

Governance And The Prime Minister

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The whole theme of the Constitution of India is that this country must be governed and how this should be done is laid down in every Article of the Constitution and in particular in Chapter 1 of Part V of the of the Constitution for the Union and Chapters 1 and 2 of Part VI for the States. The post of Prime Minister exists because Article 74 so mandates and it is he and his Council of Ministers who, in accordance with the Business Allocation Rules and the Rules of Business of the Executive Government framed under Article 77, will advise the President on how the executive functions of government will be conducted. In this there is no ambiguity and the Constitution and the Rules framed under it demand that the Prime Minister will in fact govern. The Constitution does not permit or forgive lack of governance and a Prime Minister who does not govern has no right to occupy that post. Of course as the person who, together with his Council of Ministers, enjoys the confidence of the House of the People he is the one required to initiate and pilot legislation and to carry out the wishes of the Legislature as stated through laws, the budget, debate and resolutions, etc. The Prime Minister, therefore, straddles the twin horses of the Executive and Legislature, both wings of the State being concerned with governance.

In order that a Prime Minister may govern there has to be an environment of government in which the Prime Minister can function effectively. It is for this reason that the Prime Minister enjoys and must enjoy a degree of independence in functioning in which, while discharging his responsibility to the House and to the electorate in general, the Prime Minister is not subjected to nagging, pettifogging complaints which prevent him from performing his fundamental duty of governance. Does such an environment exist in India? After independence at least till imposition of Emergency and its aftermaths such an environment did exist and though people such as Ram Manohar Lohia were the gadflies who tormented Jawaharlal Nehru for taking the decisions which a Prime Minister should, nor was he ever bogged down in controversies in which self-defence took precedence over governance. That was the period in which India took momentous decisions. We entered an era of planning and there was an immense thrust of building basic infrastructure so that the sinews of a modern industrial state were created. Whatever might be the complaints about adequacy and quality of electric power, the fact is that from a situation in which only five thousand towns and villages in India were electrified in 1947 when the British left, today we have one hundred percent electrification. Life expectancy has increased from twenty-seven years to sixty-three years, epidemics are under control, food production has increased dramatically and India is a major industrial power today. There were inefficiencies which have prevented India from achieving its full potential, but that does not detract from the magnitude of achievement during a period when India was actually governed. Not surprisingly this was also the period when corruption was at its lowest ebb, which proves that taking decisions leads to less corruption than dithering and then taking decisions in panic.

To whom should the Prime Minister be accountable? Obviously to Parliament and, by implication, to the President. He is accountable to the electorate because every five years there is an election and the ruling party, if it wants another term in office, has to convince the voters that its achievements in government have benefitted the average citizen and, therefore, it should get another term. If the ruling party fails to convince the electorate, then it loses power and the Prime Minister his office. We have seen this happen in India where a powerful Indira Gandhi was ousted at the polls, only to return to power at the next election. Atal Bihari Vajpayee won power and then lost it, just as the

Congress under Rajiv Gandhi won power and subsequently lost it. This is normal in a democracy, but the lesson learnt from our elections is that a party and a Prime Minister whose conduct of government does not live up to the expectations of the people will lose power. In other words, what the people of India want is a firm government and not a government whose every step seems to be dictated by populism and immediate expediency. One wishes that this lesson is learnt by the present government and all governments to follow.

This background about governance has been sculpted because ever since Anna Hazare and his cohorts launched a movement for the enactment of a Lokpal Act drafted by them government has been on the defensive. That is not all. Various actors have come on the stage and encouraged by a complete collapse of executive government have begun enacting solo dramas of their own which do not necessarily combine to create a great play but individually lead to such chaos on stage that the audience cannot make head or tail of what is going on. The nearest resemblance in real life of what is happening in the world of government is a lunatic asylum at bedlam hour in which no one can make any sense of what people are saying or doing. This is made possible because in the manner in which coalition governments function in India no government can orchestrate a scenario of governance which makes any sense and, therefore, chaos reigns supreme.

This point needs to be illustrated or elaborated. The Constitution in Article 112 directs that the President will cause to be laid before both Houses of Parliament and an annual statement of the estimated receipts and expenditures of the Government of India. In popular parlance this is called the budget. Under Article 113 each item of expenditure as estimated which is not charged upon the Consolidated Fund of India is to be presented to the House of the People in the form of a demand for grants and the House may approve or disapprove a grant. The aggregate of the approved grants would be the final amount of expenditure agreed upon by the House of the People and this would take the form of an Appropriation Bill under Article 114. No expenditure can be incurred before the enactment of the Appropriation Act. This entire process is initiated by the Executive, discussed and voted upon by Parliament and then handed back to the Executive as the sanction on which it will operate in the matter of expenditure. This is purely a matter between Parliament and the Executive, with each Minister being accountable to Parliament on how the grants relating to his department have been spent.

In order that Parliament can judge whether the manner in which government has spent funds is according to what has been voted the Constitution, Part V, Chapter 5 provides for the office of the Comptroller and Auditor General of India. Under Articles 149 and 151 Comptroller and Auditor General audits the accounts of government and in the case of the Union Government he presents his audit report to the President and in the case of the States to the respective Governors, who is then required to present the report to the House of the People and the State Legislative Assembly, as the case may be. Till then these reports are not in the public domain and have to be kept between CAG and government. It is for Parliament then to decide whether it accepts the audit report and directs government to take action thereon, or that it rejects the report or only partially accepts it. The Comptroller and Auditor General, when auditing an office, can comment on the propriety and wisdom of expenditure, but it cannot do what the present CAG has been doing, that is, sitting in judgement over the decisions of the Executive and stating that had some other decision been taken there would have been accrual or a certain amount of gain to government and that failure to take such decision has resulted in loss. Such hypothetical questions and views come within the realm of speculation and not audit.

No one is denying that our system has been highly corrupted by the arbitrariness of political decision making and the complete and absolute surrender of the Civil Services to political bullying. This surrender has to a large extent been converted into a nexus between politicians and civil servants. That is another story. At the same time CAG is not competent to state that if at the time that spectrum was being made available to telecommunication firms, the auction route had been followed government would have gained Rs. 1,76,000 crores and, because this was not done, government has incurred this much of loss. What about the proposition that if the auction route had been followed initially there would not have been growth in the telecommunication sector? These are political and administrative issues and are not within the realm of audit, To assume corruption from such a defective audit report is a complete distortion of facts, but tragically this is what has led to the Anna Hazare movement which started with good intentions but which has now grown berserk and is threatening the very existence of meaningful executive government in India. Once again let me hasten to submit that this is not an apology for the wrongdoing of government under the guise of compulsions of coalition nor does it excuse government from taking a firm stand but always succumbing to the pressures of such puny partners as Mamata Banerjee or Karunanidhi. Any movement to curb corruption which also forces government to provide good government would be welcome, but unfortunately Anna Hazare's movement is not the one which can do this.

More than Anna Hazare it is some of his more irresponsible associates such as Arvind Kejriwal and Prashant Bhushan whose voices, in ascending order of shrillness, have launched a most incontinent attack on the Prime Minister and his Ministers for taking decisions in cases where lack of decision making would have been fatal. Let us take the allocation of coal blocks. No decision of a Minister or the Prime Minister is open to question in this behalf unless it can be shown that there is some personal gain to the Minister concerned, which is not justified by law or the rules of financial propriety. Unless the decision has an element of criminality which could justify the registration of a First Information Report (FIR) no investigating agency with police functions can sit in judgement over such decisions. Increasingly CBI, which is accused by opposition parties of being a political handmaiden of government, is being involved in reviewing administrative decisions which it has neither the authority nor the competence to do. Legally CBI does not exist except as a government body constituted by executive order. The police is created by the Indian Police Act or the relevant State Acts and it operates according to the powers vested in it by the Code of Criminal Procedure in the matter of maintenance of public order, prevention of crime, investigation of offences and their subsequent prosecution. The Delhi Special Police Establishment, popularly known as CBI, is such a police force constituted under the Delhi Special Police Establishment Act, enjoying legal powers as conferred by the Act. CBI as such has no legal powers. It is not the administrative superior of government officers or ministers because the Rules of Business confer no such powers on it and it certainly does not have the competence to sit in judgement over the administrative decisions of senior officers and ministers. No investigating agency ever has such competence. Despite this, increasingly, CBI, through what are called preliminary enquiries, is interfering in the general administration, which it has no competence to do. It is still a mystery why when under Entry 8 of List 1 of the Seventh Schedule of the Constitution Parliament has the right to enact a law creating a Central Bureau of Investigation and conferring on it both functions and power, this has not been done and for which there does not seem to be any initiative on the part of government. It would be a sad day for our democracy if agencies like CBI begin sitting in judgement against the decisions of ministers

In this behalf let me tell a true story. In 1977 when Indira Gandhi was ousted from power and the Janata Government was formed, in Madhya Pradesh also we had a Janata Government dominated by BJP. K.L. Pasricha, the then Chief Secretary, issued an order to all Secretaries of the State

Government to review the orders of their ministers in the past five years and to bring to notice for action such cases where they felt that the minister's order was wrong. My colleague, B.J. Hirjee and I independently wrote to the Chief Secretary that under the Rules of Business it was the job of the Secretary to ensure that if an order of his minister is contrary to rules or the law, or even the canons of propriety, he should advise the minister accordingly and if the minister did not agree, then to bring the matter to the notice of the Chief Minister through the Chief Secretary in a process called Coordination. If, therefore, the Minister had taken a decision and the Secretary had failed to advise him correctly, then he was equally responsible for the wrongdoing and would have to bear the brunt of consequences. He could not hide ex post facto under the excuse of wrongdoing by the Minister, thus sitting in judgement over his Minister. We both stated that allowing a Secretary to sit in judgement over his Minister's orders ex post facto is not permissible in a democracy. The same applies to CBI or any other agency. Of course if they are investigating a criminal case duly registered under law, then it would be a different matter.

Our past experience of bringing government to a halt on account of allegations against the Prime Minister has been very unhappy. V.P. Singh, who went on to be Prime Minister, alleged that in the purchase of Bofors 155mm guns for the army illegal gratification had been paid. Rajiv Gandhi, then Prime Minister, first denied the allegations, then said neither he nor his dear ones had taken any bribe and became increasingly embroiled in an unseemly controversy in which the Indian Express came out with an expose. For the remaining years of his tenure Rajiv Gandhi was just defending himself and could be described as a lame duck Prime Minister. V.P. Singh neither provided clinching proof in the matter, nor withdrew the allegations and this, while creating an environment of distrust which has still not dissipated, brought government to a halt.

Contrast this with the case of Yoshihiro Tanaka, Prime Minister of Japan. It was alleged that he took a bribe of Dollar Two Million from Lockheed Corporation for purchase of aircraft. The complaint was registered as a criminal case, duly investigated, found proved. Tanaka was prosecuted, convicted, given a jail sentence and his party expelled him and he was removed as Prime Minister. A corrupt man was punished but the Prime Minister's post was unscathed. In India we persecute but do not prosecute and this seriously harms the post.

If the Prime Minister is convinced that neither he nor his colleague did wrong then it is his duty to categorically state that neither CBI nor anyone else could inquire into their conduct and that under no circumstance would he concede what Arvind Kejriwal and Prashant Bhushan are demanding. Having said that the Prime Minister must resolve to govern firmly and justly and not be deviated from this path by the likes of his present detractors.
