Untangling Kerala's Lokayukta Controversy

Why in news?

The controversy surrounding the amendment to the Lokayukta Act of Kerala through an ordinance has raised the political temperature in the State.

What is the background?

- The term Lokpal-Lokayukta was first used in a report of the Administrative Reforms Commission headed by Morarji Desai as far back as in 1966.
- The first Bill on Lokpal was introduced in the Lok Sabha in 1968 which lapsed with the dissolution of the House.
- Anna Hazare's movement and the active involvement of civil society generated a moral pressure on the Government which ultimately led to the passing of Lokpal and Lokayuktas Bill in 2013.
- The Act provides for the establishment of a body of Lokpal for the Union and Lokayukta for States to inquire into allegations of corruption against certain public functionaries
- Some States already have established Lokayuktas.
    - For example, Maharashtra in 1971, and Kerala in 1999.

What is Lokpal?

- The Lokpal is a body which will inquire into allegations of corruption.
- It is basically an investigative body whose task is to conduct prompt and fair investigation and the prosecution of cases of corruption.
- **Composition**- It is headed by the incumbent Chief Justice of India or a retired judge.
- It has eight members, four of whom are judicial members.
- Also, not less than 50% of the members should be from among persons belonging to the SCs, the STs, OBCs, minorities and women.
- The Lokpal has an inquiry wing and a prosecution wing to deal with investigation and prosecution, respectively.
- **Jurisdiction**- The Lokpal has jurisdiction to inquire into allegations of corruption against the Prime Minister, Ministers, Members of Parliament, Group A, B, C and D officers and officials of the central government.
- It shall apply to public servants in and outside India.
- The Act also includes the Lokpal's own members under the definition of public servant.
- **Powers-** The Lokpal may, after receiving a complaint, order a preliminary inquiry which has to be completed within 90 days.
- After the investigation, the Lokpal may file a case in the special court in case the findings disclose the commission of offence under the Prevention of Corruption Act by the Prime Minister, Ministers or Members of Parliament.
- **Limitations**- The Lokpal does not have the power to ask the President to remove the Prime Minister or a Minister from office.
- The Act does not allow a Lokpal inquiry if the allegation against the Prime Minister relates to

international relations, external and internal security, public order, atomic energy and space.
- Complaints against the PM are not to be probed unless the full Lokpal bench considers the initiation of an inquiry and at least 2/3rds of the members approve it and such an inquiry has to be held in camera.

What are the Lokayuktas?

- The Lokayuktas are the state equivalents of the central Lokpal.
- States have to establish the Lokayukta to deal with complaints on corruption against certain public functionaries in the states.
- In some states, Lokayuktas were already functioning when the 2013 Act was passed.
- Most states, however, are without a Lokayukta even after the 2013 Act.
- The Supreme Court recently directed these states to take steps for appointment of Lokayukta.

What is the Lokayukta controversy in Kerala?

- Kerala has amended Section 14 of the Lokpal and Lokayukta Act.
- It is now said that if the Lokayukta is satisfied on the complaint that a public servant should not continue to hold the post held by him, **Lokayukta shall make a declaration** to that effect in his report to the competent authority who shall accept it and act upon it.
- In other words, if the public servant is the Chief Minister or a Minister, he shall forthwith resign his office.
- Such a provision does not exist in any of the State laws or the Lokpal Act of the Centre.
- **Legal implications-** An investigative body does not have the legal authority to direct the public servant to resign his post on the basis of its findings.
- It can only submit its findings to the competent authority or, as is provided in the Lokpal Act, file a case in the special court.
- It does not and cannot enjoy the powers of the higher courts which alone can issue such directions in the nature of writs.
- **Constitutional implications**- The Chief Minister or a Minister holds office during the pleasure of the Governor (Article 164).
- The Constitution of India does not observe any external pressure on the Governor to withdraw his pleasure.
- The Sarkaria Commission had suggested that the Governor can dismiss a Chief Minister only when he loses his majority in the Assembly and refuses to step down which was accepted by the Supreme Court.
- The Governor could withdraw his pleasure when the Chief Minister is disqualified from being a member of the House on account of being convicted in a criminal case and sentenced to not less than 2 years of imprisonment.
- A Chief Minister cannot be asked to resign when he enjoys a majority in the House.

What provisions of the Kerala's amendment may not stand legal scrutiny?

- **Inclusion of office bearers of political parties**- This law includes the office bearers of political parties within its definition of 'public servant'.
- The Lokayukta law was enacted to inquire into cases of corruption of public functionaries such as Ministers, legislators, etc. who are covered by the Prevention of Corruption Act.
- This Act does not include office-bearers of political parties in its definition clause.
- **Reports of Lokayukta**- The amendment says that the Lokayukta shall, on the allegation of

corruption being substantiated, send the findings and recommendation of action to the competent authority who is required to take action as per the recommendation.

- It further says that if the Lokayukta is satisfied by the action taken by the competent authority, he shall close the case.
- The question is how the Lokayukta can close a corruption case which is a criminal case and which invites imprisonment for 3-7 years.
- The Lokpal files the case in the court after the investigation and there is no provision in the central law under which the Lokpal can close the case before it reaches the court.
- The Lokayukta not being a court does not have the legal capacity to close the corruption case under any circumstances.
- The current need is to re examine the Kerala Lokayukta Act by a committee of the Assembly and should be brought on a par with the Lokpal Act.

Reference

1. https://www.thehindu.com/todays-paper/tp-opinion/untangling-keralas-lokayukta-controversy/article65075612.ece

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