

Relevance of Lokayukta and Lokpal: Karnataka, a case study

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Manifest Pedagogy:

Maladministration is like a termite that slowly erodes the foundation of a nation. It hinders administration from completing its task. Corruption is the root cause of this problem that our country faces. Though there are many anti-corruption agencies in India, most of these anti-corruption agencies are hardly independent. In this context, an independent institution of Lokpal and Lokayukta has been a landmark move in the history of Indian polity which offered a solution to the never-ending menace of corruption. It provides a powerful and effective measure to counter corruption at all levels of the government.

In News: The Central Administrative Tribunal has directed the Centre to take a decision within eight weeks in the matter of senior IFoS seeking appointment on deputation in the organisation of the Lokpal.

Placing it in Syllabus: Polity and Governance

Static Dimensions

- History of Lokpal
- Structure of the Lokpal
- Jurisdiction and powers of Lokpal
- Lokayukta

Current Dimensions

- Issues with Lokpal
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History of Lokpal

- The concept of ombudsman originated in **1809** with the official inauguration of the institution of Ombudsman in **Sweden**.
 - Ombudsman is an old Swedish word that describes a person who represents or protects the interest of another person.
- 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**.
- Great Britain adopted the institution of the Ombudsman in 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.
- 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.
- 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.
- Later in 2005, the **Second Administrative Reforms Commission** chaired by Veerappa Moily came up with the recommendation that the office of Lokpal needs to be

established without delay.

- India rose into a nationwide protest for Lokpal. The **“India Against Corruption”** movement was led by **Anna Hazare** to exert pressure on the United Progressive Alliance (UPA) government at the Centre.
- The protests and the movement resulted in the passing of the Lokpal and Lokayuktas Bill, 2013, in both the Houses of Parliament.
- The **bill received assent from the President on 1 January 2014 and came into force on 16 January 2014** under the name “The Lokpal and Lokayukta Act 2013”.

Structure of the Lokpal

- Lokpal is a multi-member body consisting of one chairperson and a maximum of **8 members**.
- The person to be appointed as the chairperson of the Lokpal must be either:
 - The former Chief Justice of India or the former Judge of the Supreme Court or An eminent person with impeccable integrity and outstanding ability, who must possess special knowledge and a minimum experience of 25 years in matters relating to: Anti-corruption policy, Public administration etc.
- These eight members must constitute:
 - **Half members to be judicial members.**
 - Minimum **50% of the Members should be from SC/ ST/ OBC/ minorities** and women.
 - The judicial member of the Lokpal must be either: A former Judge of the Supreme Court or A former Chief Justice of the High Court.
 - The non-judicial member of the Lokpal needs to be an eminent person with flawless integrity and outstanding ability. The person must possess special knowledge and an

experience of a minimum of 25 years in specific matters relating to:

Term and appointment to the office of Lokpal

- Lokpal Chairman and the Members can hold the office for a term of **5 years or till they attain the age of 70 years**, whichever is earlier. The members and the chairman of Lokpal are appointed by the president on the recommendation of a selection committee.
- **The selection committee consists of:**
 - The Prime Minister of India, The Speaker of Lok Sabha, The Leader of Opposition in Lok Sabha, The Chief Justice of India or any Judge nominated by Chief Justice of India, One eminent jurist.
 - The Prime Minister is the Chairperson of the selection committee. The selection of the chairperson and the members is carried out by a search panel of at least eight persons, constituted by the selection committee.

Lokpal search committee

- As per the Lokpal Act of 2013, the Department of Personnel and Training needs to create a list of candidates who are interested to become the chairperson or members of the Lokpal.
- The list was then to be presented to the proposed eight-member search committee.
- The committee on receiving the list shortlists the names and places them before the selection panel, headed by the Prime Minister.
- The selection panel has discretion in selecting the names from the list presented by the search committee.

The Lokpal and Lokayukta Act of 2013 also mandates that all

states must set up the office of the Lokayukta within one year from the commencement of the Act.

Jurisdiction and powers of Lokpal

- The Jurisdiction of Lokpal extends to: **Prime Minister, Ministers, Members of Parliament, Groups A, B, C and D officers, Officials of Central Government.**
- The Jurisdiction of the Lokpal extends to the Prime Minister, except in the cases of allegations of corruption relating to: International relations, Security, The public order, Atomic energy and space.
- Lokpal's jurisdiction also includes: Every person who is or has been in charge (director/ manager/ secretary) of a body or a society set up by the act of central government, Any society or body financed or controlled by the central government, Any person involved in act of abetting, Bribe giving or bribe-taking.
- The jurisdiction of the Lokpal **does not include** ministers and members of Parliament in the matter relating to: Any speeches delivered in the Parliament or, for a vote cast in the Parliament.
- The Lokpal and Lokayukta Act states that all public officials need to furnish their assets and liabilities as well as their respective dependents.
- The Lokpal also **possesses the powers to superintendence over the CBI.** It also has the authority to give direction to the CBI.
 - If a case is referred to CBI by the Lokpal, then the investigating officer in such a case cannot be transferred without the prior approval of the Lokpal.
 - The powers of a civil court have been vested with the Inquiry Wing of the Lokpal.
- The Lokpal also possesses powers regarding the confiscation of assets, proceeds, receipts, and benefits

arising or procured by means of corruption in special circumstances.

- It also has the power to make recommendations regarding the transfer or suspension of public servants connected with the allegations of corruption.
- Lokpal is capable of giving directions to prevent the destruction of records during the preliminary inquiry.
- The Lokpal has its various wings, most important are Inquiry Wing and Prosecution Wing:
 - **Inquiry Wing-** It is headed by the Director of Inquiry, for the purpose of conducting a preliminary inquiry into any offence alleged to have been committed by a public servant punishable under the Prevention of Corruption Act, 1988.
 - **Prosecution Wing-** It is 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.

Issues with Lokpal

- The appointing committee of Lokpal consists of members from political parties that put Lokpal under political influence.
- There are no criteria to decide who is an 'eminent jurist' or 'a person of integrity' which manipulates the method of the appointment of Lokpal.
- The Lokpal and Lokayukta Act 2013 failed to provide any kind of concrete immunity to the whistleblowers.
- The provision related to the initiation of inquiry against the complainant, in cases where the accused is found innocent, leads to discouraging people from making complaints.
- One of the biggest lacunae is the **exclusion of the judiciary** from the ambit of the Lokpal.
- The Lokpal **does not have any constitutional backing.**
- Also, there are no adequate provisions for appeal

against the actions of Lokpal.

- The states have complete discretion with respect to the specific details in relation to the appointment of Lokayukta.
- The need for functional independence of the CBI has been catered to some extent, by the change brought forth in the selection process of CBI's Director, by the Lokpal and Lokayukta Act.
- The Lokpal and Lokayukta Act also mandates that no complaint against corruption can be registered after a period of seven years from the date on which the mentioned offence is alleged to have been committed.
- Lokpal can't initiate an inquiry against itself.
- In the year 2019, the Lokpal received **1,427 complaints. In 2020-21, the number dipped to a mere 110. Reports say that during the first half of 2021, only 30 complaints** were filed before the Lokpal.
 - A majority of the complaints 1,219 of them were dismissed as they were beyond the jurisdiction of Lokpal, while in 89 cases, complainants were advised to file on the prescribed form.
 - In 111 cases, the complaints were either closed after preliminary inquiry, dismissed because they were before other authorities, or directed to other concerned authorities for appropriate action.

Lokayukta

- 'Lok' means people and 'ayukta' means authority. The Lokayukta is an anti-corruption authority established at the state level. It probes claims of corruption and mal-administration against public servants and is charged with the speedy remedy of public grievances.
- Lokayukta hears the grievances of the individuals against the administration and gets an opportunity to look into the procedure of the administration and its

standards and faults.

- The Lokayukta with the help of the Income Tax Department and the Anti Corruption Bureau assists people with bringing corruption amongst the politicians and officers in the government service to public consideration.

Appointment of Lokayukta

- With the approval of the President (not compulsory in all states) the Governor or the Lieutenant Governor (in the case of NCT of Delhi) appoints Lokayukta and Upalokayukta.
- In some states, it is compulsory to seek the compliance of the Chief Justice of the High Court of that concerned state and the Opposition Leader in the Legislative Assembly.
- In states like Bihar and Uttarakhand, a selection committee is formed and the Lokayukta is based upon its suggestions.
- The Lokayukta consists of the Chief Minister as the chairperson, One Minister appointed by the Chief Minister, the Opposition Leader in the State Legislative Assembly, Communicative Lokayukta, Two sitting Judges of the High Court to be nominated by the Chief Justice of the High Court, One renowned citizen of the state to be nominated by the Chief Minister after consulting with the opposition leader and the Chief Justice of the High Court.
- The Selection Committee can adjust its procedure for selecting the chairperson and members of the Lokayukta which shall be unambiguous.

Powers

- The Lokayukta assists individuals with carrying corruption to the front mainly amongst the politicians and officers in the government service.
- A point to note is that Lokayukta conducts raids but

does not have any binding powers to punish anyone but only suggests punishment to the administration.

- The recommendations given by the Lokayukta to the government are reduction in rank, compulsory retirement, removal from office, stoppage of annual increments, and censure.
- It is up to the state to either accept the suggestions or modify them.
- The public servant can challenge the decision in the state high courts or specialised tribunals.

Functions

- **Investigating “grievances”** of the citizens caused by maladministration.
- **Inquiry into allegations** of abuse of office, corruption, or lack of integrity against public servants. Such additional function is related to the remedy of grievances and elimination of corruption as may be defined by the Governor, by notification.
- Keep a check on the investigation of anti-corruption agencies and authorities.

Lokayukta in Karnataka: A case Study

- Karnataka Lokayukta is possibly the most prominent Lokayukta of India.
- It was set up in 1986 under Karnataka Lokayukta Act, 1984.
- The Karnataka Act empowers the Lokayukta and Up-Lokayukta with judicial and investigative powers and functions to investigate the decisions of the bureaucratic officials.
- Lokayukta has been given the suo motu powers to investigate all civil servants except the CM, Ministers, and Legislators.
- It carried out 355 suo motu raids, whereas it responded to over 2,259 citizen complaints.

- About 65 per cent of the cases (consisting of four Lokayuktas) were initiated during the tenure of Lokayukta 2006-11.
- The Karnataka Lokayukta had filed complaints against three chief ministers of three different political parties that were in power at the relevant time, in the mining scam.
- It also took action against ministers, MLAs, and IAS officers for their involvement in corruption.
- More than 80 per cent of the cases are related to four essential functions of the government: Local governance, administration (taluk/district office, police, court, tax, land, revenue), welfare, and regulation.
- 40 percent of the officials against whom Lokayukta has proceeded are petty officials. The highest-cadre officials such as IAS, and members of legislature, account for less than 1 percent of all the cases.
- Of the 3,097 cases investigated, trials could be completed only in 4 per cent cases, leading to a mere 16 convictions. This conviction rate is lower than the rate of similar convictions in India, of 34 to 40 per cent.

Issues with Lokayukta

- At present, only a few states like Maharashtra, Orissa, Rajasthan, Bihar, UP, Karnataka, Madhya Pradesh, Andhra Pradesh, Gujarat, Kerala, Meghalaya, and Assam have a Lokayukta.
- Each state has different legislation which is concerned with the Lokayukta.
 - The Maharashtra Lokayukta's powers are meagre which makes it the weakest Lokayukta in the country.
- The **investigation reports of the Lokayukta are non-binding**. It is not sanctioned to exercise its jurisdiction to prosecute criminals.
- Positions in Lokayukta remain Vacant for years. Eg-The

seat of Lokayukta has been vacant for seven consecutive years in Gujarat.

- Lokayuktas are understaffed and underfunded.
- The government can undertake many activities to ensure that the Lokayukta does not have any independence or authority to act on its powers.
- They have been denied their independent investigative machinery.
- Lokayukta is to be entirely at the state's discretion.

WayForward

- 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 manpower.
- 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 done transparently so as to minimize the chances of the wrong sorts of people getting in.
- There is a need for a multiplicity of decentralised institutions with appropriate accountability mechanisms, to avoid the concentration of too much power in any one institution or authority.
- The Lokayukta ought to be made the nodal agency for receiving all the corruption complaints.

- The Lokayukta should be conferred power over state-level probe organisations.