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**REVIEW DOCUMENT**

**THE LOKPAL AND LOKAYUKTAS ACT, 2014**

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## **THE LOKPAL AND LOKAYUKTAS ACT, 2014:**

### **SIGNIFICANCE:**

Innumerable attempts have been made in the past to bring successful legislation in place with regards to the establishment of Lokpal and Lokayuktas in India. This long-awaited piece of legislation saw the light of the day after receiving assent from the President on January 1, 2013 and was therefore named as the Lokpal and Lokayuktas Act, 2013. This Act stipulates the establishment of two institutions named Lokpal- an independent ombudsman (an official appointed to investigate individuals' complaints against a company or organization, especially a public authority) at the Centre as well as parallel bodies of Lokayuktas in the State. Both these offices or institutions were empowered to investigate various complaints regarding corruption among public officials. This Act depicts the firm resolution of the Government to implement an effective anti-corruption framework across the nation. This Act may have taken its present form after significant recommendations from its various stakeholders, including civil society. Lokpal and Lokayuktas Act 2013 has been passed mainly to remove the maladministration and corruption, which was slowly eroding the foundation of the nation. Before the passing of the Act, there were several anti-corruption agencies like the CBI. But these agencies proved to be only advisory bodies with no stringent rules to wipe out the Corruption. Lokpal and Lokayuktas have provided effective measures to counter at all levels of the government.

### **ORIGIN AND HISTORY:**

The story of the Lokpal and the Lokayukta has a long story. Lokpal and Lokayukta is not an Indian origin concept. The concept of Ombudsman originated in 1809 with the official inauguration of the institution of Ombudsman in Sweden. Later in the 20th century, after the Second World War, the institution of Ombudsman developed and grew most significantly. Countries like New Zealand and Norway also adopted the system of Ombudsman in 1962. This system proved extremely significant in spreading the concept of Ombudsman to other countries across the globe.

Great Britain adopted the institution of the Ombudsman in the year 1967, on the recommendations of the Whyatt Report of 1961. Through the adoption of such a system, Great Britain became the first eminent nation in the democratic world to have such an anti-corruption institution. After Great Britain, Guyana emerged as the first developing nation to

adopt the concept of the Ombudsman in the year 1966. Subsequently, this concept was further adopted by Mauritius, Singapore, Malaysia, and India as well.

In India, the former law minister Ashok Kumar Sen became the first Indian to propose the concept of constitutional Ombudsman in Parliament in the early 1960s. Further, Dr L. M. Singhvi coined the term Lokpal and Lokayukta. Later in the year 1966, the First Administrative Reform Commission passed recommendations regarding the setting up of two independent authorities at the central and at the state level. According to the Commission's proposal, the two independent authorities appointed to look into complaints against public functionaries, including members of Parliament as well.

After the recommendations from the Commission, the Lokpal bill was passed in Lok Sabha in 1968 but lapsed due to the dissolution of Lok Sabha. Since then, the Bill was introduced many times in Lok Sabha but has lapsed. Till 2011 as many as eight attempts were made to pass the Bill, but each of them failed.

Before 2011, a commission, headed by M.N. Venkatachaliah, was also set up in the year 2002 to review the working of the Constitution. This Commission recommended the appointment of the Lokpal and Lokayuktas. The commis

The passing of the Act by both Houses is indicative of the resolve of the Parliament and the Government to give to the nation an effective anti-corruption framework.<sup>57</sup> Another significant feature of the Act is that it has taken its present shape after repeated consultations with all stakeholders, including civil society. The Lokpal and Lokayuktas Act is perhaps the only Act in the history of independent India, which has been so widely discussed, both inside and outside Parliament and has, thus generated so much awareness in the public mind about the need to have an effective institution of Lokpal to tackle corruption.<sup>58</sup> Moreover, to facilitate the operation of Lokpal and to bring other laws in tune with this Act some amendments were brought to the provisions of certain enactments, namely, Commissions of Inquiry Act, 1952, Delhi Special Police Establishment Act, 1946, Prevention of Corruption Act, 1988, Code of Criminal Procedure, 1973 and Central Vigilance Commission Act,

### **OBJECTIVES:**

The main aim of The Lokpal and Lokayuktas Act 2013 is to provide for anti-corruption legislation which includes all the public servants such as the chief ministers, cabinet minister, members of the Parliament and all the employees of the state-funded organizations at the

national and the state level. The primary objective of Lokpals and the Lokayuktas is to fast-track investigations against the government officials accused of illegal acts of corruption. This Bill aims to curtail unrestrained corruption in the nation. This Bill aims at establishing an effective mechanism to review, investigate and fast track complaints. The authority of the institution of Lokpal extends to the Prime Minister in the way of the probe of his alleged wrongdoings. The Lokpal and Lokayuktas Act aims to check corruption through the establishment of an independent body at the national level, called the Lokpal which would be empowered to receive complaints relating to corruption against a public servant as referred to in clauses (a) to (h) of subsection (1) of Section 14 of the Act, and ensure that these are properly investigated, and if found necessary, to initiate prosecution against delinquent public servants, who come under the purview of the Act. The Act allows the Lokpal to investigate the offence which is made punishable under the Prevention of Corruption Act, 1988 at all levels of the government establishment.

### **IMPORTANT PROVISIONS:**

The Lokpal and Lokayukta Act, 2014 is one of the lengthiest acts comprising of 15 chapters and 63 sections. Which further is divided in three major part in which the Part I is for preliminary provisions and Part II stipulates provisions for Lokpal for the Union and Part III, consists of only one provision.

- **Section 1: Extent of Act:**

The authority of the Lokpal and Lokayukta Act, 2013 extends to the entire nation of India inclusive of the State of Jammu and Kashmir. This Act also applies to the public servants staying outside India, which represents the extraterritorial nature of the Act.

- **Section 3: Composition of Lokpal office:**

- 1) The Act provides the institution of Lokpal with a Chairperson.
- 2) The Chairperson must be or have been a Chief Justice of India or must be or have been a Judge of the Supreme Court or any renowned person who fulfils the eligibility criteria of
- 3) The Lokpal would have to be constituted by members not exceeding eight out of who fifty per cent shall be Judicial Members.
- 4) Almost fifty percent of the members must belong to the communities of Scheduled Castes, the Scheduled Tribes, Other Backward Classes, Minorities and women.

5) The Lokpal also provides for a Judicial Member if he is or has been a Judge of the Supreme Court or Chief Justice of a High Court.

6) However, a member who is not a part of the judiciary can be appointed provided he is a person of considerable dignity and integrity and possess special knowledge with an experience of not less than twenty-five years in the matters of anti-corruption policy, public administration, vigilance, finance including insurance and banking, law and management. He must also not hold any office of profit or have any affiliation to any particular political party or carry on any business or practise any profession.

7) A Chairperson or the Member mustn't be a Member of Parliament or a member of the Legislature of any State or Union territory.

8) The Act has provided that the Chairperson or the Member must have been convicted of any offence of moral turpitude previously.

9) The Chairperson or the Member must not be less than 45 years age on the date of assuming the office.

• **Section 4: Appointment by Selection Committee**

The appointment of the Chairperson and the Members must be made by the President after obtaining recommendations from the Selection Committee. The Selection Committee comprises of the Prime Minister( Chairperson), the Speaker of the House of the People (Member), the Leader of Opposition in the House of the People (Member), the Chief Justice of India or a Judge of the Supreme Court nominated by him (Member) and one eminent jurist, as recommended by the Chairperson and Members to be nominated by the President (Member).

• **Section 10: Staff to assist the Lokpal:**

The Act has also provided for authorities to assist the working of the Lokpal in a smooth and flexible manner. It has provided for the office of a Secretary to the Lokpal in the rank of Secretary to Government of India. The Secretary is appointed by the Chairperson from the list of names recommended to the Central Government. There is also a Director of Inquiry and a Director of Prosecution who are equivalent in rank to the Additional Secretary. The and officers and other staff members are appointed by the Chairperson or such Member or officer of Lokpal as the Chairperson may direct. All the appointments about the institution of Lokpal must be made after due consultation with the Union Public Service Commission.

• **Section 11: Inquiry Wing**

This section provides for the Constitution of an Inquiry Wing under the framework of the Lokpal. The Director of Inquiry must head this wing. Such a wing is constituted for conducting a preliminary inquiry into any offence allegedly committed by a public servant which is deemed punishable under the Prevention of Corruption Act, 1988.

- **Section 12: Prosecution Wing**

The Lokpal shall, by notification, constitute a Prosecution Wing headed by the Director of Prosecution for the prosecution of public servants about any complaint by the Lokpal under this Act.

- **Section 13: Expenses of Lokpal to be charged on the Consolidated Fund of India**

This section deals with the administrative expenses of the Lokpal, which are necessary to be incurred for the day to day functioning of the Lokpal. It includes all salaries, allowances and pensions payable to or in respect of the Chairperson, Members or Secretary or other officers or staff of the Lokpal. All such expenses are charged upon the Consolidated Fund of India

- **Section 14: Jurisdiction of Lokpal**

The jurisdiction of the areas of the ruling of the Lokpal include:

- i) **Office of Prime Minister and any person who is or has been a Prime Minister:**

The jurisdiction of Lokpal covers the office of the Prime Minister or any person who has previously stood in the position of the Prime Minister.

However, the Lokpal is not empowered to inquire on any matters of alleged corruption relating to the Prime Minister if it deals with or arises from the international relations, external and internal security, public order, atomic energy and space. If any such inquiry is to be conducted then the same cannot be done unless a full bench of the Lokpal consisting of its Chairperson and all Members considers the initiation of inquiry and at least two-thirds of its Members approves of such inquiry. All such inquiries must be recorded in-camera.

- (ii) **Corporation, boards and companies**

The scope of jurisdiction of Lokpal extends to any person who is or has been. Any person who is or has been a chairperson or Member or officer or employee in any-

body or Board or corporation or authority or company or society or trust or autonomous body (by whatever name called) established by an Act of Parliament or wholly or partly financed by the Central Government or controlled by it fall within the jurisdiction of Lokpal.

**(iii) Society, association or trust**

Any person who is or has been a director, manager, secretary or other officers of every other society or association of persons or trust (whether registered under any law for the time being in force or not), by whatever name called, wholly or partly financed by the Government and the annual income of which exceeds such amount as the Central Government may, by notification, specify; fall within the jurisdiction of Lokpal.

• **Section 20: Procedure to be followed by Lokpal**

On receiving the receipt of a complaint, the Lokpal decides to proceed further with the inquiry or not. If satisfied with the complaint, the Lokpal may order for the initiation of a preliminary inquiry against any public servant alleged of corruption. He may order inquiry to be conducted by its Inquiry Wing or any agency (including the Delhi Special Police Establishment) to ascertain whether there exists a prima facie case for proceeding in the matter. There are 198 pre-defined categories of complaint which is received by the Lokpal in respect of public servants belonging to Group A or Group B or Group C or Group D to the Central Vigilance Commission. The vigilance commission is expected to submit a detailed report to the Lokpal after the completion of Preliminary inquiry. The Inquiry Agency may then demand comments on the allegations from the public servants and the competent authorities after collecting material information and documents on the same. After obtaining such comments, the agency has to submit a report to the Lokpal with sixty days from the date of receipt of the reference

• **Chapter VIII: Powers of Lokpal**

The powers of the Lokpal are clearly defined under Chapter VIII of the Lokpal and Lokayukta Act, 2013 and are as follows:

- i. Supervisory powers of Lokpal.
- ii. Search and seizure of any document.
- iii. Powers of civil court in certain cases.
- iv. Power of Lokpal to utilize services of officers of Central or State Government.

- v. Provisional attachment of assets of the corrupt public official.
- vi. Confirmation of attachment of assets of such officials.
- vii. Confiscation of assets, proceeds, receipts and benefits arisen or procured using corruption in special circumstances.
- viii. Power of Lokpal to recommend transfer or suspension of public servant connected with an allegation of corruption.
- ix. Power of Lokpal to give directions to prevent the destruction of records during the preliminary inquiry.
- x. Power to delegate.

- **Section 35: Special Courts**

This section on the recommendation of Lokpal has provided for the Constitution of Special courts. These courts are for hearing and deciding the cases related to the Prevention of Corruption Act, 1988. These courts would fast track the hearings of such cases and ensure their on-time completion with regards to their judgement. The trial in all such cases is to be completed within a period of one year from the date of filing of the case in the Court. However, if the Court fails to complete such cases within the given period of one year, then reasons must be recorded for the same. The Court must endeavour to complete the trial within a further period of not more than three months or such other periods not exceeding three months each. However, such an option cannot be extended for more than two years.

- **Section 37: Suspension, removal of Chairperson and Member of Lokpal**

This section provides the grounds for the removal or suspension of the Chairperson or any member from the office of the Lokpal. Such a member must, however, be removed after an order is passed by the President on the grounds of misbehaviour, after the Supreme Court, on a reference being made to it by the President on a petition signed by at least one hundred Members of Parliament has, on an inquiry held by the procedure prescribed in that behalf, reported that the Chairperson or such Member, as the case may be, ought to be removed on such ground.

The President may suspend from office the Chairperson or any Member in respect of whom a reference has been made to the Supreme Court, on receipt of the recommendation or interim order made by the Supreme Court in this regard until the President has passed orders on receipt of the final report of the Supreme Court on such reference. The President



may, by order, remove from the office, the Chairperson or any Member if the Chairperson or such Member is adjudged an insolvent; or engages, during his term of office, in any paid employment outside the duties of his office; or is in the opinion of the President, unfit to continue in office because of the infirmity of mind or body.

- **Section 46: Prosecution for false and frivolous or vexatious complaint**

This section provides for the punishment of those people who allegedly make false or untrue complaints under the purview of this Act. Such convicted persons are subjected to imprisonment which may extend to one year along with a fine of one lakh rupees or more. Special Court shall take cognizance of an offence on a complaint made by a person against whom the false, frivolous or vexatious complaint was made or by an officer authorized by the Lokpal.

- **Section 63: Establishment of the Lokayukta in States**

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, within one year from the date of commencement of this Act.

### **RECENT AMENDMENTS:**

Lokpal and Lokayukta Act, 2013 has been amended by the Lokpal and Lokayukta Act (Amended) Act, 2016. This amendment did not bring an extensive change in the Act of 2013. Still, its impact was significant in enabling the leader of the single largest opposition party in the Lok Sabha to become a member of the selection committee in the absence of a recognized Leader of Opposition.

The Bill considerably amended Section 44 of the Lokpal and Lokayukta Act 2013. Section 44 of the Act required the public servants to furnish the details of their assets and liabilities within thirty days of their joining the government service. However, the amendment changed the time limit of 30 days. It provided the liberty to the public servants to make a declaration of their assets and liabilities in the form and manner as prescribed by the government.

In the case where any non-governmental organization receives funds of more than Rs. 1 crore from government or receives foreign funding of more than Rs. 10 lakh then the assets of the trustees and board members were disclosed to the Lokpal. The Bill provided an extension to the time limit given to trustees and board members to declare their assets and those of their spouses

### **LOOPHOLES:**

- One of the significant lacunas in the Lokpal Act is that it conveniently excludes religious bodies and NGOs which provide for a major share of foreign inflows in the country. Religious bodies, along with NGOs and educational institutes, accounted for 19.91 % of the total foreign inflows last year. There are many NGOs suspected of committing corruption in the name of providing welfare services to the people. Leaving such NGOs and religious outside the scope of the Lokpal Act is the same as leaving the political parties out of the purview of Right to Information. There needs to be a regulatory authority to check the finances and accounts of these religious bodies and NGO's.
- Section (3) of the Act provides that the Lokpal must consist of a chairperson, and the number of its members must not be more than eight and almost 50 percent of them should be judicial members. The section also stresses that not less than 50 percent of the nine members of the Lokpal must belong to the Scheduled Castes, the Scheduled Tribes, other Backward Classes, Minorities and Women. Therefore almost 4 of the eight such members must belong to the communities mentioned above. Such reservations give rise to one major concern for the citizens which is odious: That the corruption and anti-corruption agencies are bound to follow the quota system and the members outside the reserved communities are not considered eligible to decide a case relating to corruption and be fair and impartial at the same time.
- As per Section 4(1), the Chairperson and the members of the Lokpal are provided to be appointed by the President as per the recommendations of the Selection Committee which consists of the Prime Minister, the Speaker of the House of People; the Leader of the Opposition in the House of the People and the Chief Justice of India or a Judge of the Supreme Court nominated by him. This particular provision is found to be a significant loophole in the Act. The Chief Justice is expected because of his credentials and reputation not to be subservient to the Prime Minister or the executive.
- There is a loophole even in the Section 14 Subsection (1) (a), which states

thatThejurisdiction of Lokpal covers the office of the Prime Minister or any person who has previously stood in the position of Prime Minister. However, the Lokpal is not empowered to inquire on any matters of alleged corruption relating to the Prime Minister if it deals with or arises from the international relations, external and internal security, public order, atomic energy and space. This restriction is understandable and valid, but no prohibition must be imposed on the Lokpal to enquire into matters that relate to corruption in the departments of Atomic Energy or Space (that always come directly under the Prime Minister), such as the Antrix Devas scam. This would defeat the concept of transparency and accountability.

### **CONCLUSION:**

In order to tackle the problem of corruption, the institution of the Ombudsman should be strengthened both in terms of functional autonomy and the availability of workforce. The 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 made transparently to minimize the chances of the wrong sorts of people getting in. There is a need for a diversity of decentralized institutions with appropriate accountability mechanisms, to avoid the concentration of too much power in any one institution or authority.

## **ABOUT THE AUTHOR**



I am Shruti Madhogaria, a second year law student from Himachal Pradesh National Law University, Shimla. This internship has been a wholly different experience from the rest as in this we had to review Bare Acts rather than writing a research paper. It extended my horizon of knowledge with respect to various acts and their amendment. The knowledge gained through this internship would never go waste. I tried to complete the tasks allotted to me with full dedication and hardwork and this was an invaluable experience for me which I would cherish all my life.