. The next episode beings, every time with a twist to the theme from the point where it left off. Each episode is as unbelievable as the one it succeeds and one cannot help but feeling that one is watching the theatre of the absurd compared to which the Mad Hatter’s tea party seems to be a model of sanity. More than any other government in the past the second edition of the UPA government is the conceptualiser, script writer, producer, director and the whole cast of actors of this theatre of the absurd.

Starting from the various unsavoury revelations of corruption and wrongdoing, including 2 G spectrum allocation, the Commonwealth Game, etc., government is increasingly showing itself to be totally incapable of governing. Any government worth its salt would have acted swiftly when complaints about corruption began to emerge, taken immediate steps both to book the guilty and then to ensure their punishment. This lack of governance did not start with Manmohan Singh, because going back a few years to the days of Rajiv Gandhi one finds a parallel of monumental governmental folly. The opening of the locks of the Ramlalla Temple at the Babri Masjid site, the subsequent appeasement of Muslims in the Shah Bano Case, followed by appeasement of the Hindus by laying the foundation stone of a temple on a piece of land adjacent to the disputed land at Ayodhya are all symptoms of a government completely clueless about how to govern. This was followed by the enormous shock to the system administered by V.P. Singh’s bombshell in the Bofors case. Instead of stating that there was nothing to hide and that government would institute a credible high level inquiry which would nail anyone involved in any wrongdoing, Rajiv Gandhi first tried to wriggle out the situation by stating that neither he, nor any family member, nor government were involved in any kind of wrongdoing. The information which ultimately emerged went through a process as painful as having one’s teeth extracted without benefit of anesthesia. It is not alleged bribery in the Bofors case which destroyed the government – rather it was the handling of the situation by the government itself which led to its woes. The blunder was almost on par with that made by Indira Gandhi in the handling of the Khalistan movement.

The UPA government, therefore, is heir to a long tradition of poor governance. Why did this happen? Indira Gandhi succeeded Jawaharlal Nehru after an interregnum which saw Lal Bahadur Shastri to power. The party selected her above others. However, Rajiv Gandhi came to power because after Indira Gandhi’s assassination he was seen as a natural heir to the post of Prime Minister and, therefore, he came to power through inheritance rather than merit or election. Even today when Congressmen talk of replacement of Dr. Manmohan Singh they refer to Rahul Gandhi as the natural heir and leader of Congress Party. The problem with all monarchies and all inherited positions is that birth rather than ability becomes the sole reason for occupying a place or a seat. This is the very anti thesis of good government.

Having said that the fact remains that it is Dr. Manmohan Singh who is Prime Minister of India and not Sonia Gandhi or Rahul Gandhi. Because Dr. Manmohan Singh cannot claim birth as his qualification for office one has to assume that it is his merit as a politician, as a scholar, as an economist and as an administrator which has brought him to power. Far from being a weakness, because he is

seen to be on sufferance from Sonia Gandhi, this is his main strength because if he does govern firmly the maximum that can happen is that he loses his seat, but not his inheritance.

What are this government's cardinal mistakes? One cannot help but feel that government had lost it the very day the compulsions of coalition were trotted out as an excuse for not being firm in keeping the Council of Ministers under control. Whether it is a coalition or it is a single party government, Article 75 (3) of the Constitution makes the Council collectively responsible to the House of the People. The Council of Ministers is a single body which has members, but individually the members are nothing. One example will suffice to illustrate the point. When Margaret Thatcher was the Prime Minister of Britain Alec Buchanan – Smith was a long standing member of the Council of Ministers. He had represented his constituency in Scotland for almost a quarter of a century. When the question of devolution of power to Scotland and Wales came up he totally disagreed with the Prime Minister about the formula for Scotland. Alec told the Prime Minister that he would be unable to support the government's stand in this behalf and that he could not obey the whip regarding voting on the issue. Therefore, he submitted his resignation from the Council of Ministers, from the Conservative Party and from Parliament. He told her that he would stand for election as an independent but would not embarrass her by trying for a party ticket. He did not try and brazen it out by remaining in government and opposing its policies as did Mamata Banerjee. It speaks volumes for Margaret Thatcher's sagacity that she told Alec that she would have to reluctantly accept his resignation from the Council, but that the question of his resignation from his parliamentary seat did not arise. She also gave him the freedom to vote according to conscience. Further, she told him that he would represent the constituency as a Conservative Party member in the next election also. I can vouch for this story because Alec was my contemporary at Cambridge in my College, Pembroke and we were very good friends. My only regret is that soon after the above incident narrated by me he died of cancer.

The collective responsibility of the Council applies to a coalition government also. Ministers from different constituents of the coalition are free to voice their views in the cabinet and the constituent parties can do the same during meetings of the coalition partners. What the ministers cannot do is to issue contradictory statements in public, decide on departmental policy independent of the policy of government as decided in the Council of Ministers and bypass rules, laws, regulations and the Prime Minister himself. In such a case the Prime Minister must intervene, he must stop the minister from going against government policy and he must instruct the Cabinet Secretary to direct the departmental secretaries not to carry out orders of the Ministers which are contrary to rules. There is no compulsion of coalition which is superior to the above enunciated principles. The only reason why there is surrender to that which is contrary to good government, in contravention of rules and regulations and in defiance of established practice is that the government does not want to demit power because of a decision which would make a coalition partner pull out of the coalition. Therefore, despite the knowledge that minority constituents of the coalition are virtually blackmailing government, the Prime Minister must stand firm. In order to do that the lead party in the coalition has to lay down that bottom line below which it will make no compromises, even if it means the break up of the coalition. In other words, the lead party which has cobbled together a coalition to come to power should be prepared and willing to lose office if coalition partners break away. It is only a party and a leader who are prepared to leave office if circumstances so demand who can provide us good governance because on issues of principles the party and its leaders will not bend. That is a quality which is totally absent from our politicians, notwithstanding the honourable examples of Lal Bahadur Shastri and Madhav Rao Scindia. The first resigned because of a train accident and the second because of an aircraft accident, both assuming responsibility for failure.

From this emerges the total absence of firm action in the 2 G spectrum allocation case and the Commonwealth Games case. The spokesmen of the Congress has repeatedly pointed out that in both cases government took action against the guilty. He completely misses out the point that it was the duty of government to take both preventive and curative measures which would have prevented the irregularities and corruption in the 2 G spectrum allocation and the Commonwealth Games. The result of weak and nonexistent government has been the Anna Hazare movement. 2 G spectrum and the Commonwealth Game were a culmination of virtually institutionlised corruption from grassroots to the very top which had disgusted all Indians. Any worthwhile government would have intervened forcefully and vigorously and demonstrably taken steps to revitalize the administration and virtually eliminate corruption from the system and to punish those persons who had been milking the country dry. Anna Hazare appeared on the scene as St. George on a white charger to slay the dragon of corruption. By its action in targeting Anna Hazare government converted itself from the guardian of the people into the very dragon which Hazare had set out to slay. As a piece of administrative mismanagement this is without parallel and as an example of bad governance it cannot be bettered. Instead of Anna Hazare, the people and government being on the same side it has put them in a position of antagonism. What is worse it has now ended in a farcical situation in which even for those fighting against corruption the situation has turned from one of war against corruption into one in which the wording of the Lokpal Bill is more important than its substance. Anna Hazare no longer looks like a man fighting corruption. He now sounds increasingly as a mouthpiece of a few self seeking persons who think victory lies in bludgeoning Parliament into accepting a Lokpal Bill in which not a word can be changed from what these so-called civil society members want. This is a position of deadlock and worse.

We now have Kabil Sibal who wants to regulate social networks so that they are not offensive. This has unleashed a barrage of criticism, including from experts who say that it is virtually impossible to deny access to social networks because the electronic information highway cannot be technically controlled. Shri Sibal's statement is looked upon as an attack on freedom of information. What the technical experts say is probably correct, but a government which is authoritarian and is not bound by the basic principles of democracy or the rule of law can use other than technological means to intercept the information highway. This could include a total ban on mobile telephony except by licensed and authorised persons whose loyalty to the State is cast iron. It could take the form of electronic surveillance of citizens whereby objectionable use of information technology and ICT would be detected and the users punished. It could even take the form of electronic jamming of the airwaves. All these options, however, are ruled out for India.

Our Constitution guarantees freedom of speech, though Article 19 states that by law reasonable restrictions can be imposed. Other than these there are no restrictions and certainly there cannot be an attempt to give government or prominent persons who lead a political party virtual immunity from criticism over the internet or the mobile telephone. If what is stated or shown is an offence under Indian law then legal action can certainly be taken. For example, under section 153 A of the Indian Penal Code promoting enmity between different groups on grounds of religion, race, place of birth or residence, language, etc. and doing acts prejudicial to maintenance of harmony is an offence which, on conviction, carries an imprisonment of three years and a fine. Therefore, whether on Face Book, Twitter, Blog, Email or over the telephone, mobile or landline, a person incites others to enmity against some other group that person is liable to action under section 153 A IPC. A site which provides space for this kind of an offence is also liable for action and certainly government would be justified in asking that site or that service provider to bar such messages. Any sensible service provider would willingly take necessary action. Meanwhile if the source of the objectionable message can be traced,

then the person concerned would be liable to prosecution under section 153 A IPC. This would apply mutatis mutandis to defamation, sedition, treason, conspiracy to commit an offence, etc.

Let me clarify further. The telephone is a means by which we can send greetings, exchange pleasantries, finalise a programme and a whole host of other things. The telephone can also be used for conveying messages which promote hatred, plan a crime, hatch a conspiracy to overthrow the State, or to defame people. Because of this do we ban the telephone and abolish the telephone services? The instrument is inanimate and what is said over it is entirely dependent on the users. It is the users who should be punished and not the system. If government, its ministers and its officers would take the trouble of reading the laws that we already have they would find that in almost every single case in which they want to apply controls the law has already provided for every contingency. It is not the law which is at fault but rather the total absence of a will to enforce the law. When government is bereft of such will how can it expect its officers to enforce the law? Kapil Sibal is right in stating that there cannot be totally unfettered freedom in any sphere. It is the manner in which he communicated this message which has annoyed everyone.

To return to the title, it is time that the Prime Minister, government, Anna Hazare realised that the laws which are already there are not inadequate. It is just that the very people who are responsible for framing laws and for enforcing them are the ones who have not read the law, have not the will to enforce it or the will power and patience to endure the criticism of the uninformed who talk of the need for more laws, more radical laws. If Anna Hazare could just persuade government to ruthlessly implement the Prevention of Corruption Act, if government itself would take the laws it already has and then firmly and consistently enforce them, we could drive corruption out of this country and could ensure that an environment is created in which the country can move forward. Unfortunately none of these are in evidence today and we are the victims of a government which refuses to govern. Hence the title of this paper.

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