

A SOCIO-POLITICO-LEGAL CRITIQUE OF THE JAN LOKPAL BILL WITH SPECIAL EMPHASIS ON CONTRAST WITH LOKPAL ACT

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*The concept of **ombudsman** is halfway leaning to anarchy and in some other ways egalitarianism and its practical counterpart-**accountability**. It basically involves a public body with **quasi-judicial** powers, as well as powers of uninhibited investigation. The sole aim of ombudsperson organization is to root out and penalize **corruption**. Once these charges are proved, the cases are ideally transmitted to regular courts. One huge advantage of these institutions is the solitary focus and consequential **speed** of justice.*

*This paper shall deal with these various **differences** in a **descriptive** manner by comparing and reviewing legislated and proffered **provisions**, and then move onto **prescriptive** issues of deduced **opinions**, based on **scholarly** treatises, **judicial precedents** and expert opinions such as opposing social **activists** on the issue.*

RESEARCH QUESTIONS

- What is the Concept of Ombudsman?
- What are the Key Ingredients, Features and Demerits of the Jan Lokpal Bill Drafted by Activists? What was it Raised as an Alternative to, and what was the Scenario behind its Propagation?
- With Relation to this Movement, what are the Benefits and Shortcomings of the Lokpal and Lokayuktas Act 2013?

HYPOTHESIS

-Whether the Jan Lokpal bill propounded by social activists is indeed more suitable as per personal educated and legally established opinion, than the Lokpal and Lokayuktas Act 2013, which as a question shall primarily be determined by a direct comparison of the provisions in both statutes:

HISTORY OF OMBUDSPERSON IN INDIA:

In 1969, Shanti Bhushan first introduced the Lokpal bill, as L.M.Singhvi dubbed it. Since then it has never been cleared by the Upper House pre-dissolution of the *lower house*.

Finally, a nationwide social movement known as **India Against Corruption** came into play, with beaurocrats and social activists popularizing it. It was resolved that a committee of 5 cabinet ministers and 5 social activists would draft a new Lokpal bill. This too was however

a flop and the social activists took to illicit protests once more demanding the ratification of the much more powerful bill that they had drafted.

The key issues of difference between government and activists are on the ambit of the body, i.e., whether the Prime Minister, senior beaurocrats and senior most members of the judiciary would be covered.

Finally, due to further political reasons, deadlines were extended and social protests called off, and a Lokpal and Lokayuktas Act 2013 was instituted. Due to the waning of the social movements it remains to be seen whether this legislation carries the same utility and importance as the proffered bill.

COMPARISON OF JAN LOKPAL BILL AND LOKPAL AND LOKAYUKTAS ACT 2013

These are some of the key points of distinction between the Jan Lokpal and the 2011 Lokpal bill, and by extension the key features of the Jan Lokpal itself:

A look at the salient features of Jan Lokpal Bill:

1. An institution called LOKPAL at the centre and LOKAYUKTA in each state will be set up
2. Like Supreme Court and Election Commission, they will be completely independent of the governments. No minister or bureaucrat will be able to influence their investigations.
3. Cases against corrupt people will not linger on for years anymore: Investigations in any case will have to be completed in one year. Trial should be completed in next one year so that the corrupt politician, officer or judge is sent to jail within two years.
4. The loss that a corrupt person caused to the government will be recovered at the time of conviction.
5. How will it help a common citizen: If any work of any citizen is not done in prescribed time in any government office, Lokpal will impose financial penalty on guilty officers, which will be given as compensation to the complainant.
6. So, you could approach Lokpal if your ration card or passport or voter card is not being made or if police is not registering your case or any other work is not being done in prescribed time. Lokpal will have to get it done in a month's time. You could also report any case of corruption to Lokpal like ration being siphoned off, poor quality roads been constructed or panchayat funds being siphoned off. Lokpal will have to complete its investigations in a year, trial will be over in next one year and the guilty will go to jail within two years.
7. But won't the government appoint corrupt and weak people as Lokpal members? That won't be possible because its members will be selected by judges, citizens and constitutional

authorities and not by politicians, through a completely transparent and participatory process.

8. What if some officer in Lokpal becomes corrupt? The entire functioning of Lokpal/ Lokayukta will be completely transparent. Any complaint against any officer of Lokpal shall be investigated and the officer dismissed within two months.

9. What will happen to existing anti-corruption agencies? CVC, departmental vigilance and anti-corruption branch of CBI will be merged into Lokpal. Lokpal will have complete powers and machinery to independently investigate and prosecute any officer, judge or politician.

10. It will be the duty of the Lokpal to provide protection to those who are being victimized for raising their voice against corruption.

FEATURES OF JAN LOKPAL BILL contrasted with FEATURES OF LOKPAL AND LOKAYUKTAS ACT 2013:

- While the Prime Minister and the rest of the government as well as all persons who had held such offices are under the sway of both statutes, contrasting section 2 of the Jan Lokpal Bill with the Lokpal and Lokayuktas Act section 14, judges of high court and supreme court are not explicitly held accountable in the latter act.
- There is no specific criterion for appointment of the chairperson of the Lokpal according to the Jan Lokpal bill, hereinafter referred to as the bill, whereas in the Lokpal and Lokayuktas Act hereinafter referred to as the Act, it is stated that the chairperson must either be a judge of the Supreme Court or have an affirmed impeccable integrity in public eyes.
- The bill requires that no former member of a legislative assembly including the parliament shall contest for the position of chairperson. The act on the other hand only disqualifies members of legislative assembly or parliament who currently hold office.
- The bill disqualifies all persons greater than forty years of age from being the chairperson whereas the act allows persons to be nominated or recommended until the age of forty five.
- The selection committee that recommends Lokpal members to the president in the bill consists of Bharat Ratna Laureates, Indian origin nobel laureates, high court and supreme court judges, speaker of Lok Sabha and Chairperson of Rajya Sabha, Comptroller and Auditor General of India, Chief Election Commissioner, and indian origin Magsaysay award winners. However the act merely requires the prime minister who authorizes the search committee to nominate a chairperson candidate, the speaker, opposition leader, chief justice of India and an eminent jurist recommended by the incumbent chairperson of Lokpal.

- The bill provides an elaborate transparent procedure for appointments involving publicly uploaded interviews etc, whereas the act allows the selection committee to come up with its own criterion and rites provided a degree of transparency (which is unelaborated on) is maintained.
- The act merely funds the Lokpal through the State whereas the bill also sets up a provision for a special discretionary fund for usage by the body with credits being 10% of money recovered and assigned to the Consolidated Fund of India. This provision is not just efficient but equitable, as it inculcates autonomy in an institution that may challenge the roots of power in the nation.
- The bill reserves the quasi-judicial power of reserving the sole right to grant permits for proceeding with prosecution and evidence collection. The act on the other hand merely has a prosecution wing that is subservient to the code of criminal procedure.
- The bill states no exceptions to its jurisdiction whereas the act disallows trying any person who holds or has held the office of Prime Minister on charges relating to international relations, security affairs, atomic energy and Space, (except with a two thirds majority by a hundred percent quorum. (Section 16 Jan Lokpal read with Section 14 of the Act).
- The double jeopardy of the accused is subtly different. The bill only disallows ombudsperson prosecution when a case in conventional judicature is dismissed or ongoing, thus not being against withdrawal of complaint in such judicature in favor of ombudsperson redressal. The act on the other hand positively rules that a case about corruption, misuse of office, etc. must take place in the same court it was filed in.
- The two legislations agree entirely on the provisions dealing with situations where complaints have been made against members of the Lokpal, and the procedures that will have to be followed.
- The bill requires compulsory submission of assets' list by every public authority to the Lokpal within a month of being sworn in to office, and subsequently publication of a citizens' charter entailing all the obligations inherent in the office, as well as setting up a Public Grievance Redressal officer for each such department, whereas no such affirmative action is entailed in the Act.

Thus we can see that with regards to efficacy the act reduces strain on national resources and involves speedier processes though the bill makes even lesser compromises and does a more comprehensive job at maintaining democracy.

A SUMMARY OF PUBLISHED CRITIQUES, LEGAL AND SOCIAL OPINIONS TO BOTH OF THESE STATUTES

The Jan Lokpal Bill (Citizen's ombudsman Bill) is a draft anti-corruption bill drawn up by prominent civil society activists seeking the appointment of a Jan Lokpal, an independent

body that would investigate corruption cases, complete the investigation within a year and envisages trial in the case getting over in the next one year.

Drafted by Justice Santosh Hegde (former Supreme Court Judge and former Lokayukta of Karnataka), Prashant Bhushan (Supreme Court Lawyer) and Arvind Kejriwal (RTI activist), the draft Bill envisages a system where a corrupt person found guilty would go to jail within two years of the complaint being made and his ill-gotten wealth being confiscated. It also seeks power to the Jan Lokpal to prosecute politicians and bureaucrats without government permission.

Retired IPS officer Kiran Bedi and other known people like Swami Agnivesh, Sri Sri Ravi Shankar, Anna Hazare and Mallika Sarabhai are also part of the movement, called India Against Corruption. Its website describes the movement as "an expression of collective anger of people of India against corruption. We have all come together to force/request/persuade/pressurize the Government to enact the Jan Lokpal Bill. We feel that if this Bill were enacted it would create an effective deterrence against corruption."

Anna Hazare, anti-corruption crusader, went on a fast-unto-death in April, demanding that this Bill, drafted by the civil society, be adopted. Four days into his fast, the government agreed to set up a joint committee with an equal number of members from the government and civil society side to draft the Lokpal Bill together. The two sides met several times but could not agree on fundamental elements like including the PM under the purview of the Lokpal. Eventually, both sides drafted their own version of the Bill.

The government has introduced its version in Parliament in this session. Team Anna is up in arms and calls the government version the "Joke Pal Bill." Anna Hazare declared that he would begin another fast in Delhi on August 16. Hours before he was to begin his hunger strike, the Delhi Police detained and later arrested him. There are widespread protests all over the country against his arrest.

The website of the India Against Corruption movement calls the Lokpal Bill of the government an "eyewash" and has on it a critique of that government Bill.¹

Jan Lokpal Bill regressive: Arundhati Roy²

Writer Arundhati Roy on Tuesday cast doubts over Anna Hazare's anti-graft campaign saying the civil society's Jan Lokpal Bill is a "dangerous piece of legislation".

"I am skeptical about the legislation (Jan Lokpal Bill) itself for a good number of reasons. I think the legislation is a dangerous piece of work," Ms. Roy told CNN-IBN in an interview (Click here to view the interview).

¹ <http://www.ndtv.com/india-news/what-is-the-jan-lokpal-bill-why-its-important-452223>

² The Hindu

Alleging that the civil society used public anger in their favour, the Booker Prize winner novelist said “You (civil society) used the real and legitimate anger of the people against corruption to push through this specific piece of legislation which is very regressive. It could have turned from something inclusive to destructive and dangerous.”

Calling the Hazare-led movement a “copy book World Bank agenda”, Ms. Roy said “It was an NGO-driven movement by Kiran Bedi, (Arvind) Kejriwal and (Manish) Sisodia.

“Three of them run NGOs and all the three core team members are Magsaysay Award winners... World Bank and Ford Foundation fund the anti-corruption campaigns. This is copy book World Bank agenda though they might have not meant it.”

The writer said “Anna Hazare was picked up and propped up as the saint for the masses. He was not the brain behind the movement. We really need to be worried about it.”

She also said the Hazare-led movement was not the same thing as a people’s movement and accused the media of engineering it.

“Obviously people joined in but all of them were not middle class and many came for a sort of reality show well-orchestrated by media campaigns,” she said.

“For a nation of one billion people, the media did not find anything else to report. Certain major TV channels campaigned for said to be doing so. That’s a kind of corruption for me at first place,” she said.

“If it was only for TRP then why not to settle for pornography or something which gives more TRP?” she asked.

The Director CBI in a presentation³ before the Standing Committee of the Parliament now deliberating over the Lokpal Bill has strongly argued against the vivisection of the CBI and merger of its anticorruption wing with the Lokpal. CBI Director and his senior officers strongly feel that this will seriously cripple the core functioning of the CBI and reduce it to irrelevance. An organization built over last 60 years comprising competent professionals should not be subsumed under Lokpal. CBI officers concede that in some sensitive political cases there is of course interference from the government, but in respect of an overwhelming majority of cases CBI functions, unfettered and uninfluenced by extraneous considerations. For this reason there is an ever increasing demand for CBI investigation from all-over the country in respect of important cases. Under the Jana Lok Pal bill drafted by Anna and his team, Lokpal will have its own investigation wing for investigation into acts of corruption by public servants as well as private entities which are parties to the act. It will also enquire into public grievances and investigate complaints by the whistleblowers. For this Lokpal needs a powerful investigation wing manned by tested and tried professionals. According to team Anna's view, lower 2 bureaucracy should also come under Lokpal because common man is more affected by corruption at the lower levels. Only Group-A officers are covered by the Lokpal bill drafted by the Government.

³ Functioning of Lokpal and the CBI:- Need for Synergy Sankar Sen

Anna's team wants the anti corruption wing of the CBI should be merged with Lokpal. CBI's point of view is that to hive off the anti corruption wing of the CBI will cripple it grievously and make it effete and irrelevant. Through CBI at present takes up investigation of various other types of cases like economic offences, violent crime, organized crime, crime having inter-state and international ramifications, anticorruption investigation continues to constitute the core functions of CBI. CBI's paper argues that the Director CBI should be made an ex-officio Lokpal member entrusted with control and investigations undertaken by Lokpal. Lokpal will exercise general supervision and control in anti corruption cases through the Director CBI. In respect of corruption cases after investigation CBI will file a final report in the competent courts. Investigation and prosecution will remain in the hands of the CBI. Thus there will be no vivisection of CBI and no need for a separate investigation wing under the Lokpal. Creation of two investigating wings, namely one under CBI and one under Lokpal with the same mandate is likely to lead to overlapping of work, conflict of jurisdictions, and demand for more resources. Functional autonomy of the CBI as well as its credibility has been eroded over the years and effective steps are necessary to restore its full functional autonomy. 3 However, the hard fact that cannot be wished away is that no powerful and effective anticorruption body can function without an investigation wing. Otherwise, it will be a toothless tiger. The proposal to induct the Director CBI after a very careful selection as ex-officio Lokpal is likely to encounter opposition from legal and judicial fraternity and other members of the Lokpal some of whom are likely to be Justices and Chief Justices of Supreme Court and High Courts. So instead of toying with the idea of bringing the anticorruption wing of the CBI under the Lokpal a better and more pragmatic alternative will be to entrust CBI with the investigation of corruption cases referred to it by the Lokpal. This measure will ensure avoidance of the vivisection of the CBI and consequent weakening of its core competence, and at the same time insulate it from extraneous pressures, at least in respect of anticorruption cases referred to it by the Lokpal. Lokpal will closely monitor the cases investigated by the CBI. This will enable the Lokpal to utilize all the resources of the CBI towards anticorruption work and not the resources of the anti-corruption wing only. CBI's anti-corruption unit will be ineffective without the support of the other units of the CBI. For effectively combating corruption CBI and the Lokpal should act in tandem and the similar model can be replicated in respect of state Lok Ayuktas. Of course, the Lokpal can buildup gradually its own investigation wing by getting officers on deputation from the police and the CBI. This will be a time-consuming affair. Further, transfer of officers lock stock and barrel from the CBI will not be possible without the consent of the individual 4 officers. There will be reluctance of the officers to opt for service under the Lokpal as this will not be a service under the state and officers of Lokpal will not enjoy rights under Article 309 and 311 of the Constitution. The need of the hour is to invigorate the CBI and give it a statutory basis, strengthen its functional autonomy and insulate it from extraneous pressures and influences. This was the recommendation of L.P. Singh Reform Committee in 1978 and Parliament Standing Committee on Personnel, Public Grievances Law, Justice in 2008. The committee was against the creation of another anticorruption agency because creation of another agency

will lead to overlapping of jurisdiction, conflict of interest, lack of synergy, and creation of massive infrastructure, and facilities which may not give the desired results and demand more resources which are already scarce. In the proposed anticorruption architecture CBI has to play an important role and for this purpose it should be strengthened by giving functional autonomy and not divided by taking away its anticorruption wing. However, the larger issue to be borne in mind is that the creation of powerful a institution of Lokpal, though a very important measure, is not the only antidote to corruption. China has severest punishment (execution) for those charged with corruption after running summary trials. But it has not reduced rampant corruption there. If there are sufficient gains from a transaction, the bribe-giver will seek to tempt the bribe-taker by increasing the size of the bribe and the latter may feel that the risk is worth taking. This 5 will be a paradoxical and unintended outcome of having a strong anticorruption agency. Further, the Lokpal bill should be one of the electoral and governance reforms that should be on the agenda of the Parliament. Implementation of Supreme Court's directives on police reforms brooks no delay. For delivery of swift and fair justice Judicial Standards and Accountability and Rights to Justice Bill is equally vital. There is also need for electoral reforms so that legislators with criminal background and antecedents cannot contest the election. A Loksabha tainted by 76 criminally charged MPs diminishes Parliamentary democracy and sullies the Constitution⁴.

Current Lokpal Bill is a sham: Prashant Bhushan

Advocate Prashant Bhushan says that the current Lokpal Bill is a Promotion of Corruption Bill and should be replaced with the Jan Lokpal version.⁵

Even as a key Anna Hazare associate on Thursday dropped hints of a compromise formula to break the Lokpal logjam, his another aide insists that prime minister and judiciary should be under Lokpal.⁶

While Justice Santosh Hegde has said he would try to convince Hazare to keep prime minister and judiciary out of the Lokpal purview if government agreed to other demands, advocate Prashant Bhushan told Headlines Today the government must replace its bill with the Jan Lokpal version.

⁴ <http://www.cbi.nic.in/articles/pdf/FunctioningofLokpal.pdf>

⁵ <http://indiatoday.intoday.in/story/current-lokpal-bill-is-a-sham-prashant-bhushan/1/148445.html>

⁶ Harinder Baweja

New Delhi, August 18, 2011 | UPDATED 17:34 IST

"The current Lokpal Bill is a fraudulent bill. It is a Promotion of Corruption Bill. We want the government to withdraw the current version and replace it with the Jan Lokpal version," Bhushan told Headlines Today.

Maintaining that the government should recognise the voice of the people, Bhushan said prime minister, judiciary and the entire bureaucracy should be under the purview of the Bill.

He said there is no civilised country in the world where a sitting prime minister is immune to the law (against corruption).

"Serving prime ministers should be included in the Lokpal. We are bringing moral pressure to bear on the government, not holding a gun to its head," Bhushan said, adding, "A corrupt prime minister is the biggest threat to the country."

Bhushan said the prime minister has given a free run to the looters of the exchequer.

"Manmohan Singh does not make or take money, but he is amoral in various ways. Singh has given a free rein to ministers in his cabinet. He has given them the license to plunder the public exchequer," he said.

Team Anna believes in the supremacy of Parliament but they can't decide in abstract without taking people's view into account, he said, adding the Jan Lokpal should be put to a referendum.

The results to a referendum as in many others were also favourable to the Jan Lokpal, and in an equitable and revolutionary manner referenda too have legal weightage.⁷

⁷ <https://app.box.com/shared/mrajacqxleyf11sod1cl>