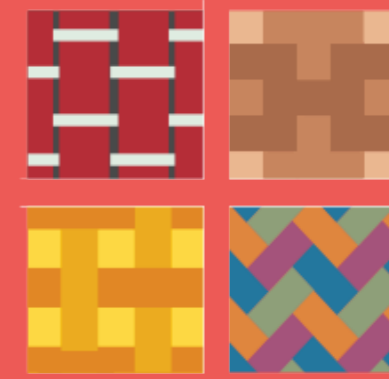




Hanns
Seidel
Stiftung



JUSTICE
adda

THE LOKPAL AND LOKAYUKTAS ACT, 2013

CONTEXT

The Lokpal and Lokayuktas Act was adopted by Parliament in 2013. This Act aims to achieve more effective implementation of the United Nations Convention Against Corruption and to ensure effective governance.

This legislation was years in the making, and was preceded by decades of unsuccessful legislative attempts to address corruption and maladministration. Over time, the focus of these legislative efforts shifted from attempting to redress grievances resulting from maladministration

- a far broader mandate - to focus solely on corruption in the 2013 Act, as defined under the Prevention of Corruption Act, 1988.

The Act established the office of the Lokpal at the centre and Lokayuktas in the states to investigate acts of corruption by public officials promptly and fairly. The body has the power to prosecute those found guilty during the course of an investigation.

The first Lokpal was established in March 2019, with Pinaki Chandra Ghose as Chairperson.



KEY PROVISIONS

ESTABLISHMENT AND APPOINTMENT OF LOKPAL

Appointment of the Chairperson and Members of the Lokpal is done on the recommendations of a Selection Committee, comprising the Prime Minister, Speaker of the Lok Sabha, Leader of Opposition in the Lok Sabha, Chief Justice of India or a judge of the Supreme Court nominated by him, and one eminent jurist. The Selection Committee establishes a Search Committee to prepare a panel of persons for consideration.

JURISDICTION

The Lokpal has jurisdiction over Members of Parliament including ministers and the Prime Minister, as well as officers serving in a variety of roles connected to the central government.

DESIGN OF THE LOKPAL

The Lokpal consists of an Inquiry Wing, responsible for conducting a preliminary inquiry into any alleged corruption offence by a public servant, and a Prosecution Wing, responsible for conducting any prosecution once the preliminary inquiry has been completed.

PROCEDURE FOR INQUIRY AND PROSECUTION

STEP 1 - COMPLAINT

Upon receiving an allegation of corruption against a public servant, the Lokpal orders a preliminary inquiry to find out whether a plausible case exists for further investigation. The Lokpal must also ask the public servant for an explanation before determining if there is case for investigation.

STEP 2 - INVESTIGATION

If a plausible case exists, the Lokpal may appoint an investigation agency to carry out an investigation. The agency submits a report to the Lokpal on conclusion of its investigation.

STEP 3 - PROSECUTION

On consideration of the investigation report, the Lokpal may ask its Prosecution Wing to file a charge sheet against the accused public servant. It may then initiate prosecution of the individual in Special Courts dedicated to handling corruption cases. In addition to sanctioning prosecution, the Lokpal can

direct the department to which the public servant belongs to start disciplinary proceedings against the public servant.

STEP 4 - PUNISHMENT

If a public servant is convicted on charges of corruption, they may be punished under the Prevention of Corruption Act, 1988. Any ill-gotten assets may be confiscated, and they may also be held liable to pay the loss, if any, caused to the public exchequer by their actions.

ACTION POINTS

While the Lokpal and Lokayuktas Act was passed in 2013, it was not until 2019 that a Lokpal was finally established, due to delays in the confirmation of a Selection Committee. As such, it is still too early to determine its impact on corruption at a central level.

While the legislation for the establishment of Lokpal at the Central level came to be passed by the Parliament only in 2013, legislation for the establishment of Lokayukta at the State level have been passed by twenty five State legislatures and one Union Territory long before, as early as the 1970s in some states.

These different systems at the central and State levels could lead to discrepancies in how the law is applied in different regions.

The 2013 Act only addresses corruption amongst public office holders, and does not address complaints of corruption against members of the judiciary.