

Jan Lokpal Bill leaves no scope for a complain against the corrupt political leadership



By Chitta Ranjan Behera

There exists a big hiatus between what most people innocuously think about Jan Lokpal Bill prodded by the hyperboles fanned out by the India Against Corruption (IAC) Team on www.indiaagainstcorruption.org and what actually transpires to a studious reader after he or she seriously goes through the weird letters of its bare text. In order not to be judgmental in our probe into this all-important question, we need first of all to recapture the very rationale made out by the protagonists of the alternative Bill vis-à-vis the official Bill in the founding meeting held on August 10, 2010 at Delhi, which was attended among others by Justice Santosh Hegde, Prashant Bhushan and Arvind Kejriwala - the three civil society members of the present Joint Drafting Committee.

After critiquing the existing anti-corruption regime, the said meeting had envisaged that the would-be Lokpal of their genre (now called Jan Lokpal), unlike today's CVC which is merely an advisory body and that too with a limited jurisdiction over bureaucrats only, can get its decisions enforced against corrupt bureaucrats and politicians as well. Further, the would-be Lokpal they envisaged would be an independent and autonomous powerhouse unlike today's CBI, which has though teeth to bite both politicians and bureaucrats, takes instruction from its political bosses as to whom to bite, when and to what degree.

Now that the phase of frenzied hullabaloo has visibly waned for various reasons beyond the control of anybody, the moot question arises, do the provisions made in the Jan Lokpal Bill fall in sync with the assurances dished out by IAC Team?

To start with we need to ascertain whether the much trumpeted Bill has any teeth to bite any politician, be the Prime Minister, a Minister, a Member of Parliament or such constitutional functionaries as President, Vice President or Speaker of Lok Sabha. We need to look at the various aspects of this subject one by one.

First, the proviso to Section 18 (8) says, "Provided that the provisions of this section shall not apply to the Prime Minister". The Section-18 is captioned as 'Provisions relating to complaints and investigations'. Thus, going by the above proviso, no complaint can be lodged against the Prime Minister nor any enquiry or investigation whatsoever made into his conduct by the would-be Jan Lokpal.

Second, the Section 18 (8) says that even if the allegation of corruption against a Minister is substantiated and he should therefore not continue to hold that post, 'Lokpal shall make such recommendation to the President, who shall decide either to accept such recommendation or reject it within a month of its receipt'. In case, the President rejects the recommendation of Lokpal for removal of the concerned Minister, Lok Pal is left with no option to do anything about it.

Third, as per Section 28B (2), “For an allegation against a Member of Parliament that he has taken a bribe for any conduct in Parliament, including voting in Parliament or raising question in Parliament or any other matter, a complaint could be made to the Speaker of Lok Sabha or the Chairperson of Rajya Sabha, depending upon the House to which that member belongs”. Then it is said that a complaint of such nature shall be forwarded to the Ethics Committee within a month of its receipt, and then “The Ethics Committee shall, within a month, decide whether to . . .”. It is interesting to know that the last line is still an incomplete sentence conveying no meaning whatsoever. Is it a grammatical slip or a moral slip? What is striking above all is that there is no mention of the word ‘Lokpal’ in the entire provision. It clearly implies that Lokpal has no power to receive, let alone dispose of a complaint of corruption against a Member of Parliament in respect of his conduct in Parliament.

Fourth, the sub-section (2) of Section 17 says, “Nothing in this Act shall be construed as authorising the Lokpal to investigate any action which is taken by or with the approval of the Presiding Officer of either House of Parliament”. Thus not only any alleged act of corruption by the Speaker or Chairman of Rajya Sabha himself, but also that of any Minister, MP or official who are in league with the Speaker of Lok Sabha or Chairman of Rajya Sabha shall enjoy immunity from the investigative scanner of Lokpal.

Fifth, the definition of ‘Public Servant’ as provided under Section 2(11) is not inclusive of such constitutional authorities as President, Vice-President and Speaker of Lok Sabha, and as such these politicians in the guise of constitutional authorities remain outside the jurisdiction of Lokpal.

Sixth, though Section -15 (Making a complaint to the Lokpal) in its sub-section (1) says inter alia that “any person may make a complaint under this Act to the Lokpal”, the sub-section (1) of Section 8 (Functions of Lokpal) provides no scope to Lokpal for receiving complaints against Judges or Minister / MPs.

Seventh, Section 18(iii) says, “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”. It plainly means that the very alleged act of corruption by a public servant, be he a Minister, MP, Officer or a Judge, into which Lok Pal may be investigating, shall continue in force as before and that too with the unfettered continuance of the impugned act by all other concerned public servants.

Eighth, in a similar vein Section 18(iv) says, “If, during the course of a preliminary inquiry or investigation under this Act, the Lokpal is prima facie satisfied that the allegation or grievance in respect of any action is likely to be sustained either wholly or partly, it may, through an interim order, recommend the public authority to stay the implementation or enforcement of the decision or action complained against, or to take such mandatory or preventive action, on such terms and conditions, as it may specify in its order to prevent further harm from taking place”. Here the word ‘action’ as defined in Section 2(1) may include an alleged act of corruption by any public servant, be he a politician, bureaucrat or a judge. Then it goes on to say, “The public authority shall either comply with or reject the recommendations of Lokpal under this sub-section within 15 days of receipt of such an order”. If the concerned public authority rejects such recommendation, which is very much likely to happen, a nonplussed Lokpal, “if it feels important, may approach appropriate High Court for seeking appropriate directions to the public authority”. Thus, any small or big public authority has been privileged with the discretion to reject Lok Pal’s recommendation, and alternatively, once the case moves on to High Court at the instance of Lok Pal himself, there is

no predictability about the time-limit or ultimate outcome of the case so lodged in the High Court, since either party, who might lose at the level of High Court, may move the Supreme Court to vindicate his position vis-à-vis that of the opposite party.

Ninth, the Jan Lokpal Bill in its Section 18(vii) says, “The Lokpal may, at any stage of inquiry or investigation under this Act, direct through an interim order, appropriate authorities to take such action as is necessary, pending inquiry or investigation.- (a) to safeguard wastage or damage of public property or public revenue by the administrative acts of the public servant; (b) to prevent further acts of misconduct by the public servant; (c) to prevent the public servant from secreting the assets allegedly acquired by him by corrupt means.” Then like in some previous instances, the public authority is privileged with the discretion to ‘comply with or reject the recommendations of Lokpal . . . within 15 days of receipt of such an order’. In the event of rejection of such recommendation, Lokpal, as in earlier instances, ‘if it feels important, may approach appropriate High Court for seeking appropriate directions to the public authority’, thus leading to endless lingering of the case at different levels with the public servant being enabled to carry on his acts of misappropriation of public wealth, misconduct and stashing of black money in safe havens.

Tenth, the Section 8 (1) describes the types of complaints that ‘Lokpal shall be responsible for receiving’. Though it includes a specific mention of complaints against misconduct by the government servants as receivable by the Lokpal, it refrains from making a specific mention of complaints against politicians like Minister or MP

To sum up, the Jan Lokpal Bill leaves no scope for any citizen to lodge a complaint against any person of the ruling political tribe, be he a Member of Parliament, Minister or Prime Minister, or Speaker, Vice-President and President, not to talk of penal action against them in two years of the receipt of the complaint. This is the stark reality of Jan Lokpal Bill as against the diehard myth built around it by IAC team.