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Personnel Administration in India (202)

LOKPAL

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 one year and conduct trials for the case within the next year.

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

Retired IPS officer [Kiran Bedi](#) and others, like Anna Hazare, Swami Agnivesh, Sri Sri Ravi Shankar, and Mallika Sarabhai are also members of the movement, called [India Against Corruption](#). Its website describes the movement as "an expression of collective anger of people of India against corruption." It goes on to state: "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, an anti-corruption crusader, began a fast-unto-death, demanding that this bill, drafted by [Civil Society](#), be adopted. The website of the India Against Corruption movement calls the Lokpal Bill of the government an "eyewash", and hosts a critique of that government bill. It also lists the difference between the bills drafted by the government and civil

Features of the Jan Lokpal Bill

1. An institution called Lokpal at the centre and [Lokayukta](#) in each state will be set up.
2. Like the Supreme Court and Election Commission, they will be completely independent of 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 the 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. If the work of any citizen is not done in a prescribed time, in any government office, Lokpal will impose a financial penalty on the guilty officers, which will be given as compensation to the complainant. So, one may approach the Lokpal or the Lokayukta if one's ration card or passport or voter card have not been made in time, with no reason being cited for doing so, or if the police does not register one's case, or if any other work has not been done within the prescribed time, without any valid reason being cited for doing so. Lokpal will have to get it done in a month's time. One may also report any case of corruption to Lokpal, like rations being siphoned off, poor quality roads being constructed or government funds being siphoned off.

6. The entire functioning of Lokpal/ Lokayukta will be completely transparent. Any complaint against any officer of Lokpal will be investigated and the officer dismissed within two months if the charges are found to be true.
7. CVC, the departmental vigilance and anti-corruption branch of the CBI, however, will not be merged with the office of the Lokpal. The Lokpal will have complete powers and machinery to independently investigate and prosecute any officer, judge or politician.
8. It will be the duty of the Lokpal to provide protection to those who are being victimized for raising their voice against corruption.

Powers of the Lokpal [Edit](#)

The Lokpal has jurisdiction to inquire into allegations of corruption against anyone who is or has been Prime Minister, or a Minister in the Union government, or a Member of Parliament, as well as officials of the Union government under Groups A, B, C and D. Also covered are chairpersons, members, officers and directors of any board, corporation, society, trust or autonomous body either established by an Act of Parliament or wholly or partly funded by the Union or State government. It also covers any society or trust or body that receives foreign contribution above ₹10 lakh (approx. US\$14,300/- as of 2019).^[8]

The Lokpal, however, cannot inquire into any corruption charge against the Prime Minister if the allegations are related to international relations, external and internal security, public order, atomic energy and space, unless a full Bench of the Lokpal, consisting of its chair and all members, considers the initiation of a probe, and at least two-thirds of the members approve it. Such a hearing should be held in camera, and if the complaint is dismissed, the records shall not be published or made available to anyone.^[8]

A complaint under the Lokpal Act should be in the prescribed form and must pertain to an offence under the [Prevention of Corruption Act](#) against a public servant. There is no restriction on who can make such a complaint. When a complaint is received, the Lokpal may order a preliminary inquiry by its Inquiry Wing, or refer it for investigation by any agency, including the CBI, if there is a [prima facie](#) case. Before the ordering of an investigation by the agency, the Lokpal shall call for an explanation from the public servant to determine whether a [prima facie](#) case exists. This provision, the Act says, will not interfere with any search and seizure that may be undertaken by the investigating agency. The Lokpal, with respect to Central government servants, may refer the complaints to the [Central Vigilance Commission](#)(CVC). The CVC will send a report to the Lokpal regarding officials falling under Groups A and B; and proceed as per the [CVC Act](#) against those in Groups C and D.^[8]

The Inquiry Wing or any other agency will have to complete its preliminary inquiry and submit a report to the Lokpal within 60 days. It has to seek comments from both the public servant and "the competent authority," before submitting its report. There will be a 'competent authority' for each category of public servant. For instance, for the Prime Minister, it is the [Lok Sabha](#), and for other Ministers, it will be the Prime Minister. And for department officials, it will be the Minister concerned.^[8]

A Lokpal Bench consisting of no less than three members shall consider the preliminary inquiry report, and after giving an opportunity to the public servant accused of corruption for his/her defence, decide whether it should proceed with the investigation. It can order a full investigation, or initiate departmental proceedings or close the proceedings. It may also proceed against the

complainant if the allegation is false. The preliminary inquiry should normally be completed within 90 days of receipt of the complaint.[8]

After the investigation, the agency ordered to conduct the probe has to file its investigation report in the court of appropriate jurisdiction, and a copy of the report has to be filed before the Lokpal. A Bench of at least three members will consider the report and may grant sanction to the Prosecution Wing to proceed against the public servant based on the agency's chargesheet. It may also ask the competent authority to take departmental action or direct the closure of the report. Previously, the authority vested with the power to appoint or dismiss a public servant was the one to grant sanction under Section 197 of the Code of Criminal Procedure and Section 19 of the Prevention of Corruption Act. Now this power will be exercised by the Lokpal, a judicial body. In any case, the Lokpal will have to seek the comments of the 'competent authority' as well as the public servant's comments before granting such sanction.[8]

The Lokpal will have a Secretary, who will be appointed by the Lokpal Chairperson from a panel of names prepared by the Union government. The Secretary will be of the rank of Secretary to the Government of India. The Lokpal will have to appoint an Inquiry Wing, headed by a Director of Inquiry, and a Prosecution Wing, headed by a Director of Prosecution. Until these officers are appointed, the government will have to make available officers and staff from its Ministries and Departments to conduct preliminary inquiries and pursue prosecution. The institution will also have to appoint other officers and staff.[8]

Public servants will have to declare their assets and liabilities in a prescribed form. If any asset(s) found in their possession is/are not declared, or if misleading information about these are furnished, it may lead to an inference that assets were acquired by corrupt means. For public servants under the State governments, the States have to set up [Lokayuktas](#) to deal with charges against their own officials.[8]

Fundamental duties [Edit](#)

1. To make jurisdictions against corruption cases with the Lokpal.
2. To judge whether a case is genuine or whether a fake complaint has been made.

[Anna Hazare](#), a [Gandhian](#) rights activist, had started a fast unto death at [JantarMantar](#) in [New Delhi](#) demanding the passing of the bill. Hazare called off his hunger strike on 9 April 2011, bringing to an end his 98-hour protest after the government issued a [gazette](#) notification constituting a 10-member Joint Committee of government ministers and civil society activists, including him, to draft a bill for the creation of an effective Lokpal. Thousands of people from all over India, especially youth, supported Anna Hazare's cause by attending candle lit marches and conducting [online campaigns](#) through social media.

Recently [yoga](#) guru, [Swami Ramdev](#), fasted for this cause for 9 days from 4 to 12 June 2011. He wanted the [Government of India](#) to accept various demands, which mainly included those related to the Lokpal Bill.

Anna Hazare on 8 June 2011, declared that he would again fast unto death on 16 August, if the Lokpal bill were not passed by the [Parliament of India](#) by 15 August, which is the [Independence Day of India](#).[9]

On 16 June, Civil Society reported that only 15 points, of 71, that they recommended have been agreed to by the Joint Committee consisting of five central ministers. Following differences with the Civil Society, the team of five central ministers decided to forward two drafts of the Lokpal Bill to the Cabinet, one from each side. Anticipating some sort of police action against his fast,

intended for 16 August, social activist Anna Hazare said he would ask the Supreme Court to prevent any situation similar to the police crackdown on Baba Ramdev and his supporters at RamlilaMaidan.

"The government said, 'we will suppress the agitation of Anna Hazare as had been done in the case of Ramdev'. Is this democracy or autocracy? You cannot suppress.... That is why we will go to the Supreme Court tomorrow," Hazare told reporters, adding "the Constitution has given right to every citizen to lodge a protest. We will launch the agitation from August 16."^[10]

On 27 December 2011, the Lokpal bill was passed by the Lok Sabha after a day-long debate and amendments. The Indian Army, the Indian Air Force and the Indian Navy have been kept out of the jurisdiction of the Lokpal. The bill also keeps the CBI independent.

The Lokpal and Lokayuktas Act, 2013 [Edit](#)

The historic [Lokpal and Lokayuktas Act, 2013](#) was passed by Indian Parliament paving the way for establishment of a Lokpal (Ombudsman) to fight corruption in public offices and ensure accountability on the part of public officials, including the Prime Minister, but with some safeguards.

Lokpal will consist of a chairperson and a maximum of eight members, of which 50% will be judicial members 50% members of Lokpal shall be from SC/ST/OBCs, minorities and women. Selection of chairperson and members of Lokpal through a selection committee consisting of PM, Speaker of Lok Sabha, leader of opposition in Lok Sabha, Chief Justice of India or a sitting Supreme Court judge nominated by CJI. Eminent jurist to be nominated by President of India on basis of recommendations of the first four members of the selection committee "through consensus". Lokpal's jurisdiction will cover all categories of public servants. All entities (NGOs) receiving donations from foreign source in the context of the Foreign Contribution Regulation Act (FCRA) in excess of Rs 10 lakh per year are under the jurisdiction of Lokpal. Centre will send Lokpal bill to states as a model bill. States have to set up Lokayuktas through a state law within 365 days.

- Lokpal will have power of superintendence and direction over any central investigation agency including CBI for cases referred to them by the ombudsman.
- A high-powered committee chaired by the PM will recommend selection of CBI director. The collegium will comprise PM, leader of opposition in Lok Sabha and Chief Justice of India PM has been brought under purview of the Lokpal, so also central ministers and senior officials.
- Directorate of prosecution will be under overall control of CBI director. At present, it comes under the law ministry.
- Appointment of director of prosecution to be based on recommendation of the Central Vigilance Commission.
- Director of prosecution will also have a fixed tenure of two years like CBI chief.
- Transfer of CBI officers investigating cases referred by Lokpal with the approval of watchdog.
- Bill incorporates provisions for attachment and confiscation of property acquired by corrupt means, even while prosecution is pending.

- Bill lays down clear timelines for preliminary enquiry and investigation and trial. Provides for special courts Public servants will not present their view before preliminary enquiry if the case requires 'element of surprise' like raids and searches.
- Bill grants powers to Lokpal to sanction prosecution against public servants.
- CBI may appoint a panel of advocates with approval of Lokpal, CBI will not have to depend on govt advocates.