

## **Lok Pal and Prime Minister**

One issue which has been debated for long is whether the office of Prime Minister should be brought under the jurisdiction of Lok Pal. 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 Prime Minister 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. While the Prime Minister's office was merely the first among equals in conception, over time the Prime Minister became the leader of the executive branch of government. The Cabinet accepts collective responsibility once decisions are made. That is why all policy debates are customarily within the Council of Ministers away from public gaze, and Ministers are not free to express their reservations or differences of opinion in public. It is the function of the Prime Minister to lead and to coordinate in framing of policies, decision making and execution of those policies and decisions. Prime Minister'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 Prime Minister is accountable to the Parliament, and on his survival depends the survival of the government. If the prime Minister'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.

In our Constitutional scheme of things, the Prime Minister 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 Prime Minister. The President cannot ordinarily dismiss the Prime Minister as long as he enjoys the majority support in the House of the People. But other Ministers are removed by the President at any time on the advice of the Prime Minister. No reasons are required to be given by the Prime Minister for removal of such Ministers. Integrity and competence of the Ministers are not sufficient conditions to continue in office. They must enjoy the confidence of the Prime Minister in order to hold office as Ministers. This scheme has been deliberately introduced in our Constitution to preserve the authority of the Prime Minister, and to ensure cohesion and coordination in the functioning of government. Any enquiry into a Prime Minister's official conduct by any authority other than the Parliament would severely undermine the Prime Minister's capacity to lead the government. Such

weakening of Prime Minister's authority would surely lead to serious failure of governance and lack of harmony and coordination, and would severely undermine public interest.

Those who argue that the Prime Minister 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 the Cabinet from the legislature, the Prime Minister became the leader of the country and government. The authority of the Prime Minister, as long as he enjoys Parliamentary support, has become synonymous with the nation's dignity and prestige. A Prime Minister 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 Prime Minister's authority is severely eroded, and the government will be paralysed. Subsequent exoneration of the Prime Minister cannot undo the damage done to the country or to the office of the Prime Minister. If the Prime Minister is indeed guilty of serious indiscretions, the Parliament should be the judge of the matter, and the Lok Sabha should remove the Prime Minister 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.

It could be argued that since any minister could be removed on Prime Minister'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 Prime Minister and the Council of Ministers as a whole whose fate is determined by Parliament's will. And the Prime Minister 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 Prime Minister to get objective assessment of the Ministers 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 members of Parliament, since Parliament's time and energy cannot be consumed by detailed enquiry into the conduct of a Member. But the final decision of removing the Member must vest in Parliament, and that of removal of a Minister must be on the advice of the Prime Minister. The Parliament is responsible to the nation for its decisions, and the Prime Minister is responsible to the Parliament for his decisions. These responsibilities of Parliament and Prime Minister cannot be transferred to any unelected body.

Finally, while Prime Minister is yet another member of Parliament in Constitutional theory, political evolution 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 Prime Minister's personality, vision, and leadership are the issues which determine the 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. Given this overwhelming political reality, it would be extremely unwise to subject the Prime Minister's office to a prolonged public enquiry by any unelected functionary. The Parliament is the best forum we can trust to enforce integrity in the office of Prime Minister.

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