

Jan Lok Pal (JLP)

We need to deal only with only the contentious points because JLP (this term includes Lok Ayukta) is an idea whose time has come.

Let me start with the RTI Act. The government will maim the JLP in the same manner as the RTI Act although only yesterday (2 June 2011) i.e. nearly six years after it enacted the RTI Act, the Government has constituted a Special Task Force to ensure effective implementation of the Act and to bring in more transparency and accountability in governance.

The stated government objective of the RTI Act is to bring transparency in governance and thus 'contain' (sic) corruption and improve governance. Unfortunately, over 95 % of the requisitions and appeals under the RTI Act pertain to individual grievances (i.e. personal or institutional). Hence, public interest requisitions do not get any priority from various RTI authorities and consequently the main object of the RTI Act to bring in transparency in governance is side tracked. RTI has become grievance redressal machinery.

As the civil society intends Jan Lok Pal (JLP) Bill to look into individual grievances, it is likely to meet the same fate as the RTI Act. The government will certainly welcome this suggestion from the drafting committee because it wants to scuttle the JLP as it has successfully done with the RTI Act. There is separate grievance redressal machinery at <http://pgportal.gov.in/>. It does not work. Hence, our suggestion is that individual grievances should be out of the ambit of the JLP.

We recommend that the JLP should not wait for corruption to take place to deal with it. Corruption always involves violation of rules, regulations, laws, guidelines, etc. However, not every such violation involves corruption. The primary task of the vigilance machinery reporting to the JLP should be to identify every such violation and make an assessment whether corruption is involved. If so, investigations should commence. There should be strict criteria for vigilance officers. Further, the vigilance officers should be located at the centre of activities of the unit concerned and where maximum number of employees is located and not with the headquarters, which are generally at good urban centres.

We recommend that the PM should come under the JLP. This is because, under the present dispensation, the party in power has made the PM a figurehead. We do not rule out such a situation again. In fact, there is need to debate whether the JLP should have under it the presidents of political parties.

After all, the main aim of the JLP is to remove political corruption completely, which we can only do by applying the JLP Bill to these worthies.

We should look at the JLP Bill as the second step (first being the RTI Act) in furthering transparency in governance and making our society corruption-free. The next steps, which must closely follow, are judicial and administrative reforms, without which the first two steps would fail. The reforms must include rules to hold the head of a department responsible for negligence due to lack of supervision. The tendency to punish the junior most employees for the ills of the department must cease.

The official website of 'India Against Corruption (IAC) <http://www.indiaagainstcorruption.org/>), says, "Lokpal and Lokayukta will have the powers to get a guilty official dismissed or suspended. They will also have the powers to get an increment of a guilty official withheld or get a guilty official reduced in rank." It is necessary that the JLP does not act both as the prosecutor and the judge to dish out punishments based on prima facie evidence. This prerogative should rest with the courts and punishments should be as per the service rules and the prevailing law under the Indian constitution.

We agree with IAC's view that Lokpal should be a multi-member body that will exercise some quasi-judicial powers but will have the authority to delegate its quasi-judicial powers to a hierarchy of subordinate offices (like CBI, CBEC etc.). We concur with IAC's view that this is a two level model where the Lokpal will take up high-profile cases (determined by the amount of money involved in the corruption case or by the rank of the accused) while for all other cases the Lokpal will delegate authority to subordinate officers to handle cases. This approach is easily the most efficient and speedy.

The greatest bane of our nation is that we are not able to enforce any laws, rules and regulations. There is very little compliance with orders except in the defence services. This is our experience when information commissioners impose fines, which the authorities very often ignore. Hence, we support the proposal that the JLP should have powers to impose severe punishments, such as jail terms without regard to the status of the person, for disobedience.

IAC says that there are only two alternatives before the *aam admi*. Either pay the bribe to get the job done or forego the job. There is actually a third alternative, which a large majority of Indians (honest ones and those that do not have the capacity to pay bribes) resort to. The alternative is to accept delay. One waits, some times for years, but the authorities always do their duties later than sooner!

It will not be prudent to put the judges under the JLP. Government should make provisions to investigate misconduct of judges in the proposed Judicial Accountability and Standards Bill, which too needs a wider consultative process.

The proposed bill defines “corruption” to include anything made punishable under Chapter IX of the Indian Penal Code or under the Prevention of Corruption Act, 1988; provided that if any person obtains any benefit from the government by violating any laws or rules, that person along with the public servants who directly or indirectly helped that person obtain those benefits, shall be deemed to have indulged in corruption. It is essential to elaborate on acts that come under "corruption", appropriately in the Rules. There is a good guideline on what constitutes 'corrupt practices' or 'corruption' and 'maladministration' given by retired justice Hon'ble P. B. Sawant during the course of the proceedings of the Commission headed by him. (Please see, pages 374-376: "The Judiciary & Governance in India" - Madhav Godbole, Rupa & Co, Chapter V - "Commissions of Inquiry - A Blunted Instrument"). There is much more to corruption than what the crisp definition given above says.

We believe that JLP should not get into routine tasks like giving protection to whistle blowers. It should come in only if protection is not provided as per the law to check if there is bribery to deprive due protection.

If JLP investigates only high profile cases there will not be any direct immediate impact on the lives of the *aam admi*. Lok Pal should have jurisdiction over lower judiciary also, because corruption at that level affects the ordinary citizen to the maximum. A majority of citizens give up at the lower judiciary because of lack of funds. Hence, JLP's ambit should extend to all types of corrupt practices.

The present identity of CVC, CBI and ACB (of States) should completely obliterate because of the low esteem in which the public holds them. Even if these entities are merged in JLP, people will not have any faith or trust in them and consequently in JLP. Public perception needs to be positive for any system to succeed.

There is a tendency to relate western practices to India in similar enactments, which is neither relevant nor realistic. The critical differences between westerners and us are: i) Propensity for civil disobedience - a legacy of our Quit India movement. ii) Low literacy (official figure is somewhere over 60 % i.e. those who can sign in their mother tongue). Less than 30 % Indians read newspapers and watch TV. Even less understand what they read and watch. iii)

Indian bureaucracy is perhaps the worst in the world. They take the Indian public for a ride easily. iv) Faulty judicial system results in delays in dispensing justice. 5 to 10 years is the normal period to get a judgement in the simplest of civil cases without adjusting for appeals. v) Antiquated rules under which the police work unlike in western countries is an impediment to prevent corruption. vi) Our observation is that those who are corrupt and those who do not have to give bribes to get what they want by using their influence are the ones opposing this Jan Lok Pal Bill. We should go slowly in applying foreign laws in India.

The Lok Pal Secretariat should have a wing to examine the findings of all independent inquiry committees appointed by the government so far. It is unfortunate that the central ministries have not even tabled such reports before the parliament although the ministries ordered the inquiries after a parliamentary debate. Not only this, the government has wholly ignored the findings, which clearly point to corruption.

Any case that the citizens bring before the Lok Pal/Ayukta concerning corruption should not suffer from time limitation.

In Phase I, the LJP should cover all elected representatives right up to Panchayat level and bureaucrats up to joint secretary level and heads of all Class 'A' ULBs. There should be a provision in the LJP Bill that the LJP shall cover every one else in phases in a period of 10 years for which specific provision will be made in the Bill itself. This will entail the present machinery to continue in parallel with the LJP. Its greatest advantage is that one might find improvement in the working of the CBI, CVC and ACB at state levels. In addition, their load will reduce, which might increase their efficiency. The greatest advantage, however, is that the LJP will have a new investigating and prosecuting wing with no baggage to carry.

The LJP Bill must include in it a provision to carry out within a specific period, administrative (including police), electoral and judicial reforms without which there will be handicaps in implementing the LJP concept.

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11 June 2011