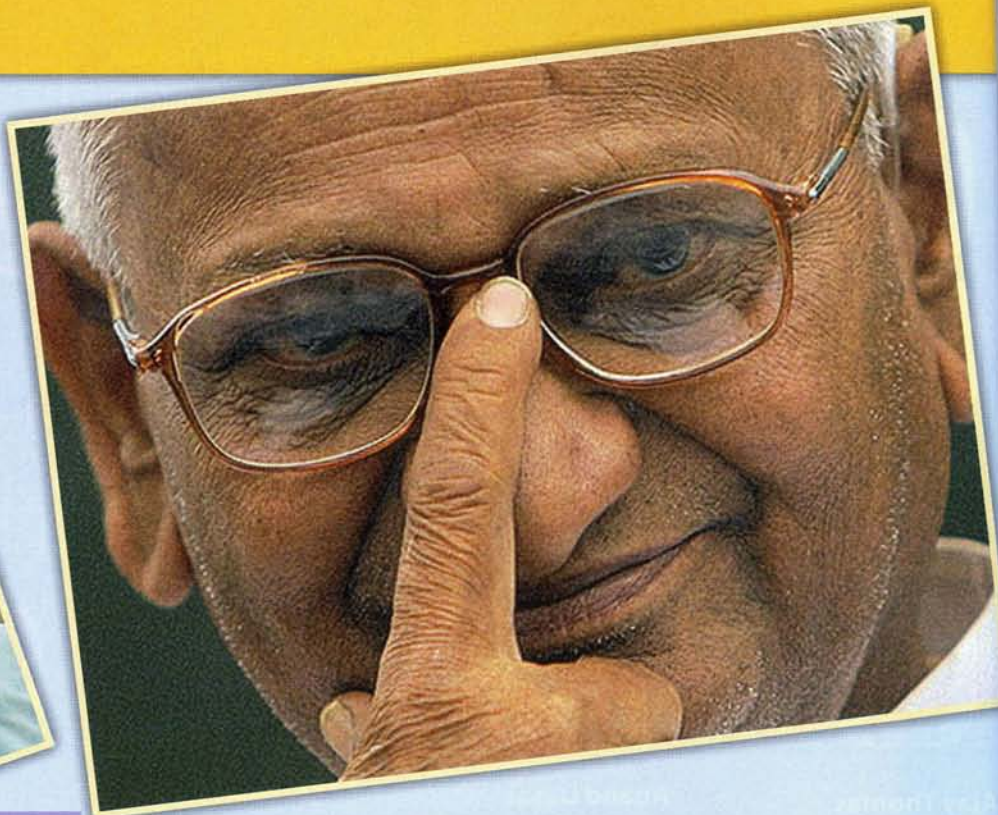
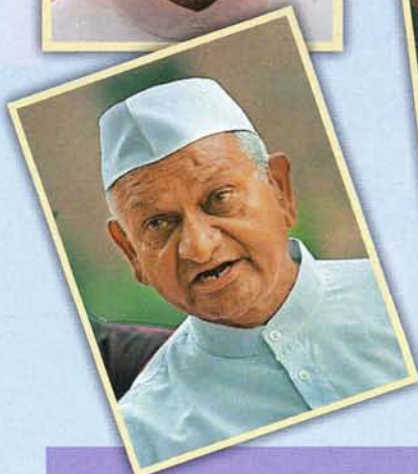
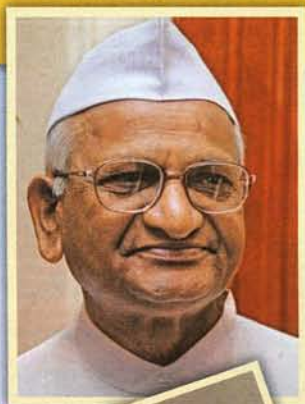


Anti Corruption Legislation: Filling the Empty Gaps



“A stringent anti-corruption legislation, such as those in the US and the UK, can go a long way in curbing the menace in India.”

The recent fiasco over the Lokpal bill has not gone unnoticed by any citizen in the country. There have been strong reactions from several quarters of the society on the bill. Few individuals representing the “Civil Society” have emerged as the new anti-graft leaders and are of the view that their proposed “Jan Lokpal Bill”, if taken in totality, would sweep corruption off its feet.

On the other hand, the government, though agree to the need for a Lokpal bill, differs with respect to its content.

The basic idea of the Lokpal is borrowed from the office of the ombudsman in other countries. It provides for filing complaints of corruption against the prime minister, other ministers and members of parliament with the ombudsman. Anyone, except for a public servant, can file a complaint and the Lokpal has to complete the inquiry within six months.

The basic difference between the two lobbies and their proposed bills can be summarized as follows:

1. Under the Draft Lokpal Bill (2010) the Lokpal will have no power to initiate suo moto action or receive complaints of corruption from the general public. It can only probe complaints forwarded by the Speaker of the Lok Sabha or the Chairman of the Rajya Sabha. Whereas under the "Jan Lokpal Bill" the Lokpal will have powers to initiate suo moto action or receive complaints of corruption from the general public.

2. Under the Draft Lokpal Bill (2010), the Lokpal will only be an Advisory Body with a role limited to forwarding reports to a "Competent Authority". Whereas under the "Jan Lokpal Bill", the Lokpal will have the power to initiate prosecution of anyone found guilty

3. Under the Draft Lokpal Bill (2010), the Lokpal will have no police powers and no ability to register a First Information Report or proceed with criminal investigations. Whereas under the "Jan Lokpal Bill", the Lokpal will have police powers as well as the ability to register FIRs.

4. Under the Draft Lokpal Bill (2010), the CBI and Lokpal will be disconnected. Whereas under the "Jan Lokpal Bill", the Lokpal and the anti-corruption wing of the CBI will be one independent body.

5. Under the Draft Lokpal Bill (2010), punishment for corruption will be a minimum of 6 months and a maximum of upto 7 years. Whereas under the "Jan Lokpal Bill", punishments will be a minimum of 5 years and a maximum of up to life.

Irrespective of which model of the Bill is eventually adopted, the basic fact



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remains that the Lokpal will only deal with complaints of corruption against the Prime Minister, other ministers and members of parliament.

The corruption of other public servants will be continued to be governed by the Prevention of Corruption Act, 1988 (PCA).

The PCA was also as promising in its objective when it was first introduced. The objective, which was then sought to be achieved, was consolidation of all anti-corruption legislations. The act applied to corruption and corrupt practices by public servants.

Public servants as defined under the Act encompassed:

- i. Any person in the service or pay of the Government or remunerated by the Government by fees or commission for the performance of any public duty;
- ii. Any person in the service or pay of a local authority.

iii. Any person in the service or pay of a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a Government company as defined in Section 617 of the Companies Act, 1956.

iv. Any Judge, including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions.

v. Any person authorised by a court of justice to perform any duty, in connection with, including a liquidator, receiver or commissioner appointed by such court.

vi. Any arbitrator or other person to whom any cause or matter has been referred for decision or report by a court of justice or by a competent public authority.

vii. Any person who holds an office by virtue of which he is



Anna Hazare address to press.

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empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election of part of an election;

- viii. Any person who holds an office by virtue of which he is authorized or required to perform any public duty.
- ix. Any person who is the president, secretary or other office-bearer of a registered co-operative society engaged in agriculture, industry, trade or banking, receiving or having received any financial aid from the Central Government or State Government or from any corporation established by or under a Central, Provincial or State Act, or any authority or body owned or controlled or aided by the Government or a Government

company as defined in Section 617 of the Companies Act, 1956;

- x. Any person who is a chairman, member or employee of any Service Commission or Board, by whatever name called, or a member of any selection committee appointed by such Commission or Board for the conduct of any examination or making any selection on behalf of such Commission or Board;
- xi. Any person who is a Vice-Chancellor or member of any governing body, professor, reader, lecturer or any other teacher or employee, by whatever designation called, of any university and any person whose services have been availed of by a University or any other

public authority in connection with holding or conducting examinations;

- xii. Any person who is an office-bearer or an employee of an educational, scientific, social, cultural or other institution, in whatever manner established, receiving or having received any financial assistance from the Central Government or any State Government or local or other public authority.

The Act further provides that, persons falling under any of the above sub-clauses would be considered public servants, whether appointed by the government or not. Further, whenever the words "public servant" occurs, the act provides that, it shall be understood to cover every person who is in

actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation.

One can reach to a fair conclusion that the PCA was wide enough to cover all the issues of corruption which would now be covered by the Lokpal Bill. What question arises at this juncture is what is then the need of the Lokpal Bill. How will Lokpal Bill solve the problem which the PCA could not? The immediate answer that the supporter of Jan Lokpal would have for this is that the independence of the Lokpal and investigating authority would remove the problems which was faced under the PCA i.e. the filling of complaint with the police, the problem of getting permission to investigate and prosecute the alleged offenders from the concerned department and also the separation of the investigation wing giving more independence and transparency to the process of investigation.

Assuming these arguments do hold true, the question then arises is that what about the corruption by other public servants? Isn't that a bigger part of the problem of corruption?

Keeping this background in mind, the proposals made below seem to be more realistic to solve the problem of corruption and also seem to be a form of progressive legislation that would bring Indian Anti-Corruption Laws in lines with international standards:

1. Instead of a new Act creating a Lokpal and the Lokyukta, they should be constituted as an authority under the PCA with power to take cognizance of a complaint without prior sanction of the appropriate authority as contemplated under Section 19 of the PCA.
2. Maintaining the Special Judge and transferring the power of appointment of the same to the

The officers investigating under Section 17 should comprise of a special force called the Anti-Corruption Cell. The appointments of members in the force and the governing authority of the force should be the Lokpal and the Lokyukta, as the case may be.

The office of Lokpal should comprise of people of the highest candidature and should be directly appointed by the President of India. The appointments of the Lokyukta should be made by the Governors of various States in Consultation with the Lokpal.

3. The powers to investigate under Section 17 of the PCA should be authorized by the Lokpal and Lokyukta as the case maybe.
4. The officers investigating under Section 17 should comprise of a special force called the Anti-Corruption Cell. The appointments of members in the force and the governing authority of the force should be the Lokpal and the Lokyukta, as the case may be.
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appointments of the Lokyukta should be made by the Governors of various States in Consultation with the Lokpal.

6. Section 12 of the PCA which covers abetment of offences under Section 7 to 11 of the Act should be expanded to cover acts of corrupt payments in exchange for advantages and also creates strict liability for companies with Indian connections that lack adequate procedures to prevent corrupt payment.
7. There should also be a new section inserted which prohibits corrupt payments to non-Indian government officials in exchange for advantages.
8. Make the officer's in-charge of a company personally liable for the offences under the act committed by the company.
9. Making money accrued to individuals, companies and public servants in connection with acts for which corrupt payment is made or received, liable for nationalization and subjecting the same to the Prevention of Money Laundering Act, 2002 (PMLA).
10. Giving the power to the Lokpal to direct investigation under the PMLA for offences connected with the PCA.

In the end, it is concluded that if the aforementioned suggestions are incorporated in the PCA, the Indian Anti Corruption legal regime will be consolidated and will also be as strict as similar legislations in countries like the US and the UK. Only such measures can actually make a difference to fight corruption in the country and insert fear in every individual and corporation not to participate in corrupt practices.

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