

Differences abound, both major and minor, in competing Lokpal drafts



On Tuesday, the Joint Drafting Committee on the Lokpal Bill reached a dead end with the United Progressive Alliance government and civil society representatives releasing their own drafts of the proposed law. A close reading of their provisions reveals differences in a number of areas.



ISSUE	JAN LOKPAL BILL (CIVIL SOCIETY)	LOKPAL BILL (GOVERNMENT)	ISSUE	JAN LOKPAL BILL (CIVIL SOCIETY)	LOKPAL BILL (GOVERNMENT)
DEFINITIONS			INVESTIGATING OFFICERS		
"Bench"	§ 2(d) - Each Lokpal bench shall have a member with "legal background," defined as a judicial officer in India for (at least) 10 years or HC/SC advocate for a minimum of 15 years §22(2) - However, for the purpose of conducting an inquiry for imposing penalties against a public servant, "judicial officers" would include retired judges/bureaucrats	§2(a) - Bench would have "judicial members," defined as such persons who are/were a Chief Justice of a HC or a Judge of the Supreme Court §3(3)(b)	Mode of investigation	- No comparable provision - <i>Note: There are provisions dealing with investigating officers/agencies but since they are similar to the Lokpal bill ones, they don't find place in this table</i>	§ 14(1) - The investigating officer must first conduct a preliminary investigation and then submit a report to the Lokpal "to enable it to satisfy itself if the matter requires to be inquired into" § 23(2) Preliminary investigation to be completed within 30 days + three months (reasons for extension to be recorded in writing)
"Complaint"	§ 2(b) - plainly as "an allegation of corruption or a request by whistleblower for protection and appropriate action"	§ 2(d) - only those alleging that a public servant has committed an offence punishable under the Prevention of Corruption Act (PoCA), 1988	CBI's role	§32 - Merger of anti-corruption Branch of CBI into Lokpal - The Central Government shall cease to have any control over the transferred part and its personnel - all cases being dealt with till then shall also stand transferred	No proposal for such merger
"Corruption"	§ 2(e) - (i) any act punishable under PoCA, including purported offences committed by an elected representative in respect of speech/vote in the house (ii) wilfully giving any undue benefit to any person or obtaining any benefit from any public servant in violation of any laws or rules (iii) victimisation of a whistle-blower/witness (iv) repeated violation of a citizen's charter by public servant	No definition of corruption, and states according to § 2(2) that undefined terms will be assigned meanings as understood in the PoCA Parliamentary privileges are secure and the Lokpal has no power to investigate the conduct of elected representatives in the House §17(1)* <i>*Note: Only Parliament</i>	JURISDICTION Who falls within purview	No inclusive or exclusionary provisions, all public servants as defined in PoCA and Govt. servants as defined in JLP will fall within its ambit § 17(1) However, for "high functionaries" - i.e. PM and Council of Ministers, sitting judges of the SC or HC, any MP - permission from seven-member bench of Lokpal is required	§ 17(1) lists those who fall within Lokpal bill's purview: most notably, the Prime Minister is excluded
Public/government servant	Public servant § 2(l) - as defined in the PoCA Government servant § 2(g) - public servant not "an elected representative or judicial officer"	§§ 2(l) and 17(1) - includes persons "associated with the allegation of corruption" under PoCA, and a host of other offices like Union Minister, MP, Group 'A' officer and above, but notably, excludes the Prime Minister from the bill's ambit	SPECIAL PROVISIONS		
			Immunity to the bribe-giver	§33 - Immunity to bribe giver in some cases "if he voluntarily and gives timely information to the Lokpal about the giving of bribe by him with entire evidence for the purpose of getting the bribe taker/public servant concerned caught and convicted, provided he also relinquishes all the illegitimate benefits which he had received by the giving of that bribe"	No such provision
CONSTITUTION			Powers of contempt	No provisions	§ 31 grants power of contempt to the Lokpal as an HC under the Contempt of Courts Act, 1971 - includes power to punish
Eligibility to be a member/Chairperson	§§ 4(4) and 4(21) are exclusionary provisions that define who shall not be eligible - usual norms like citizenship, moral turpitude, age, and recent govt. service § 4(10) apart from "impeccable integrity" only those with a "record of public service particularly in the field of fighting corruption" shall be eligible for nomination (by Search Committee) - unique to JLP	Similar norms - § 3(4) of LP is comparable to § 4(21) of the JLP	Interception and monitoring	§ 29 (12) "an appropriate Bench of the Lokpal shall be deemed to be the designated authority under Section 5 of the Indian Telegraph Act empowered to approve interception and monitoring of messages or data or voice transmitted through telephones, internet or any other medium as covered under the Indian Telegraph Act read with Information and Technology Act 2000 and as per rules and regulations made under the Indian Telegraph Act 1885."	No provision that confers such powers
Selection Committee	§ 4(6) - Composition - PM (Chair), Leader of Opp. (only Lok Sabha), 2 sitting SC Judges and 2 HC Chief Justices selected by a "collegium of all SC judges," Chief Election Commissioner (CEC), Comptroller & Auditor General (CAG), previous Lokpal chairpersons	§ 4(1) - PM (chair), Leaders of Opp. (both Houses), Lok Sabha Speaker, Leader of House other than that in which PM is a Member, 1 SC Judge and 1 HC CJ nominated by the CJ, Cabinet Secretary, Home Minister, President of National Academy of Sciences	Powers to issue letters rogatory	§6(h) - The Lokpal may authorise a Bench to issue letters -rogatory in relation to any case pending investigation under this Act	No enabling provision of this kind
Search Committee	§4(7) Mandated by the JLP Bill, a Search Committee will be constituted to prepare "a short list" from which the Selection Committee shall pick §4(8) 10 Members - five from "Civil Society" and five from retired CJs, CECs and CAGs.	§ 4(3) - Search committee is not a pre-requisite - the Selection Committee may constitute one if it thinks necessary. Criteria also listed	Power to get staff/Officers trained in investigative methods	§ 6(k) Power conferred to recruit investigating officers and other officers and staff and get them trained in modern methods of scientific investigation	No comparable provision
Selection Process	§ 4(14) - First, the Search Committee shall prepare a shortlist of "3 times the number of persons to be appointed as Lokpal members" - "preferably through consensus" §4(17) - Selection Committee shall then pick after considering "all relevant information" - preferably through consensus - but name to be dropped if three members of Selection Committee disapprove	§ 4(4) Selection Committee shall regulate its "own procedure" for selecting the Chair and Members of Lokpal, which shall be "transparent"	Whistle-blower protection	Chapter XI of the JLP is devoted to whistleblowers and their protection	No provisions relating to whistle-blowers
REMOVAL			POST-INVESTIGATION		
Complaints mechanism for Lokpal Members/Chair	§ 11(1) members/ Chair can be removed from office by the President, on the recommendation of the SC, after it holds an inquiry on the complaint of "any person" § 11(5) However complaint punishable if found frivolous or with mala fide intentions	§ 40 (1) - "Party aggrieved" shall make an application to the President who will refer the matter to the CJJ if there is a prima facie case for corruption/bias § 40 (4) - After receiving the same, if the President "is satisfied" of bias/corruption, shall take action	Lokpal's punitive powers	§ 22(1) Lokpal may either initiate prosecution against such public servant or may initiate proceedings for imposition of penalty or both §22(4) Recommendations for imposition of penalty will be binding on appointing authority of public servant	§ 27(1) - Lokpal, apart from sending the matter to the Special Courts for prosecution - has only recommending powers - competent authority is only bound to initiate disciplinary proceedings - and forward its comments on report and action taken to Lokpal
For Lokpal staff/officers	§ 15 Independent complaints authority for officer or staff - one or more in each State - State Human Rights Commission chiefs, Lok Ayukta and HC Chief Justice to select the Authority members who will be five in number - two retired bureaucrats, two from civil society and headed by retired HC Chief Justice	§ 41 - Corruption complaints against officials to be handled by Lokpal itself	Penalties and punishment	§23 features a host of punishments, including: Six months RI - can go up to imprisonment for life Higher the rank, the more severe the punishment Blacklisting of business entities that benefited from corrupt actions - recovery from assets Removal from office	Not all the measures find mention in the Govt. draft - penalties those equivalent to ones in PoCA
			False or vexatious complaints	§ 30(1) - Lokpal can impose fines on such complainants - if complaint is against members/staff of Lokpal, it can even sentence complainant to three months of SI - financial penalty limit (Rs. 1 lakh)	§50 Higher penalty range (Rs. 25,000 to Rs. 2 lakh) for vexatious complaints, but only a Special Court can take cognisance of the offence of filing false/mala fide complaints