

Experts attend India Today Roundtable conference on Lokpal, Corruption



From left: Nikhil Dey, M.J. Akbar, Dipankar Gupta, Prashant Bhushan, Arvind Kejriwal, Mahesh N. Buch, N. R. Madhava Menon, Shekhar Singh, K.T.S. Tulsi and Aron Purie.

The Lokpal Bill is unlikely to be the silver bullet to end corruption. It could, however, become a powerful weapon to aid the common man's battle against the scourge of our times. These were the conclusions of an India Today roundtable on August 29 in Delhi. The eminent panel comprised a sociologist, legal luminaries, a former bureaucrat and social activists besides core members of Team Anna. They sat down to discuss the issue just 48 hours after Anna Hazare called off his fast. There was, surprisingly, no unanimity on the bill. Team Anna believes the Jan Lokpal is the need of the hour and can be set up by hiving off existing corruption-fighting agencies like the CBI. Social activists believe that the Lokpal could lead to the creation of another gigantic bureaucracy, accountable to none. In the words of a panelist, everybody was united in concern over corruption but divided on how to tackle it. It was the perceived dissonance among the three pillars of governance: legislative, judiciary and executive that fuelled a nationwide mass movement coalescing into the anger at Ramlila Maidan. The perception that these pillars had failed to deliver led to the chorus for an independent watchdog. But clearly it will take a massive reform of these institutions if the Lokpal is to become truly effective in the form it is envisaged. Otherwise, as a panelist put it, the act could end up becoming a Delhi flyover: merely shifting its problems from one traffic signal to the next.

Arvind Kejriwal, RTI and anti-corruption activist

"If I were to define the Jan Lokpal Bill in one line, take the anti-corruption machinery of CBI out of the government's control, make it independent and rename it Lokpal. The CBI will keep enjoying the jurisdiction it has, just the anti-corruption wing needs to be under the Lokpal. Prosecution in corruption cases should be secured in a timebound manner to deter corrupt practices."

Need Unified Approach

He clarified that Lokpal is no Frankenstein's monster that is going to control the Prime Minister or functionaries of the government. He emphasised the need for a unified, strong anti-graft apparatus under Lokpal, and said the size of the agency does not define its integrity. According to him, work culture, systematic approach and use of better technology determine corruption levels in a particular organisation. The Government, he suggested,

should focus on creating the best systems to curb corruption, exemplifying the case of Delhi Metro under E. Sreedharan.

Nikhil Dey, Social activist and development specialist

"I think there are issues within the Jan Lokpal which concern all of us. We want investigation and prosecution to come under it. But the power to dismiss a government servant is an extreme power in the hands of Lokpal. It could end that person's career. It is too much power in my view."

Empower Existing Agencies

He disagreed with the creation of a separate Lokpal because it would amount to creating another organisation with a huge bureaucracy. He said he was united with Prashant Bhushan and Arvind Kejriwal on concerns about corruption but divided in the method to tackle it. He felt the anti-corruption organisation envisaged by them under the Jan Lokpal Bill was extreme, particularly in its powers to investigate, prosecute and dismiss government officials. He wondered why the fight against corruption could not be executed by existing agencies of the government particularly if they were made transparent and accountable.

N.R. Madhava Menon, Legal expert

"I would have liked the Lokpal to be a constitutional institution, as some MPs have said, with the status of an election commission. But if we go with that, things will be delayed. This is the right time for the Lokpal. I don't think for the common man a grievance is any different from a First Information Report. If there has to be a grievance redressal machinery, it must be under the Lokpal."

Right Time For Lokpal

He traced the call for an independent Lokpal to the present weakness of the judiciary. He said B.R. Ambedkar did not envisage a Lokpal in the Constitution because the judiciary was powerful, independent of Government and could review both executive and legislative action. With calls for the judiciary to be placed under supervision, the search had begun for another independent institution, particularly since corruption had overtaken all three departments of state-legislature, executive and judiciary. He emphasised that human resources and not merely laws and institutions make a system work. Hence the need to design a system to attract persons of integrity to run the institutions.

Mahesh N. Buch, Former IAS officer

"The administrative and police services succumbed to men armed with transfer orders. If the executive can't be made to function again, who is going to deliver? The Lokpal, judiciary and legislature can't. The civil service is the most independent institution and has constitutional rights which don't exist otherwise. Now they have stopped functioning. Let us go back to a system of interlocking accountability."

Overhaul Administration

He made a case for total administrative revamp. None of the safeguards or the people put into place to constitute the Lokpal would be effective unless an environment of good governance was brought in. The legislature had co-opted the executive mainly by holding out the threat of transfers, he said, and both these vital arms of government had ceased to be effective. He said the system had to move from one of merely pursuing the corrupt, to one of

good governance where corruption ceases to be an issue. The corrupt could be dealt with under existing laws. He welcomed the people's campaign to bring about this accountability at every level of government. He said no one in the country was beyond the purview of the law. The Prevention of Corruption Act applied to everyone, yet the law was not working because enforcement agencies were not doing their job.

Dipankar Gupta, Sociologist

"Let the law not disable us, but enable us. We want redressal in time. Right now we are talking of how we can make the system objective, straightforward and deliver to the citizens in time. Let us not complicate matters and let us see how we can benefit citizens. And the law alone is not benefited."

Timely Redressal

He emphasised that corruption was an important issue because democracy is a fine balance between the rule of law and the rule of numbers. It was not a judicial issue but a political one. The notion of universality was central to all democratic constitutions and valid every time there was corruption. The fight against corruption could not be delegated because you could sit at the top and have clean hands but the dirt would settle at the bottom. He felt the citizens' charter was the most attractive aspect of the Jan Lokpal Bill because it gives a time frame, teeth and investigative powers.

K.T.S. Tulsi, Senior advocate and Vice Chairman of Law Commission

"We need to fix the criminal courts, otherwise independent investigation and strong prosecution will come to naught. If we can't decide cases for 20 years, it's worthless having an anticorruption machinery. If criminal courts begin to function, many MPs and legislators will be disqualified from contesting elections. There is a conspiracy between civil servants and politicians to keep criminal justice under a severe handicap."

Reform Judicial System

In his view, the citizens' charter is the most revolutionary aspect of the Jan Lokpal Bill. Governance all across the world has improved only when mal-administration has been penalised. He said corruption is a crime and it has to be investigated and prosecuted like a criminal offence and tried by a criminal court. In his view, any Lokpal Bill will be infructuous in the criminal courts if the judicial system is not reformed. Citing the example of the 2G scam, he said the prosecution handed over 20,000 documents in 20 sacks to all the accused. It will take two years for the judge to verify whether each accused got every document. He stressed the need for a corruption code, just as we have the criminal code.

Shekhar Singh, Environmentalist and prominent RTI activist

"I have always argued that there is no shortage of institutions in this country to deal with various problems. There are independent institutions like the Central Information Commission. The more independent an institution is, the less it is accountable."

Less Independence, More Accountability

He expressed reservations on the Jan Lokpal Bill in its current form. He felt the bill needed to be discussed in an open forum to incorporate changes. He is against Parliament suspending its judgment on a bill and accepting just one version. He warned against tendencies where, if a democratically elected government is not performing a particular task well, pressure is put

to set up a parallel, autonomous institution to do it. This will lead to a scenario where a Chief Minister or the Prime Minister can say 'well, I am sorry but I have no control on corruption because all the powers over the control of corruption have been taken away from me'.

Prashant Bhushan, Civil rights lawyer and activist

"The need for an independent Lokpal has risen because of obvious conflicts of interest. The government controls investigation of corruption cases involving public servants. It doesn't make an institution threatening just because it has jurisdiction over judges, ministers and bureaucrats on the criminal investigation of corruption cases."

No government Intervention

He supports functional and financial autonomy to Lokpal to investigate corruption cases. The permission to prosecute government functionaries, ministers or MPs should rest with the Lokpal. He would like an independent selection process of Lokpal and its members. He dismissed fears of dysfunctionality of Lokpal in dealing with a huge bureaucracy. If the Central Vigilance Commissioner (CVC) can look after 39 lakh officers, he said that the Lokpal can certainly look after 40 lakh people. All levels of public servants should be under the Lokpal as corruption is institutionalised, and separate agencies cannot be investigating the same corruption case depending on the rank of functionaries. The government version of the Lokpal Bill is highly deficient, he said. It gives functional autonomy to the Lokpal and the selection is under the control of the Government.

The CVC has functional independence but since the selection is controlled by the Government, the people appointed are usually pliable. To ensure transparency and accountability in the functioning of Lokpal, the Jan Lokpal Bill ensures that details of every investigation be put out in the public domain immediately after the investigation is over. Also, the 11-member Lokpal has been made accountable to the Supreme Court. Any member of the public can complain against any member of the Lokpal to the Supreme Court. The bench will inquire into it and if they find the member guilty of any misconduct, they can recommend his removal to the Government, which would be binding on the Government. The Jan Lokpal Bill provides for a selection committee which consists of eight people out of which only one person is from the government, the Prime Minister.

<https://www.indiatoday.in/magazine/cover-story/story/20110912-india-today-roundtable-on-lokpal-bill-corruption-747474-2011-09-02>