

## POSTSCRIPT I

# FURTHER REFLECTIONS ON OUR ANTI-CORRUPTION MOVEMENT: CHALLENGE & RESPONSE

*Corrupt influence is itself the perennial spring of all prodigality, and of all disorder; it loads us more than millions of debt: takes away vigour from our arms, wisdom from our councils and every shadow and authority and credit from the most venerable parts of our constitution.*

*Sir Edmund Burke*

### (I)

The Anna Hazare-led Anti-corruption Movement would last in our national consciousness for long, both for what it could do, and what it couldn't do. It would surely shape our people's response to the challenges which rampant corruptions pose to our governance in these difficult times. It has triggered new pursuits, and it has spawned new ideas inspiring us to think about new socio-political experiments. In my Memoir, I have written a few words on this Movement as I had seen it unfolding in our country. My readers may go through those words at pages 337-339 and 477-479 of this Memoir. I have retained them in the Second Edition of this Memoir as they had appeared to me. I wish you to share that jubilation, laced though that was with apprehensions, wrenching my mind as I failed to see light at the end of the tunnel. But I was sustained by faith in ourselves which most demanding moments generate (the moments when 'it would be unwise to be sanguine' and 'unphilosophical to despair').

I draw your attention to the Line of Fire (see p. 338) as it can help us measure how movements and revolutions, we have witnessed in history, ascend or descend, or even turn stagnant: sometimes aggressive, sometimes faltering, and sometimes mere quiescent; but also sometimes diamond hard and diamond bright. Destiny goes on scribbling our history on the Stream of Time! Things present 'chiaroscuro effect': sometimes inviting us to our journey's end with scintillating passion, but sometimes driving us to our wit's end as things seem all wrapped up in mystery, even lost!

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The initial crescendo in the Anti-corruption Movement, spearheaded by a group of persons, compendiously called 'Team Anna', sagged towards the end of 2012. Differences in the Team Anna had emerged on account of their practical considerations of the issues being pursued: whether it was prudent to carry on the way Anna had done adopting Gandhian technique of protests through fast, and wordy persuasion, or to innovate a new strategy as a matter of practical prudence to provide a 'political alternative' that could, with peaceful combativeness, work towards the node 'C' on the Line of Fire.

On 26 November 2012 a new political party was formed under the leadership of Arvind Kejriwal whom I had known during 1996 and 1997 when we worked as the Members of the Indian Revenue Service: I, as one of the three Chief Commissioners of Income-tax in New Delhi, and he, as an Assistant Commissioner of Income-tax; and also when I, as a PIL Petitioner, had conducted the well-known Indo-Mauritius Tax Treaty Abuse Case before the Supreme Court of India (see Chapt. 23 of this Memoir).

Time had come when the Movement was up against the wall. Serious thinking was being done for adopting the future course of actions. I had my own ideas for the restructuring our polity for establishing a new socio-political paradigm<sup>1</sup>. It is enough for the present to say that I broadly agreed with Kejriwal that it was worthwhile to work for a new political alternative through the restructuring of the electoral system to make our polity responsive and mission-oriented. I have touched this topic at several places in this Memoir, and also in many of my articles which can be read on my website<sup>2</sup>.

I must say with candour that my reflections led me to believe that the right course for the Movement was to work for 'a political formation' rather than to set up a new political party on the conventional lines. I suggested that the 'formation' should consist of the people's representatives chosen by the people in their own constituencies out of their own people. I felt it was a mockery of democracy to permit some Trojan horse to intrude into a constituency from outside. I sent my suggestions to India Against Corruption when the ideas for forming a new political outfit were on the anvil. You may read my ideas on these issues briefly set forth in Chapter 22 ('I suggest that time has come to Restructure our Polity'), and also in Chapter 30 of this Memoir. But Arvind and his team thought it prudent to go ahead with their agenda in the light of their perception of the prevailing realities in which our Government was seen unwisely astute in delaying, even evading, the enactment of an effective and comprehensive Lokpal Bill. They formed the Aam Aadmi Party (AAP, for short) to carry on the struggle to achieve their mission.

I realised that nothing turned on mere semantics of 'party', or 'formation'. What mattered was its culture and commitments, its agenda and its capacity to

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1. **'OUR POLITICAL PARTIES'** 333-336; **'Restructure our Polity'** 338-339 'Setting up political trajectory in our villages' 522; 'Restructuring our polity' 524-525; 'Political Parties and Democracy' 525; Articles in the folder on 'DemocracyWatch' on [www.shivakantjha.org](http://www.shivakantjha.org), and also [http://www.shivakantjha.org/openfile.php?filename=governance/partyless\\_democracy.htm](http://www.shivakantjha.org/openfile.php?filename=governance/partyless_democracy.htm)
  2. see at [http://www.shivakantjha.org/openfile.php?filename=dwi/anna\\_hazare\\_revolution.htm](http://www.shivakantjha.org/openfile.php?filename=dwi/anna_hazare_revolution.htm)

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sacrifice for good of our people. I felt a new ascent on the Line of Fire had been made towards the node 'C' (see the 'Line of Fire' at page 338 of the Memoir). This Aam Admi Party registered an amazing ascent soon after its formation. In the 2013 Delhi Legislative Assembly election, it emerged as the second largest 'party' winning 28 out of 70 seats, and it formed, on 28 December 2013, a minority government in Delhi with the support (conditional?) of the Indian National Congress. What this new government did, and what led it to resign from the power (only 49 days later) is a baffling story which is all in public domain.

### (II)

I have mentioned above that the Movement had begun as an anti-corruption movement, and its immediate objective was to get an effective Jan Lokpal Bill enacted as the law of this land. We all know that the odyssey of our efforts to achieve this objective had remained, over decades, terribly frustrating. But there was a sudden turn in the events; the reasons for which were obvious. The political parties had witnessed our people's resentment against our Government's inaction in setting up an effective anti-corruption law and its enforcement mechanism. They wanted to improve the prospect of their success at the hustings in the fast-advancing General Elections 2014. Perhaps, they insightfully read what had led our people's overwhelming response for the AAP in the Delhi election, and so prudently decided not to be seen indifferent to the agitation against corruption for which our people had shown their passionate commitment. So after several decades, and numerous versions, the Lokpal and Lokayuktas Act, 2013, was passed by the Rajya Sabha on 17 December 2013, and by the Lok Sabha on 18 December 2013. It received the Presidential assent on 1 January 2014.

### (III)

#### A Quickie Legislation

History has shown that statutes alone do not solve problems which corruptions pose in a political society. We need a strong political will, and the existence of a conducive sociopolitical climate for 'anti-corruption' operations. We have seen it illustrated in the past. Neither the Corrupt Practices Act of 1854, nor the Corrupt and Illegal Practices Prevention Act 1883, could eradicate the corrupt practices of the politicians in the U.K.; nor the Foreign Corrupt Practices Act of 1977 of the USA could bring that measure of transparency as to make the anti-bribery measures really effective. We have seen how the OECD's Convention on bribery failed to give a good account of itself. Neither the Criminal Justice Act 1987, nor the Anti-terrorism, Crime and Security Act 2001, of the United Kingdom could ensure an investigation, by the Serious Fraud Office, into the Al Yamamah arms deal despite the allegations of bribery: see [2008] UKHL 60. Yet, we believe, a sound statute, if well implemented, has a good chance to achieve its mission. The real question always is how honest and serious a political society is in targeting corruptions bedeviling it. Thucydides aptly said: "It is men, and not the wall of wooden ships, who make a city."

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### A Domestic Melodrama

The Lokpal and Lokayukta Act, 2013, has been framed. It has evoked a lot of dissatisfaction, and is open to serious criticism on many counts. I do not wish to comment on its provisions as several persons abler than me are already carrying on the crusade against 'corruption'. But before I end this Postscript, I would like to touch two points: (i) what does the history of our Government's concern to set up an effective anti-corruption mechanism *reveals*; and (ii) what does the quickie style of the deliberations and enactment of the Lokpal and Lokayukta Act, 2013, *highlight*.

As to (i), we have witnessed over the years after Independence, the establishment of an Axis of Evil between the politicians and the civil servants (see pp.173-74), which, after 1991, turned into virtually a Triple Alliance of the corrupt politicians, the corrupt civil servants, and the corrupt Big Business. The years have shown a continuous operation of one shocking constant; total absence of 'political will' to stop this evil.

As to (ii), the Bill that hibernated for decades amidst indifference, and was lapped up, and thrown down, many times for years, was turned into an Act bringing the quest for an effective Lokpal law to a melodramatic end. I felt that it would have been more prudent to ask our Law Commission to suggest effective measures to respond to the challenges emerging in this phase of the market-driven Globalisation. The Commission could have studied the geo-political profile of the present-day world in which the Big Business and the MNCs have intruded into the vast areas of the domestic space of the nation states. They do so either by becoming participants in the multilateral trade treaties regimes, or as the beneficiaries of concessions and favours through commercial contracts, or as the beneficiaries under the bilateral or regional treaties which allow the private investors of other countries competence to access treaty benefits.

I believe it is essential to put even the private sector, and corporations, under direct and effective scanner of criminal law. Without subjecting them to punitive justice, anti-corruption measures are not likely to succeed to our satisfaction. The raw realities, we see all around us, are graphically captured by Stiglitz in his *Making Globalization Work* (at p. 138):

"When these corporations head overseas to the developing countries, outright bribery comes into play. In the highly competitive world of international oil, it is easier for an oil company to show high profits by bribing government officials to lower the price they have to pay than it is to be more efficient than everyone else while paying full market price."

Stiglitz is reported to have observed in an interview published by *The Times of India*, New Delhi (January 11, 2014), which I have just read:

"The US is a good competitor to India in corruption. The US drug industry succeeded in getting a provision incorporated wherein the

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government cannot bargain with the industry on drug prices. That added \$500 billion in costs to the government's healthcare expenditure. Such provisions happen because of campaign contributions that are a form of corruption. We tend to focus on public sector corruption, but there is corruption in the private sector. The US financial sector was rife with corruption. The absence of corporate governance (as demonstrated in the 2008 financial crisis) is a form of corruption. Walmart demonstrated in Mexico that is an expert in corruption. Credit rating agencies were paid by investment banks— so they competed to give the banks good ratings. So corruption in India is not extraordinary, but you are in the top league. Erosion of honesty and trust has become global. You have to have checks and balances.”