

**LOKPAL-AN INDISPENSABLE INSTITUTION FOR  
ESTABLISHMENT OF CORRUPTION FREE INDIA**

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**ABSTRACT**

*“The worst disease in the world today is corruption and there is a cure i.e. transparency”*

-Bono

The phenomenon of corruption is not of recent origin. It is as old as human civilization. In cotemporary India, corruption has attained an obscene magnitude with cancerous velocity. Like a termite , it is eroding the foundational structure of our democracy. Practically , it is impossible to imagine any department which has remained untouched from the shadow of corruption. Corruption has become deadliest enemy of growth of our nation and hindered the progress of nation. Factually corruption is breeding like a norm in our society rather than a taboo. Everyday incalculable citizens are experiencing event of being extorted by the corrupt officials in every public offices. If the present scenario will remain persist , then the day is not very far when corruption would abrade the democratic structure of India. The rank of India in current Corruption Perception Index is 85 among 180 nation<sup>1</sup> . Corruption can be uprooted only if there is an adequate mechanism for redressing public grievances against events of corruption and maladministration. In view of growing menace of corruption , Government of India has passed Lokpal and Lokayuktas Act 2013 to combat with corruption and to establish corruption free India. Lokpal is an anti-corruption body who is responsible for looking into corruption complaints at national level<sup>2</sup>. The institution of Lokpal inquires into the maladministration. Lokpal is considered as a public safety valve against incidents of corruption and maladministration. The main object of Lokpal in India is to safeguard the citizens against abuse and misuse of the powers by the executive. The role of Lokpal is sine qua non for building corruption free India.

**INTRODUCTION**

The concept of Lokpal dated back to early 1960s when Shri Ashok Kumar Sen , the then Law Minister proposed for creation of institution of Lokpal in India. Lokpal is a Sanskrit word , which

<sup>1</sup> Corruption Perception Index 2021 released by Transparency International in January 2022.

<sup>2</sup> www.thehindu.com/topic/Lokpal/

denotes defender of people or caretaker of people. It was coined by L.M. Singhvi , a member of Parliament in 1963 during his debate in Parliament regarding grievance redressal mechanism. The term “Lokpal” coincides with Scandinavian word “Ombudsman”. As per Wikipedia-free encyclopedia “An Ombudsman is an official , usually appointed by the parliament but with significant degree of independence , who is charged with representing and addressing complaints of maladministration or violation of rights. In short , the purpose of institution of “Ombudsman” or “Lokpal” is to investigate and inquire into grievances of public against corrupt officials. It is a matter of regret that we are living in a society where corrupted officials have blurred the differences between need and greed. The excitement of material greed has , as a reaction set a flame, the fire of corruption at every level. But this aggravation of material greed or weak morals of public officers has intensified the miseries of common man. In this context an independent institution of Lokpal has been a landmark move in the history of Indian polity , which has offered a solution to the never ending menace of corruption.

## **NEED FOR LOKPAL IN INDIA**

The concept of *Laissez Faire* State has been given up by almost every State. With this , the concept of Welfare State has been emerged. In a welfare State , the Government have to perform a large number of tasks to promote the welfare of citizens. To accomplish it , Government has taken number of undertakings. This gives rise to delegation of legislation to executive in order to carryout necessary functions of government. This leads to increase of powers of the Administrative authorities proportionately. In this context a very famous statement of Lord Acton seems quite relevant i.e. *Power tends corrupt ; absolute power corrupts absolutely* . The increase in powers and functions of the administrative authorities has opened scope for misuse or abuse of powers by them. Consequently the incidents of maladministration and corruption increased comprehensively. The existing Anti-corruption forum was not adequate to prevent and curb corruption . This necessitated for establishment of Lokpal at Centre to address public grievances regarding incidents of corruption and to build a corruption free nation.

## **THE INFELICITOUS FATE OF LOKPAL BILL FOR ABOUT FORTY-FIVE YEARS**

One of the most regrettable thing is that the Parliament of India had miserably failed to recognize and pass such a precious piece of legislation for a long period of about four and half decades. The Administrative Reform Committee(ARC) in its report (1966-1970) recommended the setting of Lokpal in Center and Lokayukta in State for the redressal of citizen's grievances<sup>3</sup>. Lokpal Bill was presented before parliament for ten times from 1968 to 2011 but failed to get shape of an Act. The first bill was introduced in Parliament in 1968 and was moved by former Law Minister Shanti Bhushan, but failed to get force of law<sup>4</sup>. It was the beginning of endeavor of Parliament of India for creation of Lokpal and witnessed a series of failure to get the colour of law. The Lokpal Bill was floated for a very long period. As it was delayed, for a long period of nearly for more than four and half decades after its first introduction, the public lost faith in the highest democratic institution<sup>5</sup>. In very first attempt, Lokpal Bill was passed in Lok Sabha in 1969 and later introduced in the Rajya Sabha. But before it could pass in Rajya Sabha, the house was dissolved in 1969 and with this failure, the infelicitous fortune of Lokpal Bill commenced.

Another infructuous attempt was made in 1971, but it could not be passed. After that, Janta Government re-introduced the Bill with certain modification, but the Bill faced the same fate as earlier and could not passed due to dissolution of Parliament.

In 1985 Congress government headed by Rajiv Gandhi introduced the Bill. Here the Bill indulged in conflict due to exclusion of Prime Minister from the jurisdiction of Lokpal. This Bill faced intense opposition. The Opposition Parties demanded inclusion of Prime minister, but the ruling party was disagreed. The ruling party referred the matter to Joint Select Committee of the House for opinion. All of sudden the Bill was withdrawn by the then Government without furnishing any reason.

In 1989 The National Front Government introduced Lokpal Bill. This time the ruling party had included Prime Minister within the jurisdiction of Lokpal. But the bill degenerated owing to dissolution of the house in 1990.

The B.J.P Government headed by Atal Bihari Vajpayee attempted to pass the Bill, but again it was failed due to dissolution of house.

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<sup>3</sup> INDIAN POLITY by M.laxmikant (5<sup>th</sup> edition)

<sup>4</sup> [www.viamediationcentre.org/readnews/MTYz/The-Timeline-and-History-of-lokpal/](http://www.viamediationcentre.org/readnews/MTYz/The-Timeline-and-History-of-lokpal/)

<sup>5</sup> Lectures on Administrative Law by Dr Rega Surya Rao(2<sup>nd</sup> Edition) Asia Law Series

Since the first attempt in 1969 , the Lokpal Bills were introduced in 1971, 1977 , 1985 , 1989 , 1996 , 1998 , 2005 , 2008 . and 2011. But every time The Lokpal Bill failed to metamorphose into a full-fledged Act.

## **INDIAN ANTI-CORRUPTION MOVEMENT 2011**

With a series of continuous failure of Parliament of India to bring Lokpal Law had agitated the people of India .It was assumed by people that , there was lack of political will to bring such an important anti-corruption legislation. The public dissatisfaction burst out in 2011 , which compelled the Government to enact the Lokpal and Lokayuktas Act 2013. The credit for passing of Historical Lokpal and Lokayuktas Act 2013 goes to Anna Hazare, a Gandhian leader ; who sat on fast-unto-death in Jantar Mantar Road , New Delhi demanding creation of Jan Lokpal Act. India witnessed a nation-wide agitation and strike for creation of Lokpal Law. Nation wide agitation , protest , demonstration had compelled the then Government to introduce and pass The Lokpal and Lokayuktas Act ,2013 in order to curb corruption in Government departments.

## **HOW LOKPAL SHALL COMBAT WITH CORRUPTION?**

A detailed analysis of the provisions of The Lokpal and Lokayuktas Act 2013 provide us idea about working of Lokpal for curbing corruption. The passing of this Act was described as historic movement of India. Let us understand how Lokpal is an important instrument for preventing corruption in Public offices.

### **1) CONSTITUTION OF LOKPAL:**

As per Section.3 of The Lokpal and Lokayuktas Act 2013 , Lokpal is a multi-membered body. It consists of a Chairperson and such number of members not exceeding eight. This provision signifies fairness in proceeding as well as absence of arbitrariness of Lokpal while addressing grievances of public against corruption.

### **2) ELIGIBILITY OF LOKPAL**

The institution of Lokpal shall be successful in eradicating corruption only if , an independent, impartial person of exemplary character with impeccable integrity shall hold the position.

Section 3(2) postulates who can become Chairperson of Lokpal. The eligibility criterion for Chairperson is as follows :

- (a) he is or has been a Chief Justice of India or
- (b) he is or has been a Judge of the Supreme Court or
- (c) he is an eminent person who fulfils the eligibility specified in clause (b) of sub-section(3)

Appointment of Judges of Supreme Court in citizen's grievance redressal mechanism has strengthened the confidence of common man upon Lokpal. The rationale behind is that Indian Judiciary is an Independent institution and it lacks interference from both executive and legislative organs of Government. Even our Constitution also made provision for isolating Judiciary from interference of Executive.<sup>6</sup> The first Lokpal of India is Justice Pinaki Chandra Ghosh , who is a retired Supreme Court Judge.

### 3) ELIGIBILITY OF MEMBERS

The Act has made provision for maximum eight number of members. Again out of total numbers 50% weightage has been conferred to Judicial Officers and other 50% weightage has been conferred to non judicial persons.

A person shall be eligible to be appointed as a Judicial Member if

- (a) he is or has been a Judge of the Supreme Court or
- (b) is or has been a Chief Justice of a High Court;

A person shall be eligible to be appointed as a Member other than a Judicial Member, if he is a person of impeccable integrity and outstanding ability having special knowledge and expertise of not less than twenty-five years in the matters relating to

- anti-corruption policy,
- public
- administration,
- vigilance,
- finance including insurance and banking,

<sup>6</sup> Article.50 – separation of Judiciary from executives.

- law and
- management.

Again the proviso states that not less than fifty per cent of the Members of the Lokpal shall be from amongst the persons belonging to the Scheduled Castes, the Scheduled Tribes, Other Backward Classes, Minorities and women.<sup>7</sup>

From the eligibility criterion of Lokpal and members, it is quite convincible that combination of both eminent Judicial Officers along with competent experts of non-judicial Officer would become successful in safeguarding the citizens of India against misuse of power by Corrupt Government servants.

#### **4) DEBARRING THE CHAIRPERSON AND MEMBERS FROM REAPPOINTMENT AND POST RETIREMENT EMPLOYMENT UNDER GOVT OF INDIA**

Sometimes the allurements of Post-retirement jobs under Government Of India may astray the enquiry against top most leaders or higher positioned officials. To estrange any such opportunities, The Lokpal and Lokayuktas Act 2013 has disqualified Chairperson as well as members from holding any following posts after retirement or on ceasing to hold office(U/s.8). Hence, Lokpal and members(after ceasing to hold office) are ineligible for

- (a) reappointment as the Chairperson or a Member of the Lokpal;
- (b) any diplomatic assignment, appointment as administrator of a Union territory and such other assignment or appointment which is required by law to be made by the President by warrant under his hand and seal;
- (c) further employment to any other office of profit under the Government of India or the Government of a State;
- (d) contesting any election of President or Vice-President or Member of either House of Parliament or Member of either House of a State Legislature or Municipality or Panchayat within a period of five years from the date of

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<sup>7</sup> Section.3(2) of the Lokpal and Lokayuktas Act 2013

relinquishing the post.

## 5) INQUIRY WING<sup>8</sup>

Section.11(1) has made provision for constitution of Inquiry Wing for conducting inquiry into any offence alleged to have been committed by a Public servant , which is punishable under the Prevention of Corruption Act 1988.

From this provision it is quite clear that allegation of corruption can be made only against Govt servant and such alleged offence must be punishable under The Prevention of Corruption Act 1988.

Lets look at some of the important offences under Prevention of Corruption Act 1988 :

- Taking gratification other than legal remuneration
- Taking gratification with the purpose of influencing a public servant , through illegal and corrupt means.
- Act of criminal misconduct by the public servant etc.

It has been mentioned in the Act that the inquiry wing shall be headed by the Director of Inquiry.

## 6) PROSECUTION WING<sup>9</sup>

The nomenclature “Prosecution Wing” itself denotes that this wing is meant for prosecuting the alleged corrupt Public servant.

Section.12(1) has made provisions for constitution of prosecution wing for the purpose of prosecution of public servant in relation to any complaint by the Lokpal under this Act.

Further Section.12(2) has empowered the Lokpal to give directions to the Director of Prosecution to file a case in accordance with the findings of investigation report before the Special Court.

The prosecution wing is charged with taking all necessary steps pertaining to prosecution of public servant in respect of any offence punishable under Prevention of Corruption Act 1988.

## 7) JURISDICTION<sup>10</sup>

<sup>8</sup> Chapter III of the Lokpal and Lokayuktas Act 2013

<sup>9</sup> Chapter IV of the Lokpal and Lokayuktas Act 2013

<sup>10</sup> Chapter VI of the Lokpal and Lokayuktas Act 2013

One of the most striking salient feature of this Act is vast jurisdiction of Lokpal in respect of inquiry. Lokpal's jurisdiction has covered all categories of public servants , including Group A , Group B , Group C , Group D officers and employees of Central government.

Important landmark step is inclusion of Prime Minister within the purview of Lokpal. Although the Prime Minister has been brought under the jurisdiction of Lokpal but some subject matters relating to PM has been excluded from the ambit of Lokpal.

Ministers of Union and members of Parliament also falls within the jurisdiction of Lokpal.

Institutions which are financed fully or partially by government of India are also brought under the Jurisdiction of Lokpal as per Section.14(f).

It also covered any society or trust or body that receives foreign contribution above Rs.10 lakh.

## 8) WHO CAN MAKE A COMPLAINT ?

Anyone can make a complaint . There is no restriction on who can be a complainant. A complaint under the Lokpal Act should be in the prescribed form and the alleged offence must fall within the ambit of an offence under The Prevention of Corruption Act 1988 against a public servant.

## 9) PROCEDURE IN RESPECT OF PRELIMINARY INQUIRY AND INVESTIGATION

The core of The Lokpal act lies in its procedure while entertaining a complaint received from public. Lokpal is meant for looking into the complaints of corruption.

### i.Preliminary Inquiry

Section.20 provides that when Lokpal received a complaint, he may order a preliminary inquiry against the alleged public servant by its Inquiry Wing. The purpose behind the order of inquiry is to ascertain whether there exists a *prima facie* case for proceeding in the matter.

The Lokpal , with respect to Central Government employees , may refer the complaints to Central Vigilance Commission. On complaints referred to CVC by the Lokpal , the CVC will send its report of preliminary enquiry in respect of Group A and B Officers back to the Lokpal for further decision. While complaints in respect of Group C and D , the CVC will proceed further in exercise of its own powers under CVC Act and subjects to reporting and review by Lokpal.

Section.20(2) elaborately explain the procedure for preliminary inquiry. The Inquiry Wing or any other agency will have to complete its preliminary inquiry and submit report to the Lokpal within a specified period. This provision has mandates the function of Inquiry Wing in a time bound manner. It has to submit inquiry report within 60 days from the date of receipt of the reference.

Inquiry Wing has to seek the comments on the allegation both from the public servant as well as the competent authority prior to submission of report. There will be a 'competent authority' for each category of servant. For instance . for the Prime Minister , it is Loksabha , and for other Ministers it will be Prime Minister . And for department officials , it will be the Minister concerned.<sup>11</sup>

The reports received from Inquiry Wing shall be considered by a bench of Lokpal consisting of not less than 3 members. Before deciding for investigation , the Lokpal is bound to follow the second principle of Natural Justice i.e. *audi alteram partem*. An opportunity of being heard is given to the alleged public servant in order to decide whether there exists a *prima facie* case. After that Lokpal shall proceed with following actions

- Order of a full investigation by any agency , or
- Initiation of Departmental proceeding or any other appropriate action against the concerned public servant by the competent authority , or
- Closure of proceeding against the public servant and to proceed against the complainant

The preliminary inquiry should normally be completed within 90 days of receipt of the complaint.

## **ii. Investigation**

Lokpal shall refer the matter for investigation by any agency if there is a *prima facie* case existing. The agency has to complete the investigation within a period of six months from the date of its order. Lokpal may extend the said period by a further period not exceeding of six months at a time for the reasons to be recorded in writing. The agency is required to file its investigation report in the Special Court and a copy before the Lokpal<sup>12</sup>. Thereafter a bench consisting of not less than three members of the Lokpal shall consider report received by it from any agency and after obtaining the comments of the competent authority and the alleged public servant may—

- (a) grant sanction to its Prosecution Wing or investigating agency to file chargesheet

<sup>11</sup> The Hindu newspaper on dated 23<sup>rd</sup> March 2019 under title "What are the powers and duties of Lokpal?"

<sup>12</sup> Section.20(6) of The Lokpal and Lokayuktas Act 2013

or direct the closure of report before the Special Court against the public servant;

- (b) direct the competent authority to initiate the departmental proceedings or any other appropriate action against the concerned public servant.<sup>13</sup>

## 10) POWERS OF LOKPAL

The Lokpal has power of search under the provisions of the Code of Criminal Procedure 1973. Similarly he has some powers under the Provisions of the Code of Civil Procedure 1908. The powers are to summon , evidence , examination of witnesses and requesting any records.

He has power to recommend transfer or suspension of public servant in connection with alleged charge of corruption.<sup>14</sup>

## 11) ATTACHMENT AND CONFISCATION OF PROPERTY OF PUBLIC SERVANT ACQUIRED BY CORRUPT MEANS

This Act has incorporated provisions for attachment and confiscation of property of public servants acquired by corrupt means , even while the prosecution is pending <sup>15</sup>.

## 12) ALL PROCEEDINGS IN A TIME BOUND MANNER

This Act has laid down clear timelines within which every preliminary inquiry , investigation is required to be completed. In this way , it can provide a speedy redressal to citizen's grievances. For preliminary inquiry it is three months which may be extended by three months. For investigation , it is six months , which may be extended by another six months at a time. Completing the whole proceeding in a time bound manner would eventually lower the rate of corruption in country.

## 13) DECLARATION OF ASSETS

In order to eradicate corruption , one of the best measure is introduction of transparency. Chapter XIII has made compulsory provisions for all public servant to make a declaration of his own , spouse , dependent children's assets and liabilities. If he does not declare so , it is presumed to be assets acquired by corruption.

## DRAWBACKS OF INSTITUTION OF LOKPAL

<sup>13</sup> Section.20(7) of The Lokpal and Lokayuktas Act 2013

<sup>14</sup> Section.32(1) of The Lokpal and Lokayuktas Act 2013

<sup>15</sup> Section.29(1) of The Lokpal and Lokayuktas Act 2013

Although the Lokpal and Lokayuktas Act 2013 is a strong anti corruption legislation , but it is also not free of criticism. The Act has tried to curb corruption from all level , but still there exists some lacunae and loopholes which perhaps frustrate the ambition of corruption free nation.

1. People demanded that Lokpal must be free from political influence. But the appointment is subject to recommendation of Selection Committee<sup>16</sup> which consists of the Prime Minister as Chairperson; the Speaker of the House of the People , the Leader of Opposition in the House of the People as members. Except the Chief Justice of India and nominated member , all other are politically influential persons. Therefore a reasonable doubt may arise regarding proper selection of Lokpal and members.
2. There is no crystal clear definition of words ‘eminent jurist’ and ‘a person of integrity’. Hence , the appointment of Lokpal can be manipulated in absence of proper criterion with regard to ‘eminent jurist’ and ‘a person of integrity’.
3. The Lokpal and Lokayuktas Act is an important anti-corruption legislation, but still it lacking Constitutional backing. It is made as a non-Constitutional Body.

Keeping in mind the recommendation of the Standing Committee , Government introduced Constitution 116<sup>th</sup> Amendment Bill 2011 with an aim to conferring Constitutional status to the Lokpal and Lokatyukta .But it failed to pass in the Parliament.

4. Some argued that the biggest flaw of this Act is exclusion of Judiciary from the purview of the Lokpal.
5. Fixing limitation period of 7 years for filing complaint also attracted criticism .
6. Section.46(1) has prescribed heavy punishment of imprisonment up to 1 year and fine up to Rs.1 lakhs for false and frivolous complaint.

In 2020-21 Lokpal received only 110 complaints<sup>17</sup> , which is unbelievable in present corruption scenario of our country. The fear of heavy punishment perhaps deterred the genuine aggrieved from filing the complaints. If this trend persists , then our aim of building corruption free nation wont materialize in future.

7. This Act has emphasized more on form of complaint rather than substance.
8. It has made Lokpal as toothless as Lokpal cannot suo moto proceed against any public servant.

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<sup>16</sup> Section.4(1) of the Lokpal and Lokayuktas Act 2013

<sup>17</sup> The Economics Times on dated 7<sup>th</sup> June 2021

9. Although the Prime Minister has been brought under the jurisdiction of Lokpal but some subject matters relating to PM has been excluded from the ambit of Lokpal. The excluded subject matters are international relations, external and internal security, public order, atomic energy and space.
10. A very non transparent procedure has been mentioned for dealing with complaints against the Prime Minister.

## WAY FORWARD

We are celebrating amrit mahostav or 75 years of our Independence , but still we have not succeeded in becoming a developed nation. The slow growth rate of India has revealed how rampant corruption is throughout the country. Corruption has flourished in India in last few years due to lack of effective anti-corruption mechanism. With the advent of institution of Lokpal , a ray of hope for building corruption-less nation has arisen. War with corruption is the mother of all wars. For successfully fighting with corruption the lacunae and loopholes in existing Act should be rectified . In recent times corruption in educational institutions and health care centers have increased tremendously. A proper blueprint is required to tackle corruption at this level. An endeavor is required on the part of Lokpal to redress the grievance of citizens as expeditiously as possible with transparent manner. The appointment of Lokpal must be done transparently. Already we are very late to enact and implement Lokpal Law, but fortunately we have started walking on right path towards achieving an accountable and transparent Governance. In view of various provisions embodied in the Lokpal and Lokayuktas Act , it is quite perceivable that institution of Lokpal is inevitable for uprooting corruption and building corruption free India.

For establishing corruption free India everyone must remember the motto of Lokpal i.e. **“Ma Gridhah Kasyasvidhanam”** , which means do not be greedy for anyone’s wealth.