

Lokpal is not an End in Itself

Nobody should be above corruption scrutiny. But a Lokpal that's open to misuse will do more harm than good



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Questions can be raised about the correctness of almost any professional conduct, depending on the context. It is for the State to put in place robust mechanisms so that no complaint becomes a nihilist tool, to settle scores outside legal channels.

The argument to exclude designated functionaries from the purview of the Lokpal needs to be examined against the fundamental tenet of equality and good governance. Can a head of State/judiciary/Parliament dispense justice, and be seen to be just, if he or she is actually pegged above justice? Should they not have to experience the same governance issues that their foot-soldiers are subjected to? Conversely, can they perform their exalted role with pending corruption allegations?

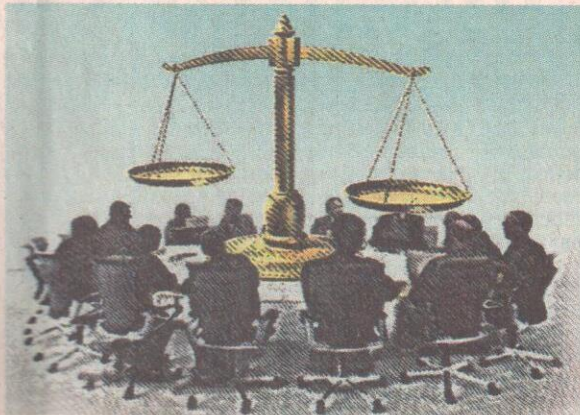
How can this conundrum be resolved? When there is an orchestrated call for the person to resign or to render him incompetent for high office, a corruption complaint becomes a political weapon. It fulfils the objective of the complainant. Not at least until the charges are framed, and formal criminal/departmental prosecution is launched, should a person be considered unfit for the office

that he is competent to hold. Then, a Prime Minister/Chief Justice of India/Speaker would not become a lame duck. Unfortunately, in our country, political expediency and double standards have prevented healthy conventions from being established.

Ideally, civil society should have sought for the Lokpal to be an oversight body, to oversee the State's instruments for tackling corruption. An overarching citizen's watchdog, comprising eminent citizens, distinct from the investigative mechanism of the State, would better safeguard society's interests. It could call for records of investigations done by the vigilance agencies, hold discussions with citizenry and then ensure that no wrongdoer was let off lightly. However, since the Lokpal, as now proposed, replaces the existing vigilance mechanism, it merits analysing the current shortcomings.

The Lokayukta is usually a single person, a retired judge of the Supreme Court or a chief justice of a high court, who supervises investigations of corruption complaints directly or through the special police establishment, headed by a DGP, reporting to him. An adverse note from an arbitrary Lokayukta can lead to an FIR being registered against a public functionary. What is wrong with that?

An FIR, once registered, can chase a public functionary for decades. Even when subsequent investigation establishes the absolute impeccability of the action complained against, because an FIR is registered, the Lokayukta cannot end the case. A special judge in some remote



GEETANJALI

district to which the case relates, will now decide the matter. It is easy to sensationalise the issue once again, to become an object in the matter, and thereby to influence the local judge to reject the final closure report of the Lokayukta. There are instances of local special judges who have, without even noticing the accused, passed illegal orders (that may have later been struck down by the high court!) against them. In such a circumstance, the Lokayukta becomes farcical and a source of harassment. To prevent this, FIRs should be lodged only if the gravity of the matter is such that the State should sanction prosecution of the public servant if the charges are proved. Importantly, the verdict of the Lokpal, if it acquits a public servant, must be final and non-judicial.

Present investigative machinery does not have the wherewithal to discriminate between genuine cases of corruption and cases where commercial judgement of a com-

mercial entity is involved. Even when there is no evidence of malfeasance, the mere fact that a private person is benefitting from a decision is ground enough to invoke the Prevention of Corruption Act. What modern-day economic decision of the State-procurement/joint-venture/licensing agreement does not involve a private party? Lokayuktas have ignored the fact that a complainant may have been an interested party who may have even lost in civil litigation right up to the level of the Supreme Court! Hence, it is important for the Lokpal to have members who have a sound understanding of business/corporate strategy/public-private partnerships.

It is noteworthy that the Planning Commission projects a thousand billion dollars of investment in the infrastructure sector in the 12th Plan. Public-private partnerships are to elicit 50% of this investment contribution from

the private sector.

Also every complaint should necessarily have to be logged on to the website of the Lokpal for a fixed incubation period. Both society and also those who are being complained against should be encouraged to respond publicly to it. That would not necessarily prejudice the Lokpal. Instead, it would allow a free public discourse and discovery of the truth to emerge.

Use of the conspiracy clause in Section 120B of the Indian Penal Code is another failing of the Lokayukta system. In innumerable cases, swathes of officers have been recklessly swept in, even if they haplessly had the file merely moved through them at some stage. The Lokpal should deploy the conspiracy clause only if there is clear *mens rea* and solid evidence of conspiracy.

We also have instances of the courts encouraging public interest litigations (effectively, private interest litigations) or PILs on the same subject as a substantive matter that is being/had been investigated by the Lokayukta. High courts may order fresh inquiries, leading to decades of tortuous litigation. Hence, PILs should be barred in matters that pertain to ongoing/completed Lokpal inquiries. Else, PILs are merely terrorist-tools.

In the proposed Lokpal Act, nobody, however big, should remain above scrutiny. But, unless we build systems to self-purge ourselves such that there are foolproof safeguards for those who are not dishonest, prospects for sustaining 10% economic growth appear highly suspect.

(Views expressed are personal)