



LOK PAL OF INDIA AND ITS EFFECTIVENESS

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Abstract

‘An uncorrupted individual in a corrupted system will finally end up being corrupted himself except and unless he is constantly fighting corruption.’

Corruption in India is playing havoc with our political system. It is eating the roots of democracy. To combat the corruption from public life and to make the system clean the demand for the ‘OMBUDSMAN’ institution was raised in India in 1963 whereas it was established in Sweden in 1809. It was in 2011 that a mass movement was organized for the formation of Lokpal act under the leadership of Anna Hazare to fight against corruption in India.

Lokpal in India is to cover a long journey from 1963 to 2019 when the Lokpal act 2013 was passed and the Lokpal institution became functional in 2019. The objective to create Lokpal at the Centre and Lokayukta at the state level were to remove the corruption from the bureaucratic and political level by bringing all the class A, B, C, and D category officials and employees under its jurisdiction and also to cover all the elected representatives in its ambit. The present research paper is focused on the genesis of Lokpal in India, the Lokpal act 2013, its structure, its jurisdiction, and its performance and effectiveness since 2019.

Keywords: Corruption, Jurisdiction, Public life, Lokpal.

Introduction

Genesis of Lokpal in India

Lokpal in India is to cover a long journey since 1963 to 2019. The ‘OMBUDSMAN’ known as defender of people or people’s friend.’ Originally a Swedish word, it refers ‘to an officer appointed by the legislature to handle complaints against administrative and judicial action.’ It is an authority under the statute to redress the citizen’s grievances against the administration. It deals with the complaints of corruption against the public servants. Sweden was the first country where the ‘OMBUDSMAN’ institution was created in 1809 to protect the citizens from administrative injustice or abuse of power by a public official. According to Norman Lewis, “Sweden was the first in the field and it remained in the splendid isolation for some considerable time before it was copied in other Nordic countries. However, it was perhaps the adoption of the institution by New Zealand in 1964 which triggered the modern surge of fissionability. Earlier it was claimed that the institution was unsuitable for Westminster system of government. Nor the only time was New Zealand able to confound these claims. Once the Britain adopted its version of office in 1967, the trickle became a flood.”¹

India is the largest democracy of the world with powerful bureaucracy. The powerful bureaucracy is the legacy of the British period. India being a welfare State started a number of programmes, schemes and projects for the welfare of the people therefore a large number of employees and officers are working in the Public Sector. There have been a number of cases of corruption, misuse of authority, 2G Spectrum scam, and coal gate, misuse of funds in Commonwealth Games, Bank fraud by Nirav Modi etc. and involvement of the public servants in the corruption. Since the Indian Penal code and Prevention of Corruption act could not stop the corruption hence the demand for more effective and independent body was raised to combat the corruption.

“Since these practices could not be curbed by the Indian penal code, 1860 and Prevention of Corruption act, 1988 therefore, there was a need to establish a separate agency which will be independent of legislature, Executive and judiciary to look into the citizen’s grievances and cases of corruption and that is why it is felt necessary and it is considered of great need to introduce “Jan Lokpal Bill” as a mechanism to tackle Corruption”²

The demand for ‘OMBUDSMAN’ like independent body was raised first time in India by noted jurist Dr. L.M. Singhvi in Parliament while participating in the debate for Demand for Grants of the Ministry of Law in 1963. Dr. Singhvi said, “I should like to mention another matter which is of great importance of our country particular. It is a matter of having a sort of a Parliamentary Commission on the pattern of Ombudsman in Scandinavian countries. This is an institution which may be the real solution for the various problems which arises in respect of injustice being done in particular cases. The institution would be securing to the common citizen a forum wherein his grievances can be effectively ventilated. This would be securing for the Parliament an institution through which it can effectively function in individual cases.”

1. Norman Lewis, “World Ombudsman community: Aspects and Prospects” The Indian Journal of Public Administration, October-December, 1993, p.863.
2. An Article, “Lokpal in India- An Analysis” by “Triloknathmishra’, www.wisdomblow.com



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The Administrative Reforms Commission of India in 1966 recommended that ‘OMBUDSMAN’ like institution be set up at the Centre and at the state level to redress the grievances of the citizens against public servants in the Public Administration and to instil confidence in the public.

A Bill “lokpal and Lokayukta Bill, 1968” was introduced in Parliament in Fourth Lok-Sabha the bill was considered by the joint Parliamentary committee and the Bill was passed by the Lok Sabha in 1969 but was pending in the Rajya Sabha before it was passed Lok Sabha was dissolved consequent upon it the Bill was lapsed.

Again the “Lokpal and Lok Ayukta Bill, 1971” was introduced in the Fifth Lok Sabha but was lapsed due to the dissolution of Lok-Sabha. A new Bill called “Lokpal Bill 1977” was introduced in the Sixth lok Sabha but was lapsed due to the dissolution of the lok Sabha. The Lokpal Bill was introduced in 1985 which sought to include the office of the Prime Minister in its ambit but was lapsed due to the dissolution of the Lok Sabha. Again, the Lokpal Bill was introduced in the Eleventh lok-Sabha in 1996 and was sent to the Parliamentary standing Committee but the Bill was lapsed due the dissolution of the Eleventh Lok Sabha.

The Lokpal Bill was presented in the Twelfth Lok Sabha but again it was lapsed as the Lok Sabha was dissolved. From 2009 to 2010 a number of mega corruption case were reported in media which hook the nation. Hence a civil society was formed under the leadership of veteran social activist Anna Hazare who raised a massive movement in India against corruption and demand for Lok Pal was raised to combat the corruption in high places. The demand for an independent body to deal the cases of corruption at bureaucratic level and at the political level. “Jan lok Pal Bill will be an act to create effective anti-corruption and grievance redressal system at the Centre so that effective deterrent is created against corruption and to provide effective protection to whistleblowers.”³

“In democracy people are supreme, hence all state authorities must be exercised in the public interest.”⁴ Ultimately the efforts made by Anna Hazare become fruitful and the Lokpal was passed in both the Houses of Parliament in December 2013 and came in to force in January, 2014. These are the features of the LOK- PAL ACT, 2014 which was amended in 2016.

The Lokpal and Lok Ayukta amendment Act, 2016 was passed by the Parliament. The following provisions were added. In case there is no recognized leader of the opposition party⁴ the leader of the single largest opposition party in the Lok Sabha will be the member of the selection committee.

It also removed the time limit to declare about their assets and property within 30 days after joining the government jobs. Now it has been left on the government to decide about the time limit to declare their assets.

It also extended the time limit to the trustees and its members to declare their assets in case they are receiving government funding more than one crore or foreign funding more than 10 lakh.

Lokpal and Lok Ayukta act, 2013 provided for the creating Lokpal at the Centre and LOK AYUKTA at the state level. ⁵

These are Statutory Bodies created by the Parliament but independent from legislative and executive interference. They will perform the functions of an OMBUDSMAN and will enquire the charges of corruption against the class A, B, C, D officers and employees of the government. It will also enquire the corruption charges against the elected representatives.

The Lokpal will consists of a chairperson and maximum eight other members out of which four members will be from judicial background.

- Fifty percent members will be from SC/ST/OBC/minority and women.
- The chairman and other members will be selected by a committee which will consists of: Prime Minister, Speaker of the Lok Sabha, leader of the opposition party in the Lok-sabha⁵, Chief justice of India, Eminent jurist nominated by the President of India on the recommendation of the first four members of the selection committee for a period of three years and not to be re-nominated.
- The headquarter of lokpal will be in the ‘National Capital Region’.
- The Act states that no appointment of a Chairperson or member of lokpal shall be invalidated on the ground of vacancy in the selection committee. The Bill adds that the proceedings of the committee would not be invalidated on the reason of the absence of the member

3. Jan lokpal bill version 1.8 www.annahazare.org

4. Justice MarkandeyKatju, Administrative law and judicial review of administrative action, (2005) 8 SCC (J) 25.

5. https://legislative.gov.in/actsofparliamentfromtheyear/lokpal-and-lokayuktas-act-2013



- The Lokpal Act provides for a selection committee which will constitute a search committee to make nomination for appointments to Lokpal. The act clearly stipulates no proceedings about the search committee shall be declared invalid on the ground that there was a vacancy in the selection committee or any member was absent in the search committee.
- In the Lokpal Act the secretary to the Lokpal shall be of the rank of secretary but the bill was amended that the secretary shall be of the rank of the Additional secretary.
- A separate wing of Directorate of prosecution will be established for the prosecution of cases.

Age: Minimum age 45yr for the members and chairman at the time of appointment is required.

Term of the members: The members will be appointed for five years or till the age of 70yrs whichever is earlier.

Removal of chairperson and Members of Lok Pal: The chairperson and its member can be removed on the ground of misbehavior by the President on the reference of the Supreme Court. The Supreme Court can recommend their removal on the basis of a petition signed by the at least one hundred members of Parliament on the basis of enquiry held in accordance with the procedure prescribed or on the basis of any member is adjudged as insolvent or engaged in some paid employment or unfit to continue due to infirmity of mind and body.

Jurisdiction of the Lok Pal

It includes Prime Minister and members of Parliament. It includes group A, B, C, D employees and officials as defined under the Prevention of Corruption Act, 1988 of central Government. But any complaint of corruption against A, B officers after enquiry will come to the Lokpal and group C and D employee’s complaints of corruption will be enquired by the Chief Vigilance commissioner and will be reported to the Lokpal.

Lokpal has limited right over the Prime Minister as the matter relating to foreign relations, atomic energy, Space, Public Order and Security of the State are not included in the ambit of Lokpal.

The enquiry against Prime Minister cannot be initiated in any complaint until the full Lokpal bench approve by it’s at least two-thirds of the member. Such enquiry will be held in Camera and if the Lokpal is of the opinion that the complaint deserves to be dismissed the record and report shall not be published and will not be given to any person. It does not have jurisdiction over ministers and MP’S on matters anything said in the Parliament or a vote given there. Its jurisdiction also includes in its ambit the director/secretary/manager of any society setup by the central authority or any other body/ society financed/controlled by the central government or any other person involved in act of abetting to bribe giving or taking.

Lokpal will have the power of superintendence and direction over enquiry officer of CBI. If Lokpal has referred a matter for investigation to CBI the investigating officer cannot be transferred without the approval of the Lokpal. The enquiry committee of Lokpal is vested the powers of a civil court. It has power to confiscate the assets, proceeds, receipts, and benefits gained or procured by means of corruption in special circumstances. It has powers to recommend the transfer or suspension of any public servant against whom the charges of corruption are levelled. Lokpal is empowered to give direction to prevent the destruction of record during the preliminary enquiry. Judiciary is kept out of the jurisdiction of the Lokpal. No complaint of corruption against any officer can be initiated after the gap of seven years.

Lok Pal is not above the law

The chairperson and its members are not above the law they are also public servants. The chairperson, members, officers and other employees of Lokpal shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this act to be public servants. It shall apply on all public servants in and outside India.

Weaknesses of Lokpal

Lokpal has not its own enquiry wing to be established under the Act. Nor it has its own Prosecution wing which is to be established. The Lokpal is to depend on other investigating agencies like CBI and Chief Vigilance commissioner.

The appointment committee of Lokpal consists of people of political parties therefore biases and prejudices cannot be ruled out. There is no criteria to decide the ‘Eminent Jurist’ or ‘a person of high integrity’ a member of Lokpal. No complaint of corruption can be initiated against the person after the lapse of seven years. The personnel’s of defense forces are kept out of the jurisdiction of Lokpal. The judiciary is also kept out of the purview of Lokpal.



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Effectiveness of Lokpal

Lokpal was constituted on 19th March 2019. Sh Pinaki Chandra Ghose was appointed as Chairperson a retired judge of the Supreme Court on 23rd March 2019. And eight other members were also appointed which consists of four members from judicial background and other four from non- judicial background w.e.f 27th March 2019.

Lokpal has received 1427 complaints from May 2019 to December 2020 and 1,152 complaints were beyond the jurisdiction of Lokpal. Some cases were referred to CVC and ministries for necessary action. Lokpal received three complaints against Members of Parliament and 48 complaints against the group A and B category of central government officials, 33 complaints were against chairpersons, members and employees of different boards/ corporations/autonomous bodies financed by the Centre partially or totally. Many people were not knowing the jurisdiction of the lokpal. Lokpal ‘Complaint’ Rules 2020 was published on 02/03/20 to send their complaints in proper format.

Suggestions

- To combat the corruption Lokpal should act in a independent and impartial way free from any interference in its functioning to build confidence in the people.
- Manpower must be provided to the Lokpal for efficient and quick working.
- Lokpal must be strong financially, administratively and legally.
- Appointments of the members of the Lokpal and its other staff must be made in a transparent and impartial method to avoid the political biases.
- To some extent the judiciary should be brought in its jurisdiction.
- The Lokpal was established two years back in this short span of time it is difficult to say about its efficacy, impartiality and credibility among the common masses. Hope lokpal will prove a powerful weapon to fight the corruption to fulfil the aspirations of the people.
- Publicity should be given about the formation and its functioning that people can approach the said institution to redress their grievances.
- Seminars and conferences should be arranged to create awareness among the masses.

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