

## "How the Lokpal, the CVC and the CBI coordinate will be crucial."

The Lokpal and Lokayuktas Act, 2013 is complicated. This could perhaps not be avoided, given that what was being attempted was a new and bold experiment to pull the anti-corruption campaign out of oblivion. This law was badly needed, if only to lend a modicum of credibility to the process of enhancing the accountability of those in high places, who were cocking a snook at all efforts to demonstrate to the world that India is not second to any other nation in making its public administration clean and fair.

Surprisingly, the appointment of India's first Lokpal has not been received with great excitement. The preoccupation with the general election of all those likely to be affected by the Act may perhaps explain the apathy. 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.

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. However, any high expectations that the new mechanism against corruption will measurably transform the scene seem misplaced.

### Actors against corruption

There are now three principal actors at the national level in the fight against graft: the Lokpal, the Central Vigilance Commission (CVC), and the Central Bureau of Investigation (CBI). Some people have misgivings over the independence of the Lokpal. They wonder how it will work with the other two so that the objective of cleansing public life is achieved with reasonable satisfaction. Some critics allege that the Lokpal's composition was dictated solely by the establishment led by the Prime Minister. But what about the Chief Justice of India, or his nominee, another important member of the Selection Committee? Casting aspersions on the neutrality of the highest judicial authority in the country is unacceptable unless one can prove with reasonable material that he acted in a biased manner in choosing the first Lokpal.

The decision of the 'special invitee' to stay away from the process on the ground that he was a mere invitee and not a full-fledged member of the Selection Committee is regrettable. The accusation that the process

of selection of the Lokpal was not transparent falls flat if someone in the Opposition abstains from participating in the Committee's decision and denies himself and the nation the chance of knowing and evaluating how open-minded or not the other members were in choosing the members and chairperson of the Lokpal.

### **Jurisdiction issues**

To my mind, 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. 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 (referred to by the Act as the Delhi Special Police Establishment, from which the CBI was born) 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. Legally speaking, the government, in addition to the Lokpal, is competent to order a preliminary inquiry and permit the CBI to proceed with a regular case. What is also to be remembered is that the CBI can 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, what should the Lokpal do? Does it have the authority 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?

The Act creates a Prosecution Wing exclusively for the Lokpal. How will that body coordinate with the CBI's Director of Prosecution in respect of a matter handled by both of them? It is a common practice for complainants in India to dash off their complaints to a host of agencies. 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 superintendency over the CBI is shared by the Lokpal and the government, and neither is in exclusive command of the former. Can the Lokpal order the CBI to suspend its inquiry in respect of a complaint and report on it to the exclusion of the government?

The initial days are going to be difficult in terms of coordination. Everything will depend on how well the Lokpal and the government sink their egos and concentrate on the fundamental objective of striking at corruption without getting bogged down by technicalities.

All these imponderables, however, do not reduce the utility of a highly placed ombudsman. It may finally boil down to Justice Ghose's perception of what his role is. He can certainly shape the future of this experiment.



# Lokpal, Lokayukt and Lok Nyayalaya

## GS World Team...

### Lokpal and Lokayukta Act of 2013

#### Why in the discussion?

- Recently Justice PC Ghosh, former Judge of the Supreme Court has become the first Lokpal of the country. Notification of their appointment was issued by the President's Office.
- Prime Minister Narendra Modi, Chief Justice Ranjan Gogoi, Lok Sabha Speaker Sumitra Mahajan, the selection committee of former Attorney General Mukul Rohatgi had recommended his name.
- Member of the committee and Congress leader Mallikarjun Kharge in the Lok Sabha did not participate in this meeting.
- Justice Dilip Babasaheb Bhosale, Justice Pradeep Kumar Mohanty, Justice Abhilasha Kumari, Justice Ajay Kumar Tripathi, Dinesh Kumar Jain, Archana Ramasundaram, Mahendra Singh and Dr. Inderjit Prasad are eight other members of Gautam Lokpal.

#### What is it?

- This bill became the 'Act' after signing the Lokpal and Lokayuktas Bill, 2013 on January 1, 2014 by the President of India.
- In this, the provision of appointment of Lokpal at the center level and Lokayukta at

the state level has been made.

- In this act a statutory body was formed to investigate allegations of corruption against public persons.

#### Who will be in Lokpal

- The Lokpal will have a chairman who is either ex-chief justice of India or the retired judge of the Supreme Court or any other important person.
- There can be up to eight members in the Lokpal, half of which should be from the judicial background.
- Apart from this, at least half of the members should be from Scheduled Castes, Scheduled Tribes, Backward Castes, Minorities and Women.

#### Who can not be?

- Member of Parliament or member of a State or Union Territory Assembly
- A person who has been found guilty of any kind of moral corruption
- A person whose age is not 45 years at the time of assuming the post of chairman or member
- Member of a panchayat or corporation

#### Major provisions

- Lokpal can have a president and a maximum of eight members, 50% of that must be from

a judicial background.

- The President and members of the Lokpal will be lected through a 'Selection Committee' in which the judges of the Supreme Court of India nominated by the Prime Minister of India, the Speaker of Lok Sabha, the Leader opposition of of the Lok Sabha, the Chief Justice of India
- Another member will be an eminent lawyer, who will nominate the president on the recommendation of these four members.
- In the jurisdiction of the Lokpal, all the categories of public servants, will be under
- With some safeguards, the prime minister has also been brought under the purview of this Act.
- Under the Act, adequate security will be provided to honest public servants.
- The Act also provides for seizure of the property acquired through corrupt ways, even if the matter of prosecution is pending.
- The Act has set an explicit deadline for preliminary investigations and trials. There is also provision for the formation of special courts for the trial.

#### **Work of the Search Committee**

- The Search Committee prepares a panel of names and names of its President and members of the Lokpal and the Selection Committee chooses the name for the appointment.
- The selection committee consists of Prime Minister, Lok Sabha Speaker, Leader of Opposition and eminent lawmaker.
- According to the rules, the Search Committee will prepare a panel of five names for the Lokpal president, while the eight members in which four judicial members and four administrative members the search committee will prepare 12 names for each.
- According to the rules, the Lokpal may be the current or retired Chief Justice of the Supreme Court or a Supreme Court Judge or an expert person in his area of convincing allegiance, while members of the judiciary may be the Chief Justice of the current or retired High Court or Supreme Court Judge.

#### **What is the benefit of Lokpal**

- The Lokpal will have the right to hear the

complaints of corruption against any public servant (government officials, ministers, panchayat members etc. of any level), except the army, from the Prime Minister to the peon.

- He can also seize the property of all of these. Under special circumstances, the Lokpal will also have the right to run a court trial against a man and impose up to Rs 2 lakh penalty.
- In the context of the Foreign Contribution Regulation Act (FCRA), any / all institutions which will receive donations of more than Rs.10 lakhs from foreign sources will come under its ambit.
- Under the Act, adequate protection will be provided to honest and straightforward public servants.
- The Act provides the authority to direct the Ombudsman to superintendence and direct any investigating agency including the CBI in various cases, whether if has been directed to the investigation agency by the Lokpal himself.
- The Director of CBI will be recommended by the High Power Committee under the chairmanship of the Prime Minister of India.
- The Central Vigilance Commission will recommend the appointment of the Director of CBI.
- The approval of Lokpal for the transfer of CBI officers who are investigating cases referred by the Lokpal will be needed.
- The Act also provides for seizure of property acquired in corrupt ways, even if the case of prosecution is pending.
- The Act has set an explicit deadline for preliminary investigations and trials. The establishment of special courts for the trial is also mentioned.
- After the implementation of this act the state legislature have to establish the institution of Lokayukt within 365 days through the enactment of the law has been mentioned.

### Expected Questions (Prelims Exams)

1. Which of the following statement is incorrect about the Lokpal and Lokayuktas Act, 2013?

- (a) In this law provision has been made to appoint Lokpal at central level and Lokayuta at state level.
- (b) There could be maximum eight members in Lokpal in which more than half must be from legal background.
- (c) Lokpal will have the right to hear all the cases of corruption except from Army.
- (d) Women are also included in Lokpal.

2. Consider the following statements regarding Lokpal Search Committee-

- 1. It prepares the panel of names of Lokpal chairman and its members, hands over to the Selection Committee.
- 2. Selection Committee consists of Prime Minister leader of opposition of Lok Sabha and famous jurist .

Which of the following statements is/are correct?

- (a) Only 1
- (b) Only 2
- (c) Both 1 and 2
- (d) Neither 1 nor 2

### Expected Questions (Mains Exams)

Q. Discussing the Lokpal and Lokayuktas Act, 2013 explain how it will be effective in curbing corruption in present.

(250 Words)

**Note:** Answer of Prelims Expected Question given on 3 APR. is 1(a)