

# NEW LOKPAL BILL UNFAIRLY DOWNGRADES CBI

Neither Team Anna nor political parties want an independent CBI. They are fighting over control of the agency

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IT IS with great anguish and distress that I write to express my dissent with the Lokpal Bill as presented to Parliament. The Bill has been a great let-down, because many expectations had earlier been aroused and these have now been belied. One of the more important expectations was of course an autonomous CBI nearly on par with the independent judiciary about which we can be rightly proud of.

Let me confess that, until recently, I was not a staunch votary of the Lokpal concept. I stood merely for a strong and autonomous CBI that would lawfully and effectively deter the dishonest public servant, especially the one in high places. After witnessing all the recent attempts by certain elements in our polity to browbeat and malign those who were vociferously and armed with eloquent logic propping up the need for an effective Ombudsman (by whatever name you call him), I now certainly endorse the need for a watchdog outside of government, who will stand like a rock and remain as objective as any principled human being can be.

I was more than convinced that those who wield authority at the present juncture — not only at the Centre but in the 28 States as well — despite all their political differences, are united in not wanting up to the idea of cleansing public life.

A majority of them are no doubt honourable men and women. They clearly have the interest of the nation at the centre of their heart. But somewhere down the line they have erroneously come to the conclusion that instituting a Lokpal, which reflects the mood of the nation is a political climb down. This is why they further think that they will have to necessarily damn all those speaking up for propriety in public life.

Let us be honest. How many of us have not strayed at least slightly from the path of virtue, sometimes or the other in our lives?

I am not for a moment suggesting that Team Anna is omniscient, infallible or faultless or that they have conducted themselves in an exemplary manner. Actually, wittingly or unwittingly, they have contributed to the impression that they are being driven by forces opposed to the current establishment.

The language used by some of them, including Anna, has also been too carping. The fight against corruption is too sacred and critical to be frittered away by such use of language that distorts and infuriates rather than inspires many who are on the fringe and share our agony in yearning to shun out for services to which we are entitled as citizens of this great country.

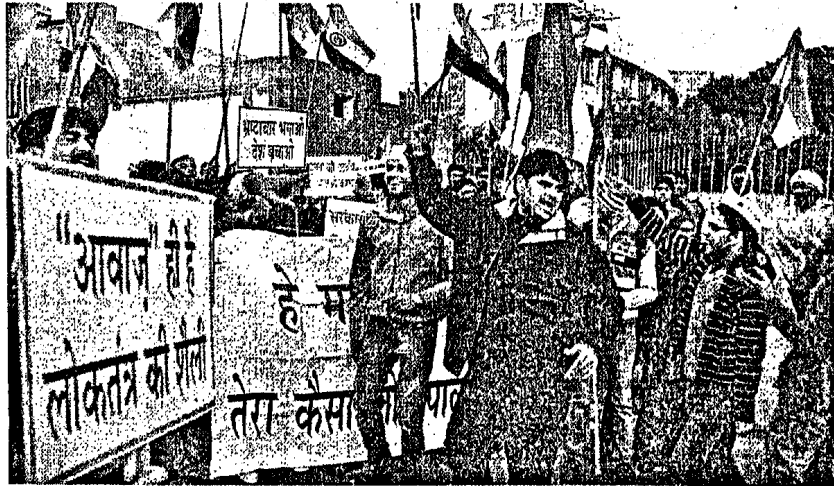
In my long years of public life, I have understood the need for care and politeness in dealing with all your detractors who are waiting for you to trip. (This incidentally is what I am trying to do in an assignment that the Apex Court has given me, and I am gallantly holding on to it only to prove that no force on earth can deter me from discharging my responsibility faithfully to the Court and the nation till my last living day.)

And Anna has unfortunately tripped, giving a lot of ammunition to those who are desperately trying to see that he fails. We have to scrupulously avoid politicising an issue that does not permit subjectivity or chamber assassination.

## EMPOWER THE AGENCY

The Lokpal Bill downgrades the CBI rather unfairly and unjustly. This organisation that has done yeoman service to the nation stands dilated. It will continue to be an appendage of the government. The unexpressed logic: an autonomous CBI spells disaster to democracy. Nothing can be further from truth.

There is mischief in circulating the false impression that an autonomous CBI is not accountable to anyone. This tends to ignore the fact that the CBI,



Team Anna has mobilised social networks like Facebook and Twitter to win over urban youth to their cause.

- CENTRAL BUREAU OF INVESTIGATION WAS SET UP in 1963.
- DELHI SPECIAL POLICE Establishment was first set up in 1941 to deal with bribes and corruption.
- THE CONVICTION RATE of the CBI in criminal cases varies between 65 to 70 per cent.
- SUO MOTO ACTION can be taken by the CBI only in Union Territories. Approval of the states required for the CBI to investigate cases in states.
- THE SUPREME COURT and the High Courts can order CBI inquiries anywhere in the country.
- CBI REPORTS TO the Central Vigilance Commission (CVC) on anti-corruption cases.
- SPECIAL INVESTIGATION TEAMS (SIT) of the CBI have inquired into cases like the Rajiv Gandhi assassination, Bombay blast cases, Securities scam etc.
- IN 2010 CBI completed investigation in 1173 cases, filed 842 charge sheets in court, carried out preliminary inquiries in 115 cases and 815 cases remained pending.
- By the middle of 2011, the agency had filled up 3575 of the 4490 sanctioned posts of executive officers, 1270 of the 1522 support staff sanctioned and 153 of the 302 Law officers.



## SEVERE CONSTRAINTS

In specific terms, the public need to know that the CBI now operates under several severe constraints. First, it cannot proceed against an officer of and above the rank of Joint Secretary to Government of India, even when there is overwhelming evidence of his wrongdoing. Neither a Preliminary Enquiry (PE) nor a Regular Case (RC) can be registered against him without the leave of the government.

What was only an executive order — the so-called Single Directive — in the early 2000 was incorporated into the Delhi Special Police Establishment Act (DSPE) from which the CBI draws its authority. To obtain such government permission, the CBI will have to reduce the information against a senior civil servant into writing and send it to the Ministry concerned.

It will be dumb to expect such information not to be leaked to the delinquent concerned, because he holds an important position in the very same Ministry. And when a Minister is in collusion with such an officer, how can you expect the former to give his consent for the CBI to go ahead? This is the greatest infirmity of the Single Directive. Without repealing the relevant legal provision, you cannot expect a civil servant to be prosecuted successfully at the end of an investigation, which may otherwise have thrown up credible evidence of the misconduct in question.

The requisite sanction for prosecution is seldom given quickly. Very often there have been deliberate delays with a view to protecting a misbehaving officer. In some cases such sanction is denied on dubious grounds.

The general impression is that Courts can neither impose a deadline for sanction or question the rationale for a denial of sanction. Nothing pertaining to a civil servant can be non-justiciable. But here is a situation where the legalities are foggy.

And when a CBI case fails in court, and the organisation feels that an appeal against acquittal is warranted, it is again at the mercy of a government. Without the latter's approval, the CBI cannot proceed with an appeal.

Experience is that this power has on a few occasions been misused through refusal of permission

to appeal. The statutory provision against such abuse of authority will be to delete the relevant section from the Criminal Procedure Code (C.P.C.). There is no hope here also that the CBI will be released from the establishment's clutches.

Perhaps even more debilitating to the CBI is the dependence on the CVC and the Department of Personnel and Training (DOPT), as also the Union Home Ministry (MHA) for staff selection, especially IPS officers.

The Director cannot bring officers of his choice from States, even when they are in requisite panels and are willing to come to the CBI on deputation from the States. I remember many instances in which I had been overruled on spurious grounds.

I would like the CBI to be given the kind of unbelievable independence I enjoy as the Chief of the SIT in Gujarat. This freedom has been conferred on me because I was appointed by the Supreme Court of India and my investigation is monitored by that court. Why can't we give the same freedom to the Director, CBI, subject to IPS Cadre Rules?

Where an IPS officer has an unblemished track record for efficiency and integrity, he is in the Promotion Panel prepared by the MHA, is willing to come on deputation to the CBI and the State Government is willing to release him, why should the CVC or MHA interfere in the process?

But it does not happen this way. Either a regional bias or a caste affiliation is cited to deny the CBI this unqualified authority. Low can a DCBI produce goods, if he does not enjoy this minimal liberty?

In the same manner, there is a tight control of the CBI by the DOPT in respect of financial matters. The DCBI enjoys very limited authority to spend, and he has to go to the DOPT with a begging bowl for a variety of things.

This is unacceptable if you want a CBI that is swift and efficient. This is a long pending demand that has received only marginal attention from the government. The best solution would be to authorise the DCBI to draw all his requirements directly from the Consolidated Fund of India.

## LET LOKPAL REPLACE CVC

Finally, what control will the Lokpal exercise over CBI? Conflict over this seems to have led to a worrying impasse.

In my scheme of things whatever is being done by the CVC and DOPT, subject to the reforms I have suggested, could be transferred to the Lokpal.

This would mean that the Lokpal will at best be a facilitator rather than a controller of the CBI. I know that Team Anna is not reconciled to this. It wants the CBI to be its investigative wing, or at least a subordinate which it can order to do certain investigations.

Neither is acceptable to me. There is no way the Lokpal can order CBI around and interfere in the latter's investigative processes. It is at best entitled to routine information on CBI cases as the CVC is now entitled to. But Anna and company will not agree to this, especially when the Bill now in Parliament weakens the CBI and does not strengthen it. This is a sorry state of affairs for which both government and the Team Anna are responsible.

In the final analysis, the current situation demands sobriety and maturity among the contending parties.

The struggle is likely to continue on the streets of Delhi, Mumbai or Chennai. This is not good for India's image. It is not good either for attracting foreign investment, particularly when there is a growing impression abroad, that without a tribe you cannot do business in our country. This is shameful. We as citizens need to pursue all the opportunities now available to push our law makers into action that would penalise the corrupt and reward the honest whistleblower.

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at every stage of a case — registration, recording of statements, charge-sheeting or submission of a closure report, and seeking sanction for prosecution from government. It is accountable to courts.

The FIR goes to a Magistrate, as also a closure report or charge sheet. The CBI cannot just afford to let its guard off and will have to take care that it conforms to the law in the strictest sense.

Also, supervision of investigation within the CBI is at least at five levels. In some cases, the Director comes in as the sixth tier. Also, any aggrieved person can go to Court to complain if any injustice has been done to him or her by the investigating officer.

More than anything else, you must remember that the appointment of a Director is being made

more transparent and clinical by bringing in the Leader of the Opposition in the Lok Sabha and the Chief Justice of India into the selection panel.

Also, a carefully chosen Director should necessarily be an officer of great repute. Give him a tenure of five years instead of the measly two now and tell him he is not eligible for any government employment for at least five years after he departs office. You will then have a CBI Chief who will not hesitate to proceed against the mightiest in the country without fear or favour.

You also need to give him the status of Cabinet Secretary so that his superior is only the Supreme Court of India and none else. If the Bill now in Parliament does not do all this, we can explain it only as a fear of the unknown.