

Vol 4 Issue 8 Sept 2014

ISSN No : 2230-7850

---

International Multidisciplinary  
Research Journal

*Indian Streams  
Research Journal*

Executive Editor  
Ashok Yakkaldevi

Editor-in-Chief  
H.N.Jagtap

---

## Welcome to ISRJ

**RNI MAHMUL/2011/38595**

**ISSN No.2230-7850**

Indian Streams Research Journal is a multidisciplinary research journal, published monthly in English, Hindi & Marathi Language. All research papers submitted to the journal will be double - blind peer reviewed referred by members of the editorial board. Readers will include investigator in universities, research institutes government and industry with research interest in the general subjects.

### *International Advisory Board*

Flávio de São Pedro Filho Federal University of Rondonia, Brazil	Mohammad Hailat Dept. of Mathematical Sciences, University of South Carolina Aiken	Hasan Baktir English Language and Literature Department, Kayseri
Kamani Perera Regional Center For Strategic Studies, Sri Lanka	Abdullah Sabbagh Engineering Studies, Sydney	Ghayoor Abbas Chotana Dept of Chemistry, Lahore University of Management Sciences[PK]
Janaki Sinnasamy Librarian, University of Malaya	Ecaterina Patrascu Spiru Haret University, Bucharest	Anna Maria Constantinovici AL. I. Cuza University, Romania
Romona Mihaila Spiru Haret University, Romania	Loredana Bosca Spiru Haret University, Romania	Ilie Pintea, Spiru Haret University, Romania
Delia Serbescu Spiru Haret University, Bucharest, Romania	Fabricio Moraes de Almeida Federal University of Rondonia, Brazil	Xiaohua Yang PhD, USA
Anurag Misra DBS College, Kanpur	George - Calin SERITAN Faculty of Philosophy and Socio-Political Sciences AL. I. Cuza University, Iasi	.....More
Titus PopPhD, Partium Christian University, Oradea,Romania		

### *Editorial Board*

Pratap Vyamktrao Naikwade ASP College Devrukh,Ratnagiri,MS India	Iresh Swami Ex - VC. Solapur University, Solapur	Rajendra Shendge Director, B.C.U.D. Solapur University, Solapur
R. R. Patil Head Geology Department Solapur University,Solapur	N.S. Dhaygude Ex. Prin. Dayanand College, Solapur	R. R. Yaliker Director Managment Institute, Solapur
Rama Bhosale Prin. and Jt. Director Higher Education, Panvel	Narendra Kadu Jt. Director Higher Education, Pune	Umesh Rajderkar Head Humanities & Social Science YCMOU,Nashik
Salve R. N. Department of Sociology, Shivaji University,Kolhapur	K. M. Bhandarkar Praful Patel College of Education, Gondia	S. R. Pandya Head Education Dept. Mumbai University, Mumbai
Govind P. Shinde Bharati Vidyapeeth School of Distance Education Center, Navi Mumbai	Sonal Singh Vikram University, Ujjain	Alka Darshan Shrivastava Shaskiya Snatkottar Mahavidyalaya, Dhar
Chakane Sanjay Dnyaneshwar Arts, Science & Commerce College, Indapur, Pune	G. P. Patankar S. D. M. Degree College, Honavar, Karnataka	Rahul Shriram Sudke Devi Ahilya Vishwavidyalaya, Indore
Awadhesh Kumar Shirotriya Secretary,Play India Play,Meerut(U.P.)	Maj. S. Bakhtiar Choudhary Director,Hyderabad AP India.	S.KANNAN Annamalai University,TN
	S.Parvathi Devi Ph.D.-University of Allahabad	Satish Kumar Kalhotra Maulana Azad National Urdu University
	Sonal Singh, Vikram University, Ujjain	

**Address:-Ashok Yakkaldevi 258/34, Raviwar Peth, Solapur - 413 005 Maharashtra, India**  
**Cell : 9595 359 435, Ph No: 02172372010 Email: ayisrj@yahoo.in Website: www.isrj.net**



## THE LOKPAL AND LOKAYUKTA ACT, 2013: A CRITICAL STUDY

Kamal Jeet Singh<sup>1</sup>, Sudhir Dutta<sup>2</sup> and Anurag<sup>3</sup>

<sup>1</sup>Department of Laws, Himachal Pradesh University, Shimla.

<sup>2</sup>Research Scholar, Department of Laws, Himachal Pradesh University, Shimla.

<sup>3</sup>Research Scholar, Department of Laws, Himachal Pradesh University, Shimla.

**Abstract:**-The very first day of the year 2014 turned out to be promising one, as the much awaited Lokpal bill became an act after receiving signatures from the President of India on January 1, 2014. It brought cheer to all the citizens who were waiting for the act to be made to curb corruption in the country. The Lokpal and Lokayukta bill was pending in the Parliament since many years. It was due to the efforts of India against corruption movement that the bill again came to life & demand was raised to make it a law as early as possible.

**Keywords:**Lokpal And Lokayukta ,Critical Study , developing economy, socio-economic development .

### I. INTRODUCTION

The responsibility for good, transparent governance lies with the elected representatives who are guided and supported by the bureaucracy. In a developing economy, socio-economic development is a mammoth task involving development of large amount of resources. Execution of these tasks requires empowerment of the political, executive and bureaucracy. More the power, more the changes of its misuse, therefore need for clean, transparent and accountable government to the people. Struggle for independence too was also a struggle for good governance. Lokayukta and Lokpal Symbolizes one of the ideals of a welfare state. They may, over a period of time, facilitate the process of attaining high standards of public morality and cleanliness of public life. This institution could be repository of public faith and confidence against corruption and maladministration of public offices in the country. A watching against injustice which may, in turn, re-establish the confidence of the public in government. Lokayukta is a forum available to the public to effectively ventilate their grievances, allegations and ensure independent and impartial justice against administration excesses. The institution facilitates an objective criticism and evaluation of administrative actions of the government and is a representative of the people. Human behavior is so complex and takes such diverse forms that it is not possible to predict it or formulate a series of exact propositions about it. It is very complicated with so many imponderable that it would be hazardous to be predictable with any certainty the course it would adopt. It is not likely fairly tale, it pertain to an event in real life and human factors responsible for that event. A Chinese thinker Confucius has advised his followers “not to do a thing to others which you will not allow others to do to you.”

Corruption does not mean only taking bribe. It used in much larger sense, “conduct”, which is morally unsound and debased. It includes conduct which is blameworthy or improper. In wider connotation corruption includes improper and selfish exercise of power and influence attached to public office due to special provision one occupies public land. Corruption has assumed alarming proportions invading all the governmental activities public funds are going into private hand, with the result some are becoming richer and richer while those, for whom the funds are meant, are not benefiting a continue below poverty line.

For example, complaints of corruption in the implementation of Mahatma Gandhi National Rural Development Guarantee Act, like non-engagement of eligible persons, non-payment of full wages, payment of wages to fake persons, non-payment of wages for period falling short of 100 days etc. The great historian, writer, philosopher, Edward Gibbon, after completion of his book, “The Decline of Roman Empire” was asked the reason for the decline of Roman empire, he said “Corruption”. Corruption has been defined as differently in legislations and

publications. Harassment of common man by public authority is socially abhorring and legally impermissible. It may harm him personally but the injury to society is for more grievous. Crime and corruption thrive and prosper in the society due to lack of public resistance. Nothing is more damaging than the feeling of helplessness. An ordinary citizen instead of complaining and fighting succumbs to the pressure of undesirable functioning in offices instead of standing against it.

The eradicate corruption media as well as NGOs have a vital role to make it a people's movement. A spirit of zero tolerance has to be imbibed among citizens if such awareness is created in public at large. It would be possible to some extent to curb corruption. There is no doubt media and NGOs are exposing corruption with all zest and zeal even at the cost of harm to their person and property.

Presently the institution of Lokayutya / Upa-Lokayukta are in 19 states, viz., Orissa, Maharashtra, Rajasthan, Bihar Uttar Pradesh, Delhi, Gujarat, Assam, Karnataka, Himachal Pradesh, Kerala, Haryana, Andhra Pradesh, Madhya Pradesh, Chhattisgarh and Uttarakhand, Goa under state legislation with the result, there is no uniformity in Lokayukta Laws in the country. Although the efforts were made for the creation of Lokpal at the numbers of times in the past and nothing has been done.

## **II.HISTORICAL DEVELOPMENT**

### **A.Ancient History of the Act**

The word Ombudsman comes from Sweden which in 1809 established the position of Justice Ombudsman to oversee the government administration. Since 1809, it has been adopted in many parts of the world in both government and private industry (e.g. banking & insurance) setting. However the role has changed considerably and now a days the ombudsman functions in Sweden and elsewhere do not generally involve acting on behalf of the complainants in the way that an advocate or lawyer would do. Nor does the ombudsman represent the agency being complained about, rather, an Ombudsman (Lokayukta) acts in an impartial and independent body.

Ombudsman is now functioning in common law and non- common law, developing and developed countries, and provincials' national level. It is a unique institution which leads to an "open government" by providing a democratic control mechanism over the power of the State. It has its own role to play by bringing 'renaissance' and 'humanism' in the working of modern government which have tended to develop an attitude to look to the paper rather than the person behind it.

The Lokpal Act, 2013, officially The Lokpal and Lokayukta Act, 2013, is an anti-corruption Act of Indian Parliament in India which "seeks to provide for the establishment of the institution of Lokpal to inquire into allegations of corruption against certain public functionaries and for matters connecting them".

The bill was tabled in the Lok Sabha on 22 December 2011 and was passed by the house on 27 December 2011 as The Lokpal and Lokayukta Bill, 2011. The bill was subsequently tabled in the Rajya Sabha on 29 December 2011. After a marathon debate that stretched until midnight of the following day, the vote failed to take place for lack of time. On 21 May 2012, the bill was referred to a Select Committee of the Rajya Sabha for consideration. The bill was passed in the Rajya Sabha on 17 December 2013 after making certain amendments to the earlier Bill and in the Lok Sabha on 18 December 2013. The Bill received assent from President Pranab Mukherjee on 1 January 2014 and came into force from 16 January 2014.

The bill was introduced in parliament following massive public protests led by anti-corruption crusader Anna Hazare and his associates. The bill is one of the most widely discussed and debated bills in India, both by the media and the People of India at large, in recent times. The protests were named among the "Top 10 News Stories of 2011" by the magazine. The bill received worldwide media coverage.

Corruption is an emotional issue in India, where at least 12 [whistle-blowers](#) were killed and 40 assaulted after seeking information under a new Right to Information Act aimed at exposing local graft, according to data compiled by [Bloombe L.P.](#) from January 2010 through mid-October 2011. Enacted by Singh six years ago, the legislation became the most powerful tool for fighting wrongdoing in politics and business, with 529,000 requests filed in the year through March. In 2011, India ranked 95th in the Corruption Perceptions Index of Transparency International. A recent survey estimated that corruption in India had cost billions of dollars and threatened to derail growth. India lost a staggering \$462 billion in illicit financial flows due to tax evasion, crime and corruption post-Independence, according to a report released by Washington-based Global Financial Integrity.

### **B.Modern History of the Present Act**

The 2010 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 were not and rejected it as a toothless body with only recommendatory powers.

Hazare started an indefinite hunger strike on 5 April 2011 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 nation-wide protests in support. The fast ended on 9 April, 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 five ministers and five members of the civil society. The chairman of the Joint Drafting Committee was Pranab Mukherjee. The Committee set 30 June 2011 as the deadline to complete the drafting process.

#### **(i) The First Draft Committee**

The Committee first met on 16 April in 2011, in the North Block and lasted for about ninety minutes. Team Anna presented their version of the bill with a slight modification relating to the selection panel to choose the Lokpal and its members. Under the revised proposal, the Prime Minister and the Leader of the Opposition in the Lok Sabha were replaced with the Rajya Sabha chairman and the Lok Sabha Speaker. The meeting was allegedly recorded and the Committee claimed that decisions would be made available to the general public. HRD Minister and Committee member Kapil Sibal, said that both the sides were keen that the new Bill should be introduced in the Monsoon session, which would begin early July.

#### **(ii) Second Draft Meeting**

The Committee met as planned on 2 May in 2011. The meeting was termed "very good" and with "no difference of opinion" between the panel members. Sibal said that the meeting discussed the document presented previously by the civil society members. Prashant Bhushan said, "The meeting was mainly to discuss the basic principles behind the Jan Lokpal Bill. The discussion was on essential features, objects and reasons of the bill which have been prepared according to the main provisions of the UN Convention against Corruption. All signatories of the United Nations Convention against Corruption have to pass this kind of law." In May 2011, the Indian Government had ratified two UN Conventions – the United Nations Convention against Corruption (UNCAC) and the United Nations Convention against Transnational Organized Crime (UNTOC) and its three protocols.

#### **(iii) Third Draft Meeting**

Kapil Sibal, member of the Joint Drafting Committee of Lokpal at the third meeting on 7 May in 2011, both parties agreed that the new authority should be independent and have a transparent appointment process. The two sides agreed to grant the Lokpal the power to initiate investigation and prosecution. After the meeting Bhushan said that it was decided that Lokpal would be independent of the government and have full powers on recruitment. He stated, "Lokpal will have powers to initiate investigation and prosecution and will not need permission from the government. The model on which the financial independence will be based is yet to be decided. Various models were discussed, including from other countries and of institutions like the Supreme Court, the Comptroller and Auditor General and the Central Vigilance Commission."

Kapil Sibal said the meeting was "exceptionally constructive" and added, "The approach was very constructive. There were areas of broad agreement, including the process of appointment of Lokpal which should be transparent." Another group of civil society members led by Aruna Roy and Harsh Mander working for a strong Lokpal Bill upped its ante against Team Anna. Under the banner of the "National Campaign for People's Right to Information" (NCPRI) they claimed that Anna's diktat could be dangerous and that the government's functioning could not be handled by one group.

#### **(iv) Fourth Draft Meeting**

The 23 May meeting in 2011 lasted over three hours and the two sides agreed "in-principle" on half of the 40 basic principles for the anti-graft Lokpal bill proposed by the civil society members.

#### **(v) Fifth Draft Meeting**

At the 30 May, 2011 meeting the chairman made it clear during the discussion that the matters pertaining to the exclusion of Prime Minister, Judiciary would be a part of the discussions on the scope of the Lokpal. The Chairman of the Panel announced that the conduct of the MPs' inside Parliament would remain outside its remit of the Lokpal to comply with [Article 105(2)] of the Constitution and that the views of the State and the political parties would be discussed with the civil society members. These announcements created a stalemate between the Committee's two-halves.

**(vi) Sixth Draft Meeting**

Team Anna boycotted 6 June, 2011 meeting, alleging that the police crackdown on Baba Ramdev had "strengthened the doubts" about the government's intentions and demanded that the next meeting be rescheduled because of Hazare's other commitments. Shanti Bhushan produced a letter that was read by the Chair "indicating their inability to attend the meeting" and "that what happened at the Ramlila ground had nothing to do with the proceedings of the Joint Drafting Committee". The chairman suggested that the drafting should be the focus. Post meeting, the draft was to be circulated to the other political parties for their consideration. They rescheduled the seventh meeting to 15 June.

**(vii) Seventh Draft Meeting**

The two hours event took place on 15 June in 2011, with out agreement on several issues. Both sides furnished versions to the Union Cabinet for consideration. Team Anna blamed the government for not being serious, claiming "The government is planning to kill Lokpal before it's born". The civil society members suggested that the Lokpal be empowered to probe corruption cases in instead of the departmental probes and CBI inquiries of the prior approach. The government rejected the idea. Chief Ministers of several BJP-ruled states expressed surprise that they were being consulted before the final draft was ready. Chief ministers of Congress-ruled states backed the Centre's stand and opposed bringing the prime minister under the Lokpal's ambit. BJP-ruled states sought wider deliberations. Opposition parties demanded to comment on the whole bill rather than on the six contentious issues. Anna Team demanded that the audio of the proceedings be made available to them. Hazare threatened to resume an indefinite fast if the bill was not passed by 15 August.

**(viii) Eight and Ninth Draft Meetings**

The Committee met again on 20 and 21 June in 2011. The final meeting ended in failure after which Hazare announced that he would begin fasting on 16 August, to "teach the government a lesson". The government rejected the creation of a parallel structure which would be "answerable to nobody". It further ruled out scrutiny of Prime Minister, higher judiciary and the conduct of MPs in Parliament. The government conferred several critical powers including quasi-judicial status to Lokpal along with powers to attach assets, including independent prosecution and investigation machinery with full police powers. The last two meetings were cordial and both sides "agreed to disagree". Law Minister M Veerappa Moily said that the mandate of the committee was to prepare a lokpal bill and not to rewrite the Constitution. Hazare stated:

The government has no intention to bring a strong Lokpal bill. It is misleading the people. Now, there is no option but to go on fast from 16 August 2011 as announced earlier.

**III. EXISTING LEGAL PROVISION ON CORRUPTION IN INDIA**

After the history of the Act, there are also some provisions for the prevention of corruption in the statutes defined here as under:-

**(A) Indian Penal Code, 1860**

The laws to prevent corruption in India were first enacted in the Indian Penal Code (Section 161-171) in 1860 by British Government of India. These provisions prohibit a public servant from taking anything other than his/her legal remuneration for doing any acts which he/she is under an obligation to do or not to do.

Later, the Indian Parliament also enacted the prevention of corruption Act by making it a little more mandatory punishment has been prescribed and also the punishment (imprisonment) has been enhanced from three years to five years.

Actually the provisions of IPC were enough to control the corruption till they were allowed to control it. When the corrupt officials and practices the law will deal with them strictly and there will be no defense for them the corruption was under control. But in 1952, section 165-A was added in IPC that made the abetting of corruption a specific offence and it gave an instrument in the hands of corruption officials to frame the complainant of a corrupt practice with the abetment of it the get him punished by misusing the government machinery.

It is the harsh fact of life that phenomenal growth of administrative powers as a byproduct of an intensive form the government though necessary for development and growth yet at times spells negation of people's right and values. Administration has a tremendous social function to perform. As today, the expectation from the government is not only to protect its people from external aggression and internal disturbance but also to take care of its citizens from the cradle to solve their problems rather than defining their rights. It is felt that the right of equality in the American constitution will be a sterile right if the black is the first to lose his job and the last to be reemployed, in the

same manner the equality clause in India. Constitution would foreword to actively help the weaker section of the society to bring about equality of life.

#### **(B) Two Tier Machinery**

In early 1960s mounting corruption in public administration set the winds blowing in favors of on ombudsman in India too. The A.R.C set up in 1966 recommended the constitution of the two tier machinery of Lokpal at centre and lokayukta in the state.

The English Government of India was better concerned with the prevention of corruption laws, added the new provisions of abatement of corruption that actually prevents the victim of corruption from making a complaints against public official due to the fear of getting himself charge with the offence of abatement of corruption. Till 2013, 20 states, Andhra Pradesh, Assam, Bihar Chhattisgarh, Delhi, Gujarat, Jharkhand, Haryana, H.P., Karnataka Kerala, MP, Maharashtra, Orissa, Punjab, Uttarakhand, U.P. Goa had enacted Lokayukta Act of their respective state.

#### **IV. OMBUDSMAN (LOKPAL) AS A LEGAL INSTRUMENT FOR PREVENTION OF CORRUPTION.**

In recent countries India has earned a place among the 91st most corrupt country out of 178 countries in the world. Corruption in India is a consequence of the nexus between Bureaucracy, politicians, and criminals. India is now considered as soft state. Today the number of ministers with an honest image can be counted on fingers. At one time bribe was paid for getting wrong things done but now bribe is paid for getting right things done at right time. It means corruption is the way of illegal means for achieving legal object. Further corruption has become something respectable in India because respectable peoples are involved in it. Social corruption like less weighting of products, adulteration in edible items, and bribery of various kinds have incessantly prevailed in the society.

In today scenario, of a person want a government job he has to pay Lakhs of rupees to the higher officials irrespective of satisfying all the eligibility criteria. In every office one has either to give money to the employee concerned or arrange for some sources to get work done. There is adulteration and duplicate weighing of products in food and civil supplies department by unscrupulous worker who cheats the consumers by playing with the health and lives of the people. It is possible today's generation is willing to change this system and soon corruption is gone out from India. Every person should have his own responsibility to avoid corruption.

Common citizens of the country pay a bribe of Rs. 21,068 crores while availing one or more of the eleven public services in a year. As high as 62 percent of citizens, think that corruption is not a hearsay, but they in fact had the firsthand experience of playing bribe or "using a conduct" to get job done in a public officer. Lokayukta investigates cases of corruption where substantiated, recommend action. He is great check on corruption bring about transparency in the system makes administrative machinery citizen friendly.

This institution is also develop in various other department like, insurance Ombudsman, Banking Ombudsman, post official Ombudsman; The Ombudsman, scheme in the financial sector was initially introduced in banking with R.B.I. notification in 1995. The Govt. of India introduced the Insurance Ombudsman scheme in Insurance sector through a notification of "Redressal of public Grievance Rules 1998" under section 114 of the Insurance Act 1938. Insurance Ombudsman handles complaints of aggrieved insured person. This institution of great importance and relevance for the protection of interests of policy holders and also in building their confidence system. The insurance Ombudsman has two types of functions to person conciliation and Award making.

The Ombudsman is an institution, independent from judiciary, executive and legislature and analogous with that of a high judicial functionary. It is mostly free to choose his investigation method and agency. The institution of Lokayukta/Ombudsman, therefore, develops good relationship between them and the government functionaries and endeavors "Citizen friendly solution of grievances," within the limits of law. Independence has been the hallmark of the institution of Lokayukta. It enables an aggrieved citizen to complain against officials' action, inaction, and corruption easily and quickly, without any expense appearing in person. In cool and composed atmosphere as compared to law court. The procedure followed is formal, in expensive and remedial. The role of Institution of Lokayukta is not to support but the efforts of government, to eradicate corruption and to ensure good governance. This institution must be regarded as complementary to the administrative machinery as it helps to put it on right track and create awareness among the people.

#### **V. LOKPAL AND LOKAYUKTA ACT, 2013**

##### **Statement and object.**

Act to provide for the establishment of Lokpal for the Union and Lokayukta for the states to inquire into allegations of Corruption against certain public functionaries.

### **A. Establishment of Lokpal**

Chapter II of the Lokpal and Lokayukta Act 2013, sec. 3 -10 deals with establishment of Lokpal. The Lokpal consist of a Chairman who is or has been a Chief Justice of India or is or has been a judge of the Supreme Court or an eminent person. A person shall be eligible to be appointed as a judicial member if he is or has been a judge of the Supreme Court or is or has been a chief justice of a High Court. The chairperson or a member shall not be a member of parliament or a member of the legislature of any state or union territory, a person convicted of any offence, a person less than 45 years of age, a member of any Panchayat or Municipality, a person who has been removed or dismissed from the service of the Union or a State.

The Chairperson and Members shall be appointed by the President the Prime Minister-Chairperson, the Speaker of the House of the people Members, the leader of opposition in the House of the People Member, the Chief Justice of India or a Judge of the Supreme Court.

The president shall take necessary steps for the appointment of a new Chairperson and Members at least three months before the expiry of the term to the Chairperson or Member. Chairperson and Member hold the office for a term of five years from the date on which he enters upon his office or until he attains the age of seventy years.

### **B. Inquiry Wing and Prosecution**

The Lokpal shall constitute an Inquiry Wing headed by the Director of Inquiry for the purpose of conduction preliminary inquiry into any offence alleged to have been committed by a public servant punishable under the Prevention of Corruption Act, 1988.

The Lokpal shall constitute a Prosecution Wing headed by the Director of prosecution for the purpose of prosecution of public servants in relation to any complaint by the Lokpal under this Act.

### **C. Jurisdiction in Respect of Inquiry**

Chapter VI deals with the Lokpal shall inquire any matter involved in, or arising from, or connected with, any allegation of corruption made in a complaint in respect of any person who is or has been PM. Lokpal shall not inquire any allegation of corruption in so far as relates to international relations, external and internal, security, public order, atomic energy and space. Such enquiry shall be held in camera. In case any matter or proceeding relating to allegation to corruption under the Prevention of Corruption Act, 1988 has been pending before any court or committee or any other authority for inquiry not to be affected. The jurisdiction of the Lokpal may be exercised by benches which may be constituted by Chairperson. The benches of the Lokpal sit at New Delhi and such other places as the Lokpal may, specify. On any application for a transfer made by complainant may transfer any case pending before one bench for disposal to any other bench.

### **D. Procedure in respect of Preliminary Inquiry and Investigation**

The Lokpal shall if it has decided to proceed with the preliminary inquiry, by a general or special order refer to complaints received by it in respect of public servant belonging to groups A, B, C, and D to the C.V.C Act, 2003. The CVC after making preliminary inquiry in respect of public servant belonging to group A and B shall submit its report to the Lokpal. The Lokpal shall call for the explanation of the public servant. Every inquiry shall be completed within the period of ninety days. Lokpal may require any public servant or any other person to furnish information. After the conclusion of the investigation, the findings of the Lokpal disclosed the commission of an offence.

### **E. Powers of Lokpal**

The Lokpal shall have the powers of superintendence over and to give direction to the Delhi Special Police Establishment in respect of the matters referred by the Lokpal for preliminary inquiry or investigation to the Delhi Special Police Establishment under this Act. If the Lokpal has reason to believe that any document shall be useful for any investigation, retain the document till the completion of such investigation. Lokpal have the powers of civil court in certain cases like summoning, production of any document and receiving evidence on affidavits.

The Lokpal may issue appropriate prevent destruction of records during preliminary inquiry. Lokpal may by general or special order in writhing direct any administrative power may also be exercised or discharged by such of its Members.

### **F. Special Courts**

Chapter IX of the Act deals with Special Court. The Central Government shall constitute special courts, as recommended by Lokpal. The special court constituted shall ensure completion of each trial within the period one



year. If the trial cannot be completed within a period of one year special court shall record reasons and complete the trial within further period of not more than three months.

#### G. Offences and Penalties

Chapter XIV of the Act deals with the Offences and Penalties. 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. Section 47 deals with false complaint made by society or association of person or trust.

It shall be the duty of the Lokpal to present annually to the President a report on the work done by the Lokpal and on receipt of such report the president shall cause a copy thereof together with a memorandum explaining, in respect of the cases, if any, where the advice of the Lokpal was not accepted, the reason for such non-acceptance to be laid before each House of parliament.

#### H. Appellate Authority

Chapter XV deals with the appellate authority. The Lokpal shall function as the final appellate authority in respect of appeals arising out of any law for the time being in force providing for delivery of public services and redressal of public grievances by any public authority in cases where the decision contains findings of corruption under the Prevention of Corruption Act, 1988.

No suit, or other legal proceeding shall lie against the Lokpal or against any officer, employee, agency or any person, which is done in good faith. 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.

So, these are some provision and measures which were provided for keep the check on the corruption in India.

#### VI. CRITICAL STUDY ON LOKPAL AND LOKAYUKTA ACT, 2013

In spite of all efforts to make this Act successful, there are also some lacunas are left in this Act and those are as under:

**Protect the corrupt:** The biggest flaw in the Bill is the Selection of the Lokpal and its members. Majority of those who will select Lokpal will be from the political class who will have a vested interest in a weak Lokpal. If the Lokpal is weak, there is no question of curbing corruption. It's another way of protecting the corrupt, as per politician's convenience.

**Lokpal's Removal:** According to the Bill, Only the government or 100 MPs can complain to SC if this are satisfied with the Lokpal's performance. Why have a Lokpal to punish the political class if its removal is in the hands of the same political class. Rather, any citizen should be allowed to complain and seek any Lokpal member's removal.

**Suspicious Exclusions:** The Bill excludes Judiciary. Can't the judges in the courts be corrupt? They are also public servants and should be under the purview of this Bill. Also, any decision of Lokpal to initiate preliminary inquiry or investigation against the PM shall be taken only by the Full Bench with a "2/3rd majority". This 2/3rd majority is of the political class itself. Why will they opt to go against the PM?

**No whistleblower provision:** The "Whistleblower" is defined as any person who faces threat of physical harm or professional harm like illegitimate transfers, denial of promotions, denial of appropriate perks, departmental proceedings, discrimination or is actually subjected to harm for making a complaint to Lokpal under this Act or for filing an application under RTI. If they are not protected, there will be no complaints in fear of such consequences.

**Appointment of Lokayuktas:** Lokayukta should have been created in the states along the same lines as the one at the Centre. However, this Bill puts this responsibility on the States. States will have absolute freedom in determining the nature and type of the institution of Lokayukta. How is that any different from the State Vigilance Committees, we have today. For example: The Chief Minister of Punjab is the Minister in charge of Vigilance Department of Punjab. Interestingly, the same vigilance department is also investigating charges of corruption against himself and his family and is prosecuting them. Can we expect such department to do any honest investigations or prosecution?

**Punishment for false or frivolous complaints:** Section 46 of the Act provides for a punishment with imprisonment for a term which may extend to one year and with a fine which may extend to Rs. 1 lakh in case a complaint is found to

be false and frivolous or vexatious. Isn't this a way to instill a fear in the mind of the complainant?

## **XII.CONCLUSION AND SUGGESTION.**

After a long time struggle finally we have The Lokpal and Lokayukta Act, 2013. 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".

There are several deficiencies in our anti-corruption systems because of which despite overwhelming evidence against the corrupt, no honest investigation and prosecution takes place and the corrupt are hardly punished. Our anti-corruption agencies have basic structural deficiencies because of which they are incapable of doing any honest investigations. So with this regards as well as with the increase in the levels of corruption in the political class, such a Bill is welcome and comes as a relief to Indians. However, there are some unaccounted areas in the Bill, without which the whole intention of rooting out corruption from public offices might just seem to be an eye wash. The purpose of the legislation and struggle that led up to it would be defeated if the real motivation behind the new thrust were to be the 2014 general election and the propaganda mileage associated with it.

## **END NOTES**

1. Thakur, U., Corruption in Ancient India, (1979), P, 2.
2. Ibid.
3. 25th Annual Consolidated Report of Lokayukta H.P., 2010
4. Ibid.
5. 24th Annual Consolidated Report of Lokayukta in Himachal Pradesh, p7.
6. International Ombudsman Institute News Letter Bulletin, (March 1997), Vol. 19, No1
7. <http://www.Ombudsman.wa.gov.au>. Visited on 14/7/2014 at 11:30 am.
8. I.P. Massy, Administrative Law, Vol. (2008), p. 552.
9. The Economic Times, 18th June 2011.
10. The Hindu, 29th May 2012.
11. Ibid.
12. The Times of India, 29th May, 2012
13. Post.jagran.com. Retrieved 29 May 2012.
14. Indiansocialstudy.com. 29 May 2012.
15. Lokpalbill2011.blogspot.in 29 May 2012.
16. Indian Express. Retrieved 29 May 2012.
17. <http://hp.gov.in/likayukts/toleoflikayuttkts.aspx>. visited on 11.2.2014 Visited on 15-7-2014 at 2:30 pm
18. <http://unscportal.com/civilservices/> An Essay-corruption-in India. Visited on 17-7-2014. at 5:30 pm
19. Ibid
20. Yojna, December (Vol. 2009), pp. 62, 63
21. Sec. 3 of Lokpal and Lokayukta Act, 2013
22. Id. Section 6
23. Id. Section 11
24. Id. Section 12
25. Id. Section 14
26. Id. Ss. 22-24
27. Id. Ss. 35-36
28. Id. Section 48
29. Id. Section 49
30. An Article, "Lokpal in India- An Analysis" by "TriloknathMishra", [www.wisdomblow.com](http://www.wisdomblow.com) as visited on 16-06-2014 at 2:00 pm



**Kamal Jeet Singh**

Department of Laws, Himachal Pradesh University, Shimla.

# Publish Research Article International Level Multidisciplinary Research Journal For All Subjects

Dear Sir/Mam,

We invite unpublished Research Paper, Summary of Research Project, Theses, Books and Book Review for publication, you will be pleased to know that our journals are

## Associated and Indexed, India

- \* International Scientific Journal Consortium
- \* OPEN J-GATE

## Associated and Indexed, USA

- Google Scholar
- EBSCO
- DOAJ
- Index Copernicus
- Publication Index
- Academic Journal Database
- Contemporary Research Index
- Academic Paper Database
- Digital Journals Database
- Current Index to Scholarly Journals
- Elite Scientific Journal Archive
- Directory Of Academic Resources
- Scholar Journal Index
- Recent Science Index
- Scientific Resources Database
- Directory Of Research Journal Indexing

Indian Streams Research Journal  
258/34 Raviwar Peth Solapur-413005, Maharashtra  
Contact-9595359435  
E-Mail-[ayisrj@yahoo.in](mailto:ayisrj@yahoo.in)/[ayisrj2011@gmail.com](mailto:ayisrj2011@gmail.com)  
Website : [www.isrj.net](http://www.isrj.net)