

Jan Lokpal bill: addressing concerns

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A number of commentators have raised issues about the provisions in the draft of the Jan Lokpal Bill. They have asked whether it would be an effective instrument to check corruption. They have pointed to the manner in which Anna Hazare's fast put pressure on the government. It is therefore important to understand the provisions of the bill and how it seeks to set up an effective institution to deal with corruption.

Corruption in India has grown to alarming proportions because of policies that have created enormous incentives for its proliferation, coupled with the lack of an effective institution that can investigate and prosecute the corrupt. Under the garb of liberalisation and privatisation, India has adopted policies by which natural resources and public assets (mineral resources, oil and gas, land, spectrum, and so on) have been allowed to be privatised without transparency or a process of public auctioning. Almost overnight, hundreds of memorandums of understanding (MoUs) have been signed by governments with private corporations, leasing out large tracts of land rich in mineral resources, forests and water. These allow the corporations to take away and sell the resources by paying the government a royalty, which is usually less than 1 per cent of the value of the resources.

The Karnataka Lokayukta, Justice Santosh Hegde, has pointed out in a report on mining in Karnataka that the profit margins in such ventures are often more than 90 per cent. This leaves huge scope for bribe-giving and creates incentives for corruption. The same thing happened when A. Raja gave away spectrum without a public auction to companies at less than 10 per cent of its market price. Private monopolies in water and electricity distribution, airport development and so on have been allowed to be created, where huge and unconscionable levels of profit can be made by corrupting the regulator and allowing private monopolies to charge predatory prices. Tens of thousands of hectares have been given away to corporations for commercialisation in the guise of airport development, construction of highways, creation of Special Economic Zones and so on, at prices that are less than 10 per cent of the value of those tracts of land.

Apart from creating huge incentives for corruption, such policies have resulted in the involuntary displacement of lakhs of the poorest people, leaving them on the brink of starvation and forcing many of them to join the Maoists. The beneficiaries have stripped the land of natural resources (a good deal of which is exported) and destroyed the environment. Most ominously, such deals have

resulted in the creation of monster corporations that are so powerful and influential that they have come to influence and virtually control all institutions of power — as we see from the Radia tapes.

While adopting policies that thus create huge incentives for corruption, we have not set up effective institutions to check corruption, investigate and prosecute the corrupt and bring them to justice. The Central Bureau of Investigation (CBI) continues to be under the administrative control of the government, which is seen as the fountainhead of corruption. Thus, no action is usually taken by the CBI to effectively investigate high-level corruption — except once in a while when the court forces its hand. Often we see the CBI itself behaving in a corrupt manner, with no other institution to investigate that. The Central Vigilance Commission (CVC), which is supposed to supervise the CBI, has failed to act, since its own appointment process is riddled with conflicts of interest. The Prime Minister, the Home Minister and the Leader of the Opposition (who has been a Minister and hopes to become Prime Minister one day) want to avoid their own accountability and are thus interested in having weak and pliable persons to man the institution that is expected to supervise the CBI. Moreover, the CVC and the CBI have to seek the government's sanction to investigate and prosecute wrongdoers; such sanction is usually not given when it comes to high-level corruption. The CVC depends on vigilance officers in various government departments. They are often middle-level officers from the same departments and cannot be expected to exercise vigilance over their bosses who write their confidential reports. The judiciary, which must try and convict the offenders, has become dysfunctional and is afflicted with corruption due to lack of accountability of the higher judiciary.

The draft Jan Lokpal bill seeks to create an institution that will be largely independent of those it seeks to police, and which will have effective powers to investigate and prosecute all public servants (including Ministers, MPs, bureaucrats, judges and so on) and others found guilty of corrupting them. Since corruption involves misconduct and gives rise to grievances, the draft proposes that the Lokpal will supervise the machinery to pursue disciplinary proceedings against government servants (the Vigilance Department) as well as the machinery to redress grievances. Thus, misconduct by government servants, and grievances, will come under the ambit of an independent authority rather than the government — where the machinery has become ineffective due to conflicts of interest. It is proposed that if the Lokpal finds that a contract is being given for corrupt considerations, it can stop the contract. It cannot otherwise interfere with government decisions or policy.

It has been said that this would create a super-cop with enormous powers and no accountability. There is a misconception that the proposed Lokpal will have judicial powers; there is no such provision in the bill. The need of the hour is to have an effective cop who can investigate and prosecute the high and mighty without interdiction from the very people who need to be prosecuted.

The bill seeks to make the Lokpal accountable. First, it is mandated to function transparently so that everything related to its functioning is known to the people (without compromising the investigation itself). Exemptions from disclosure provided in the Right to Information Act could be included. Secondly, the Lokpal's orders will be subject to review in the High Courts and the Supreme Court. Lastly, the members of the Lokpal could be removed for misconduct, by a five-member bench of the Supreme Court.

There has been some criticism of the Lokpal selection committee and the selection process. Given the erosion in the integrity of most of our state institutions, it was thought that the best bet would be to have a broad-based selection committee and build transparency and public participation into the selection process, while trying to keep out those who are most likely to be within the ambit of the Lokpal's investigations. That is why in the draft bill Ministers were sought to be kept out.

One criticism has been that this shows contempt for democracy. We have seen how the “democratically elected” Prime Minister, Home Minister and leaders of the opposition have normally selected weak and pliable CVCs. So the draft bill proposes a selection committee comprising the Lok Sabha Speaker, the Rajya Sabha Chairman, the Comptroller and Auditor General, the Chief Election Commissioner, the two seniormost judges of the Supreme Court, two seniormost Chief Justices of High Courts, the Chairman of the National Human Rights Commission and the outgoing members of the Lokpal. This proposed composition of the committee will certainly be discussed, and perhaps improved upon, during public consultations and discussions within the drafting committee that will now take place.

It has been said that putting the function of redress of grievances on the plate of the Lokpal would make its work unmanageable. Though the Lokpal will only reorganise and supervise the grievance redress machinery (rather than dealing with each grievance itself), this is an issue that will be discussed openly by the committee. By next week, a website that will formally take in all the opinions and suggestions on the Jan Lokpal bill will be launched and announced. People are welcome to read, understand and send their comments on it, to be taken note of.

One must not, however, be under any illusion that the Lokpal law by itself would solve the problem of corruption. Unless we tackle and change the policies that create enormous incentives for corruption and monster corporations that become too powerful for any institution to control, the fight will be incomplete. The judiciary too is in need of comprehensive reforms.

But an independent, credible and empowered Lokpal is a necessary, though not a sufficient, condition to effectively control corruption. Let us work at least to put that in place.

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