

## **Lokpal vs Jan Lokpal Bill**

If there is one social issue that has caught the imagination of the people of India at present, it is the issue of corruption at all levels, and the fight of the people to come up with a citizen's ombudsman bill, better known as Jan Lokpal bill. One Gandhian and social activist, Anna Hazare and his team are at the forefront of this fight, and are trying hard to make legislators accept their draft bill, while government of the day is trying to rush in with its own version of the bill called Lokpal. There is a situation of utter chaos as people are not really aware of the provisions of both these bills. This article attempts to highlight the features of both the draft bills in a manner to differentiate between the two bills.

It is the desire of the people to get created an independent body called Lokpal that would have the power to investigate government officials, members of judiciary, and members of parliament including ministers and Prime Ministers, and even private citizens if cases of corruption are brought to the notice of this autonomous body like Election Commission. Though the bill has been pending for decades, no government had the audacity to get it drafted and get passed in the parliament to give it a legal status. With cases of graft and corruption coming to light one after the other and causing embarrassment for the government (whether it was telecommunications minister A. Raja in 2G scam, or Suresh Kalmadi in Commonwealth Games scam) and growing public anger over helplessness of the government to stop such cases of corruption, it was only natural for people to vehemently support Anna Hazare and his team to fight for Jan Lokpal bill.

The government, sensing the mood of the people, has shown intent to draft a proposed bill on the issue, and for this purpose held several meetings with Anna team to come up with a compromise formula as there are glaring differences between Jan Lokpal bill and the bill that government proposes to introduce. Government has finally come up with a draft bill that it proposes to introduce in the Lok Sabha. However, the version of the bill, prepared by government is unacceptable to Anna Hazare and his civil society team, and Anna has declared that he will start a fast unto death from August 15 if his version of the bill, which is being labeled as Jan Lokpal bill, is not introduced in its original form in the Lok Sabha. It is in this context that differences between Lokpal and Jan Lokpal need to be highlighted for common people to appreciate and decide on which one to support. According to the civil society, the Lokpal bill proposed by the government is like a toothless tiger which is nothing more than wastage of public money as it cannot fight corruption at all.

### **Difference between Lokpal and Jan Lokpal**

- The biggest debate that has been raging between the two sides pertains to inclusion of Prime Minister, President, and the judges of the Supreme Court within the ambit of Lokpal, which is unacceptable to the government.
- While Jan Lokpal will have powers to take suo motu action against corrupt officials, MP's or ministers, Lokpal as proposed by the government has no such powers, and it can take action only if, the speaker of the Lok Sabha forwards a complaint (or chairman of Rajya Sabha).

- Jan Lokpal has powers to act on complaints received from general public, while Lokpal cannot initiate action on such complaints.
- Lokpal cannot register FIR, whereas Jan Lokpal has the power to initiate cases by registering FIR.
- Lokpal as proposed by government is at best an advisory body, whereas Jan Lokpal is competent enough to take up and pursue cases of corruption on its own.
- Lokpal will not have powers to prosecute judges, bureaucrats, members of parliament, and PM, while there is no such bar on the powers of Jan Lokpal.
- Lokpal can only prosecute and get the corrupt official sentenced to prison, but there is no provision to wrest back the wealth amassed through corrupt means. On the other hand, Jan Lokpal has the power to get the property of the culprit confiscated and handed over to the government.
- In the bill proposed by the government, corrupt people can take benefit of the present judicial system and can go on to enjoy their illegal wealth for years, but Jan Lokpal bill proposes maximum trial period of 1 year so as to send the culprit behind bars as soon as possible.

## **Complete set of differences between Jan Lokpal and Government's Lokpal bill**

These differences between the two versions of the Lokpal Bill were claimed by India Against Corruption in a document released online on June 23, 2011. In the absence of comments from critics of **Jan Lokpal Bill**, this section may therefore represent only one side of the debate.

<b>Issue</b>	<b>The Jan Lokpal Bill</b>	<b>Government's Lokpal Bill</b>	<b>Comments by critics (<u>India Against Corruption</u>) of Lokpal</b>
<b><u>Prime Minister</u></b>	Lokpal should have power to investigate allegations of corruption against PM. Special safeguards provided against frivolous and mischievous complaints	PM kept out of Lokpal's purview.	As of today, corruption by PM can be investigated under Prevention of Corruption Act. Government wants investigations to be done by CBI, which comes directly under him, rather than independent Lokpal.

<p><b><u>Judiciary</u></b></p>	<p>Lokpal should have powers to investigate allegation of corruption against judiciary. Special safeguards provided against frivolous and mischievous complaints</p>	<p>Judiciary kept out of Lokpal purview.</p>	<p>Government wants this to be included in Judicial Accountability Bill (JAB). Under JAB, permission to enquire against a judge will be given by a three member committee (two judges from the same court and retd Chief justice of the same court). There are many such flaws in JAB. We have no objections to judiciary being included in JAB if a strong and effective JAB were considered and it were enacted simultaneously.</p>
<p><b><u>MPs</u></b></p>	<p>Lokpal should be able to investigate allegations that any MP had taken bribe to vote or speak in Parliament.</p>	<p>Government has excluded this from Lokpal's purview.</p>	<p>Taking bribe to vote or speak in Parliament strikes at the foundations of our democracy. Government's refusal to bring it under Lokpal scrutiny virtually gives a license to MPs to take bribes with impunity.</p>
<p><b><u>Grievance redressal</u></b></p>	<p>Violation of citizen's charter (if an officer does not do a citizen's work in prescribed time) by an officer should be penalized and should be deemed to be corruption.</p>	<p>No penalties proposed. So, this will remain only on paper.</p>	<p>Government had agreed to our demand in the Joint committee meeting on 23rd May. It is unfortunate they have gone back on this decision.</p>
<p><b><u>CBI</u></b></p>	<p>Anti-corruption branch of CBI should be merged into Lokpal.</p>	<p>CBI to be completely controlled by the Government and the Prime Minister.</p>	<p>CBI is misused by governments. Recently, govt has taken CBI out of RTI, thus further increasing the scope for corruption in CBI. CBI will remain corrupt till it remains under government's control</p>
<p><b><u>Selection of Lokpal members (Selection committee)</u></b></p>	<p>1. Broad based selection committee with 2 politicians, four judges and two independent constitutional authorities. 2. An independent search committee consisting of retd constitutional authorities to prepare first list. 3. A detailed transparent and participatory selection process.</p>	<p>1. Five out of ten members from ruling establishment and six politicians in selection committee (PM, Leaders of ruling party in two House, Leaders of Opposition in two houses, Minister for</p>	<p>Government's proposal ensures that the government will be able to appoint its own people as Lokpal members and Chairperson.  Interestingly, they had agreed to the selection committee proposed by us in the meeting held on 7th May. There was also</p>

		Home Affairs). Others bring two judges and President of National Academy of Sciences 2. Search committee to be selected by selection committee 3. No selection process provided. It will completely depend on selection committee.	a broad consensus on selection process. However, there was a disagreement on composition of search committee. We are surprised that they have gone back on the decision.
<b>Who will Lokpal be accountable to?</b>	To the people. A citizen can make a complaint to <u>Supreme Court</u> and seek removal.	To the Government. Only government can seek removal of Lokpal	With selection and removal of Lokpal in government's control, it would virtually be a puppet in government's hands, against whose seniormost functionaries it is supposed to investigate, thus causing serious conflict of interest.
<b>Integrity of Lokpal staff</b>	Complaint against Lokpal staff will be heard by an independent authority.	Lokpal itself will investigate complaints against its own staff, thus creating serious conflicts of interest	Government's proposal creates a Lokpal, which is accountable either to itself or to the government. We have suggested giving these controls in the hands of the citizens.
<b>Method of enquiry</b>	Method would be the same as provided in <u>CrPC</u> like in any other criminal case. After preliminary enquiry, an FIR will be registered. After investigations, case will be presented before a court, where the trial will take place	CrPC being amended. Special protection being provided to the accused. After preliminary enquiry, all evidence will be provided to the accused and he shall be heard as to why an FIR should not be regd against him. After completion of investigations, again all evidence will be provided to him and he will be given a hearing to explain why a case should	Investigation process provided by the government would severely compromise all investigations. If evidence were made available to the accused at various stages of investigations, in addition to compromising the investigations, it would also reveal the identity of whistleblowers thus compromising their security. Such a process is unheard of in criminal jurisprudence anywhere in the world. Such process would kill almost every case.

		not be filed against him in the court. During investigations, if investigations are to be started against any new persons, they would also be presented with all evidence against them and heard.	
<b>Lower bureaucracy</b>	All those defined as public servants in Prevention of Corruption Act would be covered. This includes lower bureaucracy.	Only Group A officers will be covered.	One fails to understand government's stiff resistance against bringing lower bureaucracy under Lokpal's ambit. This appears to be an excuse to retain control over CBI because if all public servants are brought under Lokpal's jurisdiction, government would have no excuse to keep CBI.
<b><u>Lokayukta</u></b>	The same bill should provide for Lokpal at centre and Lokayuktas in states	Only Lokpal at the centre would be created through this Bill.	According to Mr Pranab Mukherjee, some of the CMs have objected to providing Lokayuktas through the same Bill. He was reminded that state Information Commissions were also set up under RTI Act through one Act only
<b><u>Whistleblower protection</u></b>	Lokpal will be required to provide protection to <u>whistleblowers</u> , witnesses and victims of corruption.	No mention in this law.	According to govt, protection for whistleblowers is being provided through a separate law. But that law is so bad that it has been badly trashed by standing committee of Parliament last month. The committee was headed by Ms <u>Jayanthi Natrajan</u> . In the Jt committee meeting held on 23rd May, it was agreed that Lokpal would be given the duty of providing protection to whistleblowers under the other law and that law would also be discussed and improved in joint committee only. However, it did

			not happen.
<b>Special benches in HC</b>	High Courts will set up special benches to hear appeals in corruption cases to fast track them.	No such provision	One study shows that it takes 25 years at appellate stage in corruption cases. This ought to be addressed.
<b><u>CrPC</u></b>	On the basis of past experience on why anti-corruption cases take a long time in courts and why do our agencies lose them, some amendments to <u>CrPC</u> have been suggested to prevent frequent stay orders.	Not included	
<b>Dismissal of corrupt government servant</b>	After completion of investigations, in addition to filing a case in a court for prosecution, a bench of Lokpal will hold open hearings and decide whether to remove the government servant from job.	The minister will decide whether to remove a corrupt officer or not.	Often, they are beneficiaries of corruption, especially when senior officer are involved. Experience shows that rather than removing corrupt people, ministers have rewarded them. Power of removing corrupt people from jobs should be given to independent Lokpal rather than this being decided by the minister in the same department.
<b>Punishment for corruption</b>	1. Maximum punishment is ten years 2. Higher punishment if rank of accused is higher 3. Higher fines if accused are business entities 4. If successfully convicted, a business entity should be blacklisted from future contracts.	None of these accepted. Only maximum punishment raised to 10 years.	
<b>Financial independence</b>	Lokpal 11 members collectively will decide how much budget do they need	Will be paid through the Consolidated Fund of India (Finance ministry will decide the quantum of budget)	This seriously compromises with the financial independence of Lokpal
<b>Prevent further loss</b>	Lokpal will have a duty to take steps to prevent corruption in any ongoing activity, if brought to his notice. If need be, Lokpal will obtain orders from High Court.	No such duties and powers of Lokpal	2G is believed to have come to knowledge while the process was going on. Shouldn't some agency have a duty to take steps to stop further corruption rather than just punish people later?
<b>Tap phones</b>	Lokpal bench will grant	Home Secretary	Home Secretary is under the

	permission to do so	would grant permission.	control of precisely those who would be under scanner. It would kill investigations.
<b>Delegation of powers</b>	Lokpal members will only hear cases against senior officers and politicians or cases involving huge amounts. Rest of the work will be done by officers working under Lokpal	All work will be done by 11 members of Lokpal. Practically no delegation.	This is a sure way to kill Lokpal. The members will not be able to handle all cases. Within no time, they would be overwhelmed.
<b>NGOs</b>	Only government funded NGOs covered	All NGOs, big or small, are covered.	A method to arm twist NGO
<b>False, Frivolous and vexatious complaints</b>	No imprisonment. Only fines on complainants. Lokpal would decide whether a complaint is frivolous or vexatious or false.	Two to five years of imprisonment and fine. The accused can file complaint against complainant in a court. Interestingly, prosecutor and all expenses of this case will be provided by the government to the accused. The complainant will also have to pay a compensation to the accused.	This will give a handle to every accused to browbeat complainants. Often corrupt people are rich. They will file cases against complainants and no one will dare file any complaint. Interestingly, minimum punishment for corruption is six months but for filing false complaint is two years.

## Protests

### Local march by Delhi residents

On March 13, 2011, a group of Delhi residents dressed in white shirts and t-shirts drove around the city for four hours in support of an anti-corruption campaign and the passing of a Jan Lokpal Bill.

### Satyagraha Movement by activist Anna Hazare

Anti-corruption activist Anna Hazare went on hunger strike "unto death" on April 5, 2011, pending the enactment of a Jan Lokpal Bill.

### One-day fast by Mumbai residents

Around 6,000 Mumbai residents also began a one-day fast in support of similar demands. Protesters chose yellow as their colour and were seen wearing yellow dresses, T-shirts while waving yellow banners. Inter city protest co-ordination is underway to observe Yellow Sunday.

## **Jail Bharo Andolan by activist Anna Hazare**

Hazare also announced plans to start a Jail Bharo Andolan protest on 13 April 2011 if the Jan Lokpal bill is not passed by the government. He also stated that his group has received six crore (60 million) text messages of support and that he has further backing from a large number of Internet activists.

The protests are not associated with any political parties, and Hazare supporters discouraged political leaders from joining the protests, because Hazare believes that political parties were using the campaign for their own political advantage. Hazare announced to go on fast again from 16 August 2011 if Jan Lokpal Bill was not presented before Parliament of India. But government rejected his demand to present any other bill except the one drafted by them. To stop Hazare from going on Hunger Strike government put forth lots of conditions in front of him if he wanted to protest. Few of which were that no more than 5000 people can gather with him, the fast must not exceed three days and anytime medical check up could be conducted. Out of which Anna accepted few conditions to start his protest. But on Monday morning, Aug 16, Sec 144 was imposed around JP Park, New Delhi where he had planned to protest.

So Delhi Police arrested Anna from the place he was living on charges that his protest can cause law and order problems in Delhi. After his arrest thousands of people gathered in city to protest against government. People took out rallies in large numbers and gave arrests. Police arrested thousand of people and were put inside stadiums converted to jails.

## **Notable supporters and opposition**

In addition to the activists responsible for creating and organizing support for the bill, a wide variety of other notable individuals have also stated that they support this bill. Spiritual leaders Sri Sri Ravi Shankar and Yog Guru Ramdev have both expressed support. Notable politicians who have indicated support for the bill include Ajit Singh and Manpreet Singh Badal as well as the principal opposition party, Bharatiya Janta Party. In addition, numerous Bollywood actors, directors, and musicians have publicly approved of the bill.

Notable opposition has been expressed by HRD minister Kapil Sibal and other Congress leaders; Chief Minister of West Bengal Mamta Banerjee; Punjab Chief Minister and Akali Dal leader Prakash Singh Badal; Shiv Sena leader Bal Thackeray, and former Chief Justice of the Supreme Court Jagdish Sharan Verma. Although BJP showed their support earlier, there are reports that BJP shares the Congress's concern "over letting the civil society gain the upper hand over Parliament in lawmaking".

## **Government response**

To dissuade Hazare from going on an indefinite hunger strike, the Prime Minister's Office have directed the ministries of personnel and law to examine how the views of society activists can be included in the Lokpal Bill.

On 5 April 2011, the National Advisory Council rejected the Lokpal bill drafted by the government. Union Human Resource Development Minister Kapil Sibal then met social activists Swami Agnivesh and Arvind Kejriwal on 7 April to find ways to bridge differences over the bill. Hazare's fast was supported by the CPI(M) with their politburo issuing a statement demanding an effective Lokpal Bill.



After several rounds of talks, on 8 April 2011, Anna Hazare announced to his supporters that the Government had agreed to all his demands and he would break his fast on the following Saturday morning. According to the understanding reached, five of the ten-member joint-draft committee would come from society . Pranab Mukherjee will be the Chairman of the draft committee and Shanti Bhushan his Co-Chairman.

Government's handling of the formation of the draft committee, involving the civil society in preparation of the draft Lokpal bill, was criticized by various political parties: BJP, BJD, TDP, AIADMK, CPI-M, RJD, BJD, JD(U) and Samajwadi Party.

On July 28, 2011, the Union Cabinet ministers approved a bill that will be introduced in the Parliament in August 2011 for approval. This bill contains parts of the provisions proposed in Jan Lokpal bill. The essential features are: (1) Lokpal consists of eight members and a chairperson; the Chair will be retired Chief Justice; four members should have judicial background such as retired justices from the Supreme Court; the other four members should have 25 years of administrative experience in particular dealing with corruption with integrity; members are appointed for a term of five years; Lokpal will have its own investigation and prosecution wing; it has the authority to investigate corruption matters involving any ministers, Members of Parliament, any Group A officers in any organization set up by the Parliament; Lokpal will not have the power to prosecute but will have to refer the case to the Supreme Court. A nine member committee, headed by the Prime Minister (with members including the Speaker, opposition party leader, a minister and reputed legal professionals) and the Prime Minister and Supreme Court and High Court justices are exempted from the jurisdiction of Lokpal. If this bill becomes law, one major change from the current practice is that the LokPal can initiate investigation of government officials and ministers and other elected representatives without prior approval from the government, as it is practiced now under the Prevention of Corruption Act of 1988. Anna Hazare was arrested on 16 August 2011 By Delhi Police on his way to the JP park where he was supposed to start his unlimited hunger strike, since the local government earlier refused to issue permission for Hazare to carry out his strike in JP park. Arvind Kejriwal and many supporters also arrested.