

Public policy and Administration in India

Lokpal and Lokayukta

With the advent of Welfare State, administration has come to play a decisive role in influencing and shaping the socio-economic order in the society of today. It cannot be denied that vesting of vast powers in the administration has given way to abuse and misuse of powers, maladministration and corruption. Though the legislative and judicial channels through which an aggrieved citizen can secure redressal of grievances, but there are certain limitations of these methods, like for example, the tedious and lengthy procedure, involved in Court methods. Similarly, the parliament also cannot directly control the administration, except that the members pressurise the ministers with their demands or complaints which are directed to the concerned department. Hence a need was felt in many countries for the creation of an independent institution which would supplement the efforts of the already existing machinery in meeting the demands of the citizens and ensure them an impartial and clean administration.

The institution of Ombudsman (an official appointed to investigate individuals' complaints against a company or organization, especially a public authority) was created in Sweden in as early as 1809, for the redressal of citizens' grievances, followed by Finland, Denmark, Norway, New Zealand, England and India. Ombudsman, a Swedish word, stands for an officer who is appointed by the legislature to deal with complaints against administration and judicial actions. The ombudsman generally takes up cases not only on the complaints made by those affected by administrative decisions, but also can investigate on his own. As an impartial investigator, the ombudsman makes investigations, collects the facts objectively and reports back to the legislature. The reasons for taking recourse to ombudsman in many countries, in recent times, is the growing dissatisfaction of the people regarding lack of sensitivity, efficiency, fair play on the part of public officials and due to ombudsman's simple, and speedy method of handling appeals against administrative actions.

The Administrative Reforms Commission (ARC), which was constituted in 1966, gave priority to the problem of redressal of public grievances and submitted its first interim report on the 'Problems of Redressal of Citizens Grievances'. The ARC recommended the creation of Ombudsman-type institution namely the Lokpal and Lokayukta. The Ombudsman institution is based on the principle of administrative accountability to parliament. The institution refers to an officer appointed by the legislature to handle complaints against administrative and judicial, action. Finally, ARC recommended that complaints against ministers and Secretaries to government may be dealt with by an authority called as 'Lok Pal' and 'Lok Ayukta' at the Centre and States respectively to deal with complaints against the administrative acts of other authorities.

The features of these institutions as given by ARC are:

1. They should be demonstrably independent and impartial.
2. Their investigations and proceedings should be conducted in private and should be uniform in character.
3. Their appointment should as far as possible, be non-political.
4. Their status should compare with the highest judicial functionary in the country.
5. They should deal with matters in the discretionary field involving acts of injustice, corruption and favouritism.
6. Their proceedings should not be subjected to judicial interference and they should have the maximum latitude and powers in obtaining information relevant to their duties, and
7. They should not look forward to any benefit or pecuniary advantage from the executive government. .

Based on the recommendations of ARC, many attempts were made from 1968 onwards for the establishment of Lokpal at the Central level. The Government of India introduced bills for this purpose in the Parliament in 1968, 77, 85, 90, 98, 2001 till 2011, but before the government could take a final stand on the issue, the house was dissolved. The Bill was again introduced in the parliament following massive public protests led by anti-corruption crusader Anna Hazare and his associates, known as India Against Corruption movement. It was passed in the Rajya Sabha on 17 December 2013 after making certain amendments to the earlier Bill and in the Lok Sabha on 18 December 2013. It received assent from President Pranab Mukherjee on 1 January 2014 and came into force from 16 January 2014.

Objective:

Is to provide speedy, cheaper form of justice to people.

Independence of the Office : In order to ensure the independence of functioning of the august office, the following provisions have been incorporated:

Appointment is to be made on the recommendation of a committee.

- The Lokpal is ineligible to hold any office of profit under Government
- of India or of any state, or similar such posts after retirement. Fixed tenure of three years and can be removed only on the ground of
- proven misbehaviour or incapacity after an inquiry made by CJI and two senior most judges of SC. Lokpal will have its own administrative machinery for conducting
- investigations. Salary of Lokpal is to be charged on the Consolidated Fund of India.
- PM relation to latter's functions of national security and public order.

- Complaints of offence committed within 10 years from the date of complaint can be taken up for investigation, not beyond this period. Any person other than a public servant can make a complaint.
- Lokpal is supposed to complete the inquiry within a period of six months. The Lokpal has the power of a civil court to summon any person or authority. After investigation, the ombudsman can only recommend actions to be taken by the competent authority. He can order search and seizure operations.
- He shall present annually the reports of investigation and the latter
- with the action take report has to put it before the both houses of parliament. It may be noted that the Lokpal is supposed to investigate cases of
- corruption only, and not address himself to redressing grievances in respect of injustices and hardship caused by maladministration. Structure of Lokpal Lokpal is a multi-member body, that consists of one chairperson and a
- maximum of 8 members.

Chairperson of the Lokpal should be either the former Chief Justice of India or the 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, finance including insurance and banking, law and management. Out of the maximum eight members, half will be judicial members and

- minimum 50% of the Members will be from SC/ ST/ OBC/ Minorities and women.

The judicial member of the Lokpal either a former Judge of the Supreme Court or a former Chief Justice of a High Court.

The nonjudicial member should be 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, finance including insurance and banking, law and management.

The term of office for Lokpal Chairman and Members is 5 years or till the age of 70 years. The members are appointed by the president on the recommendation of

- a Selection Committee.

The selection committee is composed of the Prime Minister who is the Chairperson; Speaker of Lok Sabha, Leader of Opposition in Lok Sabha, Chief Justice of India or a Judge nominated by him/her and One eminent jurist.

For selecting the chairperson and the members, the selection committee constitutes a search panel of at least eight persons. Retired Supreme Court judge Pinaki Chandra Ghose was appointed as the first Lokpal of India by a committee consisting of Prime Minister Narendra Modi and Chief Justice of India Ranjan Gogoi and Lok Sabha speaker Sumitra Mahajan and Eminent Jurist Mukul Rohatgi on 17 march 2019 Lokpal Jurisdiction and Powers Jurisdiction of Lokpal includes the Prime Minister, Ministers, members

- of Parliament, Groups A, B, C and D officers and officials of Central Government. Jurisdiction of the Lokpal included the Prime Minister except on
- allegations of corruption relating to international relations, security, the public order, atomic energy and space. The Lokpal does not have jurisdiction over Ministers and MPs in the matter
- of anything said in Parliament or a vote given there. Its jurisdiction also includes any person who is or has been in charge
- (director/ manager/ secretary) of anybody/ society set up by central act or any other body financed/ controlled by central government and any other person involved in act of abetting, bribe giving or bribe taking. The Lokpal Act mandates that all public officials should furnish the assets
- and liabilities of themselves as well as their respective dependents. It has the powers to superintendence over, and to give direction to CBI.

- If Lokpal has referred a case to CBI, the investigating officer in such case cannot be transferred without the approval of Lokpal. The Inquiry Wing of the Lokpal has been vested with the powers of a

- civil court.

Lokpal has powers of confiscation of assets, proceeds, receipts and

- benefits arisen or procured by means of corruption in special circumstances.

Lokpal has the power to recommend transfer or suspension of public

- servant connected with allegation of corruption. Lokpal has the power to give directions to prevent the destruction of records during the preliminary inquiry.

Limitations The institution of Lokpal has tried to bring a much needed change in the

- battle against corruption in the administrative structure of India but at the same time, there are loopholes and lacunae which need to be corrected. The Lokpal and Lokayuktas Act 2013 was passed by parliament, but its

- appointment has only done on March 2019, it's all because of lack of political will. The Lokpal act also called upon states to appoint a Lokayukta within a year

- of its coming to force. But only 16 states have established the Lokayukta. Lokpal is not free from political influence as the appointing committee

- itself consist of members from political parties. The appointment of Lokpal can be manipulated in a way as there is no criterion to decide who is an 'eminent jurist' or 'a person of integrity.' The 2013 act did not provide concrete immunity to the whistle blowers.

- The provision for initiation of inquiry against the complainant if the accused is found innocent will only discourage people from complaining. The biggest lacuna is the exclusion of judiciary from the ambit of the

- Lokpal.

The Lokpal is not given any constitutional backing and there is no

- adequate provision for appeal against the Lokpal. The specific details in relation to the appointment of Lokayukta have

- been left completely on the States.

To some extent, the need for functional independence of the CBI has been

- catered to by a change brought forth in the selection process of its Director, by this Act. The complaint against corruption cannot be registered after a period

- of seven years from the date on which the offence mentioned in such complaint is alleged to have been committed. Suggestions In order to tackle the problem of corruption, the institution of the

- ombudsman should be strengthened both in terms of functional autonomy and availability of manpower. Greater transparency, more right to information and empowerment

- of citizens and citizen groups is required along with a good leadership that is willing to subject itself to public scrutiny. Appointment of Lokpal in itself is not enough. The government should

- address the issues based on which people are demanding a Lokpal. Merely adding to the strength of investigative agencies will increase the size of the government but not necessarily improve governance. The slogan adopted by the government of “less government and more governance”, should be followed in letter and spirit. Moreover, Lokpal and Lokayukta must be financially, administratively and

- legally independent of those whom they are called upon to investigate and prosecute. Lokpal and Lokayukta appointments must be done transparently so as to

- minimize the chances of the wrong sorts of people getting in. There is a need for a multiplicity of decentralized institutions with

- appropriate accountability mechanisms, to avoid the concentration of too much power, in any one institution or authority. Lokayukta (Institution of Ombudsman at State Level) The Ombudsman established at the level of States in India is known as the

- Lokayukta. Many state governments have established the office of the Lokayukta and Up-Lokayukta. The office of the Lokayukta exists in Maharashtra (1971), Bihar (1973), Uttar Pradesh (1975), Madhya Pradesh (1981), Andhra Pradesh (1985), Himachal Pradesh (1985), Karnataka (1985), Assam (1986), Gujarat (1986), Punjab (1995), Delhi(1996) and Haryana(1996). Kerala is also in a process of establishing this office. Appointment: The appointment of the Lokayukta and Up-Lokayukta is

- made by the Governor who is the executive head in the states. The Lokayukta Acts provide that the Governor shall appoint Lokayukta and Up-Lokayukta in consultation with the Chief Justice of the High Court of the state and the leader of the opposition in the legislative assembly. Term of Office: The term of office for Lokayukta and Up-Lokayukta has

- been fixed for five years. Jurisdiction: The Lokayukta and Up-Lokayukta has been granted powers

- to investigate any action, which is taken by or with the general or specific approval of a minister or a secretary, or any other public servant. Thus, all administrative actions from the level of ministers to the lower levels are subjected to scrutiny by the Lokayukta and Up-Lokayukta. Certain other categories of officials like Chairman of Zila Parishad and other local bodies have also been included within the purview of the Lokayukta.

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