



Lokpal and Lokayukta

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What are Lokpal and Lokayukta?

- The **Lokpal and Lokayukta Act, 2013** provided for the establishment of Lokpal for the Union and Lokayukta for States.
- These institutions are **statutory bodies** without any constitutional status.
- They perform the function of an "ombudsman" and inquire into allegations of corruption against certain public functionaries and for related matters.

Why do we need such institutions?

- Maladministration is like a termite which slowly erodes the foundation of a nation and hinders administration from completing its task. Corruption is the root cause of this problem.
- Most of the anti-corruption agencies are hardly independent. Even Supreme Court has been termed CBI as a "caged parrot" and "its master's voice".
- Many of these agencies are advisory bodies without any effective powers and their advice is rarely followed.
- There is also the problem of internal transparency and accountability. Moreover, there is not any separate and effective mechanism to put checks on these agencies.
- In this context, an independent institution of Lokpal has been a landmark move in the history of Indian polity which offered a solution to the never-ending menace of corruption.

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.

Structure of Lokpal

- Lokpal is a multi-member body, that consists of one chairperson and a maximum of 8 members.
- Chairperson of the Lokpal should be either the former Chief Justice of India or the former Judge of Supreme Court or an eminent person with impeccable integrity and outstanding ability, having special knowledge and expertise of minimum 25 years in the matters relating to anti-corruption policy, public administration, vigilance, finance including insurance and banking, law and management.
- Out of the maximum eight members, half will be judicial members and minimum 50% of the Members will be from SC/ ST/ OBC/ Minorities and women.
- The judicial member of the Lokpal either a former Judge of the Supreme Court or a former Chief Justice of a High Court.
- The non-judicial member should be an eminent person with impeccable integrity and outstanding ability, having special knowledge and expertise of minimum 25 years in the matters relating to anti-corruption policy, public administration, vigilance, finance including insurance and banking, law and management.
- The **term of office for Lokpal Chairman and Members is 5 years or till the age of 70 years.**
- The **members are appointed by the president** on the recommendation of a Selection Committee.
- The selection committee is composed of the Prime Minister who is the Chairperson; Speaker of Lok Sabha, Leader of Opposition in Lok Sabha, Chief Justice of India or a Judge nominated by him/her and One eminent jurist.
- For selecting the chairperson and the members, the selection committee constitutes a search panel of at least eight persons.

Lokpal Search Committee

- Under the Lokpal Act of 2013, the DoPT is supposed to put together a list of candidates interested to be the chairperson or members of the Lokpal.
- This list would then go to the proposed eight-member search committee, which would shortlist names and place them before the selection panel headed by the Prime Minister.
- The selection panel may or may not pick names suggested by the search committee.
- In September 2018, the government had constituted a search committee headed by former Supreme Court judge Justice Ranjana Prakash Desai.

- The 2013 Act also provides that all states should set up the office of the Lokayukta within one year from the commencement of the Act.

Lokpal Jurisdiction and Powers

- Jurisdiction of Lokpal **includes Prime Minister, Ministers, members of Parliament, Groups A, B, C and D officers and officials of Central Government.**
- Jurisdiction of the Lokpal included the Prime Minister except on allegations of corruption relating to international relations, security, the public order, atomic energy and space.
- The Lokpal does not have jurisdiction over Ministers and MPs in the matter of anything said in Parliament or a vote given there.
- Its jurisdiction also includes any person who is or has been in charge (director/ manager/ secretary) of anybody/ society set up by central act or any other body financed/ controlled by central government and any other person involved in act of abetting, bribe giving or bribe taking.
- The Lokpal Act mandates that all public officials should furnish the assets and liabilities of themselves as well as their respective dependents.
- It **has the powers to superintendence over, and to give direction to CBI.**
 - If Lokpal has referred a case to CBI, the investigating officer in such case cannot be transferred without the approval of Lokpal.
- The Inquiry Wing of the Lokpal has been **vested with the powers of a civil court.**
- Lokpal has **powers of confiscation of assets, proceeds, receipts and benefits arisen or procured by means of corruption** in special circumstances.
- Lokpal has the **power to recommend transfer or suspension of public servant** connected with allegation of corruption.
- Lokpal has the **power to give directions to prevent the destruction of records** during the preliminary inquiry.

Limitations

- 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.

Suggestions

- 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.