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Concept of Lokpal*

INTRODUCTION

Years ago, Mahatma Gandhi said that *"Corruption and hypocrisy ought not to be inevitable products of democracy, as they undoubtedly are today."* Now days Corruption has its deep roots in Indian Society. People who work on right principles are unrecognized and considered to be foolish in the modern society. Earlier, bribes were paid for getting wrong things done, but now bribe is paid for getting right things done at right time. In today's scenario, if a person wants a government job he has to pay lakhs of rupees to the higher officials irrespective of satisfying all the eligibility criteria. In every office one has either to give money to the employee concerned or arrange for some sources to get work done. There is not a single forum or organizations of the citizens of India unaffected from Corruption.

A 2005 study conducted by Transparency International in India found that more than 62% of Indians had first-hand experience of paying bribes or influence peddling to get jobs done in public offices successfully.^{1 2} In its 2008 study, Transparency International reports about 40% of Indians had first-hand experience of paying bribes or using a contact to get a job done in public office.³ In 2012 India was ranked 94th out of 176 countries in Transparency International's Corruption Perceptions Index.⁴

The basic idea of the Lok Pal is borrowed from the office of ombudsman, which has played an effective role in checking corruption and wrong-doing in Scandinavian and other nations.⁵ A **Lokpal** is a proposed ombudsman (Legal Representative) in India. The word is derived from the Sanskrit word "lok" (people) and "pala" (protector/caretaker), or "caretaker of people."

OMBUDSMAN: MEANING AND IMPORTANCE

Ombudsman offices are form of watchdog on government, investigating and resolving citizen's complaints. Ombudsman means *"a public official who acts as an impartial intermediary between the public and government or bureaucracy, or an employee of an organization who mediates disputes between"*

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¹ ["Transparency International – the global coalition against corruption"](http://www.transparency.org). Transparency.org.

² Centre for Media Studies, [India Corruption Study 2005: To Improve Governance: Volume I – Key Highlights](http://www.transparency.org), New Delhi: Transparency International India, 30 June 2005.

³ ["India Corruption Study – 2008"](http://www.transparency.org). Transparency International. 2008.

⁴ Source: Transparency International

⁵ Ombudsman in India by Aamna. Published on: August 4, 2011

employees and management".⁶ An indigenous Danish, Norwegian and Swedish term, *Ombudsman* is etymologically rooted in the Old Norse word *umboðsmaðr*, essentially meaning "representative". In its most frequent modern usage, an ombudsman is an official, usually appointed by the government or by parliament but with a significant degree of independence, who is charged with representing the interests of the public by investigating and addressing complaints reported by individuals.⁷

The institution of ombudsman originated in Scandinavian countries. The institution of 'Ombudsman' first came into being in Sweden in 1713 when a 'Chancellor of Justice' was appointed by the King to act as invigilator to look into the functioning of war-time government. Thereafter, a new beginning was made in 1809, when it was laid down that the Ombudsman would be made thereafter by the legislature.⁸ Other Scandinavian countries followed the model of Sweden almost after a century. Amongst other countries, New Zealand was the first country outside Scandinavian to institute an Ombudsman in 1962.⁹ It has been adopted in a number of countries, such as Finland, 1919; Denmark, 1954; Norway, 1960; Mauritius, 1966; Guyana, 1966; United Kingdom, 1967; Australia, 1976.¹⁰ Today there are Ombudsman offices in over 80 countries at the national provincial and local level.¹¹

Office of Ombudsman was established under the provisions of constitutional law in Austria, Burkina Faso, Denmark, Finland, the Netherlands, Poland, Portugal, Spain and Sweden. While in other countries¹² belonging to Anglo-Saxon legal traditions, the office is generally regulated under ordinary statute law.¹³

OMBUDSMAN IN INDIA

In a welfare State like India, citizens have a variety of interactions with the Government in its myriad forms – as a service provider, a regulator, as a provider of social and physical infrastructure etc. Meeting the expectations of the citizens is a challenging task for any Government.¹⁴ In India, the Ombudsman is known as the Lokpal or Lokayukta. The concept of a constitutional ombudsman was first proposed by the Law Minister Ashoke Kumar Sen in parliament in the early 1960s.¹⁵ *The term 'Lokpal' and 'Lokayukta' were coined by Dr. L. M. Singhvi as the Indian model of Ombudsman for redressal of public grievances.*¹⁶ The office of the LokPal is the Indian version of the office of an Ombudsman who is appointed to inquire into complaints made by citizens against public officials. The Lok Pal is a forum where the citizen can send a complaint against a public official, which would then be inquired into and the citizen would be provided some redressal.¹⁷ **Lokpal** is an officer who investigates complaints of citizens of unfair treatment meted out to them by Government Departments and suggests remedy thereof, if he finds that a complaint is justified.

Historical Aspect

⁶ Source: Legal-dictionary.thefreelegaldictionary.com

⁷ Source: <http://en.wikipedia.org/wiki/Ombudsman>

⁸ Triloknath Mishra: Lokpal in India-An Analysis

⁹ Standing Committee on Home Affairs eighty fourth Report on Lokpal Bill, 2001

¹⁰ Upadhaya, J. J. R.: Administrative Law (2004) p. 382

¹¹ PUBLIC ADMINISTRATION AND PUBLIC POLICY-vol II-The Ombudsman Office-S. E.Aufrecht:E1-34-05-08.pdf

¹² Great Britain, Iceland, Ireland, Israel, New Zealand, Norway, Slovenia, South Africa, Zambia

¹³ Standing Committee on Home Affairs eighty fourth Report on Lokpal Bill, 2001

¹⁴ Second administrative Reforms Commission: Twelfth Report, February, 2009, pg.no. 21

¹⁵ Source: <http://en.wikipedia.org/wiki/Lokpal>

¹⁶ Standing Committee on Home Affairs eighty fourth Report on Lokpal Bill, 2001

¹⁷ PRS Legislative Research: PRS blog- FAQ: What is Lok Pal Bill? Why the ruckus over it?, rediff.com, april 5, 2011

After independence when increasing practice of corruption, maladministration and misuse of authority and resource couldn't be curbed by existing measures under the Indian Penal Code, 1860 and the Prevention of Corruption Act, 1988, need for an agency independent of the executive, legislative and judiciary, to look into citizens' grievances and cases of corruption have been widely felt.¹⁸

The LokPal Bill provides for constitution of the LokPal as an independent body to enquire into cases of corruption against public functionaries, with a mechanism for filing complaints and conducting inquiries etc.¹⁹ Dr. L.M. Singhvi moved a resolution in the Lok Sabha on 3 April 1964, reiterating his demand for setting up an officer of Parliament known as People's Procurator. The resolution was discussed in detail by all sections of the House but was withdrawn on the assurance of the Government that it would look into the matter. In pursuance of this assurance, the Government constituted a Special Consultative Group of Members of Parliament on administrative reforms, in early 1965, which favoured a high powered inquiry commission on administrative reforms. Accordingly, an Administrative Reforms Commission (ARC) was appointed in January 1966, for making recommendations on the reorganization of the administrative system of the country.²⁰ **First Administrative Reforms Commission** in its report submitted in 1966 suggested that:

"The special circumstances relating to our country can be fully met by providing for two special institutions for the redress of citizens' grievances. There should be one authority dealing with complaints against the administrative acts of Ministers or Secretaries to the government at the center and in the states. There should be another authority in each state and at the centre for dealing with complaints against the administrative acts of other officials..... The setting up of these authorities should not, however, be taken to be a complete answer to the problem of redress of citizens' grievances. They only provide the ultimate set-up for such redress as has not been available through the normal departmental or governmental machinery and do not absolve the department from fulfilling its obligations to the citizen for administering its affairs without generating, as far as possible, any legitimate sense of grievance. Thus, the administration itself must play the major role in reducing the area of grievances and providing remedies wherever necessary and feasible..... When this machinery (in-built departmental machinery) functions effectively, the number of cases which will have to go to an authority outside the Ministry or the Department should be comparatively small in number"²¹

The ARC while preparing its report had three ends in view:

- (i) Evolution of a suitable grievance procedure for the individuals to invoke in complaints of maladministration;
- (ii) Creation of a mechanism which would reduce corruption in the administrative services; and
- (iii) Setting up a mechanism which would take cognizance of complaints of favoritism and nepotism against Central and State Ministers.²²

LOKPAL:

The Lokpal Bill was for the first time presented by Mr Shanti Bhushan during the fourth Lok Sabha in 1968, and was passed there in 1969. However while it was pending in the Rajya Sabha, the Lok Sabha was dissolved, and so the bill was not passed at that time. Subsequently, lokpal bills were introduced in 1971, 1977, 1985 (again by Ashoke Kumar Sen when serving as Law Minister in the Rajiv Gandhi cabinet), 1989, 1996, 1998, 2001, 2005 and in 2008, yet they

¹⁸ Triloknath Mishra: Lokpal in India-An Analysis

¹⁹ Second Administrative Reforms Commission: Twelfth report, February, 2009, pg. no. 3

²⁰ Triloknath Mishra: Lokpal in India-An Analysis

²¹ Administrative Reforms Commission Report submitted in 1966: Quoted from Para 6

²² Interim Report of the Administrative Reforms Commission on Problems of Citizens' Grievances, 1966, p.8-15.

were never passed.²³ Each time, after the bill was introduced to the house, it was referred to some committee for improvements --- a joint committee of parliament, or a departmental standing committee of the Home Ministry and before the government could take a final stand on the issue, the house was dissolved again.²⁴

In 2002, the report of the National Commission to Review the Working of the Constitution urged that the Constitution should provide for the appointment of the Lok Pal and Lokayuktas in the states but suggested that the Prime Minister should be kept out of the purview of the authority.²⁵ In 2004, the UPA government's National Common Minimum Programme promised that the Lok Pal Bill would be enacted.²⁶ The Second Administrative Commission, formed in 2005, also recommended that the office of the Lok Pal be established without delay.²⁷

In January 2011, the government formed a Group of Ministers, chaired by Shri Pranab Mukherjee to suggest measures to tackle corruption, including examination of the proposal of a Lok Pal Bill.²⁸

Government's Lokpal Bill : Salient features²⁹

Lokpal and its role

The bill proposes to establish autonomous and independent institutions called Lokpal at the central level and Lokayukta for states. These shall have powers of superintendence and direction for holding a preliminary inquiry, causing an investigation to be made and prosecution of offences in respect of complaints under any law for the prevention of corruption.

Structure

- The Lokpal will consist of a chairperson and a maximum of eight members of which fifty percent shall be judicial members.
- Fifty percent of members shall be from amongst Scheduled Caste (SC), Scheduled Tribe (ST) and Other Backward Classes (OBC), minorities and women.
- It has an inquiry wing for conducting the preliminary inquiry and a separate independent prosecution wing. Officers of the Lokpal will include the secretary, director of prosecution, director of inquiry and other officers.

Process of selection

The selection of chairperson and members of Lokpal shall be through a selection committee. The Selection Committee shall comprise of the Prime Minister, Speaker of the Lok Sabha, Leaders of the Opposition in both houses, a Union Cabinet Minister nominated by the Prime Minister, one sitting judge of the Supreme Court, and one sitting Chief Justice of the High Court's both nominated by the Chief Justice of India, an eminent jurist nominated by the central

²³ <http://www.hindu.com/thehindu/holnus/002200804051550.htm>

²⁴ Source: <http://en.wikipedia.org/wiki/Lokpal>

²⁵ "Executive and Public Administration," Chapter 6 of the National Commission to Review the Working of the Constitution (Chairperson: Shri M.N. Venkatachiliah), March 31, 2002

²⁶ National Common Minimum Programme of the Government of India, May 2004.

http://pib.nic.in/archieve/upareport/upa_3_year_highlights.pdf

²⁷ "Ethics in Governance," Fourth Report of the Second Administrative Reforms Commission, Jan 2007

²⁸ "GoM on Corruption to Firm Up Lok Pal Bill at the Earliest, Outlook, January 21, 2011.

²⁹ Source: www.indiatoday.in

government and a person of eminence in public life with knowledge of public administration, policy making, anti-corruption policy, vigilance and finance.

Jurisdiction:

Prime minister has been brought under the purview of the Lokpal with specific exclusions. Lokpal cannot hold any inquiry against the prime minister if allegations relate to international relations, external and internal security of the country, public order, atomic energy and space. Any decision of Lokpal to initiate preliminary inquiry or investigation against prime minister shall be taken only by the full bench with a 3/4th majority. Such proceedings shall be held in camera. Its jurisdiction to include all categories of public servants including Group 'A', 'B', 'C' and 'D' officers and employees of government. On complaints referred by Lokpal, the Central Vigilance Commission (CVC) will send its report in respect of Group 'A' and 'B' officers back to Lokpal for further decision. With respect to Group 'C' and 'D' employees, the CVC will proceed further in exercise of its own powers under the CVC act subject to reporting and review by Lokpal. All entities receiving donations from foreign sources in the context of the Foreign Contribution Regulation Act (FCRA) in excess of Rs.10 lakh per year are brought under the jurisdiction of the Lokpal. Lokpal will not be able to initiate suo moto inquiries.

Other significant features of the Bill:

No prior sanction shall be required for launching prosecution in cases enquired by Lokpal or initiated on the direction and with the approval of Lokpal. There are Provisions for confiscation of property acquired by corrupt means, even while prosecution is pending. Lokpal to be final appellate authority on all decisions by public authorities relating to provision of public services and redressal of grievances containing findings of corruption. Lokpal to have power of superintendence and direction over any investigation agency including Central Bureau of Investigation (CBI) for cases referred to them.

CONCLUSION:

The main objective behind the institution of Lokpal is to give strength to citizens so that they can raise their voice against corruption without any fear. The existing devices like CVC and CBI for checks on elected and administrative officials have not been effective, as the growing instances of corruption cases suggest. All these have necessitated the creation of Lokpal with its own investigating team.

Therefore, there is a need for a mechanism that would adopt very simple, independent, speedy and cheaper means of delivering justice by redressing the grievances of the people. But our Country is famous for its beautiful numerous laws and its poor execution. Most of the laws have been proved fail to achieve its goal. No law or institution would have been helped to remove deep roots of corruption from our country without its proper execution.

It is rightly said by Publius Cornelius Tacitus that "the more corrupt the state, the more laws".