The year 2011 is remembered in India as the year of the campaign against corruption and for the Jan Lokpal Bill. The campaign began in January 2011 in the backdrop of the publicity that accompanied the several mega-scams that surfaced in 2010, notably those relating to the Commonwealth Games and the telecom spectrum allocations. It caught the public imagination with Anna Hazare’s fast at Jantar Mantar in New Delhi in April 2011. That forced the UPA government to constitute a joint drafting committee for a Lokpal bill. The civil society representatives in the committee proposed a bill called the Jan Lokpal bill, which became the basis for discussions. The basic principles on which the bill was drafted were culled from the United Nations Convention against Corruption, which required all countries to put in place anti-corruption investigative agencies that would be independent of the executive government and would have the jurisdiction to investigate all public servants for corruption. In the background of the Jan Lokpal movement The Lokpal and Lokayukta Bill was passed by the parliament on 18th December, 2013 which finally became an act after receiving assent from the president on January 1, 2014, and came into force from January 16, 2014. But even after its passage the not established the body called the ‘Lokpal’. The bureaucratic strategy of delay followed by the government shows the reluctance and lack of sincerity on the part of government to constitute Lokpal which is essential to curb corruption which is acting as the greatest menace to our democracy and development.

[Keywords : Lokpal, Lokayukta, Ombudsman, Democracy, Accountability, Transparency, Governance, Legitimacy]

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1. Introduction

India’s effort to have an anti-graft ombudsman in the form of a Lokpal institution may have caught national attention only now. But parliament has made eight attempts since 1968 to pass a Lokpal bill, a different version each time, all in vain. The bill was first brought before the fourth Lok Sabha in 1968 and passed in 1969. However, the house was dissolved, resulting in the first death of the bill. The legislation was revived in 1971, 1977, 1985, 1989, 1996, 1998, and 2001, but never survived. Prime Minister Manmohan Singh said the Congress-led United Progressive Alliance (UPA) government would lose no time in enacting the bill. It finally took a mass mobilization by Anna Hazare and his associates in April 2011 to get the government to work on the Lokpal bill and getting it passed through parliament.

Social movements are understood as organized collective efforts working towards achieving change. All social movements have an ideology to identify what is wrong with the present and what needs to be done in the future. One of the most recent social movements witnessed in India was the campaign on ‘India against Corruption’, spearheaded by a group of social activists led by an octogenarian Gandhian - Anna Hazare. Anna Hazare, a follower of Gandhian principles, opted for fasting unto death and demanded the enactment of the long pending Jan Lokpal Bill (Anti-Corruption Law). The movement is considered to be a milestone in the constitutional history of India forcing the government to accept civil society’s demand to have a say in drafting the stringent anti-corruption law, the Lokpal Bill.

Interestingly, the movement also successfully galvanized mass support and enticed the media took up the topic so much so that today corruption is highlighted as a major social issue in India, after remaining invisible for decades after Independence. One remarkable trend that it has exhibited is the shift in the nature of the social movements in India from being predominantly rural to now including urban citizens. The major combatants of the Anna campaign are educated and urbane. Hence, this movement as well as similar citizen’s protests, with the educated and conscious youth at their centre demanding accountability and governance reforms has enough potential to make democracy more inclusive and participatory. The Lokpal & Lokayukta Act has not been operationalized since its notification in January 2014 and the government even after several amendments has not been able to constitute the body called Lokpal.

Recently a petition has been filed in the Supreme Court seeking directions to the Centre to set up expeditiously an autonomous Lokpal in spirit of the Lokpal and Lokayukta Act, 2013. The plea also seeks to provide adequate budget, infrastructure and manpower, essential for the Lokpal’s effective functioning. The petitioner also sought simultaneous directions to all the states to establish independent Lokayukta with all the requisite facilities. The Lokpal and Lokayukta Act, 2013, received assent from the president on January 1, 2014, and came into
force from January 16, 2014, but the executive has not established the body to be
called the ‘Lokpal’ in spirit of Section 3 of the Act. Though it is essential to curb
corruption, it is the greatest menace to our democracy and development. The
petitioner also mentioned of state governments deliberate attempt to weaken the
Lokayukta by not providing adequate infrastructure, sufficient budget and
workforce.

2. Institution of Ombudsman

The word “ombudsman” is of Swedish word, meaning a representative or
agent of the people, or group of people. The world’s first parliamentary
ombudsman was appointed by the Swedish Parliament in 1809. The functions of
the institution were to supervise the courts and other public authorities, to deal
with complaints from citizens, and to prosecute officials and government ministers
who behaved unlawfully. The ombudsman concept is based on the idea that citizen
should be entitled to complain against the ruler and their complaint should be
independently investigated. Ombudsman presents an attractive alternative to the
courts. Not only do they overcome the procedural difficulties with litigation but
they provide them remedies which are quick effective and inexpensive.

There are two main models or ideal types of ombudsmen systems, first one is Redress Type
and the other one is Control Type. The primary function of redress ombudsman is
to offer and facilitate alternative dispute resolution. The control ombudsman
primary function is general supervision of state authorities, rather than resolution
of disputes.

2.1 Development of Concept

In the 1950s there was considerable discussion in many countries outside
Scandinavia about establishing a process to examine things undertaken by
governmental administration. This was to be along side and beyond the formal
means of redress available through the courts or Parliament, or a free Press. The
welfare state models in many countries had produced very large government
bureaucracies. There was concern in many quarters that a simple independent
means of redress needed to be provided for the individual citizen. The matter was
neatly put in the following way by Professor D. C. Rowat in article suggesting an
Ombudsman Institution in Canada “It is quite possible nowadays for a citizen’s
right to be accidentally crushed by the vast juggernaut of the government’s
administrative machine. In this age of the welfare estate, thousands of
administrative decisions are made each year by governments or their agencies,
many of them by lowly officials; and if some of these decisions are arbitrary or
unjustified, there is no easy way for the ordinary citizen to gain redress.”
It was simply no longer possible to say that every person adversely affected in an unfair
manner by action of a governmental official, would have the resources or means to
engage a lawyer. Court procedures could be both lengthy and expensive. The right
of a person to consult their individual Parliamentary representative, write to the newspaper, organize a petition or raise a deputation to see a Government Official or Minister, may have been no more effective.

Ombudsman is an institution through which countries have attempted to reduce or eliminate administrative inefficiencies, government corruption and human right violation by government officials. A well functional ombudsman is one of the various public sector mechanisms that can contribute to the strengthening of democratic governance. It is very difficult for an ombudsman to operate with any success in a state that dies not have some form of democratic governance. If the state is a functional democracy, its qualitative aspect will influence the ability of the ombudsmen to exercise its function effectively. In a democratic state ombudsman can lead to the improvement in the accountability of the administrative branch of the government to the members of the public.\(^5\)

Democracy and the rule of law profoundly affect and shape the broader political and institutional context in which the ombudsman institution functions and which condition its capacity to serve citizens and to enhance their ability better to enjoy their rights. Rule of law describes a condition in which all members of society live under the law, and where no one is outside or above the law. Under the rule of law, every person is subject to ordinary law and not to extraordinary or exceptional arrangements. In order to check arbitrary exercise of power by authorities the democratic countries need to develop institutions like ombudsman.

Broadly speaking there are two different variants of democracy and this difference is based on the way the system ensures accountability in the way it functions. To be accountable means to have the duty to provide an account: that is, to explain and justify one’s actions in terms of appropriate criteria and in sufficient detail. The criteria and level of detail that are required depend on the context. The concept of accountability also includes liability to some form of sanction, if the performance revealed by the account is considered unsatisfactory. The sanction may be legal or, in a broad sense, political. in a democracy, public criticism can be a significant form of sanction. In the first variant of democracy, the natural concomitant of the idea that the winners of an election can legitimately claim a plenary right to exercise power on behalf of the sovereign people is that government is accountable only to the sovereign people at the moment of periodic elections. The sanction attached to such accountability is that, if electors deem a government’s performance unsatisfactory, they can vote it out of office. Other forms of accountability are excluded as potentially limiting and constraining the sovereign people, as represented by those whom they have elected. Modern democracies have also developed other institutions of continuous or horizontal accountability to scrutinize the actions of public authorities, call them to account and provide information, analysis and redress. To give a few examples, there are: public auditors, information commissioners, ethics and standards committees, electoral commissions, data protectors and, not least, ombudsmen.
The ombudsman can be characterized as both a horizontal and a vertical accountability mechanism. While examining the administrative aspect of governance, public accountability is identified as one of the indicators of its legitimacy. Stephen Owen defines public accountability in the context of administrative governance as “government officials must be accountable to the public for the fair, honest and open exercise of statutory discretions. This requires due process in administrative decision-making which provides the interested public with access to information, protection of privacy, notice of decisions that will significantly affect them, opportunities for hearing and reasoned decisions from public officials. Public accountability for the protection of these rights is provided through ombudsman offices, human rights commission, and freedom of information and privacy commissioners, anti-corruption and conflict of interest commissioners.”

Stephen Owen states that an effective democratic state relies on legislative, administrative and judicial governance institutions which incorporate substantial public participation. He states that “legitimacy of any particular governance function will be measured by its effectiveness in engaging, representing, serving and protecting the public in a meaningful and effective way.” A well functional ombudsman can serve an important element of administrative governance by enhancing accountability of government.

There are two ways through which accountability can be secured in the functioning of government bodies, one is horizontal accountability and the other one is vertical accountability. Vertical accountability is imposed on government by voters through periodic free and fair elections. Horizontal accountability can be defined as “the capacity of state institutions to check abuses by other public agencies and branches of government.” These oversight institutions or watchdog agencies include courts of all kinds, electoral commissions, state auditors, anti-corruption agencies, conflict of interest commissioners, ombudsman and human right commissioners. The ombudsman improves legal, constitutional and administrative horizontal accountability of government by impartially investigating the conduct of public administration. Ombudsman can supply legal, administrative and financial horizontal accountability with their focus on misuse of public funds, frauds, conflict of interest etc.

The ombudsman institution can be examined from the perspective of the level of accountability provided by self-regulatory state institutions. Scheduler states that the concept of political accountability is composed of ‘answerability’ and ‘enforcement’ elements. Answerability is defined as the power given to an institution to ask accountable actors to give information on decisions and to explain the facts and the reasons upon which these decisions were based, whereas the enforcement element of accountability is composed of punishment or other negative sanctions for inappropriate behavior. An important aspect of such continuous accountability of public authorities’ is the implication that it provides
citizens with multiple opportunities and structures through which to hold public authorities accountable on a continuous basis. Indeed, it is important to point out that citizenship encompasses a dynamic component transcending legal rights and duties and involving engagement with public authorities to exercise rights, including accountability rights, and to fulfill obligations.

Ombudsman and other national human rights institutions are referred to by the UNDP and UN human right bodies as mechanism that contribute to building good governance in a state. Many organizations and states support the establishment of the ombudsman as part of their good governance and human rights program. The role of ombudsman in building good governance is now being heavily recognized by most of the states which is evident from the fact that this institution being adopted and made part of constitution.\textsuperscript{16}

\subsection*{2.2 Ombudsman can contribute to Good Governance}

Ombudsman in a state can also promote good governance. In the context of public administration, public participation, transparency of public administration, the accountability of the public authorities to the public and justice or fairness is essential components of good governance. Classical ombudsman helps build governance in public administration by working to improve all of its core elements: public participation in governance, transparency of public administration, the accountability of public authorities to the people and fairness in administration.\textsuperscript{17}

Public participation involves asking the public for input and views on proposed government actions and feedback on government actions already taken. Effective participation in governance requires access to information, the courts and government institutions and the existence of agencies where members of the public can submit complaints about government and have them addressed.\textsuperscript{18} ombudsman institutions are mechanisms which enable members of the public to participate in the regulation of the conduct of public administration by lodging complaints that lead to impartial investigation of faulty administration, allegations of human right violations and financial impropriety.\textsuperscript{19}

Transparency in the context of public administration includes: transparency and understandability of the processes in which public bodies make decisions, provisions of reasons for the decisions and public availability of the information on which these decisions are based. Transparency of government conduct can be heightened through formal objective scrutiny on complaints by ombudsman. The ombudsman can also investigate, on the basis of a complaint or own motion, complaints of lack of transparency in public administration. He can even make recommendations for changes in law and practice to increase transparency.\textsuperscript{20}

Accountability can be defined as “answerability for the performance of an office, a charge, or a duty. It is not an entirely legal concept. It refers to standards of conduct of ethical, institutional and legal nature.”\textsuperscript{21} Accountability involves establishing appropriate lines or forms of accountability between the government
and the public, which can include access to information, transparency in decision-making and rules of due process or procedural fairness such as notice of proceedings, holding hearings and communicating decisions along with reasons on which these decisions are based to the citizens. Accountability of administration can be improved through the institution of ombudsman as he has the power to investigate into complaints of any wrongdoing or can scrutinize the behavior of administration according to standard of law.22

Fairness is composed of substantive and procedural elements. Substantive fairness requires fairness of results whereas procedural fairness requires that the processes of representation, decision-making and enforcement in an institution are clearly specified, non-discretionary and internally consistent. Fairness of government in both its procedural and substantive aspect is enhanced by the ombudsman. An ombudsman is expressly mandated to investigate broad areas of administrative legality and injustice to improve procedural fairness in administration. The ombudsman can also be considered as a mechanism to improve procedural human rights by providing an avenue for members of the public to complain about illegality and unfairness in public administration. Ombudsman can build both procedural and substantive fairness by making recommendations for changes in law and policy.23

2-3 The Contribution of the Ombudsman to the Quality of Democracy

The institution of the ombudsman can help maintain and improve the quality of democracy both directly, through promoting accountability and active citizenship, and indirectly by reinforcing the rule of law and thus the balance between equality and liberty that constitutes so salient a feature of the pluralist variant of democracy. Its capacity to do so depends on being demonstrably impartial and non-partisan in carrying out its functions. This is the rationale for the independence of the ombudsman, which, in constitutional systems where parliamentary scrutiny of the Executive is well-developed, is often secured by a privileged relationship with the legislature.24 Like a court, an ombudsman not only considers the individual case but also asks how similar cases should be treated by public authorities in the future. One of the characteristics of the ombudsman institution is that it can carry out the task of establishing guidelines for future conduct not only on a reactive, case-by-case basis, but also in a proactive way. For example, the ombudsman may produce checklists of good administrative practices, publish codes of good administrative behavior and take initiatives to tackle systemic mal-administration. While for the courts the major realm of activity and concern is to ensure adherence to legality on the part of state and citizens, for the ombudsman the equivalent realm is the promotion of good administration and the avoidance of mal-administration.

The citizen’s right to a judicial remedy against the public administration is, of course, fundamental to the rule of law. However, there is lately increasing
recognition, not least by judges, that court proceedings are not always the most appropriate way to resolve disputes between citizens and public administration. Broadly, there are two reasons for this. In some cases, the non-judicial remedy of the ombudsman can provide a cheaper and quicker alternative than court proceedings. In cases that the complainant would otherwise have taken to court, use of the alternative non-judicial remedy helps to avoid an overload of the court system and consequent delays. Moreover, since the ombudsman’s services are free at the point of use, complainants who could not afford to bring judicial proceedings may nonetheless obtain an effective remedy, thus widening access to justice.  

3. The Lokpal and Lokayukta Bill 2013

Lokpal is Indian version of Ombudsman. In India, the institution was given legal status after Anna Hazare movement. In 2013 Lokpal and Lokayukta Bill was passed by the parliament. The Lokpal bill 2013 referred as “The Lokpal and Lokayukta Bill 2013” is an anti-corruption law which will provide for the establishment of the institution of Lokpal to inquire into the cases of corruption against public functionaries. It aims to prevent and control corruption through the setting up of an independent body at the central level, called the Lokpal that would receive complaints relating to corruption against most categories of public servants. The Lokpal is supposed to complete the inquiry in a time-bound manner with the assistance of special courts. The act also makes it incumbent on each state to pass within a year, a law for setting up a body, Lokayukta similar to that of Lokpal at the state level.

3.1 Evolution

In 1963, L. M Singhvi talked of setting parliamentary commission to inquire cases of corruption in administration. In 1966, administrative Reform Commission recommended the establishment of Lokpal. Based on the report of ARC in 1968, the Lokpal and was placed in 4th Lok Sabha. 1971, 1977, 1985, 1989, 1996, 1998, 2001, 2011, 2013. It was only in 2013 that the bill was passed and got president assent on 1st January 2014 after which it became act. The term “Lokpal” was coined by Dr. L.M.Singhvi in1963. The concept of a constitutional ombudsman was first proposed in parliament by Law Minister Ashoke Kumar Sen in the early 1960s. The first Jan Lokpal Bill was proposed by Shanti Bhushan in 1968 and passed in the 4th Lok Sabha in 1969, but did not pass through the Rajya Sabha. Subsequently, ‘Lokpal Bills’ were introduced in 1971, 1977, 1985, again by Ashoke Kumar Sen, while serving as Law Minister in the Rajiv Gandhi cabinet, and again in 1989, 1996, 1998, 2001, 2005 and in 2008, yet they were never passed. 3a Forty five years after its first introduction, the Lokpal Bill is finally enacted in India on 18 December 2013. The Lokpal Bill provides for the filing, with the ombudsman, of complaints of corruption against the prime minister, other ministers, and MPs.
The Administrative Reforms Commission (ARC) recommended the enacting of the Office of a Lokpal, convinced that such an institution was justified, not only for removing the sense of injustice from the minds of citizens, but also to instill public confidence in the efficiency of the administrative machinery. Following this, the Lokpal Bill was, for the first time, presented 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 thus the bill was not passed. The bill was revived several times in subsequent years, including in 2011. Each time, after the bill was introduced to the House, it was referred to a committee for improvements, to a joint committee of parliament, or to departmental standing committee of the Home Ministry. Before the government could take a final stand on the issue, the house was dissolved again. The basic idea of a Lokpal is borrowed from the Office of the Ombudsman, which has the Administrative Reforms Committee of a Lokpal at the Centre, and Lokayukta(s) in the states. Anna Hazare fought to get this bill passed and it did get passed on 18th December 2013. Lokpal and Lokayukta Bill 2013 is a step to ensure clean and responsive government. This Act came in the background of India signing UN Declaration against corruption in May 2011. After signing this declaration it was obligatory on the part of all signatory countries to have an anti-corruption institution like Lokpal in place.

3.2 Coverage

Any board, commission or authorities, fully or partially financed by the government created by an act of parliament are covered under it.

3.3 Composition

The Lokpal shall consist of one Chairperson and eight members. The chairperson of Lokpal can be one who is or has been a chief justice of India or has been a judge of the Supreme Court or an eminent person. The total members of Lokpal should not exceed eight out of which fifty percent shall be judicial members. In this act there is also provision for representation of SC, ST, OBC, minorities and women. The act states that fifty percent of members of Lokpal shall be from amongst the SC, ST, OBC, minorities and women.

3.4 Qualification of Judicial Members

A person shall be eligible for appointment as a judicial member if he is or has been a judge of the Supreme Court or is or has been a chief justice of High Court.

3.5 Qualification of Non-judicial Members

For person to be appointed as a non-judicial member he should be a person of impeccable integrity and outstanding ability having special knowledge and expertise of not less than twenty-five years in a matter relating to anti-corruption policy, public administration, vigilance, finance including insurance and banking, law and management.
3.6 Disqualification

The Chairperson or a Member shall not be:

- A Member of Parliament or a member of the Legislature of any State or Union territory;
- A person convicted of any offence involving moral turpitude;
- A person of less than forty-five years of age, on the date of assuming office as the Chairperson or Member, as the case may be;
- A member of any Panchayat or Municipality;
- A person who has been removed or dismissed from the service of the Union or a State, and shall not hold any office of trust or profit (other than his office as the Chairperson or a Member) or be affiliated with any political party or carry on any business or practice any Profession and, accordingly, before he enters upon his office, a person appointed as the Chairperson or a Member, as the case may be, shall, if:
  - He holds any office of trust or profit, resign from such office; or
  - He is carrying on any business, sever his connection with the conduct and management of such business; or
  - He is practicing any profession, cease to practice such profession.

3.7 Appointment of Chairperson and Members of Lokpal

The chairperson and the members of Lokpal shall be appointed by the president after obtaining the recommendation of Selection Committee.

The selection committee will have five members:

- The Prime Minister-Chairperson;
- The Speaker of the House of the People-Member;
- The Leader of Opposition in the House of the People-Member;
- The Chief Justice of India or a Judge of the Supreme Court nominated by Him-Member;
- One eminent jurist, as recommended by the Chairperson and Members referred to in clauses (a) to (d) above, to be nominated by the President-Member.

The Selection Committee will constitute a Search Committee of Seven Members for the selection of Chairperson and Members of Lokpal. Fifty percent of search committee members should belong to SC, ST, OBC, Women and minorities. The selection committee has the right to select anyone who is not recommended by Search Committee.

3.8 Appointment

The chairperson and members shall be appointed by the president on the recommendation of Selection Committee.
3.9 Term

The chairperson and every member will hold office for five years from the date on which he enters upon his office or until he attains the age of seventy-five, whichever is earlier.38

In order to check political interference and ensure impartiality in the functioning of Lokpal, the chairperson and every member shall be ineligible to be reappointed as the chairperson or a member of Lokpal. Secondly he cannot be employed to any office of profit under the government of India or the government of the state. Thirdly he cannot contest election of president or vice-president or member of either house of parliament or state legislature or municipality or panchayat within a period of five year from the date of relinquishing the post. Salary of Chairperson will be as that chief justice of India and members to that of judge of Supreme Court.39

3.10 Jurisdiction

Prime minister is under the preview of Lokpal but cases of corruption against him can only be taken up when two-third of full bench of Lokpal approves it and the chairperson also approves it. The proceeding of such a complaint will be done under camera. If Lokpal dismisses the complaint than the report need not be published or shared.40

3.11 Functioning of Lokpal

Lokpal will have under him Secretary, Director of Inquiry, and Director of Prosecution. The appointment of officers and other staff of the Lokpal shall be made by the chairperson or such member or officer of Lokpal as the chairperson may direct. Lokpal will have two different wings to carry on the investigation against the public servant. On is the inquiry wing headed by the Director of inquiry and the other one is the Prosecution wing headed by the Director of Prosecution for the purpose of prosecution of public servant in relation to any complaint by the Lokpal under this Act.41

After receiving the complaint the Lokpal can initiate the inquiry either through his Director of inquiry wing or can engage CBI. The Lokpal can supervise the working of CBI only in those cases which have been referred to CBI by Lokpal. Lokpal can also ask for the progress report but cannot influence the direction of inquiry. The Lokpal shall also call the public official to explain his position on the complaint which has been filed against him so as to ascertain that whether there exists a prima facie case or not. The inquiry wing is supposed to submit its report to the Lokpal within a stipulated time frame. If the inquiry wing finds that a prima-facie case exists then Lokpal can order prosecution wing to initiate prosecution in special courts. The website of Lokpal will display the status of all the complaints.42
3.12 Special courts

The central government shall constitute such number of special courts as recommended by the Lokpal. The special courts are supposed to pronounce its verdict in one year. An extension of three months can be given with reasons of extension. In total the time should not exceed two years which means that four extensions can be given with reasons specified by special courts.43

3.13 Complaints against the chairperson and members of Lokpal

The Lokpal shall not inquire into any complaints against the chairperson or any member. President can remove chairperson or any member if there is a complaint which is given to him by 100 Member of Parliament and when the case is established by the Supreme Court. Till the time the case is pending in Supreme Court the president can order suspension of such member or chairman.44

3.14 Finance

Finance for the maintenance and operation of Lokpal will come from consolidated fund of India and the accounts will be audited by CAG.45

3.15 Declaration of Assets

Each government official is supposed to declare his assets before 31st July. Along with it every government employee is supposed to file an annual return of such assets. Assets not declared in return will be presumed to be acquired through corruption.46

3.16 False or frivolous Complaint

In this act there are also provisions to have a check on the filing of false an frivolous complaints. A person found guilty of filing false and frivolous complaint can be punished for one year or with a fine of one lack. He is also liable to pay compensation to pay compensation to the public servant in addition to the legal expenses as decided by the special courts.47

3.17 Establishment of The Lokayukta

Every State shall establish a body to be known as the Lokayukta for the State, if not so established, constituted or appointed, by a law made by the State Legislature, to deal with complaints relating to corruption against certain public functionaries, within a period of one year from the date of commencement of this Act.48

4. The Lokpal and Lokayuktas and other related Law (Amended) Bill, 2014

The Lokpal and Lokayuktas Act, 2013 provides for the establishment of a body of Lokpal for the Union and making enabling provision for establishment of
Lokayukta for States to inquire into allegations of corruption against certain public functionaries, was enacted and brought into force with effect from 16th January, 2014. The Lokpal and Lokayuktas Act, 2013 (the Lokpal Act) provides for a Selection Committee for making recommendations to the President for appointment of the Chairperson and Members of the Lokpal. As per the existing provision the Leader of Opposition in the House of the People is one of the Members of the said Selection Committee but the Act of 2013 does not contain any provision as to how the eminent jurist is to be recommended for nomination by the President or how the Search Committee shall be constituted by the Selection Committee when there is no Leader of Opposition recognized as such in the House of the People. Therefore, it is considered appropriate to amend clause of the Lokpal Act and make enabling provision for inclusion of the Leader of the single largest Opposition Party in the House of the People as a Member of the said Committee. Further, the 2013 Act does not specify any tenure for the eminent jurist. It is, therefore, proposed to insert a proviso so as to lay down that the eminent jurist shall be nominated for a period of three years and shall not be eligible for re-nomination.

It is also proposed to amend sub-section (2) of section 4 so as to provide that no appointment of a Chairperson or a Member or the nomination of an eminent jurist shall be invalid merely by reason of any vacancy or absence of a Member in the Selection Committee, on the lines of the recent amendment made in the Delhi Special Police Establishment Act, 1946. Similarly, it is proposed to add a proviso to sub-section (3) of section 4 so as to provide that no appointment of a person in the Search Committee or the proceedings of the Search Committee shall be invalid merely by reason of any vacancy or absence of a Member in the Selection Committee or absence of a person in the Search Committee, as the case may be.

It is proposed to amend section 44, in regard to the way “public servant” is defined, which, inter alia, includes Prime Minister, Ministers and the Members of either House of Parliament. Section 44 of the Act makes provision for declaration of assets and liabilities by the public servants. In this regard, the Representation of the People Act, 1951 (43 of 1951) makes detailed provisions which provide for conduct of elections of the Members of Parliament, their qualifications and disqualifications for the membership of the Houses, corrupt practices and other offences, etc. The said Act and the rules framed thereunder make elaborate provisions for filing of affidavits giving full details of the movable and immovable property and the consequences of filing false affidavits, etc. In view of this, it is proposed to provide that the provisions of the Representation of the People Act should be applicable to them as regards the manner of filing of information regarding their assets and liabilities, instead of making a different provision under the Lokpal Act.

4.1 Lokpal and Lokayukta (Amendment) Bill, 2016

The parliament in July 2016 passed an amendment to the Lokpal and Lokayukta Act, 2013 to extend the deadline for filing asset declarations beyond 31
July for 50 lakh central government employees and NGOs receiving government funds. The amended Lokpal and Lokayukta Act 2013 is now called the Lokpal and Lokayukta (Amendment) Bill, 2016. This amendment is significant and controversial because it dilutes a provision in the Lokpal Act, 2013 which was one of the results of the India Against Corruption movement which had shaken the country in 2011 and 2012. This amendment affects only Section 44 of the Lokpal Act, which in turn deals with the declaration of assets and liabilities of the public servants and non-governmental organizations (NGOs) who come under the purview of the Act. The NGOs which receive over Rs 1 crore in government grants and donations above Rs10 lakh come under the purview of the Act. Earlier, as per rules notified under the Lokpal and Lokayukta Act, 2013, every public servant was supposed to file declaration, information and annual returns pertaining to his or her assets and liabilities on 31 March every year or on or before 31 July of that year. For 2014, the last date for filing returns was 15 September of that year. It was first extended till December 2014, then till 30 April, 2015. The third extension was up to 15 October. The date was then extended to 15 April this year for filing of returns for 2014 and 2015. But in April, the deadline was extended yet again till 31 July. With the latest amendment, the deadline for declaration has now gone beyond 31 July. Apart from the obvious problem that the deadline for declaration has been continuously extended since 2014, the amendment also does not provide any further details of when and how the public servants and NGOs will make their declaration.52

The amendment just states that the public servants will make a declaration in such form and manner “as may be prescribed”. The amendment also exempts the spouse and dependent children of public servants from declaring their assets, something which further reduces the transparency of the original Act. The amendment also came amid criticism that the government was diluting the transparency law by classifying NGO officials as public servants. The TOI report also said that the provisions which were affected by the amendment had been made part of the Act during UPA rule in the aftermath of the India Against Corruption movement led by Anna Hazare which had sought to bring about more transparency in governance. Because of yet another deadline extension and exemption of family members of public servants from declaration, the government was criticized for attempting to dilute the Lokpal Act after the amendment was passed in Lok Sabha.53

4.2 Shortcomings

One of the major demands during India Against Corruption movement led by Anna Hazare was that Whistle blower Protection clause should came under the ambit of Lokpal. Whistle blower protection clause is missing from the Lokpal and Lokayukta Act according to which it should have been the responsibility of Lokpal to provide protection to whistle blowers, witnesses and victims of corruption. It should have been the responsibility of the Lokpal to ensure the safety and security
of honest public officials who dare to expose the wrong doing within administration. But in the present bill there is no provision for the security of whistle blower under Lokpal. One of the major demands during the Anna Hazare movement was to bring whistle blower protection under the Lokpal but the government didn’t accepted this proposal by justifying that there will be a separate bill to ensure whistle blower protection. The government did came up with a separate whistle blower act 2011 which received the assent of the President on the9th May, 2014. The Act seeks to protect whistle blowers, i.e. persons making a public interest disclosure related to an act of corruption, misuse of power, or criminal offense by a public servant. Any public servant or any other person including a non-governmental organization may make such a disclosure to the Central or State Vigilance Commission. In order to ensure proper protection to the public servant it would have be wiser and prudent to bring it under the Lokpal or Lokauktas rather than having it under a body like CVC which is under the direct control of centre government. Transferring of such a power to a separate entity like CVC has created doubts about the efficacy of the whole proposal for the security of whistle blower.

The Lokpal established under the Lokpal & Lokayuktas Act, 2013 becomes, will have no role to play in the scheme of protection of Whistle blowers unless the Central and State Government notify them as competent authorities. Under the Lokpal Act any person may make a complaint about an act of corruption allegedly committed by the Prime Minister to the Lokpal. However the Whistle blower Bill does not say what will happen to an allegation of corruption against a Prime Minister if sent to the Central Vigilance Commission. Ideally, the Lokpal should also have been mentioned as a competent authority under the WBP Act for the purpose of receiving complaints. Further, under the Lokpal and Lokayuktas Act, complaints of corruption allegedly committed by officers of the three elite All India Services must be made to the Lokpal. The Central Vigilance Commission cannot inquire into such complaints without the direction of the Lokpal. What will happen to whistle blower complaints against officers of these elite services when made under the WBP Act must be clarified in the WBP Rules.54

Though the Lokpal and Lokayukta Act envisages that the Lokpal may use any agency it chooses to enquire or investigate complaints under its jurisdiction, in actual fact there are very few choices at the moment apart from the CBI. But, in order to ensure that such investigations, many of which might involve very senior and powerful members of the government, are fair and professional, the CBI must be functionally independent of the central government. The Act also envisages that the Lokpal will have powers of “superintendence” over the CBI. However, experience has shown that such powers are meaningless without instruments to ensure actual administrative control. The Act empowers the Lokpal with partial administrative control over the CBI as it states that transfer of CBI officers investigating cases referred by the Lokpal can be done only with the approval of
the Lokpal. Unfortunately, all this is still not adequate to provide the required functional independence to the CBI. The central government still controls the budget of the CBI, appoints its officials, and is the receiving authority for the annual confidential reports of senior CBI officials, thereby making them vulnerable to pressure from the government. It would have been much better if the CBI had been brought under the comprehensive administrative and financial control of the Lokpal, whose own expenditure is chargeable to the consolidated fund of India. Or at the very least, the appointment and removal of senior CBI officers should have required the approval of the Lokpal and for officers working on cases referred by the Lokpal, the chairperson of the Lokpal should have been the receiving authority for the annual confidential reports.\(^5\)

The biggest shortcoming of the Act is that while it makes it mandatory for Lokayuktas to be set up in each state within one year, state legislatures will be free to determine the powers and jurisdiction of the Lokayukta. The apprehension is that this could result in very weak and ineffective Lokayuktas being set up in many of the states, with limited jurisdiction. As much of the corruption that affects the common person, especially the poor and marginalized, occurs under the jurisdiction of the state government, the absence of strong and effective state Lokayuktas would deny the majority of Indians, especially those who are most in need of relief, any respite from rampant corruption. The Act envisages that all the nearly 30 lakh groups C and D public servants\(^3\) would be covered by the CVC. However, it does not specify how a CVC, located in Delhi, would receive complaints, conduct preliminary enquiries, and exercise superintendence and issue directions on investigations, against l lakhs of employees who are spread across thousands of post offices and manned railway crossings, for example, in the villages of India.\(^6\)

Under the Lokpal and Lokayukta Act, parliamentarians conduct in the parliament cannot be questioned by the Lokpal. What parliamentarians speak, how they vote in parliament on crucial issues is not covered in this act. We have recently seen cases where parliamentarians were accused of raising issues in parliament after taking money. Similarly there were cases were they voted in a particular manner after taking money from various political parties. Similarly citizen charter which was a essential demand during the Anna Hazare movement which talks of certain stands and time bound delivery of services is also missing. If the Lokpal and Lokayukta Act is properly implemented, it should provide a significant deterrent to corruption, especially the high level of corruption that seems to have become increasingly common in India. Of course, in order to achieve that, it has to be ensured that the right sorts of people are appointed to the Lokpal, that they and the agencies assisting them are provided adequate and appropriate human and financial resources, and that there is political will, especially among the top political and bureaucratic leadership, to make this institution succeed. But the true success of this bill can only be analyzed after its actual implementation and its capacity to initiate inquiry and convict corrupt officials.
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