

# THE CONCEPT OF LOKAYUKTA IN INDIA WITH SPECIAL REFERENCE TO THE NEED OF LOKPAL

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## INTRODUCTION

*"Corruption begets more corruption, and fosters a corrosive culture of impunity<sup>1</sup>."*

—*António Guterres, UN Secretary-General.*

The transition phase of laissez faire to the welfare state has overburdened the Government with various activities. The discretionary powers given to them are prone to abuse which results into violating several rights of the citizens. The complaints as to inefficiency of administration, corruption, mal-administration, violation of natural justice are common these days and the present system is emerging deficient to deal with these complaints against the Government. Also, the judicial review of the governmental actions is limited. The only appropriate remedy against the wrongs done by public officials and Ministers could be the establishment of an office like Ombudsman in Scandinavian countries or the *Counseil-d-Etat* under French administrative law in which most of the countries preferred the former one.

The concept of Ombudsman was, for the first time developed in Sweden in 1809 and later on, many countries like Denmark, Finland, New Zealand, U.K., Norway, etc. adopted it. An Ombudsman, also known as a "watchdog of the administration" or "the protector of the little man" has been developed as an integral part of the modern governmental machinery. The public submit their grievances against the injustice done by administration in the form of complaints to an Ombudsman. He acts as an inquisitorial umpire for settling the disputes between citizens and government machinery but the decision of Court is always given preference over the decision of Ombudsman. Therefore, in the case of *Durga Hotel Complex*

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<sup>1</sup>*THE SECRETARY-GENERAL – MESSAGE ON INTERNATIONAL ANTI-CORRUPTION DAY*, MINUJUSTH, <https://minujsth.unmissions.org/en/secretary-general-%E2%80%93-message-international-anti-corruption-day#:~:text=Corruption%20is%20present%20in%20all,value%20of%20the%20United%20Nations.&text=Corruption%20begets%20more%20corruption%2C%20and,tools%20for%20advancing%20the%20fight>, Dec. 9, 2018.

v. *RBI*<sup>2</sup>, the Honourable Court held that if the matter is pending before a Court, ombudsman cannot exercise its jurisdiction<sup>3</sup>.

## HISTORICAL BACKGROUND IN INDIA

In the year 1960s, the then Law Minister, Ashok Kumar Sen put forward the idea of constitutional ombudsman in Parliament and in 1962 All India Lawyers' Conference, M.C. Setalvad, in his speech suggested the same. In 1963, Dr. L.M. Singhvi devised the term 'Lokpal'. The concept of these institutions was conceived by the Administrative Reforms Commission (ARC), the then Chairman head Morarji Desai, in its published report of 1966. It recommended the creation of Lokpal at the Centre and Lokayuktas in the States. Therefore, in 1968, the first Lokpal and Lokayuktas Bill was introduced in the Parliament but with the dissolution of Lok Sabha, it lapsed. Subsequently, the Bills were introduced in the year 1971, 1977, 1985, 1989, 1997, 1998, 2003, 2005, 2008 but they all met with the similar fate<sup>4</sup>. Again in 2011, institution of Lokayukta and Lokpal got momentum when the social activist Anna Hazare in demand of "Jan Lokpal Bill" went on fast unto death. The Bill proposed the recommendations related to constitutional post, composition of committee, speedy investigation procedure, compensation etc. It also proposed the merging of anti-corruption department of the Central Bureau of Investigation (CBI), Central Vigilance Commission (CVC) and other like departments. Though the creation of this institution at Centre could not be done but most of the States appreciated the move and enacted the concerned state legislations<sup>5</sup>.

## THE WORKING OF LOKAYUKTA IN STATES

Every State shall establish a body to be referred to as the Lokayukta within a period of 1 year from the date of commencement of the Act. However, many States in India haven't complied with this section. The first institution of Lokayukta was set up in Maharashtra in the year 1971. Odisha had passed the Act in 1970 but it came into force in 1983.

Before the enactment of the Lokpal and Lokayukta Act, 2013 most States have created Lokayukta as a statutory authority. The citizens having complaints of corruption, nepotism or maladministration, can directly approach the Lokayukta. After the abrogation of Jammu and Kashmir's semi-autonomous status and statehood on 5 August 2019, eight state commissions were dissolved by the Government including the J & K Accountability Commission. In 8 states/UTs namely Goa, Assam, Maharashtra, Himachal Pradesh, Uttarakhand, Rajasthan and Puducherry, the post of Lokayukta is vacant while in J & K, institution has been dissolved. 22

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<sup>2</sup>(2007) 5 SCC 120.

<sup>3</sup>Prof. (Dr.) I.P. Massey, Administrative Law 545-546 (Abhinandan Malik, 9<sup>th</sup> ed. 2017)

<sup>4</sup>*Lokpal- A 'toothless' tiger?*, PRS Legislative Research (Jan. 10, 2011),

<https://www.prsindia.org/theprsblog/lokpal-toothless-tiger>.

<sup>5</sup>*Supra* note 3, at 555-557.

States/UTs have not appointed Up-Lokayukta (Member)<sup>6</sup>. Only Bihar, Manipur, Odisha and Tamil Nadu Lokayuktas have appointed its judicial and non-judicial members<sup>7</sup>.

A comparative study of State legislations show that there is no similarity among them. Each of them is different in its structure, appointment, qualifications, charging fees for complaint filing, status and powers. Some states like Maharashtra, Karnataka, Andhra Pradesh and Rajasthan have the provision for Lokayukta as well as Up Lokayukta but in states like Uttar Pradesh, Bihar and Himachal Pradesh, only lokayukta is created. No qualifications are specified for Lokayukta in Rajasthan, Bihar and Maharashtra. The appointment procedure of Andhra Pradesh and Karnataka varies from other states with reference to consulting authority.

In some states, jurisdiction of lokayukta is limited to certain public officials while in others, jurisdiction is wide. The Supreme Court in the case of *Ripusudam Dayalv. State of M.P.*<sup>8</sup> held that all public servants except Speaker and Deputy Speaker fall within jurisdiction of Lokayukta. In *University of Kerala v. Parvathy Krishna*<sup>9</sup>, the Kerala High Court laid down that the Lokayukta cannot issue direction to university to re-evaluate answer paper of students.

This clearly portrays the political scenario in which the system of lokayukta is running at the sweet will of the State Government. The appointment of Justice H.S. Rai, Lokayukta of Punjab was quashed by the Supreme Court reason being Chief Justice of High Court had not been consulted. In 2011, Justice Hegde, Lokayukta of Karnataka resigned because of non-cooperation of the State Government in investigation of mining scandal case<sup>10</sup>.

## The Lokpal And Lokayuktas Act

After famous Anna Movement, based on the recommendations of the Select Committee, the government made amendments to the Bill before it was passed in Rajya Sabha. Lok Sabha then approved these amendments resulting in its passage in Parliament in 2013. Unfortunately, it was after a lot of delay on the part of the Executive that the post of the Lokpal was established which could be seen as a complete mockery of the legislation itself, besides questioning the real intentions of the government. The Lokpal and Lokayuktas Act, 2013 received the assent of the President on January 1 2014, and came into force on January 16 2014. This law was enacted against the background of concerns that India's investigatory authorities weren't sufficiently independent of state influence to police corruption within the government<sup>11</sup>.

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<sup>6</sup>*Working of Lokayukta (State Level Ombudsman) in Indian States*, Transparency International India Report 2020 at 11.

<sup>7</sup>*Only four states have appointed judicial, non-judicial members of Lokayukta, says report*, THE ECONOMIC TIMES, <https://economictimes.indiatimes.com/news/politics-and-nation/only-four-states-have-appointed-judicial-non-judicial-members-of-lokayukta-saysreport/articleshow/79627314.cms?from=mdr> (last updated Dec. 8, 2020).

<sup>8</sup>AIR 2014 SC 1336.

<sup>9</sup>AIR 2014 Ker. 99.

<sup>10</sup>*Supra* note 3, at 559-560.

<sup>11</sup>*Supra* note 6, at 7-8, 10.

The Act provides for establishment of the Lokpal at the Centre and Lokayuktas within the States for inquiring into complaints of corruption against certain public servants. The Lokpal is that the first institution of its kind in independent India, established under the Lokpal and Lokayuktas Act 2013 to inquire and investigate into allegations of corruption against public officials. The jurisdiction of Lokpal extends to incorporate Prime Minister, Union Ministers, Members of Parliament, Group A, B, C and D officers and officials of Central Government. The lokpal is entrusted with the power of search and seizure, attachment of assets and may also exercise powers under the Civil Procedure Code for the purpose of conducting preliminary inquiry & investigation. He will also have the supervisory powers over any central investigation agency including CBI for cases mentioned by the Lokpal. In addition to this, he may take other steps for eradication of corruption.

The Lokpal and Lokayuktas (Amendment) Bill, 2016 was introduced in Lok Sabha on July 27 2016 by the Minister for Personnel, Public Grievances and Pensions, Dr. Jitendra Singh. The Bill amends the Lokpal and Lokayuktas Act, 2013 in reference to declaration of assets and liabilities by public servants. The provisions of the Bill would apply retrospectively, from the enforcement date of the 2013 Act<sup>12</sup>.

### **Performance of States as per Report 2020<sup>13</sup>**

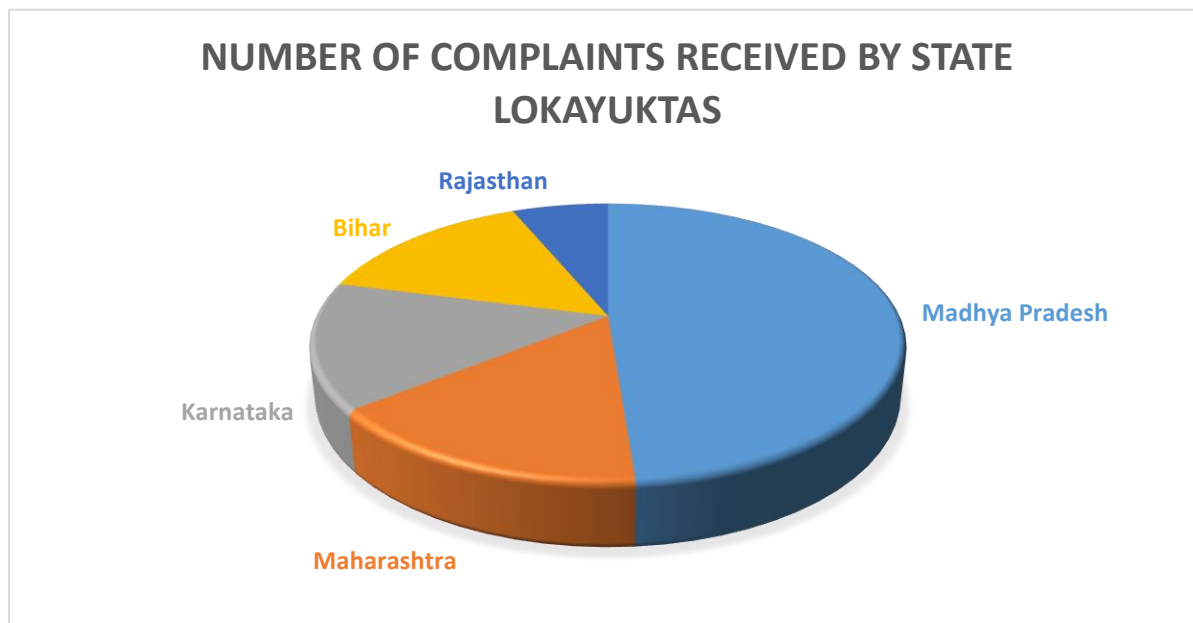
- ◆ *Karnataka and Kerala Lokayukta Acts are often considered as model state level laws.*
- ◆ *Around 9 states/UTs have not initiated any amendments in their Lokayukta Acts to bring the acts in line with the Lokpal and Lokayukta Act of 2013.*
- ◆ *Assam and Karnataka are state Lokayuktas which have simple complaint forms. Only Lokpal and Lokayuktas of Odisha, Maharashtra, Mizoram have online complaint facility.*
- ◆ *Odisha and Haryana Lokayuktas have the best websites among all the State Lokayuktas. Their annual reports are also updated. 10 states/UTs have no official websites or their websites cannot be accessed.*
- ◆ *Only Lokpal (Central Level) and Karnataka, Madhya Pradesh, Maharashtra have statistics (either monthly or yearly) uploaded on their respective websites.*
- ◆ *Odisha (2019-20), Nagaland (2019-20), Mizoram (2019-20) & Haryana (2018-19) published updated Annual Report on website.*
- ◆ *Uttar Pradesh has submitted Annual Report 2018 to the Governor of UP (As per media reports).*
- ◆ *Only Lokpal (Central Level) & Delhi, Haryana, Jharkhand, Kerala, Nagaland, Odisha, Telangana have Covid regulations and notifications regarding sittings/hearings during the Covid period or have been functioning during the COVID-19 period.*

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<sup>12</sup>Ministry: Law and Justice, *The Lokpal and Lokayuktas (Amendment) Bill, 2016*, PRS Legislative Research, <https://www.prsindia.org/billtrack/the-lokpal-and-lokayuktas-bill-2016-4354> (last visited Dec. 23, 2020).

<sup>13</sup>*Supra* note 6, at 3-4.

◆ **Total number of Complaints received by State Lokayuktas are 3, 76, 109.**



## DO WE NEED LOKPAL IN INDIA?

The Lokpal of India is committed to deal with concerns and aspirations of the citizens of India for clean governance. It shall make all efforts within its jurisdiction to serve the general public interest and shall endeavor to use the powers vested in it to eradicate corruption. The commitment of the Indian Government to provide clean and responsive governance is reflected in passing of the legislation and creation of the body of Lokpal, to contain and punish acts of corruption<sup>14</sup>.

Justice Pinaki Chandra Ghose, the former Supreme Court judge, has been appointed as India's first Lokpal — the national anti-corruption ombudsman. Justices Dilip B Bhosale, Pradip Kumar Mohanty, Abhilasha Kumari and Ajay Kumar Tripathi have been appointed as judicial members while Former SSB Chief Archana Ramasundaram, ex-Maharashtra Chief Secretary Dinesh Kumar Jain, Indrajeet Prasad Gautam and Mahender Singh have been appointed as non-judicial members of Lokpal<sup>15</sup>.

When we question about the need of Lokpal and Lokayukta, the answer is undoubtedly affirmative as the existing anti-corruption bodies are losing their credibility but this process has lot of contradictions. Firstly, the jurisdiction of Lokpal is so wide, but it does not have its own investigating agency for which it has to depend on CBI (referred as caged parrot). Secondly, the Lokayukta's in States are overburdened with complaints which makes scrutiny difficult. Therefore, the idea of Lokayukta is defeating. Increase in number of frivolous

<sup>14</sup>Lokpal of India, [http://lokpal.gov.in/?about\\_us?about\\_lokpal?0101](http://lokpal.gov.in/?about_us?about_lokpal?0101) (last visited Dec. 24, 2020).

<sup>15</sup>Justice Pinaki Chandra Ghose appointed India's first Lokpal, The Indian Express, <https://indianexpress.com/article/india/justice-pinaki-chandra-ghose-appointed-india-first-lokpal-president-kovind-5634590/> (last updated Mar. 19, 2019).

complaints may lead to apprehension of media trial which is against tenets of constitutional democracy. Thirdly, Indian Constitution already provides for the system of checks and balances and the matter would ultimately go before the judiciary so the priority should be given to the reforms in judicial system.

The scenario at the Centre is same as that of States. The institution of Lokpal cannot be considered as the universal remedy for all the wrongs done by public officials. The success of the institution depends upon the existence of well administered state. It is quite difficult for the Lokpal to do substantial improvements in the administration which is possessed by unrestricted corruption and nepotism<sup>16</sup>. If the institution of Lokpal come up in the way it is envisioned of, it would become a supreme authority over the three organs of the government and this will surely question the legitimacy of the constitutional democracy.

## CONCLUSION

After analyzing the working of Lokayukta in States, it is quite clear that this institution has not been successful in curbing corruption and creating awareness among the public about its functioning. It simply creates an impression in the minds of the people about the existence of this body and any aggrieved person may file complaint for redressal of his grievances. But in reality, this institution has become ineffective because of the non-cooperation and political reasons of the government. In order to make the working of this institution effectual, some measures have to be adopted. Firstly, the uniformity in the State legislations i.e. model law will help the States to work in the same procedure and manner. Secondly, the selection of a person as Lokayukta must not be political. Thirdly, the function of Lokayukta must be confined only to redressal of citizen's grievances. Hence, the smooth functioning of Lokayukta in States will impulsively make the Lokpal effective at the Centre.

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<sup>16</sup>Prof. U.P.D. Kesari and Dr. Aditya Kesari, Lectures on Administrative Law 307-308 (21<sup>st</sup> ed. 2016).

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