WHAT IS LOKPAL? WHY DO WE NEED IT?

Frequently Asked Questions about the Anti-Corruption Watchdog

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What is Lokpal?

Lokpal is India's anti-corruption ombudsman representing public interest. It is meant to look into complaints against public servants defined under the Lokpal And Lokayuktas Act, 2013 (L&L Act). The Act states that the Lokpal will have a Chairperson, who is or has been a Chief Justice of India or Supreme Court judge. The ombudsman office should also have a panel of up to eight members, out of which 50 per cent shall be judicial members.

What will be the different components of the Lokpal?

According to the L&L Act, "the Lokpal shall constitute an Inquiry Wing headed by the Director of Inquiry for the purpose of conducting preliminary inquiry into any offence alleged to have been committed by a public servant punishable under the Prevention of Corruption Act, 1988."

In addition, there's going to be a "Prosecution Wing headed by the Director of Prosecution for the purpose of prosecution of public servants in relation to any complaint by the Lokpal under this Act."

"The Director of Prosecution shall, after having been so directed by the Lokpal, file a case in accordance with the findings of investigation report, before the Special Court." He/she will take all necessary steps in respect of the prosecution of public servants in relation to any offence punishable under the Prevention of Corruption Act, 1988.

Currently, former Supreme Court judge Justice Pinaki Chandra Ghose, has been appointed as the first Chairperson of the Lokpal. Four of the judicial members appointed have been former Chief Justices of different High Courts while the four non-judicial members have been from All India Services/Central Services.

Who will be accountable under the new Lokpal?

Its official website states that, "the Lokpal has jurisdiction to inquire into allegations of corruption against anyone who is or has been Prime Minister,

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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." It goes on to say that other entities or individuals covered include "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 ₹10 lakh (approx. US$ 14,300/- as of 2019)."[1]

What is the procedure for submitting complaints to the Lokpal?

The Lokpal officially claims that "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."

What is the passage of inquiry in the Lokpal?

A separate section devoted to 'Procedure In Respect Of Preliminary Inquiry And Investigation' is laid down in the Act. Once the Lokpal receives a complaint, it may order a preliminary inquiry against any public servant or investigation by any agency. After it receives the preliminary inquiry report, the Lokpal can order an investigation by any agency or initiate departmental proceedings or any other appropriate action against the concerned public servants by the competent authority. It may even order the closure of the proceedings.[2]

What are the provisions for Lokayuktas in the Act?

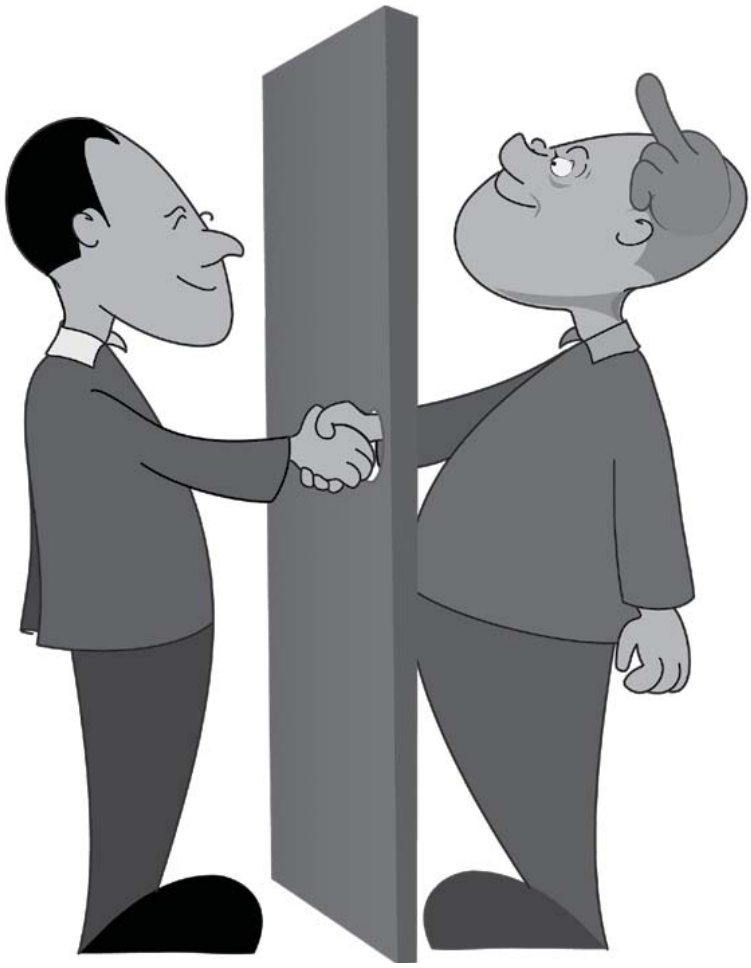
Details about the establishment of the Lokayukta, or the anti-corruption authority constructed at the state level, are laid down clearly in the Act. Under Section 63 of Part III, it states that "every State shall establish a body to be known as the Lokayukta for the State, if not so established, constituted or appointed, by a law made by the State Legislature, to deal with complaints relating to corruption against certain public functionaries." The L&L Act has also mandated that the states set up the institution of Lokayukta within one year of the commencement of the Act.

What is the history of the Lokayukta in India and what is its status in various states?

The Government of India put in place the Administrative Reforms Commission (ARC) so that it can offer recommendations to review India's public administration system. The first ARC, established on January 5, 1966 had recommended the establishment of Lokpal at the Centre and Lokayukta in the states.

Among Indian states, Maharashtra was the first to set up its Lokayukta through The Lokayukta and Upa-Lokayuktas Act in 1971. Earlier this year, the state cabinet has decided to bring the office of Maharashtra Chief Minister under the Lokayukta's ambit through a landmark initiative.[3]

The Karnataka Lokayukta too was regarded very highly for its powerful and decisive indictments, and was hailed for not shying away from pointing fingers at the government. Way back in 2011, an indictment by then Lokayukta Justice Santosh Hegde in an illegal mining case compelled BS Yeddyurappa to step down as Chief Minister.[4] However, the institution has lost its past glory in recent years. Last year, the Lokayukta and the registrar sought Karnataka High Court's intervention to put an end to governmental interference.[5]



Some states also don't seem to be in a tearing hurry to set up an independent anti-corruption ombudsman that will call out the government in the very state it is set up. It has required aggressive nudge from the Apex Court for the state governments to get into action. Newspapers had reported widely as to how a handful of states had to be expressly directed by the SC to expedite their Lokayukta appointments. In fact, a few months ago, the Supreme Court took on record efforts undertaken by six states, including Tamil Nadu, Odisha, Manipur, Mizoram, West Bengal and Nagaland to appoint Lokayukta. Even earlier, the top court had sought explanation from chief secretaries of 11 states regarding their failure in appointing Lokayukta and Uplokayukta, despite enactment of the law several years ago.

What is the long-term expectation from Lokpal and would it be enough to wipe out corruption in governance?

The Lokpal of India officially claims to be "committed to address concerns and aspirations of the citizens of India for clean governance." It also seeks to "make all efforts within its jurisdiction to serve the public interest."[6] However, given the deep rooted and endemic nature of graft in Indian society, the task of fighting corruption should be a multi-pronged one and not just vested on one singular body or institution.

It needs to be kept in mind that it is impossible to exercise full coverage of anti-corruption efforts to a dizzying range of financial malpractices. There already exists a spectrum of legislation to keep corruption in check, but there are huge gaps in their implementation. Featuring in the legislative framework around transparency and integrity are Indian Penal Code, 1860, Prevention of Corruption Act, 1988, Benami Transactions (Prohibition) Amendment Act, 2016, as well as Prevention of Money Laundering Act, 2002.

Additionally, India has ratified the United Nations Convention against Transnational Organised Crime and its three protocols and the United Nations Convention against Corruption. The Convention introduces a comprehensive set of standards, measures and rules that all countries can apply in order

> ***"Given the general ecosystem of graft, India's anti-corruption ombudsman Lokpal gains serious relevance."***

to strengthen their legal and regulatory regimes to fight corruption.[7]

However, an entire bouquet of anti-graft laws is clearly not enough when the intention to implement them is lacking. In the article *Lokpal just a step against graft*, Kaushiki Sanyal and C.V. Madhukar writes that there's need to understand certain aspects about anti-corruption laws: "Firstly, we have many laws that have been passed by Parliament and state legislatures. In many of these laws, there are loopholes that tend to provide opportunities for corruption. A major contributor to corruption is when discretion is given to the implementing officers to take certain decisions," they say. They go on to add that: "Secondly, once a law is written up, it is critical to enforce it in all seriousness. Our Parliament and state legislatures pass laws that require huge amounts of money to be spent. But then when it comes to providing the funding for implementation of all of the laws that they have passed, our governments and MPs under-fund the mandates in many cases. So, even when it comes to investing in strengthening our criminal justice system which is critical to ensuring a corruption free country, there has been systematic under-funding for many years both for the police and for the judicial system."[8]

Not surprisingly, attempts to improve governance by weeding out corruption by successive governments have been both feeble and lacking conviction over the years. A slew of bills, including the Judicial Standards and Accountability Bill, 2010, Public Procurement Bill, 2012, Electronic Delivery of Services Bill, 2011, Right of Citizens for Time Bound Delivery of Goods and Services and Redressal of their Grievances Bill, 2011 as well as Prevention of Bribery of Foreign Public Officials and Officials of Public International Organisations Bill, 2011, have lapsed.

It is therefore unwise to see the Lokpal as a one-stop solution to all our graft problems. It can work, only if it is aided by a battery of anti-corruption reforms, leading with the strengthening of institutions of prosecution. As R.N. Bhaskar points out in his paper *The state of corruption in India* published by the *Observer Research Foundation* (ORF), "First, the government must dispense with the protection that legislators, bureaucrats and bankers enjoy, instead allowing some of them to become approvers with immunity from prosecution. Second, judicial vacancies must be filled up soon, and appropriate premises and support staff must be provided." "The system will also need a mechanism that allows the courts to clean up corruption in their own backyard. Legislators and jurists can mutually find measures that work, without treading on each other's toes," he adds.[9]

> ***"There already exists a spectrum of legislation to keep corruption in check, but there are huge gaps in their implementation."***

What is the institutional framework for checking corruption, apart from Lokpal?

There exists an assortment of institutions that are mandated with effectively implementing anti-corruption laws. At the federal level there's the Central Bureau of Investigation (CBI), which is the government's foremost agency to investigate allegations of corruption. It was set up as the Special Police Establishment (SPE) in 1941 to look into cases of bribery and corruption in transactions with the War & Supply Deptt. of India during World War II. At that time, the SPE was part of the War Department in 1946. The Delhi Special Police Establishment (DSPE) Act was brought into force to probe cases of bribery and corruption by central government employees and the SPE was brought under the Home Department. Its functions expanded to cover all government departments. The jurisdiction of the SPE extended to all the Union Territories and could even be widened

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to include the states with the concerned state government's consent.

The DSPE became the CBI, when the Home Ministry decided to give it a new moniker in 1963. Initially the agency investigated corruption only among central government servants but its purview later expanded to include the employees of public sector undertakings and then to public sector banks and their employees.

Another key anti-graft watchdog is the Central Vigilance Commission (CVC), set up in 1964 on the recommendations of the K. Santhanam headed Committee on Prevention of Corruption. The CVC is meant to be the apex vigilance institution, free of control from any executive authority, and is tasked with monitoring all central government vigilance activity as well as advising various central government organisations in their fight against corruption. In 2003, the Parliament enacted the Central Vigilance Commission Act, 2003, making the CVC a statutory body.

A third layer in the anti-corruption institutional framework is the Comptroller and Auditor General (CAG), whose role is to deepen democracy while also auditing public expenditure. The main job of the CAG office is to make the executive accountable for its use of public money and expose financial misdeeds. In his *Economic and Political Weekly* article *Transparency in Appointing the CAG*, Dr B.P. Mathur writes that "from the time we adopted the Constitution in 1950, the CAG has been a key player in overseeing government finances and ensuring public accountability."[10] He goes on to say that, "the CAG's responsibilities include auditing the union and state governments and public sector undertakings, as well as a large number of autonomous institutions and grants-in-aid bodies which receive public funds (both at the centre and in the states). Additionally, the CAG is responsible for compiling and consolidating state accounts."

One cannot overlook the role played by the Central Information Commission (CIC) in maintaining transparency in governance and eradicating corruption. The institution was set up in 2005 by the Union government under provisions of Right to Information (RTI) Act, 2005, while its jurisdiction is over all central public authorities. The Chief Information Commissioner heads the body, which also includes not more than 10 Information Commissioners (IC). In fact, the Supreme Court has recently said the post of a Chief Information Commissioner (Chief IC) is at a higher level than that of a Chief Election Commissioner (CEC) and that the appointment process for the Chief IC should at least be on the same terms as that of a CEC.[11]

> ***Attempts to improve governance by weeding out corruption have been both feeble and lacking conviction.***

The Chief IC's job is to receive and inquire into complaints from information-seekers who have been aggrieved by the public authority, and also contribute towards the successful implementation of the RTI Act. One of the primary responsibilities of the Chief IC is to tackle corruption through institutional channels by serving the information seeker and create an enabling environment for the disclosure of information.

In addition, cases related to money laundering by public servants are investigated and prosecuted by the Directorate of Enforcement and the Financial Intelligence Unit, outfits that come under the Ministry of Finance.[12]

Apart from the national-level anti-corruption watchdogs, there are several set-ups for fighting graft that vary across states. While a few states are armed

with State Vigilance Commissions (SVC), there are others with anti-corruption bureaus.

(Endnotes)

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> Our lives begin to end the day we become silent about things that matter.
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> ***Martin Luther King, Jr.***