



How to insulate the Lokpal

Institute a roster of deliverables and a system of public scrutiny

Former Supreme Court judge PC Ghose is likely to be India's first Lokpal, a report in the Hindustan Times said on Monday. This is a welcome step, considering that the legal and political journey of appointing a Lokpal has been mired in controversy for decades. While many

are rejoicing Justice Ghose's likely appointment, it is important to address

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a crucial question: Is the office of the Lokpal independent of the government and others whom it is mandated to scrutinise?

This question is important because the government, regardless of the party in power, has a tendency to interfere in autonomous institutions that are set up to ensure transparency and accountability of governance. For example, the Central Bureau of Investigation (CBI) has long borne the brunt of such meddling, so much so that it has been called a "caged parrot". In recent times, the Reserve Bank of India has also faced similar challenges.

There are four aspects that need to be considered while examining the issue of independence. First, the 2013 Lokpal Act provides for a selection committee comprising the Prime Minister, the Lok Sabha Speaker, the Leader of Opposition (LoP), the Chief Justice of India and an eminent jurist. This is supposed to be bipartisan in representation to ensure that the Lokpal is not beholden to any particular group and can function independently. However, in the absence of a formal LoP being declared (as is the present case), the panel has had no representation from the Opposition. In 2014, amendments to address this issue were introduced, and subsequently approved by the Parliamentary Standing Committee. However, they have not been passed in Parliament. This must be rectified. Second, there is a lack of clarity on the interplay and hierarchy between the Lokpal, the CBI and the Central Vigilance Commission (CVC). Third, in a paper in the *Economic and Political Weekly*, Amrita Johri, Anjali Bharadwaj, and Shekhar Singh write that the Act envisages that the Lokpal may use any agency it chooses to enquire or investigate complaints. There are few choices at the moment apart from the CBI. So to ensure that investigations are fair and professional, the CBI must be functionally independent of the Centre.

Fourth, the Act has nothing on the professional attributes required for selecting a Lokpal. Nor is there a mention of deliverables. In this, the Lokpal is not different from other appointments in constitutional bodies, such as the National Human Rights Commission. Without clear guidelines on professional attributes required to be a Lokpal, a roster of deliverables and a system of public scrutiny, it will be difficult to guarantee the office's insulation from the government of the day.



No soldier prosecuted for rights violations in Kashmir in 28 yrs: US

State Dept report reveals rising graph of HR abuses; 'pellet guns injured 6,221 civilians in 2016; 1,000 detained without trial under PSA'

ABID BASHIR

Srinagar, Mar 18: The annual report of the US Department of State has painted a grim picture of human rights situation in Kashmir, saying that no prosecution of accused soldiers has been allowed for 28 years as armed forces special powers act (AFSPA) has been in vogue in J&K.

The report reads that the Jammu and Kashmir human rights commission does not have the authority to investigate alleged human rights violations committed by members of paramilitary security forces.

"The National Human Rights Commission has jurisdiction over all human rights violations, except in certain cases involving the army. The NHRC has authority to investigate cases of human rights violations committed by Ministry of Home Affairs paramilitary

forces operating under the AFSPA in the northeast states and in the state of Jammu and Kashmir," the report states. "According to the OHCHR report on the Human Rights situation in Kashmir, there has been no prosecution of armed forces personnel in the nearly 28 years that the AFSPA has been in force in the state of Jammu and Kashmir."

The report said that in cases other than those involving "security risks, terrorism, insurgency", or cases arising in the state of Jammu and Kashmir, police may detain an individual without charge for up to 30 days, although an arrested person must be brought before a judge within 24 hours of arrest.

"Lengthy arbitrary detention remained a significant problem due to overburdened and under-resourced court systems and a lack of legal safeguards. Arraignment

of detainees must occur within 24 hours unless authorities hold the suspect under a preventive detention law," the report states, adding, that "the law allows police to summon individuals for questioning, but it does not grant police pre-arrest investigative detention authority. There were incidents in which authorities allegedly detained suspects beyond legal limits. By law authorities must allow family members' access to detainees, but this was not always observed."

ON PSA:

The Public Safety Act (PSA), which applies only in the state of Jammu and Kashmir, permits state authorities to detain persons without charge or judicial review for up to two years without visits from family members, the report reads. "Authorities in the state of Jammu and Kashmir allowed detainees'

access to a lawyer during interrogation, but police allegedly and routinely employed arbitrary detention and denied detainees access to lawyers and medical attention," the report reads.

It reads that NCRB data from 2015 showed most individuals awaiting trial spent more than three months in jail before they could secure bail, and nearly 65 percent spent between three months and five years before being released on bail.

"There were reports of political prisoners and detainees. NGOs reported the state of Jammu and Kashmir held political prisoners and temporarily detained individuals under the PSA. The Jammu and Kashmir state government reported that more than 1,000 prisoners were detained under the PSA between March 2016 and August 2017," it adds. "According to the Jammu and Kashmir High

Court Bar Association, political prisoners made up one-half of all state detainees."

KILLINGS

The report states that various domestic and international human rights organizations continued to express serious concern at the use of pellet guns by "security forces for crowd control purposes in Kashmir."

"HRW reported that according to official government figures, 17 individuals died from pellet gun injuries between July 2016 and August 2017. Former CM for J&K Mehbooba Mufti told the state legislative assembly that pellet guns injured 6,221 people in Kashmir between July 2016 and February 2017," the report reads.

ABDUCTIONS:

"Human rights groups maintained that military, paramilitary, and insurgent forces abducted numerous persons," the report

states. "On August 29 and 30 (2018), family members of five policemen were abducted by suspected HM militants. Media reports indicated nine persons were abducted in what was seen as HM's retaliation for the arrest of some family members of HM militants and the killing of their leader, Altaf Dar, by security forces on August 29. This was the first time since 1990 that militants abducted family members of the Jammu and Kashmir police."

CHILD SOLDIERS:

"Insurgent groups reportedly used children to attack government entities," the report states. "Three incidents of child recruitment and conscription by separatist groups were reported in Jammu and Kashmir; unverified reports also indicated children were used as informants and spies by national security forces," the report reads.



भ्रष्टाचार के विरुद्ध लड़ाई की दिशा में अहम फैसला

केंद्र सरकार ने सुप्रीम कोर्ट के पूर्व जज जस्टिस पिनाकी चंद्र घोष को देश का पहला लोकपाल बनाने का निर्णय लेकर भ्रष्टाचार से निपटने की दिशा में एक बड़ा कदम उठाया है। 2014 के लोकसभा चुनाव के पहले भ्रष्टाचार के खिलाफ अन्ना हजारे के आंदोलन की यह प्रमुख मांग थी। यह विचित्र संयोग है कि पिछली कांग्रेस सरकार काफी दबाव के बाद अपने कार्यकाल के अंत में लोकपाल व लोकायुक्त अधिनियम लाई थी और अब मौजूदा सरकार ने अपने कार्यकाल के अंतिम दौर में लोकपाल के चयन का फैसला लिया है। लोकपाल की नियुक्ति न होना विवाद का विषय रहा है। नियुक्ति के लिए सुप्रीम कोर्ट में दायर याचिका पर एनडीए सरकार की दलील थी कि विपक्ष के नेता की मौजूदगी के बिना लोकपाल की नियुक्ति नहीं की जा सकती और फिलहाल लोकसभा में कोई विपक्ष का नेता नहीं है। 2016 के अपने फैसले में सुप्रीम कोर्ट ने उसकी यह दलील ठुकराते हुए कहा कि विपक्ष के नेता की गैर-मौजूदगी से लोकपाल की नियुक्ति अवैध नहीं मानी जाएगी। जाहिर है सरकार ने चुनाव की बेला में यह फैसला लेकर एक और वादा पूरा करने का दावा पुख्ता कर लिया है। गौरतलब है कि लोकपाल की चयन समिति में प्रधानमंत्री, लोकसभा अध्यक्ष, लोकसभा में विपक्ष के नेता व भारत के मुख्य न्यायाधीश या उनके द्वारा नामांकित सुप्रीम कोर्ट का कोई जज और उन सदस्यों की सिफारिश पर आमंत्रित कोई ख्यात न्यायविद होते हैं। गौरतलब है कि केंद्रीय सतर्कता आयोग के साथ मिलकर काम करने वाले लोकपाल को मौजूदा व पूर्व प्रधानमंत्री, केंद्रीय मंत्रियों, सांसदों, सरकारी कर्मचारियों और यहां तक कि सार्वजनिक उपक्रमों के कर्मचारियों के खिलाफ शिकायतों की जांच का अधिकार है। इसीलिए सत्ता में कोई भी दल क्यों न रहा हो, इस मामले में कोई कदम उठाने के प्रति उदासीनता ही दिखाई गई है। आंध्र प्रदेश हाई कोर्ट के चीफ जस्टिस भी रहे जस्टिस घोष वर्तमान में मानवाधिकार आयोग के सदस्य हैं और उन्हें मानवाधिकार कानूनों का विशेषज्ञ माना जाता है। लेकिन, उनके चयन की खबर आते ही आम आदमी पार्टी ने उनके समक्ष रफाल सौदे में भ्रष्टाचार की शिकायत करने की घोषणा की है। जहां यह शिकायत जायज भी मानी जा सकती है वहीं, यह सावधानी बरतनी होगी कि लोकपाल कहीं राजनीतिक रस्साकशी में न उलझ जाए।