

Lokpal Bill: After the deluge

BOTH THE UPA government's attempt to pass the Lokpal Bill, 2011 and Team Anna's attempt to exert pressure on the government ended in a damp squib. While Team Anna failed to recognise the limits of exerting public pressure through such loose non-political alliances, the UPA government was undone, not by the opposition National Democratic Alliance, but its ally Trinamool Congress (TMC).

Many eyebrows have been raised and Banerjee's unpredictability has been blamed. Such simplistic view does not explain the phenomenon called Mamata Banerjee. The TMC's opposition to the Lokpal Bill has as much to do with federalism as it has to do with the future of the TMC.

Banerjee is acutely aware that the TMC's ascendancy to the Writers Building was luck by chance after CPM supremo Prakash Karat withdrew support from the UPA-I government on the Indo-US civil nuclear cooperation. Had the CPM not withdrawn the support, Banerjee would still have been in the political margins. The Congress high command has always been willing to sacrifice West Bengal to the CPM for the sake of power at the Centre. Banerjee had left the Congress to form the TMC on that ground alone.

If opportunity arises, Congress will once again sacrifice West Bengal to the left parties to remain in power at the Centre. Not surprisingly, the TMC has been treating the Congress in West Bengal as the main opposition. In fact, the Congress had to raise



SUHAS CHAKMA

Team Anna has no strategy to deal with Mamata Banerjee and continues to focus on the central government

objections with the TMC after Abhijit Mukherjee, son of Pranab Mukherjee was appointed as the chairman of West Bengal Industrial Development Finance Corporation. The Congress considered such appointments as co-option. Congress MPs Deepa Dasmunshi and Mausam Benazir Noor have been leading the campaign against Banerjee's scheme of things but their appeal beyond their constituencies is suspect.

While the battlelines between the TMC and the Congress will be drawn on seat-sharing in the next parliamentary elections, the TMC will continue to consolidate



Team Anna made a mistake by painting all politicians with the same brush.

its support base and follow anti-left policies, which in fact makes the TMC more leftist than the left parties. It is precisely for this reason that the TMC brought the UPA government to its knees by opposing the Foreign Direct Investment in the retail sector, the Pension Bill, foreign direct investment in aviation and a host of left-favoured issues. The left has become a shadow of the TMC since the Singur and Nandigram days and the situation is unlikely to get any better for the UPA-II. Banerjee does not only play the left's favoured issues to the hilt but also assuages Bengal's sentiment, pride and interest. The refusal to toe the Centre's line on the Teesta water sharing agreement with Bangladesh is a case in point.

For the UPA-II, the Lokpal Bill appears to have reached a dead end. Union Home Minister P Chidambaram stated that only two or three amendments of the Lokpal Bill are possible. That is unlikely to placate the TMC

which must be seen to be opposing the Lokpal Bill as much as the CPM does.

Team Anna on its part has no strategy to deal with Mamata Banerjee and continues to focus on the central government. They appeared too obstinate by pushing its Jan Lokpal Bill as the only acceptable one. The National Campaign for Peoples' Right to Information led by Aruna Roy made a serious dent on Team Anna's credentials and Team Anna suffered from its failure to address the representation of the minorities, scheduled castes and the scheduled tribes within its team as well as within the Bill's framework. Further, while citizens have every right to protest and pressurise the public representatives and the government, dictating the parliamentarians remains unacceptable to majority Indians.

There are serious problems with India's parliamentary democracy but when CPI leader Gurudas Das Gupta, who is as credible as Anna or

anybody else in public life, questions the pretension of another father of the nation, it echoes across the social and political spectrum. Clubbing all politicians under the same basket has been the most serious mistake of Team Anna.

While debate on various aspects of the Lokpal Bill will continue, corruption or any other malaise of India cannot be addressed unless two fundamental problems that plague the constitutional and statutory bodies of India are squarely addressed.

First, virtual impunity through the requirement of prior sanction for prosecution of the public servants whether accused of rape or corruption has been the single most important factor for all the malaises of India. Prior sanction is not only needed under the Prevention of Corruption Act but also under Section 197 of the Criminal Procedure Code since 1997. The regime of prior sanction makes the judiciary subservient to the executive. Otherwise, it is for the judiciary to decide prosecution based on the facts and merits of each case, and not for the executive without application of any judicial mind. The Lokpal Bill did not address the need for a fine balance between the need for protection for official duty and acts done on good faith and the need to ensure supremacy of the judiciary to decide based on the factum and merits of any case.

Second, all the constitutional and statutory bodies suffer from serious shortcomings with selection of the chairperson and its members, which finally make

these bodies ineffective. The Lokpal Bill, 2011 is an improvement of existing procedures as Section 3(4) and Section 9 of the Lokpal Bill address the conflict of interest both prior to appointment as well as on ceasing to hold office. These measures are progressive but insufficient to address the problems.

As PC Thomas' appointment as Chief Vigilance Commissioner showed the problem was not with the selection panel but concealment of information from the selection panel. The Supreme Court held the appointment of Thomas as non-est in law but failed to provide the remedy. Unless the selection of candidates is confirmed through public hearings as done in the US such as by the Senate Foreign Relations Committee, inclusion of the Chief Justice of India as a member of the Lokpal Selection Panel will not help.

India does not appear to be ready for public hearings for appointment but there is a need to put mechanisms wherein the names of the candidates for the constitutional and statutory bodies will be displayed in public and information pertaining to the short listed candidates will be invited for consideration by the selection panel, if necessary, without any public hearing.

If the Lokpal Bill addresses these two primary concerns along with issues connected to federalism, it would go a long way to solidify Indian democracy.

The writer is the director of the Asian Centre for Human Rights