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LOKPAL: THE INSTITUTION IS USEFUL BUT ITS DESIGN IS NOT THOUGHT THROUGH

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The Lokpal and Lokayuktas Act 2013 came into existence on January 1, 2014. It extends to the whole of India and applies to “public servants” as defined in the Act, which includes the incumbent prime minister and Union ministers. Past public servants can also be investigated. This “landmark” law followed prolonged public debates on issues related to corruption, and several demonstrations, including by activists such as Anna Hazare. Some politicians like Arvind Kejriwal, who had supported the enactment, later stated that what was actually enacted was a “Jokepal Act”.

The drama of the years prior to the enactment of the law will be etched in public memory. It became possible because the two lead political parties then — the ruling UPA and the NDA — joined hands in the “war against corruption” thinking that the enactment would yield rich political dividend. The passage of the bill did not, therefore, pose any difficulty: At that point, the code of conduct for the 2014 general election had not come in existence. However, it was enacted in great hurry and contained numerous legal infirmities, which will sooner or later be tested in the appropriate courts of law.

This issue was in the works for nearly half a century after the recommendation for a Lokpal at the Centre was first made by the Administrative Reforms Committee of 1966. It had been the subject of several assurances given by incumbent prime ministers on the floor of Parliament. Given this background, the law should have been better drafted. It should have gone before a select committee of Parliament for scrutiny by all the stakeholders.

Some of the provisions of the Act contain directions, which are not tenable. Section 63 of the Act mandates establishment of the Lokayukta in every state, where it is not established “within a period of one year from the date of commencement of this Act”. Many of the states have already enacted and developed Lokayukta institutions much earlier, but this section had little effect on states which had not done so till then. Tamil Nadu, for instance, has enacted the law only now, but Lokayukta appointments are yet to be made — the one- year period is long over. This shows that the section is a dead letter apart from encroaching on the legislative powers of the respective states.

There are many other provisions of doubtful utility. “Competent authorities” are defined in the Act. In section 24, if the findings of the Lokpal disclose any corruption, a copy of the report is to be sent to the “competent authority” while filing a chargesheet. In the case of the prime minister being the accused, the competent authority mentioned is the House of the People, namely the Lok Sabha. If such “authorities” have no major role in the Act, why call them “competent authorities”? The time limit for “the removal of difficulties” in the Act is already over, unless extended again, by law.

More importantly, what is indeed not adequately appreciated in the fierce anti-corruption debate, which will continue with greater intensity in the election season, is that this Act is only applicable

to “public servants” who come within the purview of the Union of India and not the states. The scope for the Lokpal to deal with corruption involving public servants would, therefore, be limited to a narrow band of public servants.

A very large part of the corruption we talk about involves state governments, their agencies and bodies of the local self-government, which would fall entirely outside the purview of the central Lokpal — in varying degrees (depending upon the actual state legislation), these come under the state lokayuktas. A fully empowered lokayukta in Karnataka, enjoying “terms of service” equivalent to the chief justice of India, has hardly failed to contain corruption in that state. There were instances when the institution there itself came under a serious cloud, and when the lokayukta himself had to resign following a controversy involving his own son.

The point here in any case is not the utility of the institution at the Centre. It is the undue haste with which the law itself was earlier enacted and the obvious haste with which the institution is being operationalised five years later, after assuming a sudden urgency — reportedly on account of the Supreme Court’s (SC) admonition. The SC had considered the delay several times in the past few years. So what is new now?

A code of conduct prior to the Lok Sabha elections has come into place from March 10. The guidelines contained in the model code of conduct do refer to a ban on appointments or promotions in the government, without prior clearance of the Election Commission (EC). It could be argued that these are not election-related appointments in the government, but the appointment of high functionaries by the President. The note below these instructions in the Model Code of Conduct states that the list of dos and don’ts is only illustrative and cases of doubt should be referred to the EC. In this case, the President of India (read as advised by the Union cabinet comprising members of the party in office) may take the stand that they are acting at the orders of the SC. Opposition parties are unlikely to complain either, since the common plank now is “anti-corruption”. And the EC too is likely to look the other way, once the President “swears in” the new appointees.

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