

A Civil Way to Bell The Cat

The Needle's Eye



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In early June, a few weeks before the launch of the Goods and Services Tax (GST), Prime Minister Narendra Modi held an informal meeting with a group of senior bureaucrats at which, according to a government press release, he exhorted them to rise above the "administrative mechanisms of earlier centuries". He urged them to seize the opportunity to transform the lives of one-sixth of humanity.

Less than a week later, 65 retired Secretaries wrote an open letter to the prime minister expressing distress over rising intolerance, vigilantism, and hyper-nationalism. "A sense of deep disquiet at what has been happening in India has prompted us to write this open letter to chronicle our reservations and misgivings about recent developments in the body politic," they said.

A few days later, and just ten days before the launch of GST, the government carried out another of its periodic reshuffles of senior bureaucrats, with 17 new appointments.

Last Saturday I heard Finance Minister Arun Jaitley claim that the generation of illegal cash has been made much more difficult by demonetization and the GST. "For 70 years Indian democracy has completely been funded by invisible money," he said. "Elected representatives, governments, political parties, parliaments, and I must say even the Election Commission completely failed in checking it."

Ring words. But how many corrupt politicians have been prosecuted and how many corrupt officials jailed over the past 33 months? The day before Jaitley spoke, I read a news report that Chinese authorities had punished more than 210,000 corrupt officials in the first half of 2017.

In India, though, we seem anxious to distinguish between 'deliberate' and 'inadvertent' corruption, between bona fide and mala fide intentions, and between premeditated and involuntary dishonesty. Even if we are honest, we do not enjoy standing out. It is easier to swim with the current than against it.

Jaitley himself has spoken more than once about the anomalies in the Prevention of Corruption Act of 1988, which he notes predates economic liberalization. Last October he said the PCA's failure to distinguish between erroneous and corrupt decisions had hampered the ability of public-sector banks to resolve the bad-loan crisis that was crushing their balance sheets. Although I do not

see how you can be erroneous—in the face of overwhelming financial details—about 'ever-greening' bad loans that are clearly not going to be repaid, ever. In March, Jaitley said the government is determined to punish bad borrowers who are gaming the banking system, but the PCA needed to be amended first. "I believe once those amendments are made, bankers and public servants in positions of decision making will be sufficiently empowered without fear of consequences, in relation to honest decisions they take in normal commercial matters," he said.

Let's see how our governments have fared on re-defining corruption. The Prevention of Corruption (Amendment) Bill of 2013 has been going through several changes. It has been referred to a Standing Committee, the Law Commission, and then a Select Committee of the Rajya Sabha. The Modi government itself has proposed amendments in 2014 and 2015. Now, based on the Select Committee's August 2016 recommen-

is forced to bribe a municipal official for a water tap) and a 'collusive' bribe (as when a company bribes a government official for a licence or an undue favour). In an odd twist, the Bill says a public servant will not be deemed taking a bribe, or to have committed an offence if he "does not perform public function or activity dishonestly". As they say in American English, go figure.

In addition, the amendment now says prior approval from an "appropriate authority", which was needed so far by, say, the Central Bureau of Investigation to prosecute a corrupt official, will also now be required for an investigation. This is bound to tamp down the zeal of the CBI or special courts. The 'authority' is the Lokpal at the centre, who does not exist so far, or the state-level Lokayuktas, most of whom do not exist either.

Importantly, the bill deletes Section 13(1)(d) (iii) of the original act which defines as an offence of criminal misconduct when an individual "while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest".

These caveats have been extended to former officials. But they will not shield H.C. Gupta, the former Coal Secretary, who was convicted to two years in prison by a special CBI judge for irregularities in allocating a coal block in Madhya Pradesh in 2008. The former IAS official, who is out on bail and has appealed his sentencing, faces prosecution in 10 more coal-block cases, each one being tried separately in the same CBI court.

The CBI also charged Gupta's predecessor P.C. Parakh in the coal scam case but found no evidence of wrongdoing against him. Parakh, who has written two books on the scandal that engulfed the UPA government, told me the PCA's definition of "public interest" was subjective. He said Gupta had an unblemished record and the government must stand by honest civil servants. "Prime Minister Modi should take lessons from how Sardar Patel won (the) confidence and goodwill of the civil service."

Anil Swarup, who as Coal Secretary supervised three rounds of transparent auctions of coal blocks under the Modi government said Gupta's conviction has had a chilling effect on senior officials. "People are refusing to commit themselves on the file, especially where there is a financial implication... What they are doing is, they note on the file: 'These are the facts of the case, you take a call' and pass the buck to the minister," said Swarup, who was moved to School Education last November. Swarup said the Gupta case showed there was no statute of limitations for retired officials. "Some people are congenitally honest, but they will cease to be efficient. Imagine a country where the bureaucrats are either dishonest and efficient, or dishonest and inefficient, or honest and inefficient," he told me. "Instead of hounding everybody, make an example of somebody who is actually dishonest. Take them to the cleaners." Very civilly put.



TIME FOR A CHANGE

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dations, the bill is finally on the calendar of parliament's monsoon session.

If it is passed, the amended act will make some important distinctions. Many people feel it will raise the threshold for prosecution to an unattainable height and water down some of the more stringent provisions of the 1988 Act. It will also add bribe-giving as a crime, although hairs are split between 'coercive' bribe-giving (as when a poor man



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