

Legislative Brief

The Lok Pal Bill, 2011

The Bill was introduced in the Lok Sabha on August 4, 2011 by Shri V. Narayanasamy, Minister of State, Ministry of Personnel, Public Grievances and Pensions.

The Bill was referred to the Standing Committee on Personnel, Public Grievances, Law and Justice (Chairperson: Dr Abhishek Manu Singhvi) on August 8, 2011. It is scheduled to submit its report by December 7, 2011.

Related Briefs:

The Information Technology Rules, 2011
August 12, 2011

The Enemy Property (Amendment and Validation) Second Bill, 2010
July 6, 2011

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Highlights of the Bill

- ◆ The Bill seeks to establish the office of the Lok Pal to investigate and prosecute cases of corruption.
- ◆ The Lok Pal will cover the Prime Minister after he demits office, Ministers, Members of Parliament, Group 'A' officers and officers of organisations which are either government aided or funded by public donations.
- ◆ Any person may make a complaint against a public servant within seven years of the offence. The Bill provides a process for investigation and inquiry.
- ◆ If the Lok Pal finds that an offence has been committed it may recommend disciplinary action and file a case in the Special Court.
- ◆ The Bill enhances penalties for certain offences under the Prevention of Corruption Act, 1988 from seven years to ten years. It also imposes penalties for false and frivolous complaints.
- ◆ All expenses of the Lok Pal will be charged to the Consolidated Fund of India.

Key Issues and Analysis

- ◆ Currently, the Central Vigilance Commission has jurisdiction over Group 'A' officers. The Lok Pal will also investigate Group 'A' officers. Therefore, there may be dual jurisdiction over these officers.
- ◆ The Bill creates an Investigation Wing under the Lok Pal. An earlier Standing Committee had recommended against creating additional investigation agencies.
- ◆ The Bill expands the definition of public servant to include certain private persons under the Lok Pal. This differs from provisions under several other Acts.
- ◆ There are some gaps in the inquiry and prosecution procedure. The Lok Pal cannot prosecute private persons who abet corruption. The seven-year limitation on filing complaints may prevent prosecution of a two-term Prime Minister in the early years of his tenure.
- ◆ The penalty prescribed for false and frivolous complaints is different from other similar laws and Bills.

PART A: HIGHLIGHTS OF THE BILL

Context

Presently, public servants (such as government officials, Members of Parliament¹, Ministers, judges, employees of universities, armed forces officers, officers of government-aided cooperative societies and banks) can be penalised for corruption under the Prevention of Corruption Act, 1988 (PCA) and the Indian Penal Code, 1860 (IPC).² India became a signatory to the UN Convention against Corruption in 2005 (ratified in May 2011).³

In order to tackle corruption and inefficiency, and redress specific grievances against the administration, the First Administrative Reforms Commission (ARC) mooted the idea of an Ombudsman in 1966. It recommended that independent authorities be established at the centre and in each state to enquire into complaints against public servants.⁴ The Lok Pal and Lokayukta Bill, 1968, sought to penalise maladministration and corruption. However, it lapsed with the dissolution of the Lok Sabha. Different versions of the Bill were introduced seven more times in Parliament, the last in 2001. Each Bill lapsed except the Bill of 1985 which was withdrawn.⁵ Different versions of the Bill have varied on coverage of public servants as well as scope of offences.

The Venkatachaliah Commission in 2002⁶ and the Second ARC in 2005⁷ recommended that the office of the Lok Pal be established without delay.

Following the agitation led by Anna Hazare, the government constituted a Joint Drafting Committee in April 2011. The Committee included government representatives and nominees of Hazare to draft the Lok Pal Bill by June 30, 2011.⁸ However, the two groups could not agree on key points and prepared two drafts of the Bill (the draft by Hazare's nominees is known as Jan Lok Pal Bill). The government introduced its version of the Bill in Parliament on August 4, 2011.⁹ This brief analyses the Lok Pal Bill as introduced in Parliament.

Key Features

The Bill establishes a body called the Lok Pal. It provides a process for receiving corruption complaints against public servants and investigating and prosecuting these in a time bound manner. The Bill also removes the requirement of prior sanction for investigating and prosecuting public servants.

Jurisdiction of Lok Pal

- The Lok Pal can inquire into complaints filed within seven years of the commission of an offence under the PCA. The officials who come under its jurisdiction are: (a) the Prime Minister once he has demitted office, (b) Union Ministers; (c) Members of Parliament (MPs); (d) Group 'A' officers and persons of equivalent ranks in public sector undertakings and other government bodies; and (e) officers of organisations having an annual income above a specified amount receiving funds from the government or donations from the public.
- The Lok Pal does not have jurisdiction over the vote or speech of any MP in Parliament or Committees.

Composition of Lok Pal

- The Lok Pal shall consist of a chairperson and up to eight other members. The Chairperson shall be a present or former judge of the Supreme Court. At least 50 per cent of the other members shall be judicial members (judges of the Supreme Court and Chief Justices of the High Court). A non-judicial member is required to have 25 years of experience in anti-corruption policy, public administration, vigilance, finance or law.

Selection of Lok Pal

- The Lok Pal shall be appointed by the President on the recommendation of a Selection Committee. The Committee shall comprise of the PM, Speaker of the Lok Sabha, Leaders of the Opposition in both Houses of Parliament, a judge of the Supreme Court and a Chief Justice of a High Court (both nominated by the Chief Justice of India), a Union Cabinet Minister, an eminent jurist and an eminent person (all three are nominated by the central government).
- The Selection Committee may constitute a Search Committee. The Search Committee may prepare a list of persons to be considered for appointment to the Lok Pal.

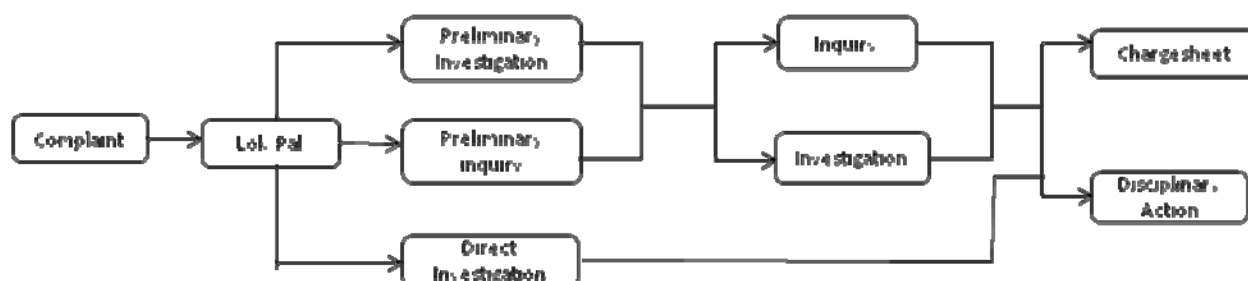
Removal of Lok Pal

- The Chairperson and members of the Lok Pal may be removed on grounds of misbehaviour by an order of the President. The President may make a reference to the Supreme Court to enquire into the Lok Pal's conduct (a) on his own, (b) on the basis of a petition signed by at least 100 MPs or (c) if he is satisfied with a petition by a citizen. The President may issue an order of removal on the basis of the inquiry made by the Supreme Court.

Process of investigation and prosecution

- The Lok Pal shall comprise of an Investigation Wing and a Prosecution Wing. The central government is required to constitute Special Courts to hear cases referred to it by the Lok Pal. The Lok Pal shall recommend the number of such courts. The Lok Pal is not required to obtain any sanction to investigate complaints against a public servant or to file a case against him in the Special Court.

Flow Chart: Investigation process under the Lok Pal Bill, 2011



- Inquiry or investigation:** Upon receiving a complaint, the Lok Pal must initiate a preliminary inquiry or a preliminary investigation which must be completed within a month which may be extended by three months. If there is a *prima facie* case, the Lok Pal will conduct an inquiry or an investigation. Inquiries conducted by the Lok Pal must be completed within a year of receipt of the complaint. In exceptional cases, the Lok Pal may proceed directly with an investigation. All inquiries may be conducted in open court except in exceptional circumstances when they may be held *in camera*. The accused will be given the opportunity to be heard at both the preliminary stage and the investigation stage. The accused has the right to inspect any record related to his alleged offence.
- Prosecution or disciplinary action:** If the Lok Pal finds that an offence was committed, its prosecution wing may file a case in the Special Court and send the report to the competent authority. The competent authority shall report to the Lok Pal on action taken or proposed to be taken within 90 days in case of Ministers and MPs and within 30 days in case of Group 'A' officers. For Ministers, the competent authority is the PM; for MPs, the Speaker or Chairman; and for government officers, the concerned Minister.
- The Special Court shall complete the trial within one year. This period may be extended by a maximum of another year for reasons given in writing.
- The Lok Pal or its investigating officers may provisionally attach assets which are believed to have been obtained through corrupt means. Provisional attachment may be for a period of up to 90 days. The Special Court may confirm the attachment until the proceedings are completed.

Declaration of Assets

- Every public servant is required to declare his assets and liabilities (above a certain value) within a specified time. If he wilfully fails to do so or gives misleading information, he shall be presumed to have acquired such assets by corrupt means.

Penalties

- The Bill increases the maximum penalty for criminal misconduct and for 'habitually' abetting bribery (as mentioned in the PCA) from seven years to ten years imprisonment.
- The penalty for filing "false and frivolous or vexatious" complaints is imprisonment for two to five years and a fine between Rs 25,000 and Rs 2 lakh.

Finances

- The Lok Pal shall estimate its expenditure and forward it to the central government. All its expenses including salaries, allowances and pensions will be charged to the Consolidated Fund of India. This implies that the funds available to the Lok Pal will not be dependent on the annual budget voted by Lok Sabha.
- The Financial Memorandum estimates Rs 50 crore as non-recurring expenditure and Rs 100 crore as recurring expenditure for the Lok Pal. Additionally, it allocates Rs 400 crore (non-recurring expenditure) to construct a building for the office of the Lok Pal.

PART B: KEY ISSUES AND ANALYSIS

Role of CVC and CBI

Dual jurisdiction of Lok Pal and CVC

Clause 17(1)(d) The Lok Pal shall have jurisdiction over public servants categorised as Group ‘A’ officers. Presently, these officers fall under the purview of the Central Vigilance Commission (CVC). Therefore, both the CVC and Lok Pal will have jurisdiction over Group ‘A’ officers.

The Second ARC⁷ recommended the constitution of a Lok Pal for investigation of Ministers and MPs while the CVC continues with its present role. It had further suggested that there be a link between the two bodies to address collusion between Ministers and bureaucrats.

Multiplicity of agencies

Clauses 12, 13, 14 Currently, the Central Bureau of Investigation (CBI) is supervised by the CVC for corruption cases. This Bill creates a separate Investigation Wing under the Lok Pal. A Parliamentary Standing Committee, in its report on the CBI, recommended against the creation of more agencies to tackle corruption, transnational terrorism or organised crimes.¹⁰ It felt that multiple agencies would involve more expenditure and lead to overlapping jurisdictions.¹⁰

Inclusion of private citizens

Officers of private trusts and companies deemed as “public servants”

Clause 17(1)(g) Under this Bill, officers of every trust, society and association of persons (whether registered or not) will be considered to be public servants if (a) the organisation receives government fund or donations from the public and (b) its annual income is above a specified amount. This differs from the definition of public servants in other laws. Under the IPC¹¹, a “public servant” is a person who performs a public duty and receives a fee or salary from the government. The PCA has a similar definition but includes officers of cooperative societies receiving government aid. The Right to Information Act, 2005¹² includes only those non-government organisations which receive government funding.

Unequal treatment of entities

Clause 17(1)(g) The UN Convention against Corruption³ requires member states to penalise corruption between private entities. The Lok Pal Bill does not cover acts of corruption by every private entity. Officials of private organisations who engage in corrupt activities are deemed to have committed an offence if their organisation (association of persons, trusts, etc) receives public donations and has an annual income above a specified amount. Officers of organisations that have an annual income below the specified amount are not covered under the PCA, the IPC or other criminal laws. The Bill criminalises acts of officers of certain entities based on the entities’ income.

Lack of clarity

Clause 17(1)(f) The Bill states that any association of persons “wholly or partly financed and aided by the government” whose annual income is above a prescribed amount shall be under the purview of the Lok Pal. It remains unclear whether the term “wholly or partly financed” will include a company which has taken a loan from a public sector bank.

Procedural gaps

Clause 54 and 17(1)(a) The Lok Pal may inquire into complaints only if they are made before seven years of the date on which the offence was committed. This implies that the first three years of a two-term Prime Minister would be beyond the purview of the Lok Pal once he has demitted office.

Clause 28, 29 and 15 Receiving bribes and abetting bribery are offences under the PCA. The Lok Pal may inquire or investigate a complaint against a person who receives bribes or abets bribery. However, while the Lok Pal may prosecute public servants, it is not empowered to prosecute others abetting bribery.

Clause 23 The Bill provides that the inquiry should be completed within 12 months of filing the complaint. However, it does not provide a timeframe for conducting the investigation.

No safeguards for information related to national security

Clauses
23(7), 26,
57

The Bill does not specifically provide safeguards for information related to national security or public safety.

Under this Bill, certain provisions explicitly require disclosure of information. For instance: (a) the Lok Pal requires any public servant to furnish information, which is relevant to the inquiry; and (b) a public servant under investigation has the right to inspect any record in connection with the case and extract information as is considered necessary to defend his case. The Bill allows an inquiry to be held in-camera in exceptional circumstances but does not specify the circumstances. Under the Code of Criminal Procedure¹³ the judge may hold in-camera trials in certain offences such as rape.¹⁴ In the absence of any guidelines on sharing of sensitive information with public servants and private citizens, there may be a risk to national security or public safety.

The Lok Pal Bill, 2001¹⁵ included the Prime Minister but exempted any complaint that was related to matters of national security and maintenance of public order.

The Right to Information Act, 2005¹⁶ allows the government to reject any request for information, which may be prejudicial to “the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the state, relation with foreign State or lead to incitement of an offence”.

Differing views on the basic framework of the Lok Pal

The Standing Committee on Personnel, Public Grievances, Law & Justice invited comments on some issues such as the jurisdiction, powers and functions of the Lok Pal. In Table 2, we provide some views on these issues.

Table 2: Some issues raised by the Standing Committee

Issues	Arguments for Inclusion in the Bill	Arguments against Inclusion in the Bill
Prime Minister	Corruption is a criminal offence and there is no justification for exempting any public servant. The PM also holds direct charge of ministries.	The PM is the head of the government. Any investigation against him may lead to instability. This also erodes the supremacy of Parliament in determining confidence in the PM.
Lower bureaucracy	PCA includes lower bureaucracy in its definition of public servants.	Over 30 lakh people are employed as Group B, C and D officers in the central government. The Lok Pal may not have the capacity to cover all these officers.
MP's conduct in Parliament	If an MP takes a bribe to speak or vote in a certain way in Parliament, he should not be given immunity for his actions.	The Constitution provides legal protection to speeches and votes of MPs in Parliament. The Bill also gives legal protection only to the speech and vote of an MP. It does not exempt any corrupt acts.
Lokayuktas	It would ensure uniformity of laws across the country. As India has signed the UNCAC, Article 253 of the Constitution permits Parliament to enact a law across India to implement the Convention and appoint Lokayuktas.	State public services fall under the ambit of the state list. A Bill setting up Lokayuktas may violate the federal nature of the Constitution. Also, 18 states presently have Lokayuktas.

Sources: “Ethics in Governance,” 4th Report of the Second ARC, Jan 2007; “Executive and Public Administration,” Chapter 6 of the National Commission to Review the Working of the Constitution, March 31, 2002; Standing Committee Reports on 1996, 1998 and 2001 Lok Pal Bill; “Jan Lokpal Bill: Addressing Concerns,” Prashant Bhushan, Hindu, April 15, 2001; Minutes of the Meeting of the Joint Drafting Committee for drafting the Lokpal Bill; “Census of Central Government Employees: As on March 31, 2008,” Ministry of Labour, Govt of India (2011); PRS.

False and frivolous complaints

Clause
49(1)

The Bill provides that persons making “false and frivolous or vexatious complaints” will be penalised with two to five years of imprisonment and fine of Rs 25,000 to Rs 2 lakh. Other laws with similar provisions impose different penalties. The Standing Committee while examining the Public Interest Disclosure Bill, 2010¹⁷ and the Judicial Standards and Accountability Bill, 2010¹⁸ had concluded that having a high level of punishment may deter people from complaining.

Clause
49(1) and
52

Furthermore, the provision is ambiguous. It is not clear which of these complaints are criminalised under the Bill: “false and frivolous”, “vexatious” or “false and vexatious”. It is also not clear if a person making a complaint in good faith may be penalised if the complaint is found to be false. This may further deter persons from complaining. Table 3 compares various laws with similar provisions.

Table 3: Laws against false and frivolous complaints

Legislation	Offence	Penalty	Standing Committee Recommendation
Public Interest Disclosure Bill, 2010	Making incorrect or false or misleading disclosure, knowingly and with the intent to cause harm	Imprisonment of up to 2 years and a fine of up to Rs 30,000	Reduction in penalty imposed. The intent of the complainant and not the outcome should be vital for determining the offence
Judicial Standards and Accountability Bill, 2010	Making a frivolous or vexatious complaint, or with the intent to scandalize or intimidate the judge	Rigorous imprisonment of up to 5 years and a fine which may extend to Rs 5 lakh	Reduction in penalty to six months imprisonment and fine of Rs 2,000
Indian Penal Code, 1860	Knowingly giving false information to a public servant	Imprisonment of up to six months and a fine of Rs 1000	-
Lok Pal Bill, 2011	Making false and frivolous or vexatious complaints	Imprisonment of 2 to 5 years and fine between Rs 25,000 and Rs 2 lakh	-

Sources: Public Interest Disclosure Bill, 2010; Judicial Standards and Accountability Bill, 2010; Indian Penal Code, 1860, Report of the Standing Committee on Public Interest Disclosure Bill, 2010 and Judicial Standards and Accountability Bill, 2010; Lok Pal Bill, 2011; PRS.

Notes

1. As ruled by the Supreme Court in *PV Narasimha Rao v. State* (AIR 1998 SC 2120).
2. Section 21 of the Indian Penal Code, 1860 and Section 2(c) of the Prevention of Corruption Act, 1988.
3. UN Convention Against Corruption, December 14, 2005.
4. "Problems of Redress of Citizens' Grievances," Interim Report of the First Administrative Reforms Commission, 1966.
5. The Lokpal and Lokayukta Bill, 1968 and Unstarred Question No. 1773, Rajya Sabha, Answered on November 25, 2010.
6. "Executive and Public Administration," Chapter 6 of the National Commission to Review the Working of the Constitution (Chairperson: Shri M.N. Venkatachiliah), March 31, 2002.
7. "Ethics in Governance," Fourth Report of the Second Administrative Reforms Commission, Jan 2007.
8. Resolution No. 1(42)/2004-Leg-I, Ministry of Law and Justice, April 8, 2011.
9. "Finance Minister's Statement in the Lok Sabha 27 August 2011," PIB, Aug 27, 2011.
10. 24th Report on the "Working of Central Bureau of Investigation," Standing Committee on Personnel, Public Grievances, Law and Justice, March 11, 2008.
11. See Sections 21, 170 and 186 of the IPC and Section 2(c) of PCA, 1988.
12. Section 2(h)(d) of the Right to Information Act, 2005.
13. Section 327 of the Code of Criminal Procedure, 1973.
14. Sections 376, 376A, 376B, 376C, 376D of the Indian Penal Code, 1860.
15. Clause 10(1) of the Lok Pal Bill, 2001.
16. Section 8(1)(a) of the Right to Information Act, 2005.
17. 46th Report of the Standing Committee on Personnel, Public Grievances, Law & Justice on the Public Interest Disclosure Bill, 2011, June 9, 2011.
18. 47th Report of the Standing Committee on Personnel, Public Grievances, Law & Justice on the Judicial Standards and Accountability Bill, 2010, Aug 30, 2011.

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