

To Privatisise, Shield Bureaucrats



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On Wednesday, Prime Minister Narendra Modi made a spirited push in Parliament for 'a bigger role for the private sector in the economy'. But when it comes to privatisation — the 'P' word clearly mentioned by Finance Minister Nirmala Sitharaman in her latest budget — even as the list of prospective public sector undertakings (PSUs) under the hammer gets longer, it has been a no-show for nearly 20 years. Potential bidders will tell you in private that 'theory' has failed to become 'practice' because of one key reason: bureaucratic ennui. No member of the bureaucracy wants to put pen to paper and take a call on anything, fearing public inquisition.

Two closure reports from the Central Bureau of Investigation (CBI) and a Comptroller and Auditor General (CAG) audit finding no irregularities weren't good enough for a special CBI judge in Jodhpur to pass orders to issue arrest warrants and book former Cabinet minister for disinvestment Arun Shourie and his chief lieutenant Pradip Baijal of the Indian Administrative Service (IAS) last September. The charges against them were of alleged irregularities in the disinvestment of Hotel

Laxmi Vilas Palace in Udaipur between 1999 and 2002.

Five months have passed since that interim order and the case lingers, even as the Rajasthan High Court has stayed the initial order. Baijal, now a private citizen after serving as Telecom Regulatory Authority of India (Trai) chairman, is still waiting for a clean chit. In fact, CBI counsel had even told the court that it had not found any prima facie evidence and the trial court had 'illegally passed the impugned order'.

If 20 years into retirement, you are hauled up by a lower court without any statutory protection despite no evidence against you, why would any civil servant want to play a role in such 'reform'?

British Prime Minister Margaret



Saving Private Privatisation

Thatcher was successful in selling Capitalism to the public as she had the wisemen of Whitehall backing her. As Gerry Grimstone, a former Treasury bureaucrat in charge of Thatcher's privatisation policy in the 1980s, later said, 'In the civil service, the brightest and the best brains were working on it. There was the old guard resistance at first to the dismantling of big bureaucratic structures. But the younger, more radical officials thought it was a fantastic thing to do.' Our steel frame's spine needs bolstering.

Decision-makers in the private sector benefit from a directors and officers (D&O) liability insurance that covers the board and the company if sued. It's time for GoI to consider such a protective and empowering kavach-kundal for our bureaucrats, too. Alternatively, a pool of funds from which all legal expenses for retired personnel can be drawn down upon to pay for the services from an empanelled bevy of best lawyers.

If found guilty, make the accused bureaucrat cough up the difference between market rates and the subsidised services she or he relied upon. But, till then, let the officer be armed with the tools to defend the decisions she or he has taken on behalf of the government.

Interestingly, India does have the necessary legal safeguards in place already. The 2018 parliamentary amendment to the anti-corruption law did away with the earlier 'unhappy wordings' and clearly specified that prosecution of senior government officials, even retired ones,

would require prior government sanction. But if a judge is to ignore such a law, the accused has no option but to enter a lengthy legal process to enforce the same law. Legal safeguards also exist to insulate government officers from frivolous lawsuits by private individuals. But these often fail to hold up.

In Davos in 2015, Finance Minister Arun Jaitley had assured global CEOs at the World Economic Forum (WEF) that his government would put an end to all cronyism. A key step would be to reinvigorate bureaucrats to work fearlessly, by offering a legal shield for life. Alas, that shield looks full of chinks, especially when local judges supersede previous rulings of Parliament, or go contrary to even the Supreme Court that made it explicit in 2002 — in the Balco (Bharat Aluminium Company) Employees Union vs Union of India case, when Shourie and Baijal had also divested the PSU in 2001 — that no court or investigating agency can substitute GoI's assessment of the valuation or price of a transaction.

If decades-old cases continue to fester, then the entire reforms agenda that the Modi government wants to fast-track will trip up even before the first expression of interest gets past the diligence stage. By all means, punish the dishonest. But protect the bona fides. Shourie and Baijal were the first team to sell strategic stake in government companies. Let them not end up being the last.