

SIX YEARS ON, LOKPAL IS A NON-STARTER

Relevant for: Ethics | Topic: Challenges of corruption

The massive public campaign in 2011 demanding an independent anti-corruption ombudsman resulted in the passage of the Lokpal law. The political dividend of the agitation was reaped at the national level by the BJP, which vociferously supported the demand for an effective Lokpal and rode to power in 2014 on the plank of anti-corruption.

More than six years after the Lokpal law received the President's assent, the institution of the Lokpal is yet to play any significant role in tackling corruption in the country. The manner in which the Lokpal has been emasculated by the current regime closely mirrors the undermining of other institutions of oversight and accountability.

The preambular statement of The Lokpal and Lokayuktas Act, 2013 notes that the law has been enacted to ensure prompt and fair investigation and prosecution in cases of corruption against public servants. The Lokpal was envisioned to be independent. It was accorded a high stature and given extensive powers including the power to inquire, investigate and prosecute acts of corruption.

For more than five years, the chairperson and members of the Lokpal were not appointed. The government claimed that since no one could be recognised as the Leader of the Opposition (LoP) after the 2014 general election, the committee responsible for selecting members of the Lokpal could not be constituted. This malady could have been easily remedied by either recognising the leader of the single largest party in Opposition in the Lok Sabha as the LoP, or by amending the Lokpal law to allow the leader of the largest Opposition party to be a member of the committee in the absence of a recognised LoP (this was done for the selection committee of the CBI Director). However, neither recourse was taken.

The chairperson and members of the Lokpal were appointed only in March 2019 after a contempt petition was filed in the Supreme Court following the failure of the government to comply with the 2017 ruling of the court to initiate the process of making appointments.

A truncated selection committee, without the LoP, was set up. The Prime Minister, Speaker, and the then Chief Justice of India appointed Mukul Rohatgi, who had earlier served as Attorney General of India during the BJP regime, as the eminent jurist on the selection panel. The leader of the largest Opposition party in the Lok Sabha was invited for meetings of the selection committee as a 'special invitee', which he declined on grounds that it was mere tokenism.

The four-member selection committee, having a preponderance of representatives of the ruling party with an inherent bias towards recommending candidates favoured by the government, selected the Chair and members of the Lokpal. The manner in which the appointments were made raised doubts about the independence of the Lokpal even before it became operational.

Despite the fracas over appointments, many had hoped that once constituted, the Lokpal would nevertheless be a significant oversight body to check corruption and the arbitrary use of power by the government. More than 10 months later, however, evidence suggests that the Lokpal is a non-starter. Till date, the government has not made rules prescribing the form for filing complaints to the Lokpal. The Central government has also failed to formulate rules regarding asset disclosure by public servants.

In order to ensure independent and credible action on allegations of corruption, the Lokpal was

empowered under the law to set up its own inquiry wing headed by a Director of Inquiry and its own prosecution wing headed by a Director of Prosecution. However, information accessed under the Right to Information Act has confirmed that the inquiry and prosecution wings of the anti-corruption ombudsman are yet to be set up. The Lokpal has also not appointed the Director of Inquiry or Prosecution. Further, regulations which the Lokpal was obligated to make under the law are yet to be made, including those specifying the manner and procedure of conducting preliminary inquiry and investigation.

The website of the Lokpal states that it scrutinised 1,065 complaints received till September 30, 2019 and disposed of 1,000. Since necessary procedures to operationalise the law are yet to be put in place, the legal veracity of the decisions of the Lokpal could potentially be challenged in a court of law.

Without the requisite rules, regulations and machinery in place, it is not surprising that the Lokpal has failed to meet expectations. In recent times, the only reason for the Lokpal being in the news has been the resignation of its judicial member, Justice Dilip B. Bhosale, for undisclosed reasons.

The failure to operationalise the Lokpal in an effective manner lays bare the lack of political will of the BJP government. It took nearly half a century for the Lokpal law to be enacted from the time the need for the oversight institution was first articulated. It is anybody's guess how much longer it will take before India has an effective, independent and empowered Lokpal.

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