THE TIMES OF INDIA

Date: 04-04-19

# Pandora's Box

## *Debt resolution has been thrown in disarray, restoring its vigour is vital for economy*

**TOI Editorials**

Alongside the Insolvency and Bankruptcy Code, the RBI circular of February 12, 2018, has been a very powerful weapon in the long fight against India's bad loan crisis. But it got neutralised on Tuesday when SC found it illegal, because under the Banking Regulation Act it should have had the Centre's authorisation, which it did not. Given that the circular became a major flashpoint between RBI and government, it is a moot point whether such authorisation would have at all been forthcoming.

In the circular's defence, RBI deputy governor NS Vishwanathan had said that when a borrower delays payment on a corporate bond even for one day he is heavily penalised by the market – via ratings downgrade, rocketing yields on bonds, etc – while defaults in bank borrowings were being treated laxly, especially where the borrowing was large. The circular changed all that, by mandating that banks classify a loan as stressed if there was even a day of default, and then refer all loans of over Rs 2,000 crore to the bankruptcy court if they were not resolved within 180 days of default. It made indefinite delays history.

The SC ruling has put a question mark on cases at different stages of debt resolution – this confusion urgently requires sorting out. It has also restored the discretion of banks – and the danger is that they may again be as sloppy as in the past. The good news is that the lynchpin of this process, IBC, which is often hailed as the single most important reform by Modi government, has been upheld by SC in its entirety. The way forward is for RBI to issue a fresh circular, with government support, to ensure that recent improvements in the credit culture of both borrowers and lenders are not reversed.

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THE ECONOMIC TIMES

Date: 04-04-19

# Banks Still Can Trigger Bankruptcy

## *Transfer regulatory authority to the RBI*

**ET Editorials**

Banks still have the leeway to use the Insolvency and Bankruptcy Code (IBC) to resolve bad loans, even after the Supreme Court's quashing of the Reserve Bank of India's (RBI) February 12 circular. What has changed is who decides to initiate bankruptcy. The decision has shifted from RBI, unless specifically directed by the government, to the creditor bank. This is not so bad. The country needs swift creditor seizure of defaulting companies followed by quick resolution, either by sale of the company as a going concern or, if that fails, sale of the assets following liquidation. Already, the so-called inter-creditor

agreement (ICA) gives banks the flexibility to resolve stressed assets either through the IBC or otherwise. But ensuring that the ICA works calls for protection of bankers from criminalisation of motives.

The SC ruling also puts the spotlight on the flaws in Section 35AA of the Banking Regulation Act. As things stand, the Centre to has to authorise the RBI to issue directions in respect of individual defaults. It means without the government's authorisation, RBI would have no power to issue directions. That is absurd. A key regulatory power of the banking regulator thus stands transferred to the government. Prudential regulation must be left to RBI, which must have the power to issue directions to banks to initiate bankruptcy proceedings, if banks do not take such action on their own within a reasonable time period.

The government that assumes office at the Centre must amend the Banking Regulation Act to remove the requirement of specific authorisation for RBI to direct banks to move for resolution in the case of individual defaults. But for bank CEOs to not be tempted to leave filing for bankruptcy to their successors, wide-ranging reform is called for in areas ranging from appointment of senior managers and structuring their remuneration to the functioning of bank boards and their supervision.

The charge that a single day's delay triggering default is too stringent is misplaced. That can apply to any deadline, including for any grace period, one day or one year.

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बिज़नेस स्टैंडर्ड

***Date: 04-04-19***

# जारी रहेगी फंसे हुए कर्ज से लड़ाई

**तमाल बंद्योपाध्याय , ( लेखक बिज़नेस स्टैंडर्ड के सलाहकार संपादक, लेखक और जन स्मॉल फाइनैंस बैंक लि. के वरिष्ठ परामर्शदाता हैं )**

न्यायिक अवमानना का जोखिम उठाते हुए भी मैं यह कहना चाहूंगा कि सर्वोच्च न्यायालय ने मंगलवार को जो आदेश दिया उसे देश के केंद्रीय बैंक पर सर्जिकल स्ट्राइक कहा जा सकता है। अदालत का निर्णय रिजर्व बैंक की फंसे हुए कर्ज के खिलाफ लड़ाई को एक झटका है। अदालत ने आरबीआई के 12 फरवरी, 2018 के उस परिपत्र को खारिज कर दिया जिसमें बैंकों से कहा गया था कि वे बिजली, चीनी, नौवहन क्षेत्र की डिफॉल्ट करने वाली कंपनियों को ऋणशोधन प्रक्रिया से गुजारें।

अगस्त 2018 में बिजली क्षेत्र की कंपनियां और औद्योगिक समूह इस परिपत्र की संवैधानिक वैधता को लेकर सर्वोच्च न्यायालय गए थे। न्यायालय ने किन आधारों पर आरबीआई के निर्देश को खारिज किया? विकसित देशों में भी अक्सर न्यायालय सरकार या नियामकों के नीतिगत निर्णयों में हस्तक्षेप नहीं करते। परंतु वह किसी नियम के क्रियान्वयन में प्रक्रिया के उल्लंघन के मामले में अवश्य हस्तक्षेप कर सकता है। वहीं अगर उसे लगे कि कोई नियम संवैधानिक प्रावधान के खिलाफ है तो भी वह कदम उठा सकता है।

इस मामले में न्यायमूर्ति रोहिंटन फली नरीमन और न्यायमूर्ति विनीत सरन के पीठ ने पाया कि परिपत्र से मई 2017 में संशोधित बैंकिंग अधिनियम की धारा 35एए का उल्लंघन हुआ था। अधिनियम के तहत किसी एक डिफॉल्ट मामले में निर्देश दिया जा सकता था लेकिन इस मामले में नियामक ने ढेर सारे डिफॉल्ट के मामलों को इकठ्ठा किया था। बिजली कंपनियों का आरोप था कि आरबीआई ने सबको एक ही तराजू में तौल दिया जबकि उसे यह देखना चाहिए था कि कंपनियां अपना कर्ज क्यों नहीं चुका पा रही हैं। उन्होंने मांग और आपूर्ति की दलील भी रखी। आरबीआई ने कहा कि इन कंपनियों को पर्याप्त समय दिया गया लेकिन वे मुद्दे को हल नहीं कर पाईं।

अगस्त 2018 में आरबीआई को पहले चरण में जीत मिली जब इलाहाबाद उच्च न्यायालय ने कहा कि वह बिजली कंपनियों को कोई राहत नहीं दे सकता। उसने सुझाव दिया कि सरकार रिजर्व बैंक अधिनियम की धारा 7 का प्रयोग करके निर्देश जारी कर सकती है। सरकार ने ऐसा करने की बात भी कही थी। इस निर्णय के बाद तीन दर्ज कंपनियों ने सर्वोच्च न्यायालय का रुख किया, जिसने सभी मामलों को चेन्नई और दिल्ली के उच्च न्यायालयों में भेज दिया। उसने इन कंपनियों के खिलाफ ऋणशोधन की प्रक्रिया पर रोक भी लगा दी। आरबीआई की वेबसाइट पर उक्त परिपत्र 12 फरवरी की मध्यरात्रि प्रकाशित किया गया। अगले दिन यानी 13 फरवरी को अवकाश था और बाजार बंद थे। आरबीआई ने यह सुनिश्चित करना चाहा था कि बाजार पर इसका बुरा असर न पड़े।

निश्चित तौर पर सरकार का रुख इन कंपनियों के प्रति नरम था। उसने केंद्रीय बैंक को भी नरमी बरतने के लिए मनाने का पूरा प्रयास किया। यहां तक कि उसने आरबीआई अधिनियम की धारा 7 का प्रयोग करने की बात भी कही थी। परंतु केंद्रीय बैंक अपने मानक शिथिल करने को तैयार नहीं हुआ। कई लोग कहते हैं कि पूर्व आरबीआई गवर्नर ऊर्जित पटेल और सरकार के बीच इस विवाद की शुरुआत इसी परिपत्र से हुई और आखिरकार दिसंबर 2018 में पटेल की आरबीआई से विदाई हो गई। परिपत्र में बैंकों तथा अन्य लेनदारों से कहा गया था कि वे या तो 2,000 करोड़ रुपये या उससे अधिक के फंसे खातों की निस्तारण योजना पेश करें या फिर उनके विरुद्घ ऋणोशोधन प्रक्रिया शुरू की जाएगी। निस्तारण के लिए 180 दिन का समय दिया गया जिसमें प्रक्रिया शुरू न होने पर संपत्ति जब्त कर ऋणशोधन की प्रक्रिया शुरू करनी थी।

यह परिपत्र का केवल एक हिस्सा था। उसके कई अन्य पहलू भी थे। उदाहरण के लिए संकटग्रस्त परिसंपत्तियों के निस्तारण के तमाम अन्य ढांचे मसलन कॉर्पोरेट डेट रिस्ट्रक्चरिंग (सीडीआर), स्ट्रैटेजिक डेट रिस्ट्रक्चरिंग (एसडीआर) और संकटग्रस्त परिसंपत्तियों का स्थायी पुनर्गठन (एस4ए) आदि को वापस ले लिया गया और ऋणदाताओं के संयुक्त मंच को खत्म कर दिया गया था। मुझे नहीं लगता कि इस फैसले के बाद वह दोबारा शुरू होगा। फंसे कर्ज का 180 दिन के भीतर निस्तारण न होने की स्थिति में उसे आईबीसी के हवाले करके आरबीआई यह चाहता था कि अगर कोई कर्जदार बैंक ऋण न चुका पाए तो वह डिफॉल्टर हो जाए। वह 'तनावग्रस्त' शब्द का इस्तेमाल बंद करना चाहता था क्योंकि उसका इस्तेमाल प्राय: बैंक अपरिहार्य परिस्थिति को टालने के लिए करते थे।

यकीनन टालने वाला काम किया गया। कई मामलों में नया कर्ज भी दिया गया ताकि पुराना कर्ज चुकाया जा सके। बैंक अपनी बैलेंस शीट को बचाना चाहते थे। इसके अलावा कई को कर्जदारों के साथ रिश्ते की कीमत चुकानी पड़ी। जून 2015 में एसडीआर ने बैंकों को यह अधिकार दिया कि वे संकटग्रस्त कंपनियों में अपने कर्ज का एक हिस्सा बहुलांश हिस्सेदारी में बदल सकें। यह काम नहीं आया क्योंकि प्रवर्तकों ने पुनर्गठन में देरी की और नए निवेशक नहीं लाए। इससे पहले फरवरी 2014 में आरबीआई ने संकटग्रस्त कंपनियों के प्रबंधन में बदलाव की इजाजत दी ताकि पहले नुकसान

अंशधारक वहन करें। सीडीआर के जरिये ऐसा किया गया लेकिन नाकामी हाथ लगी। एस4ए योजना ने बैंकों को यह इजाजत दी कि वे संकटग्रस्त कंपनियों में अपने आधे कर्ज को शेयर या शेयरनुमा प्रतिभूति में बदलें।

आरबीआई ने फंसे हुए कर्ज के खिलाफ एक्यूआर यानी ऐसेट क्वालिटी रिव्यू के जरिये फंसे हुए कर्ज के खिलाफ जंग छेड़ी। इसके तहत आरबीआई ने तमाम बैंकों के बहीखातों में फंसे कर्ज की पहचान की। बैंकों को कहा गया कि मार्च 2017 तक फंसा कर्ज चिह्नित करें। वर्ष 2017 में एक अध्यादेश लाकर बैंकिंग नियमन अधिनियम 1949 में संशोधन किया गया। केंद्रीय बैंक को यह अधिकार दिया गया कि वह बैंकों पर फंसे कर्ज से निपटने का दबाव बनाएं। आरबीआई को यह अधिकार मिला कि वह बैंकों से देनदारी चूकने वालों के खिलाफ आईबीसी में प्रक्रिया शुरू कर सके। ऐसा कारोबारी जगत को यह दर्शाने के लिए आवश्यक था कि सरकार इस कदम के साथ है। इसके बाद आरबीआई के दबाव में बैंकों ने 2017 में 39 खातों के खिलाफ दिवालिया प्रक्रिया शुरू की। 12 फरवरी का परिपत्र, जो अब खारिज कर दिया गया है, वह 2017 के 39 मामलों पर लागू नहीं होता।

यकीनन यह निर्णय आरबीआई की फंसे कर्ज से जंग के लिए झटका है लेकिन यह अस्थायी ही है। इन मामलों की निस्तारण प्रक्रिया में देरी होगी और वे बैंक निराश होंगे जो पहले ही आवश्यकता से अधिक फंसा कर्ज उजागर कर चुके हैं। परंतु सवाल यह है कि क्या वे उन कर्जदारों को नया कर्ज देना पसंद करेंगे जो अदालत जाकर पैसे की वसूली की राह रोकना चाहते हैं। क्या आरबीआई को डिफॉल्टरों से निपटने की नई व्यवस्था पर काम करना होगा? शायद नहीं। उसके पास संशोधन से पहले से यह अधिकार है कि वह बैंकों को निर्देशित कर सके। अब उसे बस बैंकों से अलग-अलग यह कहना होगा कि वे फंसे कर्ज की वसूली के लिए काम करें। जरूरी नहीं कि हर डिफॉल्ट से आईबीसी में ही निपटा जाए। स्वच्छता अभियान के बाद बैंकरों और कॉर्पोरेट जगत दोनों का रुख बदला हुआ है। प्रवर्तक अब अपने कारोबार को गंभीरता से ले रहे हैं। क्या इस फैसले से कुछ बदलेगा? मुझे नहीं लगता। एक मजबूत बैंकिंग तंत्र आवश्यक है वरना हमारी विकास गाथा कमजोर पड़ जाएगी।

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दैनिक भास्कर

***Date: 04-04-19***

# वादों पर अमल की गारंटी क्यों नहीं देते घोषणा-पत्र ?

**संपादकीय**

राजनीतिक मंचों से हो रही घोषणाएं जब बुकलेट फॉर्मेट में एक जगह आ जाए तो उसे चुनाव घोषणा-पत्र कहते हैं। कोई पार्टी इसे संकल्प-पत्र भी कहती है। कांग्रेस ने 52 विषयों पर किए 487 वादों का नाम दिया है 'हम निभाएंगे।' इतने लंबे-चौड़े परिपत्र में पिछले चुनावी वादों का कहीं जिक्र नहीं है। सत्ताधारी पार्टी की असफलता विपक्ष के नए घोषणा-पत्र का मुख्य आकर्षण बन जाती है और सत्ताधारी दल पिछला घोषणा-पत्र भूलकर नए वादे गढ़ने को अपनी सफलता मानता है। अगले दो-चार दिन में भाजपा का नया संकल्प-पत्र हमारे सामने होगा। पिछले संकल्प-पत्र का कोई नाम नहीं ले रहा है। पार्टी के बड़े नेता भी पिछले चुनावी वादों से बचने के रास्ते ढूंढ़ते नज़र आ रहे हैं। राजनीति में यह अजब खेल है जो

सत्ता में आता है वह पुराने वादों को याद करना नहीं चाहता और जो विपक्ष की भूमिका में है वह भी घोषणा-पत्र में पुराने वादे बदल लेता है। ईमानदारी से देखें तो यह घोषणा-पत्र वादों की पोटली ही तो है न ? मतदाता भी इन वादों में पार्टी का चेहरा देखते हैं, काम करने की क्षमता नहीं तलाशते। इसे आप इस तरह भी समझ सकते हैं भाजपा धारा 370, हर साल दो करोड़ रोजगार, राम जन्मभूमि और काले धन के मुद्दे लेकर चुनाव में उतरी।

सत्ता हासिल हुई तो पांच साल बाद ये मुद्दे न मंचों पर और न किसी की जुबान पर। कांग्रेस 2014 में सत्ता से बाहर हो गई। पांच साल बाद 2019 में उनके घोषणा-पत्र का स्वरूप ही बदल गया। अब कांग्रेस के घोषणा-पत्र को रोजगार, किसान और गरीबों का स्मरण है। दरअसल, सत्ताधारी दल ये मुद्दे इसीलिए नहीं उठा सकता, क्योंकि कोई उसे पूछ सकता है कि आप तो सत्ता में थे तो पूरे क्यों नहीं किए? सबसे बड़ी चिंता की बात अब यही है कि हमारे देश में विकास का एजेंडा पक्ष का अलग और विपक्ष का पूरी तरह अलग है। देश के नज़रिए से कोई भी पार्टी सोच नहीं रही है। पक्ष में हैं तो 'उजाले मुबारक' और विपक्ष में हैं तो 'अंधेरों की बानगी' हमारे देश के राजनीतिक दलों के विकास का एजेंडा जिस दिन एक दिशा में आ गया समझो हमारी दिशा-दशा बदल जाएगी। राजनीतिक दल जिस दिन लोक-लुभावन, जाति-धर्म परस्त मुद्दों से ऊपर उठकर देश के वास्तविक मुद्दों को समझने लगेंगे उस दिन सभी दलों को घोषणा-पत्रों में मुद्दे और वादे एक होंगे।

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The Indian EXPRESS
JOURNALISM OF COURAGE

***Date: 03-04-19***

# Bonds of Secrecy

## *Concealing the identity of donors in electoral bonds goes against a fundamental tenet of democracy — transparency.*

**P D T Achary, [ The writer is a former general secretary of the Lok Sabha.]**

Electoral bonds are attracting attention in the run-up to the general elections. These bonds were conceived in 2017 and the necessary legislative changes were made in the Finance Bill of 2017. For example, Section 31 of the Reserve Bank of India Act, 1924, was amended and a new Clause (3) was added to provide for electoral bonds. This amendment was pushed through as a money bill, whereas the Reserve Bank of India Act itself is not a money bill. This contradiction remains unresolved till today. If the parent Act is not a money bill, how can an amendment to it be treated as a money bill ?

Be that as it may, the notification issued by the Department of Economic Affairs of the Ministry of Finance on January 2, 2018, gives us details of these bonds. From it, one gets a clear idea of the objective of these bonds: To conceal the identity of the donor of political funds. In India, political parties fund their election campaigns mostly through funds from corporate houses and wealthy individuals. No political party can meet the exorbitant expenses of an election with their membership fees. They need to depend on corporates, who are flush with money, and have no hesitation in generously helping political parties,

particularly the ones that are their favourites. Much of these funds are actually black money. Although political parties get income tax exemptions on these donations and the donors too can claim exemption under the relevant provisions of the Income Tax Act, the bulk of these donations remain un-accounted. This means that every election in India adds to the volume of black money in the country. While politicians keep on receiving such donations, they do not forget to make promises about eradicating black money.

Electoral bonds were conceived with a view to keeping the identity of the donor secret. The bond does not carry the name of the buyer. The donor does have a genuine fear that if parties in the Opposition get to know how much he has contributed to the ruling party, he will be in trouble when the former come to power. The electoral bond scheme is informed by an appreciation of such fears. Under the scheme, the name or other details of the buyer of the bonds will not be disclosed to any authority for any purpose whatsoever. The recipient, after receiving the bonds from the donor, will deposit it in his account. Of course, the government — and the ruling party — will know who the donor is and how much money has been given to a party. If there is a "tough" government in office, we can be sure that the parties in Opposition will get almost nothing. Thus, two objectives are achieved by introducing electoral bonds. One, the identity of the donor can be kept secret from the public, including other political parties. Two, the ruling parties will get the lion's share of the donations. There is ample evidence that these two objects have been achieved.

The details of the electoral bonds were notified by the finance ministry in January 2018. Para 7(4) of this notification points out, "Confidentiality of the information furnished by the buyer shall not be disclosed to any authority for any purpose." This notification was issued under Section 31(3) of the Reserve Bank of India Act, 1924. This Section does not give any details about the electoral bonds policy. The confidentiality of the bonds and the total prohibition of disclosure of information about the donor, to any authority for any purpose, is a matter of legislative policy. This cannot be dealt with through a notification, which is a subordinate legislation. A subordinate legislation can only deal with the details of the implementation of the policy contained in the parent Act. It is the Act which should contain the policy, not the notification issued by the executive under the Act. The Supreme Court has struck down many such orders, regulations and notifications on the ground of being ultra vires the parent Act. The January 2, 2018, notification on electoral bonds is ultra vires Section 31(3) of the Reserve Bank of India Act, 1924, and hence is illegal.

It is not open to the executive to legislate against transparency — a fundamental aspect of public policy in a democracy. A legislature can provide for the confidentiality of state secrets but not for protecting the confidentiality of the donors of political funding who are private individuals or private companies. No public interest will be served by that. In fact, it would only injure public interest.

Section 29(C) of the Representation of People Act, 1951, requires every political party to submit an annual report to the Election Commission. This report should contain the details of contributions in excess of Rs 20,000 received by the party concerned from individuals and private companies. This requirement has been done away with in the case of electoral bonds through an amendment. This amendment to Section 29(C) is against the public policy of transparency and is hence unconstitutional. The Preamble to the Right to Information Act, 2005 declares: "… Democracy requires an informed citizenry and transparency of information which are vital to its functioning." Any executive Act which takes away transparency is anti-democratic and against public interest.

***Date: 03-04-19***

# Hitting the Regulator

***SC's striking down of RBI circular on resolution of bad loans undermines central bank at a critical moment for economy.***

**Editorial**

On Tuesday, the Supreme Court struck down the circular issued by the RBI on February 12, 2018, which directed banks to refer all bad loan accounts of over Rs 2,000 crore to the National Company Law Tribunal (NCLT) if they failed to come up with a resolution plan within 180 days. The Court has said that the circular was unconstitutional and that a reference under the Insolvency and Bankruptcy Code (IBC) has to be on a case-to-case basis and with the authorisation of the central government. This was in response to the challenge mounted against the RBI circular by companies in the power and other sectors arguing that the defaults were because of extraneous reasons such as lack of availability of coal and gas, and delays in payment by distributors. The court's ruling is a blow to India's banking regulator which had, over the last four years, forced domestic lenders to clean up their balance sheets, by first forcing them to recognise the true extent of their bad loans and making full provisions for them. Against their will, the RBI directed them to take over 40 large bad loan cases to the NCLT.

The latest ruling courts the danger of reversing all these gains. It also marks a dent on institutional and regulatory credibility. With all loan restructuring schemes having been disbanded as part of the simplified generic framework for resolution of stressed assets on February 12, surely the process of resolution will be further delayed, adding to the pressure on banks. Recent data points to the fact that even with a deadline of 270 days, resolution of cases under the insolvency law has stretched way beyond, thanks to gaming by promoters and some borrowers, weakening one of the most structurally important reforms in recent years. A judicial intervention now, as in the coal allocation case, will impose its own costs, including a possible weakening of regulation and leave the door open for more regulated entities to approach the courts against regulatory rulings.

The costs will have to be borne by an economy already in slowdown mode. But it is worth recalling that the fire was first lit by the government which objected to this circular, encouraging infrastructure firms to take on the regulator. That, among other things, led to the exit of Governor Urjit Patel. The Supreme Court ruling should not lead to a further diminishing of the stature of the RBI. It is a moment of reckoning.

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THE HINDU

***Date: 03-04-19***

# The principle and procedure in Lokpal

## *It is disappointing that the appointment of the Lokpal was shrouded in secrecy.*

**Rajeev Dhavan, a senior advocate of the Supreme Court, has just published a two-volume book on the Lokpal**


The Supreme Court's ultimatum to the Centre to appointment a Lokpal within a given time frame, and the subsequent appointment of the first Lokpal in the country, is to be welcomed. After all, the fight for a Lokpal has been long-drawn-out.

### A brief history

From 1963, India has been nurturing the ambition to appoint a Lokpal, a phrase coined by L.M. Singhvi. Copied from Sweden's Ombudsman and its adaptation in the U.K. in 1967, the idea was to expose 'maladministration', which British MP Richard Crossman defined as "bias, neglect, inattention, delay, incompetence, ineptitude, arbitrariness and so on". Despite affirmations to its need, no one really wanted a Lokpal in India, preferring instead the mild Vigilance Commission from 1964 to 2003. In one sense, the National Human Rights Commission and the various national commissions dealing with Scheduled Castes, Scheduled Tribes, women, children and even safai karmacharis are all special Lokpals within their areas. But nobody fears them because they are promotional and deal with individual grievances. They hurt no one and have become semi-ineffective. No one wanted a strong Lokpal because it would demand accountability from politicians and bureaucrats.

After the Emergency, a new model of Lokpal emerged, a model for 'regime revenge'. The 'maladministration' model gave way to an anti-corruption model with a sweep clause of five years. This meant that the Lokpal would re-examine Emergency and target the Indira Gandhi government. It meant that it would target politicians, but not bureaucrats. The power of the bureaucracy to stultify anti-corruption measures is well known. This model continued with regularity.

The 2011 Anna Hazare movement, which fought to get the Lokpal Bill passed, faltered in many ways. When the Modi government came to power, it did not appoint a Lokpal either. It did not want Lokpal accusations and investigations to mar its tenure.

Directed by the Supreme Court, the Lokpal appointment process began in 2018, which was too late to scrutinise the Modi government before the 2019 general election. The government constituted a eight-member Search Committee in September 2018, headed by former Supreme Court Justice Ranjana Prakash Desai, to recommend names for the posts of Lokpal chairperson and members. The names recommended were scrutinised by a Selection Committee, comprising Prime Minister Narendra Modi; the Chief Justice of India's nominee, Justice S.A. Bobde; Speaker of the Lok Sabha Sumitra Mahajan; and eminent jurist Mukul Rohatgi. The 'special invitee', who was Congress leader Mallikarjun Kharge, refused to attend the meetings. We can see that the Prime Minister and the Lok Sabha Speaker are from the BJP. The eminent jurist was the Attorney General of India from 2014 to 2017. Only the Chief Justice's nominee is not connected to the party.

### Neither transparent nor fair

Was this entire procedure transparent and fair? Unfortunately, no. When the matter was argued in the Supreme Court, advocate Prashant Bhushan asked for the names of those who had applied for the post.

This suggestion was shot down during the argument. We don't know who applied to be considered as chairperson and as a member of the Lokpal. Did former Supreme Court judge, Justice Pinaki Ghose, apply even though he was a member of the National Human Rights Commission (NHRC) at the time? Who were the others? Section 4(3) of the Lokpal and Lokayuktas Act of 2013 states that the Selection Committee "may also consider any person other than the persons recommended by the Search Committee". This makes the procedure futile. The Search Committee Rules, 2014 stated that the Selection Committee would select one of the five names recommended for the post of Chairperson of the Lokpal and eight of 24 names recommended for the post of members of the Lokpal. The Selection Committee was to lay down the criteria for appointment and decide by majority in cases of difference of opinion. The public is entitled to know the list proposed by the Search Committee. It is entitled to know who all were considered and why. That the appointment of the Lokpal is shrouded in secrecy is an affront to the very concept of the Lokpal.

## Background of members

Justice Pinaki Ghose is not known for any path-breaking judgments, so it is curious why he was chosen over other retired judges, especially as he was already a member of the NHRC. No less than a sitting judge could have been offered this post. The other judicial members are Justice Pradip Kumar Mohanty, who was Chief Justice of the Jharkhand High Court; Justice Abhilasha Kumari, who served on the Gujarat High Court and was a chairperson of the Human Rights Commission of Gujarat; and Justice Ajay Kumar Tripathi, who was Chief Justice of the Chhattisgarh High Court. The first woman chief of the Sashastra Seema Bal, Archana Ramachandran, is a non-judicial member, as are former Chief Secretary of Maharashtra D.K. Jain, former Indian Revenue Service officer Mahender Singh, and former Indian Administrative Service officer of the Gujarat cadre, I.P. Gautam. The question is, should IAS and IPS officers be appointed, especially since they have to deal with fellow officers? The field was wide open from non-government sectors as well.

Mr. Hazare was right in being overjoyed that a Lokpal has been appointed at last. And Aruna Roy and others were right in insisting on a wider jurisdiction on maladministration and delivery of services. This Lokpal will always be known as a secretly appointed one. It is supposed to be an anti-corruption institution. Much will depend on how it is used and against whom. Will we find out who is the chor (chief) and who is the chowkidar (watchman)? Or will this be another playground for politics ?