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News: Dilution of powers of Lokayukta

- Recently, the Kerala Legislative Assembly passed the **Kerala Lok Ayukta (Amendment) Bill, 2022**.

The provisions of amendment

- The amendment Bill has **diluted the binding aspect of the Lokayukta order, allowing the competent authority to now either reject or accept the ombudsman's report.**
- With the **amendment the state government will get the power to either accept or reject the verdict of the anti-corruption body, after giving an opportunity to be heard.**
- The **amendment will make Lokayukta a body for just making recommendations or sending reports to the government.**
- It has also made the **Legislative Assembly the competent authority to review an indicting report against the Chief Minister.**
- If a **Lokayukta report indicts a cabinet minister, the Bill vests the reviewing authority in the Chief Minister.**

- And in the case of **legislators, the competent authority will be the House Speaker.**
- The **Bill exempts political leaders** from the purview of the Act.
- The **Bill allows for retired High Court judges to be appointed Lokayukta.**
- Section 14 of the Act which has now been amended said that if the **Lokayukta is satisfied on the complaint against the public servant being substantiated that he should not continue to hold the post held by him, he 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.

Lokpal and Lokayukta

- Lokpal and Lokayukta Act, 2013 provided for the establishment of Lokpal for Union and Lokayukta for States.
- First administrative commission recommended the setup of Lokpal.
- Lokpal is a **multi-member body that consists of one chairperson and a maximum of 8 members.**

- Chairperson must be either a Chief Justice of India, or a former Judge of Supreme Court, or an eminent person with impeccable integrity and outstanding ability, having special knowledge and expertise of minimum 25 years in the matters relating to anti-corruption policy, public administration, vigilance and finance.
- Out of 8 members, half will be judicial members and rest will be from All India Services.
- Minimum 50% of Members shall be from SC/ST/OBC/Minorities and Women.
- Judicial members of Lokpal should be either a former Judge of SC or former Chief Justice of any High Court.
- The non-judicial member should be an eminent person with impeccable integrity and outstanding, having special knowledge and expertise of minimum 25 years in the matters relating to anti-corruption policy, public administration, vigilance and finance.
- The members are appointed by President on the recommendation of a Selection Committee, headed by Prime Minister as Chairperson, Lok Sabha Speaker, Leader of Opposition in Lok Sabha, CJI or a SC Judge nominated by CJI, and one eminent jurist as members.
- The Chairperson or any Member can be removed from his office by order of the President on grounds of misbehaviour after the Supreme Court, on a reference

being made to it by the President on a petition signed by at least one hundred Members of Parliament has, on an inquiry, reported that the Chairperson or such Member, as the case may be, ought to be removed on such ground.

- The term of office for Lokpal Chairman and Members is 5 years or till the age of 70 years.
- Salaries, allowances and service conditions of the Lokpal chairperson will be the same as those for the Chief Justice of India; those for other members will be the same as those for a judge of the Supreme Court.
- The administrative expenses of the Lokpal, including all salaries, allowances and pensions of the Chairperson, Members or Secretary or other officers or staff of the Lokpal, will be charged upon the Consolidated Fund of India and any fees or other money taken by the Lokpal shall form part of that Fund.
- Jurisdiction of Lokpal includes Prime Minister, Ministers, members of Parliament, Groups A, B, C and D officers and officials of Central government.
- Lokpal will not inquire the PM if the allegation of corruption is related to international relations, external and internal security, public order, atomic energy and space, unless a full Bench of the Lokpal, consisting of its chair and all members, considers the initiation of a probe and at least 2/3rd of the members approve it.

- Any such inquiry shall be **held in camera** and if the Lokpal comes to the conclusion that the complaint deserves to be dismissed, the records of the inquiry shall not be published or made available to anyone.
- Also covered are chairpersons, members, officers and directors of any board, corporation, society, trust or autonomous body either established by an Act of Parliament or wholly or partly funded by the Union or State government.
- Jurisdiction of Lokpal also **expands to any society or trust or body that receives foreign contribution above 10 lakh.**
- The **Lokpal is vested with the power of search and seizure and also powers under the Civil Procedure Code for the purpose of conducting preliminary inquiry & investigation** and power of attachment of assets and taking other steps for eradication of corruption.
- It has powers to superintendence over CBI and CVC and give directions.
- If a case is referred to CBI by Lokpal, the investigation officer cannot be transferred without the approval of Lokpal.
- A **Bench of at least three members considers the investigation report and may grant sanction to the Prosecution Wing to proceed against the public servant based on the agency's chargesheet.** It may also ask the competent authority to take departmental action or direct the closure of the report.

Director of Inquiry

- As per the Lokpal and Lokayuktas Act, 2013, there shall be a Director of Inquiry, not below the rank of Joint Secretary to the Central Government.
- As per the provisions contained under Section 20 (1) (b) of the Lokpal and Lokayuktas Act, 2013, complaints in respect of public servants are referred by the Lokpal to the Central Vigilance Commission (CVC) for a preliminary inquiry.

Lokayukta

- Some States like Rajasthan, Karnataka, Andhra Pradesh and Maharashtra have created the lokayukta as well as Upalokayukta, while some others like Bihar, Uttar Pradesh and Himachal Pradesh have created only the lokayukta. There are still other states like Punjab and Orissa that have designated officials as Lokpal. This pattern was not suggested by the ARC in the states.
- The Lokayukta is appointed by the Governor of the State, through nomination by its Chief Minister (in consensus with Chief justice of the State High Court, Leaders of the Opposition in the Legislative Assembly and Legislative Council, Speaker of the Legislative Assembly and Chairman of the Legislative Council).

- While appointing, the governor in most of the states consults the chief justice of the state high court, and the leader of Opposition in the state legislative assembly. But this is a fluctuating provision in many states.

Drawbacks

- Lokpal **cannot suo moto proceed against any public servant.**
- Emphasis on the form of complaint rather than substance.
- Heavy punishment for false and frivolous complaints against public servants may deter complaints from being filed to Lokpal.
- **Anonymous complaints not allowed.**
- Legal assistance to public servants against whom the complaint is filed.
- Very **non-transparent procedure for dealing with complaints against the PM.**