

Transparency of Lokpal Selection Committee

February 19, 2021

The Central Information Commission has refused to disclose the minutes of the meetings of the Selection Committee for the Lokpal. However, the RTI Act and general ethics of administration demands transparency about any selection or recruitment for public office. The issue of selection of Lokpal and the CIC ruling becomes for UPSC aspirants.

In news: Centre need not disclose Lokpal selection committee minutes, rules CIC

Placing it in syllabus: Law & Policy

Dimensions

- What was the application filed under RTI?
- Basics of Lokpal
- Ruling of of the CIC
- Reasons for the ruling
- Criticisms
- Way forward

Content:

What was the application filed under RTI?

- In November 2018, RTI activist Anjali Bhardwaj filed an RTI request seeking information about the five-member Lokpal selection committee
- It requested for records on the dates of committee meetings, names of attendees, and a copy of the minutes.
- The Department of Personnel and Training, which works as a nodal Ministry for both Lokpal and CIC, refused to provide a copy of the minutes

- DoPT said that, “the authorship of such documents which include 3-5 high level dignitaries does not vest in the Department of Personnel and Training and same have been shared as secret document.”
- Instead of the minutes, a brief summary of the committee’s decisions at each meeting was provided.
- In March 2019, Ms. Bhardwaj appealed the rejection at the CIC, noting that the Centre had not invoked any of the exemptions permitted under the RTI Act.
- The appeal argued that just classifying some information or marking some document as confidential does not make it so.
- The appeal also pointed out that there is no provision in the RTI Act for denying information merely because :
 - the authorship does not vest in the public authority **or**
 - because some documents are shared as secret.
- It was highlighted in the appeal to the CIC that transparency in appointment to oversight bodies is a crucial safeguard against arbitrariness in appointments and to ensure their independent functioning.

Contentious sections

- **Section 4(4) of the Lok pal Act** which states that the Selection Committee shall regulate its own procedure in a transparent manner for selecting the Chairperson and Members of the Lok pal.
- **Section 8 or Section 9 of the RTI Act:** Under which access to information can be rejected only on the grounds mentioned in these Sections.

Basics of Lokpal

- The Lokpal is the first institution of its kind in independent India, established under the Lokpal and Lokayuktas Act 2013.
- It is a statutory body without any constitutional

status.

- It performs the function of an “ombudsman” and inquires into allegations of corruption against certain public functionaries and for related matters.
- In India, the concept of constitutional ombudsman was first proposed by the then law minister **Ashok Kumar Sen** in parliament in the early 1960s.
- The **term Lokpal and Lokayukta** were coined by **Dr L. M. Singhvi**.
- the Lokpal and Lokayuktas Act 2013 came into force on 16 January 2014.

Jurisdiction

The Lokpal has jurisdiction to inquire into allegations of corruption against anyone who is or has been:

A Lokpal can enquire into allegations of offences under the Prevention of Corruption Act, 1988 (PCA) committed by:

- the Prime Minister of India with specified safeguards,
- current and former Union Ministers,
- current and former MPs,
- group A, B, C, D – civil servants of the Union government,
- employees of a company, society or a trust set up by an Act of Parliament, or financed or controlled by the central government.
- employees of association of persons that
 - (i) have received funding from the government and have an annual income above a specified amount; or
 - (ii) have received public donation and have an annual income above a specified amount or received foreign funding above Rs 10 lakh a year.

Functions

- The Lokpal is vested with the power of search and

seizure and also powers under the Civil Procedure Code for the purpose of conducting preliminary inquiry and investigation.

- It also has the power of attachment of assets and taking other steps for eradication of corruption.
- Lokpal has the power of superintendence and direction over any central investigation agency including CBI for cases referred to them by the Lokpal.

Composition and Appointment of Members

- The members of the Lokpal are appointed by the President on the basis of the recommendations of the Selection Committee.
- The Lokpal shall consist of one chairperson and up to eight members.
- The Chairperson shall be the CJI or a present or former judge of the Supreme Court or a non-judicial member with specified qualifications (Chief Justice or a Judge of a High Court). 50% percent of the other members shall be judicial members (judges of the Supreme Court and Chief Justices of the High Court in case of Lokpal and judge of a High Court in case of Lokayuktas).
- A non-judicial member is required to have 25 years experience in anti-corruption policy, public administration, vigilance and finance.
- At least 50 per cent of the members of both bodies shall be from among SC, ST, OBC, minorities and women.
- Members of the Lokpal may be removed by the President after an inquiry by the Supreme Court.
- The Supreme Court may inquire based on a reference from the President.
- Such reference may be made by the President on his own, or on a citizen's petition if the President is satisfied by it, or on a petition signed by 100 MPs.

Selection Committee

- The Selection Committee for the Lokpal shall comprise of:
 - the Prime Minister,
 - Speaker of the Lower House (Lok Sabha)
 - Leaders of the Opposition of the Lower House,
 - the Chief Justice of India or a judge of the Supreme Court nominated by him, and
 - an eminent jurist nominated by the President (Governor).
- The Act makes it mandatory for the Selection Committee to constitute a search committee of at least seven members.
- The Selection Committee may consider a candidate other than one recommended by the Search Committee.

Ruling of CIC:

- The CIC upheld the withholding of information and refused access to minutes of the meeting of the Selection Committee.
- The CIC relied on the orders of the Supreme Court of March 7, 2019 in a contempt petition filed with respect to the constitution of the Lokpal to arrive at this conclusion.

Reasons for the ruling:

The CIC order reasoned that:

- provisions under **Section 6(3) of the RTI Act** does not provide for transferring the RTI application to the members of the Selection Committee.
- documents received by the DoPT under sealed cover were confidential as they had been presented before the Supreme Court too in a sealed cover.
- the documents authored by the third parties were held in a fiduciary capacity by DoPT

Criticisms of the ruling

- The CIC **wrongly quoted the two Supreme Court judgements** and gave an order exactly opposite to SC orders. A simple reading of Section 8(1)(b) would have been sufficient to know that disclosure of minutes was not prohibited by SC.
- **non-disclosure of minutes of the selection committee leads to secrecy** in the appointment process much against the letter and spirit of Right to Information Act and good governance rules.
- The **secrecy and opaqueness** in appointments of anti-corruption ombudsman may **breed corruption**.
- The order of **CIC does not give enough support** to its conclusion that information sought 'confidential' 'secret' and 'fiduciary' in nature.
- The **CIC did not explain who and why the minutes was categorised as 'secret'** and on what grounds
- When **cabinet decisions are disclosable** along with entire material after a decision was taken, **why can't selection committee meetings be disclosed?**

Way Forward

- Transparency in appointment to oversight bodies is a crucial safeguard against arbitrariness in appointments and to ensure their independent functioning.
- The Department of Personnel and Training rules and Office Memorandum also guide the CPIOs to place the entire record of recruitments and promotions and transfers in the public domain on their own.
- Therefore, Minutes of Meeting of the Selection committee shall be made voluntarily public.

Mould your thought: The order of CIC withholding details of Lokpal selection encourages arbitrariness in appointments. Critically Evaluate.

Approach to the answer:

- Introduction
- Discuss the CIC order and its reasoning
- Write about the criticism of the order
- Write the Way forward