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Turf Issues in Fighting Corruption

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(This editorial is based on the article 'Turf Issues in Fighting Corruption' which appeared in 'The Hindu' on 4th April, 2019. The article talks about the importance of inter agency coordination to fight corruption.)

India is the 78 least corrupt nation out of 175 countries, according to the 2018 Corruption Perceptions Index reported by Transparency International. The corruption of public servants in India has become such a menace that something drastically new had to be tried, and appointing the Lokpal at least partially meets this crying need.

There is guarded optimism in a few quarters, and considerable cynicism in others, over the likely efficacy of the Lokpal. The Lokpal and Lokayuktas Act, 2013 is complicated. But it was badly needed for enhancing the accountability of those in high places and to demonstrate to the world that India is not second to any other nation in making its public administration clean and fair.

Moreover the appointment of Lokpal is delayed for many years and now it has not been received with great excitement. Nevertheless, the working of the Act may be expected to be closely followed in the months to come, both by the polity and the legal fraternity, which is how it ought to be in a vibrant democracy.

Actors Against Corruption

There are three principal actors at the national level in the fight against corruption: the Lokpal, the Central Vigilance Commission (CVC), and the Central Bureau of Investigation (CBI).

Questions have been raised over the independence of the Lokpal and there is little clarity how it will work with the other agencies so that the objective of cleansing public life is achieved with reasonable satisfaction. What is worrying is how well the CVC and CBI are going to play a complementary role in upholding the objective for which the Lokpal has been appointed.

Jurisdiction Issues

The Lokpal has jurisdiction over Group A and B public servants. This does not deprive the CBI of its own jurisdiction over these two groups.

The Lokpal Act permits using the CBI for examining a complaint against a public servant for misconduct. Although the Lokpal has its own Inquiry Wing, it can nevertheless forward a complaint to the CBI for a preliminary inquiry, and thereafter for registering a regular case under the Prevention of Corruption Act, 1988. It is not clear what happens when such a complaint is already being inquired into by the CBI.

The government, in addition to the Lokpal, is competent to order a preliminary inquiry and permit the CBI to proceed with a regular case. The CBI can also register a case even without the government's nod in instances in which a public servant is caught red-handed while receiving a bribe.

If an individual lodges a complaint with the government and the Lokpal, then there is no clarity about the authority of Lokpal to give direction to the CBI to keep its hands off the matter and wait for the Lokpal's own Inquiry Wing to handle the matter.

It is a common practice for complainants in India to dash off their complaints to a host of agencies. The Lokpal and Lokayuktas Act, 2013 creates a Prosecution Wing exclusively for the Lokpal. In this case there will be possibility of coordination issue between Lokpal wing and the CBI's Director of Prosecution.

There is a distinct prospect of a clash between the government (which has greater powers of superintendence over the CBI than the Lokpal) and the Lokpal over a wide spectrum of issues.

The Act gives the impression that superintendence over the CBI is shared by the Lokpal and the government, and neither is in exclusive command of the former.

Suggestions

Given the overlapping functions of anti-corruption agencies, recommendations given by Parliamentary Committee in 2018 hold importance. It recommended integration of Central Vigilance Commission and anti-corruption wing of the CBI to work directly under the command and control of Lokpal to deal with corruption cases.

The Committee is of the view that institutions of CVC and the CBI, be fully integrated with Lokpal and the institution of anti—corruption watchdog may be architecturally created vertically with the Lokpal at the apex level and CVC and CBI under its command and control.

The functions of Lokpal and CVC should be clearly specified and overlap between functions and powers of CVC and Lokpal be addressed. Lokpal should utilise these organisations for conduct of inquiry, investigation and prosecution.

There is need to review of existing rules, which reflect “colonial mindset of doubt and mistrust”, on declaration of assets and liabilities by government servants as they are “at present being used more to harass government servants than as a safeguard against corruption”.

There should be uniformity in provisions and use of digital surveillance software to detect any disproportionate growth in assets and liabilities of a public servant beyond his known sources of income can help the cause.

The Lokpal and Lokayuktas Act, 2013 should be modified accordingly to incorporate above mentioned provisions.

Way Forward

As India has appointed its first Lokpal (Justice Pinaki Chandra Ghose), initial days are going to be difficult in terms of coordination.

Everything will depend on how well the Lokpal and the government cooperate and concentrate on the fundamental objective of striking at corruption without getting bogged down by technicalities.

All these issues, however, do not reduce the utility of a highly placed ombudsman. It may finally depend upon the perception of Lokpal what his role is. He can certainly shape the future of this experiment.
