

The Politics of Intimidation

■ Dr. M.N. Buch

The Bharatiya Janata party, which is the main opposition in Parliament today, acting on behalf of the coalition that it leads, the National Democratic Alliance (NDA), has said that because the Comptroller and Auditor General (CAG) has raised serious issues relating to allocation of coal blocks when the Prime Minister held charge of the Coal Ministry, the Prime Minister should resign. The Opposition was not prepared for a debate on the issue, await the report of the Public Accounts Committee on the audit report of CAG or even agree to the setting up of a Joint Parliamentary Committee. It was a question of either the Prime Minister resigning or the Opposition blocking the functioning of Parliament. This is a most blatant example of a threat which amounts to blackmail because the evil consequences of not resigning have been enunciated by the Opposition, principally the Bharatiya Janata Party.

The whole issue of government is covered by the Constitution of India in Part V, Chapter 1. Under Article 75 the appointing authority of the Prime Minister is the President and not the Opposition in Parliament. It is both implicit and explicit in Article 75, in particular clause 3, that the President appoints as Prime Minister the person whose party commands a majority in the House of the People and which party has put forward the name of that person as its leader and, therefore, the one whom the President should invite to become Prime Minister. The Opposition has no role in this. Under Article 75 (3) the Council of Ministers is collectively responsible to the House of the People and the Prime Minister and his government will continue in office so long as they enjoy the confidence of the House. The Opposition cannot decide to unseat a Prime Minister by making demands in this behalf. What the Opposition can do is to move a motion of no confidence and, after debate, such motion would be put to the vote. If the motion is carried the government would fall, otherwise the government would remain in place because by rejecting the motion of no confidence the House would have reiterated its confidence in the Prime Minister and the Council of Ministers.

The Constitution of India in its Preamble, in the Chapter on Fundamental Rights and through the Directive Principles of State Policy lays down where the duty of government lies. For example, not only government required to protect the Fundamental Rights of the citizens, it is required to provide for the welfare of the people and to establish a just social order. A government which follows the principles as government of laid down in the Constitution would be a good government as it would work in the interest of the people. However, nowhere does the Constitution say that the government will govern wisely and well or, for that matter govern at all. All that the Constitution says is that the government will honour the Constitution and that if it does not do so then the President will have to consider how best to uphold the oath which he took under Article 60 when assuming office. Provided that a government does not act in open violation of the Constitution, the Prime Minister and the Ministers will continue to hold office because the pleasure of the President under Article 75 (2) is supposed to be coterminous with government enjoying or failing to enjoy the confidence of the House. In other words, even a government which rules the country with extreme incompetence will remain in office till it is unseated at the next election. This does not leave any room for the opposition to mandate that the Prime Minister will resign and if he does not do so Parliament will not function.

Parliamentary democracy has two sets of players in the game of government. One set is of players who are elected in sufficient numbers as part of a group or party which gives them a majority in the House. Collectively these players then form the government. Then there is the second group which consists of players who are not able to have a sufficient number of members of their party or group to be elected to Parliament so that they form a majority. This group of players is known as the Opposition. Whereas the Constitution does not specify what role the Opposition will play, in Britain the Opposition is referred to as “Her Majesty’s Loyal Opposition”. In other words, just as the Prime Minister and the government are required to be loyal to the Sovereign, the Opposition is also required to be equally loyal. In a multi-party democracy, whether it be Britain or it be India, various parties are required to have their own ideologies and programmes, on the basis of which they try and earn the mandate of the people. Naturally this brings several different ideologies into the political scenario, but regarding the basic tenets of the Constitution these widely differing political philosophies have to develop a broad, common understanding about how the system will function. Depending on how people vote today’s government may become tomorrow’s opposition and vice versa. If there were to be no understanding and agreement on the fundamentals of the democratic system prevailing in a country, every time that government changes the State policy would fundamentally alter and there would be chaos. From this flows the second axiom, which is that in government there will be continuity and whereas each political party will try and push its own political agenda, evolution rather than radicalisation would mark the process of political and policy change in the country.

Under Part V of the Constitution the executive government of India vests in the President, but is exercised by him on the basis of the advice rendered to him by his Council of Ministers. The decision making function, therefore, vests in the Prime Minister and the Council of Ministers. Executive authority is to be exercised as per the Rules of Business prescribed under Article 77 of the Constitution. This rules out arbitrariness but it does not prohibit the executive from taking political decisions at the level of policy and in individual cases also. Every decision of government can be criticised in hindsight but that cannot be allowed to hinder the process of decision making. Every decision is taken according to the exigencies of a situation or in pursuance of long-term policy goals. Government is the trustee of public funds but government does have the mandate given to it by the people to decide to use public funds in a particular way determined by its policy goods. The logic and rationale of every decision in this behalf has to be clear, properly enunciated and subject to objective, non-partisan, unbiased application. But that does not mean that every decision has to be aimed at maximising income for the State. Let us take a few examples. In 1983 Arjun Singh, then Chief Minister of Madhya Pradesh decided to give *pattas* to slum dwellers and to regularise their encroachments. A great deal of prime land was thus transferred in ownership to those who had encroached on it. This was done virtually free of cost. It was a welfare measure and in keeping with the policy that slum dwellers and encroachers should be encouraged to organise themselves, improve the infrastructure of the areas in which they reside and upgrade the quality of their housing. This could only be done if ownership rights were to be transferred to slum dwellers. Many prime sites were thus handed over to the illegal occupiers, virtually free of cost. Should this welfare measure be now taken as an example of causing loss to the exchequer by giving away prime land and without recovering its opportunity cost?

Let us take another example, that of the city of Bhopal. When it became the capital of Madhya Pradesh in November 1956 it was a sleepy little town which suddenly exploded because thousands of government servants came here from Nagpur, Rewa, Indore and Gwalior which were the capitals of the constituent units from which new Madhya Pradesh was formed. In addition to government housing it

was decided to encourage people to construct their own houses and for this purpose developed land was made available to individuals and cooperatives either directly through the Capital Project Administration or indirectly through the Madhya Pradesh Housing Board and the Bhopal Development Authority. This land was allotted at very low rates, somewhere around Rs. 1.25 per sq.ft. As Bhopal developed this land is now valued at Rs. 5000 to Rs. 15000 per sq.ft. Had land not been made available cheap Bhopal city would not have developed in a planned manner. There would be proliferation of slum and authorised colonies. What then, would have been the value of land? The decision of government viewed even commercially should be read in this context, that is, planned development came to Bhopal without too much capital cost to government, the city developed in an environment far better than that which exists in most Indian cities and Bhopal became a beautiful city where educated but not necessarily affluent citizens could afford to build a house. If the opportunity cost of land is viewed from today's prices what we have lost is the opportunity cost, but have gained a planned city in the bargain.

Let us take another example. At the time that mobile telephony was developing in India government took a conscious decision to bring the maximum number of players into the game and this has given India the fastest growing mobile telephony sector in the world. Because the industry has developed it now commands high value. Why should the decision of the past be judged in today's context? Had the sector not developed it would not command high value and the losses as calculated by CAG would have been hypothetical. That is true even today. This applies to coal also. I do not know enough about the coal block allocation process and would not like to comment in detail on the subject. The fact remains, however, that Coal India Limited has not been able to develop the coal mining sector adequately and we needed to open up the sector to entrepreneurs who were prepared to invest in mining coal. Coal buried in the ground has a value ranging from zero if it is not mined and infinity if it is mined optimally. The process of allocating coal blocks may be open to criticism, but for CAG to estimate losses caused by a defective allocation procedure at approximately rupees three lakh crores is pure fantasy. It is certainly not an issue on which the Prime Minister can be forced to resign.

In fact this brings me to the whole question of what is expected of the Comptroller and Auditor General of India. Constitutionally the office of the Comptroller and Auditor General of India finds mention in Chapter 5 of Part V of the Constitution in Articles 148 to 151. As Comptroller he controls the Consolidated Fund of India in that he determines how our accounts will be maintained for all expenditure from and accruals to the Consolidated Fund. As Auditor General he keeps a watch on how money voted by Parliament is spent by government and for this purpose he conducts the audit of government revenue and expenditure. Under Article 150 it is CAG who prescribes the form and substance of government accounts and under Article 151 his audit reports on such accounts are submitted to the President, who causes them to be laid before each House of Parliament. *Mutatis mutandis* CAG has coterminous powers vis-à-vis the States. The constitutional role of CAG is extremely important because he is the watch dog on behalf of Parliament about how money voted by it is being spent and he thus enables Parliament to fulfil its constitutional function of controlling the budget and calling government to account. In this behalf Parliament is supreme because unless the estimate of expenditure chargeable to the Consolidated Fund of India is not approved in the form of grants by Parliament under Article 113 the Appropriation Bill cannot be presented to Parliament under Article 114 and government will no longer be able to withdraw a paisa from the Consolidated Fund of India.

To be the financial watchdog of such a powerful Parliament gives CAG extraordinary constitutional authority. This is incontrovertible, but what is in dispute is whether while auditing the accounts CAG is competent to question the propriety of an executive decision of government taken in

accordance with the Rules of Business and conforming to the ideology and programme of the party in power. Whether to nationalise or denationalise an undertaking sanction a programme which benefits the poor but may cause a loss to the exchequer or give a subsidy to a particular class of people are issues clearly beyond the scope of CAG. When CAG audits the functioning of a department he is required to comment on the manner in which funds have been spent or a project has been implemented. CAG is not competent to state that had the programme been organised in some other way or had there been some other programme government would have benefited to the extent of a notional figure calculated by CAG, or that by not doing so government has suffered loss to the extent of a notional figure calculated by CAG. This is clearly beyond the scope of the Comptroller and Auditor General of India. CAG has to live in a real world of real figures --- he can neither be speculative in his analysis nor hypothetical in his conclusions.

The Opposition is baying for the blood of the Prime Minister on the basis of certain reports given by CAG, which reports themselves are more speculative than hard audit reports. This forms the basis of the demand that the Prime Minister must resign. Under what clause of the Constitution does CAG acquire authority to decide whether or not the pleasure of the President under Article 75 (2) should be exercised? The office of the Prime Minister as head of the executive government is political, though within the framework of the Constitution. This office will be occupied or vacated on the basis of politics and not on the basis of an audit report. The Opposition is creating a very dangerous precedent in superimposing an audit report on the judgment of government in its executive decision making and on this basis demanding that the Prime Minister should resign. It is the duty of the Prime Minister to refuse to accede to the Opposition's demand. This does not mean that if the Prime Minister has done something which attracts criminal action he should not be prosecuted. Under Article 361 only the President of India and Governor of a State enjoys immunity from court proceedings, civil or criminal, is not liable to criminal proceedings and can neither be subjected to process or imprisonment so long as he is in office. No such an exemption is constitutionally granted to the Prime Minister or the members of the Council of Ministers. There are legal provisions for sanction from a competent authority before the prosecution of the Prime Minister in his capacity as a public servant, but that does not give him immunity from court proceedings. If the Opposition feels that it has enough material to prosecute the Prime Minister it should file a FIR in the nearest police station and let the law take its course. That occurred with Yoshihiro Tanaka, the Prime Minister of Japan. He did not resign because the Opposition wanted him to. He resigned because his party ordered him to do so and because his conscience told him that he had in fact taken a bribe, which was later proved in court. In India the Opposition is welcome to move a motion of no confidence against the Prime Minister. It can seek his prosecution by filing a FIR on criminal charges against him, but it cannot indulge in the politics of intimidation in which if the Prime Minister does not accede to the Opposition's demand this he must resign then the Opposition will bring Parliament to a halt. If the Opposition does disrupt Parliament then the Speaker of the House should take the severest disciplinary action against those members of the Opposition who disrupt the House. Even a weak Prime Minister is better than an Opposition which practices the politics of intimidation.
