



# An Idea Moulded and Remoulded

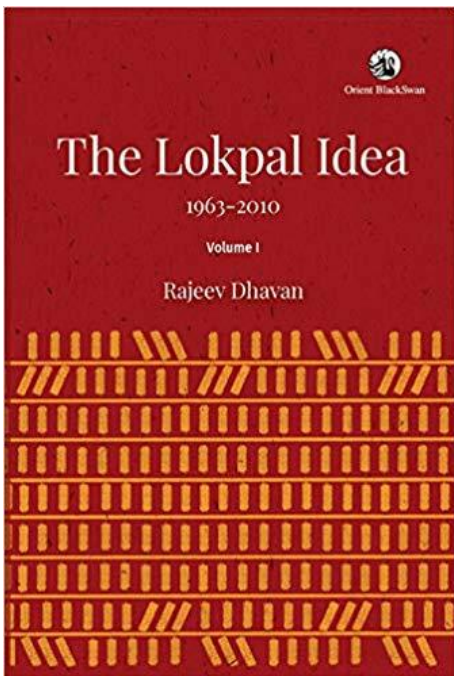
Rumki Basu

**THE LOKPAL IDEA: 1963-2010 (Volume I)**

**ANNA AND THE LOKPAL BILL: 2010-2018 (Volume II)**

Both by **Rajeev Dhavan**

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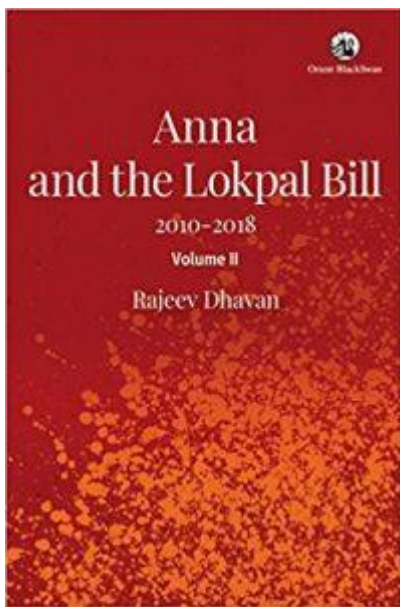


Increasing corruption in public life has been a matter of growing concern in India since the early 1960s. The Administrative Reforms Commission recommended the appointment of the Lokpal institution in 1966. Since then, a number of Lokpal legislations were introduced in the Union Parliament in the years 1971, 1977, 1985, 1989, 1996, 1998 and 2001 that could not be passed. The Anna Hazare movement of 2011 forced the Government of India to seriously think of reintroducing the Lokpal legislation. Finally, the Lokpal and Lokayuktas Act 2013 was passed.

During the UPA II Government's regime (re-elected in 2009), corruption emerged as the major cause of public anger involving politicians, civil servants, law enforcement agencies and the democratic state. Scams such as the 2G spectrum, Commonwealth Games, Adarsh Society, Coalgate and so on surfaced during the UPA II regime and there seemed to be no end to endemic corruption. People in general are gradually losing faith in the investigation carried out by the Central Bureau of Investigation (CBI)—the main investigating wing of the Union government, leading to serious 'ethical deficit' in governance. The recurring public impression was that despite occasional rhetorics, the political class was not

seriously interested in tackling corruption.

It was in this backdrop that Anna Hazare, the well-known political activist announced his decision to undertake a fast unto death for instituting what his team termed 'Jan Lokpal'. The idea was to pressurize the government for instituting a strong Lokpal institution that had eluded legislation for the past five decades. Anna Hazare's movement forced the government to take the unusual step of inviting Anna's representatives for talks on the nature and modalities of the Lokpal Bill. Perhaps this was the first time in the parliamentary history of Independent India that people outside the legislature were invited for considering a draft legislation. Finally the official version of the Lokpal Bill, 2013 was passed by the Parliament, which became the Lokpal Act of 2014. India is currently ranked 80th on the Corruption Perception Index out of the 180 countries surveyed by Transparency International (CPI 2017).



The Lokpal Act was passed by the Parliament in December 2013, and got Presidential assent on 1 January 2014. It aims to prevent and control corruption through the setting up of an independent and empowered body at the central level called the Lokpal that would receive complaints relating to corruption against most categories of public servants and ensure that these are properly investigated and, where warranted, effectively prosecuted. All this is envisaged in a time-bound manner, with the help of special courts set up for the purpose. The Act also makes it incumbent for each State to pass, within a year, a law setting up a body of Lokayuktas at the State level, but leaves it to the States to work out the details.

The legislation envisages that the Lokpal would receive complaints of corruption against the Prime Minister, ministers, Members of Parliament, officers of the Central Government (all levels), and against functionaries of any entity that is wholly or partly financed by the government with an annual income above a specified limit, and also, all entities receiving donations from foreign sources in excess of ten lakh per year.

Every investigation report must be considered by a bench consisting of not less than three members of the Lokpal and, after obtaining the comments of the public functionary, the Lokpal may grant sanction to its own prosecution wing, or to the investigating agency, to file a charge sheet before the special court, or direct filing of a closure report, or direct initiation of departmental proceedings against the concerned public servant.

Apart from providing the Lokpal with its own prosecution wing, the Bill provides for amending the Delhi Special Police Establishment Act, 1946, to set up a Directorate of Prosecution headed by a Director of Prosecution under the overall control of the CBI director.

For the purpose of deciding cases arising out of the Prevention of Corruption Act (PCA), 1988, the Bill provides for setting up of special courts. All trials in the special courts have to be ordinarily completed within one year, extendable to two years for reasons to be recorded in writing.

Rajeev Dhavan's book examines India's governance issues concerned with corruption and public accountability. Why so much faith in the Lokpal? Like so many concepts of governance, according to Dhavan, it is a motif of discourse to create an institution to root out maladministration and corruption. We agree. Different people look at it differently. Bureaucrats are uncomfortable and will seek to evade its jurisdiction. Politicians were wary of its implications for ministers and legislators. Political parties will see in it an opportunity to avenge past regimes on the pretext of corruption.

The Lokpal Idea 1963-2010 Volume I critically examines debates, ideas, and documentary evidence to show how the idea of Lokpal was moulded to suit politicians and civil servants. Can remedial institutions like the Lokpal really combat corruption effectively? Can the Lokpal be seen as an institution of governance, or will it be a mere tool in the hands of political regimes? In a wide sense, this book also examines how institutions of law and governance get corrupted in practice and evolve to become vehicles for advocating or resisting change.

The years 2010-2011 in India witnessed tumultuous civil rights campaigns against corruption in politics. The advent of social activist Anna Hazare and his India Against Corruption (IAC), gave rise to a civil society agitation of an unprecedented nature in India's post-Independent history.

Anna and the Lokpal Bill, 2010-2018, the second of Rajeev Dhavan's two-volume history of the Lokpal Bill in India, provides detailed discussions and analyses of the events of these years. In 2011, as the issue of corruption became a national movement with overwhelming pan-Indian public support, both the UPA government and the Opposition went on the defensive. A special session of Parliament was summoned pledging support to Anna in the form of a parliamentary resolution, and several versions of the Lokpal Bill were debated in both Houses of Parliament and special committees. Unfortunately in 2012, the Anna movement lost momentum, resulting in a severely truncated Lokpal Bill.

The book (Volumes I & II) speculates on some important philosophical questions: What is civil society? What is its relationship with political society? What should be the aims of both civil and political society?

The Lokpal and Lokayuktas Act of 2014 can be said to be a positive step forward. If the Lokpal and Lokayuktas Act is properly implemented, it should provide a significant deterrent to corruption, especially at the higher levels of government that seem to have become widespread in India. In order to achieve that, it has to be ensured that the right people are appointed to the post of Lokpal. Also, the people and the agencies assisting them are provided adequate and appropriate human and financial resources, that there is political will, especially among the top political and bureaucratic leadership, to make this institution succeed.

The Lokpal, headed by Justice Pinaki Chandra Ghose, has two former high court chief justices—Justices Abilasha Kumari and Dilip Babasaheb Bhosale—as judicial members along with three non-judicial members.

It is important to address a crucial question: Is the office of the Lokpal independent of the government and others whom it is mandated to scrutinize? This question is important because the government, regardless of the party in power, has a tendency to interfere in autonomous institutions that are set up to ensure transparency and accountability of governance. For example, the Central Bureau of Investigation (CBI) has long borne the brunt of such meddling, so much so that it has been called a 'caged parrot'. In recent times, the Reserve Bank of India has also faced similar challenges.

There are four aspects that need to be considered while examining the issue of independence. First, the 2013 Lokpal Act provides for a selection committee comprising the Prime Minister, the Lok Sabha Speaker, the Leader of Opposition (LoP), the Chief Justice of India and an eminent jurist. This is supposed to be bipartisan in representation to ensure that the Lokpal is not beholden to any particular group and can function independently. However, in the absence of a formal LoP being declared the panel has had no representation from the Opposition. In 2014, amendments to address this issue were introduced, and subsequently approved by the Parliamentary Standing Committee. However, they have not been passed in Parliament. This must be rectified. Second, there is a lack of clarity on the interplay and hierarchy between the Lokpal, the CBI and the Central Vigilance Commission (CVC).

Corruption is a social malaise and cannot be fought by punitive action alone. It requires a slow process of change with no radical transformation guaranteed. The fight against corruption has to become a mass movement, spearheaded by the people who are affected most. The culture of integrity has to come from within, from an ethics internalized by education of all citizens who constitute the society and the nation.

Looking at the multiple dimensions of corruption, the challenge lies in turning corruption from a low-risk high-return activity to a high-risk low-return enterprise. Tackling the inadequacies of the legal machinery, reform of the supply side of delivery, civil service reform, procurement reform, independent anti-corruption bodies and strengthening the demand side of governance are among some of the suggested remedies by eminent scholars and critics.

The antidote to corruption should follow from the causes. First, there is an issue of reforming the civil services, including codes of conduct, salaries, entry and promotions and laws against corruption that are credible. Second, this implies the existence of independent anti-corruption bodies. Third, the monopoly in providing public services can be ended by enabling private sector delivery, since many such public goods and services are no longer instances of market failure. Fourth, public procurement needs to become much more transparent. Fifth, countervailing pressure must be created by civil society, which in turn, requires awareness and dissemination of information. Only a few of these pre-conditions have been met so far in India.

Rajeev Dhavan's book presents a detailed account of one of the most important periods in India's 21st century history and is therefore invaluable for students, academicians, legal professionals, journalists and civil society activists.

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## Review Details

Book Name:

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