

A Comparative Study of Lokpal Bills and Jan Lokpal Bill of 2011

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Abstract: *In 2010, a series of big-ticket scams had been exposed in Bharat (India). Over the next year, a political response gathered momentum via the Anna Event (AE) which however fizzled as suddenly as it had erupted. Anna emerged as the face of the India Against Corruption (IAC) Agitation in the AE. This chapter refers to the philosophy of language in order to understand the import of “Anna” (elder brother) as a name and an appellation that explains the rise of the septuagenarian as an anti-corruption activist. Groups across the social spectrum responded to his demand for the passage of the Jan Lokpal Bill (JLB) to bring down corruption. Several versions of such an ombudsman bill had been on the anvil since 1968. But it had never achieved the status of law despite eight rounds of introduction and discussion in the parliament. This essay provides the irresolute history of legislative attempts to institute a rational authority which was expected to arrest corruption. It then analyses the differences between the JLB and versions of the ombudsman bill since 1968.*

Keywords: Anti-Corruption, Jan Lokpal Bill (2011), Lokpal Bill

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1. Introduction

If Anna’s anti-corruption campaign in Maharashtra makes for an iceberg then the countrywide agitation that he led from New Delhi is certainly the most prominent tip of it. The reputation that Anna had consolidated over the years contributed to the public attention that he received in the capital. In 2011, he became the totem of the ‘imagined community’ in the nation of Bharat (India) (Anderson, 2006). But popular support for him lasted not more than sixty days across two volatile but brief phases.

Circumstances had made 2011 conducive for the Anna Event (AE). The world witnessed the Arab Spring which had spread in North Africa and West Asia. Public agitations had swelled against authoritarian governments. Leaders fell in Egypt, Libya, Syria and Tunisia. This was not only due to protests but also because of armed rebellions which included assassinations. The closest that it came to the territory of Bharat (India) was when anti-government rallies took place in Iran. The news media in the North-West had initially cheered the Arab Spring. But the enthusiasm disappeared as soon as the unrests were about to be exploited by violent actors. The Islamic State (IS) which attempts to establish an Islamic Caliphate in the world re-emerged in this background (Jacob, 2016, pp. 98-102). It has few but motivated participants from Bharat (India) as well (Taneja, 2018).

2. Materials and Methods

A list of corruption scandals had unfolded after the Indian National Congress (INC)-led United Progressive Alliance (UPA) was elected again in 2009 (India Today, 2013). The most infamous among them are those related to real estate in upscale Mumbai, the Commonwealth Games in New Delhi, allocation of 2G ‘spectrums’ (radio frequencies) and allotment of coal reserves. In 2010, charges of corruption surfaced over the denial of residential apartments to war widows in downtown Mumbai. It is alleged that rules to identify beneficiaries were tweaked so that influential members of the federal government could benefit. INC leader Ashok Chavan had to resign as the chief minister of Maharashtra. He continues to be investigated by the Central Bureau of Investigation (CBI) along with other leaders from his political party. The run-up to the Commonwealth Games in 2010 was also marred by accusations of corruption. The CBI has charged Suresh Kalmadi – INC leader from Maharashtra and administrator of the Commonwealth Games – for losses up to 90 crore rupees due to goods bought at inflated prices. The case continues to be heard in a special court. In the latter half of 2010, telecom minister, Andimuthu Raja was forced to resign. Allegations suggested that radio frequencies for telecom services had been sold to private players at a cheaper rate under his watch. The Comptroller and Auditor General (CAG) estimated that the loss to the public exchequer could be almost 1.75

lakh crore rupees.¹ The figure managed to shock the polity even in Bharat (India) which is no stranger to big swindles. Conversations between the PR industry and some journalists had also been leaked to the public.² The tapes revealed covert attempts by private businesses to influence the appointment of the telecom minister. The CBI arrested Raja in 2011 but he was acquitted of all charges after six years. In 2012, the CAG red flagged the process by which the government had allowed coal reserves to be mined. It estimated that the public resource had been provided to private businesses at a price which was much lower than that in the market. The loss estimated this time amounted to more than 1.75 lakh crore rupees. The Supreme Court called for a fresh allocation of coal reserves and levied additional charges on what had been mined already.

It was in this backdrop that the AE demanded the passage of the JLB which had been drafted by members of the civil society. The final version of the JLB marked a strict difference with the previously Lokpal Bills of the state. A content analysis of various versions of the anti-corruption ombudsman bill has thus been performed for the purpose of comparison.

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3. Results

The wider ambit of the JLB includes bureaucrats, judges and parliamentarians. But the 2010 government's bill either excludes such entities or restricts their coverage to particular tiers. Differences exist in the composition of the ombudsman bodies as well. The JLB vies for a larger committee with a diverse make up. But the 2010 government's bill proposes a smaller committee with a judicial background as an essential requirement. In addition, the selection process for ombudsman members varies. The JLB proposes a two-stage process that involves a search committee and a selection committee with various stakeholders. The 2010 government's bill on the other hand opts for a traditional committee-based selection.

The process for removal of ombudsman members and the offenses covered by the bills also vary significantly between the two proposals. And lastly, while the 2010 government's bill includes provisions for an investigation and prosecution wing under the ombudsman, the JLB suggests integration of the CBI for these functions.

4. Discussion

The Lokpal Bill has a five-decade old history. In 1963, the proposal to set up an office of the ombudsman was made in the parliament. In 1966, the Administrative Reforms Commission recommended the establishment of two offices of the ombudsman. It suggested that the Lokpal be set up at the central level and Lokayuktas be established at the federal level. Their purpose would be to look into complaints, including corruption, against public authorities. In 1968, L. M. Singhvi became the first to introduce the Lokpal and Lokayuktas Bill in the parliament. Eight attempts were made till 2001 to pass the bill and make it a law. But every time the bill was either sent to a parliamentary committee for further discussion or the term of the government ended before it could become a law. In 2005, the Administrative Reforms Commission reiterated the need for speedy passage of the Lokpal Bill, but little happened until the anti-corruption agitation took off. Another factor, besides indecision and reluctance, had played a major role to derail the bill. The larger purpose of the Lokpal Bill was to make public authorities accountable. But parliamentarians wanted it to subscribe to what Rajeev Dhavan (2019) has identified as a "regime-revenge model":

The 1977, 1985 and 1996 models were regime-revenge models. Bent on not letting go of the previous regime, these models were politically vindictive and left the bureaucracy out. With a limitation period of five years, the regime-revenge models would work so that the past would be reopened to look at the present. There were always the usual 'in or out' jurisdictional questions about whether the PM, ministers, bureaucrats and MPs should be brought under the Bill or not. Then came the questions as to how the Lokpal would be appointed ... (p. 91)

What follows is a summary of the many versions of the Lokpal Bill that were tabled in the parliament. Most changes pertain to the constitution and the jurisdiction of the Lokpal.

¹ The projected loss from the sale of 2G Spectrum that the CAG Report suggested was found to be much less by a special court set up by the CBI. The matter remains contentious (The Indian Express, 2017).

² Phone calls between celebrity journalists and PR professional Niira Radia had indicated their links to the 2G Scam. Barkha Dutt had been hooted away from the AE when she went to report the event (Kothawade, 2011).

The Lokpal and Lokayuktas Bill of 1968 empowered the President of India to appoint the Lokpal after consultations with the Chief Justice and the Leader of Opposition in the Lok Sabha (Clause 3.1.a). The President would then appoint the Lokayuktas on the advice of the Lokpal (Clause 3.1.b). Each appointee could hold office for a period of five years and neither could be removed without impeachment proceedings (Clause 5.1). The Lokpal and the Lokayuktas could initiate a probe after approval from select legislative offices or a category of public servants which was to be defined (Clause 7.1.i.ii). They could start an investigation on their own but only after due notification (Clause 10.1.a). The bill made a distinction between ‘grievance’ and ‘allegation’. Grievances included issues of mal administration while allegations were specific to corruption (Clause 2.b.d.g). The bill mandated that a grievance could not be probed if the complaint was made after one year (Clause 8.4.a). The window period was five years in case of an allegation (Clause 8.4.b).

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The Lokpal and Lokayuktas Bill of 1971 differed little from the previous one. The overall bill remained the same except minor changes.

The Lokpal and Lokayuktas Bill of 1977 is important. The general election that year denied parliamentary majority to the INC. It failed to form the central government for the first time since independence and a faction-ridden Janata Party came to power. The general election of 1977 also marked the end of the Emergency which Prime Minister, Indira Gandhi had imposed two years ago. It was her response to a verdict by the Allahabad High Court which had upheld a complaint by Raj Narain and dismissed her from the parliament. The high court decreed that the electoral victory of Indira Gandhi in 1971 from Rae Bareilly was invalid due to ballot malpractice. Shanti Bhushan, lawyer and father of Prashant Bhushan, had argued for Narain back then. The latter went on to defeat Indira Gandhi in the post Emergency vote. Continued reputation of the senior Bhushan earned him an advisory role in the IAC Agitation. The general election of 1977 was as decisive as the one in 2014 which has brought forth the BJP and made Narendra Modi prime minister. If 2014 brought upon the muscular construction of religious nationalism in Bharat (India), 1977 had ushered factionalism based on varna-jati politics that led to coalition governments.

The Lokpal Bill of 1977 was a reaction to the Emergency. It removed the Leader of Opposition in the Lok Sabha from consultations that would enable the appointment of the Lokpal (Clause 4.1). This was a tit-for-tat for the Emergency. The new government by the Janata Party did not want the INC to have any say in the appointment. As the title indicates, the posts of Lokayuktas were dissolved in the Lokpal Bill of 1977. But the Lokpal was empowered to appoint additional Lokpals (Clause 8.1). It is important to remember that the previous versions of the bill had distinguished between ‘grievance’ and ‘allegation’. This distinction was done away and all emphasis was put on the investigation of corruption. Offices of the “public man” were defined as those of the prime minister, chief ministers, ministers and legislators and they were brought within the purview of the Lokpal Bill of 1977 (Clause 3.3). The window period for investigation remained five years for complaints against these offices like in the previous versions of the bill. It meant that any allegation of corruption in course of the Emergency or before it could still be investigated. Quite importantly, the bill placed the bureaucracy largely outside the ambit of the Lokpal. Its focus was restricted largely to the “public man” (Clause 11.2). The move was to protect the bureaucracy from any probe against extra-legal action that it may have undertaken due to compulsions of the Emergency or otherwise. Support of the bureaucracy, often celebrated as the ‘steel frame’ of Bharat (India)’, was vital for the new party in power.

To reiterate, the Lokpal Bill of 1977 was a revenge-regime model. In 1980, the INC returned to power under Indira Gandhi who had militarily aided in the creation Bangladesh in 1971 and redrawn the map of South Asia. In 1985, Rajiv Gandhi, grandson of Jawaharlal Nehru and son of Indira Gandhi and Feroze Gandhi, became prime minister after the assassination of his mother, Indira Gandhi. The INC won a record 404 seats in the parliament and was greatly aided by a rush of sympathy for the fallen leader. The government retained most features from the previous version in the newly introduced Lokpal Bill of 1985. It was an instrument to discipline leaders of not only other political parties but also those of a faction-ridden INC. The Lokpal Bill of 1985 witnessed only one major change. The Lokpal had to be either a judge of the Supreme Court or had to be qualified to be so (Clause 3.1).

The Lokpal Bill of 1989 was introduced in the parliament after enactment of the Prevention of Corruption Act of 1988. The bureaucracy was once again kept out of the jurisdiction of the Lokpal so that it would not

add to the insecurity of a coalition government. But the Lokpal was made into a three-member body which would be composed of one chairperson and two members (Clause 3.2). All three members would have to be judges of the Supreme Court either in the present or in the past (Clause 3.3).

The Lokpal Bill of 1996 included the Leader of the Opposition in the Lok Sabha and added that of the Rajya Sabha in the collegium which would recommend members for appointment as Lokpal (Clause 4.1.e.f). No member could be removed without impeachment proceedings before the Lokpal Bill of 1996 proposed otherwise.

The Lokpal Bill of 1998 registered two changes of significance. The tenure of the Lokpal was reduced from five years to three years (Clause 6.1). But the Lokpal could now investigate a complaint against an instance of alleged corruption which had taken place ten years ago (Clause 11.2). This limit was five years in all the previous versions of the bill.

The Lokpal Bill of 2001 differed little from the previous one. The overall bill remained the same except slight alterations.

In 2010, criticism against the INC-led central government was on the rise for its inability to ebb the tide of horizontal corruption. What surfaced soon was the draft of a Lokpal Bill which was yet to be tabled in the parliament. It was not confirmed by any institution of the state but contents of the Lokpal Bill were reported by the news industry. More interestingly, the government did not deny the existence of this bill. So, Dhavan (2019) cannot be faulted when he observes, “the Bill of 2010 was an unofficially official Bill” (p.91).

The draft of the Lokpal Bill of 2010 suggested that the President of Bharat (India) would appoint nine members to the office of the Lokpal for five years. The appointments would be based on the recommendations of a collegium which must include the prime minister, the Leaders of Opposition in the Lok Sabha, two judges of the Supreme Court and two chief justices of high courts among others (Clause 4.6). The chairperson of the Lokpal would have to be either a former judge of the Supreme Court or a current one. Other judicial members of the Lokpal would have to bear similar qualification unless the appointee is a current or former chief justice of a high court. Non-judicial members of the Lokpal would be required to have a minimum experience in anti-corruption administration or policy. Like in previous versions of the Lokpal Bill, a member of the Lokpal would not hold any other post that could compromise the neutrality of the office. But the removal of the Lokpal was again not subjected to impeachment proceedings. The President could now remove the Lokpal on the basis of an enquiry by the Supreme Court. The jurisdiction of the Lokpal remained the same except for one vital change. Even the highest echelons of the bureaucracy would now be under the purview of the Lokpal (Clause 7.2.a). The number of years in the past which fell within the temporal ambit of investigation by the Lokpal was re-limited to five years. It is worthwhile to remember that the numbers of years had been made longer to ten in the Lokpal Bill of 2001.

The government had hoped that reportage on the draft of the Lokpal Bill of 2010 would soothe the citizenry. But that was not to be. The surreptitious appearance of the draft further dented the impression of the INC-led government. The contents of it also failed to excite many. Clauses were hardly out of the ordinary whereas horizontal corruption seemed to be of extraordinary proportions. A former Chief Justice of the Delhi High Court vented his frustration. Rajinder Sachhar (2011) wrote:

... we ordinary mortals must make an effort to find some mechanism which may hopefully be able to keep in check the demoralisation and corruption in our public life ... The government has at last proposed the Lokpal Bill 2010, but unfortunately it fails even to be a cosmetic exercise to fight corruption. It is shamefully toothless and just meant to give a false reassurance ...

The deficiencies in the draft of the Lokpal Bill of 2010 became a rallying point for Anna and the IAC Agitation. Anna had nominated a core team of Arvind Kejriwal, Prashant Bhushan, Santosh Hegde and Shanti Bhushan to draft the JLB. In 2011, it emerged as the alternative to the Lokpal Bill of 2010. The version which was prepared by Anna’s nominees agreed that the tenure of the Lokpal should be five years. But it contended that the Lokpal should consist of eleven members. The JLB of Anna mostly agreed with the qualifications of judicial members as laid out in the draft Lokpal Bill of 2010. But an unbridgeable chasm appeared with regard to moot points. These included – constitution of the collegium that would recommend members for appointment, investigative power of the Lokpal, its jurisdiction and its prosecutorial authority.

The JLB first appeared in December 2010. It was released after internal deliberations and bore “Version 1.8” in the title. But Version 1.8 of the JLB was revised thrice more. They were set down as Version 2.1 (5th April 2011), Version 2.2 (14th April 2011) and Version 2.3 (21st June 2011). Each modification attempted to accommodate public concerns which had been solicited offline and online. Version 2.3 was accepted as the final version. By JLB, I shall consistently refer to the final version unless I mention otherwise.

The JLB suggested the establishment of a “search committee” and a “selection committee”. The former would scrutinize applications for appointment to the office of the Lokpal and send a shortlist to the latter (Clause 4.8). The selection committee would have to make the final selections from the shortlist and offer recommendations to the President of Bharat (India). The search committee would consist of ten members. Five of them would be from a pool of retired authorities who have formerly held designations such as Chief Justice, Chief Election Commissioner and Comptroller and Auditor General. They would have to be individuals “with impeccable reputation of integrity, who have not joined any political party after retirement” (Clause 4.8). The search committee would then select another five members from civil society. The ten members would create the shortlist and forward it to the selection committee. The JLB, thus, proposed a filter that would be made of former appointees to the state that held the highest constitutional post. It would exclude elected leaders from absolute say in the appointment of the Lokpal. The move indicates the IAC Agitation believed that “impeccable reputation of integrity” and electoral popularity are mutually exclusive. In addition, after a long time, the JLB reintroduced the proposal of the Lokayukta in each federal unit.

The JLB proposed an unprecedented shift. In all other bills, the Lokpal had been entirely dependent on the investigative agencies of the state to carry out a probe. This was considered a major weakness. But the JLB proposed that the Lokpal would be “a deemed police officer” who “shall be competent to investigate any offence under any other law in the same case” of alleged corruption (Clause 12). The JLB also proposed that the CBI wing dedicated to corruption-related investigation should be brought under the Lokpal (Clause 32). To bypass any dilly-dally by the lower judiciary or by the magistrate, it empowered the office of the Lokpal to issue a search warrant as well (Clause 9).

The JLB made another unique proposal. It suggested that the jurisdiction of the Lokpal would be as universal as that which is covered by the Prevention of Corruption Act of 1988 (Clause 2.e). Most notably, this would bring all levels of the central bureaucracy under the purview of the Lokpal. Some critics of the bill have seen it as a neoliberal instrument of subterfuge as it focuses only on public corruption (Kaur, 2012 p. 42). But this is an uninformed allegation as the JLB extended its jurisdiction to private businesses that were found to be in collusion with public offices. In such cases of corruption by a “corporate house” the JLB mandates that an additional “...fine amounting to five times the loss caused to the government shall be recovered ...”. Private properties of top officials would be seized as well if the business did not have enough assets (Clause 19.a).

The JLB suggested that the Lokpal should be able to initiate prosecution under the Prevention of Corruption Act of 1988. For the same purpose, the Lokpal would appoint former judges or even retired civil servants as judicial officers after the pursuance of due process. A bench of such officers would be able to impose penalty if anyone is convicted (Clause 13.a). But to safeguard the stability of the government and the overall state, prosecution would be initiated against the prime minister, ministers, parliamentarians and judges of the Supreme Court or high courts not without the permission of a seven-member bench of the Lokpal (Clause 14.8).

The most significant change that the JLB suggests is the limitation imposed on elected representatives with regard to their choice of members for the office of the Lokpal. The search committee would first be composed of five non-elected and retired persons of the highest constitutional stature. It would then appoint five more members from civil society who must be eminent but not necessarily popular. The search committee would then shortlist recommendations to the office of the Lokpal for the selection committee. The latter would be composed of elected representatives. It is important to note that the selection committee would be bound by the shortlist for their final choice of members.

5. Conclusion

Such an organizational plan evinces suspicion towards elected representatives and preference for non-elected appointees to operate as the Lokpal. It shows distrust for the democratic – a plain consequence of universal suffrage – and an inclination for the charismatic which is the opposite of en masse.

This is why some scholars have viewed the AE as populist (Chatterjee, 2011; Patnaik, 2011). I do not agree with this characterization. The AE demanded a legal instrument that would have outdone the separation of constitutional powers and would have led to their unprecedented centralization. But the clamour was fed by allegations of big-ticket corruption whose magnitude was unrivalled. The politics of anti-corruption has had historical relevance in Bharat (India) since ancient times (Rajan, 2020). The extreme call for the JLB was given five decades after the Lokpal Bill was first proposed in the parliament and which was repeatedly scuttled by every government that was elected to New Delhi. In addition, the AE shared no other attribute – communalism, patriarchy, racism, xenophobia that is typical of populism. Most importantly, the AE was remarkably non-violent despite massive gatherings.

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