



POLITICAL PARALYSIS AND INSTITUTION OF LOKPAL IN INDIA: AN ANALYSIS

Dr Pawan Kr Mishra¹

Abstract:

The state has undergone a number of changes since the Second World War. The government has as increasing number of functions to perform in the modern democratic setup. As a result, administrative agencies have come into the picture in order to overcome hardship faced in the political administration of the state. The increase in the wide functions of the government has led to the emergence of the powers in the hands of the administrative authorities have to deal with public administration, it is only but natural that a system has to evolved which recognizes the rights of the members of the public to know what goes on the workings of administration. The increasing number of administrative authorities has unfortunately led to a rise in the number of faults and corruption committed by public officials. One of the remedies available to an aggrieved person under administrative action is to make a complaint to an Ombudsman or Lokpal. The Lokpal as an institution was supposed to act as a watchdog over the integrity of ministers and the members of Parliament. This paper has been written to find out the definition of Lokpal, its origin and development. Apart from studying its utility in foreign countries, emphasis will be laid on its implementation in India.

I. Introduction:

Power corrupts and absolute power corrupts absolutely. These words of Lord Acton spoken out in the 19th Century are very relevant even after 200 years of its inception. There must be a watch dog to control all the powers which are said to be in absolute sense for the public good. Today, when we are emphasizing upon the Democracy then it becomes more relevant. In today time there is a rat race for the power and position without the concern of path and consequence, then the necessity of a watchdog become more relevant.

Edward Coke has pronounced in the time of King James I that “king should be under law and god”. This was the time when the order of the king was treated as last word or we say in Indian context “Akatya Satya”. This concept is much required in the present day for our legislature and state head.

¹ Associate Professor of Law, School of Law & Governance, Central University of South Bihar, Gaya, India.

Aristotle in his book “Politics” has said that Law should be basic foundation of the society. It means all the working and governance should be done by law and there must be effective law to check and balance the working of the law. And here it comes the concept of a watchdog or whistleblower which is known as “Ombudsman”.

Ombudsman is an administrative officer of the Parliament who looks into the working of the government and act as administrator for redressal of public complaints. This was the concept started in 1809 A.D. in Scandinavian countries for looking into public complaints. The Ombudsman type of machinery is very useful in redressing the grievances of the citizens, which fall in above description. It contains some of the features of Droit Administrative which settles down the principle of different court for the different purpose.

Informality is the most significant aspect of the Ombudsman proceedings. The Ombudsman may act either on her own initiative or upon complaint from aggrieved party. The Ombudsman can refuse to investigate such complaint if she finds the complaint frivolous. However, she has to give reason for doing so. If she finds the complaint to be genuine then she may send the complaint with the ground thereof to the concerned official and seek clarification and explanation.²

The concept is India which is grooming and blossoming with the term Lokpal for the union and Lokayukt for state government. The bill for Lokpal was first drafted by advocate Shanti Bhushan. The term literally means care taker of the people.

II. History and Development of Ombudsman:

The Ombudsman has a long history of 200 years in Scandinavian countries but its full fledged development stated in early 1970s with following the concept in New Zealand and India. For proper study of history it should be read as follow:-

(a) Ombudsman in Scandinavian Countries:

The concept of an ombudsman originated in its present form with the Swedish constitution of 1809, and it has been adopted and even extended in the other Scandinavian countries such as Finland (1919), Denmark (1953), and Norway (1962). Bureaucracy sometimes rides brutally over the rights of the individual, either because of careless disregard, or because regulations cannot cover exceptional cases, or for other reasons having to do with the fallibility of laws or officials. Any society that seeks justice must provide channels for appeal and correction of mistakes, but too often the procedures of complaint go through the same governmental structure as the thing objected to. Therefore, the Swedes provided for a judicial agent, the Justitia Ombudsman (JO), acting under the authority of parliament to be a watchdog over administrative officials and acts.

² S. P. Sathe Administrative Law (Seventh Edition 12th Reprint 2012) Lexis Nexis Wadhwa Nagpur

With the expansion of bureaucracy the JO's task has grown in both complexity and importance. Out of 1,000 plus complaints filed each year, from 75 to 90 percent are rejected as petty or unjustified. But even in these cases the aggrieved party has had the psychological satisfaction of a means of protest and an explanation of why he or she was treated so. In scores of cases, Jos have discovered errors or derelictions of duty. In these instances, the JO ordinarily discusses the matter with the official concerned and tries by persuasion to get the wrong righted. If necessary, the JO can take the official to court, but this happens rarely because the prestige of a JO's position is usually sufficient to obtain compliance.³

The JO is a person respected in the community, with salary and position comparable to that of a Supreme Court judge. He or she has the right to see all relevant documents and access to whomever he wishes to consult. The press checks with the JO each day, so the power of publicity is at the JO's disposal. The constitution of each country empowers the JO not only to accept complaints from individuals but also to initiate proceedings whenever he or she senses there may be injustice. Occasionally the JO makes inspection trips, visiting courts, hospitals, schools, smelling out little and big cases of wrongdoing, suggesting remedies.⁴

(b) Ombudsman in US and UK:

In US, though there is a lot of "Ombudsman" but no ombudsman has infiltrated except the 3 states Hawaii, Nebraska and Oregon for local government agency. Since 1963 in every session a bill is presented before Congress for an institution akin to Ombudsman but bill has not become act yet. However Congressional investigation and grievance cells established in various department like police review board, discharged the work like Ombudsmen⁵.

The office of Health Service Ombudsman was created in the NHS Reorganization Act 1973 following pressure for an effective resolution of grievances, given the exclusion of the NHS from the 1967 Parliamentary Commissioner Act, as outside the direct responsibility of the then Minister for Health. It was subsequently modified by the Parliamentary and Health Service Commissioners Act 1987, the Health Service Commissioners Act 1993 and the Health Service Commissioner (Amendment) Act 1996. This last Act considerably broadened the scope of the investigations by enabling the HSC to investigate all aspects of NHS care and treatment, including clinical judgment. It was designed to place the Ombudsman at the top of the new unified NHS complaints procedure.

Until devolution, the parliamentary ombudsman was chosen by convention as Health Service Ombudsman for each constituent part of the UK, except for Northern Ireland. Currently, the post is combined with Health Service Ombudsman for England, as separate arrangements apply in Scotland, Wales and Northern Ireland. There is no MP filter for the Health Service Ombudsman.

³ Bob Brook, The Ombudsman fight for the right of individuals

⁴ Ibid.

⁵ Gellhorn, When American Complain(1966)

The parliamentary ombudsman's office today continues to investigate cases of maladministration in government departments and agencies and other public bodies. The current Ombudsman is Dame Julie Mellor. Her predecessor, Ann Abraham, retired in January 2012. The Public Administration Select Committee monitors the work of the Parliamentary and Health Services Ombudsman through regular hearings and support. It is due to take oral evidence from Dame Julie in December 2012.

The Ombudsman is an appointment made by the Crown under the terms of the Parliamentary Commissioner Act 1967. The Act now specifies a seven year term.² In practice, an open competition is held for the post, and an interview panel makes the final selection. The chairman of the Public Administration Select Committee participates in the process and the panel has an external assessor from the Public Appointment Commissioner's office to ensure that the appointment is made fairly according to the Commissioner's Code of Practice.⁶

(c). The Ombudsman is responsible for:

- i. Providing the Treasury with a 3 Year Funding Settlement Submission as required;
- ii. Providing the Treasury with a Main Estimate of resources, capital and cash requirements, including pay, for the following financial year in accordance with the published timetable;
- iii. Ensuring that such Estimates are scrutinized and approved by the Executive Board with due regard to the need for economy, efficiency and effectiveness in the request for and use of resources; and, for pay, ensuring that full account is taken of the need for broad comparability with the Civil Service.

III. Lokpal and Lokayukt in India:

“An uncorrupted individual in a corrupted system will finally end up being corrupted himself except and unless he is constantly fighting against the corruption”.⁷ There was a time when socially, a corrupt person was not considered a desirable person. But today we have reached such a stage that corruption is not only taken for granted but a person with money is most respected by the society. The root cause of poor governance is corruption. The recent exposes, disclosure of financial scams have highlighted the extent of corruption that is going on across the country. And corruption can only be fought with a co-ordinate effort. Therefore, there is a huge cry going on throughout the country in order to eliminate corruption from the entire political system. “There should be established a Lokpal at the “central level” and a Lokayukt at the “state level”. Both will address the inadequacies of the current anti-corruption systems and will have the power and independence to investigate and prosecute cases of corruption”. This is the most probable perspective that a common man has in up-bringing this very concept of Lokpal and Lokayukta in our democratic structure. Indian political system is considered as a “corrupt system” composed of “corrupt officials”. Even a layman, who is not well-educated, will look

⁶ Oonagh Gay, The Ombudsman –developing in UK (House of commons Library)

⁷ From happyworldforall.blogspot.com/2011/04/i-hate-corruption-support-grows-for.html as visited on 10th November 2011

down upon such a system where the political officials promise to work for the welfare of the nation but are working for their own good.

Lokpal and Lokayukta⁸ will work on behalf of the citizens and will prevent their interests from the abuse by public office both at the central and the state level. These will be an independent body and the politicians and the bureaucrats will have no interference in their functioning. The establishment of Lokpal and Lokayukta will give the citizens right to file complaints in the High Courts and the Supreme Court in case they are not satisfied with the working of any government official or any other bureaucrat, as the case may be. For the first time, the citizens will have the right to participate in the making of law. In other words, there will be a system of referendum in our country. Such a measure as to establish a Lokpal and Lokayukta which will work as the effective grievance redressal system for the public is essential in this corruption ridden country so that the malice of corruption is removed and the citizens are able to live in a disease free country.

IV. Struggling history of Lokpal And Lokayukt:

The term Lokpal is the Indian version of Ombudsman which is a Swedish term. The institution of ombudsman⁹ was first established in Sweden in 1808. He is an officer of Parliament and his job is to ensure that the civil servants discharge their functions properly. This institution has emerged as watch dog of the administration and protector of the common man.

“Power does not corrupt. Fear corrupts; perhaps the fear of a loss of power.”¹⁰

Corruption is a term and every common is familiar with this. In fact, it seems that a person cannot have a single discussion without the topic of corruption.

The Prevention of Corruption Act, 1947¹¹ was a measure which sought to eradicate corruption. But this measure failed to check the same. A new technique was adopted on the recommendations of Santhanam Committee and the Central Vigilance Commission¹² a non-statutory body established in 1964.

Today Lok Sabha is the fifteenth Lok Sabha and the bill for the establishment of Lokpal and Lokayukta had been introduced in the fourth Lok Sabha. It was then described as the Lokpal and the Lokayuktas Bill, 1968. Lokpal derives its existence since 1963, when this term was first used by the then Indian Prime Minister, Jawaharlal Nehru. Thus, the origin of Lokpal which is commonly known as “anti-corruption ombudsman” dates back to 1963 in India. “It was in 1966 that a Lokpal was proposed at the centre and Lokayuktas in the states. For the first time in 1968, this bill was presented in the Lok Sabha. In 1968, the Bill was referred to the Joint Committee of the two Houses and it was passed by the Lok Sabha. While the Bill was pending before Rajya Sabha, Lok Sabha was dissolved and the Bill could not be passed. The house passed it in 1969, but while it was pending, Lok Sabha was dissolved and the bill

⁸ By Jhurry Muhammad Anas on corruption from www.quotationsbook.com/quotes/tags/corruption

⁹ An Ombudsman is someone who investigates complaints made by people against the government or any public organization. He is an independent official who represents the common man in his fight against the government.

¹⁰ John Steinbeck from <http://www.goodreads.com/quotes/tag/corruption>

¹¹ Prevention of Corruption Act, 1947 was amended and consolidated by the Prevention of Corruption Act, 1988

¹² Central Vigilance Commission is an apex Indian governmental body in 1964 to address governmental corruption

lapsed”.¹³ This was further reintroduced in 1971, 1977, 1985, 1989, 1996, 1998, and 2001 but was never passed. In the year 1977 during the fifth Lok Sabha, Indira Gandhi introduced the Bill but it again lapsed after waiting for six long years in a queue to be considered; the reason being that Lok Sabha was dissolved. In the same year, the Bill was again introduced by Morarji Desai’s Government and it was referred by the Joint Committee in the year 1978. While the Bill was under consideration with Lok Sabha, the latter got prorogued and dissolved and therefore, the Bill again lapsed. In the year 1980, no such Bill was introduced at the time of seventh Lok Sabha. In 1985, the then Prime Minister Rajiv Gandhi presented the Lokpal Bill and this was referred to the Joint Committee which again was of no use. With failures in the consequent years, this Bill was again introduced in the year 2001, 2005, and most recently in 2008. Each time the Bill was introduced in one House, it was referred to other Committees for recommendations such as Joint Committee and before a final decision could be taken by the Government, the House was dissolved. Each time a failure and the road to its success seemed tough. So, the introduction to the whole film suggests its difficulty in enforcing the same.

V.A view of Corruption in India: Instances:

There have been many cases of corruption, maladministration, and misuse of authority that has Come to light in the recent years. For instance, “2G Spectrum Financial Scandal¹⁴ in the Telecommunications and IT Ministry under A. Raja which is considered one of the largest political corruption case in the history of modern India, still remains unsolved; “CWG Scam”, IPL Lalit Modi Scam”, etc. “If we discuss about the 2G Scam, we will observe that the government merely watched the events unfold helplessly”¹⁵. In fact, the Government of India had to suffer a loss of Rs. 1.76 Lakh Crores but still the mystery is unsolved. It is wrong to say here that no action has been taken against the perpetrators of the Scam because many people associated with the Scandal have been detained and arrested. But a mere arrest of these has not yet solved the problem because allegations against the main culprit or the mastermind behind this huge scandal that is, A. Raja had not yet been proved. Moreover, our present Indian Prime Minister Dr. Manmohan Singh and Home Minister P. Chitambaram who was the former Finance Minister of India was pointed out by A. Raja, the main culprit behind the Scandal, that the formers had full knowledge of the same. So, now here lies the impossibility to tackle the issue as it’s difficult to judge the extent of corruption. Few more instances can be mentioned here regarding illegal activities going on in the country. The Andhra Pradesh Government suspended Y. Srilakshmi, a 1988- batch Indian Administrative Service (IAS) officer arrested recently in connection with illegal mining case; there continues to be a decline in India’s Integrity Score that is from 3.5 in 2007 to 3.1 in 2011, 3.4 in 2008-09, 3.3 in 2010 indicating a serious corruption problem; An FIR against DMK leader, M.K. Stalin, his son Udhayanidhi and four others for allegedly threatening a person to sell his property at a prime locality at a lesser price. These instances suggest that

¹³An Article, “Lokpal in India- An Analysis” by “Triloknath Mishra”, www.wisdomblow.com as visited on 3rd mar. 2017

¹⁴2G signifies second generation wireless digital technology

¹⁵www.socialissuesindia.wordpress.com as visited on 3rd march 2017

such a corruption ridden system cannot be made disease free until and unless there is a separate redressal mechanism that will specifically deal with the problem of corruption and will prosecute cases of the same. Another instance was that of a mining case in Karnataka which led to the ouster of the then Chief Minister Yeddyurappa. A famous bribery case that came to light in the year 1996 was that of \$18 millions bribery scandal in which the leading politicians of our country were alleged of illegally taking payments through the Hawala Brokers and this was known by the name of Hawala Case. Among the list of accused, the present opposition leader Mr. L.K. Advani was also there. This is really painful to know that the politicians whom we elect as our representatives to run the government on our behalf and who are supposed to work in the best interests of the public are misusing their seats and cheating the common man. Here, it is absolutely wrong to say that India is a poor country because if this would have been the case then such huge financial scandals would have never occurred in our country. Where does the money go? Taxes are imposed on all working men with respect to the income which they earn. But how is the Government using this money. It does not provide a clear picture of this. This money should be utilized for the public good! Saying that India is a poor country and we don't have enough funds to meet the needs of hour, is easy. But to look into the in-depth reasons regarding the same is required by every citizen so that they can raise voice against the corruption. A person is stopped by a policeman every day for no fault of his and told to pay a fine of Rs. 100 each day for breaking the rules of traffic. This shows nothing but the abuse of these governmental officials. They are not working in the interests of the public. In fact, they are using the public source to earn extra amount. If the public servants are only corrupt then how can we think that the problem of corruption can be eliminated so easily? There must be a system to keep a check on such government officials or bureaucrats or politicians so that the misusing of their chairs is minimized. The formulated laws have not served in their best interests; for instance the Prevention of Corruption Act sought to check the policy brokers and prosecute those involved in corruption. Therefore, a proper initiative has to be taken in this regard.

“Since these practices couldn't be curbed by the measures under Indian Penal Code, 1860 and Prevention of Corruption Act, 1988, therefore, there is a need to establish a separate agency which will be independent of Legislature, Executive and Judiciary to look into the citizens' grievances and cases of corruption and that is why it is felt necessary and is considered of great need to introduce “Jan Lokpal Bill” as a mechanism to tackle Corruption”.¹⁶

VI. Jan Lokpal Bill in India:

“Jan Lokpal Bill is an act to create effective anti-corruption and grievance redressal system at centre so that effective deterrent is created against corruption and to provide effective protection to whistleblowers”¹⁷.

This Act may be called “Anti- Corruption, Grievance Redressal and Whistleblower Protection

¹⁶ An Article, “Lokpal in India- An Analysis” by “Triloknath Mishra”, www.wisdomblow.com as visited on 3rd October 2011

¹⁷ Jan Lokpal Bill version 1.8, www.annahazare.org as visited on 3rd October 2011

Act, 2010”.

VII. Maladministration leading to the weakening of Indian Bureaucracy:

The continuing increase in the instances of maladministration has weakened the public faith in bureaucracy. The Lokpal and Lokayukta Act has been sought to be promulgated since 1963, and till today efforts are being made for the same which shows a lack of political will to institutionalize the ombudsman in India. Even though states such as Orissa and Kerala have enacted their own State Acts constituting the ombudsman, they have not been successful in achieving the same as the Commissions created through these Acts remains defunct till now. “It is not wisdom alone but public confidence in that wisdom which can support an administration”.¹⁸

This statement underscores the importance of public confidence as the test of the efficacy of administration.¹⁹ In a democracy, people are supreme and hence, all state authorities must be exercised in the public interest²⁰. This fundamental principle of administrative law has remained the same. However, with the increase in the scope of administration in India, a feeling has arisen in the minds of the public that this will lead to misuse of power by the administrative officials. Due to delay in the redressal of grievances of the public by the administrative officials, the public confidence in the administration has reached to its lowest point. Thus, there is a need for the establishment of a separate agency so that it can help the citizens’ to keep a check on the administrative bodies. This vital role can be played by the “ombudsman”. The Merriam Webster Dictionary defines “ombudsman” as a government official (as in Sweden and New Zealand) appointed to receive and investigate complaints made by individuals against abuses or capricious acts of public officials. In its special sense, it means a Commissioner who has the duty of investigating and reporting to Parliament on citizens’ complaints against the Government.²¹ Jan Lokpal Bill, 2011 is therefore, commonly known as Citizens’ Ombudsman Bill, 2011. This Bill is a move towards the eradication of corruption and maladministration in the country in order to prevent public abuse. This will set up a two tier system that is Lokpal at the central level and the Lokayuktas at the state level and will work as a separate agency to fight specifically against corruption.

VIII. The need for Lokpal and Lokayuktas:

The ‘Jan Lok Pal Bill’ proposes a single, autonomous Lokpal combining within it, the powers and mandate of the CBI and the CVC and with jurisdiction over politicians, bureaucrats and judges.²² This agency will be able to initiate investigation without prior permission from any other agency. The whistleblowers will come under the protective purview of Lokpal. The need for Lokpal at the centre and Lokayukta in states is therefore, justified in this democratic framework. After all, public also wants that their problems should be looked after.

¹⁸ Thomas Jefferson to James Monroe, 1824

¹⁹ An Article, “Instilling public confidence in administration: The need for an Ombudsman like institution in India”, from ssrn.com as visited on 3rd October 2011

²⁰ Justice Markandey Katju, Administrative law and judicial review of administrative action, (2005) 8 SCC (J) 25

²¹ Wade & Forsyth, Administrative Law, (Oxford University Press, Oxford Eighth Edition, 2000)

²² An Article, “Lokpal in India- An Analysis”, by Triloknath Mishra, www.wisdomblow.com as visited on 3rd October 2011

This cannot be possible unless we have these two separate agencies to function for the welfare of the public. This will help the public to instill confidence in the administrative bodies. Not only this, but the corrupt officials will also find the way out from their chambers which they might have obtained through numerous illegal ways. This will give a sigh of relief to the citizens. But not even one has taken place till now. This is the saddest part.

It is very essential to give a blow to those political dignitaries who are working for the general good just for name sake. A system of this kind will prove to be an effective system to drive out the so-called “janta-sevaks”, some of whom might not be eligible for the particular posts that they are holding. Very clearly, this system is to keep a check on the political dignitaries to prevent any sort of corruption to take place. And if they are found to be corrupt or misusing their authority in the name of public, they will be driven out from their chairs. This will help the citizens’ build confidence in our administration and other authorities. Currently, there are multiple anti-corruption agencies to deal with corruption cases. But they spend a lot of time in dealing with the same cases. Therefore, other important cases are made to stand in queue and wait for their chance to be considered. This problem can be solved if there happens to be a separate and independent agency that would deal specifically with corruption cases.

IX. Issues regarding the institution of Lokpal and Lokayukta:

To establish a Lokpal at the centre and Lokayukta in the states, the proposed bill, that is, the Jan Lokpal Bill, has been surrounded by many issues. This bill has been compared on various points An Article, “Instilling public confidence in administration: The need for an Ombudsman like institution in India”, with the “Government bill, that is, Lokpal Bill”. One of the major issue regarding the Jan Lokpal Bill was to settle whether the Prime Minister (PM) be included or not in the purview of Lokpal. One view emerged saying that PM must be excluded from the scope of the Bill. This view is taken as the PM is responsible to the Parliament and also he or she is the face of the nation in the International arena. One of the basic premises of the institution of Lokpal is to bring effective checks and balances to the system of governance as well as the centers of power, irrespective of their position of their Constitutional eminence.²³

In any form, maladministration is the root to corruption. When checks and balances are not so efficient, it gives way to maladministration which further paves the way for scandals and corruption.

To consider another point, in the cabinet form of the Government, the Prime Minister’s office (PMO) occupies a locus of decision making, and PM is the “Chief whip” of the cabinet. If the civil servants are included in the Lokpal, the PMO will come under the scope of the bill. 22 Another point of issue regarding the same was whether MPs should fall within the scope of Lokpal. The Government’s view is that MPs must be excluded from the scope of Jan Lokpal Bill because the Lokpal will not deal with corruption allegations against the MPs for how they voted or spoke in the Parliament. Such allegations are left to be probed by the Parliament itself.

²³ An Article, “Politics of Lokpal: A way Beyond” by Vinod Bhanu,

Whereas, the opposite is the view of the supporters of Jan Lokpal Bill. Another side of objection is regarding Lokayukta to be implemented by the same bill. Government's view is that Lokayukta should be implemented by a separate bill and only Lokpal should be implemented at the centre. But this is also denied by the supporters of Jan Lokpal Bill because they want the same bill to be implemented for both Lokpal and Lokayukta. It, therefore, can be said that it's a kind of a war going on for establishing these agencies.

The Jan Lokpal Bill deals with grievance redressal of citizens, in addition to the process for prosecuting corruption cases. It requires every public authority to publish citizen's charters listing its commitments to citizens. But the government Bill does not deal with grievance redressal.

X. Jan Lokpal Bill verses Government Bill:²⁴

It is a good opportunity for the citizens to understand the loops and holes of the two bills which will help in enacting a law. After all, it a citizens' bill where the agency will work for redressing the grievances of the public so that justice is done in an unbiased way. However, it is important to mention here that today things are not how they appear. Saying that a system will wholly work for the welfare of the general public does not show, by any way, their pure character. Today, in the era of modernization, nothing is so pure. In fact, it's difficult to distinguish between what is pure and what is impure. Coming to the point, saying that Lokpal members will work for the public good does not prove its efficacy. It will be wrong to neglect here that the Lokpal members cannot be corrupt.

We have corrupt judges, citizens, and constitutional authorities. Who says that only politicians are corrupt?²⁵ Therefore, we see that purity cannot be guaranteed. It will be wrong to consider only the advantageous point of it neglecting the other sides which can prove to be one of its strong opposing points.

However, the present legal mechanism is considered to be weak and rather corrupt because it is composed of MPs who try all methods to save a person who may have benefitted them in any form. This shows their corrupt characteristic.

Some of the weaknesses of the present legal mechanism to deal with corruption are; the Central Bureau of Investigation (CBI) comes under the purview of Government. This enables the MPs, ministers and the politicians to influence those engaged with the investigation agency. *It is, therefore, demanded that CBI should be merged with Lokpal.*

Mr. R. Sivaraman, former Union Revenue Secretary, agreed that the CBI should be merged with the Lokpal mentioning that only Grade-A officers and above should be merged. He told that the remaining portion of the anti-corruption unit should be merged with Central Vigilance Commission (CVC) who shall deal with lower level corruption cases. Well, to elaborate further on this point, amongst hundreds of officers investigated by the CBI, all, that is, the IRS, IAS, and other Services investigated

²⁴ "10 difference between Lokpal Bill and Jan Lokpal Bill", Published on Friday, 19 August 2011, from ibnlive.com,

²⁵ What is Lokpal Bill India" www.sannayak.com as visited on 10th march 2017

except the IPS. This would mean that only the formers are corrupt and all the police officers are purer than the purest.

So, this also gives birth to a negative view that all the demands of the Jan Lokpal Bill cannot be implemented. Because what the bill seeks might not be so accurate when it is discussed on an intellectual platform. The Indian law is in a written format. But, the implementation of the same does not run with the written words. Likewise, the establishment of Lokpal and Lokayuktas by the passing of Jan Lokpal Bill might also create the same picture. Who knows that the passing of the Bill could one day be just on paper and practical application of the same would be different! The establishment of Lokpal and Lokayukta has also led to resentment among many people. For instance, according to Pratap Bhanu Mehta, President of the Centre for Police Research Delhi, the bill is “premised on an institutional organization that is at best naïve; at worst subversive of Representative Democracy”.²⁸ The Congress General Secretary Rahul Gandhi also is of the view that the institution of Lokpal will alone not be able to eradicate corruption from the entire political system. The most important question raised in this regard is whether judiciary should be brought under the purview of Ombudsman. If this is done then the federal character of the Indian Constitution which speaks about the doctrine of Separation of Powers will be diluted. Therefore, it is felt that such merging which would bring judiciary under the purview Ombudsman is not acceptable. Thus, these are some viewpoints that go against the establishment of such independent and separate mechanism and acts as a hindrance in its path.

Comparison between Lokpal and Lokayukt

Subject	Lokpal	Lakayukt
Discription	Central governing body that has jurisdiction over all Members of Parliament and central government employees in cases of corruption.	State level governing bodies that has jurisdiction over State Government employees in corruption cases.
Scope	On a national government level basis.	On a state government level basis.
Responsibilities	Corruption in government on central level.	Corruption in government on state level.
Function	To address complaints of corruption, to make inquiries, investigations, and to conduct trials for the cases.	To address complaints of corruption, to make inquiries, Investigations, and to conduct trials for the cases.
Committee	A chairperson and a maximum of eight members, of which 50% will be judicial members 50% members of Lokpal shall be from SC/ST/OBCs, minorities and women.	Proposal: three members body, Headed by a retired Supreme Court judge or high court chief justice and comprising the state vigilance commissioner and a jurist or an eminent administrator as other members.

Recent status	The Lokpal Act 2013 is still not fully implemented and provisions have lot of lacuna and a bill has been proposed of amendment “Lokpal Amendment Bill 2016”	Different states have different status of the lokayukt. e.g. In Karnataka above led to resignation of C.M
---------------	---	---

XI. A brief study of Lokpal Act 2013 and Lokpal amendment Bill 2016:

The Lokpal Act covers only the bureaucrats and public officer and not the legislature’s member. The bare provision of the Lokpal Act says :-An Act to provide for the establishment of a body of Lokpal for the Union andLokayukta for States to inquire into allegations of corruption against certainpublic functionaries and for matters connected therewith or incidental thereto. WHEREAS the Constitution of India established a Democratic Republic to ensure justicefor all; AND WHEREAS India has ratified the United Nations Convention Against Corruption;AND WHEREAS the Government's commitment to clean and responsive governance has to be reflected in effective bodies to contain and punish acts of corruption; NOW, THEREFORE, it is expedient to enact a law, for more effective implementation of the said Convention and to provide for prompt and fair investigation and prosecution in cases of corruptions²⁶.

In the above the preamble all the lines are regarded and confined with certain exceptions. The jurisdiction of Lokpal as stated in Sec. 14 Chapter VI of the Act includes Prime Minister, Ministers, members of Parliament, Groups A, B, C and D officers and officials of Central Government .It is followed up with the proviso:-

Provided that the Lokpal shall not inquire into any matter involved in, or arising from, or connected with, any such allegation of corruption against the Prime Minister. Here we can say Prime Minister is indirectly out of the ambit of Lokpal and as discussed earlier there is merger of CBI for investigation. The Lokpal should have its own investigation machinery and autonomy.

It is said that public servants are fishes in the ocean, where you cannot exactly predict and know as to when fish is drinking that water. Here water is public money and Lokpal should be given enough competency as to judge the difference between drinking and swimming.

Eminent personality is a vague term used in the Act. As the present scenario of politics is just of turncoat kind, it is a loop hole where there is chance of nepotism and to make a favored one by using this “Eminent Personality” term. The term was used in NJAC Act which was quashed by the court.

There has been already long deadlock in Parliament for bringing Prime Minister under the ambit of Lokpal and the concern seriously needed to be looked upon.

There has been amendment proposed with name Lokpal Amendment Bill 2016 which says:- On and from the date of commencement of this Act, every public servant shall make a declaration of his assets and liabilities in such form and manner as may be prescribed.

²⁶ The Gazette of India, Extraordinary Part II-Section 1, Published on 1st January 2014, New Delhi

On and from the date of the commencement of the principal Act, in **section 59**, in sub-section (2), for clause (k), the following clause shall be substituted, and shall be deemed to have been substituted, namely:— "(k) the form and manner of declaration of assets and liabilities by public servants under section 44: Provided that the rules may be made under this clause retrospectively from the date on which the provisions of this Act came into force.

There are also lots of thing which needs constructive discussion for making it as competent and useful as we need. The act in itself needs effectiveness and a kind of exhaustive characteristics for Pan India acceptance.

XII. Conclusion:

It is said that public servants are fishes in the ocean, where you cannot exactly predict and know as to when fish is drinking that water. Here water is public money and Lokpal should be given enough competency as to judge the difference between drinking and swimming. It is not only confined with that but we have to focus on the top designated body also like council of ministers and Prime Minister. The biggest deadlock was to bring P.M. under Lokpal. It should enjoy free, capable and autonomous structure. The merger of CBI for investigation is also an issue of concern. Rather, Lokpal must have a free and effective investigation agency with special task force for swift investigation procedure and punishment as with the linger in process there is chances of contamination and manipulation.

The Lokayukta need equal focus for its effective enforcement. The Lokayukta somewhat has a bit different situation and it has to tackle with the different way according to its local demand and prevailing situation. Some states has shown indifferent result in its implementation like Karnataka where CM has to resign after complaint in Lokayukta, Utrakhand which has successfully appointed Lokkyukta as per his manifesto. But we do have instances of U.P. also where Hon'ble High Court has to intervene in the matter and the criticized state govt. for ineffective Lokayukta.

So we have a different situation in each state for the demand but the bottom line should be that truth and justice never gets defeated and citizen of the country never get penalized.
