

Lok Pal and the Prime Minister

The current debate about Lok Pal centers on whether the office of Prime Minister should be brought under the jurisdiction of Lok Pal. This issue figured prominently even in the consensus-building effort 'Round Table on Lok Pal' held in New Delhi, on April 24, 2011. The participants expressed strong views both in favour of and against, the inclusion of the Prime Minister.

Those participants having a rich public service experience at the highest levels cited the findings of the 4th Report of the 2nd Administrative Reforms Commission (ARC) and the National Commission for the Review of Working of Constitution (NCRWC) and recommended the exclusion of Prime Minister from the jurisdiction of Lokpal. They pointed out that the Prime Minister in the Westminster system occupies a pivotal position, and his / her accountability should be only to the Lok Sabha; and not any appointed authority. Any destabilization of the office of the Prime Minister could seriously undermine the stability of government and paralyze all administration. Even if the Prime Minister is exonerated fully after an enquiry by Lokpal, the damage done to the country would be considerable and irreversible.

However, several other participants strongly felt that the Prime Minister must be within the ambit of the Lokpal. They felt that public confidence in our political process has been eroded significantly, and it may be necessary to bring the Prime Minister within the purview of the Lokpal in order to restore public trust.

The demand for PM's inclusion:

Those who believe that the Prime Minister's conduct should be scrutinized by Lok Pal rightly argue that all public servants should be accountable. In a democracy, the citizen is the sovereign, and every public servant holds office to serve the citizens, spending tax money and exercising authority under the laws made on citizens' behalf or under the Constitution which we, the people, gave unto ourselves. Therefore, no functionary, however high, should be exempt from scrutiny by Lok Pal. In constitutional theory, in the Westminster model, the PM is the first among equals in a Council of Ministers exercising collective responsibility. Therefore, whatever rules apply to other Ministers should apply to the Prime Minister as well.

However, there are deeper issues that need to be examined carefully.

The pivotal, unparalleled role of the PM:

While the PM's office was merely the first among equals in conception, over time and particularly in India, the PM became the leader of the executive branch of the government. It is the function of the PM to lead and to coordinate in framing of policies, decision making and execution of those policies and decisions. The PM's unchallenged authority and leadership are critical to ensure cohesion and sense of purpose in government, and to make our Constitutional scheme function in letter and spirit. The PM is accountable to the Parliament, and on his survival depends the survival of the government.

In our Constitutional scheme of things, the PM is appointed on the basis of the President's judgment of his commanding majority support in Parliament. All Ministers are then appointed only on the advice of the PM. The President cannot ordinarily dismiss the PM as long as he enjoys the majority support in the House of the People.

PM, not just another Minister or an MP:

But other Ministers are removed by the President at any time, on the advice of the PM. No reasons are required to be given by the PM for removal of such Ministers. They must enjoy the confidence of the PM in order to hold office as Ministers. This scheme has been deliberately introduced in our Constitution to preserve the authority of the PM, and to ensure cohesion and coordination in the functioning of the government.

If the PM's conduct is open to formal scrutiny by extra-Parliamentary authorities, then the government's viability is eroded and Parliament's supremacy is in jeopardy. Any enquiry into a PM's official conduct by any authority other than the Parliament would severely undermine the PM's capacity to lead the government. Such weakening of the PM's authority would surely lead to serious failure of governance and lack of harmony and coordination and goes against public interest.

- *Therefore, those who argue that the PM is like any other Member of Parliament or any other Minister are only technically correct.*
- *In reality, in all countries following the Parliamentary executive model drawing Cabinet from the legislature, the PM became the leader of the country and the government.*

The authority of the PM, as long as he enjoys Parliamentary support, has become synonymous with the nation's dignity and prestige. A PM facing formal enquiry by a Lok Pal would cripple the government. One can argue that such an enquiry gives the opportunity to the incumbent to defend himself against baseless charges and clear his name. But the fact is, once there is a formal enquiry by a Lok Pal on charges, however baseless they are, the PM's authority is severely eroded, and the government will be paralyzed. Subsequent exoneration of the PM cannot undo the damage done to the country or to the office of the PM

We should note that, there is no provision to impose President's rule in the Union. In case of states, Article 356 provides for a mechanism to ward off instability or collapse in a state. But in the Union, we always need a strong and viable Council of Ministers headed by PM. Therefore, any roving enquiry by a Lokpal into the conduct of PM himself will leave the country vulnerable, and may even jeopardize national security.

It could be argued that since any minister could be removed on PM's advice or Parliament as well, Lok Pal need not have jurisdiction on a Minister's conduct also. But Parliament does not really sit in judgment of a Minister's conduct. It is the PM and the Council of Ministers as a whole whose fate is determined by Parliament's will. And the PM does not have the time or energy to personally investigate the conduct of a Minister. The government's investigative agencies are controlled or influenced by the Ministers, and therefore it is hard for the PM to get objective assessment of the Minister's official conduct. Therefore, an independent, impartial body of high standing would be of great value in enforcing high standards of ethical conduct among Ministers. A similar reasoning

applies to MPs, since Parliament's time and energies cannot be consumed by detailed investigations into individual conduct. But the final decision of removing the Member must vest in Parliament, and that removal of a Minister must be on the advice of the PM. The Parliament is responsible to the nation for its decisions, and the PM is responsible to the Parliament.

While the PM is yet another member of the Parliament in theory, political evolution has transformed him into the leader of the nation. Theoretically, each member of the legislature is elected by his constituents in our model of government. But over the past century, elections even in parliamentary system have become plebiscitary in nature. Most often, the PM's personality, vision, and leadership are the issues which determine electoral outcomes. Similarly, the opposition focuses its energies and hopes on its leader. The electoral contest is transformed into a test of acceptability of the leaders. The constituency contests have thus become increasingly dependent on the larger question of whose governmental leadership people trust or seek at that point of time.

PM accountable to Parliament:

Given this overwhelming political reality, it would be extremely unwise to subject the PM's office to a prolonged public enquiry by any unelected functionary. However, this does not mean granting blanket immunity to the PM.

The Parliament is the best forum we can trust to enforce the integrity of the office of the PM: If the PM is indeed guilty of serious indiscretions, the Parliament should be the judge of the matter, and the Lok Sabha should remove the PM from office. No lengthy enquiry or impeachment are therefore contemplated in our scheme of things, and a mere passing of no-confidence motion without assigning reasons is sufficient to change government. In the directly elected executive model of government, the Parliament cannot remove the President who is the Chief Executive, and therefore a complex process of impeachment, and an enquiry by Special Prosecutors to precede such an impeachment have become necessary.

Therefore, the Lok Pal Round Table was of the opinion that, on the balance, this issue should best be left to the wisdom of the Parliament. However, the Round Table was of the unanimous view that all other ministers and senior officials, including those directly associated with the Prime Minister's Office should be brought within the purview of Lokpal's jurisdiction.

Finally, don't exclude the CMs!

But Chief Ministers should be brought under the jurisdiction of Lokpal at the national level, because in States there is much less risk of a government being paralyzed if a Chief Minister is under investigation / enquiry.

In a crisis situation in a state, if the government cannot be carried in accordance with the provisions of the Constitution, the President may invoke the provisions of Article 356. Therefore, the balance of convenience lies in bringing the Chief Ministers within the purview of an independent anti-corruption authority, but at the national level (i.e. Lokpal).
