**Consult and decide**

BY A . G. N O O R A N I 2020-12-12

SINCE Independence, India has seen many a protest, some massive. But never before has it seen such an organised, mammoth demonstration in which old as well as young participated. I am referring, of course, to the protests by the farmers of Punjab.

Schoolboys left their homes and schools to be counted among the protesters. All were overshadowed by elderly women, whose presence made this unprecedented show of righteous wrath even more impressive.

It was a unique, unmatched feat of organisation. They travelled on their tractors, on and under which they slept, covered with blankets, under open skies in bitter cold.

The traditional Sikh langar is another story.

There were giant tawas to cook food for the huge crowds that had assembled all united by clear, precise demands that the Modi government could have easily anticipated when it inflicted the three laws on a host of sites pertaining to the farmer, from farm to mandi.

The demonstrations, covered by the Indian and international press, have evoked strong reactions among the Punjabi, particularly Sikh, diaspora. It has united a fragmented opposition. There have been some rounds of talks with government representatives, all to no avail.

The episode holds a lesson in democratic governance. A government `majority` in parliament cannot, must not, govern without consulting not only the opposition but also the af fected parties.

The government refused to even refer the three offending agriculture bills to a joint committee of parliament. It would have studied them far more closely than either house of parliament possibly could. It would have asked the farmers` representatives to appear before it with facts and figures, expound their case and answer questions thoroughly, and satisfy themselves that they had been heard fully. Experts would have studied the committee`s report. An informed public opinion would have been evolved. In the time thus taken, the heat would have subsided.

This process is an integral part of participative government. In Deep Citizenship, P.B.

Clarke wrote, `Democracy is unfinished business. It has yet to widen and institutionalise the crucial dimension of public participation.` To that I would add, old as it is, democracy has not passed the age of childbearing.

The last half-century has sprouted the ombudsman; call him the mohtasib or lok pal.

Both in formulating policy and introducing it as a bill, the government may embark on a process of consultation with outside interests, and sometimes issue consultation documents to invite public comment. This can help to improve and legitimise a bill, andwin the support of those whose cooperation is needed if the legislation is to be ef fective.

The UK`s Hansard Society Commission on the Legislative Process made a number of recommendations for more timely, open, and suf ficient consultation so that bills could be got into `a form fit for enactment, without major alteration, before they are presented to parliament`. A few years later in 1997, the Select Committee on Modernisation of the House of Commons found there was little or no consultation within parliament or with other bodies before bills were introduced.

Subsequently, the government issued a code of practice that urges departments to consult widely throughout the process of policy development and sets out criteria for effective consultation.

Pre-legislative scrutiny by parliament as well as outside bodies is facilitated if bills are published in draft well before their formal introduction. It has been said authoritatively that proper consultation is a crucial part of the process of determining the most effective way of achieving a policy objective, andwhere legislation is deemed to be necessary. It is important therefore that, when a law comes before parliament, it should have been exposed to those whowillbe affected byits provisions and its suitability revi-ewed in the light of their reactions.

Some enabling acts oblige the minister concerned to consult organised interests or other bodies before making regulations.

The particular organisations to be consulted may be specified by the act, or lef t to the judgement of the minister in accordance with some general formula.

In the UK, legislation is sometimes virtually the product of negotiation with af fected groups. Some policies are not so much influenced by pressure as produced in a joint effort by a government department and one or more groups with which it shares a common interest. For example, a continuous dialogue takes place between the department for environment, food and rural affairs and the farmers` union on questions of agricultur al policy.

In his masterpiece, Parliament, Sir Ivor Jennings refers to the practice of consultation between the government and opposition, if arrangements are arrived at `behind the speaker`s chair`. Narendra Modi has no use for that.  The writer is an author and lawyer based in Mumbai.