

JAN LOKPAL BILL

A DETAILED ANALYSIS

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Why do we need Jan Lokpal?

There are several deficiencies in our anti-corruption systems because of which despite overwhelming evidence against the corrupt, no honest investigation and prosecution takes place and the corrupt are hardly punished. The whole anti-corruption set up ends up protecting the corrupt.

Our anti-corruption agencies have basic structural deficiencies because of which they are incapable of doing any honest investigations:

The following four deficiencies stand out in our anti-corruption system. For details on deficiencies in our anti-corruption systems, please read **Annexure 1**.

a. Lack of Independence

Most of our agencies like CBI, state vigilance departments, internal vigilance wings of various departments, Anti-corruption Branch of state police etc are not independent. In many cases, they have to report to the same people who are either themselves accused or are likely to be influenced by the accused. For instance,

- The Chief Minister of Punjab is the Minister in charge of Vigilance Department of Punjab. Interestingly, the same vigilance department is also investigating charges of corruption against himself and his family and is prosecuting them. Can we expect the vigilance department to do any honest investigations or prosecution?
- Please read detailed report in Annexure 2 to see how despite huge unaccounted cash being recovered from the house of a top NHAI officer, Kamal Nath denied permission to register a case of corruption against him. Coal Ministry just sat on CBI's repeated requests to prosecute the officer who was to become the CMD. Railways just sat on CBI's request to prosecute one of its top employees involved in railway recruitment scam.

b. Powerless

Some bodies like CVC or Lokayuktas are independent, but they do not have any powers. They have been made advisory bodies. They give two kinds of advise to the governments – to either impose departmental penalties on any officer or to prosecute him in court. Experience shows that whenever any minister or a senior officer is involved, their advice is rarely followed.

c. Multiplicity of agencies

Governments have deliberately created plethora of anti-corruption agencies and given them fractured mandates. This has been done to render them ineffective. For instance,

- At central government level, in the same case of corruption, CVC is supposed to look into the vigilance angle of senior bureaucrats and departmental vigilance is supposed to look into the role of junior bureaucrats. As if junior and senior bureaucrats indulge in corruption separately.
- Again in the same case, whereas these two agencies enquire into the matter from vigilance angle, CBI investigates into the same matter from criminal angle i.e corruption angle. Now, the vigilance and corruption angles are almost the same. The two agencies broadly do the same enquiries and investigations.
- According to the Lokpal model proposed by Government of India, CVC will enquire into the role of bureaucrats and Lokpal will look into the role of politicians, as if politicians and bureaucrats indulge in corruption separately.

Firstly, this kind of fractured mandate creates confusion. Secondly, enquiries and investigations into any case go on and on for years. For instance, in street lighting case of Common Wealth Games, first an enquiry was done by CVC, then CBI investigated into the same case and then it was again enquired into by Shunglu committee. Thirdly, if two agencies arrive at conflicting conclusions on the same case, it only weakens the case against corrupt people. The final beneficiaries of this confusing system are the corrupt people who never get punished.

d. Lack of Transparency and internal accountability

In addition, there is the problem of internal transparency and accountability of these anti-corruption agencies. Presently, there isn't any separate and effective mechanism to check if the staff of these anti-corruption agencies turns corrupt.

That is why, despite so many agencies, corrupt people rarely go to jail. Corruption has become a high profit zero risk business. There is absolutely no deterrence against corruption.

Our anti-corruption laws also have several critical deficiencies, which end up protecting the corrupt.

For instance,

- Even if a corrupt person is sent to jail, there is no provision in law to confiscate his ill gotten wealth or to recover the loss caused by him to the government due to his corrupt practices.

- Before initiating investigations or prosecution into any case, permission has to be taken from some officer or minister in charge of the same department. In many cases, they themselves are directly or indirectly involved in that case.

Therefore, there seems to be too much protection for the corrupt people. There are many other deficiencies in our anti-corruption laws. The above have been mentioned only by way of illustration.

Jan Lokpal Bill seeks to address these deficiencies in anti-corruption agencies and the law.

Structure of Lokpal

Jan Lokpal Bill proposes that at the level of Central Government, an institution called Jan Lokpal should be set up. Likewise, in each state, Jan Lokayukta should be set up. Jan Lokpal will accept corruption complaints against Central government departments and Jan Lokayukta will accept complaints against departments of respective state government.

Each of these bodies will have 10 members and one Chairperson.

a. Independence of Jan Lokpal and Jan Lokayukta

Jan Lokpal and Jan Lokayukta would be completely independent of the governments. Their independence would be ensured through following measures:

(i) Administrative independence

They will be independent agencies like Central Election Commission, Comptroller and Auditor general of India and Supreme Court. Therefore, no politician or a bureaucrat will be able to interfere with its functioning.

(ii) Financial independence

Their expenses will be charged to the Consolidated Fund of India/State. They will be provided whatever expenses they require.

(iii) Manpower

They will have powers to assess their manpower requirements and employ them either from existing government servants (who can come on deputation basis) or directly from the market.

b. Single anti-corruption agency

Anti-corruption branch of CBI, CVC and departmental vigilance wings will be merged into Lokpal. Anti-Corruption Branch of Police, state vigilance departments would be merged into Jan Lokayuktas. In 1986, when Karnataka Lokayukta was created, all existing anti-corruption and vigilance agencies in the state were merged into Lokayukta.

Presently, we have institutions of Lokayuktas in 18 states. They are merely advisory bodies. They neither have resources nor powers. They will be replaced with Jan Lokayuktas through Jan Lokpal Bills.

c. No more advisory bodies

Jan Lokpal and Jan Lokayukta will not be advisory bodies. They will have powers to start investigation or prosecution in any case. For that, they will not need permission from any government agency.

Jan Lokpal and Jan Lokayukta will also have powers to impose departmental penalties on bureaucrats.

What action will be taken by Lokpal against corrupt people?

There is corruption at all levels – in panchayat works, in construction of roads, in NREGA, mid day meals, rations, 2G spectrum, leasing of mines, Common Wealth Games etc. Jan Lokpal will ensure that corrupt people are punished through the following provisions.

a. Time bound investigations

Investigation in any case of corruption will have to be completed within one year. Jan Lokpal or Jan Lokayukta will have powers to employ more officers, if required, to complete investigations in time. After investigations, Lokpal or Lokayukta shall take two actions:

- **Dismiss corrupt officers:** After investigations, if adequate evidence is found, then after giving an opportunity of being heard, Jan Lokpal or Jan Lokayukta will have powers to remove a government officer from job or to impose any other departmental penalties like reduction in rank, stopping promotion etc. These orders could be challenged in High Court.
- **Time bound trial:** In addition to imposing departmental penalties, if a case is made out, Jan Lokpal or Jan Lokayukta will file a case in trial court. The court will have to complete the trial and announce punishment within next one year. If required, Jan Lokpal or Jan Lokayukta will have powers to direct the government to set up additional courts to complete the trial in time.

b. Recovery of loss caused to government

During investigations, if there is strong evidence against corruption, Jan Lokpal or Jan Lokayukta shall ban the transfer of assets of the accused or the assets of those who would have benefitted from the accused. At the time of conviction, the court will assess the loss caused by the accused to the government. This loss will be recovered from these assets and as land revenue. (Currently, there is no provision

in our law to recover the bribes earned by corrupt people or the loss caused by them to the government).

c. Confiscation of assets

Each bureaucrat, politician and judge would be required to submit a statement of moveable and immovable assets owned by him and his family on an annual basis, which will be put on the official website. If an asset is subsequently found to be owned by a public servant, it would be deemed to have been obtained through corrupt means and would be confiscated. Prosecution proceedings would be initiated against the accused.

Similarly, after each election, the Jan Lokpal will verify the assets declared by each candidate. If undeclared assets are found, a case will be registered and investigations started.

d. Increased punishment for corruption

Presently, the maximum punishment for corruption is seven years, which is believed to be very less. This is proposed to be increased to life sentence.

e. Illegally obtained benefits are deemed to be obtained through corruption

In the current system, if anyone obtains any benefit from the government illegally, it is difficult to prove that he did so by paying bribes. Therefore, it has been provided in Jan Lokpal Bill that if a person obtains any benefit from the government in violation of a law or rules and regulations, that person along with concerned public servants shall be deemed to have indulged in corrupt practice.

f. Power to punish if its orders are not followed

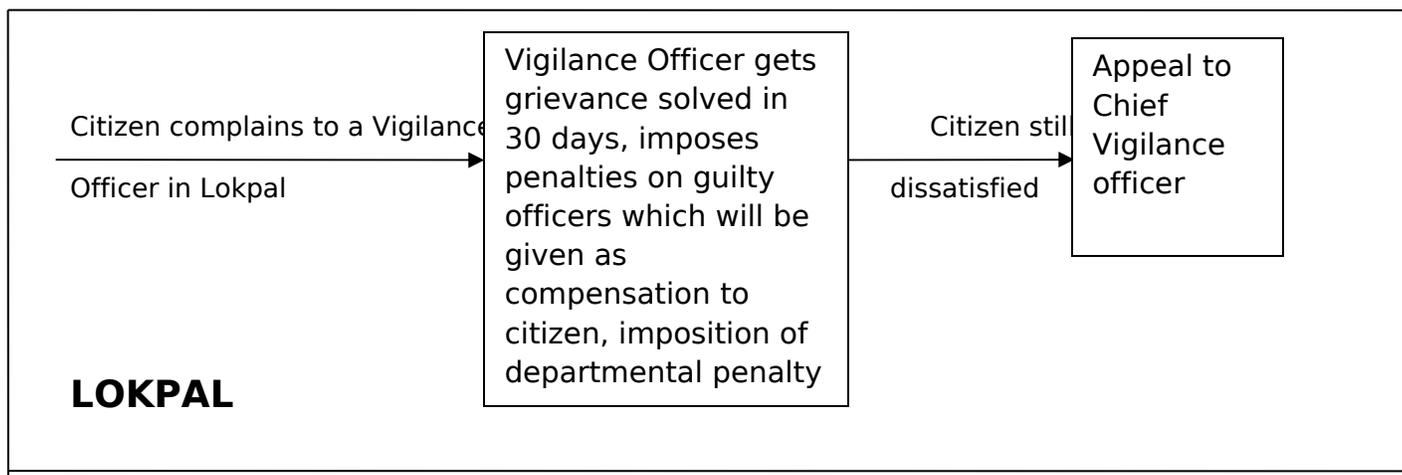
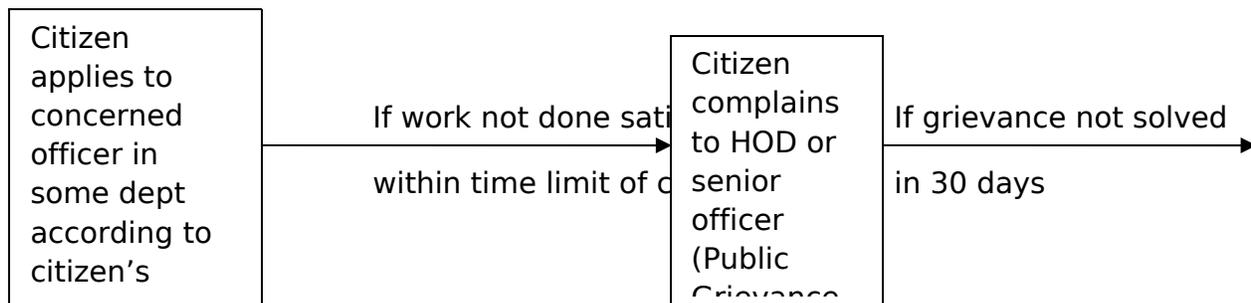
If orders of the Jan Lokpal or Jan Lokayukta are not obeyed, it will have the powers to impose financial penalties and also initiate contempt proceedings against the guilty officials.

How will Lokpal provide relief to a common man against bribery?

Today, a common man has to pay bribe to get any work done in any government department like making ration card or passport or getting income tax refund or old age pension etc. Jan Lokpal and Jan Lokayukta will provide relief to a common man against such day to day corruption.

- Each government department will have to make a Citizen's Charter telling who does what job and in how much time. For instance, the charter will have to mention which officer will make ration card and in what time, which officer will make a passport and in how much time etc.
- If Charter is not followed, then people can complain to the Head of that department who will be designated as the Public Grievance Officer (PGO)
- PGO will redress the complaint within 30 days maximum
- If PGO doesn't satisfy the complainant, then a complaint can be made to the vigilance officer of Jan Lokpal and Jan Lokayukta. Lokpal will have a vigilance officer in each district and Lokayukta will have it in each block.
- When a complaint of violation of citizens charter reaches a Vigilance Officer, it will be deemed to have corruption angle.
- The Vigilance Officer will have to
 - Solve the grievance in 30 days
 - Impose penalty on the guilty officers which will be given to the Complainant as compensation
 - Start investigations of corruption against guilty officers.
- If a citizen is not satisfied with the action taken by Vigilance officer, he could appeal to the Chief Vigilance officer in Lokpal or Lokayukta.
- The officers of any department against whom financial and departmental penalties have been imposed may appeal against it in High Court.
- We believe that as soon as a few penalties get imposed upon the Head of any Department, he will put adequate systems in place and ensure that no grievances take place in future.

Flow chart to show how public grievances related to violation of citizen's charter will be dealt in Lokpal?



How to ensure that there is no corruption within Jan Lokpal

a. Firstly, by ensuring that the right person is selected for this role!

Selection process for the members and Chairperson of Jan Lokpal and Jan Lokayukta has been kept transparent, broad based and participatory.

- The 10 members and the chairperson of Jan Lokpal will be selected by a *Selection Committee* that would comprise of the PM, Leader of the opposition in Lok Sabha, two youngest judges of Supreme Court (SC), two youngest Chief Justices of High Courts, Comptroller and Auditor General (CAG) and the Chief Election Commissioner (CEC). The *Selection Committee* will make the above appointment from a pool of shortlisted candidates that has been identified by a "*Search Committee*".
- The "*Search Committee*" is a 10-member committee formed as follows: First, the *Selection Committee* selects five members from retired Chief Election Commissioners and retired CAGs. However those CECs and CAGs who have any substantive allegation of corruption against them or who have joined any political party after retirement or who are still in any government appointment shall not be eligible. These 5 members will then select another 5 members from the civil society to make the 10-member *Search Committee*.
- The *Search Committee* will invite recommendations from various eminent people (like journalists, academics, etc). These names will be put up on a website and public feedback invited. The search committee will then, by consensus, choose 3 times the number of vacancies. This list will be forwarded to the *Selection Committee* which will then make final selections through consensus.
- All meetings of the *Search Committee* and *Selection Committee* shall be video recorded and will be made public.
- Jan Lokpal and Jan Lokayukta will then select and appoint its own officers and staff.

b. Secondly, by ensuring that they work well!

- Every complaint to Jan Lokpal or Jan Lokayukta shall have to be compulsorily disposed. No complaint could be rejected without giving a hearing to the complainant. If any case is closed, all records related thereto shall be made public
- The functioning of Jan Lokpal and Jan Lokayukta will be completely transparent. All records will be open to the public, barring those which will affect national security or security of the whistle blower. Those which will impede the process of

investigation, may be withheld during investigations but these records will also have to be disclosed after conclusion of investigations.

- Lokpal will publish every month on its website the status of cases received, disposed, closed, reasons for closure and the list of cases pending

c. Thirdly, by ensuring that Jan Lokpal and Jan Lokayukt are not influenced!

The Chairperson and members will not be eligible for appointment to any position in the government or for contesting elections after they leave office.

d. Fourthly, by ensuring that if not working well, they can be removed!

(i) Removal of corrupt staff in Lokpal or Lokayukta

Complaints of corruption against the staff could be made to an independent platform, which will be set up in each Commissionerate or at the level of each state and at national level. These complaints will be enquired into within a month. If the allegations are proved, the corrupt staff will be dismissed from the job in the next one month and a criminal case will be registered under various sections of Indian Penal Code and Prevention of Corruption Act.

(ii) Removal of Lokpal or Lokayukta members or Chairperson

Complaints against members and chair person could be made to Supreme Court or respective High Court. A bench of respective Court, after hearing, may order the formation of a Special Investigation Team that will conduct an inquiry and submit its report within 3 months. On the basis of this enquiry report, the respective Court may order removal of the member or Chairperson.

Jurisdiction of Lokpal

a. High Court and Supreme Court Judges

(i) Removal of a Supreme Court or High Court Judge

Present system: Under the present system, a judge can be removed for misconduct by the process of impeachment specified in the Constitution of India.

Proposed system: Jan Lokpal Bill does not propose to change this system.

(ii) Investigating Cases of Corruption of Supreme Court or High Court Judges

Present system: Today, if there is an allegation of corruption against any Supreme Court (SC) or High Court (HC) judge, an FIR cannot be registered and investigations cannot be started into those allegations without the permission of the Chief Justice of India (CJI). Experience shows that Chief Justices have hesitated in giving permissions, despite overwhelming evidence of corruption being presented against any judge.

Even those Chief Justices, who have been well known for their honesty, did not give permissions. For instance, Mr P Chidambaram sought permission to register an FIR against Justice Sen Gupta of Kolkatta High Court. Permission was sought from the then Chief Justice of India, Justice Venkatachaliah, who is very well known for his integrity. However, Justice Venkatachaliah did not give permission. Was the evidence against Justice Sen Gupta strong enough? The strength of the evidence can be gauged from the fact that Justice Sen Gupta was raided and arrested soon after he retired because after retirement, permission of CJI was not required.

There are many more instances when permission for registration of FIR has been denied. Some such cases are mentioned below:

- Despite overwhelming evidence, request of the Campaign on Judicial Accountability (represented by Shanti Bhushan, Prashant bhushan, Ram jethmalani, Justice Rajender Sachhar, Indira jaisingh, Arvind Nigam etc) seeking permission to register an FIR against Justice Bhalla of Allahabad High Court is pending before the Chief Justice of India since 2006.
- Similarly, the request of Campaign for Judicial Accountability and Judicial Reforms seeking to register FIR against Justice F I Rebello is pending since September 2010.

Therefore, the present system of seeking permission from the CJI to register an FIR against a judge of SC or HC appears to have protected the corrupt and encouraged corruption in higher judiciary.

Proposed system: An impression is being sought to be created that judiciary is being brought under the control of Jan Lokpal. This is completely incorrect.

What is being proposed is that the permission to register FIR against corruption of any judge should be granted by a seven member bench of Jan Lokpal (the bench may have majority of judicial members) rather than the Chief Justice of India. That is the only real difference in the system proposed in Jan Lokpal Bill and the existing system.

Post registration of an FIR, the police or CBI investigates and prosecutes (if a case is made out) under the existing system. Since we are proposing that the anti corruption branch of CBI would be merged into Jan Lokpal and would form the investigation and prosecution wing of Jan Lokpal, therefore, obviously the investigations and prosecution after registration of FIR is proposed to be done by the new investigation and prosecution wings of Lokpal.

After completion of investigations, a full bench of Lokpal would decide whether to initiate prosecution or not. Lokpal will not have any powers to award punishment or to remove judges. The case would go to the normal courts for trial and punishment.

Therefore, effectively, there is just one change being proposed from the existing system – that rather than CJJ giving permission to register FIR, a seven member bench of Lokpal should grant such permission.

(iii) Objections by some friends to the inclusion of higher judiciary within the purview of Jan Lokpal Bill

<u>Critique of our proposal</u>	<u>Our response</u>
This would affect the independence of judiciary.	How will it affect the independence of judiciary? We have greatest respect for our judiciary and we strongly stand for its independence. Most of the judges in higher judiciary are honest. However, a few of them bring bad name to the whole judiciary due to their wrongdoings. They ought to be identified and acted against. A system which effectively does that would strengthen the independence of judiciary and increase its credibility in the eyes of the public. Present system tends to protect the corrupt and encourages corruption. Therefore, the present system tends to lower the prestige and credibility of judiciary in the

	<p>minds of the people and compromises its independence.</p> <p>Jan Lokpal Bill seeks to create a system, which is independent of judiciary, to grant permission to register an FIR and initiate investigations against a judge.</p>
<p>This would tremendously increase the workload of Lokpal</p>	<p>There are less than 1000 SC and HC judges in our country. Justice S P Bharucha had once commented that less than 20% of higher judiciary is corrupt. Obviously, complaints will not come against all of them at the same time. But even if all complaints came together, there will be less than 200 complaints. That is a very small number and would not increase the workload of Lokpal in any manner.</p>
<p>Judicial matters are very technical. Therefore, Only people from judiciary should deal with complaints against judges.</p>	<p>Jan Lokpal Bill does not empower Lokpal to go into or question the judicial procedures or decisions of judiciary. It does not empower Lokpal to peep into professional (mis)conduct of judges. It only empowers them to grant permission to register an FIR against a judge against whom there are allegations of bribery. Giving and accepting bribe is a criminal offence. There is no technicality involved in that.</p> <p>If that logic were accepted, then the income tax people would also say that income tax is a very complex subject and only people with income tax backgrounds should deal with allegations of corruption against income tax officers. There would be similar demands from politicians, customs officers and other sections of bureaucracy.</p>
<p>But the proceedings for impeachment of judges is already provided in the Constitution. Are you suggesting an amendment to the Constitution?</p>	<p>We are not seeking any amendment to the constitution. We are not even touching the provisions relating to impeachment of judges as provided in</p>

	<p>the constitution. We are not even talking of impeachment. All that we are saying is that the power to grant permission to register FIR against a judge should be given to a seven member bench of Lokpal rather than the CJI.</p>
<p>What will happen to the Judicial Accountability Bill presented by the Government?</p>	<p>Unfortunately, the Judicial Standards and Accountability Bill presented by the Government does not inspire confidence that it would make judiciary accountable in any manner. This Bill seems to be driven by the belief that the judiciary must be essentially accountable to itself though it seeks to induct some people from the executive in the bodies as well. Thus the judicial oversight committee, which would receive complaints against judges, would be a body comprising of the former Chief Justice of India, a sitting judge of the Supreme Court, a sitting judge of the High Court, the Attorney General and one "eminent person" nominated by the President. This means three persons in the judiciary, including two sitting judges, and two persons from the executive. Moreover three out of the five members are ex officio, being very busy in their official work. The oversight committee is therefore neither independent of the government nor the judiciary. Moreover they can hardly devote adequate time to the task of looking at complaints against all judges of the higher judiciary. Even worse is a provision in the Bill requiring a complaint to be sent to the scrutiny committee consisting of two sitting judges and a retired Chief Justice of the same court. This will make it virtually impossible to the scrutiny committee to give an unbiased report against a person who is, and has been, a professional colleague and brother judge on the bench at the</p>

	<p>same court.</p> <p>Besides, Judicial Accountability Bill does not talk of bribery by the judges. It only talks of professional misconduct. Jan Lokpal talks of criminal misconduct. Therefore, the two bills complement each other. The Judicial oversight committee will not have the police and investigative powers and machinery to deal with criminal complaints of bribery. It could be done only by Lokpal.</p>
<p>Complaints against Lokpal members will go to Supreme Court and those against Supreme Court judges will go to Lokpal. Would that not create some kind of circularity?</p>	<p>Such circularity is a part of internal checks and balances at top levels in any democracy. For instance, Supreme Court keeps a check on legislature and Executive and the Legislature has powers to legislate on judicial matters.</p> <p>If there is a complaint against a Supreme Court judge and a Lokpal member at the same time, then obviously, the accused judge or the accused member will recuse himself from the benches.</p> <p>If ever such an eventuality happens, the transparency of proceedings in the two institutions will keep a check on the possibility of any misuse. The hearings at the two places will be open for the public and media.</p>
<p>Won't we need to amend the constitution to allow a seven member bench of Lokpal to give permission rather than the CJI under the existing system?</p>	<p>No, we won't need any amendment. There is no provision either in the constitution or in any law which empowers the CJI to give permission before registration of an FIR against any judge. Such a system was created by the Supreme Court through an order in Veeraswamy case, in which the SC made it mandatory that permission would need to be sought before registration of an FIR against any judge. Interestingly, no frivolous FIR had ever been filed against</p>

	any judge before that judgement and such a judgement was completely uncalled for.
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b. Elected politicians including ministers and Prime Minister

(i) For their conduct outside parliament

If any politician indulges in any corruption outside Parliament, he could be investigated against by the Lokpal or Lokayukta on either a complaint from any citizen or suo moto. After completion of investigations, if a case is made out, Lokpal or Lokayukta shall file prosecution in court. The court will have to complete its trial and pass orders within one year.

In the case of ministers including Prime Minister and Chief Minister, the permission for starting investigations or initiating prosecution will have to be given by a full bench (seven members) of Lokpal or Lokayukta.

In the case of ministers barring Prime Minister, if a case is made out, Lokpal or Lokayukta may recommend removal of the minister to the Governor or President. Such recommendation will also have to be made by a full bench of Lokpal or Lokayukta.

(ii) For their conduct inside Parliament

If any politician indulges in any corruption inside Parliament, then either suo moto or on a complaint from anyone, the Chairperson of respective House shall forward the case to the Ethics Committee. If Ethics Committee so recommends, the Chairperson shall forward the complaint to Lokpal or Lokayukta for necessary investigations. Lokpal shall be responsible for conducting investigations and shall submit its report to the Chairperson, who will then present it in that House for necessary decision.

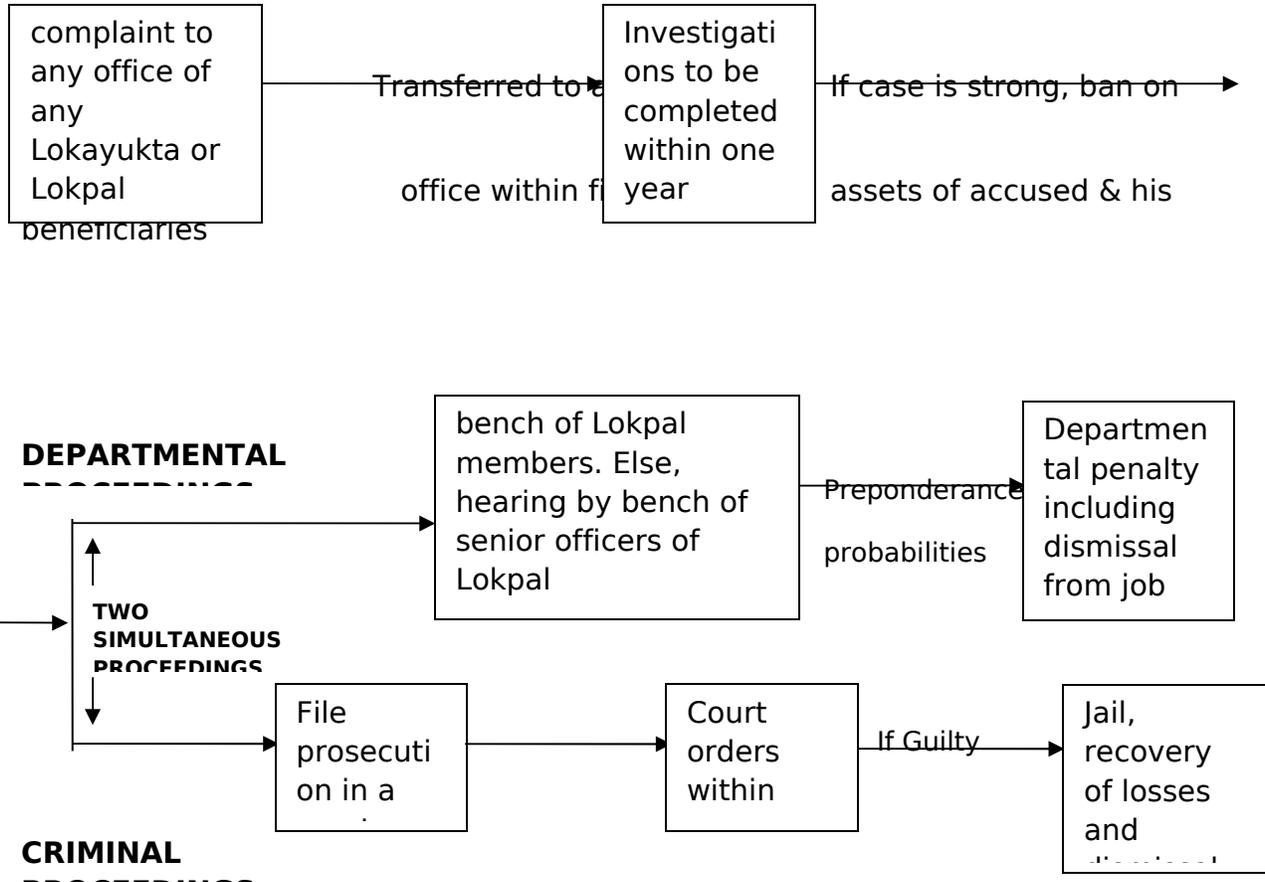
c. Bureaucrats

Lokpal may, either suo moto or on receipt of a complaint, may initiate investigations against any bureaucrat. After completion of investigations, if a case is made out, Lokpal or Lokayukta may file prosecution in court. The court will have to complete its trial and pass orders within one year.

In the case of bureaucrats, after completion of investigations, if a case is made out, Lokpal or Lokayukta will have the powers to recommend departmental penalties including dismissal. Such recommendations shall be binding on the government.

However, in imposing such penalties, the evidence would be examined on the basis of preponderance of probabilities. If the accused are of the level of Joint Secretary or above, such penalties will be imposed by a bench of members of Lokpal or Lokayukta after giving an opportunity of being heard to all parties. For others, the penalties will be imposed by a bench of senior officers of Lokpa or Lokayukta. These orders could be appealed against in High Court.

Flow chart of how a complaint of corruption would be dealt at Lokpal or Lokayukta



Whistleblower Protection

What is the problem?

If anyone raises his voice against corruption, there is no agency that can provide effective and credible protection. The person can only approach the police. Police is usually subordinate to the same people who are corrupt. For example, in the event a local MP or MLA is harassing the public, police won't do anything.

Proposal in Jan Lokpal Bill:

Lokpal, being an independent body, will have the responsibility and powers to provide protection from harm to the whistleblower and order investigation and prosecution in the case. In the event the concerned officer of Lokpal fails to provide adequate protection to the whistleblower, and the person is actually harmed, the concerned officer would face a criminal charge unless he has sufficient reason to prove his innocence.

A whistleblower will have the option to seek protection from the local vigilance officer or the chairperson or the members of Lokpal, who will be required to act within stipulated times depending on the severity of the threat. The person would have the right to seek an appointment with members of the Lokpal in person, on phone or through video conference if the whistleblower cannot practically come to the Lokpal building.

In case of mental harassment, Lokpal will provide necessary protection within a maximum period of one month from the date of launch of a complaint by the whistleblower.

In case of physical threat, Lokpal will provide necessary protection to the whistleblower within few hours and maximum within one week of the launch of complaint depending upon the urgency of the case. If physical harm has already happened then Lokpal will provide protection from further physical harm within 24 hours of the launch of complaint. Lokpal will also direct the police to register criminal case against the people who caused the physical harm to the whistleblower.

If false cases get filed by authorities against the whistleblower, Lokpal will ensure that such cases are withdrawn.

Protection against frivolous and mischievous complaints

False complaints of corruption or false complaint against staff of Lokpal : If anyone makes a complaint which is without any basis and is meant only to harass someone, then a financial penalty could be imposed upon that complainant by Lokpal. However, merely dismissal of a case due to weak evidence would not be held against a complainant.

False complaint against member or Chairperson of Lokpal or Lokayukta: Supreme Court or High Court may impose fine and also sentence the complainant to jail in case of complaints which are without basis and meant only to harass the member or Chairperson.

Frequently Asked Questions about the Jan Lokpal Bill

Is Lokpal a super cop?

A myth is being created that the proposed Jan Lokpal will become a supercop and will become a threat to all democratic institutions. This is completely wrong. Let us see what does Jan Lokpal Bill propose to do?

1. Against politicians (for their conduct outside parliament), judges and bureaucrats, Lokpal will only investigate complaints of corruption and file a case in court. The courts will have the power to try and award punishment. Lokpal will not have powers to award punishment.
2. However, in case of bureaucrats, the institution of Lokpal will have powers to impose departmental penalties including dismissing them, if after investigations by the investigation wing of Lokpal, the guilt of that officer is established. For Joint Secretary and above, a bench of members of Lokpal will impose such penalty after giving an opportunity of being heard to all affected parties. However, if accused are below the rank of Joint Secretary, the same will be heard by a bench of senior officers of Lokpal. These orders of Lokpal can be appealed against in respective High Courts. This system is much better than the existing system, in which the accused and its friends are responsible for enquiring against themselves and awarding punishment to themselves. Presently, the enquiries are conducted by officers from the same department (often enquiries are conducted by junior officers against their bosses), penalties are decided by some officer in the same ministry and appeals also lie with some officer in the same ministry. Since the accused officer belongs to the same department/ministry, he is able to influence their decisions as they have been his colleagues, friends and subordinates. Many times, the disciplinary authorities are themselves accomplices in corruption.

Under existing system, the public or the complainant have no say in entire proceedings. Corrupt officers are let off after dishonest enquiries. Complainant cannot do anything. Under Jan Lokpal Bill, the complainant will be treated as a prime witness and case cannot be closed without giving an opportunity of being heard.

Therefore, the proposed system is far more fair, transparent and accountable.

3. If any Member of Parliament or a Minister indulges in any corrupt activity inside Parliament, then a complaint could be made to the Speaker of Lok Sabha or

Chairperson of Rajya Sabha. They would forward the complaint to the Ethics Committee. If Ethics committee recommends, the Speaker or Chairperson would forward the complaint to the Lokpal for investigations. After investigations, Lokpal would submit its report to the Speaker or Chairperson, who would then present it in Parliament. The Parliament would decide what action should be taken on the report.

Should public Grievances be brought under the jurisdiction of Lokpal? This will overburden Lokpal and make it unwieldy.

Under the grievance redressal system proposed in Jan Lokpal Bill, none of the complaints would directly reach the Lokpal members. It is only when the officers of a department, including its head of department fails to redress the grievance of a citizen, does the grievance reach the Vigilance officer of Lokpal. The Vigilance officer, in addition to getting the grievance resolved, will impose penalties on the officers including the head of department. It is expected that this would act as a very big deterrent and the Heads of various departments would start strengthening their systems. Also, each department would be asked to prepare their own citizens' charter. They will themselves assess which items to put on citizens charter where they could make a firm commitment. However, the departments would be expected to bring all public dealing issues in citizens charter in one years time.

There is an apprehension that the Lokpal will get flooded with thousands of complaints and jam its machinery. This apprehension is not correct because only those grievances which result from violation of citizens charter will be accepted. Even if we assume for the sake of argument that lakhs of grievances do come up in any place against any department, that would not jam the entire machinery of Lokpal. It could only jam the functioning of some VOs in some departments in some stations. If Lokpal feels that there are more VOs required, it will have the powers to appoint as many VOs as it wants.

Annexure 1

Deficiencies in the present anti-corruption systems

Central Government level:

At central Government level, we have 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 to deal 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 merely acts as a post office and forwards most of the complaints to the vigilance wings of respective departments. It directly enquires into very few complaints of its own. For instance, during 2009-10, it directly enquired into just 11 out of more than 1800 cases that it received. Rest all cases were merely forwarded.
- CVC is merely an advisory body. The departmental vigilance wing of any Central Government Department first conducts an enquiry into any case and then seeks CVC's advice on what punishment should be given in that case. However, the head of that Department is 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. Experience shows that whenever senior officers are involved in corruption, CVC's advice is rarely accepted.
- CVC has jurisdiction only on bureaucrats. It does not have powers over politicians. If there is an involvement of a politician in any case, then CVC can enquire only into the role of bureaucrats in that case.
- It does not have any direct powers over departmental vigilance wings, to which it forwards all complaints. 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 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 the Head of the same department only.

- Appointments to CVC are directly under the control of ruling political party. The appointments are arbitrary and intransparent.
- 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 any action. CVC has been reduced to merely a show piece.

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 enquire 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, some field officials double up as vigilance officials. It means that an existing field 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 complaints 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. There are hundreds of examples of such absurdity.
- Many of the officials posted in vigilance wing by that department have 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 by taking money.
- 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, most of the time, the vigilance wing of any department are seen to scuttle genuine complaints or are 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 control of Central Government. CBI Director and all other officials in CBI are directly appointed by Central Government.
- CBI has to seek government's permission to start investigation into any case involving joint secretary and above. It has to seek the permission of the government to initiate prosecution in any case. Sometimes, the people who have to give permissions are either themselves accused in some corruption cases or are under some political obligation of accused people.
- After investigation is completed in any case, when a case is filed by CBI in a court, CBI's lawyer is selected and appointed by the Law ministry. Therefore, if any minister is involved in any case, law ministry would appoint such a person, who would try to kill the case rather than get the accused punished.
- So, if a complaint pertains to any minister or politician which is part of ruling coalition or a bureaucrat which is close to them, it is practically impossible for CBI to do a fair investigation. In such cases, CBI's job is to scuttle these cases.
- Again, because CBI is directly under the control of Central Government, CBI has often been used 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 neither has powers nor resources.

At State level:

We have similar systems at state level also. All vigilance agencies (like state vigilance department, departmental vigilance wings) and anti-corruption

agencies (like anti-corruption branch of state police, CID etc) are directly under the control of state government and therefore, ineffective in fairly investigating corruption cases against their political bosses. In addition, some states have the institution of Lokayuktas.

Lokayuktas:

- Lokayuktas cannot initiate investigations on their own. They have to seek permission of state government to investigate cases involving officials above certain levels.
- In some states, vigilance department has been given powers over bureaucrats and Lokayuktas have been given powers only over politicians. Such division of jurisdiction hampers investigations. So, in a case involving both politician and bureaucrats (which is the case most of the times), both Lokayukta and the vigilance department feel handicapped.
- Lokayuktas merely have advisory roles. They do not have the powers to directly initiate prosecution. They make recommendations to the government, which may or may not agree with those recommendations.
- They also do not have adequate resources to investigate the large number of complaints that they receive.
- Lokayukta is appointed by the state government in an intransparent and arbitrary manner. In some states, their independence has been questioned.

Annexure 2

Government denied permission to register case against top NHAI officer

Indian Express 18th Nov 2010

The Union Ministry of Road Transport and Highways (MoRTH), under Kamal Nath, has refused the Central Bureau of Investigation (CBI) sanction to initiate an inquiry against a top official of the National Highways Authority of India (NHAI) in connection with a corruption case registered six months ago in which two top NHAI officials were arrested.

CBI officials said the denial of sanction came early this month after it sent several reminders to the Ministry and to the Cabinet Secretary underlining that it was Union Minister Kamal Nath who was the “competent authority” to take a final decision in the matter.

Sources have confirmed to The Indian Express that the CBI, after seeking legal advice, has now written to Cabinet Secretary K M Chandrasekhar asking him to transfer out S I Patel, an Additional Secretary-level officer who is now posted as Member (Projects) in the NHAI.

The Cabinet Secretary is understood to have scheduled a review meeting with CBI officials later this week.

The case in question is a controversial award of contract in the 120-km Nagpur-Betul Highway (NH 69) to a Delhi-based private firm, Oriental Structural Engineers Pvt Ltd (OSEPL). The contract value, over an 18-year period, is Rs 10,800 crore, and the CBI has alleged several irregularities in the manner in which it was awarded.

It was in May this year that the CBI registered a case after it received complaints from among the 12 other bidders and put telephones of NHAI and OSEPL under surveillance. Cash totalling Rs 1.86 crore was recovered by the CBI from NHAI officials during searches.

The CBI called it a case of criminal conspiracy and corruption in which while awarding a contract, the NHAI had tried to “eliminate all possible contenders on one pretext or another and favoured the accused company ensuring huge financial gain to it.”

Those arrested were a Chief General Manager and General Manager of the NHAI and two top OSEPL bosses, including its managing director. An analysis of the evidence — including telephone transcripts of conversations between the two camps and emails exchanged between NHAI and OSEPL officials — led the CBI to seek sanction to investigate Member (Projects) Patel too.

Significantly, Patel was able to stay out of the country — he sought several extensions of his leave — all throughout the 60-day remand period of the arrested officials and returned to NHAI only after they secured bail since the CBI failed to file a chargesheet.

The CBI version is that Patel's evidence is vital to link pieces of evidence in the case and, therefore, its urgent reminders for immediate grant of sanction.

When contacted today, NHAI chairman Brajeshwar Singh told The Indian Express that he wasn't aware of the final outcome of the CBI's request for sanction since it was being handled by the Ministry.

"The Ministry had asked us for comments and we gave them what was on our files. I am not aware of the nature of evidence with the CBI since they are not expected to share it with us," he said. "Yes, the CBI recovered huge sums of money from two NHAI officials but again I am not aware if they were able to establish a nexus between the officers and the contract."

Despite senior NHAI officials being arrested and OSEPL being made the "accused" private beneficiary, the NHAI went ahead and signed the concessional agreement — the final contractual procedure — with the same company. This was done in end August, three months after the arrests and searches. When asked about this, NHAI chief Singh said: "Technically, the contract was awarded before the CBI action. Nobody, including the CBI, had asked us to cancel the concessional agreement. Its signing was a mere formality."

Coal Ministry sits on CBI requests to prosecute Coal India top officer

Indian Express 7th March 2011

The Coal Ministry is sitting on at least three requests by the CBI during the past year to initiate prosecution proceedings against S C Garg, the Chairman and Managing Director of Western Coalfields Ltd, a subsidiary of state-owned monopoly Coal India Ltd. Garg is one of the two contenders for the post of Coal India CMD.

The investigating agency first wrote to the ministry on March 18, 2010, seeking permission to register a case of "grave misconduct" against Garg. As WCL CMD, Garg was accused of showing undue favours to Shri Sai Constructions, which was awarded a Rs 13.5 crore contract for building the Motaghat Nala. It allegedly forged bank guarantee papers to execute the works, but Garg didn't take serious action to penalise the firm.

"The CMD of WCL is a Joint Secretary-level officer. Hence approval under Section 6A of the DSPE Act is required for carrying out an inquiry into the said allegations," the CBI wrote in its letter to the ministry, a copy of which is with The Indian Express. But the ministry did not respond.

According to CIL sources, while Garg constituted a committee on September 9, 2008, to ascertain if Shri Sai Constructions could be banned and penalties imposed on it, he did little to implement its recommendations. The panel had recommended

banning the firm “with immediate effect” and also forfeiting the balance payment of Rs 92,23,154 against the work executed. It had also suggested recovery of over Rs 16 lakh from it for forging bank guarantees.

Denying that he was responsible for the Motaghat Nala contract, Garg says the charges were an attempt to malign him as he was set to become CIL CMD. “The CBI has jumped midway without collecting fact or waiting for the outcome of the deliberations of the Board, which is the competent authority for giving any decision involving such expenditure (of about Rs 14 crore). I, as the MD can only decide on cases involving expenditure of up to Rs 10 crore. The Motaghat Nala contract was given before I became CMD of WCL, and I was apprised of it in July 2008. So how am I responsible?”

He said they had realised that Shri Sai Constructions had provided a fake bank guarantee (Rs 2.24 crore), following which they had filed an FIR, forfeited their guarantee and also charged Rs 17,00,000 as interest. “I also solicited the advice of the Additional Solicitor General. The matter is with the board and a case is on against the company.”

After the ministry didn’t get back on its March 2010 letter, then CBI Director Ashwini Kumar wrote another letter to the Coal Ministry on June 10, seeking approval to prosecute Garg for “criminal misconduct”. “...so far, no action has been taken and Garg continues to enjoy his posting”, the CBI said in its second letter. However, the ministry chose to ignore this too.

Six months later, on December 3, the CBI again reminded the ministry about its request and said that one of its Joint Director-level officers “himself had come and handed over the request for permission for registration of the case against Garg”.

After Partha S Bhattacharya retired as CIL CMD recently, Garg and T K Lahiry, CMD of Bharat Coking Coal Ltd, also a subsidiary of CIL, were shortlisted by the Public Enterprises Selection Board for the coveted job.

When contacted, Coal Minister Sriprakash Jaiswal said: “We are looking into it. The law will take its own course.” He added that his ministry was waiting for the final report of the Central Vigilance Commission on Garg’s candidature for becoming CIL chief.

Incidentally, the CVC too had written a letter to the ministry on November 11 last year, endorsing the CBI’s request for proceeding against Garg and asking the ministry to expressly get back to the agency on whether it was allowing prosecution, and if not, to convey the reasons for refusal.

CBI cannot act against Railway scam accused

Asian Age 21st July 2010

The Central Bureau of Investigation sleuths probing the Railway Recruitment Board scam couldn't make much headway in the case of Mumbai RRB chief Mr S. M. Sharma thanks to a provision in the Delhi Special Police Establishment Act which makes government sanction mandatory before registering an FIR against an officer of the rank of joint-secretary or above under the Prevention of Corruption Act. Though the CBI allegedly found incriminating evidence against Mr Sharma, they couldn't register an FIR against him due to Section 6A of the DSPE Act as Mr Sharma is an officer of the joint-secretary rank.

On June 17, the CBI had written to the Centre seeking permission for initiating investigation against Mr Sharma after the arrest of his son Mr Vivek Bhardwaja. Sources in the Central Bureau of Investigation said that the agency is still awaiting the Centre's nod and this delay in obtaining permission is having a negative impact on the investigations as in several cases the accused get enough time to manipulate various aspects of the case.

A Central Bureau of Investigation official said, "Earlier, in several cases the accused tried to seek a discharge from the case on technical grounds by raising the issue that the mandatory provision of Section 6A was not complied by the CBI."

Section 6A was inserted in 2003 with an intention of safeguarding public servants against mala fide and unwarranted investigations.