

61 Lokpal and Lokayuktas

GLOBAL SCENARIO

Modern democratic states are characterised by a welfare orientation. Hence, the government has come to play an important role in the socio-economic development of a nation. This has resulted in the expansion of bureaucracy and the multiplication of administrative process, which in turn increased the administrative power and discretion enjoyed by the civil servants at different levels of the government. The abuse of this power and discretion by civil servants opens up scope for harassment, malpractices, maladministration and corruption. Such a situation gives rise to citizens' grievances against administration¹.

The success of democracy and the realisation of socio-economic development depends on the extent to which the citizens' grievances are redressed. Therefore, the following institutional devices have been created in different parts of the world to deal with the redressal of these grievances:

1. The Ombudsman System
2. The Administrative Courts System
3. The Procurator System

The earliest democratic institution created in the world for the redressal of citizens' grievance is the **Scandinavian institution of Ombudsman**. Donald C. Rowat, an international authority on the Ombudsman, calls it a "uniquely appropriate institution for dealing with the average citizens' complaints about unfair administrative actions."

The institution of Ombudsman was first created in Sweden in 1809. 'Ombud' is a Swedish term and refers to a person who acts as the representative or spokesman of another person. According to Donald C. Rowat, Ombudsman refers to "an officer appointed by the legislature to handle complaints against administrative and judicial action."

The Swedish Ombudsman deals with the citizens' grievances in the following matters:

- (i) Abuse of administrative discretion, that is, misuse of official power and authority
- (ii) Maladministration, that is, inefficiency in achieving the targets
- (iii) Administrative corruption, that is, demanding bribery for doing things
- (iv) Nepotism, that is supporting one's own kith and kin in matters like providing employment
- (v) Discourtesy, that is, misbehaviour of various kinds, for instance, use of abusive language.

The Swedish Ombudsman is appointed by the Parliament for a term of four years. He can be removed only by the Parliament on ground of its loss of confidence in him. He submits his annual report to the Parliament and hence, is also known as 'Parliamentary Ombudsman.' But he is independent of the Parliament (legislature) as well as the executive and judiciary.

The Ombudsman is a constitutional authority and enjoys the powers to supervise the compliance of laws and regulations by the public officials, and see that they discharge their duties properly. In other words, he keeps a watch over all public officials—civil, judicial and military—so that they function impartially, objectively and legally, that is, in accordance with the law. However, he has no power to reverse or quash a decision and has no direct control over administration or the courts.

The Ombudsman can act either on the basis of a complaint received from the citizen against unfair administrative action or *suo moto* (i.e. on his own initiative). He can prosecute any erring official including the judges. However, he himself cannot inflict any punishment. He only reports the matter to the higher authorities for taking the necessary corrective action.

In sum, the characteristics of the Swedish institution of Ombudsman are as follows:

- (i) Independence of action from the executive
- (ii) Impartial and objective investigation of complaints
- (iii) *Suo moto* power to start investigations
- (iv) Uninterrupted access to all the files of administration
- (v) Right to report to the Parliament as opposed to the executive; the institution of ombudsman is based on the doctrine of administrative accountability to legislature.
- (vi) Wide publicity given to its working in press and other media
- (vii) Direct, simple, informal, cheap and speedy method of handling

complaints

From Sweden, the institution of Ombudsman spread to other Scandinavian countries— Finland (1919), Denmark (1955) and Norway (1962). New Zealand is the first Commonwealth country in the world to have adopted the Ombudsman system in the form of a Parliamentary Commissioner for Investigation in 1962. The United Kingdom adopted Ombudsman-like institution called Parliamentary Commissioner for Administration in 1967. Since then, more than 40 countries of the world have adopted Ombudsman-like institutions with different nomenclature and functions. The Ombudsman in India is called Lokpal/Lokayukta. Donald. C. Rowat says that the institution of Ombudsman is a “bulkwork of democratic government against the tyranny of officialdom.” While Gerald E. Caiden described the Ombudsman as “institutionalised public conscience.”

Another unique institutional device created for the redressal of citizens’ grievances against administrative authorities, is the French system of Administrative Courts. Due to its success in France, the system has gradually spread to many other European and African countries like Belgium, Greece and Turkey.

The socialist countries like the former USSR (now Russia), China, Poland, Hungary, Czechoslovakia and Romania have created their own institutional device for the redressal of citizens’ grievances. It is called ‘Procurator System’ in these countries. It should be noted here that the office of the Procurator-General is still functioning in Russia. He is appointed for a tenure of seven years.

POSITION IN INDIA

The existing legal and institutional framework to check corruption and redress citizens' grievances in India consists of the following:

1. Public Servants (Enquiries) Act, 1850
2. Indian Penal Code, 1860
3. Special Police Establishment, 1941
4. Delhi Police Establishment Act, 1946
5. Prevention of Corruption Act, 1988
6. Commissions of Inquiry Act, 1952 (against political leaders and eminent public men)
7. All-India Services (Conduct) Rules, 1968
8. Central Civil Services (Conduct) Rules, 1964
9. Railway Services (Conduct) Rules, 1966
10. Vigilance organisations in ministries / departments, attached and subordinate offices and public undertakings
11. Central Bureau of Investigation, 1963
12. Central Vigilance Commission, 1964
13. State Vigilance Commissions, 1964
14. Anti corruption bureaus in states
15. Lokpal (Ombudsman) at the Centre
16. Lokayukta (Ombudsman) in states
17. Divisional Vigilance Board
18. District Vigilance Officer
19. National Consumer Disputes Redressal Commission
20. National Commission for SCs
21. National Commission for STs
22. Supreme Court and High Courts in states
23. Administrative Tribunals (quasi-judicial bodies)
24. Directorate of Public Grievances in the Cabinet Secretariat, 1988
25. Parliament and its committees
26. 'File to Field' programme in some states like Kerala. In this innovative scheme, the administrator goes to the village/area and hears public grievances and takes immediate action wherever possible.

LOKPAL

The Administrative Reforms Commission (ARC) of India (1966–1970) recommended the setting up of two special authorities designated as 'Lokpal' and 'lokayukta' for the redressal of citizens' grievances². 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. The Lokpal would deal with complaints against ministers and secretaries at Central and state levels, and the lokayukta (one at the Centre and one in every state) would deal with complaints against other specified higher officials. The ARC kept the judiciary outside the purview of Lokpal and lokayukta as in New Zealand. But, in Sweden the judiciary is within the purview of Ombudsman.

According to the ARC, the Lokpal would be appointed by the president after consultation with the chief justice of India, the Speaker of Lok Sabha and the Chairman of the Rajya Sabha.

The ARC also recommended that the institutions of Lokpal and lokayukta should have the following features:

1. They should be demonstratively independent and impartial.
2. Their investigations and proceedings should be conducted in private and should be informal in character.
3. Their appointment should be, as far as possible, non-political.
4. Their status should compare with the highest judicial functionaries in the country.
5. They should deal with matters in the discretionary field involving acts of injustice, corruption or favouritism.
6. Their proceedings should not be subject to judicial interference.
7. They should have the maximum latitude and powers in obtaining information relevant to their duties.
8. They should not look forward to any benefit or pecuniary advantage from the executive government.

The Government of India accepted the recommendations of ARC in this regard. So far, ten official attempts have been made to bring about legislation on this subject. Bills were introduced in the Parliament in the following years:

1. In May 1968, by the Congress Government headed by Indira Gandhi.

2. In April 1971, again by the Congress Government headed by Indira Gandhi.
3. In July 1977, by the Janata Government headed by Morarji Desai.
4. In August 1985, by the Congress Government headed by Rajiv Gandhi.
5. In December 1989, by the National Front Government headed by V.P. Singh.
6. In September 1996, by the United Front Government headed by Deve Gowda.
7. In August 1998, by the BJP-led coalition Government headed by A.B. Vajpayee.
8. In August 2001, by the NDA government headed by A.B. Vajpayee.
9. In August 2011, by the UPA government headed by Manmohan Singh.
10. In December 2011, by the UPA government headed by Manmohan Singh.

The first four bills lapsed due to the dissolution of Lok Sabha, while the fifth one was withdrawn by the government. The sixth and seventh bills also lapsed due to the dissolution of the 11th and 12th Lok Sabha. Again, the eighth bill (2001) lapsed due to the dissolution of the 13th Lok Sabha in 2004. The ninth bill (2011) was withdrawn by the government.

LOKPAL AND LOKAYUKTAS ACT (2013)

Features

The salient features of the Lokpal and Lokayuktas Act (2013) are as follows.³

1. It seeks to establish the institution of the Lokpal at the Centre and the Lokayukta at the level of the State and thus seeks to provide a uniform vigilance and anti-corruption road map for the nation both at the Centre and at the States. The jurisdiction of Lokpal includes the Prime Minister, Ministers, Members of Parliament and Groups A, B, C and D officers and officials of the Central Government.
2. The Lokpal to consist of a Chairperson with a maximum of 8 members of which 50% shall be judicial members.
3. 50% of the members of the Lokpal shall come from amongst the SCs, the STs, the OBCs, minorities and women.
4. The selection of the Chairperson and the members of Lokpal shall be through a Selection Committee consisting of the Prime Minister, the Speaker of the Lok Sabha, the Leader of the Opposition in the Lok Sabha, the Chief Justice of India or a sitting Supreme Court Judge nominated by the Chief Justice of India and an eminent jurist to be nominated by the President of India on the basis of recommendations of the first four members of the selection committee.
5. A Search Committee will assist the Selection Committee in the process of selection. 50% of the members of the Search Committee shall also be from amongst the SCs, the STs, the OBCs, minorities and women.
6. The Prime Minister has been brought under the purview of the Lokpal with subject matter exclusions and specific process for handling complaints against the Prime Minister.
7. Lokpal's jurisdiction will cover all categories of public servants, including Group A, Group B, Group C, and Group D officers and employees of Government. On complaints referred to the CVC by the Lokpal, the CVC will send its report of preliminary enquiry in respect of Group A and Group B Officers back to the Lokpal for further decision. With respect to categories of employees from Group C and Group D, the CVC will proceed

further in exercise of its own powers under the CVC Act subject to reporting and review by the Lokpal.

8. The Lokpal will have the power of superintendence and direction over any investigating agency, including the CBI, for cases referred to them by the Lokpal.
9. A High-Powered Committee chaired by the Prime Minister will recommend the selection of the Director of CBI.
10. It incorporates provisions for attachment and confiscation of property of public servants acquired by corrupt means, even while the prosecution is pending.
11. It lays down clear timelines. For preliminary enquiry, it is three months extendable by three months. For investigation, it is six months which may be extended by six months at a time. For trial, it is one year extendable by one year and to achieve this, special courts to be set up.
12. It enhances maximum punishment under the Prevention of Corruption Act from seven years to ten years. The minimum punishment under sections 7, 8, 9 and 12 of the Prevention of Corruption Act will now be three years, and the minimum punishment under section 15 (punishment for attempt) will now be two years.
13. Institutions which are financed fully or partly by Government are under the jurisdiction of Lokpal, but institutions aided by Government are excluded.
14. It provides adequate protection for honest and upright public servants.
15. Lokpal conferred with power to grant sanction for prosecution of public servants in place of the Government or competent authority.
16. It contains a number of provisions aimed at strengthening the CBI such as:
 - (i) setting up of a Directorate of Prosecution headed by a Director Prosecution under the overall control of the Director of CBI;
 - (ii) appointment of the Director of Prosecution on recommendation of the CVC;
 - (iii) maintenance of a panel of advocates by CBI other than Government advocates with the consent of the Lokpal handling Lokpal-referred cases;
 - (iv) transfer of officers of CBI investigating cases referred by Lokpal with the approval of Lokpal;

- (v) provision of adequate funds to CBI for investigating cases referred by Lokpal.
17. All entities receiving donations from foreign source in the context of the Foreign Contribution Regulation Act (FCRA) in excess of ₹10 lakhs per year are brought under the jurisdiction of Lokpal.
 18. It contains a mandate for setting up of the institution of Lokayukta through enactment of a law by the State Legislature within a period of 365 days from the date of commencement of this Act. Thus, the Act provides freedom to the states to decide upon the contours of the Lokayukta mechanism in their respective states.

Drawbacks

The following are the drawbacks (shortcomings) of the Lokpal and Lokayuktas Act, 2013^{3a}:

1. Lokpal cannot suo motu proceed against any public servant.
2. Emphasis on form of complaint rather than substance.
3. Heavy punishment for false and frivolous complaints against public servants may deter complaints being filed to Lokpal.
4. Anonymous complaints not allowed -Can't just make a complaint on plain paper and drop it in a box with supporting documents.
5. Legal assistance to public servant against whom complaint is filed.
6. Limitation period of 7 years to file complaints.
7. Very non-transparent procedure for dealing with complaints against the PM.

LOKAYUKTAS

Even much before the enactment of the Lokpal and Lokayuktas Act (2013) itself, many states had already set up the institution of Lokayuktas.

It must be noted here that the institution of lokayukta was established first in Maharashtra in 1971. Although Odisha had passed the Act in this regard in 1970, it came into force only in 1983.

Till 2013, 21 states and 1 Union Territory (Delhi) have established the institution of Lokyuktas. The details in this regard are mentioned below in [Table 61.1](#).

Table 61.1 *Establishment of Lokayukta in States (Chronological Order)*

Sl. No.	States/UTs	Created in (enacted in)
1.	Odisha	1970
2.	Maharashtra	1971
3.	Rajasthan	1973
4.	Bihar	1974
5.	Uttar Pradesh	1975
6.	Madhya Pradesh	1981
7.	Andhra Pradesh	1983
8.	Himachal Pradesh	1983
9.	Karnataka	1985
10.	Assam	1985
11.	Gujarat	1986
12.	Punjab	1995
13.	Delhi	1995
14.	Kerala	1999
15.	Jharkhand	2001
16.	Chattisgarh	2002

17.	Haryana	2002
18.	Uttarakhand	2002
19.	Jammu and Kashmir ^{3b}	2002
20.	West Bengal	2003
21.	Tripura	2008
22.	Goa	2011

The various aspects of the institution of lokayukta are:

Structural Variations

The structure of the lokayukta is not same in all the states. Some States like Rajasthan, Karnataka, Andhra Pradesh and Maharashtra have created the lokayukta as well as upalo-kayukta, while some others like Bihar, Uttar Pradesh and Himachal Pradesh have created only the lokayukta. There are still other states like Punjab and Orissa that have designated officials as Lokpal. This pattern was not suggested by the ARC in the states.

Appointment

The lokayukta and upalokayukta are appointed by the governor of the state. While appointing, the governor in most of the states consults (a) the chief justice of the state high court, and (b) the leader of Opposition in the state legislative assembly⁴.

Qualifications

Judicial qualifications are prescribed for the lokayukta in the States of Uttar Pradesh, Himachal Pradesh, Andhra Pradesh, Gujarat, Orissa, Karnataka and Assam. But no specific qualifications are prescribed in the states of Bihar, Maharashtra and Rajasthan.

Tenure

In most of the states, the term of office fixed for lokayukta is of 5 years duration or 65 years of age, whichever is earlier. He is not eligible for reappointment for a second term.

Jurisdiction

There is no uniformity regarding the jurisdiction of lokayukta in all the states. The following points can be noted in this regard:

- (a) The chief minister is included within the jurisdiction of lokayukta in the states of Himachal Pradesh, Andhra Pradesh, Madhya Pradesh and Gujarat, while he is excluded from the purview of loka-yukta in the states of Maharashtra, Uttar Pradesh, Rajasthan, Bihar and Orissa.
- (b) Ministers and higher civil servants are included in the purview of lokayukta in almost all the states. Maharashtra has also included former ministers and civil servants.
- (c) Members of state legislatures are included in the purview of lokayukta in the States of Andhra Pradesh, Himachal Pradesh, Gujarat, Uttar Pradesh and Assam.
- (d) The authorities of the local bodies, corporations, companies and societies are included in the jurisdiction of the lokayukta in most of the states.

Investigations

In most of the states, the lokayukta can initiate investigations either on the basis of a complaint received from the citizen against unfair administrative action or *suo moto*. But he does not enjoy the power to start investigations on his own initiative (*suo moto*) in the States of Uttar Pradesh, Himachal Pradesh and Assam.

Scope of Cases Covered

The lokayukta can consider the cases of 'grievances' as well as 'allegations' in the States of Maharashtra, Uttar Pradesh, Assam, Bihar and Karnataka. But, in Himachal Pradesh, Andhra Pradesh, Rajasthan and Gujarat, the job of lokayuktas is confined to investigating allegations (corruption) and not grievances (maladministration).

Other Features

1. The lokayukta presents, annually, to the governor of the state a consolidated report on his performance. The governor places this report along with an explanatory memorandum before the

state legislature. The lokayukta is responsible to the state legislature.

2. He takes the help of the state investigating agencies for conducting inquiries.
3. He can call for relevant files and documents from the state government departments.
4. The recommendations made by the loka-yukta are only advisory and not binding on the state government.

NOTES AND REFERENCES

1. According to the Chambers Dictionary, grievance means 'a ground of complaint; a condition felt to be oppressive or wrongful'.
2. The ARC headed by Morarji Desai submitted a special interim report on the 'Problems of Redressal of Citizens' Grievances' in 1966.
3. Press Information Bureau, Government of India, December 23, 2013.
- 3a. Tixmann's Guide to Lokpal and Lokayuktas Act 2013, pp.I-9 to I-11.
- 3b. In Jammu and Kashmir, the institution is known as State Accountability Commission (SAC).
4. But, in Andhra Pradesh, the leader of the Opposition in the state legislative assembly is not required to be consulted in this regard. In Karnataka, on the other hand, the Chairman of the state legislative council, the Speaker of the state legislative assembly and the leader of Opposition in the state legislative council are also required to be consulted on this matter.