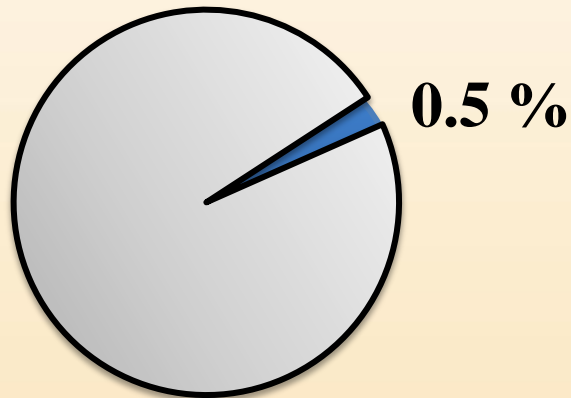


Lokpal Bill

...Understanding the Drafts of **Government** and Civil Society

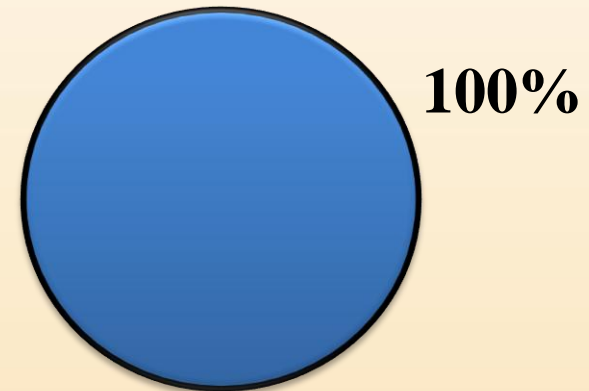
Government's Lokpal

**Directed against those who raise their voice
against corruption?**



Jurisdiction

**Only 65,000 people out of 1.2 crore
Only Group A Central Govt employees
Instead of ALL Govt employees**



**All NGOs, Societies, Trusts ,
even unregistered**

[Section 17 (1) (e) of Govt Bill]

Government's Lokpal

Provides illegitimate protection to the corrupt officials?

If a citizen complains against a govt officer's corruption to Lokpal...

- Govt officer can file a **Cross Complaint** directly to the **Special Court without Preliminary Enquiry** that whether complain was frivolous
- Govt officer given **free advocate** while the **Citizen has to defend himself**
- If complain proved frivolous **citizen gets minimum 2 years jail**
- If **corruption** of Govt officer proved – gets **minimum 6 months jail**

Government's Lokpal

Pro-accused investigation process?

After preliminary enquiry, **accused given a hearing before filing an FIR** to explain why an FIR should not be registered against him.

After completion of investigations, **presented evidence** & again given a hearing to explain why a case should not be filed in the court

During investigations, if investigations are to be started against **any new persons**, they too would be presented with evidence against them & given hearing

Increased risk to **whistleblowers**

Nowhere else in the world is Criminal Jurisprudence like this!

[Section 23, 24 of Govt Bill]

Critical Issues – Prime Minister

Jan Lokpal Draft

- Lokpal should have power to investigate allegations of corruption against PM.
- Special safeguards provided against frivolous & mischievous complaints

Government's Draft

PM kept out of Lokpal's purview.

CORRUPTION by PM can be investigated, under Prevention of Corruption Act

Govt wants investigations to be done by CBI...

....which comes directly under him, rather than independent Lokpal

Critical Issues – Judiciary

Jan Lokpal Draft

- Lokpal should have power to investigate allegations of corruption against Judiciary.
- Special safeguards provided against frivolous & mischievous complaints

Government's Draft

Judiciary kept out of Lokpal's purview.



Government wants it to be included in Judicial Accountability Bill (JAB)

In JAB permission to enquire against a judge will be given by a Three member committee, Two judges & a ret'd Chief justice of the SAM E court)

... If only a strong and effective JAB were considered & enacted simultaneously

Critical Issues – Judiciary

- Judicial Accountability Bill (JAB), drafted by the government, does not talk of bribery by the judges. It only talks of “misbehavior”.
- National Oversight Committee sought to be created through JAB will not have the police and investigative powers and machinery to deal with criminal complaints of bribery, which Lokpal would have. Therefore, the two bills actually complement each other.
- Even if judicial corruption were included in JAB, it is not clear when would an effective JAB become a reality? Should we wait endlessly till JAB became a reality?

Critical Issues – MPs

Jan Lokpal Draft

Lokpal should be able to investigate
allegations that any MP had taken bribe to
vote or speak in Parliament

Government's Draft

Government has excluded this
from Lokpal's purview.



**Article 105(2) gives them Freedom to Vote or Speak in Parliament,
not Freedom for taking Bribe for it!!!**

Govt virtually giving a license to MPs to take bribes with impunity

Strikes at the foundations of our democracy

Critical Issues – Grievance Redressal

Jan Lokpal Draft

Violation of CITIZEN'S CHARTER (if an officer does not do a COMMON MAN's work in prescribed time) by an officer should be penalized and should be deemed to be corruption.

Government's Draft

No penalties proposed. So, this will remain only on paper

Government had earlier agreed to it –

(Joint committee meeting, 23rd May)

Unfortunately have gone back on this decision.



Critical Issues – CBI

Jan Lokpal Draft

- Anti-corruption branch of CBI should be merged into Lokpal.

Government's Draft

Government wants to retain its hold over CBI.



CBI misused by government.

Recently, govt exempted CBI from RTI,

Critical Issues – CBI

Jan Lokpal Draft

- Broad based selection committee with 2 politicians, 4 judges and 2 independent constitutional authorities.
- An independent search committee consisting of retired constitutional authorities to prepare first list.
- A detailed transparent selection process with PUBLIC PARTICIPATION

Government Draft

- With 5 out of 10 members from ruling establishment, 6 politicians in selection committee, ensured that only pliable & weak people be selected
- Search committee to be selected by selection committee
- No selection process provided.

**Government's will be able to appoint its own Lokpal members & Chairperson.
Earlier consensus on Selection committee, Selection process,
Disagreement only on composition of search committee –
(Joint Committee meeting, 7th May)**

Critical Issues – Accountability (Lokpal Members)

Jan Lokpal Draft

- Accountable to the PEOPLE
- Any Citizen can make a complaint to Supreme Court and seek removal.
- Judicial review over the actions of the Lokpal by the High Courts under Article 226 and the Supreme Court under Article 32 and 136

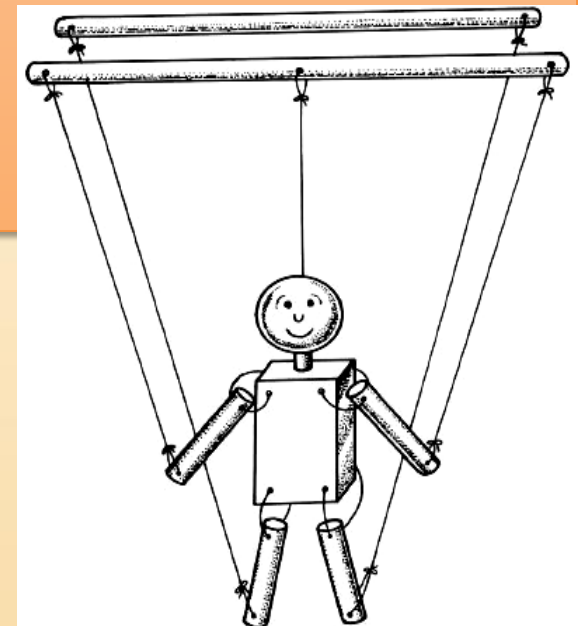
Government's Draft

Accountable to the Government.
Only government can seek removal of Lokpal

Both Selection and Removal of Lokpal in

Government's CONTROL

Puppet in government's hands



Critical Issues – Accountability (Lokpal Staff)

Jan Lokpal Draft	Government's Draft
Complaint against Lokpal staff will be heard by an independent authority	Lokpal itself will investigate complaints against its own staff, thus creating serious conflicts of interest

Government's Lokpal is accountable either to itself or the government.

We suggested accountability of Lokpal directly to PUBLIC

Critical Issues – Method of Enquiry

Jan Lokpal Draft

- Method would be the same as provided in CrPC like in any other criminal case.
- After preliminary enquiry, an FIR will be registered.
- After investigations, case will be presented before a court, where the trial will take place

Government's Draft

CrPC being amended

Special protection to the accused

- After preliminary enquiry, all evidence provided to the accused & hearing for why an FIR should not be regd. against him.
- After completion of investigations, again all evidence provided & hearing for why a case should not be filed against him in the court.
- During investigations, if investigations are to be started against any new persons, they would also be presented with all evidence against them and heard.

Investigation process provided by the government
would severely

COMPROMISE ALL INVESTIGATIONS

If evidence were made available to the accused at various
stages of investigations, it would also

REVEAL IDENTITY OF WHISTLEBLOWERS

compromising their security

Such a pro-accused process of Criminal
Jurisprudence **NOWHERE IN THE WORLD**

Such process would

KILL ALMOST EVERY CASE !!!!



Critical Issues – Lokayukta

Jan Lokpal Draft

- The same bill should provide for Lokpal at centre and Lokayuktas in states

Government's Draft

Only Lokpal at the centre would be created through this Bill.

According to Mr Pranab Mukherjee, some of the CMs have objected State Information Commissions were also set up under RTI Act through single Act only.

Critical Issues – Whistleblower Protection

Jan Lokpal Draft

- Lokpal will be required to provide protection to whistleblowers, witnesses and victims of corruption

Government's Draft

No mention in this law.

Protection for whistleblowers is being provided through a separate law.

That law so bad - Trashed by Standing Committee of Parliament - headed by Ms Jayanthi Natrajan.

Earlier agreed that Lokpal would be given the duty of providing protection to whistleblowers under the other law, & that law would also be discussed & improved in

Joint Committee only (Joint Committee meeting, 23rd May)

Critical Issues – Special Benches in HC

Jan Lokpal Draft

High Courts will set up special benches to hear appeals in corruption cases to fast track them

Government's Draft

No such provision

One study shows that it takes **25** years at appellate stage in corruption cases.

Critical Issues – CrPC

Jan Lokpal Draft

- On the basis of past experience on why anti-corruption cases take a long time in courts and why do our agencies lose them, some amendments to CrPC have been suggested to prevent frequent stay orders.

Government's Draft

Not included



Critical Issues – Dismissal of Corrupt Government Servant)

Jan Lokpal Draft

- After completion of investigations, in addition to filing a case in a court for prosecution, bench of Lokpal will hold open hearings and decide whether to remove the government servant from job.

Government's Draft

The minister will decide whether to remove a corrupt officer or not.

Often, Ministers are beneficiaries of corruption of senior officers

Power of removing corrupt people from jobs should be given to

independent Lokpal rather than this being decided by the minister in the same department.

Critical Issues – Punishment

Jan Lokpal Draft

- Maximum punishment is ten years
- Higher punishment if rank of accused is higher
- Higher fines if accused are business entities
- If successfully convicted, a business entity should be blacklisted from future contracts.

Government's Draft

None of these accepted. Only maximum punishment raised to 10 years.



Critical Issues – Financial Independence

Jan Lokpal Draft

Lokpal 11 members collectively will decide how much budget do they need

Government's Draft

Finance ministry will decide the quantum of budget

This seriously compromises with the financial independence of Lokpal

Critical Issues – Prevent ongoing Corruption

Jan Lokpal Draft

- Lokpal will have a duty to take steps to prevent corruption in any ongoing activity, if brought to his notice. If need be, Lokpal will obtain orders from High Court.

Government's Draft

No such duties and powers of Lokpal

2G is believed to have been known while the process was going on.

Shouldn't some agency have a duty to take steps to stop further corruption rather than just punish people later?

Critical Issues – Tap Phones

Jan Lokpal Draft

Lokpal bench will grant
permission to do so

Government's Draft

Home Secretary would
grant permission



The right to tap phones is a basic right provided to all Investigation Agencies in the country even now

Permission from Home Secretary will compromise investigations.

Critical Issues – Delegation of Powers

Jan Lokpal Draft

- Lokpal members will only hear cases against senior officers and politicians or cases involving huge amounts.
- Rest of the work will be done by officers working under Lokpal

Government's Draft

All work will be done by 11 members of Lokpal. Practically no delegation.

This is a sure way to kill Lokpal.

Within no time, the members would be overburdened.

Critical Issues – NGOs

Jan Lokpal Draft

Only government funded
NGOs covered

Government's Draft

All NGOs, big or small, even
unregistered, are covered.

A method to arm twist NGOs

About **5** lakh registered NGOs and millions unregistered

Contradicts own logic of not including lower bureaucracy because of
large numbers overburdening Lokpal

Critical Issues – False, Frivolous & Vexatious Complaints

Jan Lokpal Draft

- No imprisonment, only fines on complainants.
- Lokpal will decide whether a complaint is frivolous or vexatious or false.

Government's Draft

- 2-5 years of imprisonment & fine
- The accused can file complaint against complainant in a court
- Prosecutor and all expenses of this case will be provided by the government to the accused
- The complainant will also have to pay a compensation to the accused

Every accused will harass complainants.

Corrupt people will file cases against complainants and no one will dare file any complaint.

Interestingly,
Minimum punishment for
corruption is 6 months but for
filing false complaint is 2
years.

