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## JAN LOKPAL BILL: COMBATING AGAINST CORRUPTION

\*RAHUL SHARMA, \*\*ANSHUL SHRIVASTAVA

*\*Asst. Professor, Deptt. Of Commerce & Management, Dr. C.V.Raman University, Kargiroad, Kota, Bilaspur (C.G)*

*\*\*Asst. Professor, Deptt. Of Commerce & Management, Dr. C.V.Raman University, Kargiroad, Kota, Bilaspur (C.G)*

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### ABSTRACT

The problem of corruption is neither new nor it is restricted to developing countries only. Its nature can be extremely diverse and thus the context and relevance of the problem varied widely between countries and time periods. India is the largest democracy in the world, it continues to struggle on a daily basis to fight corruption in every field at both the national and local levels. Political, bureaucratic, corporate and individual corruption in India are major concerns. A 2005 study conducted by Transparency International in India found that more than 55% of Indians had first-hand experience of paying bribes or influence peddling to get jobs done in public offices successfully. The history of corruption goes back to ancient times. Its nature can be extremely diverse and thus the context and relevance of the problem varied widely between countries and time periods. The problem has become more focused in recent decades with increase in global cooperation for achieving economic and social growth in all countries since 1960s. Although the former Prime Minister Narasimha Rao in the 1990's took the first steps towards putting an end to corruption and tried to make all government officials more accountable for their actions, there is still much work that needs to be done to reform the roots of political corruption in India. This paper provides a broader overview on Jan Lokpal Bill and how it is helpful to reduce or stop corruption in our society. The paper argues that theoretically it may be impossible to have a corruption-free society but it should be minimized to a much extent.

**Keywords :** Fraud, Embezzlement, Bribery, Extortion, Neo-colonial

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### INTRODUCTION

The problem of corruption is neither new nor it is restricted to developing countries only. Its nature can be extremely diverse and thus the context and relevance of the problem varied widely between countries and time periods. The problem has become more focused in recent decades with increase in global cooperation for achieving economic and social growth in all countries since 1960s. Due to complex political and economic forces that have been shaping the global development agenda, the reasons for the phenomenal growth of corruption are also complex.

Roots of corruption go back to the history of human civilization. Corruption, in some form or the other, existed since human lives became institutionalized and leader follower relationship started in an organized manner. References of corruption were found in the writings of the fourth century B.C. in India and also in the writings of Greek philosophers like Aristotle and Plato.

Although corruption exists in all societies and all times, the problem seems to be more prominent in the context of developing countries. It is not difficult to visualize a strong relationship between scarcity and corruption. When resources are limited and competition among the participants in the production process is strong, the situation seems to be ideal for growth of corrupt practices. Everybody would be interested in maximizing their own benefits through ethical or unethical means. The situation can be kept under control only if good prudential regulations are in practice within the country. But very few resource scarce developing countries can practically afford to maintain such a prudential system. Moreover, gradually corruption is becoming more and more institutionalized involving policy-making authorities and making the situation worse. Colonial and neo-colonial backgrounds of a large number of

present day developing countries had also contributed in flourishing corrupt practices.

There is a growing worldwide concern over corruption at the present time. Several factors are responsible for this. First, a consensus has now been reached that corruption is universal. It exists in all countries, both developed and developing, in the public and private sectors, as well as in non-profit and charitable organizations. Second, allegations and charges of corruption now play a more central role in politics than at any other time. Governments have fallen, careers of world renowned public figures ruined, and reputations of well-respected organizations and business firms badly tarnished on account of it. The international mass media feeds on it and scandals and improper conduct, especially of those in high places, are looked upon as extremely newsworthy, and to be investigated with zeal and vigour. The rising trend in the use of corruption as a tool to discredit political opponents, the media's preoccupation with it as a highly marketable commodity, and the general public's fascination with seeing prominent personalities in embarrassing situations have brought scandalous and corrupt behavior, a common human frailty, into the limelight of international attention. Third - The corruption can be a major obstacle in the process of economic development and in modernizing a country. Many now feel that it should receive priority attention in a country's development agenda.

This greater recognition that corruption can have a serious adverse impact on development has been a cause for concern among developing countries. In a recent survey of 150 high level officials from 60 third world countries, the respondents ranked public sector corruption as the most severe obstacle confronting their development process. Countries in the Asia and Pacific region are also very worried about this problem and they are in substantial agreement that corruption is a major constraint that is hindering their economic, political and social development, and hence view it as a problem requiring urgent attention at the highest level.

Increasing public interest and concern over corruption have resulted in a large amount of scholarly research on the subject. Admittedly, there are still wide gaps in the current state of information and knowledge on the matter and much more remains to be done. Nevertheless, theoretical and empirical research that has been conducted thus far has yielded fresh insights into the problem. We now have a clearer understanding of the underlying causes of corruption, its consequences, and ideas and approaches on possible measures to combat it. At the same time, a better perspective has been obtained on the reasons why corruption persists in so many countries, and why it is difficult to deal with, although people throughout the world view it with disfavor.

## **DEFINITION OF CORRUPTION**

The term 'corruption' is widely used in a rather loose manner in literature as well as in day-to-day context. There is no consensus on definition of corruption, either in literature or in practice. In recent years, concepts of corruption are broadly viewed from the perspectives of the western economies although such economies themselves have not positively recognized the issue. Basically the concept has been derived from the ethical perspectives and thus normative values are associated. Certain practices can always be viewed as corrupt under any situation, but there exist a wide range of borderline issues that can be debated. Cultural variations should be considered while interpreting such practices.

Traditionally corruption was associated with public sector activities only. Black's Law Dictionary, one of the premier legal resources, defines corruption as "The act of an official or fiduciary person who unlawfully or wrongfully uses his station or character to procure some benefit for himself or for another person, contrary to duty and the rights of others."

Braguinsky defined it as 'misappropriation of government property or revenues made possible through government regulations' Gradually, over the periods, the concept has expanded to include all areas of life such as private business, religion, culture and so on.

In early literature, the concept of acquiring unlawful incomes was referred as 'rent seeking'. According to Buchanan, "rent is that part of the payment to an owner of resources over and above that which those resources could command in any alternative use. Rent is receipt in excess of opportunity cost."

Roth referred corruption as an unintended consequence of social welfare theory. Although the market concept was originally based on moral standards, the neoclassical economists brought the idea that value judgments and normative issues were not the concern of positive economics. He argued that the neoclassical literature regarded corruption as efficiency enhancing. Government intervention was justified to reconcile competitive and ethical equilibria and that was how the corruption could be introduced. Government interventions in any form motivated by perceived market failures may lead to political rent seeking and may spread to other areas.

Gregory (1995) observed that treating all public sector activities as 'production' may lead to corruption. Many of the tasks undertaken by the public sector in any country are not like traditional products, they are not distinctly observable. More discretionary powers in the hands of public sector employees could be corruptive. He predicted increase in instances of corruption come at both official and personal levels.

In early days corruption was primarily associated with politics and bureaucracy. As Gong viewed, 'the fundamental difference between the classical notion of corruption and the modern one is that the former focuses on institutions whereas the latter is behaviorally oriented'. With passage of time the concept has widened significantly. In modern world, corruption is evident in every sphere of life. Political corruption (involving governments or the policymaking bodies of a country) seems to be the major concern of developing countries whereas corporate corruption is increasingly becoming a problem in industrialized rich nations.

Corruption is a wide concept and closely associated with ethical norms. Cross-cultural issues play very important roles in defining corruption as ethical concepts are often different. Thus it is extremely difficult to provide a universally acceptable definition of corruption. It may be easier to describe corrupt practices in the context of a specific society, although that too cannot avoid controversies. Gong provided a long list of activities that include taking bribes, neglect of duties, profiteering activities, lavish Living, gambling and visiting prostitutes, smuggling and so on. There could be difference of opinions on viewing several such activities as corrupt practices. Again, much depends on the circumstances where a particular activity is undertaken.

In this list of corrupt behavior, activities such as fraud and embezzlement can be undertaken by an official alone and without involvement of a second party. While others such as bribery, extortion and influence peddling involve two parties - the giver and taker in a corrupt deal.

The two party type of corruption can arise under a variety of circumstances. Often mentioned are concerned with the following:

- Government contracts: bribes can influence who gets the contract, the terms of the contract, as well as terms of subcontracts when the project is implemented.
- Government benefits: bribes can influence the allocation of monetary benefits such as credit subsidies and favoured prices and exchange rates where price controls and multiple exchange rates exist. Bribes can also be important in obtaining licenses and permits to engage in lucrative economic activities such as importing certain goods in high demand and in short supply. Moreover, bribes can be employed to acquire in-kind benefits such as access to privileged schools, subsidized medical care, subsidized housing and real estate, and attractive ownership stakes in enterprises that are being privatized.
- Government revenue: bribes can be used to reduce the amount of taxes, fees, dues, custom duties, and electricity and other public utility charges collected from business firms and private individuals. Time savings and regulatory

avoidance: bribes can speed up the granting of permission, licenses and permits to carry out activities that are perfectly legal. This is the so-called "grease money" to turn the wheels of bureaucracy more smoothly, speedily and hopefully in the right direction. It is also not difficult to think of a really awful situation where rules and regulations, and the way they are applied, are so complex and burdensome that the only way left to get things done is to pay money to avoid them.

- Influencing outcomes of legal and regulatory processes: bribes can be used to provide incentives to regulatory authorities to refrain from taking action, and to look the other way, when private parties engage in activities that are in violation of existing laws, rules and regulations such as those relating to controlling pollution, preventing health hazards, or promoting public safety as in the case of building codes and traffic regulations. Similarly, bribes can be given to favour one party over another in court cases or in other legal and regulatory proceedings.

### **JAN LOKPAL BILL**

Jan Lokpal Bill is a draft anti-corruption bill drawn up by prominent civil society activists seeking the appointment of Jan Lokpal - which would be an independent body that would investigate corruption cases. This body would have the power to prosecute the government officials, politicians and bureaucrats involved in any wrong doing without any government permission. This bill was initially drafted by prominent civil society activists Justice Santosh Hegde (Former Supreme Court Judge and present Lokayukta of Karnataka), Prashant Bhushan (Supreme Court Lawyer), Arvind Kejriwal (RTI activist).

### **BACKGROUND**

The word Lokpal was coined in 1963 by L.M.Singhvi, a Member of Parliament during a debate in Parliament about grievance redressal mechanisms. His son Dr. Abhishek Singhvi is now the head of the Parliamentary Standing Committee reviewing the bill. In order to bring to the attention of the Government, the need to enact the Jan Lokpal Bill, a focused campaigning was started in the form of the India Against Corruption (IAC) movement. Anna Hazare is heading core members of civil society and India Against Corruption (IAC) movement. Being a foreground for Jan Lokpal campaign, IAC has also setup a website [www.indiaagainstcorruption.org](http://www.indiaagainstcorruption.org) to encourage suggestions and objections from citizens across India. Through these collaborative efforts till August 2011, IAC was able to upload the 23rd version of Jan Lokpal Bill draft.

The Lokpal Bill was first introduced by Shanti Bhushan in 1968 and passed the 4th Lok Sabha in 1969. But before it could be passed by Rajya Sabha, the Lok Sabha was dissolved and the bill lapsed. Subsequent versions were re-introduced in 1971, 1977, 1985, 1989, 1996, 1998, 2001, 2005 and in 2008, but none of them were passed. In 2011, during the Parliament's Winter Session, the Lok Sabha passed controversial Lokpal Bill, but it was subsequently turned down in the Rajya Sabha.

What is presently happening is Bill drafting with 50:50 panels i.e. the new Lokpal Bill to be presented in the parliament will be drafted by 5 ministers from the government and 5 civil society representatives i.e. Government of India constituted a 10-member Joint Committee of ministers and civil society activists to draft an effective Jan Lokpal Bill. The ministers in the 50:50 panel are Pranab Mukherjee (chairman), Veerappa Moily, P. Chidambaram, Kapil Sibal, Salman Khurshid. The civil society representatives are Shanti Bhushan (Co-chairman), Anna Hazare, Santosh Hegde, Arvind Kejriwal, Prashant Bhushan.

What will happen in the future is that this Bill which would be drafted by the 50:50 panels would be presented in the parliament on 15th August 2011. And recently Anna again sat on a day fast at Rajghat showing remorse for what government did against Baba Ramdev and his followers at the Ramlila ground in the early hours of morning. He also

declared that if on 15th August the parliament does not pass this bill then they will go on indefinite fast from August 16th 2011 onwards.

**Anna Hazare in his first statement to PM:**

"Do you want us to have faith in a process in which some of the most corrupt people in the country draft the anti-corruption law?"

**MAIN FEATURES OF JAN LOKPAL BILL**

- 1) Lokpal is at the centre and Lokayukta in each state will be set up.
- 2) Like Supreme Court and Election Commission, they will be completely independent of the governments and no minister or bureaucrat will be able to influence their investigations.
- 3) Cases against corrupt people will not linger on for years anymore. Investigations in any case will have to be completed in one year. Trial should be completed in next one year so that the corrupt politician, officer or judge is sent to jail within two years.
- 4) The loss that the corrupt person caused to the government will be recovered at the time of conviction.
- 5) How will it help a common citizen- If any work of any citizen is not done in prescribed time in any government office, Lokpal will impose financial penalty on the guilty officers, which will be given as compensation to the complainant.
- 6) Now, people can approach Lokpal for ration card or passport or voter card if it is not being made or if police is not registering their case or any other work is not being done in prescribed time. Lokpal will have to get it done in a month's time. They can also report any case of corruption to Lokpal like ration being siphoned off, poor quality roads been constructed or panchayat funds being siphoned off. Lokpal will have to complete its investigation in a year, trial will be over in next one year and the guilty will go to jail within two years.
- 7) But won't the government appoint corrupt and weak people as Lokpal members? That won't be possible because its members will be selected by judges, citizens and constitutional authorities and not by politicians, through a completely transparent and participatory process.
- 8) What if some officer in Lokpal becomes corrupt? The entire functioning of Lokpal / Lokayukta will be completely transparent. Any complaint against any officer of Lokpal shall be investigated and the officer will be dismissed within two months.
- 9) What will happen to existing anti-corruption agencies? CVC, departmental vigilance and anti-corruption branch of CBI will be merged into Lokpal. Lokpal will have complete powers and machinery to independently investigate and prosecute any officer, judge or politician.
- 10) It will be the duty of the Lokpal to provide protection to those who are being victimized for raising their voice against corruption.

**DIFFERENCE BETWEEN GOVERNMENT BILL & JAN LOKPAL BILL**

**1) Existing System**

- ❖ No Politician or senior officer ever goes to jail despite huge evidence because Anti corruption Branch (ACB) and CBI directly come under the government. Before starting investigation or initiating prosecution in any case, they

have to take permissions from the same bosses, against whom the case has been investigated.

**System proposed by Civil Society:**

- Lokpal at centre and Lokayukta at state level will be independent bodies. ACB and CBI will be merged into these bodies. They will have power to initiate investigations and prosecution against any officer or politician without needing anyone's permission. Investigation should be completed within 1 year and trial to get over in next 1 year. Within two years, the corrupt should go to jail.

**2) Existing system:**

- No corrupt officer is dismissed from the job because Central Vigilance Commission, which is supposed to dismiss corrupt officers, is only an advisory body. Whenever it advises government to dismiss any senior corrupt officer, its advice is never implemented.

**System proposed by the Civil Society:**

- Lokpal or Lokayukta will have complete powers to order dismissal of a corrupt officer. CVC and all departmental vigilance will be merged into Lokpal and state vigilance will be merged into Lokayukta.

**3) Existing System:**

- No action is taken against corrupt judges because permission is required from the chief justice of India to even register an FIR against corrupt judges.

**System proposed by the Civil Society:**

- Lokpal and Lokayukta shall have powers to investigate and prosecute any judge without needing anyone's permission.

**4) Existing system:**

- Nowhere to go- People have exposed corruption but no action is taken on their complaints.

**System proposed by the Civil Society:**

- Lokpal and Lokayukta will have to enquire into and hear every complaint.

**5) Existing system:**

- There is so much corruption within CBI and vigilance departments. Their functioning is so secret that it encourages corruption within these agencies.

**System proposed by the Civil Society:**

- All investigations in the Lokpal and Lokayukta will be transparent. After completion of investigation, all case records shall be open to public. Complaint against any staff of Lokpal and Lokayukta shall be enquired and punishment announced within two months.

**6) Existing system:**

- Weak and corrupt people are appointed as heads of anti-corruption agencies.

**System proposed by the Civil Society:**

- ❖ Politicians will have absolutely no say in selections of Chairperson and members of Lokpal and Lokayukta. Selections will take place through a transparent and public participatory process.

**7) Existing system:**

- ❖ Citizens face harassment in government offices. Sometimes they are forced to pay bribes. One can only complaint to senior officers. No action is taken on complaints because senior officers also get their cut.

**System proposed by the Civil Society:**

- ❖ Lokpal and Lokayukta will get public grievances resolved in time bound manner, imposed a penalty of Rs 250 per day of delay to be deducted from the salary of guilty officer and award that amount as compensation to the aggrieved citizen.

**8) Existing system:**

- ❖ Nothing in Law to recover ill-gotten wealth. A corrupt person can come out of jail and enjoy that money.

**System proposed by the Civil Society:**

- ❖ Loss caused to the government due to corruption will be recovered from all accused.

**9) Existing system:**

- ❖ Small punishment for corruption- Punishment for corruption is minimum 6 months and maximum 7 years.

**System proposed by the Civil Society**

- ❖ Enhanced Punishment- The punishment would be minimum 5 years and maximum of life imprisonment.
- ❖ Small punishment for corruption- Punishment for corruption is minimum 6 months and maximum 7 years.

## SUPPORT FOR THE BILL

### Surveys

India Against Corruption conducted a survey on the draft Lokpal Bill presented by the Indian Government in Parliament. It showed that 85% of the participants were opposed to the government's bill. The team especially cited the results from the Chandni Chowk constituency, the constituency of Telecom Minister Kapil Sibal, who is a vehement voice for the government's version of the bill.

According to a nationwide survey conducted by CNN-IBN & CNBC-TV18 and published in early August, only a shade over a third of respondents have heard of Lokpal. 34% of all respondents said they have heard of the ombudsman and only 24% knew what it actually meant.

Prashant Bhushan, one of Anna Hazare's associates and a drafter of the Jan Lokpal Bill, has demanded a nation-wide referendum on the Jan Lokpal Bill to gauge the mood of the nation.

### Legislator support

Post the massive support to Anna Hazare's movement, several MPs across party lines have come out in support to the Jan Lokpal Bill. Most notable are Congress MPs from Maharashtra, Priya Dutt and Datta Meghe. Datta Meghe also demanded that his party spokesperson Manish Tiwari should apologise to Anna Hazare for his uncharitable comments.

This support started coming as over 150 MPs and Ministers from different states were forced to remain confined to

their houses as Anna supporters protested outside their houses. Protests were also seen outside the residence of Sheila Dixit CM of Delhi, Kapil Sibal, Pranab Mukherjee amongst others. BJP MP Varun Gandhi is introducing Jan Lokpal Bill as a private member's bill in the parliament.

### **Social media**

As per reports, Anna Hazare's fast was successful in mobilising the support of thousands in the virtual world of social media. On Independence Day, Anna had over 500,000 mentions through status updates and comments across top social networking sites, including Facebook and Twitter in the country. Two days later, the number had shot up to 9 million. On YouTube, over 40,000 people watched the video shot by Kiran Bedi inside Tihar Jail in which Anna has addressed his supporters. Facebook has 542 fan pages by Anna's name.

### **Online surveys**

- ❖ According to the survey conducted by STAR News and Nielsen, 87% of the 8900 respondents of the survey supported the Jan Lokpal Bill. The survey - conducted in 28 cities across the country, including all four metros - mainly dealt with three important points: public's knowledge about the Lokpal Bill; awareness about Anna's campaign; and the perceived problems with the Jan Lokpal Bill.
- ❖ Over a million people joined the Times of India online anti-graft campaign, in one of the biggest ever voting exercises in the virtual world. The news analysis points that citizens want to make their voices heard and have found the platform offered by the campaign a viable one to do so.

### **CONCLUSION**

A useful conclusion that has emerged from the current discussion and ongoing debate on the corruption issue is that corruption is a symptom of deep-seated and fundamental economic, political and institutional weaknesses and shortcomings in a country. To get rid off from such dangerous disease, effective measures like Jan Lokpal Bill are required against corruption. Emphasis must thus be placed on preventing corruption by tackling the root causes that give rise to it through undertaking economic, political and institutional reforms. Anti-corruption enforcement measures such as oversight bodies, a strengthened police force and more efficient law courts will not be effective in the absence of a serious effort to address the fundamental causes.

Another observation that may be useful to bear in mind is that corruption is most prevalent where there are other forms of institutional weaknesses, such as political instability, bureaucratic red tape, and weak legislative and judicial systems. The important point is that corruption and such institutional weaknesses are linked together and that they feed upon each other. So, getting rid of corruption helps a country to overcome other institutional weaknesses, just as reducing other institutional weaknesses helps to curb corruption.

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