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**A CRITICAL SURVEY OF THE LOKPAL AND LOKAYUKTA  
ACT**

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**ABSTRACT**

Corruption in India has become culture these days as it is in practice from time immemorial. First Administrative Commission advised to establish Ombudsman type institution for redress of citizens' grievances to curb this evil. For giving effect to the recommendations of First ARC, from 1968 to 2011 Lokpal and Lokayukta Bill was introduced but it finally passed in the year 2013 after the pressure of huge public agitation. This study is an effort to figure out the loopholes in the Lokpal and Lokayukta Act, 2013. The aim of the study is to provide a critical analysis of the Act.

Corruption is a deep rooted cancerous evil of our country. There are lots of laws beautifully drafted to curb this evil but the weak side is our institutional framework. For the establishment of strong institutional framework and to give effect to the recommendations of the First Administrative Reforms Commission, finally The Lokpal and Lokayukta Act, 2013 was passed by Parliament in December 2013, and got Presidential assent on 1 January 2014.

The First Administrative Reforms Commission was appointed on 25<sup>th</sup> June, 1966. The ARC made an interim report on 20<sup>th</sup> October, 1966, in which it advocated the adoption of the Ombudsman type institution for redress of citizens' grievances.<sup>1</sup> In the special circumstances of India, ARC recommended two special institutions for the redress of citizens' grievances. One may

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<sup>1</sup> Para 3 of the Report.

be designated as Lokpal at the centre for dealing with the complaints against the administrative acts of the Minister or Secretaries and another authority will be Lokayukta in the state for dealing with the complaints against administrative acts of other officials. These institutions were to be set up on the pattern of the institution of Ombudsman in Scandinavian countries and the parliamentary commissioner for investigation in New Zealand. Judiciary was not included by the ARC in the purview of Lokpal as in New Zealand.

In the year 2011, again (as it was introduced previously from the year 1968 to 2011 but never passed) Lokpal Bill was introduced in the Lok Sabha after the demonstration by the public in the leadership of Team Anna. But it was withdraw after the recommendation of the Standing Committee and decided to introduce a thoroughly revised bill for carrying out the necessary amendment. Consequently Lokpal and Lokayukta Bill, 2013 was passed by both houses.

### **THE LOKPAL AND LOKAYUKTA ACT, 2013: A CRITICAL ANALYSIS**

#### **(1) Statement of Object-**

Act to provide for the establishment of a body of Lokpal for the Union and Lokayukta for States to inquire into allegations of corruption against certain public functionaries.

#### **(2) Establishment of Lokpal-**

As per section 3 of the Act maximum strength of the members of the Lokpal would be 8, out of which 50% shall be judicial members. The proviso attached with the section stipulates that not less than 50%, i.e. four posts, 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. Again, this is mandatory provision. The strange position is that five categories are reserved against four posts. This could not be possible unless two categories merged as one. In my opinion there is no need of quota system in this institution. If a person is highly efficient and impartial one, he should be selected irrespective of caste, creed, sex or religion.

Selection Committee, for the selection of Lokpal and its Members, is having majority of political persons. Lokpal is meant for combating corruption from politics and other government departments. This shows a great controversy that how could the persons, who are going to be disclosed the corruption among them, could appoint Lokpal. Obviously, the presence of the political persons in the selection committee will create political influence on the Lokpal. Although

the Search Committee will recommend the names selection of the Chairperson and Members of the Lokpal but on the other hand it is also give power to selection committee to consider any person who is not recommended by search committee. In this way there is no longer any value of the recommendations of the search committee.

Another shortcoming with the selection Committee that the participation of the Chief Justice of India or his nominee. The Constitutionality of the Sec. 4(1) (d) was questioned in Kerala High Court on the ground that there would be an obvious conflict of interest when the Chief Justice of India or his nominee who could well be appointed the Lokpal are themselves part of the Selection Committee that is to recommend to the President, the names of the persons to be appointed as the Lokpal and its members.<sup>2</sup> The petitioner contends that the inclusion of the Chief Justice of India or his nominee in the Selection Committee is a conscious attempt to make the judiciary a part of the executive function, as the legislation passed is without due deliberations on all aspects by the parliament and the consequences attached to such a process, and that the inclusion of the Chief Justice of India or his nominee, by itself in the Selection Committee will not make the appointment or the appointee a 'holy cow'.<sup>3</sup>

Section 4 (2) provides that no appointment of a Chairperson or a Member shall be invalid merely by reason of any vacancy in the Selection Committee. This position can ever be aroused? The posts of Prime Minister, Lok Sabha Speaker, Leader of Opposition in Lok Sabha or the Chief Justice of India can never be vacant. The situation can only be raised in respect of the "eminent jurist". But the appointment of the "eminent jurist" also depends upon the Chairperson and Members of the selection committee. When these posts (post of chairperson and members) can never be vacant, then how the post of "eminent jurist" could be ever vacant? This provision gives space for manipulation by the political persons.

### **(3) Jurisdiction of Lokpal-**

Lokpal has jurisdiction over Prime Minister but it is subject to some limitations. Lokpal may not hold any inquiry against the Prime Minister if allegations relate to International relations; External and internal security of the country; public order; Atomic energy and Space, and further providing that any decision of the Lokpal to initiate preliminary inquiry or investigation against the Prime Minister shall be taken only by the Full Bench with a majority of 2/3rd and that such

<sup>2</sup><http://www.livelaw.in/lokpal-lokayuktas-act-commentary/>

<sup>3</sup> <http://www.livelaw.in/constitutionality-section-41d-lokpal-lokayuktas-act-challenge-high-court-kerala/>

proceedings be held in camera.<sup>4</sup> Restrictions putting on the jurisdiction to exercise over Prime Minister are not understandable regarding Atomic energy and Space. This department is directly under the control of Prime Minister. Who will inquire corruption in this department like Antrix Devas Scam<sup>5</sup>? When the Prime Minister is under the ambit of Lokpal, then there cannot be any reason that the department which is under control of the Prime Minister is kept out of the purview of the Lokpal.

#### **(4) Procedure in Respect of Preliminary Inquiry and Investigation-**

The procedure under section 20 regarding preliminary inquiry and investigation is confusing and having self-contradiction. It provides that after receiving a complaint, the Lokpal may order (a) preliminary enquiry to ascertain whether there exists a prima facie case; or (b) investigation by any agency where there exists a prima facie case. The proviso in the same section further provides that before ordering an investigation under Clause (b), the Lokpal shall call for the explanation of the public servant so as to determine whether there exists a prima facie case for investigation. The word 'shall' has been used in this proviso; it means seeking the explanation of the public servant is mandatory before ordering investigation of Lokpal. But what creates confusion is the last proviso in the same section. It stipulates that the seeking of explanation from the public servant before an investigation shall not interfere, with the search and seizure, if any, required to be undertaken by any agency. If we go to apply this provision then it clears that practically investigating agency could not work before any authorization by the Lokpal. It means agency could not get any power of search and seizure unless Lokpal authorizes the agency. on the other hand, unless the Lokpal seeks an explanation from the public servant he cannot order investigation. In this view the last provision seems to be of no value.

Section 23(1) provides notwithstanding anything contained in section 6A of the Delhi Special Police Establishment Act, 1946 Lokpal shall have the power to grant sanction for prosecution without any previous approval. Section 6A of DSPE Act specifies that the CBI cannot inquire or investigate into any offence committed by an officer of the rank of a joint secretary or above of the Government of India, and of equivalent rank in government-owned or controlled bodies, without the previous approval of the central government. The position is Lokpal has power

<sup>4</sup> The Lokpal and Lokayukta Act, 2013, Sec. 14

<sup>5</sup> In January 2005, a deal was finalized between Antrix, ISRO's commercial arm, and Devas, a Bangalore based multimedia Company, in which Chairman and other senior official had vested interest in the company which lead to the wrongful gain to the Devas of Rs. 578 Crores.

to grant sanction for prosecution without previous approval of Central Government, but what about inquiry and investigation.

Section 20 of the Lokpal Act empowers Lokpal to give order for inquiry or investigation to CBI without seeking permission of the central government. Which provision has overridden effect Sec. 20 of the Act of 2013 or Sec. 6A DSPE Act, does not clearly specify which would create confusion in future.

**(7) Supervisory Powers of Lokpal-**

Although the Act conferred supervisory powers to Lokpal upon CBI but these supervisory powers are only in respect of investigation. The budget of the CBI, appointment of its officials, receiving confidential report is still under control of the Central Government. It proves that CBI still not freed from political pressure.

**(8) Special Courts-**

Section 35 of the Act provides that the Special Court shall complete the trial within the maximum period of 2 years. It is an appreciating step towards speedy trial. But there is no clarification in case of non-completion of trial within a period of two years. This ambiguity would give the accused a chance to flee from justice and also if 'delay caused acquittal of accused' he will make all his effort to delay the proceedings.

Interestingly, the Parliamentary Committee had also stated: "The Committee believes that it cannot be the intention of the law that where acts and omissions by the accused create an inordinate delay in the preliminary inquiry and/or other factors arise which are entirely beyond the control of the Lokpal, the accused should get the benefit or that the criminal trial should terminate. For that purpose it is necessary to insert a separate and distinct provision which states that Clauses 23(2), 23(8) or other similar time limit clauses elsewhere in the Lokpal Bill, 2011, shall not automatically give any benefit or undue advantage to the accused and shall not automatically thwart or terminate the trial".<sup>6</sup>

**(9) Complaints against Chairperson, Members and Officials of Lokpal-**

The procedure of the removal of the Lokpal is extremely cumbersome. Removal is also in the hands of political person. Civil society groups had suggested that ordinary citizens also be

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<sup>6</sup> <http://www.snsindia.org/pdf/lokpal-2-epw-article.pdf>

empowered to make complaints against members of the Lokpal – a suggestion that was not accepted by the select committee and has not been included in the Act.<sup>7</sup>

Lokpal itself deal with the complaints against its officials. It puts question of fair investigation on the Lokpal as possibility of corruption cannot be ruled out from these offices. It is to think that how impartial and independent inquiry done by the Lokpal against its own officials. A suggestion made to the Standing Committee<sup>8</sup> was that an ombudsman be appointed by an independent committee, which would in a time-bound manner enquire into the complaints against Lokpal staff, and make recommendations to the Lokpal, which would be binding. However, the suggestion was not accepted.<sup>9</sup>

#### **(10) Prosecution for false complaints-**

Whoever makes any false and frivolous or vexatious complaint under this Act shall, on conviction, be punished with imprisonment for a term which may extend to one year and with fine which may extend to one lakh rupees. He shall also be liable to pay compensation to such public servant against whom he made the false complaint in addition to the legal expenses for contesting the case by such public servant.<sup>10</sup>

This provision create discourage among people from complaining. Where public servant proved innocent due to corruption in Lokpal or lack of evidence, the person who make complaint innocently will be punished. This provision also put fear in the mind of the complainant.

#### **(11) Limitation-**

The Lokpal shall not inquire or investigate into any complaint, if the complaint is made after the expiry of a period of seven years from the date on which the offence mentioned in such complaint is alleged to have been committed.<sup>11</sup>

It seems to be unreasonable restriction. If complaint is having sufficient and credible evidence of an offence then what will be the issue in examining the complaint.

#### **(12) Establishment of Lokayukta-**

The constitution of Lokayuta has been left on the States. Now the States have absolute liberty to in determining the power, composition and scope of the institution of Lokayukta. There

<sup>7</sup> <http://www.snsindia.org/pdf/lokpai-2-epw-article.pdf>

<sup>8</sup> See Report of the Parliamentary Standing Committee, p. 571.

<sup>9</sup> <http://www.snsindia.org/pdf/lokpai-2-epw-article.pdf>

<sup>10</sup> The Lokpal and Lokayukta Act, 2013., sec. 46

<sup>11</sup> Ibid., sec. 53

will be no uniformity in the constitution and powers of the Lokpal and Lokayuktas. There is also possibility of weak institution in the States.

Though the institution of Lokpal took a long period to become a reality at the Central level, similar institutions of Lokayuktas have in fact been setup and are functioning for many years in several States. Some of the States prescribed qualification for Lokayukta like Karnataka, Delhi and Andhra Pradesh and in the other only the eminent person having knowledge of law can be appointed as Lokayukta like Bihar and Rajasthan. Some of the States covers Chief Minister in its ambit and others can exercise its powers only upon Ministers (other than Chief Minister) and government employees. In some of the States Lokayukta look into matter related to Corruption and Maladministration, while in other States matters covered related to Corruption only.

### **OTHER CRITICISM-**

1. **Exclusion of Judiciary-** Judiciary is excluded from the ambit Lokpal. We have daily experience of corruption in judiciary from low level to high level. The reason was given behind the exclusion of judiciary that independence of judiciary should be maintained and it must be regulated and made accountable by a separate mechanism. For this purpose 'The Judicial Standards and Accountability Bill' is introduced but it is still pending and waiting to become an Act.
2. **No constitutional status-** Standing Committee was recommended for conferring Constitutional status to the institution of Lokpal and Lokayukta. But the Constitution (one hundred and sixteenth Amendment) Bill 2011, which provided for making the Lokpal a constitutional body, was defeated in the house and constitutional status was not given to the Lokpal body.
3. **No suo motu power to take cognizance** - No power is given to Lokpal to take cognizance of corruption suo motu as it can only act on complaints. If Lokpal has any credible information of any corruption, yet it is handicapped to take cognizance of the matter until someone does not complain.

### **STATUS OF LOKAYUKTAS IN STATES-**

The bitter fact is that the Lokayukta institutions have not been proven successful in curbing corruption. The reason behind this may be of political. States established these institutions to give a sense of confidence to the public that States provide them a platform for grievance redressal but government does not put their efforts seriously to make the working of institution effective and efficient.

The information about the working of Lokayukta does not reach to the public as annual reports are not published regularly. They are not having adequate resources and working staff. These institutions has been failed to create confidence in the public about impartial inquiry into allegation.

In *Ravinder Kumar vs State Of Haryana And Another*<sup>12</sup> (on 9<sup>th</sup> November 2016) the high Court observed that The Legislature of every State was well within its legislative powers to bring a suitable enactment, for setting up the institution of Lokayukta. For example, under the Andhra Pradesh Lokayukta Act, the Chief Minister, as such, has no role to play and consultation for appointment to the post of Lokayukta is to be held only with the Chief Justice of Andhra Pradesh High Court. Up-lokayukta is to be appointed not from amongst the judges of High Court, either sitting or former, but from a panel of District Judges whose names shall be forwarded by the Chief Justice.

The Court further observed that, similarly, in the States of Assam, Delhi and Gujarat, the Chief Ministers have hardly any role to play. In the State of Assam, Bihar, Delhi, Gujarat and Jharkhand, the Chief Justices of High Courts are consultee for the post of appointment of Lokayukta, as per the procedure provided under their Lokayukta Acts. However, in the States of Chhattisgarh and Haryana, Governor appoints the Lokayukta on the advise of the Chief Minister. Thus, Legislatures of different States, in their wisdom, have adopted different criteria and method for appointment and removal etc, in the matters of 31 of 56 appointments of Lokayuktas and the Up-Lokayuktas. In this view of the matter, statutory provisions deserve to be construed in the context of scheme of particular statute, as a whole, keeping in view the legislative intent and object of the Act sought to be achieved.

The appointment of Lokpal at the Centre and Lokayukta in some States are still pending and provisions are waiting to be implemented. From the whole critical study we can conclude that

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<sup>12</sup> <https://indiankanoon.org/doc/146444340/>

there are so many loopholes in the enactment which need to be removed. But still with some improvements it seems to be judicious. The main objective of this law is to give strength to the citizens so that they can raise their voice. The dying need is its proper execution.

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