

Issues Related to the Lok Pal Bill

Background Note

Context

The central government is considering the introduction of a Lok Pal Bill to put in place a mechanism to tackle corruption.¹ Currently, public servants (such as government employees, judges, armed forces, police) can be prosecuted for corruption under the Indian Penal Code, 1860 and the Prevention of Corruption Act, 1988. However, the Code of Criminal Procedure and the Act require the investigating agency (such as CBI) to get prior sanction of the central or state government before it can initiate the prosecution process in a court.² The Supreme Court in the 1998 P.V. Narasimha Rao bribery case ruled that Members of Parliament (MPs) fall within the ambit of the definition of “public servant” in the Prevention of Corruption Act, 1988. However, opinion among the judges was divided over the issue of previous sanction with one side stating that MPs could not be prosecuted since there was no authority competent to give sanction and the other suggesting that till the law is suitably amended, the Speaker of the Lok Sabha and Chairman of the Rajya Sabha should give the necessary sanction.³

The idea of constituting an Ombudsman type institution to look into the grievances of individuals against the administration was first mooted in 1963 during a debate on Demands for Grants for the Law Ministry.⁴ In 1966, the First Administrative Reforms Commission recommended that two independent authorities at the central and state level be established to enquire into complaints against public functionaries (including Members of Parliament).⁴

The Lok Pal Bill was introduced for the first time in 1968 but it lapsed with the dissolution of the Lok Sabha. It was introduced seven more times in Parliament, the last time in 2001. However, the Bill lapsed each time except in 1985 when it was withdrawn.⁵ At the state level, so far 18 states have created the institution of the Lokayukta through the Lokayukta Acts.⁶

In 2002, the report of the National Commission to Review the Working of the Constitution urged that the Constitution should provide for the appointment of the Lok Pal and Lokayuktas in the states but suggested that the Prime Minister should be kept out of the purview of the authority.⁷ In 2004, the UPA government’s National Common Minimum Programme promised that the Lok Pal Bill would be enacted.⁸ The Second Administrative Commission, formed in 2005, also recommended that the office of the Lok Pal be established without delay.⁹

In January 2011, the government formed a Group of Ministers, chaired by Shri Pranab Mukherjee to suggest measures to tackle corruption, including examination of the proposal of a Lok Pal Bill.¹⁰

While drafting or examining the Lok Pal Bill, it may be useful to have clarity on certain issues: (a) composition and manner of appointment of the Lok Pal; (b) whether its jurisdiction should include all public servants or only political functionaries such as Ministers, Prime Minister and Members of Parliament; (c) whether CVC and CBI should be brought under the Lok Pal to create a single independent body to deal with corruption cases; (d) whether Lok Pal’s role should be advisory or should it have powers to prosecute; (e) whether it should have suo motu powers to investigate or would require a written complaint; (f) whether the Prime Minister should be exempt; and (g) whether prior sanction should be required to initiate inquiry against an MP or Minister.

Key recommendations of Commissions

A number of commissions have made recommendations on various aspects of the office of Lok Pal including procedure of appointment, powers of inquiry, and powers of prosecution.

First Administrative Reforms Commission (1966)

- A citizen has the right to seek redressal against administrative acts of the government. He can either move court or seek other remedies such as petitioning his Member of Parliament. However, these remedies are limited because they may be too cumbersome or specific grievances may not be addressed. Therefore, a more effective and simpler machinery is required to redress specific grievances of citizens against the administration.
- Each government department should have a suitable machinery to receive and investigate complaints and set in motion the administrative process to provide remedies. There should also be two independent authorities to

redress grievances: (a) Lok Pal, which shall deal with complaints against the administrative acts of Ministers or secretaries of government at the centre and the state; and (b) Lokayukta in each state and at the centre, which would deal with complaints against the administrative acts of other officials.

- These authorities should be independent of the executive as well as the legislature and the judiciary. The Lok Pal should be appointed by the President on the advice of the Prime Minister. The PM shall consult the Chief Justice of India and the Leader of the Opposition. The Lok Pal shall have the same stature as the Chief Justice of India and can be removed only by impeachment. The Lokayuktas shall have similar powers as the Lok Pal and shall be equivalent to the Chief Justice of a High Court. Their appointment should, as far as possible, be non-political.
- The Lok Pal may either act on the complaints made by an affected citizen or on his own cognition. He shall investigate cases related to maladministration, which involves acts of injustice, corruption and favouritism. The investigations and proceedings should be conducted in private and should be informal.
- On receiving a complaint, the Lok Pal shall decide whether it is worth investigating, then send for comments to the concerned department. After getting the report, the Lok Pal shall decide if he wants to proceed or not. If he investigates and finds that injustice has been done, he shall suggest remedial action to the department. If the department does not act on it, he can report to the Prime Minister or the Chief Minister, who shall report back within two months. If he is not satisfied, then he may bring it to the notice of the Parliament or the Legislature. If there are criminal charges against a public official, he can bring it to the notice of the Prime Minister or the Chief Minister and they can then set the machinery of law in motion and inform the Lok Pal.

National Commission to Review the Working of the Constitution (2002)

- The Constitution should provide for the appointment of the Lok Pal. But the office of the Prime Minister should be kept out of the purview of the Lok Pal.
- Its findings should be final and form the basis for action by the government.
- The Constitution should make it obligatory for states to establish the institution of Lokayuktas.
- The Constitution should be amended to state that Members of Parliament may be prosecuted for the offence of giving or receiving monetary or other valuable considerations for voting in a particular manner or not voting.
- An MP can be prosecuted after the investigating agency receives prior sanction from a committee constituted by the President. The committee shall have five MPs, nominated by the President in consultation with the Speaker of the Lok Sabha and the Chairman of the Rajya Sabha.

Second Administrative Reforms Commission (2007)

Lok Pal

- The Constitution should be amended to provide for a national Ombudsman called the Rashtriya Lokayukta. The role and jurisdiction of the Rashtriya Lokayukta should be defined in the Constitution while the composition, mode of appointment and other details can be decided by Parliament through legislation.
- The jurisdiction of Rashtriya Lokayukta should extend to Ministers (except the Prime Minister), Chief Ministers, and Members of Parliament. In case the enquiry establishes the involvement of any other public official, it can enquire against such public servants.
- The Prime Minister should be kept out of the jurisdiction of the Rashtriya Lokayukta.
- The Rashtriya Lokayukta should consist of a serving or retired Judge of the Supreme Court as the Chairperson, an eminent jurist as Member and the Central Vigilance Commissioner as the ex-officio Member.
- The Chairperson and members of the Rashtriya Lokayukta should be selected by a Committee consisting of the Vice President, the Prime Minister, the Leader of the Opposition, the Speaker of the Lok Sabha and the Chief Justice of India. The Chairperson and Member should be appointed for only one term of three years and they should not hold any public office later, except if they can become the Chief Justice of India.

Lokayukta

- The Constitution should make it obligatory on the part of state governments to establish the institution of Lokayukta and stipulate the general principles about its structure, power and functions.
- The Lokayukta should be a multi-member body consisting of a judicial Member in the Chair, an eminent jurist or eminent administrator as Member and the head of the State Vigilance Commission as ex-officio Member.
- The Chairperson and member of the Lokayukta should be selected by a Committee of the Chief Minister, Chief Justice of the High Court and the Leader of the Opposition in the Legislative Assembly. There is no need to have an Uplokayukta (deputy Lokayukta).
- The Chairperson and members of the Lokayukta should be appointed strictly for one term only and they should not hold any public office under government thereafter.
- The Lokayukta should have its own machinery for investigation. Initially, it may take officers on deputation from the state government, but over a period of five years, it should take steps to recruit its own cadre, and train them properly.
- All cases of corruption should be referred to Rashtriya Lokayukta or state Lokayukta and these should not be referred to any Commission of Inquiry.
- The jurisdiction of the Lokayukta would extend to only cases involving corruption. They should not look into general public grievances. The Lokayukta should deal with cases of corruption against Ministers and MLAs.
- Each State should constitute a State Vigilance Commission to look into cases of corruption against state government officials. The Commission should have three Members and have functions similar to that of the Central Vigilance Commission. The Anti Corruption Bureaus should be brought under the control of the State Vigilance Commission.

Ombudsman at local level

- A local bodies Ombudsman should be constituted for a group of districts to investigate cases against the functionaries of the local bodies. The State Panchayat Raj Acts and the Urban Local Bodies Act should be amended to include this provision.
- The local bodies Ombudsman should be empowered to investigate cases of corruption or maladministration by the functionaries of the local self governments, and submit reports to the competent authorities for taking action. The competent authorities should normally take action as recommended. In case they do not agree with the recommendations, they should give their reasons in writing and the reasons should be made public.

Investigation and Prosecution

- The State Vigilance Commissions and Lokayuktas should supervise the prosecution of corruption related cases.
- The investigative agencies should acquire multi-disciplinary skills and should be thoroughly conversant with the working of various departments. Modern techniques of investigation should be used such as electronic surveillance, video and audio recording of surprise inspections, traps, searches and seizures.
- A reasonable time limit for investigation of different types of cases should be fixed for the investigative agencies.
- There should be sustained step-up in the number of cases detected and investigated. The priorities need to be reoriented by focussing on 'big' cases of corruption.
- The prosecution of corruption cases should be conducted by a panel of lawyers prepared by the Attorney General or the Advocate General in consultation with Rashtriya Lokayukta or the Lokayukta.
- The anti-corruption agencies should conduct surveys of departments with particular reference to highly corruption prone ones in order to gather intelligence and to target officers of questionable integrity.
- The economic offences unit of states needs to be strengthened to effectively investigate cases and there should be better coordination among the existing agencies.

Comparison of Lokayuktas

Till 2010, 18 states have enacted laws to establish Lokayuktas. They are: Andhra Pradesh, Assam, Bihar, Chhattisgarh, Delhi, Gujarat, Jharkhand, Haryana, Himachal Pradesh, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Orissa, Punjab, Rajasthan, Uttarakhand, and Uttar Pradesh. In Appendix 1, we have compared some of the Lokayukta Acts on certain parameters.

International experience

The basic idea of the institution of Lok Pal was borrowed from the concept of Ombudsman in countries such as Finland, Norway, Denmark, Sweden, U.K. and New Zealand. In 1995, the European Union created the post of European Ombudsman. Presently, about 140 countries have the office of the Ombudsman.¹¹

The Ombudsman is an institution, independent of the judiciary, executive and legislature and analogous with that of a high judicial functionary. He is mostly free to choose his investigation method and agency. The expenditure of the office is under Parliamentary control.⁴

In Sweden, Denmark and Finland, the office of the Ombudsman can redress citizens' grievances by either directly receiving complaints from the public or suo moto.¹¹ However, in the UK, the office of the Parliamentary Commissioner can receive complaints only through Members of Parliament (to whom the citizen can complain).¹² Sweden and Finland also have the power to prosecute erring public servants.¹¹

Notes

1. "PM Inaugurates Conference of Chief Secretaries of State," PIB, Feb 4, 2011.
2. Section 197 of the Code of Criminal Procedure and Section 19 of the Prevention of Corruption Act, 1988.
3. PV Narasimha Rao v. State (AIR 1998 SC 2120).
4. "Problems of Redress of Citizens' Grievances," Interim Report of the First Administrative Reforms Commission, 1966.
5. Unstarred Question No. 1773, Rajya Sabha, Answered on November 25, 2010.
6. Unstarred Question No. 385, Lok Sabha, Answered on February 23, 2011.
7. "Executive and Public Administration," Chapter 6 of the National Commission to Review the Working of the Constitution (Chairperson: Shri M.N. Venkatachiliah), March 31, 2002
8. National Common Minimum Programme of the Government of India, May 2004.
http://pib.nic.in/archieve/upareport/upa_3_year_highlights.pdf
9. "Ethics in Governance," Fourth Report of the Second Administrative Reforms Commission, Jan 2007.
10. "GoM on Corruption to Firm Up Lok Pal Bill at the Earliest, Outlook, January 21, 2011.
11. The Parliamentary Ombudsman of Finland (see <http://www.oikeusasiamies.fi/Resource.phx/ea/english/ombudsman/othercountries/index.htm>).
12. UK Parliamentary Commissioner Act, 1967 (see <http://www.legislation.gov.uk/ukpga/1967/13/section/6>).

	Governor and inform the competent authority and the complainant. The Lokayukta can initiate prosecution without prior sanction if it is a criminal offence.	Governor and inform the complainant.	Governor and inform the complainant.	Lieutenant Governor and inform the complainant.	Governor and inform the complainant.	Governor and inform the complainant.
Power of Lokayukta to ensure compliance	The competent authority has the discretion to accept or reject the Lokayukta's recommendation on dismissal of concerned public servant. However, if it is not rejected within three months, it shall be deemed as accepted.	If the Lokayukta recommends penalty of removal of a public servant, the government can initiate action without further inquiry.			If the Lokayukta recommends penalty of removal of a public servant, the government can initiate action without further inquiry.	

Sources: Respective Lokayukta Acts of each state; PRS.

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