

Lokpal

The Lokpal is the first institution of its kind in independent India, established under the Lokpal and Lokayuktas Act 2013 to inquire and investigate into allegations of corruption against public functionaries who fall within the scope and ambit of the above Act.

Background:

In 1809, the institution of ombudsman was inaugurated officially in Sweden. In the 20th century, Ombudsman as an institution developed and grew most significantly after the Second World War. New Zealand and Norway adopted this system in the year 1962 and it proved to be of great significance in spreading the concept of the ombudsman.

In 1967, on the recommendations of the Whyatt Report of 1961, Great Britain adopted the institution of the ombudsman and became the first large nation in the democratic world to have such a system. In 1966, Guyana became the first developing nation to adopt the concept of the ombudsman. Subsequently, it was further adopted by Mauritius, Singapore, Malaysia, and India as well. In India, the concept of constitutional ombudsman was first proposed by the then law minister Ashok Kumar Sen in parliament in the early 1960s. The term Lokpal and Lokayukta were coined by Dr. L. M. Singhvi. In 1966, the First Administrative Reforms Commission recommended the setting up of two independent authorities- at the central and state level, to look into complaints against public functionaries, including MPs. In 1968, Lokpal bill was passed in Lok Sabha but lapsed with the dissolution of Lok Sabha and since then it has lapsed in the Lok Sabha many times. Till 2011 eight attempts were made to pass the Bill, but all met with failure. In 2002, the Commission to Review the Working of the Constitution headed by M.N. Venkatachaliah recommended the appointment of the Lokpal and Lokayuktas; also recommended that the PM be kept out of the ambit of the authority. In 2005, the Second Administrative Reforms Commission chaired by Veerappa Moily recommended that the office of Lokpal should be established without delay. In 2011, the government formed a Group of Ministers, chaired by Pranab Mukherjee to suggest measures to tackle corruption and examine the proposal of a Lokpal Bill. "India Against Corruption movement" led by Anna Hazare put pressure on the United Progressive Alliance (UPA) government at the Centre and resulted in the passing of the Lokpal and Lokayuktas Bill, 2013, in both the Houses of Parliament. It received assent from President on 1 January 2014 and came into force on 16 January 2014.

The Lokpal and Lokayuktas (Amendment) Bill, 2016

This Bill was passed by Parliament in July 2016 and amended the Lokpal and Lokayukta Act, 2013. It enables the leader of the single largest opposition party in the Lok Sabha to be a member of the selection committee in the absence of a recognized Leader of Opposition. It also amended section 44 of the 2013 Act that deals with the provision of furnishing of details of assets and liabilities of public servants within 30 days of joining the government service. The Bill replaces the time limit of 30 days, now the public servants will make a declaration of their assets and liabilities in the form and manner as prescribed by the government.

It also gives an extension of the time given to trustees and board members to declare their assets and those of their spouses in case of these are receiving government funds of more than Rs. 1 crore or foreign funding of more than Rs. 10 lakh.

Jurisdiction and Functions of Lokpal

The Lokpal has jurisdiction to inquire into allegations of corruption against anyone who is or has been Prime Minister, or a Minister in the Union government, or a Member of Parliament, as well as officials of the Union Government under Groups A, B, C and D. Also covered are chairpersons, members, officers and directors of any board, corporation, society, trust or autonomous body either established by an Act of Parliament or wholly or partly funded by the Union or State government. It also covers any society or trust or body that receives foreign contribution above Rs 10 lakh (approx. US\$ 14,300/- as of 2019).

A complaint under the Lokpal Act should be in the prescribed form and must pertain to an offence under the Prevention of Corruption Act, 1988 against a public servant. There is no restriction on who can make such a complaint. When a complaint is received, the Lokpal may order a preliminary inquiry by its Inquiry Wing or any other agency, or refer it for investigation by any agency, including the CBI, if there is a prima facie case. Before ordering of an investigation by an agency, the Lokpal shall call for an explanation from the public servant to determine whether a prima facie case exists. This provision, the Act says, will not interfere with any search and seizure that may be undertaken by the investigating agency. The Lokpal, with respect to Central government servants, shall refer the complaints to the Central Vigilance Commission (CVC). The CVC will send a report to the Lokpal regarding officials

falling under Groups A and B; and proceed as per the CVC Act against those in Groups C and D.

The Inquiry Wing or any other agency will have to complete its preliminary inquiry and submit a report to the Lokpal within 60 days. It has to seek comments from both the public servant and "the competent authority", before submitting its report. There will be a "competent authority" for each category of public servant as defined under the Act.

A Lokpal Bench shall consider the preliminary inquiry report, and after giving an opportunity to the public servant accused of corruption for his/her defence, decide whether it should proceed with the investigation. It can order a full investigation, or direct to start departmental proceedings or close the proceedings. It may also proceed against the complainant if the allegation is false. The preliminary inquiry should normally be completed within 90 days of receipt of the complaint.

After the investigation, the agency ordered to conduct the probe has to file its investigation report in the court of appropriate jurisdiction, and a copy of the report has to be filed before the Lokpal. A Bench of at least three members will consider the report and may grant sanction to the Prosecution Wing to proceed against the public servant based on the agency's charge-sheet. It may also ask the competent authority to take departmental action or direct the closure of the report. Previously, the authority vested with the power to appoint or dismiss a public servant was the one to grant sanction under Section 197 of the Code of Criminal Procedure and Section 19 of the Prevention of Corruption Act. Now this power will be exercised by the Lokpal.

The lokpal is vested with the power of search and seizure and also powers under the Civil Procedure Code for the purpose of conducting preliminary inquiry & investigation and power of attachment of assets and taking other steps for eradication of corruption.

Lokpal will have power of superintendence and direction over any central investigation agency including CBI for cases referred to them by the Lokpal.

Organisational structure

The Lokpal consists of a Chairperson and eight Members out of whom 50% are Judicial Members. The Chairperson and the Members are appointed by the President of India by warrant under his hand and seal and hold office for a term of five years from the date on which they enter upon the office or

until they attain the age of 70 years, whichever is earlier. The salary, allowances and other conditions of services of the Chairperson are the same as that of Chief Justice of India. The salary, allowances and other conditions of services of the Members are the same as that of a Judge of the Supreme Court.

Lokpal will have two main branches and will discharge its functions through these two.

1. **The Administrative branch** will be headed by an officer of the rank of Secretary to Govt of India and will have in its fold:
 - Inquiry/ Investigation branch to be headed by an officer not below the rank of Additional Secretary to Govt of India
 - Prosecution wing to be headed by an officer not below the rank Additional Secretary to Govt of India
 - Central Registry
 - Scrutiny wing
 - Establishment, Coordination, Media and Publication
 - Budget, Finances and Accounts
2. **The Judicial Branch** will be headed by a Judicial officer of appropriate level and will assist the Lokpal discharge their judicial functions.

The Government appointed Justice Shri Pinaki Chandra Ghose, as the first Chairperson of the Lokpal who was administered oath on 23rd March, 2019 by the President of India.

Criticism

The institution of lokpal has tried to bring a much needed change in the battle against corruption in the administrative structure of India but at the same time, there are loopholes and lacunae which need to be corrected. Five years have passed since the Lokpal and Lokayuktas Act 2013 was passed by parliament, but not a single Lokpal has been appointed till date indicating the lack of political will.

The Lokpal act also called upon states to appoint a Lokayukta within a year of its coming to force. But only 16 states have established the Lokayukta. Lokpal is not free from political influence as the appointing committee itself consist of members from political parties.

The appointment of Lokpal can be manipulated in a way as there is no criterion to decide who is an 'eminent jurist' or 'a person of integrity.' The 2013 act did not provide concrete immunity to the whistle blowers.

The provision for initiation of inquiry against the complainant if the accused is found innocent will only discourage people from complaining.

The biggest lacuna is the exclusion of judiciary from the ambit of the Lokpal. The Lokpal is not given any constitutional backing and there is no adequate provision for appeal against the Lokpal.

The specific details in relation to the appointment of Lokayukta have been left completely on the States.

To some extent, the need for functional independence of the CBI has been catered to by a change brought forth in the selection process of its Director, by this Act.

The complaint against corruption cannot be registered after a period of seven years from the date on which the offence mentioned in such complaint is alleged to have been committed.

Conclusion

In order to tackle the problem of corruption, the institution of the ombudsman should be strengthened both in terms of functional autonomy and availability of manpower. Greater transparency, more right to information and empowerment of citizens and citizen groups is required along with a good leadership that is willing to subject itself to public scrutiny. Appointment of Lokpal in itself is not enough. The government should address the issues based on which people are demanding a Lokpal. Merely adding to the strength of investigative agencies will increase the size of the government but not necessarily improve governance. The slogan adopted by the government of "less government and more governance", should be followed in letter and spirit. Moreover, Lokpal and Lokayukta must be financially, administratively and legally independent of those whom they are called upon to investigate and prosecute. Lokpal and Lokayukta appointments must be done transparently so as to minimize the chances of the wrong sorts of people getting in. There is a need for a multiplicity of decentralized institutions with appropriate accountability mechanisms, to avoid the concentration of too much power, in any one institution or authority.