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To

Shri Narendra D Modi
Prime Minister

Subject:- Transparency in governance- Recent instances of extending the tenure of senior civil servants run counter to norms of good governance

Dear Shri Modi,

The website of the Prime Minister's Office (PMO) rightly emphasises the need for transparency in governance in the following words.

“Prime Minister Narendra Modi firmly believes that transparency and accountability are the two cornerstones of any pro-people government. Transparency and accountability not only connect the people closer to the government but also make them equal and integral part of the decision making process.....During his record 4 terms as Chief Minister Narendra Modi demonstrated strong commitment to an open and transparent government. Rules and policies were not framed in AC Chambers but among the people....His strong resolve to transparency backed by the manner in which he put this commitment to practice indicates an era of open, transparent and people- centric government for the people of India ”

I am afraid that the manner in which the present government at the Centre has moved away from the idea of transparency, whether it is in the case of corporate donations to the political parties, or in the matter of disclosing important information on employment and other economic indicators, or in the case of the functioning of the PM CARES fund, is a matter of serious concern.

In the specific case of appointments to important offices within the government also, your government seems to be opting in favour of opacity in preference to transparency. For example, your government has moved away from the more transparent 2-year fixed tenure rule for the senior civil servants to a more opaque system of granting ad hoc extensions that runs counter to the basic norms of good governance. Some of us had questioned the earlier UPA government for transgressing that norm in an arbitrary manner but, unfortunately, the NDA government under your leadership has not done any better and not lived up to its own assurances.

It was during the second UPA term that a decision was taken to provide a fixed 2-year tenure for occupants of the three senior positions at the Centre, namely, the Cabinet Secretary, the Home Secretary and the Defence Secretary. When Shri Atal Bihari Vajpayee was the Prime Minister earlier, a decision was first taken to provide a 2-year tenure to the occupants of the office of the Cabinet Secretary. The idea of a fixed tenure is intended to ensure continuity in office assured to the concerned officers in advance and elimination of subjectivity in senior postings. Ad hoc extensions beyond the fixed tenure raise concerns about the impartiality of the officers benefitting from such extensions and the intentions underlying the decision to grant such extensions. In a federal set up like ours, it is imperative that the civil servants occupying senior positions at the Centre, especially

those in sensitive institutions like the CBI, the Enforcement Directorate (ED), CBI, the Intelligence Bureau (IB) etc. remain professionally independent and committed to the rule of law. Any attempt to disturb that system will erode the credibility of governance as far as the Centre is concerned. Our federal system is based on mutual trust between the Centre and the States. Weakening the Central institutions erodes that trust.

I cite below specific examples of the non-transparent manner in which the 2-year fixed tenure rule has been ignored by your government.

Shri P K Sinha (Former Cabinet Secretary):

Shri P K Sinha was appointed as the Cabinet Secretary on 29-5-2015. He was given a two year extension in 2017. At the end of the second extension period, he was given yet another three months' extension beyond June, 2019. Since the Cabinet Secretary heads the civil services, such ad hoc extensions given to the occupant of that office create uncertainty among the civil services, in addition to eroding the credibility of governance. It is not as though there were no other equally, if not more, competent officers available to fill that position. Civil service appointments should not promote a feeling of indispensability among some officers in comparison to the others.

Director of CBI:

Shri R K Shukla retired as the Director of CBI on 3-2-2021. Since he was given a fixed term of two years, when he was appointed to head the CBI, the government could have readily started the process of selection of his successor well in advance and appointed a suitable candidate on time to succeed Shri Shukla. However, the process was delayed, for reasons best known to the government and Shri Shukla's successor, Shri S K Jaiswal was selected only in May, 2021. Shri S K Jaiswal took over as the Director of CBI on 26-5-2021. During the interregnum period, an additional Director of CBI functioned as the in-charge Director.

It is relevant to mention here that one of the candidates short-listed to be on the panel of candidates for selecting Shri R K Shukla's successor, as reported widely, was Shri Rakesh Asthana against whom there were some allegations made in the past. Those allegations were still being investigated. It was Shri R K Shukla who had given the final clean chit to Shri Asthana, when the former was about to retire in February, 2021. Apparently, the government took some time to take a final decision on Shri Shukla's finding. Had the government started the process of selection of Shri Shukla's successor well in advance, so as to be able to appoint his successor well before the date of his retirement, Shri Asthana's chances of being short-listed for selection as Director would perhaps have been affected. Apart from raising concerns over the undue delay in the process of selecting Shri Shukla's successor, it also raised concerns over allowing the CBI to function without a regular Director for more than three months. Since 2014, it was the fourth time that an acting director had been given charge to look after the duties of the CBI chief. Considering that the CBI is handling many sensitive cases, especially those in which political leaders belonging to some opposition parties are involved, this raises concerns about the credibility of CBI as a statutory investigating agency. The credibility of any government is dependent on the credibility of its institutions.

Director of the Enforcement Directorate (ED):

Shri S K Mishra was appointed as the Director of ED on 19-11-2018 with a fixed term of two years. In November, 2020, his original appointment order was retrospectively amended to give him a three-year term. His extension has since been challenged before the Hon'ble Supreme Court.

For the same reason, as in the case of the CBI referred to above, considering that the ED is engaged in investigating several sensitive cases, including those involving the prominent members of some political parties, any deviation from the well established norm of a 2-year fixed term should raise

concerns.

Shri P C Mody, Chairman of CBDT:

Shri Mody was appointed as the Chairman of CBDT in February 2019. He would have retired at the end of August 2020 in the normal course. However, he was given an extension of 6 months till the end of February, 2021. He was once again given an extension of three months from 1-3-2021 till 31-5-2021. Such ad hoc extensions not only introduce an element of uncertainty within CBDT but also defeat the purpose of ensuring continuity in service. Had the government cared to ensure continuity in the functioning of the head of the CBDT, a more rational approach would have been to provide a 2-year fixed tenure for the occupant of that office, announced well in advance of his appointment. Ad hoc extensions of tenure given to the head of CBDT, which handles numerous sensitive cases, raises serious concerns about the motives underlying the same. It also erodes the credibility of CBDT as a premier taxation institution of the country.

Directors of the IB and the Research and Analysis Wing (RAW):

Shri Arvind Kumar and Shri S K Goel were appointed to head the IB and the RAW respectively on 26-6-2019 with a fixed 2-year tenure. In the normal course, they would have retired in June, 2021. However, it is understood that they have been given one-year extensions in their respective tenures. (<https://www.news18.com/news/india/ib-raw-chiefs-get-one-year-extension-jk-chief-secy-to-take-charge-as-commerce-secy-3783308.html>). Once again, such ad hoc extensions create uncertainty within the two agencies and defy all established norms of transparency in governance.

During the recent elections, some political parties had alleged that the Centre was using agencies such as the CBI, the ED, CBDT etc. to intimidate their leaders. While there may not necessarily be any truth in those allegations, if the heads of those organisations are granted undue extensions, such allegations gain credence. In a way, it would indirectly erode the legitimacy of those institutions. Those in the government could argue that they have the authority and the freedom to make appointments to the institutions that function under them. One cannot dispute that argument. However, the credibility of the government depends entirely on the credibility of the institutions that deliver governance. As rightly stated at the website of the PMO, transparency and public accountability constitute the foundation of good governance. While the government under your stewardship has been taking credit for “reforms”, in my view, the first step in any reform process is to bring in basic reforms in the functioning of the institutions that deliver governance. From this point of view, I would strongly urge upon you to move away from ad hocism in dealing with the institutions of importance and bring in greater transparency and accountability.

Regards,

Yours sincerely,

E A S Sarma
Former Secretary to Government of India
Visakhapatnam
28-5-2021