

INSTITUTION OF LOKPAL IN PUNJAB: A CRITICAL ANALYSIS

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ABSTRACT

The present study is an attempt to examine the powers, functions and contribution of the institution of the Lokpal in the Punjab state of India. The study depicts that the institution of Lokpal was constituted in the state for curbing corruption, inefficiency and abuse of power at the level of ministers and higher bureaucracy. But unfortunately, the Lokpal in Punjab has failed to achieve its purpose and mission for which it was formulated. Lack of independent and autonomous structuring, and dearth of any practical powers to investigate and penalize the accused prove the institution of Lokpal in Punjab as a watchdog without real teeth.

Keywords: Lokpal, corruption, inaction, abuse of power, administrative dependence.

INTRODUCTION

Corruption at the level of political institutions and the bureaucratic administration has been the unfortunate reality of India, especially since independence (Yadav 2014). Numerous political commitments have been made by the political leaderships (Jain 1970). But the situation has remained unresolved and unimproved. Therefore, the experts during nineteen sixties and seventies started raising voices for the constitution of a nodal institution to curb the problem of political and administrative corruption (Gupta 2011). The demands of the constitution of the institution of ombudsman have been raised by the civil society organizations since the seventh decade of the twentieth century (Monteiro 2013). The regional civil society organizations also started protesting for the incorporation of the institution of the Lokpal the level of the states (Poheker 2010). Acknowledging the demands of civil society organizations, several state governments have constituted the institutions of Ombudsman or Lokpal in their states.

The institution of Lokpal had been established in Punjab in 1996 under the Punjab Lokpal Act, 1996. It was further amended under the Punjab Act 1 of 1998 to remove the deficiencies in the Punjab Lokpal Act, 1996 and to provide for certain safeguards which were missing earlier. As per the depiction of the Punjab Lokpal Act 1996 itself, the prime objective of the institution of

the Lokpal in Punjab is, among others, ‘to secure proper investigation of enquiry against publicman and thereby ensuring eradication of corruption, adherence to the rule of law by observing rules of natural justice’.¹ Subject to the other provisions of the Punjab Lokpal Act 1996, the Lokpal may inquire into any matter involved in, or arising from, or connected with any allegation of misconduct against public man made in a complaint under this Act.²

Institution of the Lokpal has been made highly prestigious as the emoluments, allowances and pension payable, to the Lokpal and other conditions of service of the Lokpal are determined by the Governor having regard to the allowances and pension payable to and other conditions of service of the Chief Justice of High Court of Punjab & Haryana. There is a rigid process to remove the Lokpal from his office as there is provision in the Punjab Lokpal Act that the Lokpal may be removed by the Governor on the ground of misbehavior or incapacity and no other ground. Even on these grounds, an enquiry required to be held before such removal, by a person appointed by the Governor being a person who is or has been a judge of the Supreme Court or a Chief Justice or judge of the High Court. Even after an enquiry, the Governor cannot remove the Lokpal unless an address by the State Legislature supported by a majority of the total membership of the House present and a majority not less than two third of the members of the House present and voting, has been presented to the Governor in the same session for such removal. Moreover, the Government in consultation with the Lokpal appoints a Secretary and such other officers and employees as may be prescribed to assist him in the discharge of his functions including verification and enquiries in respect of complaints. Further, the Lokpal may for the purpose of dealing with any complaints, or any classes of complaints, secure the services of any officer or employees or investigating agency of the Central or State Government with the concurrence of that Government.³

The institution of Lokpal in Punjab undoubtedly expresses the commitment of the state government to combat and counter the corruption, misconduct and abuse of power by the politicians and the bureaucrats. But that expression may only be seen in the papers. While observing critically the Punjab Lokpal Act and examining the routine functioning of the Punjab Lokpal, it appears as a watchdog of corruption without teeth.

CRITICAL ANALYSIS OF PUNJAB LOKPAL

1. Partial Procedure of the Appointment of Lokpal

¹ The Punjab Lokpal Act 1996.

² The Punjab Lokppal Act, 1996, 9 (1)

³ Punjab Lokpal Act, 1996, Section 8 (2).

As per the Punjab Lokpal Act 1996, 'the Lokpal shall be appointed on the advice of the Chief Minister who shall consult the Speaker of the Punjab Legislative Assembly, and the Chief Justice of India, in case of appointment of a person who is or has been a judge of the Supreme Court; or Chief Justice of Punjab and Haryana High Court in case of appointment of a person who is or has been a judge of High Court'. Eventhough there is firm provision in the appointment of the Lokpal to consult the Chief Justice of Supreme Court or the Chief Justice of High Court, as the cases may be; still it appears that the ruling party gets dominance in selecting their preferred person to be appointed as the Lokpal in Punjab. Because after the Chief Minister, the speaker of the legislative assembly, the second authority to be consulted, predominantly belongs to the ruling party and hence cannot go contrary to the choice of the Chief Minister. The opposition groups in the State Legislature and the civil society has been totally ignored while deciding the penal for the appointment of the Lokpal. There is no provision in the Punjab Lokpal Act 1996 to consult the Leader of Opposition and/or the members of civil society while appointing any person as the Lokpal in Punjab. If the ruling party appoints its favourite person as the Lokpal, it is doubtful to believe that the Lokpal will function in an impartial manner.

2. Limited Jurisdiction

As per the Punjab Lokpal Act 1996, the Punjab Lokpal has the authority to consider the complaints against the 'Public men' and the 'Public Servants'. The term public man here means 'a person who holds or has held the office of (i) a Minister; (ii) a Member of the Legislative Assembly of the State; (iii) The Chirman and a Member of a Board constituted by or under the State of Central Act or otherwise; (iv) the Chairman of any Government company within the meaning of section 617 of the Companies Act, 1956, in which not less than fifty-one per cent of the paid up share capital is held by the State Government or any company which is subsidiary of a company in which not less than fifty-one per cent of the paid up share capital is held by the State Government, and (v) the Chairman and a Member of any non-statutory Committee by the State Government.⁴ In the Act the term 'Public Servant' has the same meaning as given in the Section 21 of the Indian Penal Code, 1860.⁵

Thus the Punjab Lokpal is not empowered to take lower level bureaucracy under its jurisdiction, despite the fact that the common masses are frequent victims of corruption, misconduct and abuse of power by the lower level bureaucrats. Secondly, the NGOs, Private trusts and societies, constituted under Indian Societies Act 1860, which are profitable institutions, are also excluded from the jurisdiction of the Punjab Lokpal.

⁴ Punjab Lokpal Act, 1996, Section 2 (g).

⁵ Punjab Lokpal Act, 1996, Section 2 (1)

3. Unenthusiastic Approach towards Complaints

The intention of an ideal Lokpal should be to redress wholeheartedly the complaints against corruption, misconduct or abuse of power by any public man, by thoroughly and systematically investigating all complaint with the utilization of its exclusive and formally constituted investigating wing. But in case of Punjab Lokpal, the onus to prove the allegation is to be on the complainant. The Lokpal 'may' collect evidence and 'may' call upon the person against whom a complaint is made, to produce evidence.⁶ The apathetic attitude of the Punjab Lokpal is confirmed from the provision that complainant's failure to prove an allegation shall subject the

Complainant to rigorous imprisonment for a term which may extend to one year and shall also be liable to fine.

4. Non-Consideration of Complaints

The Punjab Lokpal does not inquire into any allegation of misconduct against a public man after the expiry of five year from the date on which the act of misconduct/corruption/abuse of power had allegedly been committed.⁷ On the basis of this provision, the Punjab Lokpal has denied to provide justice to several complaints of misconduct by the public men. In majority of the cases the offended complainants, due to the threat or pressure by the power and position of the accused public man, are not in secure position to complain immediately against his misconduct, especially when the culprit is the powerful and influential person. But it does not mean that their complaints lose the legitimacy to get justice after the period of five years. However unfortunately at the Punjab Lokpal, the complaints of corruption and misconduct by a public man are no more legitimate and justifiable and are deemed to be expired after the period of five years.

5. Powerless to take suo moto cognizance

Another noteworthy provision in the Punjab Lokpal act 1996 which establishes the institution of Lokpal in Punjab as less effective is its incapacity to take any suo moto cognizance of the acts of misconduct by the public men. Clause 4 of the Section 10 of the Punjab Lokpal Act says that the Lokpal shall not enquire into any complaint suo moto.⁸ It conveys that the Lokpal is bound to shut his eyes on the occurrence of any act of misconduct by any public man in the media and will wait for any complainants to come forward to formally register a complaint against the misconduct. In the scenario when the misconduct by any public man is legally considered as a crime, not against any particular individual but against the State also, prohibiting the Lokpal to

⁶ Punjab Lokpal Act, 1996, Section 9 (2).

⁷ Punjab Lokpal Act, 1996, Section 10 (1).

⁸ Punjab Lokpal Act, 1996, Section 10 (4).

take cognizance of the acts of misconduct by the public men confirms the lackadaisical attitude of the Lokpal to eradicate corruption and misconduct by the public men and servants. Unfortunately the Punjab Lok Pal remains inactive against any act of corruption, misconduct and abuse of power by any public man or public servant even if the Lok Pal is convinced and has sufficient information, documents and evidence to his knowledge regarding the misdeeds.

6. Complex and Costly Procedure to Complain

The process to complain at the Lokpal is complex as well as costly. The act instructs that the complaint shall be in the prescribed form and shall set forth particulars of the misconduct alleged and shall be accompanied by an affidavit in support of the allegation of misconduct and the particulars thereof and a certificate in the prescribed form in respect of the deposit.⁹ Moreover the complainant shall deposit in such manner and with such authority or agency as may be prescribed a sum of 'One Thousand Rupees' as fee.¹⁰

7. Irrelevant Secrecy in regard to investigation, reports and judgments

The Punjab Lokpal Act 1996 says that the proceedings of the Lokpal, including the outcomes of enquiries, compilation of reports and even various clauses and rulings of the judgments by the Lokpal should be strictly kept secret.¹¹ On the basis of that provision, even the complainants are denied to provide them the copy of the report prepared by the Lokpal regarding the investigation and status of their complaints. Even the Punjab and Haryana High Court has to interfere and remind the Lokpal about its moral authority to provide the complainants and even make public all necessary information regarding the proceeding in regard to particular complaints. In a judgement, with an aim to provide some deterrent power to the nascent institution of Punjab Lokpal, a Division Bench of the Punjab and Haryana High Court comprising Mr. Justice Jawahar Lal Gupta and Mr. Justice N. K. Sud, had lifted the cloak of secrecy over the reports of the Lokpal. Allowing a writ petition filed by a resident of Naya Gaon Karoran village of Ropar district of Punjab, Mr. Gurbakhsh Singh, the Bench today directed the Punjab Lokpal and other respondents to immediately supply a copy of his report on a complaint filed by the petitioner against a former Minister of State, Mr. Jagmohan Singh Kang. Gurbakhsh Singh was informed by the Registrar to the Lokpal that the Lokpal had come to the conclusion that the allegations have not been substantiated and as such, this case had been closed and the complaint had been filed. The petitioner's request for a copy of the report was declined by contending that since evidence was to be treated as confidential in view of Section 18 of the Punjab Lokpal Act, 1996, the petitioner was not entitled to a copy of the final report. The Punjab and Haryana High Court,

⁹ Punjab Lokpal Act, 1996, Section 10 (3).

¹⁰ Punjab Lokpal Act, 1996, Section 10 (4).

¹¹ Punjab Lokpal Act 1996, Section 16.

in a milestone judgment in regard to the Punjab Lokpal, depicted that the purpose of the constituting Punjab Lokpal Act and the institution of the Lokpal is to restore the lost confidence in public mind about publicmen. The Court further said that it will not be possible for the Lokpal to serve its purpose by keeping everything confidential and secret.

8. No Powers to Punish the Culprit

In case the allegations of the complainant are proved there is no sentence/punishment provided in the Act to be awarded to the public man. The only thing provided is that the Lok Pal shall make a report to the Governor, who shall examine the report and inform the Lok Pal about the action taken or proposed to be taken. The Governor also is not vested with any powers to award any punishment to the guilty. The reports submitted by the Lok Pal are to be placed before the State Legislature, after which the Lok Pal shall close the case. That is the end of the matter. Thus nobody can be arrested or sent to jail by the Lok Pal except the complainant.

The evidence collected by the Lok Pal and the report made about the allegations proved or substantiated does not have any per-se value to initiate a criminal trial in a Court of law as compared to a report even of an ASI as an Investigating Officer under Section 173 of the Code of Criminal Procedure on the basis of which a trial is initiated and charges are framed. In case, the Governor on receipt of the report of the Lok Pal recommends registration of a criminal case against the guilty under the Indian Penal Code or the Prevention of Corruption Act 1988, the matter is to be reinvestigated by that agency again. The evidence and report of the Lok Pal will serve no legal purpose. It will be kept aside. It is not binding on the courts to acknowledge the investigating report of the Lokpal. It carries neither presumption of truth nor any evidentiary value. It is a sheer wastage of time.

9. Non-Implementation of Recommendations

It has been observed that all recommendations of the Punjab Lokpal, given after thorough investigations, are not endorsed. There are several cases in which the recommendations of the Lokpal are sometimes, turned down by the Governor, sometimes not acknowledged by the Legislature and sometimes, ignored by the concerned governmental departments. In 2006, then Governor of Punjab Lieut. General B.K.N. Chhibber (retd.) had turned down the recommendations of the Punjab Lokpal for initiating action against four ministers in the erstwhile Congress led state government under the Chief Ministership of Beant Singh. Moreover, in September 2006, then Punjab's Legislative Assembly had passed a resolution to endorse the action taken by the Governor on the recommendations of the Punjab Lokpal.¹²

¹² The Tribune News Service, Chhibber's Report on Dullu, 3 others Accepted, The Tribune, September 20, 2006.

There is another case in which the report and the recommendations of the Punjab Lokpal were totally ignored by the Health Department of Punjab State. Kulwinder Singh from Bhagthana Tulian village near Dera Baba Nanak in Punjab had complained to the Lokpal that he, along with other twelve candidates, was discriminated and not given the job of Multipurpose Health Worker in the State Health Department, while the appointments were made under the Punjab Subordinate Services Board. The Punjab Lokpal, D.S. Dhaliwal, after a thorough enquiry, had found that among all, at least 32 persons selected to fill the vacant posts of the Multipurpose Health Workers were extraordinary by the selection committee. The Lokpal recommended that Kulwinder Singh and other petitioners should be appointed as Multipurpose Health Workers against the existing vacancies and in case no vacancy existed vacant, they be appointed against the next available vacancies. The order passed by the Lokpal was endorsed by the Governor, who asked the state government to take a necessary action in this regard. But unfortunately the Health Department official's flatly refused to implement the Lokpal's recommendation by claiming that 'Lokpal was nobody to send them any recommendation'.¹³

10. Uninterested and Irregular Approach towards Routine and Annual Reports

As per the Punjab Lok Pal Act, the Lok Pal shall make special reports, periodical reports and also present annually the Governor a consolidated report on the administration of this Act.¹⁴ The Governor shall cause the same together with an extraordinary memorandum to be laid before the State Legislature.¹⁵ But quite worryingly, the Punjab Lokpal is not always regular to send the periodical and annual reports to the Governor. Moreover the reports communicated to the Governor and required from the Governor to be presented to the State Legislature are seldom discussed and debated in the State Legislature. Punjab Lokpal has not submitted any report to the Punjab Governor in the past two years.¹⁶

11. Dysfunctional due to various Vacant Posts

The office of the Lokpal has intimated the government repeatedly about the lack of staff, especially investigating officers, but to no avail. The office, in a recent letter, claimed that if this trend continued, work in the office of Lokpal would come to complete stop soon. According to the information received, the Lokpal office has recently written a letter to the state government stating how its staff strength has been reduced in the past two years. The letter states that one post of Superintendent of Police (SP), one post of senior stenographer, two posts of clerks and that of one sewadar have been reduced. As per information, in October 2009, PS Khaira, who

¹³ Sarbjit Dhaliwal, Lokpal Order on Health Workers not Implemented, The Tribune, April 15, 2011.

¹⁴ Punjab Lokpal Act, 1996, Section 16 (4).

¹⁵ Punjab Lokpal Act, 1996, Section 16 (5).

¹⁶ Jangveer Singh, Bereft of Staff, Lokpal Almost Defunct, The Tribune, October 21, 2011.

was posted as SP in the Investigating Cell, was transferred out and no replacement was given. The senior stenographer posted with the Inspector General in the Investigating Cell was also transferred in May 2009. One senior assistant was transferred in 2009 and two clerks were promoted but their vacancies were not filled. Moreover the Lokpal was not given permission by the state government in 2011-2012 session for posting one SP, one constable, one senior assistant, one junior assistant, two clerks and one sewadar. Against a sanctioned strength of 110 employees, it only has 30 employees posted in its office presently.¹⁷ It is quite understandable to observe that the institution of Lokpal, which itself has been facing dearth of 75 per cent of its staff, cannot be expected to perform adequately. Most surprisingly, the most prestigious post of the institution of Lokpal, the Lokpal itself had remained vacant most of the times. Though the Lokpal was appointed in Punjab in 1996, the post of the Lokpal remained vacant till August 1997 and then again from December 1999 to December 1999 to December 2000.¹⁸ Again since 2002 till 2006, interestingly nobody was appointed the Lokpal after Justice D. V. Sehgal died in December, 2002. In March 2006, Justice D. S. Dhaliwal was appointed as the Lokpal.¹⁹

12. Lack of faith among People

It has been observed that the people of Punjab do not have much faith in the Punjab Lokpal. It confirms from the fact that the Punjab Lokpal receives very less number of complaints every year from the people against the publicmen. In 2007, the Lokpal has received only 04 reports in the current year (2011). In 2010, it received 06 complaints; in 2009 only 05 complaints; in 2008; it received only 01 complaint and in 2007; only 03 complaints were received by the Punjab Lokpal.

CONCLUSION

A Lokpal is meant to be an ombudsman to whom people with grievances can go even if they have a complaint against the high and mighty politicians and the Bureaucrats. Indeed, in the mature democracy, the public has number of complaints against those who govern. To that extent, the Punjab Lokpal should have been duly equipped with actual powers and endeavoured with sincere functioning to redress the complaints regarding corruption and misconduct by the politicians and the bureaucrats. But facts are quite to the contrary. Former Punjab Lokpal Justice D. V. Sehgal has confirmed the fact that the Pujab Lokpal Act is the weakest compared to such acts in other states.²⁰ And there are several shortcomings and limitations to prove that the Punjab

¹⁷ Ibid.

¹⁸ Chitleen K. Sethi, Punjab Lokpal Lergely Defunt, The Tribune, August 11, 2009.

¹⁹ Ajay Banerjee, Lokpal's Office Faces Fund Crunch, The Tribune, June 22, 2006.

²⁰ Justice D. V. Sehgal, as quoted by Sarbjit SDhaliwal, Lokpal for Enlarging Jurisdiction, The Tribune, September 2002.

Lokpal has not been functioning in an ideal and expected manner. The leadership of opposition political parties and the civil society is totally ignored while appointing the Punjab Lokpal. Politicians, who are to be subjected to investigation by the Lokpal, deliberately did not give enough powers to the Lokpal. The onus to prove the allegation is to be on the complainant. And in case of complainant's failure to prove an allegation, shall subject the complainant to rigorous imprisonment for a term which may extend to one year and shall also be liable to fine. Further at the Punjab Lokpal, the complaints of corruption and misconduct by a public man are no more legitimate and justifiable and are deemed to be expired after the period of five years. The Punjab Lokpal Act says that the Lokpal shall not enquire into any complaint suo moto. The process to complain at the Lokpal is complex as well as costly. In case the allegations of the complainant are proved there is no sentence/punishment provided in the Act to be awarded to the public man. Moreover, the recommendation of the Punjab Lokpal are several times turned down by the Governor, or not accepted by the state government. The Lokpal office itself does not prepare regularly and present periodically to the Governor, the special reports, routine reports and the annual reports. And the reports prepared by the Lokpal are not regularly present in the Punjab Legislative Assembly for discussion. There always remains huge dearth of officials at the Lokpal office as most of the posts remain vacant most of the times. It increases the workload of the Lokpal office unnecessarily. All these shortcomings and limitations are no doubt proving to be huge hindrances in the functioning of the Pokpal. But if the scope of the jurisdiction of Lokpal is broadened, its powers are widened, and the Lokpal is equipped with appropriate manual and financial resources, the Punjab Lokpal can prove to be an ideal ombudsman to check, combat and counter the acts of corruption, misconduct and abuse of power by the politicians and the bureaucrats in Punjab.

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