In August 2011, prominent social activist Anna Hazare went on a hunger strike while leading a series of anti-corruption demonstrations in India. One of the protestors’ demands was the establishment of an ombudsman body, called Lokpal, to combat the widespread corruption hindering the country’s economic development. C. Raj Kumar’s book, *Corruption and Human Rights in India: Comparative Perspectives on Transparency and Good Governance*, was published just in time to provide concrete suggestions to Indian lawmakers as they confront this issue. In the book, Kumar adopts a relatively new perspective on corruption—that it is a human rights violation—and applies that framework to India.

In *Corruption and Human Rights in India*, the author argues that the mere recognition of corruption as a human rights violation is itself a substantial step in combating the problem. Noting that some of the rights on which corruption

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30. Id.
impinges—such as the right to nondiscrimination, the right to access to justice, and the right to development—are already internationally recognized as human rights, Kumar presents the right to a corruption-free government as a human right, as well. Under Kumar’s paradigm, both victims of corruption and the judicial branch should play important roles in holding officials accountable. These strategies are promising for India. As Kumar shows, “judicial governance”—a term used to emphasize judicial activism—has already posed critical challenges to parliamentary and executive powers in that country. For instance, India’s Supreme Court has creatively interpreted the right to information through the constitutional right to freedom of the press (p. 164). The author also suggests that the human rights approach is particularly relevant to India given the country’s high levels of poverty: if public administration works properly only when government officials receive bribes, the poor will suffer discrimination due to their economic status (pp. 11, 36, 42).

One of Kumar’s principal arguments is that India focuses too heavily on the instruments of criminal justice in combating corruption. Kumar contends that India should instead emphasize transparency and accountability. The main reason for this proposal is the inefficiency of the Indian criminal justice system. For example, Kumar cites a problematic provision in the Code of Criminal Procedure that gives procedural immunity to public servants (p. 19). The only argument for keeping this provision in the Code—a relic from India’s colonial past—is to avoid “vexatious prosecution” against public servants, an unacceptable reason, in the author’s view. Such statutory provisions support the status quo in which corruption is a “low-risk, high-profit activity” (p. 26). Thus, Kumar argues that a human rights approach is preferable to the criminal justice strategy, because it does not depend on the inefficient state apparatus. Instead, a human rights approach empowers victims—with the help of whistleblower laws—to attack corruption by seeking justice through judicial remedies (pp. 9-10).

Kumar’s treatment of the criminal law approach in India is, however, incomplete. For one thing, he does not acknowledge that the criminal law approach to combating corruption had been undermined in India largely as a result of a lack of political will. But this situation need not be permanent. In fact, India has witnessed a recent increase in political will to fight corruption, prominently evidenced through the trial of a former government minister, among other officials, in a sale-rigging scandal that began in November 2011.32

Kumar also does not consider a number of arguments in favor of the criminal justice approach in general. After all, a criminal justice system can work well when there is proper cooperation between the police and the public prosecutor and when the legal framework provides tools for combating corruption (e.g., special investigative techniques). Moreover, victims cannot fight corruption without the involvement of police and public prosecutors, as they are in charge of collecting the relevant evidence and bringing corrupt public officials to

justice. In the end, an effective combination of both the human rights and criminal law approaches is likely the key to success in combating corruption.

The scope of Kumar’s book extends well beyond a criticism of the criminal justice approach to combating corruption. Perhaps one of his most compelling insights relates to the treatment of corruption vis-à-vis cultural values. The author confronts an argument encountered in part of the literature (p. 85 n.95)—that Asian countries have different cultural values that make importing human rights concepts from the West inappropriate—by arguing that there is no evidence to suggest that culture has anything to do with social tolerance or intolerance for corruption. He discusses forms of networking known in Southeast Asia as quan-xi as examples of culturally-rooted tolerance for corruption, but rejects the possibility of using culture as an excuse for not fighting corruption. Nevertheless, he allows that “the cultural underpinnings of corruption in a given society must be considered when attempting to formulate effective measures against such acts” (p. 88).

Having rejected a cultural justification for corruption, he focuses on India’s domestic anti-corruption legal framework—both as it is and as it should be. To find the appropriate legislative solutions for India, Kumar looks to international law, especially the United Nations Convention against Corruption, as well as to a number of countries’ domestic systems. Perhaps the most valuable study of this book is the comparison of anti-corruption systems across Asia (Hong Kong, China, Mongolia, Thailand, the Philippines, and Singapore). Kumar argues that anti-corruption laws in Hong Kong and Singapore, which both introduce an independent agency to fight corruption, have proven to be most efficient in combating corruption (pp. 72-73).

Inspired by Hong Kong’s institutional approach, Kumar suggests that India establish an Independent Commission Against Corruption (ICAC) with constitutional status and the power necessary to investigate and prosecute cases of corruption (pp. 176, 192). Kumar would give the ICAC the following basic institutional requirements: a commitment to independence, a commitment to guaranteed operational capacity, and a commitment to wide jurisdiction (pp. 177-78). Given that corruption cases have not been investigated or prosecuted impartially and that Indian police and law enforcement agencies are perceived to be corrupt, Kumar also argues that it is important to separate anti-corruption initiatives from other police functions (p. 179). Furthermore, he adds that the ICAC should have a communications office for providing relevant information, such as the procedure for receiving complaints, to the media (pp. 194-95). Finally, among other activities necessary for a structured anti-corruption strategy, the author proposes a number of lifelong learning projects targeting parliamentarians, legal officers, and judges. This training should facilitate communication between the ICAC and the legislative, executive, and judicial bodies, which is certainly critical to the effectiveness of the fight against corruption.

Kumar’s recommendations have immediate relevance—especially given
protestors’ recent demands for the establishment of an ombudsman body similar to the ICAC. Referring to these new developments in the book’s postscript, the author gives support to Hazare’s campaign and estimates that “[t]here is no doubt about the fact that the institutional design of Lokpal as an independent, impartial, and effective mechanism will be the sole factor for its success” (p. 215). The author has every reason to be optimistic about the Lokpal Bill as it establishes a single institution for combating corruption similar to the one proposed in his book.

Kumar’s treatment of recent events goes beyond merely acknowledging their connection to his project. At the end of the postscript, the author outlines several proposals regarding the draft of the Lokpal Bill. First, he stresses that the Lokpal should include members of civil society in addition to politicians, bureaucrats, and judges—the typical members of commissions in India—to ensure the legitimacy and credibility of Lokpal. Second, Kumar’s last proposal emphasizes the importance of the accountability of Lokpal itself, which is essential to retaining the trust and faith of the citizens in this institution. Finally, to send a clear message that government leaders are not above the law, Kumar demands that the prime minister of India be subject to Lokpal’s jurisdiction. Perhaps surprisingly, however, Kumar asserts that Lokpal is not suitable for investigating allegations of corruption against the judiciary, arguing that its constitutional powers would weaken Lokpal’s efforts to seek transparency and accountability in governance. But this rationale does not seem very convincing. Many European countries have special bodies for combating corruption that are able to exercise jurisdiction over judges without witnessing a diminishment of their role and powers.34 Furthermore, the ideal models of Kumar’s book—Hong Kong’s ICAC and Singapore’s Corrupt Practices Investigation Bureau—both have jurisdiction over acts of corruption committed by members of the judiciary. The principle that no one—including members of the judiciary—is above the law would likely provide even more legitimacy to such specialized institutions.

Furthermore, despite these concrete proposals, Kumar’s arguments lack historical perspective. Indeed, the author does not even mention the many previous attempts to establish an independent ombudsman in India. In fact, the first legislative proposal for establishing Lokpal dates back to 1966.35 Of course, Kumar might justify this omission by positing that the earlier drafts of the Lokpal Bill were substantially different from his conception of the ICAC, but this assumption is only partially true. An examination of one of the first drafts regulating Lokpal36 reveals several similarities that the author fails to address. For example, according to Article 7(1) of the Lokpal and Lokayuktas

34. The French Service central de prévention de la corruption (Central Service for the Prevention of Corruption), the Belgian Office Central pour la Répression de la Corruption (Central Office for the Repression of Corruption), and the Croatian Ured za suzbijanje korupcije i organiziranog kriminaliteta (Office for the Prevention and Suppression of Corruption and Organised Crime) function in this manner.


Bill of 1968, Lokpal would have had the competence to investigate allegations that a public servant committed a corrupt act.\textsuperscript{37} Furthermore, Lokpal would have had the same status as the Chief Justice of India, thus providing it the independence necessary to investigate corruption.\textsuperscript{38}

Despite its limitations, Kumar’s book ultimately succeeds in developing practical ideas relevant to a current, and important, controversy.\textsuperscript{39} Beyond providing interesting solutions to some of the dilemmas faced by Indian legislators today, Kumar’s book speaks to the expectations of a broader audience interested in new approaches to fighting corruption or in new perspectives on the contemporary framework of human rights in general.

\textsuperscript{37} Id. at 61. Such acts involve “abuse of position, with a view to gain or harm a person (including gain to himself), personal interest or improper or corrupt motives, or corruption or lack of integrity.” Id. at 16.

\textsuperscript{38} Jain, supra note 35, at 128.