

Will India Be Governed, And By Whom?

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The Preamble of the Constitution informs me that India is a democratic republic. The form of government, therefore, is a democracy, defined in the New Oxford Dictionary as “a system of government by a whole population or all the eligible members of society, typically through elected representatives”. Chapter 2 of Part V of the Constitution constitutes Parliament and Chapter 3 of Part VI constitutes the State Legislatures. Both these legislative bodies consist of members elected from specified constituencies who represent the constituency in question and from amongst whom the Council of Ministers is appointed. The legislative functions of the State fall within the domain of the elected representatives and because the Council of Ministers, which advises the President or the Governor, as the case may be, in all matters pertaining to the executive government, the representatives of the people determine how the Executive will function in a democracy. All executive decisions are, therefore, taken on the basis of the advice tendered by the Council of Ministers and within a framework of laws, rules and regulations enacted or approved by Parliament or the State Legislature, as the case may be. In a democracy there is a third wing of the State, the Judiciary, whose job is to adjudicate between citizens, between government and the citizens, in all matters relating to criminal justice, in civil matters and through, exercise of writ jurisdiction, to determine the vires, that is, the legal and constitutional legitimacy, of legislation and executive action taken under law. That is how a democracy is required to function.

Under the Indian Constitution article 19 gives every citizen the fundamental right to freedom of speech and expression, peaceful assembly, formation of associations, freedom to move freely throughout the territory of India, to reside and settle anywhere in India and to practise a profession, occupation, trade or business of choice. This freedom is subject to reasonable legal restrictions to protect the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency and morality, the dignity of the courts and the prevention of defamation and libel. Our courts have been strict in interpretation of what constitutes a reasonable restriction and generally have opined in favour of the right rather than the restriction. All activism in India falls within the ambit of the exercise of the rights available to citizens under Article 19. The New Oxford Dictionary defines activism as under: “the policy or action of using vigorous campaigning to bring about political or social change”. Such activism, therefore, is legitimate, but it still does not amount to a licence to use activism to bring the Legislature or the Executive Government to a virtual halt. I state this because we have had the experience of Anna Hazare’s campaign in favour of the Lokpal Bill, drafted by him and his advisers, bringing the Parliament to a halt because it was prevented from exercising its legitimate legislative functions unless it approved the Bill in question without changing a comma or full stop. Such activism is not legitimate and it transgresses the freedom contained in Article 19 of the Constitution. Pressing for the Bill is legitimate, creating an environment in which Parliament cannot function is illegitimate and undemocratic. Unfortunately negative activism whose objective is not to bring about a social change but rather to prevent government from functioning is all too common in India.

Let us go back to the seventies of the last century. Jai Prakash Narain launched the Sampoorna Kranti campaign aimed at overthrowing the Indira Gandhi government and, in the process, the government of several States, with a view to replacing them by a government of good people chosen by Jai Prakash Narain. Because the idea was vague and unfocussed about how good people would be selected and made to remain good and was never articulated, the movement failed. However, it also led to the Emergency, a period of authoritarian rule which badly damaged our instruments of State. The Russian Revolution led by Lenin was an extreme form of activism whose objective was very clear and specifically defined. The Russian, rather Bolshevik, Revolution had the clearly stated objective of overthrowing the Tsarist regime in Russia, destroying the old feudal, social and economic structure and replacing it by a highly egalitarian regime consisting of the dictatorship of the proletariat. The aim of this activism was to complete replacement of the existing social and political order in Tsarist Russia by a completely new model of political, social and economic organisation.

Compare this with Martin Luther King's activism in the United States. It recognised the democratic polity of the United States, but it wanted to bring about a major political and social change which would enfranchise and empower the black and other coloured communities in what was basically a white dominated country, end discrimination against the blacks and ensure equal opportunity to every American citizen, regardless of colour or birth. The objective of the American Constitution is given in the Preamble wherein it is stated that the people ordained and established the Constitution in order to, "establish justice, ensure domestic tranquility, provide for the common defence, promote the general welfare and secure the blessings of liberty ..." It is to this that Martin Luther King appealed when campaigning for equal rights for all, as also Section 1 of Amendment XV of the Constitution passed by Congress on 26th February, 1869 and ratified on 3rd February 1870. The section reads, "The right of citizens of the United State to vote shall not be denied or abridged by the United States or by any State on account of race, colour, or previous condition of servitude". The success of Martin Luther King's campaign can be judged by the fact that the United States not only has a black President but he has been reelected by the people for a second term. This is what I called positive activism.

The parallel in India would be Mahatma Gandhi's sustained campaign for ending untouchability, pressing for temple entry for Harijans and his personal example of living amongst the untouchables and performing every menial task which they performed and which earned them millennia of humiliation and social discrimination in Hindu society. B.R. Ambedkar's activism was a different kind because he felt that social action was not enough and that until the untouchables were politically empowered they would never be given their rights. The result of this campaign has been the introduction of Article 17 in the Constitution which abolishes untouchability and Part XVI of the Constitution which makes special provisions relating to certain classes, that is, the scheduled castes, scheduled tribes and the Anglo Indians in terms of reservation of seats in Parliament and State Legislatures, reservation in public service, the special powers of the Central Government over administration of scheduled areas and welfare of scheduled tribes, etc. Gandhi's activism combined with Ambedkar's positive role in providing constitutional guarantees has definitely led to empowerment for the scheduled castes and scheduled tribes, but the activism has not gone far enough to eradicate from the Indian mindset the feeling of social superiority over the scheduled castes which has, therefore, delayed their total and absolute integration into what should be a casteless society. We need a great deal more activism in this field if Manusmriti is to be finally consigned to the dust bin as a philosophy which is obsolete and has no place in modern Indian society.

Together with positive activism we also have a great deal of negative activism in India, much of which started with a noble end but which has largely degenerated into a quest for personal recognition of individual activists and groups, regardless of the social cost of such recognition. Over time what started well ultimately developed into such negative attitudes that any attempt at modernisation or development now faces the stone wall of activists who are not prepared to listen to reason. The Narmada Bachao Andolan is one example of an excellent environmental movement losing a sense of direction as the movement developed. It began with opposition to projects on the Narmada which, collectively, constitute the largest river valley project in the world. The project aimed at developing 29 major dams, 450 medium dams and about 3000 minor works on the Narmada and its tributaries. These projects between them were to irrigate about four million hectares of land and generate several thousand mega watts of hydro electric power. The projects had the negative side of widespread submergence and loss of forests, together with displacement of thousands of families. Medha Patkar who led the Narmada Bachao Andolan (NBA) campaigned against the dams and other such projects from two angles: (1) The environmental impact of impounding large quantities of water. (2) The widespread displacement of people which would affect the livelihood of lakhs of displaced persons.

On the environmental impact NBA depended on data more relevant to the alluvial plains of the Punjab and western Uttar Pradesh, as also of Pakistan, where the Indus Valley projects and, to some extent, projects on the Yamuna and Ganga had caused widespread water logging and the loss of fertility because of rising salts. The Narmada Valley does not consist of alluvial plains and, therefore, the repetition of the North Indian example was a remote possibility. In fact the NBA's first target was the Tawa Project where all sorts of dire consequences were forecast. However, because of timely lining of the canals and the nature of the soil itself the danger of salt encrustation and heavy water logging was prevented and today the villages in the Tawa command area are prosperous. NBA also forgot that for water starved Gujarat the Narmada was a boon, a life saver and, therefore, the movement met with no success whatsoever in that State. In fact the movement faced the hostility of the people, whose lives were transformed as Narmada water began to flow to the fields and cities of Gujarat. The success story of Northern Gujarat, including Kutch, is a fine example of what water can do to improve the lives of people. Now NBA is restricted to pettifogging court cases in an attempt to delay projects such as Omkareshwar and Maheshwar, raising the cost, causing annoyance, delaying development but not promoting the welfare of either those in the command and those who are displaced. However, one great contribution of Medha Patkar and NBA is that they have awakened the conscience of the people of India to the fact that a development project can have adverse consequences for those who are in the catchment because they are bound to be displaced. In other words, people in the command are benefitted at the cost of the people in the catchment. This is grossly unfair and, therefore, because of the agitation by NBA, government has been forced to look to the interests of displaced people so that not only can they be rehabilitated but they are made partners in the benefits which flow from the project. There is a long way to go before we really equate the displaced with the beneficiaries, but we have begun to move in that direction. That is why the new Land Acquisition Act makes it difficult to acquire land for public purpose and almost impossible for private purpose. It also enhances compensation four-fold so that the displaced get a larger share in what ultimately would be the benefits of the projects. This much part of the NBA activism is positive.

This is an essay on who will govern us and how, rather than a study of different shades and nuances of activism, though activism would still be an important element of the discussion. We have had the mushroom growth of activists, largely in the environmental field but also in the socio-political field. Environmental activism, healthy in itself, has now gone haywire in that almost every development project is now at a halt. The Ministry of Surface Transport sanctions a highway. Land acquisition, however, is blocked. If that is unclogged then extraction of metal and earth necessary to build the road is not permitted. How can a road be built without the material for the sub-grade and subsequently for asphaltting and the final coat? Therefore, the road network cannot be completed. Buildings are sanctioned but the sand needed for concreting, the boulders and masonry blocks for the foundations and walls are not allowed to be excavated and as delay after delay occurs the building cost goes up, there are massive time overruns and the project itself remains incomplete for years on end. In this process the courts, through their activism as represented by easy acceptance of Public Interest Litigation, have held up projects year after year. I am not stating that courts should reject all the writ petitions made on account of public interest, but they must use their discretion in admitting petitions, they should not allow multiple petitions on the same issue to be filed seriatim and they must dispose of cases in a finite period and apply closure one way or the other. Today the position is almost the same as that of the Mad Hatter's Tea Party in Alice In Wonderland. In this lunatic scenario is it worthwhile for us to plan any development at all? Will lack of development really promote environmental protection, or will it encourage lawlessness? This is something which government, the activists, the High Courts and the Supreme Court must ask themselves, because lack of movement on the development front is now beginning to hurt. What is more, it has brought government to a halt in India, which is an open invitation to anarchy.

Let me end with two specific cases. The first relates to the allocation of 2G spectrum. From the improvements brought about in our telephone system by Sam Pitroda the next legitimate step was the introduction of mobile telephony. This is a field in which India was at a very primitive stage. Arun Shourie as Minister for Communications brought about a revolution by opening up the market for allocation of 2G spectrum. A number of new players came in, even in the telecommunication circles for which there were no takers. The mobile telephone industry expanded by leaps and bounds and developed a critical mass. This is the stage at which the policy could have been reviewed, but no one in government bothered. Ultimately a stage came where a mobile telephone was a prized item and spectrum allocation could have brought government substantive additional revenue. However, an unscrupulous minister, A. Raja and his parent party, DMK saw a glorious opportunity to make money and by manipulating the policy Raja and his cronies apparently did reap undue benefits. The CAG whose job is to audit what is and not hypothesise on what could be, came up with some extraordinary figures of theoretical loss, amounting to Rs. 1.72 lakh crores, which were latched on to by the political opposition and by activists who saw an opportunity to enhance their own image through publicity, through making a noise, through using the media and by approaching the courts. The media, especially the electronic media, sniffed a story and went to town without ever trying to fully understand the issue, which Arun Shourie was taking such pains to explain. The courts stepped in, the Delhi Special Police Establishment misnamed as the Central Bureau of Investigation (CBI) swung into action and before one could say "Jack Robinson" the bottom had fallen out of the mobile telephony market. Such an atmosphere of distrust was created that no one was prepared to take any decisions at the level of government.

Was there indeed a scandal regarding 2 G spectrum allocation? There were elements of criminality in some allocations and the miscreants should be punished when that happens. To the extent of criminality CBI as a police force does have jurisdiction, but it does not extend to sitting in judgement over executive decisions taken within an executive policy framework. That is not the job of a policeman, nor is he equipped to do so. Government which should have taken a public stand that India has become the largest mobile telephone country in the world, went around furtively and with a look of guilt, thus further complicating matters. From that day on government virtually abdicated its function and its duty to govern. Here is a case of totally misplaced activism by CAG, by socio-political activists, by the courts and by CBI, without a strong counter from government to neutralise the negative effects of such activism.

The second case relates to the allocation of coal blocks. Coal was nationalised, but over time our experience was that Coal India by itself was inadequate for exploiting what happens to be the largest deposit of coal in the world. The coal industry needed injection of funds, new ideas and better management and for this purpose it was decided to open up the coal industry to private and joint venture enterprise. The demand for coal had increased with industrialisation and the sanctioning of more thermal power stations. Coal lying in the ground has no value, which it gains only if it is excavated and used. Exploration for coal and its exploitation through mining requires massive investment of capital, which means that only companies with a proven track record of mining or with the clearly demonstrated and proved availability of their financial resources for investment in the coal industry should be allotted coal blocks.

It is alleged that some coal blocks have been arbitrarily allotted. If that is so then the matter can be investigated and remedial action can be taken. The investigation, however, has to be through a credible executive investigation by superior officers and not an investigation by policemen. As it is under the Code of Criminal Procedure no police organisation, including CBI, has any authority whatsoever to question an executive decision unless that decision amounts to a crime. I question the very authority of CBI to hold a preliminary enquiry in which senior officers are asked to justify their executive decisions to police officers. The Cabinet Secretary, the Prime Minister, the Council of Ministers or a committee appointed by government can call an officer to account, as can a parliamentary committee; a police officer cannot do so. The fact that we have allowed police officers to question senior officers about executive decisions which prima facie do not constitute a crime, even if they are unwise decisions, is one of the main reasons why the Executive Government is coming to a halt in this country. Why should any senior officer take any decision in any case when years later some police officer will call him to account? Let me give an example. Suppose a Patwari is ordered by his Tehsildar to assess crop damage in his Halka because of a hailstorm. The Patwari reports a certain quantum of damage on the basis of which government gives ex gratia compensation to the affected farmers. Five years later some nit-picking auditor or a mischievous activist questions the quantum of compensation and alleges that a few hundred rupees each has been paid as extra compensation and the Patwari is hauled up for what was a bona fide assessment. Will any Patwari ever give a report thereafter? He will keep procrastinating. That is what is happening to even the highest echelon of the Civil Service because of a combination of weak Executive Government, a Judiciary out of kilter, irresponsible activists busy seeking publicity and a CBI gone berserk.

To return to the coal allocation case, if a thermal power station is sanctioned it must be guaranteed coal, preferably from captive mines. One cannot harass Anil Ambani because in the case of Sasan 4000 mega watt thermal power plant in Madhya Pradesh he asked for captive mines and meanwhile transferred same coal from some other mines held by him. Even if coal has to be given free to power plants it is worth it because electricity produced from that coal will yield electricity duty to government and the power generated will facilitate lift irrigation by farmers, permit new industry to come up, provide energy to business, to households, to the transportation system and help in building the economy. Any other view is short sighted and in fact downright stupid.

Let us take the case of Hindalco, a Kumarmangalam Birla company. It has invested Rs. 17,000 crores in a two million ton alumina plant, a three and a half lakh tone aluminium smelter and a 900 mega watt power plant captive to the industry. Coal was to be supplied by the Talibara 1 and 2 coal fields, originally allotted to Mahanadi Coal Fields, a Government of India undertaking holding seventy percent equity and Neyveli Lignite Corporation, another Government of India company, holding thirty percent equity. At Kumarmangalam Birla's request government allotted fifteen percent equity in a new holding company, MNH Sakthi Limited, in which Hindalco was given fifteen percent equity by diluting the equity allotted to Neyveli Lignite. Even today the public sector owns eighty-five percent equity in these coal blocks. What is wrong with the decision of the Coal Ministry? Today P.C. Parakh, an IAS officer with an impeccable reputation, who was Coal Secretary, is being investigated by CBI, which has registered a case against him and Kumarmangalam Birla. Kumarmangalam Birla, Anil Ambani, Ratan Tata and practically every other big names in Indian industry will now have to open themselves for investigation by police officers in cases where there is unlikely to be any criminality. And they expect Indian industrialists to invest in India? Or foreign business to favour India as a destination? Do the Supreme Court or the CBI feel that they can run our economy?

For this sorry state of affairs I squarely blame government. The Prime Minister should have categorically stated that the decisions of government at the level of the Prime Minister, the Council of Ministers or an individual minister can be called into question only by Parliament and the electorate. Unless a crime is committed the police, of which the CBI is a constituent, has no jurisdiction whatsoever and if it dares to step outside the line it will, if necessary, be abolished. The courts, in exercise of writ jurisdiction, can question the vires of an act of government but they cannot sit in judgement over executive decisions in a manner such that their judgement supersedes the power and discretion of the Executive to take decisions in executive matters. It is only such bold action by the government at the highest level which can restore the balance of power in India and encourage officials to take executive decisions which they are competent to do, without fear of an overarching police force judging them. In other words, if India is to be governed this has to be done by the representatives of the people, working through the Council of Ministers and the officials mandated by law to perform executive functions. Today the exact opposite is happening.
