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CIVIL SERVICE

TELEGRAPH 23.6.10 CIVIL SERVICE

WITHOUT FEAR OR FAVOUR

The Civil Services Performance Standards and Accountability Bill proposes steps to make the bureaucracy more professional and independent, reports **V. Kumara Swamy**



Not civil: O. Ravi (centre), an IAS officer arrested recently on charges of corruption

If you thought the Indian bureaucracy was plagued by inefficiency, corruption and non-accountability, take heart. A new bill, the Civil Services Performance Standards and Accountability Bill, proposes a set of reforms that will hopefully usher in a bureaucracy that is not only more independent, but also responsive to the needs of citizens.

The bill, which has been in the works for almost three years, aims to make the bureaucracy “professional, neutral, merit-based and accountable”. It will codify the rules of conduct and regulate the appointment and conditions of service of public servants. A draft bill will soon be presented to the Union cabinet before it is tabled in Parliament. According to cabinet secretary K.M. Chandrasekhar, the bill is being prepared by the ministry of personnel, public grievances and pensions.

At present, the ethical norms for civil servants are enumerated as “conduct rules” in the Central Services (Conduct) Rules under Article 309 of the Constitution. Some rules are also contained in provisions of other laws. However, most of these are in the form of generalities such as “maintaining integrity and absolute devotion to duty” and “not

indulging in activities unbecoming of a government servant”.

A salient feature of the draft bill is the establishment of a Central Public Services Authority (CPSA) that would act as an interface between the government and the bureaucracy. The CPSA would consist of three to five members of “eminence in public life” with enough experience to deal with problems related to public policy and management.

The body would be in charge of transfer and promotion of bureaucrats and also formulate a “public services code of ethics”. Those found in breach of the code would be eligible to punishments ranging from fines to demotion to even dismissal.

Advocates of the bill believe that setting up a body like the CPSA would help reduce political interference in the bureaucracy. “We are under constant pressure from politicians, and we have been asking the central government to let us function according to the rules without fear or favour. Hard workers should be rewarded and the laggard and the corrupt punished. I hope the new law will do just that,” says an Indian Administrative Service (IAS) officer serving in Kerala, who did not wish to be named.

Adds M.N. Buch, an IAS officer who quit the service in 1984 and is at present the chairman, National Centre for Human Settlement and Environment, Bhopal, “A public servant can function without fear or favour as long as he is on the right side of the law. But not everybody can do it for fear of annoying the political masters. So a central authority will help.” According to Buch, honest civil servants are often sidelined by their political bosses. “Politicians want pliant officers who can do the dirty work for them. They promote these mediocre people while shunting out strong and independent-minded officers,” he says.

In 1983 the L.K. Jha Commission on Economic and Administrative Reforms concluded, “What we have in our system is essentially accountability for error and wrong doing, and not for non-achievement

or inefficiency.” But that will change if the new law is implemented, says an official of the department of personnel and training. “With the CPSA being set up, all the best practices will be put in place and erring civil servants will be pulled up. The body will be the government’s eyes and ears,” says the official.

However, Buch points out that the bill should have included “interlocking accountability” where the bureaucracy’s “chain of command” can be hauled up for any wrongdoing by a junior officer. “This will result in fast decisions and efficient officers will come to the fore,” he says.

The bill also attempts to promote efficiency by overhauling the appraisal system of bureaucrats.

A “performance management system” aimed at putting merit, performance and integrity above all else is being proposed. The current system of annual confidential report (ACR) has been found to be ineffective and more often than not, upright officers find their ACRs tinkered with by politicians and their cronies in the bureaucracy. Even the second Administrative Reforms Commission had questioned the system where senior officers write the ACRs of large numbers of employees, some of whom they may not even know personally!

The government is apparently looking to replicate the performance appraisal system adopted by the Delhi Metro Rail Corporation. Under this, the assessment takes into account over 15 desirable attributes, each of which carries 10 points. The employee does a self-grading which is appraised by a superior. The final appraisal is done by the management.

The bill is also significant in that it links the appraisal of civil servants to the tasks and goals of the organisation. “If this is implemented, officers will be on their toes as they will be forced to look back on their performance vis a vis their goals and justify their failures,” says a serving IAS officer.

Promotions based on seniority alone are also likely to be done away with. “Putting seniority above everything is the biggest disincentive for honest and hardworking officers. Only efficiency and achievement of goals should matter,” says Buch.

However, though the bill lays down stringent rules for civil servants, it also has provisions to protect them from harassment when the officers act in “good faith”. “No suit, prosecution or other legal proceedings shall lie against any person for anything done in good faith or intended to be done under this act or any rule made under this act,” says a previous draft of the law, which, according to a source, has been retained in the new bill.

But not everybody is excited about the bill. “The law may be well-intentioned, but it will be only cosmetic as what we need is a radical shake up of the bureaucracy rather than mere patchwork,” says Jayaprakash Narayan of the Hyderabad-based Loksatta Party, formerly a civil society initiative in the field of governance reforms.

According to Narayan, instead of shifting them from department to department, civil servants should be made to specialise in particular fields. The government should also bring in talent from the private sector. “More and more private citizens should be brought into the bureaucracy to shake up the system. The only thing that should matter is competence,” he says.

Narayan’s suggestions may not materialise just yet. But if the draft bill is implemented, it will go a long way in reforming the civil services and making civil servants more accountable to the public they are supposed to serve.

CORRUPTION

Fighting corruption

Need to empower Lok Ayuktas in states

KARNATAKA Lok Ayukta Justice Santosh Hegde's resignation from his post on the ground that the state government is not cooperating with him in curbing corruption suggests that this institution has failed to deliver the goods because of the government's reluctance to arm it with adequate powers. Justice Hegde, a former Supreme Court Judge, had been carrying on a relentless campaign against illegal mining of iron ore and corruption in the state. He revealed how nearly five lakh tonnes of iron ore worth Rs 200 crore, which was seized by the forest staff at Belikeri port in February following a Lok Ayukta report, mysteriously vanished. He has also taken exception to the reinstatement of a Bangalore City Corporation official within days of his suspension after his team caught him while taking bribe. His complaints that over 8,000 cases are pending due to the government's refusal to appoint an Upa-Lok Ayukta and harassment of his officers fighting corruption are very serious.

Unfortunately, the plight of the Lok Ayuktas in 16 other states is no better. No government has armed them with teeth to bring culprits to justice. In Punjab, the Lok Pal is a toothless tiger. In Haryana, he works more like a forum for the redressal of grievances against junior employees rather than fighting corruption and catching the big fish. In Himachal Pradesh, as in most states, the Lok Ayukta has only recommendatory powers. He neither has adequate infrastructure nor powers to deal with complaints against higher-ups, including politicians.

Even at the Centre, the fact that the government's actions would come under public scrutiny has invariably discouraged successive governments from enacting a Lok Pal Bill. Each government is fearful

that the Bill would boomerang on it. However, the mere creation of this office — or that of the Lok Ayukta in states — can hardly guarantee an effective solution to public grievances unless the incumbent is allowed to act independently with adequate powers, staff and infrastructure. It is a moot point whether Justice Hegde would heed Union Home Minister P. Chidambaram and Karnataka Governor Hans Raj Bhardwaj's appeals and continue in office. However, in view of the increasing cases of corruption and nepotism in the government, we need Lok Ayuktas like Justice Hegde to stem the rot in the system.

DISASTER MANAGEMENT

HOW DISASTERS HAPPEN

- Proper corporate governance would have helped Bhopal

S.L. Rao

The world economic recession of 2008 was triggered off by the greed of large financial firms, poor corporate governance in them, and the ineffectiveness of regulatory authorities who had not kept pace with changing markets. There were few self-imposed restraints. Public restraints were ineffective because of poor and biased enforcement. A current example is the massive ongoing oil leak into the Gulf of Mexico from the BP oil well. It seems to have been caused by cost-cutting while overriding well-established industry practices and public regulation biased in favour of the drilling oil companies. The Bhopal disaster of 25 years ago was also caused by poor oversight within Union Carbide, and failure of the Indian and Madhya Pradesh governments to ensure safe practices because of incompetence and perhaps corruption. The welfare of the people was neglected before the disaster and ignored afterwards.

I wonder whether Indian companies and Indian regulatory authorities have learnt from Bhopal. Are all of them prepared to handle disasters? Disasters can arise in many situations: for example, in industry, transport, mining, drilling and in sectors where poisonous or inflammable substances are handled, or when geological disturbances occur.

Union Carbide (now Dow Chemicals) was a diversified multinational company. Such multinational companies have good management structures and staffing in their many operations. Each product, function and region has parallel specialists at headquarters. Each HQ specialist is fully involved in the aspect he specializes in. Every activity and action thus has duplicate (and hence perhaps fail-safe supervision) — at local

HQ and multinational HQ. In a production operation all decisions would be double-checked — for example, on the appointment of high level staff, technology, plant layout, production processes and systems, productivity, finances, operating costs, inventories, health, safety, internal audit and so on.

There is such continuous interaction between functional and product departments in each country, frequent mutual visits, conferences, as well as regular reports, which many times lead to instructions for action. The intent is to apply to each of its companies best practices from learnings everywhere. There is no doubt in my mind that many officials at Union Carbide headquarters (and in India) must have known and participated in decisions about the Bhopal plant. Indian investigating agencies obviously did not pursue them.

The Bhopal plant was one among Union Carbide's many other Indian operations and, as in any well-run company, must have had strong superintendence in India as well. A director must have made regular visits to the Bhopal plant. In most multinational companies, safety is on the agenda of the top management and the board. Production and storage of poisonous gases, their storage and handling and safety standards would have been approved by both Indian and overseas HQs, and periodically reviewed by the board.

If investigators had studied the Indian company records, reports, minutes of internal meetings, and correspondence with the American HQ, people could have been identified for responsibility and held accountable for the tragedy.

How responsible is a non-executive chairman (like the iconic Keshub Mahindra) for a disaster of this magnitude? Such positions carry no executive responsibility. Twenty-five years ago, corporate governance practices since laid down by the Securities and Exchange Board of India did not exist. The role of independent directors, even non-executive

chairmen, was ill-defined and their time poorly remunerated. Even today, when these have changed, unless the operating management discloses the facts, independent directors and non-executive chairmen are unlikely to know the who, why and what of decisions regarding a matter like the storage and handling of poisonous gases. Satyam is a good example of the wilful non-disclosure of facts by the management. We cannot apply the standards of today to events of 25 years ago. Perhaps though, the non-executive chairman of Union Carbide could have publicly accepted company responsibility, pushed the operating management to clean the site and make it safe, as well as offered help to the victims.

Warren Anderson was in overall charge as the chief executive officer of the multinational company. He is ultimately responsible for the disaster and its aftermath and has to be accountable for it. Union Carbide (and its successor Dow Chemicals) have to take responsibility. Arresting Anderson and letting him go are not vital for the victims' welfare, compensation, treatment, and cleaning up of the site. Union Carbide has not acted responsibly and has avoided all these. Their managers in India and Union Carbide (now Dow) must be made to pay. Even by standards of 25 years ago there was a failure of corporate governance.

The American government is adopting double standards. Just as it has pushed ultimate responsibility on to BP for the damage due to the oil-well explosion, the Indian government must fix responsibility on Union Carbide, its CEO and the concerned managers. Our political parties and electronic media are hysterical today about less vital matters, after not pursuing them for 25 years.

Instead of relying on the lethargic Indian judicial system, government and civil society organizations can still file class action suits in the United States of America against Union Carbide/Dow. The government could also have intervened in the subsequent sale of the Eveready battery division of Union Carbide to McNeil Magor and seized the

amount paid. The government could have threatened to nationalize Union Carbide too.

India was not strong enough to do these things 25 years ago. We were not then the fifth largest economy with nuclear military capability, growing faster than any country except China. A new, young and inexperienced prime minister, succeeding an assassinated mother, in the middle of a hectic national election, had to recognize that India under licence-control-permit *raj* was vulnerable and could not challenge the wishes of the Reagan administration of the US, the only superpower left, to protect one of their top businessmen. No other prime minister or political party could have acted differently. They did not when they later exercised power.

India's antiquated laws are an embarrassment today. As we develop industrially, disasters in industries, oil and gas drilling and production, mining, and other accidents, are certain to occur. Our laws, enforcement, monitoring, penalties, disaster management systems, judicial processes for disasters, and so on, should be ready at all times. This has yet to happen, after 25 years. As the US Congress has told BP, "We need agreement that any exploring agency, nuclear plant operator, or anybody in a business that can cause major human or environmental damage to a country as in the Gulf, or to many countries, should follow safe practices laid down by a global group of experts." India has not even thought of this, let alone the procedures and institutions for the purpose. At least companies should do so.

Our regulatory agencies must enforce legislation and rules, and publish new and tougher ones, for manufacturing and storage of poisonous gases and other such matters. Galloping urbanization demands that strict laws and policing agencies are in place since slums come up quickly in close proximity to factories. Our laws and the judicial mechanism require change to quickly prosecute and penalize the guilty in industrial disasters.

Our governments, instead of passing on blame or being defensive, must put a remedial framework in place. The nuclear liability bill is the first opportunity for comprehensive legislation and implementation mechanisms that will prevent another Bhopal and its subsequent careless handling. It must be suitably extended to other industries.

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**Gas tragedy and after
Congress, No. 1 culprit**

By Kuldip Nayar

By shouting down its critics, the Congress underlines its arrogance of power. It must own the responsibility and apologise to the nation.

Democratic polity in India has been again exposed when the details of Bhopal gas tragedy have come out. There was a nexus between the judiciary, the executive and the bureaucracy. All the three joined hands to let chairman Warren Anderson of Union Carbide, the company which owned the gas plant, escape from India. They also scaled down the compensation that the company had offered and delayed the court judgment by 26 years.

This was like the Emergency, a decade earlier, when prime minister Indira Gandhi battered the polity on June 25, 1975, denying even the fundamental right. It was the same story: the judiciary, the executive and the bureaucracy falling in line to justify an authoritarian rule. Scant attention was paid to the democratic constitution. In fact, the organs of the state were part of the tyranny perpetrated.

On both occasions, the ruling Congress was in power at the Centre and in Madhya Pradesh where the gas plant was located. And on both occasions the prime ministers, Indira Gandhi and her son Rajiv Gandhi, became law unto themselves and inflicted deep wounds on the democratic structure which is still recovering from the staggering blows it received.

Rajiv is said to have told state chief minister Arjun Singh to let off

Anderson, which what a top Congress functionary characterised as under ‘US pressure.’ Rajiv consulted the cabinet subsequently, if he at all did. Indira too imposed the emergency on her own, consulting the cabinet only subsequently.

Both happenings show that the army does not have to walk in to make the judiciary, the executive and the bureaucracy to toe line. The prime ministers who can concentrate power in themselves can flout all the norms and rules which necessitate accountability.

Indira had the supreme court uphold by 5 to 1 her authoritarian rule in the emergency like Pakistan chief justice Munir who justified the takeover by General Ayub through ‘the doctrine of necessity.’ Such instances indicate that the judges are as much dictated by ‘other considerations’ as civil servants. They are just afraid to stand up to the government’s aggrandisement. Chief Justice A H Ahmadi diluted the section under which the perpetrators of Bhopal gas tragedy were booked, from section 304 of the IPC, which laid out a punishment of 10 years, to section 304-A, where the maximum sentence given was two years.

As far as the bureaucracy, including officials of the CBI, is concerned, it has become too hapless and too obliging, ready to ‘serve’ any party which comes to power. Over the years, it has got over the qualms of conscience, if it had any, and high ideals of service without fear or favour.

Chief minister’s orders

It was comical to find the same deputy commissioner and the superintendent of police, who put Anderson under arrest on arrival for the gas tragedy, escorted him to the airport to fly out in the state plane. The chief minister’s orders had made all the difference. None of the two stood up to the oath they had taken to uphold the constitution and the country’s integrity.

I have seen similar things happening in Pakistan, Bangladesh, Sri Lanka and Nepal. The ruler counts, not the rules. The ethical considerations inherent in public servants have become generally dim and in many cases beyond their mental grasp. Anxiety to survive at any cost forms the keynote of approach to the problems that come before them.

Accountability is the only way to ensure that those who violate the norms followed in a democratic system do not go scot-free. I have never seen an erring judge, a tainted minister or a delinquent civil servant getting punishment. They are chips of the same block, using all methods if and when they are arraigned even before any tribunal.

In fact, the Congress has put all the blame on the then chief minister, also a Congressman. Even if the party is able to deflect the blame — as it did when it came to saving Indira — there is something called the value system. True, political parties have substituted it with power. But then they must be prepared for the violent, desperate forces like that of the Maoists or the Taliban.

Home Minister P Chidambaram, appointed by the prime minister to preside over the Group of Ministers and look into the Bhopal gas tragedy was trying, as finance minister, to push through a decision that would absolve the Dow Chemicals, which had bought Union Carbide, of responsibility. By shouting down every critic, the ruling Congress underlines its arrogance of power. It must own the responsibility and offer apologies to the nation. At least, it can take immediate steps to rehabilitate thousands of victims still in the cold. The Congress must learn humiliation.

Yet, if the nation has to preserve the fundamental values of a democratic society, every person — whether a public functionary or a private citizen — must display a degree of vigilance and willingness to sacrifice. Without the awareness of what is right, there may be no realisation of what is wrong.

ECONOMIC DEVELOPMENT

ECONOMIC TIMES 24.6.10 ECONOMIC DEVELOPMENT

Boom or no boom, India can grow at 9%

T T Ram Mohan

The Indian economy grew at an average of 9% in 2004-08 . This burst of growth surprised people since it had not been immediately preceded by any

burst of ‘reforms’. Some commentators now think that this burst is a something of fluke linked to the global economic bubble. The global bubble burst following the sub-prime crisis. So, these commentators believe that a return to the 9% trajectory is unlikely in the near future.

They are likely to be proved wrong — and sooner than thought earlier. Until recently, it appeared that the Indian economy would grow at 8-8.5% in 2010-11. Only in 2011-12 would growth touch 9%. On present showing, there is every prospect of the Indian economy growing at 9% in 2010-11 itself.

This optimism is based on the latest figures for growth in the recent past. In 2009-10, the Indian economy grew at 7.4% even as the world economy struggled to come out of the worst financial crisis in a century. Not many had expected such a strong recovery following the fall in the growth rate to 6.7% in 2008-09. The recovery in 2009-10 was strong despite agriculture doing badly on account of drought. Agriculture grew only by 0.2%.

What conclusions can we draw from the recent growth experience? The first and, perhaps, most important conclusion is that growth of close to

9% in 2004-08 was not entirely the outcome of the global boom and cannot be construed as something of a bubble. If that were the case, the deceleration in growth rate in the Indian economy in 2009 and 2010 should have been as sharp as that of the global economy and the subsequent recovery as slow. Neither has happened.

Global economic growth (in PPP terms) declined from an average of 4.9% 2004-07 to 1.2% in 2008-09, a decline of 3.7 percentage points. India's growth declined in the same period from 8.9% to 6.5%, a decline of 2.4 percentage points. (These are calendar years). In 2010, the IMF expects world economic growth to rise to 4.2%, which is 0.7 percentage points away from its pre-crisis average. For India, growth is projected at 8.8%, almost the same as the pre-crisis average.

The figures for world economic growth are exaggerated by the inclusion of numbers for India and China. Take away India and China from the world growth figures and the contrast between India's performance and that of the rest of the world after the crisis becomes even starker. The bottom line is clear: India's return to a 9% growth trajectory is not contingent on the world economy returning to its so-called bubble growth rate of the pre-crisis years.

This does not mean that Indian growth is de-coupled from the rest of the world. India's relatively low trade to GDP ratio (of 16%) does give it some insularity from the world economy. But, as we saw in the recent crisis, a more potent mechanism for transmission of contagion is capital flows. India's vulnerability to capital flows is on two counts.

One is that investment exceeds saving. This gap was 1-1.5% in recent years. In 2008-09, it widened to over 2.4%. This is mainly because the savings rate fell more sharply than the investment rate as the government

sought to contain the impact of the global slowdown on the Indian economy by boosting government expenditure. This caused the fiscal deficit — or government dissaving — to increase.

With the planned return to FRBM targets, the savings rate should go up but investment is likely to exceed savings in the near future. In the medium-term, we will continue to be dependent on foreign capital to support our growth.

We found during the recent crisis that the savings-investment gap understates our vulnerability to capital flows. Capital flows in 2007-08 amounted to 9% of GDP, vastly in excess of the current account deficit. A significant portion of the increase in corporate investment, which led to the increase in India's investment rate in 2003-08, came from external sources.

For a higher growth rate to be sustainable, the savings rate needs to go up so that it can substantially finance a higher investment rate. This will happen given the fiscal reforms under way. Secondly, corporate dependence on external funds must go down. This happened consequent to the crisis but companies must be careful not to revert to the earlier position. Thirdly, the growth rate of 9% that many people forecast for 2010-11 assumes good monsoons and a sharp revival in the growth rate of agriculture. It is also based on significant investment in infrastructure. If we can move towards the target of 4% growth in agriculture through substantial investment in the sector, not only is 9% growth achievable but growth will be that much more sustainable. Similarly, growth driven by an expansion in infrastructure rather than exports will make for greater sustainability. Getting back to a growth rate of 9% is not the issue. The issue is making economic growth relatively immune to the vagaries of the world economy. An increase in the savings rate and a focus on agriculture and infrastructure hold the key to sustainable growth.

INTERNATIONAL RELATION

...but India's quiet voice loud & clear

Gautam Chikermane

For a country that's the poorest among the 19 nations (I'm excluding the European Commission) that comprise the Group of 20 in terms of per capita income, India, over the past 19 months has been able to get a substantially larger voice-share in the four summits. The expression "fighting protectionism", for instance, is an issue Prime Minister Manmohan Singh raised in the very first summit in November 2008. That was when, in the time epicentre of the ongoing financial crisis, developed countries — after preaching the importance and power of "free markets" — began to raise trade and finance barriers against India and other emerging economies.

"We renew for a further three years, until the end of 2013, our commitment to refrain from raising barriers or imposing new barriers to investment or trade in goods and services," the June 27 Toronto Declaration stated. This takes the November 15, 2008 Washington Declaration that underscored the "critical importance of rejecting protectionism and not turning inward in times of financial uncertainty. In this regard, within the next 12 months, we will refrain from raising new barriers to investment or to trade in goods and services, imposing new export restrictions..."

The two statements in the middle — the April 2, 2009 London Statement and the September 25, 2009 Leaders' Statement at Pittsburgh — echoed much of the same. While the G20 leaders reaffirmed the commitment against raising trade barriers in London, they further strengthened the

financial protectionism in Pittsburgh. Among many other things, this has turned out to be a geopolitical high for Singh, whose PhD in Economics makes him (along with Russian President Dmitry Medvedev and Indonesian President Susilo Bambang Yudhoyono) the most educated among all G20 leaders.

But it's not just his education — or age — that has given Singh a leg into a club of 19 countries that are setting the global agenda on recreating the world's financial architecture, also known as the Bretton Woods II. As the leader of the world's 12th largest economy in real terms and fifth when adjusted for prices (PPP or purchasing power parity) that is also the world's second-fastest growing, India has had its voice heard in other areas too. Increasing the voting share of emerging economies at IMF and World Bank as well as membership to the Financial Stability Board are also Singh-led initiatives.

In relative terms, India has escaped the recession and economic contraction that gobbled countries like US, UK and France. Fiscally, India's deficit, at 5.5 per cent is comfortably lower than theirs — 8.8 per cent, 12.0 per cent and 8.4 per cent, respectively (and I'm not even beginning to discuss Greece and Spain whose deficits stand at 9.9 per cent each). Going forward, India is going to grow by 8.8 per cent according to the conservative IMF, though Singh sees it at 9 per cent-plus.

But even if India grows at 10 per cent for the next 10 years — not unlikely but nothing to take for granted either — its GDP will cross what Germany's is today and still fall short of Japan's and China's by more than 30 per cent. And it's not like those countries are going to be staying put. The global stakes could change in the middle — India may cross Russia, Canada, Brazil, Italy, Britain and France. After that, the road is going to be steep and for India to be able to back its current intellectual stature at the G20 with some real numbers a decade later is going to take some doing.

The other issue India needs to confront is that of income disparity within as well as outside. To his credit, Singh had raised this issue — tentatively in Washington and firmly in London. But he could well be extending the India story of abject poverty amid high growth and seeking a more equal, more egalitarian world. Words, however, will not be enough.

In order to take the next big leap of growing by, say, 12 per cent per annum, Singh needs to usher in economic reforms, the list of which is only increasing. From reforms in the financial sector (pension, insurance or banking, where he needs to ensure that the consumer interest is protected and not just blandly and unthinkingly increase FDI) to real sector transformations (land acquisition, mining policy or urban infrastructure push), the task is daunting.

But with the hydra-headed protectionism under control (thereby saving India's exports) and the financial sector safer (and hence the illiterate across-the-board bank tax snuffed out), these are the issues Singh must address on priority before he flies into Seoul for the fifth G20 Summit in November 2010.

POLITICS AND GOVERNMENT

Congress's subversion of the Constitution

Surya Prakash

June 25, 2010 marks the 35th anniversary of the Emergency that was imposed on an unsuspecting nation by Mrs Indira Gandhi. The Emergency (a euphemism for dictatorship), which lasted 19 months, resulted in the incarceration of political opponents of the Congress, suspension of fundamental rights, censorship of the media and the complete eclipse of democracy. The reign of terror unleashed by that regime reduced parliament to a rubber stamp and even the judiciary failed to stand up to its tyranny.

The story of the Emergency is a long one that falls into distinct chapters dealing with each of the organs of state and cannot possibly be told in a single article. This article will therefore be limited to one aspect — the mutilation of the Constitution — by that regime. But, before we get to the fate that befell the Constitution, a quick re-cap of the events that led to the imposition of the Emergency.

The story begins with the judgement of Justice Jagmohanlal Sinha of the Allahabad High Court holding Mrs Indira Gandhi guilty of corrupt practices in the 1971 Lok Sabha election from Rae Bareli. He held that election to be void and also barred her from contesting elections for six years. The judge found that she had violated many provisions of the election law. Mrs Gandhi appealed against this order in the Supreme Court and managed to secure a “conditional stay”. Justice VR Krishna Iyer, who heard the appeal, allowed her to continue in Parliament but barred her from participating in debates or voting and referred the matter to a larger Bench of the court.

These judicial pronouncements clearly reduced Mrs Gandhi to a lame duck Prime Minister and the right course for her would have been to step down until the larger Bench had disposed of her case. But, egged on by her family and the toadies she collected around her, she decided to challenge the judiciary and place herself above the law. Misusing an unused provision in the Constitution (Article 352) that permitted the imposition of Emergency to deal with “internal disturbance”, she got the President to issue a proclamation suspending fundamental rights and giving the Union Government unbridled powers. Further, all this was done by stealth. The President passed the order after a late night meeting with the Prime Minister. The Cabinet was not consulted but only “informed” the next morning at 6 am in gross violation of the rules governing conduct of business in Government.

On June 27, 1975, the President issued an order suspending citizens’ right to move the courts for enforcement of fundamental rights guaranteed under Article 14 (equality before law and equal protection of the law), Article 21 (no deprivation of life and liberty except by procedure established by law) and Article 22 (no detention without being informed of the grounds for it). With the passage of this order, citizens lost their fundamental right to life and liberty. Later, he passed yet another order suspending the right of citizens to move court for enforcement of freedoms under Article 19. This laid the infrastructure for dictatorship.

The assault on the Constitution began soon thereafter with the 38th Amendment, which barred judicial review of the presidential proclamation and the laws made by a discredited Government in contravention of the fundamental rights. Then came the 39th Amendment, which barred the Supreme Court from hearing the election petition against the Prime Minister.

This amendment, passed in gross violation of parliamentary rules, was

hustled through at break-neck speed. It, therefore, enjoys the dubious distinction of being the fastest constitutional amendment in India's history. It was introduced in the Lok Sabha on August 7, 1975 and passed that very day after a two hour 'debate'. It was introduced in the Rajya Sabha on August 8, 1975 and again, passed that very day. On August 9, a Saturday, all State legislatures were summoned to ratify this amendment and on August 10, 1975 (a Sunday) it received the President's assent. The reason for this over-speeding was the Congress's desire to pre-empt the Supreme Court which was to begin hearing Mrs Gandhi's appeal on Monday, August 11, 1975. Alas, there was no Constitutional Policeman to challan this rash driver!

But such was the desperation within the Congress to place its leader above the law that it showed itself to be both ruthless and reckless. Although the 39th Amendment had been passed by the Rajya Sabha only the previous day, the Government introduced and ensured passage of the 41st Amendment in that House the very next day — August 9, 1975. Parliament had become a captive legislative machine churning out constitutional amendments to suit the needs of an individual — the Prime Minister.

This amendment took the concept of putting the Prime Minister above the law to a far more ridiculous level. It said no civil or criminal proceedings "whatsoever" could lie in court against a person who is or who had been Prime Minister for acts done by that person before entering office or during the term of office. This amendment shook the very foundation of our Constitution because equality before law and equal application of all laws is the basic premise of a democratic Constitution. Fortunately, though the Rajya Sabha passed this amendment with undue haste, there was some rethinking and the Bill was not brought before the lower House. Also rushed through around this time was the 40th Amendment that put an anti-media law in the 9th Schedule to bar judicial intervention.

The 42nd Amendment turned out to be the final nail in the coffin of a democratic Constitution. Its primary aim was to clip the wings of the judiciary. It said Parliament's power to amend the Constitution was unlimited "by way of addition, variation or repeal" and no amendment could be questioned "in any court on any ground". This meant that Parliament henceforth had the unfettered power to preserve or destroy the Constitution.

The 42nd Amendment had two other reprehensible components. One, it abolished the need for quorum in Parliament and State legislatures, thus making it possible for just a handful of Congress MPs to sit late in parliament and make laws for the country at will. Two, it gave the President the power to amend constitutional provisions through an Executive Order. It said if there were any difficulties in giving effect to the Constitution as amended, the President may, by order, for up to two years, "adapt or modify the provision to remove the difficulty". Through this provision, Parliament had bartered away its exclusive power to amend the Constitution.

History books tell us that Hitler and Mussolini were among those who acquired such special powers to 'amend' their Constitutions with the stroke of a pen. Taken together, these amendments robbed the Constitution of its soul and turned India into a dictatorship.

Fortunately the people voted out this regime in March 1977. The Janata Party, which came to power, quickly removed these fascist features and re-introduced democratic values in the Constitution. However, although it had turned a vibrant democracy into a dictatorship, the Congress has had no remorse over its conduct during 1975-77.

Worse, some of its members and many of its apologists argue that Mrs Gandhi had no option but to impose the Emergency. So, next time Congress spokespersons talk about the virtues of democracy, we need to ask them what they think of Amendments 38 to 42!

SOCIAL JUSTICE

A matter of dishonour

Chandan Mitra

North India's caste orthodoxy is fighting a violent battle to preserve its dominance over rural society, but the war is already lost

Is this the last gasp of a 'Bharat' against the onslaught of 'India'? Or is it a potentially successful rebellion by a beleaguered orthodoxy determined not to yield any more ground to the advancing forces of modernism and Westernisation? In a sense both these hypotheses run concurrently. The sudden spate of so-called honour killings that has gripped North India in recent months probably demonstrates that the old order will not give up without battle and mindsets in rural India are not ready to adjust to change at the speed modernisers wish. It will be a long war of attrition. Significantly, it is becoming increasingly difficult even to identify who is on whose side.

I say this because demonstrably modern politicians, some foreign educated and at ease holding knives and forks correctly at formal dinners, have emerged as apologists for the peculiar social organism called khap. Arguably, this powerful institution does a lot of philanthropic work and occasionally even espouses the cause of social reform, spreading awareness against child marriage and dowry for example. But today the khap is in the dock for ordering or at least vocally endorsing retrograde norms of marriage and denying its members constitutional rights, apart from blatantly defying the law and the duly established judicial process, which upholds the sanctity of individual choice.

Loosely defined khaps are assemblies of sub-castes spanning a number of villages in a defined geographical area. For readers outside the Delhi region who have little knowledge of this peculiar contraption, let me elucidate by referring to various khaps among Jats, such as the Balyan, Malik and Tewathia, among others. Just as Brahmins have divisions like Kanyakubj and Saryupari while Kayasths are divided into sub-castes like Srivastava and Mathur, Jats and others who dominate the hierarchical middle order among Hindus in North-West India are organised in sub-sets, which territorially overlap but determine social behaviour within and outside their respective sub-castes. Interestingly, almost every village throughout India is dominated by one caste and they, acting through the village panchayat, set the social agenda. As a relative of the slain couple, Kuldeep and Monica, in Delhi put it: “Gujars settled here 300 years ago. Rajputs and Muslims moved in later. But they too follow the same rule as us and do not permit marriages within the same village.” Although Muslims have no exclusionist rules governing marriage and kinship, usually they tend to fall in line with dominant Hindu caste practices except where they are the majority.

A further complication arises when gotra is introduced into this complex social matrix. In the Hindu scheme of things, everybody has an assigned gotra named after a sage of ancient times such as Gautam, Vishwamitra, etc. The term gotra originates from go-kshetra, that broadly marks the territorial boundary within which cows belonging to a particular rishi and his disciples would graze. Same gotra marriages are generally forbidden because it is assumed that people living within that geographical area originated from the same rishi and are thus brother and sister, no matter how many times removed. Orthodox elements contend that all marriages must be guided by two rules of exclusion, that is, men and women belonging to the same village or the same gotra must not inter-marry, and one of inclusion, namely marriages can be solemnised only within the same caste.

There might have been some rationale behind this in the past when

people rarely moved out of villages. But since the advent of the British and the railways, movement of people out of their cloistered villages gained rapid momentum. Migration to cities and small towns has accelerated in recent decades, resulting in the virtual snapping of rural roots. Therefore the enforcement of gotra, village and even caste rules has become almost impossible. A recent academic study suggested that as many as 31.6 per cent of OBC women married outside their caste or religion in Mumbai between 1990 and 2000. However, Delhi's neighbourhood, particularly the agriculturally prosperous regions of Haryana and western Uttar Pradesh, remain deeply conservative on social matters. This could be the legacy of the waves of alien invasions the region underwent over the last millennia, which in turn bred a strong sense of self-preservation and defensiveness, particularly regarding the honour of womenfolk who were obviously violated by conquering hordes.

Thus, rural society here retreated into a shell and became over-protective about women. The khap system probably evolved to collectively legitimise this conservatism because the khap panchayat was authorised by common consent to enforce rules of social behaviour, punishing the deviant by ostracisation ("hukkah-pani bandh — meaning no sharing of the common hookah and withdrawal of permission to draw water from the community well). Depending on the gravity of the crime, the khap and sometimes the village panchayat (if the culprits belonged to different castes), could impose fines, order expulsion from the village, publicly admonish or physically assault the errant and so on. The pronouncement of the death penalty, however, seems to be a relatively recent and most horrific addition to the panchayats' powers.

Judging by the recent cases, it appears that wholly illegal and unacceptable imposition of the death penalty is reserved for same gotra or inter-caste marriages. The significant thing is that couples that commit this 'crime' usually flee the village before marriage but are lured back with the promise of reconciliation and thereafter violently beaten to

death or hanged from the branch of a tree. Such outrage has become commonplace recently because social mores are steadily breaking down under the impact of urbanisation and examples promoted by TV serials. Besides, police penetration has increased considerably in these areas, which till some decades ago were left to administer themselves and hence the quantum jump in the reportage of such atrocities by an increasingly intrusive media.

Delhi's neighbourhood is witnessing an explosion of such kangaroo courts delivering rough-and-ready justice because the hiatus between a metro that has rapidly become cosmopolitan and its hinterland has widened sharply. Besides, the castes that dominate Delhi's surroundings, especially Jats and Gujars, have always prided themselves for machismo and believe it is the bounden duty of the male to protect, forcibly if necessary, the honour of the family or village female. Unfortunately, the same concern for feminine honour does not usually extend to strangers, especially those who wear 'provocative' attire or move around with other men. They are often considered fair game, which explains Delhi's dubious distinction as India's rape capital. Contradictions that have engulfed villages situated within the metropolis' ever-expanding boundaries are making matters worse. Women from villages located inside the city's urban precincts nowadays study in co-ed institutions and also go out to work, where they interact with 'alien' males and end up establishing romantic liaisons. Wazirpur is a classic example of a village entombed within a burgeoning modern colony of Ashok Vihar. Here a village, trying desperately to cling on to antiquated norms and code of social behaviour finds itself increasingly besieged by the encroaching city with its different set of morals. But no matter how many 'deviant' young women and their lovers they kill in the hope of terrorising other women and future generations for violating rural orthodoxy, Wazirpur's days are numbered. North India's 'honour killings' are indeed the last, frustrated acts of vengeance by a dying society unable to accept the unstoppable reality of change.

Let The Children Flower

MADHU PURNIMA KISHWAR

It should come as no surprise that even after great public outrage over the tragic suicide of 13-year-old Rouvanjit as a result of being repeatedly subject to traumatic forms of punishments, the principal of Kolkata's La Martiniere School has justified the caning and other forms of humiliation inflicted on the class VIII student as a necessary means of disciplining him. One supposedly serious allegation levelled by the principal to justify corporal punishment is that Rouvanjit exploded a stink bomb in class! It shows that despite their avant-garde pretensions, many of our elite English-medium schools have not outgrown the moral dictum of their Victorian founding fathers: "Spare the rod and spoil the child."

Today's notions of child upbringing among the educated middle class demand constant disciplining, constant nagging, teaching children to behave themselves to fit into the supposedly orderly world of adults. After they have been taught to say "mama-papa", the two most important words dinned into child minds by the school system and parents alike are "thank you" and "sorry". To this is added the maddening pressure to "succeed" in a highly competitive world with tests and exams starting from nursery onwards which subject tender minds to robotic academic discipline, with every child expected to be equally good in all standard subjects taught in highly regimented school classrooms irrespective of the child's abilities, inclinations, desires or talents.

By contrast, some traditional notions of bringing up children in India

make far greater allowance for the unique privileges of childhood and the liberties children are entitled to. For example, in most traditional and semi-traditional families in India, expectant mothers hang a portrait of Bal Gopal right opposite their beds so that they can see baby Krishna's visage first thing in the morning as an aid to having their prayers for a Krishna-like child rewarded. Why Krishna, and not Ram or any other god or goddess?

Socially conditioning expectant mothers to desire a Krishna-like child is to prepare them for the joie de vivre that most children are intrinsically gifted with. Krishna is supremely naughty, forever tricking his playmates and playing pranks on his mother and other village folk. Stealing butter is his favourite sport not because he is ill fed or deprived of his favourite food but because he enjoys playing naughty tricks. He lies and cheats while playing games with other children and teases young girls and women no end. This Krishna leela has been celebrated in our mythology, paintings, literary creations, dance and music through the ages.

To see an image of baby Krishna in each child is to recognise the divinity of every child and learn to delight in their making sense of and negotiating with this world in their unique way, including through naughty pranks and childish tantrums. Children don't need air-conditioned classrooms, expensive schools, toys and exotic entertainment to make them happy. They need unconditional love and a sense of security from the adults responsible for their well-being. They are as happy playing with mud or sand, chasing butterflies or simply running around, jumping up and down, or cracking stink bombs.

One would have expected that after Aamir Khan's insightful and moving film *Taare Zameen Par*, at least teachers of elite schools would have imbibed the basic lesson that regimenting children is not the best way to educate them. Each child is unique and should not be expected to become a flawless assembly line product or behave like a little saint!

Real education lies in enabling each child to discover his own genius within. The present-day school system revolves around penalising you for your weaknesses and mistakes and the inability to tread the beaten path in learning predetermined skills. The film held up a mirror to all adults parents and teachers alike to show how the system of education we have come to value is so designed that only a few lucky ones can succeed in the rat race and that too by destroying or suppressing much of their creative abilities and innate joy. During the years i taught in a Delhi University college, i steadfastly refused to accept examinership because it involved marring young lives by "failing" them or grading them in ways that left permanent scars.

While a few lucky ones come out successful, most of our modern-day baby Krishnas just manage to get by while a large number are simply crushed under the burden of living up to the neurotic expectations of adults. Our education system is making nervous wrecks out of otherwise perfectly healthy individuals by privileging robotic learning and cut-throat competition which takes all joy out of learning and makes children slaves to the insane world we have created under the pretence of promoting excellence and rewarding merit. HRD minister Kapil Sibal needs to put this issue centre stage in his attempts at reforming India's education system.

All those parents holding stage-managed demonstrations to defend La Martiniere School's disciplining methods better remember, their child could be the next victim. In fact, it is not enough to demand that the principal and teachers of La Martiniere who traumatised little Rouvanjit be made to resign. They should be charged with and tried for abetment to suicide, no less.

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