

Ombudsman

Ombudsman is a Scandinavian word. It means an officer or commissioner. In its special sense, it means a commissioner who has the duty of investigating and reporting to Parliament on citizens' complaints against the Government. An Ombudsman has no legal powers except power of inquiry. In simple words, Ombudsman is an officer of Parliament whose main function is to investigate the complaints or allegations against the administration. The main object of the institution of Ombudsman is to safeguard the citizens against misuse of the powers of the administration

History and Development

The concept of Ombudsman at first originated in Sweden, a Scandinavian state, in 1809 more than two centuries ago. From the beginning of the twentieth century the system began to draw attention of several other European states.

For example Finland created the institution of Ombudsman in 1919, Denmark in 1955 and Norway in 1961. The institution of Ombudsman drew the attention of several European states, and they did borrow the term. Some countries used the term Parliamentary commission and New Zealand is one of them.

From the beginning of 1960s the British government was seriously thinking about instituting a body to remedy people's grievances against public administration and to provide a constitutional safeguard against the misuse of power. In 1966 the British government appointed a Parliamentary Commissioner. In 1973 Parliamentary Commissioner also acted as Health Commissioner.

Powers and Functions:

An important function of Ombudsman is to protect the rights and freedoms of citizens and needless to say that primarily for this purpose the post of ombudsman was instituted. In nineteenth and twentieth centuries there were autocracies in many European states and even

the bureaucracies were indifferent to people's freedom. This appalling situation inspired freedom-loving men to find out a solution and ombudsman was the consequence.

Ombudsman In India

The administration in India has been acquiring vast powers in the name of socio-economic development. They discharge not only the administrative functions but also quasilegislative and quasi-judicial functions. Therefore chances for administrative excesses and abuse of powers abound. Therefore, close supervision over the administration, and a mechanism for redressal of grievances become essential. The judiciary, Parliament and the executive have not been successful in controlling them. The courts, have expanded their supervision over the administration but still it is not sufficient.

The Central Government had took some steps to create the Ombudsman system. The Administrative Reforms Commission headed by Moraji Desai had recommended for the adoption of Ombudsman system in India. The Commission submitted its report on October 20, 1966. The Commission propounded a scheme for setting up an Ombudsman system in India. While the Commission did draw largely from the experiences of other countries in drafting its schemes, nevertheless, it was sui generis in many respects and contained a number of peculiar features of its own to meet the special circumstances in India, viz., much larger population than other countries having the Ombudsman system; federal structure; parliamentary government with ministerial responsibility. The Government of India accepted the recommendations of the Commission.

The term Lokpal was coined in 1963 by Laxmi Mall Singhvi, a member of parliament during a parliamentary debate about grievance mechanisms. The word Lokpal was derived from the Sanskrit words "Lok" (people) and "Pala" (protector/caretaker), meaning „Caretaker of People

PRATAP SINGH v. STATE OF PUNJAB AIR 1964 SC 72

The Supreme Court has observed that the courts cannot substitute their discretion for that of the official who has been conferred with the powers under law.

LOKPAL

In 2010 a draft was created by the United Progressive Alliance to create an Ombudsman tasked with tackling political corruption. The draft was circulated to various ministries for their review. It provided a mechanism for filing complaints against the prime minister,

ministers and MPs. However, civil society groups rejected it as a toothless body with only recommendatory powers.

Anna Hazare started an indefinite hunger strike on 5 April 2011 at Jantar Mantar in New Delhi to pressure the government to create an Ombudsman with the power to deal with corruption in public places as envisaged in the Jan Lokpal Bill. The fast led to nationwide protests in support. The fast ended on 9 April 2011, one day after the Government accepted his demands. The government issued a gazette notification on the formation of a joint committee, consisting of government and civil society representatives, to draft the legislation. A Joint Drafting Committee was established, consisting of ten members which was chaired by Pranab Mukherjee. The Committee set 30 June 2011 as the deadline to complete the drafting process.

The Lokpal Bill was tabled in the Lok Sabha on 22 December 2011 and passed by voice voting on the first day of the three-day extended session of the Lok Sabha, on 27 December 2011, after a marathon debate that lasted over ten hours. The Lokpal body was not given the constitutional status as the Constitutional Amendment Bill, which provided for making the Lokpal a constitutional body, was defeated in the house.

DINESH TRIVEDI v. UNION OF INDIA [9]

The Supreme Court has recommended that till the constitution of an Institution like Ombudsman, a High Level Committee to be appointed by President of India in consultation with Prime Minister of India and Speaker of India. The Committee can be directed to monitor the investigation with regard to nexus between criminals and politicians, bureaucrats, media persons and some member of judiciary as disclosed in Vohra Committee Report.

The Lokpal Bill was passed under Article 252 of the Constitution of India, which is a legislation pertaining which pertains to the power of Parliament to legislate for two or more States by consent and adoption of such legislation by any other State

LOKAYUKTA:

In spite of several attempts, the Ombudsman (Lokpal) has not been established at the Centre but some States have adopted the Ombudsman system (called Lokayukta). The institution of

Lokayukta has been established in several States by enacting a statute. In some States Uplokayuktas have also been appointed.

Maharashtra was the first state to introduce Lokayukta through the Maharashtra Lokayukta and Upalokayuktas Act in 1971. Presently there are no Lokayuktas in the States of Andhra Pradesh, Arunachal Pradesh, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tamil Nadu, Tripura and West Bengal.

Conditions

Generally, the Lokayukt under the State Acts is a retired Judge of the Supreme Court or a retired Chief Justice or Judge of a High Court. His appointment is made by the Governor as a result of consultation between the Chief Minister, Chief Justice of High Court concerned and the Leader of the Opposition. But in this process the opinion of the Chief Justice has primacy as he alone is more equipped to recommend names of a retired Chief Justice or a Judge. The term of appointment is for five or six years. The Lokayukt gets the same salary, perquisites and privileges which he was enjoying as a Judge or Chief Justice before retirement. In some of the States, provision is also made for appointment of Uplokayukt to share the workload of the Lokayukt. But complaints against ministers and officers of the rank of Secretary are generally to be enquired into by the Lokayukt.

M.P. SPECIAL POLICE ESTABLISHMENT v. STATE OF MADHYA PRADESH (2004) 8 SCC 788

The Supreme Court has ruled that the Governor may act independently in the matter of grant of sanction of prosecution against the Chief Minister or any Minister as in the matters there would be real danger of bias in the opinion rendered by the Council of Ministers and even in the case of grant of sanction to prosecute an ex-minister when decision of the Council of Ministers is shown to be irrational and based on non-consideration of relevant facts

JUSTICE K.P. MOHAPATRA v. RAM CHANDRA NAYAK (2002) 8 SCC 1 The Supreme Court while dealing with functions of Lokpal under s.7 of Orissa Lokpal and Lokayukta Act, 1995 has held that the functions of Lokayukta are of utmost importance in seeking that unpolluted administration of State is maintained and maladministration as defined under s.2 (h) of the Act is exposed, so that appropriate action against such maladministration and administrator can be taken. The investigation which Lokpal is required to carry out is quasi-judicial in nature.

- The **Lokpal and Lokayukta Act, 2013** provided for the establishment of Lokpal for the Union and Lokayukta for States.
- These institutions are **statutory bodies** without any constitutional status.
- They perform the function of an "ombudsman" and inquire into allegations of corruption against certain public functionaries and for related matters.

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The Lokpal and Lokayuktas (Amendment) Bill, 2016

- This Bill was passed by Parliament in July 2016 and amended the Lokpal and Lokayukta Act, 2013.
- **It enables the leader of the single largest opposition party in the Lok Sabha to be a member of the selection committee** in the absence of a recognized Leader of Opposition.
- It also amended section 44 of the 2013 Act that deals with the provision of furnishing of details of assets and liabilities of public servants within 30 days of joining the government service.
- The Bill replaces the time limit of 30 days, now the public servants will make a declaration of their assets and liabilities in the form and manner as prescribed by the government.
- It also gives an extension of the time given to trustees and board members to declare their assets and those of their spouses in case of these are receiving government funds of more than Rs. 1 crore or foreign funding of more than Rs. 10 lakh.

Structure of Lokpal

- Lokpal is a multi-member body, that consists of one chairperson and a maximum of 8 members.
- Chairperson of the Lokpal should be either the former Chief Justice of India or the former Judge of Supreme Court or an eminent person with impeccable integrity and outstanding ability, having special knowledge and expertise of minimum 25 years in the matters relating to anti-corruption policy, public administration, vigilance, finance including insurance and banking, law and management.
- Out of the maximum eight members, half will be judicial members and minimum 50% of the Members will be from SC/ ST/ OBC/ Minorities and women.
- The judicial member of the Lokpal either a former Judge of the Supreme Court or a former Chief Justice of a High Court.
- The non-judicial member should be an eminent person with impeccable integrity and outstanding ability, having special knowledge and expertise of minimum 25 years in the matters relating to anti-corruption policy, public administration, vigilance, finance including insurance and banking, law and management.
- **The term of office for Lokpal Chairman and Members is 5 years or till the age of 70 years.**
- **The members are appointed by the president** on the recommendation of a Selection Committee.
- The selection committee is composed of the Prime Minister who is the Chairperson; Speaker of Lok Sabha, Leader of Opposition in Lok Sabha, Chief Justice of India or a Judge nominated by him/her and One eminent jurist.

- For selecting the chairperson and the members, the selection committee constitutes a search panel of at least eight persons.

Lokpal Search Committee

- Under the Lokpal Act of 2013, the DoPT is supposed to put together a list of candidates interested to be the chairperson or members of the Lokpal.
- This list would then go to the proposed eight-member search committee, which would shortlist names and place them before the selection panel headed by the Prime Minister.
- The selection panel may or may not pick names suggested by the search committee.
- In September 2018, the government had constituted a search committee headed by former Supreme Court judge Justice Ranjana Prakash Desai
- The 2013 Act also provides that all states should set up the office of the Lokayukta within one year from the commencement of the Act.

Lokpal Jurisdiction and Powers

- Jurisdiction of Lokpal **includes Prime Minister, Ministers, members of Parliament, Groups A, B, C and D officers and officials of Central Government.**
- Jurisdiction of the Lokpal included the Prime Minister except on allegations of corruption relating to international relations, security, the public order, atomic energy and space.
- The Lokpal does not have jurisdiction over Ministers and MPs in the matter of anything said in Parliament or a vote given there.
- Its jurisdiction also includes any person who is or has been in charge (director/ manager/ secretary) of anybody/ society set up by central act or any other body financed/ controlled by central government and any other person involved in act of abetting, bribe giving or bribe taking.
- The Lokpal Act mandates that all public officials should furnish the assets and liabilities of themselves as well as their respective dependents.
- **It has the powers to superintendence over, and to give direction to CBI.**
 - If Lokpal has referred a case to CBI, the investigating officer in such case cannot be transferred without the approval of Lokpal.
- The Inquiry Wing of the Lokpal has been **vested with the powers of a civil court.**
- Lokpal has **powers of confiscation of assets, proceeds, receipts and benefits arisen or procured by means of corruption** in special circumstances.
- Lokpal has the **power to recommend transfer or suspension of public servant** connected with allegation of corruption.
- Lokpal has the **power to give directions to prevent the destruction of records** during the preliminary inquiry.

Limitations

- 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.
- Five years have passed since the Lokpal and Lokayuktas Act 2013 was passed by parliament, but not a single Lokpal has been appointed till date indicating the **lack of political will**.
 - The Lokpal act also called upon states to appoint a Lokayukta within a year of its coming to force. But only 16 states have established the Lokayukta.
- Lokpal is **not free from political influence** as the appointing committee itself consist of members from political parties.
- The appointment of Lokpal can be manipulated in a way as there is no criterion to decide who is an ‘eminent jurist’ or ‘a person of integrity.’
- The 2013 act **did not provide 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.
- The biggest lacuna is the **exclusion of judiciary from the ambit of the Lokpal**.
- The Lokpal is **not given any constitutional backing** and there is no adequate provision for appeal against the Lokpal.
- The specific details in relation to the appointment of Lokayukta have been left completely on the States.
- To some extent, the need for functional independence of the CBI has been catered to by a change brought forth in the selection process of its Director, by this Act.
- The complaint against corruption cannot be registered after a period of seven years from the date on which the offence mentioned in such complaint is alleged to have been committed.