

## **About India Against Corruption**

India Against Corruption is a citizen's movement to demand strong anti-corruption laws. Lokpal bills were introduced in 1968, 1971, 1977, 1985, 1989, 1996, 1998, 2001, 2005 and in 2008, yet they were never passed. After a fast by veteran social activist Anna Hazare and widespread protests by citizens across India the Government of India constituted a 10-member Joint Committee of ministers and civil society activists to draft an effective Jan Lokpal Bill.

### **Deficiencies in the present anti-corruption systems Central Government level:**

At central Government level, there is Central Vigilance Commission, Departmental vigilance and CBI. CVC and Departmental vigilance deal with vigilance (disciplinary proceedings) aspect of a corruption case and CBI deals with criminal aspect of that case.

**Central Vigilance Commission:** CVC is the apex body for all vigilance cases in Government of India.

- However, it does not have adequate resources commensurate with the large number of complaints that it receives. CVC is a very small set up with a staff strength less than 200. It is supposed to check corruption in more than 1500 central government departments and ministries, some of them being as big as Central Excise, Railways, Income Tax etc. Therefore, it has to depend on the vigilance wings of respective departments and forwards most of the complaints for inquiry and report to them. While it monitors the progress of these complaints, there is delay and the complainants are often disturbed by this. It directly enquires into a few complaints on its own, especially when it suspects motivated delays or where senior officials could be implicated. But given the constraints of manpower, such number is really small.
- CVC is merely an advisory body. Central Government Departments seek CVC's advice on various corruption cases. However, they are free to accept or reject CVC's advice. Even in those cases, which are directly enquired into by the CVC, it can only advise government. CVC mentions these cases of non-acceptance in its monthly reports and the Annual Report to Parliament. But these are not much in focus in Parliamentary debates or by the media.
- Experience shows that CVC's advice to initiate prosecution is rarely accepted and whenever CVC advised major penalty, it was reduced to minor penalty. Therefore, CVC can hardly be treated as an effective deterrent against corruption.
- CVC cannot direct CBI to initiate enquiries against any officer of the level of Joint Secretary and above on its own. The CBI has to seek the permission of that department, which obviously would not be granted if the senior officers of that department are involved and they could delay the case or see to it that permission would not be granted.

- CVC does not have powers to register criminal case. It deals only with vigilance or disciplinary matters.
- It does not have powers over politicians. If there is an involvement of a politician in any case, CVC could at best bring it to the notice of the Government. There are several cases of serious corruption in which officials and political executive are involved together.
- It does not have any direct powers over departmental vigilance wings. Often it is seen that CVC forwards a complaint to a department and then keeps sending reminders to them to enquire and send report. Many a times, the departments just do not comply. CVC does not have any really effective powers over them to seek compliance of its orders.
- CVC does not have administrative control over officials in vigilance wings of various central government departments to which it forwards corruption complaints. Though the government does consult CVC before appointing the Chief Vigilance Officers of various departments, however, the final decision lies with the government. Also, the officials below CVO are appointed/transferred by that department only. Only in exceptional cases, if the CVO chooses to bring it to the notice of CVC, CVC could bring pressure on the Department to revoke orders but again such recommendations are not binding.
- Appointments to CVC are directly under the control of ruling political party, though the leader of the Opposition is a member of the Committee to select CVC and VCs. But the Committee only considers names put up before it and that is decided by the Government. The appointments are opaque.
- CVC Act gives supervisory powers to CVC over CBI. However, these supervisory powers have remained ineffective. CVC does not have the power to call for any file from CBI or to direct them to do any case in a particular manner. Besides, CBI is under administrative control of DOPT rather than CVC.
- Therefore, though CVC is relatively independent in its functioning, it neither has resources nor powers to enquire and take action on complaints of corruption in a manner that meets the expectations of people or act as an effective deterrence against corruption.

**Departmental Vigilance Wings:** Each Department has a vigilance wing, which is manned by officials from the same department (barring a few which have an outsider as Chief Vigilance Officer. However, all the officers under him belong to the same department).

- Since the officers in the vigilance wing of a department are from the same department and they can be posted to any position in that department anytime, it is practically impossible for them to be independent and objective while inquiring into complaints against their colleagues and seniors. If a complaint is received against a senior officer, it is impossible to enquire into that complaint because an officer who is in vigilance today might get posted under that senior officer some time in future.
- In some departments, especially in the Ministries , some officials double up as vigilance officials. It means that an existing official is given additional duty of

vigilance also. So, if some citizen complaints against that officer, the complaint is expected to be enquired into by the same officer. Even if someone complains against that officer to the CVC or to the Head of that Department or to any other authority, the complaint is forwarded by all these agencies and it finally lands up in his own lap to enquire against himself. Even if he recuses himself from such inquiries, still they have to be handled by those who otherwise report to him. There are indeed examples of such absurdity.

- There have been instances of the officials posted in vigilance wing by that department having had a very corrupt past. While in vigilance, they try to scuttle all cases against themselves. They also turn vigilance wing into a hub of corruption, where cases are closed for consideration.
- Departmental vigilance does not investigate into criminal aspect of any case. It does not have the powers to register an FIR.
- They also do not have any powers against politicians.
- Since the vigilance wing is directly under the control of the Head of that Department, it is practically impossible for them to enquire against senior officials of that department.
- Therefore, the vigilance wing of any department is seen to softpedal on genuine complaints or used to enquire against "inconvenient" officers.

**CBI:** CBI has powers of a police station to investigate and register FIR. It can investigate any case related to a Central Government department on its own or any case referred to it by any state government or any court.

- CBI is overburdened and does not accept cases even where amount of defalcation is alleged to be around Rs 1 crore.
- CBI is directly under the administrative control of Central Government.
- So, if a complaint pertains to any minister or politician who is part of a ruling coalition or a bureaucrat who is close to them, CBI's credibility has suffered and there is increasing public perception that it cannot do a fair investigation and that it is influenced to scuttle these cases.
- Again, because CBI is directly under the control of Central Government, CBI is perceived to have been often used to settle scores against inconvenient politicians.

Therefore, if a citizen wants to make a complaint about corruption by a politician or an official in the Central Government, there isn't a single anti-corruption agency which is effective and independent of the government, whose wrongdoings are sought to be investigated. CBI has powers but it is not independent. CVC is independent but it does not have sufficient powers or resources.

### **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.

**Jan Lokpal Bill will improve existing anti-corruption systems.**

| Existing System  | System Proposed by civil society   |
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| <p><b>No politician or senior officer ever goes to jail despite huge evidence</b> because Anti Corruption Branch (ACB) and CBI directly come under the government. Before starting investigation or initiating prosecution in any case, they have to take permission from the same bosses, against whom the case has to be investigated.</p> | <p>Lokpal at centre and Lokayukta at state level will be independent bodies. ACB and CBI will be merged into these bodies. They will have power to initiate investigations and prosecution against any officer or politician without needing anyone's permission. Investigation should be completed within 1 year and trial to get over in next 1 year.<br/><b>Within two years, the corrupt should go</b></p> |

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|   | <b>to jail.</b>  |
| <b>No corrupt officer is dismissed from the job</b> because Central Vigilance Commission, which is supposed to dismiss corrupt officers, is only an advisory body. Whenever it advises government to dismiss any senior corrupt officer, its advice is never implemented. | Lokpal and Lokayukta will have <b>complete powers to order dismissal of a corrupt officer.</b> CVC and all departmental vigilance will be merged into Lokpal and state vigilance will be merged into Lokayukta.  |
| <b>No action is taken against corrupt judges</b> because permission is required from the Chief Justice of India to even register an FIR against corrupt judges.   | Lokpal & Lokayukta shall have <b>powers to investigate and prosecute any judge</b> without needing anyone's permission.  |
| <b>Nowhere to go</b> - People expose corruption but no action is taken on their complaints.   | Lokpal & Lokayukta will have to <b>enquire into and hear every complaint.</b>  |
| <b>There is so much corruption within CBI and vigilance departments.</b> Their functioning is so secret that it encourages corruption within these agencies.  | <b>All investigations in Lokpal &amp; Lokayukta shall be transparent.</b> After completion of investigation, all case records shall be open to public. Complaint against any staff of Lokpal & Lokayukta shall be enquired and punishment announced within two months. |
| <b>Weak and corrupt people are appointed as heads</b> of anti-corruption agencies.  | <b>Politicians will have absolutely no say in selections</b> of Chairperson and members of Lokpal & Lokayukta. Selections will take place through a transparent and public participatory process.  |
| <b>Citizens face harassment</b> in government offices. Sometimes they are forced to pay bribes. One can only complaint to senior officers. No action is taken on complaints because senior officers also get their cut.   | Lokpal & Lokayukta will get <b>public grievances resolved in time bound manner</b> , impose a penalty of Rs 250 per day of delay to be deducted from the salary of guilty officer and award that amount as compensation to the aggrieved citizen.                      |
| <b>Nothing in law to recover ill gotten wealth.</b> A corrupt person can come out of jail and enjoy that money.   | Loss caused to the government due to corruption <b>will be recovered</b> from all accused.   |
| <b>Small punishment for corruption-</b> Punishment for corruption is minimum 6 months and maximum 7 years.  | <b>Enhanced punishment</b> - The punishment would be minimum 5 years and maximum of life imprisonment.   |

### Critique of Government's Lokpal Bill 2010

***(Proposed to be passed as an ordinance by the Central government)***

UPA government has been under constant attack due to exposure of one scam after the other on the issue of corruption. In order to salvage its image, the government proposes to set up an institution of Lokpal to check corruption at high places. However the remedy seems to be worse than the disease. Rather than strengthening anti corruption systems, this bill if passed, will end up weakening whatever exists in the name of anti corruption today.

The principal objections to government's proposal are as follows:

- Lokpal will not have any power to either initiate action suo motu in any case or even receive complaints of corruption from general public. The general public will make complaints to the speaker of Lok Sabha or chairperson of Rajya Sabha. Only those complaints forwarded by Speaker of Lok Sabha/ Chairperson of Rajya Sabha to Lokpal would be investigated by Lokpal. This not only severely restricts the functioning of Lokpal, it also provides a tool in the hands of the ruling party to have only those cases referred to Lokpal which pertain to political opponents (since speaker is always from the ruling party). It will also provide a tool in the hands of the ruling party to protect its own politicians.
- Lokpal has been proposed to be an advisory body. Lokpal, after enquiry in any case, will forward its report to the competent authority. The competent authority will have final powers to decide whether to take action on Lokpal's report or not. In the case of cabinet ministers, the competent authority is Prime Minister. In the case of PM and MPs the competent authority is Lok Sabha or Rajya Sabha, as the case may be. In the coalition era when the government of the day depends upon the support of its political partners, it will be impossible for the PM to act against any of his cabinet ministers on the basis of Lokpal's report. For instance, if there were such a Lokpal today and if Lokpal made a recommendation to the PM to prosecute A. Raja, obviously the PM will not have the political courage to initiate prosecution against A. Raja. Likewise, if Lokpal made a report against the PM or any MP of the ruling party, will the house ever pass a resolution to prosecute the PM or the ruling party MP? Obviously, they will never do that.
- The bill is legally unsound. Lokpal has not been given police powers. Therefore Lokpal cannot register an FIR. Therefore all the enquiries conducted by Lokpal will tantamount to "preliminary enquiries". Even if the report of Lokpal is accepted, who will file the chargesheet in the court? Who will initiate prosecution? Who will appoint the prosecution lawyer? The entire bill is silent on that.
- The bill does not say what will be the role of CBI after this bill. Can CBI and Lokpal investigate the same case or CBI will lose its powers to investigate politicians? If the latter is true, then this bill is meant to completely insulate politicians from any investigations whatsoever which are possible today through CBI.

- There is a strong punishment for “frivolous” complaints. If any complaint is found to be false and frivolous, Lokpal will have the power to send the complainant to jail through summary trial but if the complaint were found to be true, the Lokpal will not have the power to send the corrupt politicians to jail! So the bill appears to be meant to browbeat, threaten and discourage those fighting against corruption.
- Lokpal will have jurisdiction only on MPs, ministers and PM. It will not have jurisdiction over officers. The officers and politicians do not indulge in corruption separately. In any case of corruption, there is always an involvement of both of them. So according to government’s proposal, every case would need to be investigated by both CVC and Lokpal. So now, in each case, CVC will look into the role of bureaucrats while Lokpal will look into the role of politicians. Obviously the case records will be with one agency and the way government functions it will not share its records with the other agency. It is also possible that in the same case the two agencies arrive at completely opposite conclusions. Therefore it appears to be a sure way of killing any case.
- Lokpal will consist of three members, all of them being retired judges. There is no reason why the choice should be restricted to judiciary. By creating so many post retirement posts for judges, the government will make the retiring judges vulnerable to government influences just before retirement as is already happening in the case of retiring bureaucrats. The retiring judges, in the hope of getting post retirement employment would do the bidding of the government in their last few years.
- The selection committee consists of Vice President, PM, Leaders of both houses, Leaders of opposition in both houses, Law Minister and Home minister. Barring Vice President, all of them are politicians whose corruption Lokpal is supposed to investigate. So there is a direct conflict of interest. Also selection committee is heavily loaded in favor of the ruling party. Effectively ruling party will make the final selections. And obviously ruling party will never appoint strong and effective Lokpal.
- Lokpal will not have powers to investigate any case against PM, which deals with foreign affairs, security and defence. This means that corruption in defence deals will be out of any scrutiny whatsoever. It will become impossible to investigate into any Bofors in future.

Therefore, the draft Lokpal ordinance is eyewash, a sham. It is sad that despite so much of embarrassment caused to UPA due to so many scams, UPA is still making a fool of the people in the form of this draft ordinance.

<http://www.indiaagainstcorruption.org/index.html>