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## A CRITICAL APPRAISAL OF THE POWERS AND FUNCTION OF THE LOKPAL IN INDIA

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### ABSTRACT

*Corruption is just another type of tyranny*

- Joe bidden

Maladministration is like a termite which erodes the function and governance of a nation. It hinders in full functioning of the administrative authorities. As a welfare state, administration plays an important role in influencing the socio-economic order of current society. corruption is one of the main problems that our country face. Lokpal and Lokayukta was introduced in 2013 for tackling corruption problem and public accountability of administrative authorities.

**Keywords:** Lokpal, Lokayukta, Corruption, Administration and etc.

**Introduction:**

Corruption was one of the main challenges facing in India for several decades. As vast power was given to the administration authorities it has led to maladministration and misuse of power by the administrative authority. Corruption is the key feature which leads to maladministration and misuse of power by the administrative authorities. According to Transparency International in 2005, it is said that more than 62% people have to give bribe to the public servants to make their work done. India ranks a lowly 81 out of 180 countries on Transparency International's Corruption Perception Index. It affects the economic growth and stability of the developing countries. Though there are legislation and judiciary to control the corruption it was extended only up to a certain limit. Parliament can't directly control the corruption and lengthy process of the court has said as limitation in controlling corruption in India. Hence the need of independent institution for regulating the clean administration. Administrative reforms commission suggested the government about the ombudsman model to implement in India in its interim report on 14 October 1966. Lokpal and Lokayukta was the statutory body which works on the prevention of corruption in India.

This paper focuses on the origin, background, powers and functions of the Lokpal and Lokayukta and other things which led to the development of Lokpal and Lokayukta.

**History and origin of Lokpal:**

Lokpal and Lokayukta was not the Indian origin concept. It was based on the ombudsman concept. Ombudsman in terms of utility which means a watchdog for the administration. It was the concept evolved in Sweden in 1809. Later in 20<sup>th</sup> century after 2<sup>nd</sup> world war the concept developed and grown all over the world. Ombudsman model led to open government where the people control over the powers of the state. The first Swedish ombudsman was Lars Augustin Mannerheim<sup>1</sup>. Ombudsman is a person not only investigate up on the complaints registered he also investigate up on his own.

This concept this then developed in various countries like Denmark; Finland; Sri Lanka. Finland was the first country to adopt ombudsman concept in 1913. Great Britain adopted ombudsman model in 1967 based on Whyatt Report of 1961. Parliament commissioner act was

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<sup>1</sup> Parliamentary Ombudsman of Finland' website  
<http://www.oikeusasiamies.fi/Resource.phx/ea/english/ombudsman/...>

passed in 1967. Parliamentary commissioner is considered as permanent appointee with the security of service of high court judge. Parliamentary commissioner was appointed on advice of the prime minister by the crown. Great Britain was the first eminent nation to bring anti-corruption institution in this democratic world. Subsequently it was adopted in Singapore, Malaysia and India as well. But in US the bill was not passed and never become an act. However, the congressional investigations and grievance cells established in various departments, like the police review boards, discharge the work of ombudsmen.<sup>2</sup>

M.C. Setalvad, gave his speech in All India Lawyers' conference in 1962 suggested an idea about setting up institution similar to ombudsman. The concept was introduced by Santhanam committee by central vigilance commission. This was sole authority during that time about the complaints of corruption. This idea was then investigated by administrative reforms commission headed by Morari Dasia and the suggestions was placed before government in its report on 14<sup>th</sup> October 1966. Suggestion was to execute two tier monitoring committee that is Lokpal at union level and Lokayukta at state level.

As the recommendation the Lokpal and Lokayukta bills was introduced in parliament in 1968<sup>3</sup>. But the bill was not passed. There were several attempts in passing the bill but it failed 8 times till 2011 in house of people but not passed to council of state.

Attempt to pass the bill:

1.1968-Lapsed 4<sup>th</sup> house of people dissolved

2.1971-Lapsed due to dissolution of house of people.

3.1977-Before Joint select committee recommendations 1977 the sixth house of people dissolved and the Bill lapsed.

4.1985-Bill withdrawn.

5.1989-Bill lapsed due to the dissolution of the 9<sup>TH</sup> House of people.

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<sup>2</sup> Gellhorn, when Americans Complain (1966)

<sup>3</sup> M P JAIN and S N JAIN *Principles of Administrative Law* 14<sup>th</sup> edition Wadhwa and company Nagpur 2003 p.938.

6.1996-Committee presented its Report on 09.05.1997. Before the Government could consider the amendments proposed by the Committee, the 11<sup>th</sup> house of people dissolved and the Bill lapsed.<sup>4</sup>

7.1998-Bill could not passed because of controversy of inclusion of Prime Minister within the jurisdiction.

8.2001- Lapsed due to dissolution of House of people.

9.2005-Again, the bill introduced.<sup>5</sup>

In 2002 M.N. Venkatachaliah headed the committee to review the working of Constitution of India. This committee also recommended to setup Lokpal and Lokayukta and suggested that the Prime Minister ought to be kept out of the ambit of the Lokpal.

Later in 2005 committee headed by Veerappa Moily suggested to setup Lokpal without delay. In 2011 a group of ministers headed by Pranab Mukherjee based on these proposals worked to examine the Lokpal and taken measures to eradicate corruption in India. Anna Hazare started a movement called “India against Corruption”. It was nationwide protest led by Anna Hazare.

After this widespread outbreak the bill was passed in both the houses of the parliament in 2013 and the assent was given by president in 1<sup>st</sup> January 2014 and came into force from 16<sup>th</sup> January 2014 in the name of Lokpal and Lokayukta Act 2013.

### **Lokpal and Lokayukta Amendment Act 2016:**

Leader of the single largest opposition party in House of People to be the member of the select committee in the absence of the recognized opposite party leader.

Section 44- Time limit for disclosure of assets and liabilities were 30 days of public servant but amended as prescribed form said by the government.

When any non-governmental organization receive funds of more than Rs. 1 cr from government or receive foreign fund of more than Rs. 10 lakhs then the assets of the trustees and board

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<sup>4</sup> Compendium on Parliamentary Enactments

<sup>5</sup> I.P. MASSEY'S *Administrative law* 10<sup>th</sup> edition EBC 2022 p.550

members must be disclosed to the Lokpal. The bill provides extra time to trustees and board members to declare about their properties also their spouses too.

**Lokpal and its structure:**

Lokpal means defender of people which is derived from Sanskrit word Lokpala. It is a statutory body which solves the problems related to corruption in union level. The chairman of Lokpal as August 2024 is Shri Justice Ajay Manikrao Khanwilkar<sup>6</sup>.

**Structure of Lokpal:**

It consists a chairperson and 8 other members. The chairperson can be:

- 1.The retired chief justice of India
- 2.The former supreme court judge
- 3.Eminent person who is well versed in the field of anti-corruption
4. members must be judicial member and 50% of the members must be from SC/ST/OBC and Woman.

These people shall be appointed by president by the recommendation of select committee that constitutes:

- 1.Prime Minister
- 2.Speaker of Lok Sabha
- 3.Leader of opposition in Lok Sabha.
- 4.Cheif Justice of India or any Supreme court judge appointed by Chief Justice.
- 5.One eminent Jurist

Expiration time: Chairperson-3 years or till the age of 70.

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<sup>6</sup> <https://lokpal.gov.in/>

Members – till age of 70 or 5 years which is earlier.

### **Jurisdiction of Lokpal:**

Prime Minister, Minister of Union, Members of Parliament as well as Union officials ranked as A, B, C, D.

Chairpersons, members, officers and directors of any board, corporation, society, trust or autonomous body either established by an Act of Parliament or wholly or partly funded by the Union or State government<sup>7</sup>

Also covers body or trust which receives foreign fund of more than 10 lakhs.

Exception for Prime Minister: Public Order, International relations, Security and Atomic energy and space exploration.

Exception to ministers: Parliament speech and casting of votes in Parliament.

Complaints against Public servants must be in accordance with prevention of corruption act 1988.

### **Branches of Lokpal:**

Lokpal has 2 main branches where their functions were done through it.

1. The Administrative branch will be headed by an officer of the rank of Secretary to Govt of India and will have in its fold:
  - a. Inquiry/ Investigation branch
  - b. Prosecution wing
  - c. Central Registry
  - d. Scrutiny wing

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<sup>7</sup> [https://lokpal.gov.in/?about\\_us?Jurisdiction\\_and\\_Functions\\_of\\_Lokpal?0103](https://lokpal.gov.in/?about_us?Jurisdiction_and_Functions_of_Lokpal?0103)

- e. Establishment, Coordination, Media and Publication
  - f. Budget, Finances and Accounts
2. The Judicial Branch will be headed by a Judicial officer of appropriate level and will assist the Lokpal discharge their judicial functions.

### **Functioning of Lokpal:**

As soon as the complaint is received, the Public Servant will be called for an explanation of whether the prima facie exists. Then, the preliminary inquiry is by its inquiry or any other agency, and the agency may be by CBI. CVC will forward the complaints related group A, B of public servant group C, D will be by vigilance act.

Inquiry committee must submit report within 60 days with the comments from both public authority and competent authority before the submission of report.

Lokpal bench gives opportunity to public authority to seek his or her defence whether to proceed in investigation.

Lokpal may order for full investigation, or it may order to start departmental proceedings or end the proceedings.

If the allegation is false complainant will be taken action against him.

After investigation, the report must be filed before the appropriate court of jurisdiction and also submitted to Lokpal.

A Bench of at least three members will analyse the report and grant sanction to the Prosecution Wing to take action against the public official according to the agency's charge-sheet.<sup>8</sup>

Also ask competent authority to take departmental action and closure of the investigation report.

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<sup>8</sup> [https://lokpal.gov.in/?about\\_us?Jurisdiction\\_and\\_Functions\\_of\\_Lokpal?0103](https://lokpal.gov.in/?about_us?Jurisdiction_and_Functions_of_Lokpal?0103)

Previously, competent authority has the power to appoint or dismiss a public official he was the one to grant sanction according to Section 19-Prevention of Corruption Act and section 218 of BNSS<sup>9</sup>. But now it is been exercised by the Lokpal.

**Powers of Lokpal:**

1. Seize assets
2. Suspension or removal from the job
3. Lokpal has the authority to issue orders to prevent records from being destroyed during the preliminary investigation.
4. Supervision power on the CBI for the cases referred by Lokpal.
5. Some cases Lokpal has given authority of civil courts.
6. In the absence of the Government or a competent authority, the Lokpal has the jurisdiction to provide sanctions for the prosecution of public officers.

**Criticism of existing Lokpal:****Appointment delay and vacancies:**

Major issue is the delay in appointing Lokpal members, which has plagued the institution since its inception. For instance, despite the Act being passed in 2013, the first Lokpal was not appointed until 2019, significantly delaying the institution's functioning.<sup>10</sup> There are vacancies which is not filled for years.

**Exclusion of Judiciary in Lokpal:**

One of the major criticisms is the exclusion of the judiciary from its jurisdiction. Its authority extends only to legislative and executive authority, which excludes the judiciary. Due to this exclusion, corruption in the judiciary is an emerging problem.

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<sup>9</sup> Smt. Neera Yadav vs C.B.I

<sup>10</sup> K. Singh, The Lokpal Delay: Implications for Anti-Corruption Efforts, 15 Indian Gov't Rev. 47 (2020).



**Restrictions on judiciary:**

Lokpal has limited its authority in investigating the Prime Minister of India in the field of security, public relations, etc., for investigating against Prime Minister 2/3rd majority of Lokpal members, which restricts the full accountability of the Prime Minister.

**Dependence of other agencies:**

Due to dependence of investigation on other agencies like CBI its function is limited. And in various factor CBI is influenced by political factor. And there was a delay in the case of rendering action against the public authority.

**Political influence in appointing process:**

As the members and chairman was recommended by select committee. Select committee was political peoples and the political interference were there in the appointment of members. And the members may influence by political agendas and doesn't act independently.

**Lack of enforcement powers:**

As the enforcement power is not in authority of Lokpal it is with the concerned department competent authority it may have delay in process or not executed.

**Public awareness and accessibility:**

Lokpal as a statutory body it is not known for every citizen of the India and lack of awareness about how to lodge complaints. It is limited in action as of July 2024 only 31 complaints were registered. Due to lack of public participation Lokpal is risks becoming underutilized institution.

**Slow investigation and bureaucratic delay:**

The process of investigation has been criticised for delay, and the involvement of the CBI in the investigation process causes a subsequent delay. Lack of clear time-bound mechanism to complete the investigation it takes significant amount of time. Lokpal has disposed 68% of complaints without any action taken against the public servants said by Parliamentary panel

report. Only 4 complaint was fully investigated information by Lokpal to the Parliamentary Panel.

**Lack of accountability of Lokpal members:**

Lokpal have a limited amount of accountability of its members among themselves.

**Lack of adequate resources and infrastructure:**

Lokpal is insufficient to handle large number of complaints. It is often understaffed, lack of proper infrastructure. It curtails the efficient working of Lokpal mainly in independent investigation.

**Reforms needed in Lokpal:**

**Broadening the jurisdiction:**

Broadening the jurisdiction of Lokpal by including Judiciary and private sectors individuals and companies who indulge in corruption.

**Strengthening the autonomy and independence:**

As the investigation process is aided by CBI it can be standalone in investigation. And in select committee people from the civil society can be appointed for the purpose of gaining confidence among the citizens of India. Must have full control over the budget without the dependence of ministries.

**Increased transparency:**

Periodic publishing of the reports and the findings by the Lokpal and open hearing of the complaint can build in trust among the people.

**Streamlining and speeding up investigation:**

Time bound investigation and the specials courts dedicated for the purpose of the Lokpal cases might be much efficient in speeding up the enquires.

**Public participation:**

Public participation can be created by providing the track of the case and the stage and encouraging the whistle blowers to expose more of the crime.

**Clear guidelines for complaints:**

There must be issue of clear guidelines for raising up of the complaints and the punishment for the redressal.

**Performance Audits and Accountability:**

Independent body for auditing and supervision of the Lokpal periodic auditing and checks and balances among the members of the Lokpal will increase in accountability of the Lokpal working.

**Public awareness:**

Arrangement of public campaign to increase in the awareness of Lokpal among the citizens to increase in the efficient working of the Lokpal.

**Conclusion:**

To tackle the problems of corruption, the institution must be strengthened in both functional autonomy and manpower. Three organs of the government must be free from corruption and full efficient working. The current Lokpal has too little independence and future legislation is pointless unless the issue of executive influence over these organisations is resolved. Lokpal plays a major role in curbing corruption in India and improving governance. It is an institution which addresses past issues and emerging issues, too. It ensures public servant accountability and transparency, which builds trust among citizens.

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