

Politics of Lokpal: a way beyond

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Corruption and maladministration have become an integral part of our ‘celebrated democracy’. Corruption is one of the prime causes of poverty in India. India’s shining economic growth keeps ironically the largest number of impoverished people in the world. There are no effective anti-corruption and anti-grafting measures in this country. What we claim to have suited is only for meeting the very purpose of continuing the comfort of corruption. India is ranked a poor 87 among 178 countries with a score of 3.3 out of 10 in the Corruption Perception Index (CPI) 2010 of the Transparency International (TI).¹ India is also hesitant and slow in ratifying the UN Convention against Corruption (UNCAC),² which is a legally binding international treaty that obliges nations to implement a range of anti-corruption instruments. This shows the clear signage of government’s lack of political will to deal with corruptions. This is the stark reality, and this is why Anna Hazare could draw massive support from both urban and rural people of India for a strong accountable Lokpal institution.

The support to Hazare was not limited to the capital’s ‘carnival society’³ or a few who gathered at the Jantar Mantar. The support was not minuscule and there has been no dearth in support from diverse quarters. If anyone does an opinion poll or referendum across the country for testing the mass support against corruption, the result could be a staggering figure to determine the legitimacy of representation of such democratic protest. Even the legitimacy of representation of the ruling governments can be debated or challenged when it comes to the turnout in our general elections (based on the first-past-the-post poll)⁴ and the voting share of the government. This is why we need to respect and strengthen the political participation and the civic engagement for an inclusive democracy. There is another set of pseudo secular and political activists whose scepticism towards Hazare’s hunger strike was mainly because of the presence of some controversial ‘Babas’ and the alleged support of other sects with their politics of interests. In fact, the electronic media failed to highlight the presence and support of priests, Jain monks, imams, maulavis, jathedars, etc. during this hunger strike.

There is a larger message: social activist Anna Hazare was not trying to subvert the democracy or electoral politics. He was trying to transform a flawed democracy into full

democracy. Or, he was trying to elevate the politics ‘of the few (elites)’ onto a higher or broader domain, the politics of the people. Ultimately, politics has the capacity to get reduced into that of a few political elites. Subversion of democracy happens when it is run by these few political elites and their promoters. Constant vigil and intervention by the general public or civil society can sustain a vibrant democracy.

According to the Democracy Index 2010, a report from the Economist Intelligence Unit, India is in the category of ‘flawed democracy’ with a rank of 40 among 167 countries studied, and India is ranked below the countries like Estonia, Chile, Botswana, Taiwan, Israel, etc. This Democracy Index is based on five broad categories: electoral process and pluralism; civil liberties; the functioning of government; political participation; and political culture. India scores very low for the categories, political participation and political culture: 4.44 and 4.38 out of 10 respectively. The other category scores are comparatively better to qualify a ‘full democracy’.⁵ For a full and consolidated democracy, political participation and a supportive democratic political culture are noticeably demanding elements, whereas India’s ‘functioning constitutional democracy’ falls short of the grade.

Lokpal is one of the longest pending Bills in the law-making history of Independent India. Ever since the first Lokpal bill was introduced and passed in the 4th Lok Sabha in 1969, at least ten times the different versions of the Lokpal bills have been introduced,⁶ but all attempts were in vain. The fact is that the successive governments (mostly Congress governments, and also to mention the abortive attempts of various Janata and BJP governments) comfortably failed to bring this law in place. Congress governments lived with corruption. Finally, scams after scams, UPA II government decided to bring the Lokpal. The government was planning to bring through an Ordinance bill, the Lokpal 2010 to save the face of the government from the embarrassment caused due to the series of scams.

However, the government version of the Lokpal Bill 2010 is complete eyewash. It suffered from a variety of flaws or built-in scope for shielding corruption. It does not include the civil servants in the scope of the Bill. The government intentionally failed to recognise the nexus between the politicians and the bureaucrats in the scandals by leaving out the bureaucrats altogether from the ambit of the proposed Government Bill. The Bill proposes that all the complaints will be routed through the Speaker of the Lok Sabha/Chairperson of the Rajya Sabha. We have several continuing and shameful instances where the Speakers or the

Chairpersons of the Houses were unsuccessful or hesitant to invoke even very legitimate procedures to discipline or take proper action against the parliamentarians who run the Houses into pandemonium and stop the business of the houses for reasons of narrow political scoring. Surprisingly, it is beyond one's comprehension that the same Speakers/Chairpersons could act against the wishes and whims of the parties and their leaders. And there is no guarantee that they would show their institutional courage beyond their politics of the allegiance.

There are several farce provisions in the government Bill such as: it does not authorize the enquiry beyond two years of the scam; routine corruption in defence sector will be out of the purview of any scrutiny; strong punishment for frivolous complaints; no provision for recovering the money or illicit gains from the accused; dubious selection methods for the members of the Lokpal, etc. Apart from all these sham provisions, the Lokpal will have only recommendatory or advisory role matching to the present Lokayuktas in the states or the failed practices of Central Vigilance Commission, Commissions of Inquiry Act, 1952, Comptroller Audit General and so on.

There have been major issues to settle such as whether the Prime Minister (PM) is included or not included in the purview of the Lokpal. The one view emerged is that the PM should be excluded from the scope of the bill. The view is taken as PM is responsible to the parliament and also he/she is the face of the nation in the international arena. One of the basic premises of the institution of Lokpal is to bring effective checks and balances to the system of governance as well as the centres of power, irrespective of their position of constitutional eminence. Maladministration, in all forms, mars the system of governance. In most cases, corruption begins from maladministration. There may be cases where corruption is not made out, and maladministration is (Dhavan 2011). Maladministration is attached to the individual in the office, is part of the system. When the checks and balances are out of application then the maladministration opens, and it leads to scandals and corruptions. In the Cabinet form of government, Prime Minister's office (PMO) occupies a locus of decision making, and PM is the 'chief whip' of the Cabinet. If the civil servants are included in the Lokpal the PMO will generally come within the scope of the bill. Though the integrity or the virtue of the person who assumes prime ministership may be exploited or slipped in the game of politics, accountability cannot be retained a diffused idea.

By nature the power is often for deception or travesty on its subjects. Nevertheless, the signals and initial attitude of the UPA government are encouraging and seems to give a hope for a strong deterrent and far reaching legislation for saving the millions of people from the menace of corruption. However, the task is not easy for Hazare-Kejriwal team. The hidden agenda will be revealed during the process of joint drafting committee and its outcome. Reaching a consensus on the provisions without compromising the objectives is important. There may be some fantasies in the Jan Lokpal bill when it weighs against the rational application. A fair way of democratic consultation and reaching out to the experts across the country can be initiated by the civil society groups, including the National Advisory Council (NAC) while the drafting process is in progress in the joint committee.

Civil society is not compact. Civil society cannot replace political parties or undermine the very democratic process. Democracy cannot sustain, unless it is underpinned by a vibrant political culture of inclusive civic engagement. Often discredited political parties and political institutions fail to recognise the civil society contribution in fostering democracy and development. Who represent or who do not represent the civil society is debatable, but this is a momentous opportunity. An experiment of UPA government's policy making bodies such as NAC is there with members from 'civil society'. One can question about their representation or the process of their selection. Some of them are with their own or pet agendas. If they represent civil society they should show at least their solidarity to the other grave issues in this country. Some of their statements seem unfortunate during and after Hazrae's hunger protest, alleging blackmailing or usurping parliamentary power to legislate and so on. It was nothing blackmailing, it had to wait long 42 years and now people have come out on the streets. Jan Lokpal bill was a draft version for submitting the government and parliament similar to NAC's many draft bills. In a democracy drafting of bill can be initiated from any side, not necessarily by the executive. For instance, there are several recent laws or draft bills such as Mahatma Gandhi National Rural Employment Guarantee Act, Right To Information Act, Right To Education, Domestic Violence Act, Right to Food bill, HIV/AIDS bill, Communal Violence bill, etc, initiated or drafted by the civil society groups. There is a shared interest of corruption among some section of politicians and a few biased media elites. They consistently undermine the idea of civil society and its efforts by bringing flawed theories.

The government has said that the Lokpal Bill will be introduced in the Monsoon Session of the Parliament 2011. However, setting a date for its passage by 15 August 2011 by Hazare may be untenable. It will amount to the effect of bypassing the due process of deliberation and pre-legislative scrutiny by the respective standing committee of the parliament. Also the joint committee and the civil society should ensure that the Bill should be introduced in the Rajya Sabha and let not the Lokpal Bill dies once more. And we have very important Bills such as Women Reservation Bill waiting for its passage!

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Notes

¹ The 2010 Corruption Perception Index measures the perceived levels of public sector corruption in 178 countries around the world. The Index shows that nearly three quarters of the 178 countries' score are below five on a scale of 0-10. When Governments are committing huge sums to tackle world's most pressing problems from instability of financial markets to climate change and poverty, corruption remains an obstacle to achieving much needed progress. The message is clear: across the globe, transparency and accountability are critical to restoring trust and turning the tide of corruption. Without them, global policy solutions to many global crises are at risk (Press release, CPI 2010).

² UN Convention against Corruption, which entered into force on 14 December 2005. It has been six years, India is yet to ratify, if it is ratified, India could have taken easy measures to bring back those huge billions of black money alleged to have been deposited in the foreign banks.

³ The Indian Express labelled those people who gathered and supported the fast as a 'carnival society' (IE editorial, Friday April 08, 2011)

⁴ In the UK, a referendum will be held in May 2011 on whether to change the first-past-the-post system for electing MPs to the Westminster Parliament with a method of the alternative vote (AV).

⁵ Democracy Index 2010 scores for electoral process and pluralism: 9.58; functioning of government: 8.57; civil liberties: 9.41.

⁶ The Lokpal bill was first introduced in 1969 and subsequently in 1971, 1977, 1985, 1989, 1996, 1998, 2001 2005 and 2008.

References

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