

Protect freedom of internet speech

The Internet could be happy hunting grounds for those who today object to every other commercial film on the ground that it hurts their sensitivities. Any criticism of the state of affairs in any part of the country could be interpreted as threatening public order. Criticism of the regime or policies with any foreign country could be described as harmful of friendly relations with that country.

The freedom of speech is in trouble today by the Internet Control Rules introduced recently. The new security rules are omnibus. They are inadequately defined. Where the Internet is concerned, they have the potential to turn India into a police state, no freer than China. And all had thought that the rise of the Internet marked the break of a new dawn of freedom.

Particularly pernicious are the intermediaries' liability rules. Intermediaries are the purveyors of third-party content on the Internet and include Internet Service Providers, portals of all kinds, social networks, search engines, blogging platforms and Web-hosting service providers.

The Information Technology Rules, 2011, notified under Section 79 of the Information Technology Act, 2000, intermediaries enjoy exemption from liability for the third-party content they host provided they observe due diligence. How are they to exercise due diligence?

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The onus is on the intermediary to take a call and act. Just about anybody can make a complaint about anything. Any representative of the state, anywhere in India, could take exception to anything on the Net and lodge a complaint. The intermediary is obliged to act within 36 hours.

This is a throwback to a great debate in international forums in the 1970s and 1980s between the votaries of the doctrine of free flow of information and the champions of a new world information and communication order.

The new d rules relating to cyber cafes are as exceptionable, designed as they are to enhance surveillance and inhibit free and easy access to information. Every cyber café user must now show proper ID proof, a copy of which the owner must store for at least one year.

A student does not have proper ID proof? No problem. She must bring along an adult who has one! The cyber café owner must then photograph the user and maintain time logs of usage. He must submit these, with her photograph and personal information, along with data relating to other users, to appropriate authorities every month.

The mandarins, who framed these Internet Control Rules, should have paid heed to what founding fathers of the Republic India had to say about the free speech. Jawaharlal Nehru had said: "Imposing restriction you do not change anything; you merely suppress the public manifestation of certain things, thereby causing the ideas and thought underlying them to spread further. And "the restoration of free speech, free association and free press is almost the whole of swaraj". If these be the principles on which India was founded, why must our mandarins go about thwarting free speech and free access to information and data in this information age.

Letters to the Editor

Infy Murthy bids adieu to investors (May 19) was an emotional read. Separation is painful they say, but for such personalities, the organisation they fostered gets into chromosomes and lives with them. His words are not idle utterances but come from someone who has been through the pain and challenges of building an IT behemoth over several decades.

Akruti, Yelanhanka

The nation is bracing for another hike in petrol prices as the Centre has decided to allow only a Rs 5 per litre increase as against the Rs 10 demanded by oil marketing companies. The only way to solve this problem is to ration petrol so that we can cut down on extravagant consumption by the high class.

Manish, BTM Layout

The real challenge before new Chief Minister Oommen Kerala Chief Minister is keeping his flock together. Chandy will have to do balancing act in ensuring the survival of his coalition government, which has just 72 members in the 140 member Kerala Assembly.

Nagesh, Sheshadripuram



Jan Lokpal Bill is powerless on the corrupt bureaucrats

By Chitta Ranjan Behera

Former IPS officer and activist Kiran Bedi's recent outburst that the first draft of the government on the Lokpal Bill was shocking and ineffective as the corrupt bureaucrats were excluded in it. But, she should also note that the Jan Lokpal Bill is also not effective, rather powerless, on the corrupt bureaucrats.

In fact, the prevailing public perception on Jan Lokpal Bill subscribed to by countless Indians across and outside the country is, regrettably, not based upon their reading of the actual text of the Bill, rather sourced from the hearsays, speeches or media reports, which are in turn sourced from the propaganda stuff relentlessly dished out by 'India Against Corruption' (IAC) website.

Let me quote here a typical instance of such uncritical public perception, as was recently articulated by an erudite member of an All India Service - Lokpal shall be an Institution which shall be having so wide ranging powers that it will not only get complaints directly from the people, will also get it enquired, will get FIRs registered if the complaints are found true, will seize the property if it is found to be one that has been procured through ill-gotten means, will also start disciplinary proceedings if a person is a government servant and will penalize the government servant as well and so on. Lokpal will be a Police officer, will be the appointing authority, be the Chief Vigilance Commissioner.....'

Well, it seems the commentator feels apprehensive about centralization of too much of powers in a single body, which is not desirable at all in a democracy based upon the principle of division of powers. Granting the legitimacy of his apprehension, one would like to ask a more fundamental question - do the various provisions made in Jan Lokpal Bill (version 2.2 available at www.indiaagainstcorruption.org) corroborate at all his apprehension that Anna's Lokpal is going to wield 'wide ranging powers'?

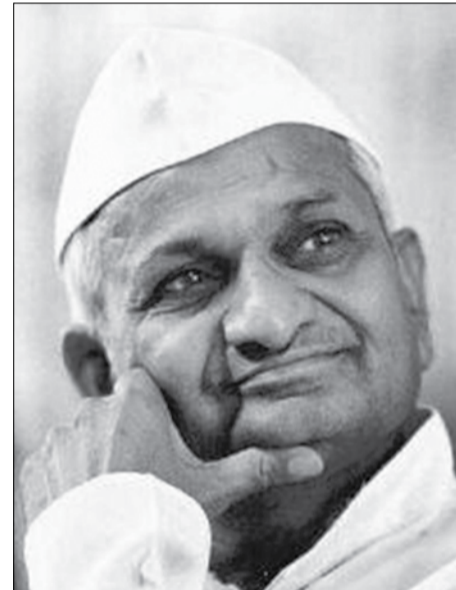
The Jan Lokpal Bill envisaged therein has no power worth the name to conduct a full scale investigation into the allegation against any public servant - be he a government servant, MP, minister or a Judge - let alone seize the property of or penalize a guilty public servant. Yes, it seems the commentator was carried away by such eye-catching captions of certain sections of the Bill like 'Lokpal to be a deemed a police officer' (section 12), 'Issue of Search Warrant' (Section-9), 'Powers in case of non-compliance of orders' (section 13), 'Provisions relating to complaints and investigations' (section-18), 'Recovery

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of loss to the government' (section 19), 'Punishment for offences' (section 19A), 'Imposition of major and minor penalties' (section 21 B & C), and 'Properties deemed to have been obtained through corrupt means' (section 28 A).

But, if anybody minutely and meticulously scan these provisions and that too in conjunction with the rest of the Bill, he or she is sure to get baffled at the impotence of the envisaged Jan Lokpal to investigate the case of even a Desk Officer, who has been held 'corrupt' or guilty of 'misconduct' prima facie as per the preliminary enquiry by Lokpal himself.

For instance, the subsection (vii) of section 18 (provisions relating to complaints and investigation) says that Lokpal may 'direct through an interim order, appropriate authorities to take such action as is necessary, pending enquiry or investigation' with a view to prevent 'wastage or damage of public property or public revenue' by the concerned public servant, or 'to prevent fur-



ther acts of 'misconduct by the public servant' or to prevent the public servant from secreting the assets allegedly acquired by him by corrupt means'.

Then the Bill, strangely enough, takes a U turn by privileging the concerned public authority, with a peculiar discretion i.e. 'either to comply with or reject the recommendations of Lokpal' 'within 15 days of receipt of such an order'. In the event of rejection of the said order, which is most likely to happen, a nonplussed Lokpal shall have no option except, if 'it feels important', to 'approach appropriate High Court for seeking appropriate directions to the public authority'. Needless to say, once the case moves on to High Court, there would inevitably follow an endless era of lingering uncertainty and misdirection. Thus, the promise dished out in section 30 (time limits) that 'investigation into any allegation shall be completed within six months, and in any case, not more than one year, from the date of receipt of complaint' gets automatically belied. If investigation couldn't be started, let alone completed for the reasons stated above, does the other provision made in the Section-30 that 'trial in any case filed by Lokpal should be completed within one year' hold good? No and not at all.

Another instance of Lokpal being powerless, nay helpless in getting executed its own order against public servant proved corrupt by its investigation is evident from sub-section (vi) of section 18.

This provision says, "If during the course of investigation or enquiry into a complaint, the Lokpal feels that continuance of public servant in that position could adversely affect the course of investigation or enquiry or that the said public servant is likely to destroy or tamper with the evidence or influence the witnesses, the Lokpal may issue appropriate recommendations including transfer of that public servant from that position or his suspension, if he is a government servant".

Then, just in the queer manner as mentioned above, the said provision continues, "The public

authority shall either comply with or reject the recommendations of Lokpal" and in the event of rejection by the concerned public authority, the Lokpal shall have no option, except to "approach appropriate High Court for seeking appropriate directions to the public authority". Under the circumstances, is there any guarantee that a fair investigation would ever be held and that too completed within one year, followed by a trial to be completed within the next year? No, not at all.

Still another instance of the above kind, noticeable in sub-section (iv) of section 18 is worth referring to. This provision says, "If, during the course of a preliminary inquiry or investigation the Lokpal is prima facie satisfied that the allegation or grievance is likely to be sustained either wholly or partly, it may, through an interim order, recommend the public authority to stay the implementation of the action or decision compliant against, or to take certain 'mandatory or preventive action' to safeguard against the possibility of further harm taking place.

But just as in above two instances, the concerned public authority has been privileged with the peculiar discretion to 'either comply with or reject the recommendations of Lokpal'. And, as in the previous instances, here also the Lokpal shall have no option, except, 'if it feels important', to 'approach appropriate High Court for seeking appropriate directions to the public authority'.

As already mentioned, once the case moves on to the High Court, where there is no time-limit for disposal of any case, it may linger for years on end at that level and even if disposed sooner or later by the High Court, it may thereafter, at the instance of either party, move on to the Supreme Court, where there is a veritable chance of the case hanging fire ad infinitum. Under the circumstances, is there an iota of possibility that the Lokpal as envisaged under Anna's Bill would ever prove capable enough to compel a public authority to accept its interim order, let alone penalizing any of its officers? No, and not at all.

Above all, the sub-section (iii) of section 18 offers a protective shield to the allegedly corrupt public servant and also the public authority he belongs to, saying that "the conduct of an investigation under this Act against a public servant in respect of any action shall not affect such action, or any power or duty of any other public servant to take further action with respect to any matter subject to the investigation". Simply put, such a queer provision allows a corruptible regime together with its corrupt personnel to carry on their business as usual even if the investigation by Lokpal might have brought to the fore their acts of corruption deserving stern punishment.

Thus, Jan Lokpal as envisaged under Anna's dream Bill is not a real tiger that can pounce upon anybody and everybody as and when warranted, but a cyber tiger that emits much sound and fury, simply to eye-wash the emotionally gullible Indians unfamiliar with the intricacies of law and administration. To conclude in one line, to put in place a really effective and foolproof Jan Lokpal Bill is the starting point for ushering in of a corruption free India.