

CHAPTER 1

Transparency and Accountability in Lokpal and Lokayukta Act, 2013- An Analysis

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Abstract

Corruption has plagued innumerable societies and has been inimical to their growth and development. It has been observed that omnipresence of corruption creates hurdles and hampers the whole prospect of having a quality life. Since long corruption and maladministration in India has repeatedly proven to be debilitating to the country's development. Government of India has set up various statutory bodies to evade this social evil such as the Lokpal and Lokayukta Act of 2013. Increased corruption and demand of its accountability underlies the ombudsman system around the world, including India. This paper is an attempt to study the need, structure; functioning and powers of lokpal along with its transparency and accountability highlight the problems surrounding the Lokpal and Lokayukta Act, 2013.

Keywords: Corruption, Lokpal, Lokayukta, Maladministration, Government, Officials, Complaints

Introduction

Corruption is a systemic and multilateral flaw in any society. In ordinary parlance, corruption is defined as the act of doing something that is debased, imputed, or unethical. As a result, it jeopardises society's foundation. Corruption is pervasive in the sense that there isn't a single country in the world that isn't corrupt, and there isn't a single government department that isn't involved in corrupt acts. Without a doubt, there is a lot of debate on how to deal with corruption and bad administration. The appointment of an Ombudsman can be seen as a result of such a discussion. To understand how the Ombudsman deals with these ills, it is necessary to first go over the definitions of the term's maladministration and corruption (Jha, U. K. (2014) 'Mal' is a Latin word that means 'bad' or 'wrong.' "Maladministration is a terrible phrase with unfortunate associations, conjuring up behaviours such as taking bribes or bias, or extreme examples of bias or

perversity," said Sir Edmund Compton, the UK's first Parliamentary Commissioner (Roy Gregory and Jane Pearson, 1992)

The office of ombudsman received much attention when it was first introduced to Canada during the late 1960s and 1970s but has since received limited attention in scholarly periodicals and textbooks. This is despite the fact that the ombudsman has managed in its own functional way to emerge as a cornerstone of the modern administrative state in Canada, not only in the form of the classical (all-purpose) ombudsman but also in a number of other, more specialized ombudsman offices. (Najmul Abedin, 2011)

The ombudsman in India is known as a Lokpal or Lokayukata. Before the early 1960s, then-law minister Ashok Kumar Sen presented the concept of a constitutional ombudsman in parliament. Dr.L.M.Singhvi invented the terms lokpal and lokayukta as the Indian model of ombudsman for the settlement of public concerns, and it was passed in the Loksabha. It was established in 1968, but it was dissolved with the dissolution of the Lok Sabha, and it has lapsed in the Lok Sabha numerous times since then (Tripathi, P. K., 1967)

Need of Lokpal in the Country

Our anti-corruption procedures have significant flaws as a result of which, despite overwhelming evidence against the dishonest, no honest inquiry and prosecution occurs, and the corrupt are rarely punished. The entire anti-corruption apparatus serves to protect the corrupt.

- 1) Lack of independence: Most of our agencies, including as the CBI, state vigilance departments, internal vigilance wings of various departments, and the state police's Anti-Corruption Branch, are not self-contained. They have to report to the same people in many situations, who are either accused themselves or are likely to be influenced by the accused (Dhavan, R., 1977).
- 2) Powerless bodies, such as CVC or CBI, are independent, but they have no authority. They've been elevated to the status of advisory bodies. They advise governments on two options: imposing departmental sanctions on any officer or prosecuting him in court. When a minister or a senior officer is involved, history demonstrates that their counsel is rarely heeded (Navlakha, G., 2011)
- 3) Lack of Transparency and internal accountability in addition, there is the problem of internal transparency and accountability of these anti-corruption agencies. Presently, there isn't any separate and effective mechanism to check if the staffs of these anti-corruption agencies turn corrupt. That is why, despite so many agencies, corrupt people rarely go to jail. Corruption has become a high profit zero risk business. There is absolutely no deterrence against corruption (Johri, A., Bhardwaj, A., & Singh, S. 2014).

The Lokpal and Lokayuktas Act, 2013, highlight the following features:

- 1) The Lokpal and Lokayuktas Act of 2013 established a central Lokpal with the authority to try corruption matters involving all Members of Parliament and central government workers. The Lokpal's functions are similar to those of the Lokayuktas, except they operate on a state level.

- 2) The Lokpal and Lokayuktas offices deal with allegations of corruption against public person, including the prime minister's office, but with sufficient protections. Both the Lokpal and the Lokayukta deal with allegations of corruption against the government and its workers; in reality, they conduct investigations and hold trials based on the findings of those investigations.
- 3) The statute provides for the establishment of a Lokayukta and its set of powers for each state, but does not specify the scope of those powers. As a result, multiple Lokayuktas have been established, some with greater power than others. A suggestion has been made to implement the Lokayukta uniformly across Indian states in order to achieve uniformity. The Act mandates that all states establish Lokpal and/or Lokayukta offices within one year of the Act's enactment. Lokpal, on the other hand, will have a chairperson and a maximum of eight members, 50 percent of whom will be judicial members and 50 percent of whom will be from SC/ST/OBCs, minorities, and women.(Section 3 of Lokpal and Lokayukta Act, 2013)
- 4) The Act, allows for the seizure and attachment of any government official's property that he or she has acquired by corrupt methods, and this can be done while the official's case is pending.
- 5) The Lokpal Act requires all public officials to disclose their assets and liabilities, as well as those of their dependents. In actuality, the stated Act provides protection to any government official who acts as a whistle blower, and a Whistle Blowers Protection Act has been created as a supplementary measure.

Transparency and Accountability under the Act

The Lokpal was established as a much-needed shift in the fight against corruption. The Lokpal was a tool to combat the corruption that was rife across India's administrative structure. At the same time, there are flaws and omissions that must be addressed. Lokpal's appointing committee is made up of representatives of political parties who try to sway Lokpal's decisions.

There are no standards for determining who is a "eminent jurist" or "a person of integrity," which skews the Lokpal selection process. The Lokpal and Lokayukta Act of 2013 failed to provide whistleblowers with any type of concrete immunity. In circumstances where the accused is ruled innocent, the provision relating to the commencement of an investigation against the complainant discourages individuals from filing complaints. One of the most significant flaws is the Lokpal's exclusion of the judiciary from its purview (Section 4(e) of Lokpal and Lokayukta Act, 2013)

The Lokpal is not backed by the constitution. In addition, there are no effective procedures for appealing Lokpal's decisions. The states have complete discretion over the exact details surrounding the appointment of the Lokayukta. The Lokpal and Lokayukta Act, which changed the appointment process for the CBI's Director, has met the demand for functional independence of the CBI to some extent.

The Lokpal and Lokayukta Act further stipulates that no complaint against corruption can be filed until a period of seven years has passed from the date on which the alleged offence was committed (Section 53 of Lokpal and Lokayukta Act, 2013)

Conclusion and Suggestions

1. The institution of lokpal has been a land mark move in the history of Indian polity, the lokpal and lokayukta act 2013 has offered a productive solution to combat the never ending menace of corruption.
2. 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. Firstly it is not free from political influence as the appointing committee itself consist of parliamentarians There is no criteria to decide who is an ‘eminent jurist’ or ‘a person of integrity.’ Thus, this appointment can easily be manipulated. Further, the act provides no 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. Also, there is no foolproof way to determine whether the person who is appointed as the Lokpal will remain honest throughout (Khandekar, A., & Reddy, D. S., 2015).
3. The biggest lacuna is the exclusion of judiciary from the ambit of the Lokpal. The Lokpal is also not given a constitutional backing. There are no adequate provisions for appeal against the Lokpal. The powers, composition and scope of Lokayuktas do not find any mention of the act. There is a long way to go to ensure transparency and crusade against corruption are still on and yet to reach its destiny.

References

- Roy Gregory & Jane Pearson (1992), The Parliamentary Ombudsman After Twenty-Five Years, Public Administration, 70(4), 469-498. <https://onlinelibrary.wiley.com/doi/10.1111/j.1467-9299.1992.tb00951.x>
- Jha, U. K. (2014). Tackling the Menace Of Corruption: Need For A Broad Framework. *The Indian Journal of Political Science*, 75(4), 633–640. <https://www.jstor.org/stable/26575542>
- Khandekar, A., & Reddy, D. S. (2015). An Indian summer: Corruption, class, and the Lokpal protests. *Journal of Consumer Culture*, 15(2), 221-247.
- Navlakha, G. (2011). Lokpal Movement: Unanswered Questions. *Economic and Political Weekly*, 46(44/45), 19–21. <http://www.jstor.org/stable/23047382>
- JOHRI, A., Bhardwaj, A., & Singh, S. (2014). The Lokpal Act of 2014: An Assessment. *Economic and Political Weekly*, 10-13.
- Tripathi, P. K. (1967). Lokpal: The Proposed Indian Ombudsman. *Journal of the Indian Law Institute*, 9(2), 135-152.

KUMAR, A. (2014). The Jan Lokpal Andolan and alternate politics: Symbiotic interactions, vernacular publics, and news media in the Jan Lokpal Andolan. In *Democratic Transformation and the Vernacular Public Arena in India* (pp. 111-128). Routledge.

Bhanu, V. (2011). Politics of Lokpal: a way beyond. *CLRA Research Paper Series*, (1).

Dhavan, R. (1977). Engrafting the Ombudsman Idea on a Parliamentary Democracy—A Comment on the Lokpal Bill, 1977. *Journal of the Indian Law Institute*, 19(3), 257-282.