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EMERGENCE OF LOKPAL AND LOKAYUKTA IN INDIA

I feel a little weak, but there is nothing to worry about it. The fight will go on till we a strong Lokpal.

-Anna Hazare

ORIGIN OF LOKPAL AND LOKAYUKTA

If it is the prosperity of the people in which lies the strength of the government; it is in the contentment of the people that the security and stability of the democracy is found¹. Citizens and Government are rightly said to be two sides of the same coin. It is since the emergence of human civilization that communication between the ruler and subjects or the masses and government has been an area of major concern for the jurists, policy makers and administrators. In order to minimize the gap between the state and the people, a need for an institution was felt which could deal with the grievances of the people and thus ensure the speedy administration of justice. The Courts take a lot of time in delivering the judgement thereby expanding the scope of denial of justice. In the modern times, the duty of the state has expanded and taking care of the people has become the primary goal of the state unlike previously when the government's role was restricted to merely looking after the borders and safety of the territories of the nation. More functions of the government meant conferring of more power to it. This led to the development of delegated legislation. Under the garb of delegated legislation, more and more powers began to be conferred on the administration which resulted in corruption gradually creeping into the system. With the increase in functions and powers of the government and administrative authorities, the chances of such power being misused also increased. Government agencies tend to work in a relentless manner at the cost of benefit of general masses and nation's credibility².

In any democratic country, the people's satisfaction is of prime importance but due to the ever pervading problem of corruption, the very aim of the democratic government to look after people's prosperity and satisfaction takes a back seat. This made it necessary to provide for an alternative

¹K.S. Shukla, & S.S. Singh, Lokayukta (Ombudsman in India) A Socio-Legal Study 1 Ch-1, 1988

²John B. Monterio, Corruption : Control of Maladministration (Manaktlas, Bombay, 1966), C. Rajkumar, Corruption and Human Rights in India (Oxford University Press, 2011) and Sadhan Kumar Samanta, Corruption in India : A Case for the Ombudsman (2003)

institution within the democratic framework which would enjoy the confidence of the people in it as it was to provide for better redressal mechanism. Subhash Chandar Gupta in his book has stressed on the need of such machinery which could effectively control maladministration and corruption³. As a result, the concept of Ombudsman evolved which was considered to be the solution to the problem of maladministration and corruption⁴. On the basis of the Swedish Ombudsman, the institution of Lokpal and Lokayukta have been established in India though a considerable delay has been done in doing so. Emphasis was laid on establishing the institutions at centre and state level so as to deal with the ever growing problem of corruption⁵. It took almost sixty six years for the institution to be established in India. Many jurists, politicians and eminent people have expressed their doubts on the functioning of the Lokpal. Intense debates took place in the Parliament regarding constitutionality of Lokpal and Lokayukta and after many deliberations the bill became a law in 2013.

HISTORY OF THE LOKPAL AND LOKAYUKTA ACT, 2013

It was not too late after the independence of India that the leaders of our nation realized the gravity of corruption rooted into our system. Meanwhile, mainly in the Scandinavian nations the concept of Ombudsman for tackling corruption related grievances emerged. The first proposal in this regard was initiated by Late Dr L.M. Singhvi (Member of Parliament) in 1963⁶. The Law Minister recognized the fact that the proposal was full of possibilities but since it was a matter of policy, the decision of the Prime Minister was to be final in such a case⁷. The then Prime Minister Mr Jawaharlal Nehru after much hesitation accepted the fact that India indeed needed the institution of Ombudsman. This led to the formation of First Administrative Reforms Commission which in its interim report titled 'Problems of Redress of Citizen's Grievances' recommended the setting up of Lokpal in the centre and Lokayukta in the states.

Consequently, to implement the recommendations, eight different bills were introduced in different years. Except for the bill tabled in 1985, the others had lapsed due to the dissolution of the respective Lok Sabhas. The interesting point was that each bill which was introduced was slightly different from the others. The bill introduced in 1968 covered the entire universe of public officials within the act, even the Prime Minister. The 1971 bill had almost the same coverage like the previous bill except for that it did not cover Prime Minister within its ambit. The 1977 bill too had

³Subhash Chandar Gupta, Ombudsman : An Indian Perspective, (Manak Publications (P)Ltd., 1995)

⁴Ibid

⁵Supra 4

⁶Vol. XVI , Lok Sabha Debates (3 April, 1963), Pg 7556-7558

⁷Ibid Pg 7590-7592

the same coverage but it defined corruption as under the language of the Indian Penal Code 1860 and Prevention of Corruption Act, 1988. The 1985 bill included Prime Minister in its ambit but the drawback was that it did not aim at tackling issues related to maladministration and misconduct of officials. The 1989 bill restricted itself only till matters of corruption as under Prevention of Corruption Act. The bills in 1996, 1998 and 2001 included the Prime Minister and Members of Parliament within its jurisdiction but not the bureaucrats.⁸

The Lokpal Bill 2011 included all public officials within its jurisdiction which were Prime Minister, MPs and Group A Officials. It provided for separate investigation and prosecution wings of Lokpal. It made the declaration of assets by all 'public servants' mandatory and failure to do so would lead to the presumption that such assets have been acquired by corrupt means. This bill was far more detailed and inclusive than earlier versions, with a large number of principal and ancillary provisions which were not a part of the earlier bills.

Meanwhile, the public at large realized the gravity of the corruption prevalent in the country. The delay in the passage of the Lokpal bill came within the notice of several Civil Societies which finally led to the launching of "India Against Corruption" movement in 2011. It was led by Shri Anna Hazare who was supported by various eminent personalities. The protests and the movement resulted in the passing of the Lokpal and Lokayuktas Bill, 2013, in both the Houses of Parliament. The bill received assent from President on 1 January 2014 and came into force on 16 January 2014 under the name "The Lokpal and Lokayukta Act 2013".

STRUCTURE OF LOKPAL AND LOKAYUKTA

The term Lokpal etymologically means 'protector of people'. It is derived from the Sanskrit word 'loka' which means people and 'pala' means caretaker or protector'. It is the Indian variant of 'Ombudsman'. The Lokpal and Lokayukta Act 2013 provided for the establishment of Lokpal at the centre and Lokayukta at the state level. The act is applicable to the whole of India without any exceptions. It covers within its ambit public servants, even those who are working outside the Indian Territory for the Indian Government. The Institution is a statutory body and not a constitutional body, that is the institution does not find its mention in the Constitution of India.

⁸Rajya Sabha Secretariat, Compendium on Parliamentary Enactments: The Lokpal and Lokayukta Act 2013 (Published by Secretary General of Rajya Sabha in 2015)

Section 3⁹ provides for the establishment of Lokpal. It comprises of one chairman and a maximum of eight members out of which at least fifty percent are to from the SC/ST/OBC/Minorities and women while the other fifty percent are to be necessarily judicial officers. The dignitary to be appointed as the chairman has to be either a former Chief Justice of India or former Supreme Court Judge an eminent person with impeccable integrity and outstanding ability having special knowledge and expertise of at least 25 years in the fields of anti-corruption policy, public administration, vigilance, finance, law and management . The appointments are to be made by the President of India based on the recommendations of the Selection Committee which consists of Prime Minister (Chairperson), Speaker of Lok Sabha, Leader of Opposition in Lok Sabha, Chief Justice of India or any judge appointed by him and any other eminent jurist under Section 4 of the act .

The jurisdiction of the Act as per its Section 14(1) extends to the Prime Minister except for allegations of corruption in matters of international border, atomic energy, space and public order. The MPs and Ministers are also within the jurisdiction except for anything said or any vote given by them in Parliament due to the protection provided by Article 105¹⁰. Group A, B, C or D officers defined under the Prevention of Corruption Act, 1988 will be covered under the act but any corruption complaint against Group A and B officers after inquiry will come to the Lokpal. However, in the case of Group C and D officers, the Chief Vigilance Commissioner would investigate and report to the Lokpal. Under Section 14(1)(h) of the Lokpal and Lokayukta Act , any entity receiving donation of more than 10 Lakhs from any foreign source in the context of Foreign Contribution Relaxation Act 2010 is under the jurisdiction of the Lokpal.

Lokayukta is similar to lokpal with the major difference being that is is an anti corruption statutory body at the state level. The Lokayukta is meant to deal with corruption related grievances regarding the public officials working at the state level. Much before the Lokpal and Lokayukta Act 2013 had been passed in India; some of the Indian states had already set up the institution for combating corruption. Maharashtra was the first Indian State to have a Lokayukta. The composition of Lokayukta varies from state to state. The Governor of the concerned state appoints Lokayukta for a period of six years.

SCENARIO AFTER ENACTMENT OF THE LAW

⁹Lokpal and Lokayukta Act, 2013

¹⁰The Indian Constitution, 1950

It was after a span of five years that the first Lokpal was appointed. Despite this, the selection of Justice P.C. Ghose as the first Lokpal in India was welcomed as a milestone in the fight against corruption¹¹. It was the Supreme Court's ultimate stern warning to the government which finally led to this appointment of the Lokpal. The government justified the delay caused in the appointment of Lokpal stating that it was awaiting for the amendments suggested by the Parliamentary Committee report to take place. The major amendment which was suggested was of including the largest opposition party's leader in the selection committee of the Lokpal in the absence of any recognized Leader of Opposition. This particular requirement was held to be not mandatory for selection of Lokpal and any vacancy in the selection. Another amendment was the exemption of the public servants' spouses and dependant children from the disclosure of their assets and liabilities¹². This amendment was brought about in the year 2016.

Many state governments have acted in the same lethargic manner as that of the centre government in appointing the Lokayukta in their state. Certain states like Jammu and Kashmir and Uttarakhand have even questioned the very need of a Lokayukta in their state. Another issues is that the powers of Lokayukta are not uniform in nature. Different states have conferred upon their Lokayukta different set of powers and authorities. For example, the Lokayukta in Maharashtra has no police wing in order to investigate the graft complaints made in contrast to the Lokayukta in Karnataka¹³.

Whatever the case might be, the fact remains that the efficiency of the institutions is yet to be assessed and analyzed in terms of effectiveness in tackling corruption as the appointments have been finalized only recently.

CONCLUSION

The Lokpal and Lokayukta Bill went to become the most widely discussed bill in India after the Independence of the country in 1947. If viewed from a pragmatic perspective, it would not be possible to not arrive at the conclusion that the Lokpal and Lokayukta Act 2013, though having its own share of shortcomings, is an essential instrument deployed for fighting corruption in our country. Given the political situation in India during the time when the discussions and debates

¹¹ *Lokpal, at Last*, The Hindu, (1 May 2020 , 03:25 pm),

<https://www.thehindu.com/opinion/editorial/lokpal-at-last/article26572294.ece> (Last visited on 3rd May, 2020)

¹² G Seetharaman, *Delay in appointment of Lokpal and Lokayukta: Who will bell the graft ?*, Economic Times, (2 May 2020 , 04:00 PM),

<https://economictimes.indiatimes.com/news/politics-and-nation/why-there-is-no-lokpal-at-centre-and-lokayukta-in-m-ny-states/articleshow/66570168.cms> (Last visited on 3rd May, 2020)

¹³ *Ibid*

around the bill were taking place , what the Indians got is not an incompetent piece of legislature as deemed to be so by many but is rather an Act having such shortcomings which have been and can also further be overcome over a period of time . The provisions of the act are such that if they are implemented properly they will act as a major force in combating corruption. However if one expects that the institutions of Lokpal and Lokayukta are the only ways needed to tackle corruption, he or she holds a wrong viewpoint. The fight against corruption has not yet ended; it has just begun now.

