

Wisdom By Hindsight

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Of the three pillars of the State, the Executive, the Legislature and the Judiciary the task of the Executive is perhaps the most arduous. The Legislature is answerable only to itself and to the electorate. The Legislature can make and break a government and when this is done by due process it is legitimate. When, however, this is done through dubious means which have come to prevail since 1967, when for the first time legislators were purchased and thus induced to defect, resulting in the legitimately elected governments falling and power passing to those who had purchased it by arranging defections, it is totally reprehensible. The entire history of corruption as it affects us today dates back to that fateful period in 1967 when in States such as Madhya Pradesh, Bihar, Haryana and Uttar Pradesh governments were bought and sold. The legislators suddenly found that they command a price and this could only be paid through the wholesale corruption which became possible only by subverting the State and its institutions. The process brought the legitimacy of government itself into question and it certainly brought the Legislature, both at the Centre and the States, under a cloud which is refusing to lift.

The judiciary is in the happy state of enjoying total autonomy in which whereas there is a hierarchical judicial accountability, there is very little internal administrative accountability up to the level of District Judge and virtually no internal or external administrative accountability so far as the High Courts and the Supreme Court are concerned. Because the process of impeachment of a judge ultimately rests in Parliament, as was proven in the Justice Ramaswami case even a judge found guilty of various misdemeanours by a properly constituted tribunal could not be removed because the Congress Party played foul and the requisite majority for passing of the impeachment motion could not be mustered. Theoretically even if a judge is convicted of a heinous offence and sentenced to a long term of imprisonment he will continue in office if the necessary majority cannot be ensured in Parliament to have an impeachment motion carried. Therefore, the conscience of the judges apart, there is no one on earth to whom a judge of a High Court or the Supreme Court is accountable.

This brings us to the Executive. At the political level the Executive, that is, the Council of Ministers, is collectively responsible to the House of the People under Article 75 (3) of the Constitution, with the House having the power to remove the government by adopting a motion of no confidence. The Council of Ministers advises the President on how the Executive government will be conducted and the Executive government itself then functions as per the Rules of Business approved by the President under Article 77. Incidentally, under Part VI of the Constitution whatever applies to the Central Executive also applies mutatis mutandis to the State Executive. The Executive power vests in the President and he exercises this power through officers appointed by him under Article 53 of the Constitution and Part XIV of the Constitution. The permanent Executive, that is, the officers who implement the decisions of government, is organised into Services under Part XIV of the Constitution, with selection to the Services being done as per the provisions of Chapter 2 of Part XIV. The structure of the Services is hierarchical and, therefore, every official is accountable to his immediate superior and through him right up to the senior most person in his Service or his department. For the organised Services this accountability is virtually daily and continuous and an official who is unable to discharge his

duty is liable to disciplinary action. The Conduct Rules, Disciplinary Rules, etc., are all framed to provide a framework within which the Services will act and be called to account for their actions. These officials, therefore, are accountable to their superiors and the ministers and can lose their jobs if they are found to be guilty of misdemeanour after a proper departmental enquiry. Neither the Legislature nor the Judiciary is subjected to this type of accountability, especially at the level of the higher Judiciary.

What are the functions of the Executive government? Under the definition given in the Chambers Twenty-first Century Dictionary one meaning given to the Executive is “the branch of government that puts laws into effect”. This is an excellent definition of the Executive. The implementation of laws, therefore, is the primary function of the Executive and whereas it is the Legislature which gives the framework of laws, it is the Executive which takes all the necessary decisions to implement the laws. A start has to be made with the Constitution itself, which is the fundamental law of the country. Therefore, the Executive has to take action to ensure social, economic and political justice and zealously guard the liberty of the citizen and ensure him equality of status and opportunity. The Executive has to take action to ensure that no citizen is discriminated against on grounds of religion, race, caste, sex or place of birth. It has to ensure that untouchability is not practised and that the protection under Article 19, especially to move freely throughout the territory of India, to reside and settle in any part of India and to practise any lawful profession and carry on any lawful trade or business is fully available to all citizens. The Executive must also strive to make the Directive Principles of State Policy an integral part of the business of government, which means that the Executive must secure a social order for the promotion of the welfare of the people. In other words, the protection of the people and the promotion of their welfare becomes a fundamental duty of the Executive. All this is possible only if there is an environment of law and order, public security and freedom of the citizen from fear. It is the duty, constitutionally and legally, of the Executive to ensure that such a climate of security is created. If one single citizen of India lives in fear then the State has failed in its duty.

Every business house functions with the objective of maximising profit and obtaining the highest possible return on investment. There is nothing intrinsically wrong or immoral in maximising profit, but in business terms it means an excess of income over expenditure. Everything in business is amenable to a cost benefit analysis in monetary terms and that activity which does not yield a monetary profit would come within the definition of bad business practice. The objective of government is to maximise welfare. Welfare entails the health, comfort, happiness and general well-being of people at large, welfare economics means equitable distribution of the Gross Domestic Product to the best advantage of people at large and the promotion of welfare uses welfare economics to maximise the welfare of the citizens. Health care of citizens, provision of social security, development of an educational system which extends the benefit of quality education to the least privileged child, elimination of malnutrition and hunger, providing directly or facilitating gainful employment, providing adequately for the defence of the country against foreign aggression and internal disturbance are all the legitimate concerns of the State in general and the Executive in particular. Many of the measures which are to be undertaken for this purpose will not pass a commercial cost benefit analysis. Quite often welfare is not quantifiable, though there are objective and subjective tests which can help us in determining whether maximum benefit is being delivered by the Executive.

Let us take a few examples. Tamil Nadu pioneered the mid-day meal programme and is running the only successful example of this programme in India. Because the programme is

being run efficiently over a million children in school get a nutritious diet, the school drop-out rate has substantially reduced and level of nutrition in Tamil Nadu is better than in any other State. It a fully subsidised programme, ultimately paid for by the tax payer. No private business establishment would take up such a programme because it does not yield monetary profit. But what about the social benefit which flows from it? Should not that be taken into account when assessing the programme?

Let us take another programme, that of providing housing and house sites to the poor. The *jhugi- jhopdi* resettlement scheme of the Delhi Development Authority is an example of providing a house site, with some services to, the squatter population of a city. Certainly the opportunity cost of land given to the squatters is not taken into account and in purely monetary terms people with no legal entitlement are thereby given a house site whose present value is a multiple of what that land cost when it was initially developed. Why only squatter colonies? Almost the entire programme of providing housing for the economically weaker sections, lower income groups and middle income groups, who were provided land and built houses at minimum, affordable cost throughout India has always been a welfare programme. Whole cities have developed because the State provided the development inputs to the cities. The present value of land in these cities and towns and of the land under the areas colonised for EWS, LIG, MIG beneficiaries would run into absolutely astronomical figures before which the estimates of CAG of losses in 2G Spectrum allocation and allotment of coal blocks would pale into insignificance. Are we to apply commercial norms to these welfare decisions of the Executive, ex post facto and to indict them for causing loss? Not if one looks at the duty of the Executive as one to promote welfare.

Let us take another example and that is industrial development. When the process of planning began one of the objectives of government was to create an environment and to provide the land and infrastructure which could promote the development of industry in India. Our major hydro electric and thermal power projects, the huge new capital industries of steel, aluminium, fertilisers, machine tools, etc, were heralded as the new temples of India. All over the world industrial area and estates were developed where land, power, water, roads and other infrastructures were provided to industry at highly subsidised rates. Prior to 1947 India had some industries but was not an industrial power. After 1951 there was no holding back of industry. Would that have been possible if the State had not provided? Would that have been possible had the State not formulated an appropriate policy and the Executive not provided the base on which industry grew?

Our great institutions of learning -- the Indian Institutes of Technology, Indian Institutes of Management, the Agriculture Universities, our magnificent Medical Colleges such as AIIMs, PGIEMR, Chandigarh and Pondicherry, the Indian Institutes of Information Technology, the Central Universities and the State Universities -- would not have come into being if the State had not invested in them and the Executive not created the necessary infrastructure. The intervention of the State and the process of Executive decision making have given India the foundations of a higher educational system which is as good as anything which can be found anywhere in the world. Commercially these decisions may not be viable but the national assets that we have created are beyond valuation.

Let us now go to the other end of the spectrum. Rural electrification by itself, especially in remote areas, is not a commercially viable proposition. However, rural electrification has certainly transformed the agricultural scene because with availability of power lift irrigation

throughout the country has become both feasible and viable. Crores of pump sets are lifting water to bring irrigation to fields which would otherwise have remained dry. A subsidy is paid to the farmer by way of cheap power and the State is bearing the subsidy. Can such an Executive decision be faulted because it is probably costing State a great deal on a daily basis? What about the fundamental change which it has brought about in agriculture and the prosperity that it has extended to rural masses in far flung areas?

Very early under British rule, especially after the Crown took over the Government of India from the East India Company and assumed direct rule, it was decided that it was the duty of the government to look after the people in times of famine and scarcity. The Famine Code was drawn up sometime in the 1860s, to be succeeded by the Scarcity Manual which operates even today. The Collector of the District would do an annual or seasonal crop review and determine whether it was a year of scarcity or not. Thereafter relief works would be started and employment provided to indigent rural people. Today the programme is supplemented by such schemes as the National Rural Employment Guarantee Scheme, now renamed after Mahatma Gandhi, the Watershed Management Programme, the Integrated Rural Development Programme and other schemes aimed at improving the rural economy, providing better health care, promoting women and child development and various other schemes for the welfare of the people. These are all programmes mandated at the political level but implemented by the Executive. Are we to stop such programmes because the Executive thereby causes a drain of the public exchequer which is not recouped by commercial means? Even in a purely capitalist, free market economy such as the United States, when the economy began to collapse the government intervened and virtually nationalised banks, investment companies and various financial institutions in order to protect the people. The Executive will continue to take decisions and must continue to do so for promoting the welfare of the people even if it means that valuable land is virtually gifted away and budgetary support for welfare schemes is increased. To bring every decision of the Executive under the scanner of commercial viability is to sound the death knell of effective Executive government.

Even in the two worst cases for which government is facing so much opposition, the 2G Spectrum allocation and coal block allotment, we need to objectively bring the matter into a more balanced perspective. The argument that at a certain stage in the development of our telecommunication system allotment of spectrum without auction was appropriate because if that had not been done mobile telephony would not have achieved the present heights has validity. This issue needs to be looked at objectively and not necessarily through the prism of the audit report. If there is wrongdoing then let us punish the guilty, but let us not reject the policy without understanding all its implications. In the matter of coal block allotment two issues have to be separated. If it is decided to have coal based thermal power generation, then the proposed power station must have captive coal mines. Government through a transparent process can determine the tariff for coal, but no loss as such can be assumed merely because the mine was not auctioned. Without the coal power plants could not have been made operational at Sasan and Chittarangi and there is evidence to believe that these power plants will soon be operational. Every allotment made to a power company or an industry in which coal is an important input, in which the industry has taken all the necessary steps to go into production in the near future, should be deemed to be a valid allotment. Coal blocks allotted to dubious companies which have taken no obvious steps to activate the mine and to use the coal for productive purposes must be cancelled. In every single case where a coal block is allotted on political considerations the

allotment should be cancelled. In every case where there is collusion punitive action must be taken, but if as a result of this government stops developing the coal sector it would be a tragedy.

The following lessons have to be learnt from the recent development in which CAG has been active, Parliament is not allowed to function, the press and electronic media have a field day and the Executive has become so scared of its own shadow that government has virtually ceased to function. That is what the Washington Post article literally states. Instead of being annoyed with a newspaper for writing something which is largely true the Government of India should now do a great deal of introspection and take all the necessary steps needed to activate the Executive and to make it function boldly but honestly. Let us cut all favouritism and nepotism out of the system and let the Executive perform its function of promoting welfare and governing firmly and purposefully.
