

## Corruption, the Courts and the People

■ Dr. M.N. Buch

The average Indian voter lives in a village or in small town India. Unlike his urban counterpart, that is, a person dwelling in our large cities, the average Indian citizen is in fact a person who exercises his franchise every five years, braves the heat, the cold and the rain to stand in a queue to cast his vote and despite the contempt in which he is held by the pseudo intellectuals in our large cities he knows what exactly he wants from his politicians and what sort of government he desires. It is not Bombay, Bangalore, Delhi or Madras which determine who will rule us and how we will be ruled. It is village folk of Karwar, Allapuzha, Nellore, Thirunelveli, Seharsa, Bongaigaon, Etawa, Chattarpur, Sirsa, Bhatinda and Sopore Districts who, because they actually vote, decide on our government. In the past they have thrown out a government which ruled us badly and recently in Karnataka they roundly defeated the BJP which was responsible for so much corruption and misgovernment. The message to the politicians is, "Be honest, govern us wisely and well, look after our welfare or be prepared to cast out into the cold". This is not the illiterate, ignorant, indifferent person which is how so-called intellectuals picture the average Indian. This is a very clued-up and wide awake electorate which, despite its limitations, is telling the politicians in no uncertain terms to behave.

Our politicians have always tended to take elections for granted but I think they are beginning to realise that their perception is wrong and, therefore, repeating the old mantras of caste, religion, promises of the pie in the sky just will not work. People are fed up of corruption, false promises, the utterly selfish behaviour of politicians and the misconduct of politicians and officials. Karnataka reflects this mood and if this converts itself into a national perception, then God help the present ruling party at the Centre! In fact God does not come into the picture because why should He help people who have made a Faustian deal with Mephistopheles? Having said that is it enough to ensure that we shall have good government in the near future? Will corruption be brought under control and will the politicians revert to their immediate post independence role of promoting the welfare of the people?

India is one of those fortunate countries which has a written Constitution that lays down certain basic principles regarding what the citizen can expect of the State and how we shall be governed. There are four fundamental rules of what the citizens, by virtue of the Preamble of the Constitution, are entitled to :- (1) Social, economic, political Justice (2) Liberty of thought, expression, belief, faith and worship (3) Equality of status and of opportunity (4) The creation of an environment in which Fraternity is promoted, assuring dignity of the individual. As a corollary to this, Article 14 of the Constitution mandates equality of all persons before law and equal protection of law. The provisions of Article 14 apply to citizen and foreigner alike because no law in India can discriminate against a foreigner except in those matters which are covered by the concept of citizenship. The right to vote would be one such an area where the citizen obviously has the right but a foreigner does not. The Preamble, read with the Directive Principles of State Policy assures every Indian that it is the duty of the State to promote the welfare of the citizens and, therefore, a government which does not have welfare as its objective can be deemed to be one operating in violation of the Constitution. The Constitution does not specifically state that government will rule wisely and well, but that is implied in the duty cast on

government to promote the welfare of the people. The day the electorate moves beyond a negative vote against a corrupt government and punishes parties which do not promote welfare India will become a true democracy.

This is not a paper on democracy and democratic values in India. It is about corruption and how our courts and the people react to it. Corruption is a criminal offence under the Indian Penal Code and the Prevention of Corruption Act. The definition of corruption given in the Prevention of Corruption Act is quite all embracing and any act of government and its officials which goes against the rules, the laws, established practices or common sense rule of prudence would come within the ambit of the Prevention of Corruption Act. Corruption can be dealt with through legislation, administrative action, registration as an offence and then its investigation, prosecution and trial. Another dimension of dealing with corruption is social reaction in which society itself rejects the corrupt and ostracises them. Unfortunately the last named remedy is applied less and less in the country and, therefore, social pressure which keeps officials honest has declined and become extremely weak. Because corruption is a crime it has to be dealt with by the police, named as such or legally incorporated under some other name, but having police powers. The Forest Department and the Excise Department officials have, for the purpose of forest and excise offences respectively, been given the powers to investigate, arrest and prosecute specific offences through their respective laws. This does not make these officials a police force, but they certainly have some limited police powers. In India the police is organised under the Indian Police Act and State Police Acts which have the President's approval. The Delhi Special Police Establishment is one such a police force established under the Delhi Special Police Establishment Act, 1946. In 1963, by an executive notification, the Government of India created the Central Bureau of Investigation, which subsumed the Delhi Special Police Establishment. However, CBI as such is not a police force, it is not even a legal entity under an Act of Parliament. It is merely another department of government, just as the Directorate of Agriculture or the Directorate of Public Instructions are departments established by an order of government. CBI is not the administrative superior of government servants at large, it is not a police force and, really speaking, it does not exist as an entity empowered by law.

The Constitution of India by Entry 8 of List 1 (Union List) of the Seventh Schedule empowers Parliament to enact legislation on the Central Bureau of Investigation and the Intelligence Bureau (IB). Why Parliament has not done so is a mystery to me. The Delhi Special Police Establishment (DSPE), in which form the so-called CBI acts, registers and investigates offences as per the provisions of Chapter XII Cr.P.C, which gives the police the power to register an offence, investigate it, prosecute it or apply for closure of the case. The trial of the case takes place as per the procedure prescribed in the Code of Criminal Procedure. This is true even of cases under the Prevention of Corruption Act because the procedure and process of investigation, prosecution and trial remains the same for all criminal cases in India. The Code of Criminal Procedure, in the matter of investigation of an offence, vests all the powers in the investigating officer, who generally would be an Inspector, Sub Inspector or Assistant Sub Inspector. No one can interfere with the investigation, not even a court, unless some specific issue relating to the case in hand is brought before the court. The police is an executive arm of government, and that applies to DSPE/CBI also. However, no other executive arm of government can interfere with an investigation launched under Chapter XII Cr.P.C. There is one class of officials who can guide investigation and both are provided in Cr.P.C. Under section 36 of the Code a superior police

officer may exercise the same powers as the officer incharge of a police station. Under section 158 the report of the investigating officer under section 157 Cr.P.C. may be sent to the Magistrate having jurisdiction through a designated superior police officer, who can give suitable instructions to the station officer, which have to be recorded on the report while transmitting it to the Magistrate. No superior police officer, however, can direct that a person against whom no case is made out should be made an accused or that person against whom a case is made out should be dropped from the list of the accused. The power to add or discharge accused persons vests only in a court after it has become seisant of a case.

I am making this point because in the cases relating to coal allocation the Supreme Court has observed that it will not rest till it makes CBI independent of all external influence in the matter of investigation of offences. My firm objection is to the use of the words CBI by the Supreme Court. CBI has no existence in the eyes of the law as an agency empowered to investigate an offence. How can any court direct that as CBI this institution will investigate offences and will refrain from showing its records to anyone other than the court? How can the Supreme Court direct government to bring legislation which would give independence to CBI? In fact first and foremost we need a law to create a CBI. Till that happens the only agency available to the Central Government to investigate corruption cases is the Delhi Special Police Establishment. The Supreme Court is free to use this nomenclature because in law that is the only legal entity which exists for the purpose of investigating offences, other than the normal police. Of course it is perfectly legitimate for the Supreme Court to remind government of the provisions of Entry 8, List 1, Seventh Schedule of the Constitution and direct that government should now cloak CBI with the authority of law by bringing forth appropriate legislation. My second, even more respectful, submission to the Supreme Court would be that the Code of Criminal Procedure gives absolute freedom in the matter of investigation of offences to every police force in India, including DSPE. What greater independence can be given than this? I presume one could put in a specific provision in Cr.P.C. which categorically and positively debars any investigating officer from sharing information with any unauthorised person. This would include ministers, government officials, etc. Other than that is it the objective to create a new category of a quasi judicial body, CBI, which is in fact only a police force? I am raising this question because ultimately the investigation of offences upto the point of actual prosecution will always be an executive function, though conducted strictly in accordance with law. If officers of CBI/DSPE function according to law they are already fully protected by Chapter XII, Cr.P.C. They cannot and must not share details of investigation with a third party, including government officials and if they do not do so they are clearly in violation of law, for which they can be punished. What the Supreme Court should have ordered is that whereas on the one hand government functionaries, including the Law Minister, were acting without jurisdiction in the matter of investigation by Delhi Special Police Establishment, the officers who shared information with unauthorised persons should be brought under disciplinary proceedings.

I am speaking as a purely practical person and not pontificating on theory. Articles 308 to 314 of the Constitution already give a great deal of immunity from arbitrary action to our Civil Servants, including the police. Both the Indian Administrative Service and the Indian Police Service are All India Services constituted under Article 312 and they enjoy a position unique to any Civil Service in the world in that they are created by the Constitution of India. If these officers will not do their duty despite having the protection of the Constitution, they are unfit to

hold office. If Ashwini Kumar was wrong in summoning the Director, CBI, if Joint Secretary level officers were in error in holding discussions on a specific matter with the Director, CBI, then CBI officers are even more guilty for not telling these persons that information regarding an ongoing investigation could be shared only with a court of competent jurisdiction. In this case it is the Supreme Court which had given directives for submitting a status report and the report, therefore, could only have been shown to the Supreme Court. The officers of CBI, including the Director, who showed the report or shared information with unauthorised persons, are not fit to adorn their present posts. This is particularly true of any person who is elevated to the post of Director CBI. My submission to the Supreme Court would be that this is what the Supreme Court should insist upon, that is, remind the officers where their duty lies and then punish severely for dereliction.

Parallel to the coal allocation case is the recent case of the Railway Minister's nephew being arrested for taking a bribe of Rs. 90 lakhs as an installment of a larger amount promised by Mahesh Kumar, Member (Staff), Railway Board and General Manager, Western Railway. The Minister has not resigned and his party is trying to support him. In this behalf I would like to submit two examples from Britain of how ministers, the government and the general public behaved in the case of John Porfumo and Jeffery Archer. John Porfumo was Minister of State for Defence, who had an affair with a person called Christine Keeler. It is alleged that when some Soviet warships paid a courtesy visit to Britain the Royal Navy, with the help of Naval divers called Frogmen, tried to explore the hulls of these warships under water. The Soviet Navy sensed what was happening and two of the Frogmen were killed in quietly conducted counter action by Soviet Frogmen. It was made out as if John Porfumo had inadvertently blurted out what the Royal Navy was planning to his paramour in the course of a pillow talk. John Porfumo immediately resigned and was virtually permanently banished from politics for life. The second case is of Jeffery Archer, famous author, Deputy Leader of the Conservative Party, Member of Parliament and a Minister of the Crown. He had an affair with a prostitute and allegedly paid her 1000 pounds to keep the affair secret. The matter was investigated, during which Jeffery Archer denied the charge. His lie was established, he was tried for perjury and sentenced to three years rigorous imprisonment. He also resigned from all posts, party and government. The law in Britain did not distinguish between those who are high ranking and those who are ordinary citizens. Everyone is equal before the law.

A third case, very recent, is of the Deputy Speaker of the House of Commons who was accused by two males of homosexual assault and rape. The station officer of the police station where the complaint was made did not seek anyone's permission to proceed to register an offence, investigate it and to arrest the accused. In sharp contrast Pawan Bansal and the party he represents have both steadfastly decided that he should continue as a minister, despite the fact that the nephew of the minister could be given a bribe only if there is a perception in the Railways, including at the exalted height of a Member of the Railway Board, that paying a bribe to the nephew, Vijay Singla, would result in a favourable order by the minister. Pawan Bansal is obviously cut from a different cloth than Lal Bahadur Shastri, who resigned because a railway accident took place, or Madhavrao Scindia, who resigned when an Airbus crashed near Hyderabad because of pilot error. Neither minister had anything to do with the accident, but they accepted a higher moral responsibility. So far as Pawan Bansal is concerned, there is neither acceptance of responsibility nor any moral code of conduct and by backing him the Congress

Party has proved that it has no moral code of conduct either. No wonder there is public outrage. What the Congress should be worried about is that its victory in Karnataka having been brought about by a revulsion against corruption and misgovernment, if that is the national mood in 2014 it would certainly be reflected in voter behaviour towards the party whose government is seen to be corrupt, weak and venal.

Justice and equality demand that those entrusted by law with the function of dealing with crime should do their duty as prescribed by law. To the extent that the Supreme Court can make the Delhi Special Police Establishment realise this it would have done a great service to the nation. But as I have said repeatedly, the Supreme Court is not only the Supreme Court of Delhi, it is the Supreme Court of India. Why should it restrict its remarks CBI /DSPE? It should address every police force and every government in India and ask them to read Chapter XII Cr.P.C. and then function accordingly. The so-called police reforms will not achieve this but an insistence that police officers function according to law and further insistence that those who do not do so should be severely punished, can restore the proper functioning of investigating agencies and their credibility. Once again my submission to the Supreme Court would be that it is these kinds of directives which it must issue to cover every police force in India. One last word, the people of India must realise that they have in their hands the power of the vote. Agitation by Anna Hazare or Arvind Kejriwal will not root out corruption. The observations or orders of Supreme Court will help in dealing with corruption but will not end it. If, however, the voter uses the ballot wisely he can send a message to all political parties that they may govern badly only at their own peril because the people will not tolerate them and will throw them out. We need Karnataka to be re-enacted wherever there is a corrupt government. That is democracy at its very best.

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