CHAPTER IV

INDIAN OMBUDSMAN PLAN: LOKPAL
Emergence of the Idea

The idea of an Ombudsman like independent institution to look into public grievances is thirty-six years old and it has a chequered history. To combat corruption, casual effort was taken by the government in 1952 by having a discussion on corrupt practices at the time of consideration of the Prevention of Corruption (Second Amendment) Bill, the Criminal Law Amendment Bill and the Commissions of Inquiry Bill. Only on 9th May 1968, the attempts took the form of a Bill which was introduced in the Lok Sabha. Behind this great achievement to give birth to Ombudsman idea three factors played commendable roles.

Role of Parliamentarians.

On April 3, 1963 Dr. L.M. Singhvi, a noted parliamentarian, put forth for the first time on the floor of Parliament the demand for setting up of an Ombudsman-like grievance mechanism. In support of his proposal he advanced the following arguments in the course of the debate on the demand for grants of the Ministry of Law. He said:

"That the institution of Ombudsman would enable the citizen to effectively ventilate his grievances: that the question hour in Parliament and writing letters to Ministers
are no substitute for it; that the available judicial remedy is not adequate as the courts are hide bound by limitations of procedure and technicalities; that through it Parliament would effectively function in individual cases; and that it would ensure independent, impartial justice in matters of administrative excesses in individual cases.]

Again, on April 1964 Dr. Singhvi moved a resolution for setting up of Ombudsman type machinery. The resolution sought to express the opinion of the House that:

"An Officer of Parliament to be known as the People's Procurator 'Lok Ayukta', broadly analogous to the institution of Ombudsman in Sweden, Denmark and New Zealand, be appointed, under suitable legislation, for the purpose of providing effective and impartial investigation machinery for public grievances, for eradicating corruption at all levels, for redressing administrative wrongs and excess for securing the liberties of citizens, and generally for strengthening the basic foundations of Parliamentary democracy as a system of Government".

As the aforesaid resolution was not adopted Dr. Singhvi moved another resolution for constituting a Committee of M.Ps to examine the utility and feasibility of Ombudsman type of institution. As such the consistent campaign of Dr. Singhvi for two years (1963-65) for setting up

1. India, Lok Sabha Debates (L.S.D.), 3rd Series; Vol, XVI, CC.7556-58 and 7589-93. The title of the machinery 'Lok Ayukta', People's Procurator, was first used by Dr. Singhvi in Lok Sabha in 1964.

of an Ombudsman of the Parliament did create a favourable atmosphere for considering its desirability in India.

Role of Law Conference and Bar Association

It is a matter of interest to note the dignified service, rendered by the Third All India Law Conference held on 12-14 August 1962 in urging the creation of Ombudsman institution. To that effect, the credit for generating a lively interest and urging upon the participants to study the feasibility of Ombudsman in India goes to M.C. Setalvad, the then Attorney-General of India. And the Madras Provincial Bar Association supported the creation of such grievance handling machinery. Also P.B. Gajendragadkar, then Chief Justice of India, invited urgent attention for careful examination of the independent machinery for redress of public grievance while discussing the 'Role of Administration in a Democratic Welfare State' on July 15, 1963.

Role of Committees and Commissions

The idea of independent Ombudsman type institution for ventilating public grievance, is the

3. For details regarding the inaugural speech of Mr. M.C. Setalvad, then Attorney General of India, to the Third All India Law Conference held in New Delhi, August 1962; see M.C.J. Kagzi, 'Control of the Administration', Public Law Journal, 1968, pp. 254-55.
offspring of various Committees such as: (1) Committee on Prevention of Corruption (Santhanam Committee, 1962), (2) Administrative Reforms Committee of Rajasthan; (3) Special Consultative Group of Members of Parliament 1965 and; (4) Administrative Reforms Commission (A.R.C. January 1966).

The Santhanam Committee after making an in-depth study recommended on 31 March 1964 the setting up of a Directorate General of Complaints as a wing of the Central Vigilance Commission. The Government turned down the proposal on the plea that it was humanly impossible and impracticable to look into public grievances and allegations against public service.

Apart from that at State level the Administrative Reforms Committee of Rajasthan\(^4\) candidly recommended in September 1963 the structural and functional aspects of the Ombudsman to hear complaints against State Officials and Ministers. This provided stimulus to think of such an institution at central level for functioning against bureaucratic excess and malfunctioning.

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\(^4\) Officially, the Ombudsman institution was first spoken of in India by the Rajasthan Administrative Reforms Committee. For detailed recommendations regarding the Committee’s proposal see Rajasthan, Report of the Administrative Reforms Committee (Jaipur: Central Government Press, 1963), Paras 3.13.2 to 3.13.17.
On subsequent occasions, on the demand of representatives in Parliament, the Government of India constituted in early 1965 a Special Consultative Group of Members of Parliament for administrative reforms. The Committee appointed three sub-committees: (1) Sub-committee on controls; (2) Sub-committee on administrative tribunal and machinery for redress of grievances at the centre and; (3) Sub-committee on district administration - removal of citizens' grievances. The second Sub-committee classified the citizens' grievances into two types; first, grievances relating to legal discretion of administrative authorities; second, grievances concerning biased exercise of discretion, negligence, delay, harassment discourtesy and extortion. For ventilation of the first it suggested the machinery of an appellate authority, tribunal or court. While for the second type of complaints it put forward an Ombudsman type institution, independent of executive.

On receiving the reports of the sub-committees, the special consultative group of members favoured the setting up of a technically high-powered enquiry commission on administrative reforms. To meet the constant demand voiced in Parliament and in the Press during two years period in 1963-65, the Administrative Reforms Commission (ARC) was appointed on 5th January, 1966. Specifically,

5. The ARC was appointed vide the Ministry of Home Affairs Resolution No. 40/3/65-AR(P), dated 5 January, 1966 with Mr. Morarji Desai as its Chairman.
it was entrusted inter alia with the task of recommending suitable machinery for redress of citizens' grievances. After a thorough analysis and probe into the adequacy of existing machinery for the redress of grievances and the need for new special machinery for redress of grievances the commission in its interim report recommended a statutory machinery. The avowed purpose of such machinery, as recommended, was to inquire into complaints alleging corruption or injustice arising out of maladministration 6.

**ADMINISTRATIVE REFORMS COMMISSION'S PROPOSAL**

The Commission, advanced the following arguments for the creation of Ombudsman institution:

First, Ombudsman being quasi judicial in nature would serve as unbiased forum to deliver speedy and cheap justice to aggrieved citizens against cumbersome costly and formal court procedure.

Second, the institution would enhance the people's credibility in administration, which in turn is essential for people's participation and for sustenance of Indian democratic political structure.

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Third, the exigency of the machinery is twofold: (a) it enhances efficiency and fairplay in administration by looking into corruption, genuine or frivolous; (b) it pays attention to citizens' grievances as a protector.

Fourth, it would create an ethos of responsive administration to cater to the needs of the citizens.

Fifth, in the wake of ineffectiveness of Parliamentary supervision, it would deter administration from mal-practices and corruption.

The ARC suggested two institutions. One, designated as Lokpal, would deal with complaints against Ministers and Secretaries to the Government at the Centre and States. Second, termed as Lokayuktas, empowered to look into complaints against administrative acts of other officials at the centre and in the states. It is to be instituted in each state and one in centre. The Ombudsman Organisation as such, envisaged certain characteristics of impartiality, informal investigating procedure and non-partisanship.

Keeping in view these requisite features the ARC made detailed recommendations as to structure and function of Lokpal and Lokayukta. The salient features of the suggestions are discussed below.

**Structural Aspect**

Under ARC proposal the Lokpal will be appointed
by the President on the advice of Prime Minister in consultation with Chief Justice of India and the Leader of Opposition in the Lok Sabha. If there is no such leader in Lok Sabha, the Speaker may direct the ways for electing a leader from among the opposition. The term of the office would be five years with a provision for reappointment for another term. The incumbent would enjoy the analogous status of Chief Justice of India so far as conditions of service, emoluments and salary are concerned. The Lokpal should not be Member of Parliament or Legislative Assembly and should not hold any office of profit. On appointment he should sever political connections and party membership. Ordinarily, Lokpal can not be removed from office except on the ground of proved misbehaviour or incapacity. To that effect, the President shall pass an order after the move was supported by a majority of the total membership of that House and by a majority of not less than two-thirds of the members present and voting.

After retirement from the post of Lokpal, he is ineligible for any other appointment under the Government or in any Government Undertaking. Further, Lokpal would be free to appoint his staff but his power is limited so far as their number, categories and conditions of service would be subject to government approval. The budget of the institution would also be under the control of Parliament. Provisions have to be made as to the laying before the Union Parliament or Legislative Assembly.
of the state concerned, as the case may be, annual reports, containing an account of its role performance during the year.

Jurisdiction and Procedure of Investigation

The Lokpal will have the power to investigate allegations against Minister or Secretary to Government at central level. Also ARC recommended the suo moto power of investigation on the part of the Lokpal.

After the complaints are received they are scanned by the Lokpal who would decide if those complaints come within his jurisdiction and are fit cases for investigation. To speed up the matter, he would communicate the complaints to the appropriate administrative authority for comments thereon. On receipt of the administration's justification for the action the Lokpal may inform the complainant the corrective measures taken by the administration in case of wrong action or the fairness or justifiability of the administrative action. The Lokpal may also recommend corrective measures to the administrative authority for rectifying the wrong actions. He may also propose amendments of the law to Prime Minister or Chief Minister, if necessary for the interest of citizen. So far the administrative authority accepts the recommendation the case would be closed. On refusal to rectify the wrongs, he may make report to Prime Minister or Chief Minister of the State,
obliging him to inform action within two months. And in case of no action and dissatisfied action, he may bring the matter to Legislature or Parliament or State Assembly - in the form of adhoc report or annual report. The procedure of investigation would be similar in either complaint cases or suo moto cases. Also here mention should be made that Lokpal would enjoy the powers of a court in matters of calling witness, furnishing information, producing documents, otherwise barred on the ground of security and foreign relations.

The ARC appended to its report a draft Bill with the intention of speedy action on the part of the government to enact the necessary statute.

Despite several pronouncements by the Government to introduce the required legislation nothing was done before the Fourth General Elections. After the Fourth General Elections the strength of the Congress in the Lok Sabha was reduced from 361 to 283 seats and political uncertainties prevailed in States of West Bengal, Kerala, Punjab, Tamil Nadu, Orissa, U.P., Bihar and Madhya Pradesh. Hence the Lokpal Bill could not be moved.

However, in 1967, Sri P.K. Deo, M.P., moved a private member's Bill on Lokpal and Lokayuktta, on the model of the ARC recommendations. On this issue the Government was defeated on a snap vote, the first of its kind in the history of Indian Parliament. However,
the bill was withdrawn on the assurance given by the Government for the introduction of a Bill on the subject during the same session. Following the announcement, the Government introduced the Lokpal and Lokayuktas Bill, 1968 on 9th May 1968. The Bill was designed to create a national institution with remarkable difference from the ARC proposal. This difference is mainly ascribed to the non-conformist attitude of States and Union Territories in agreeing to the ARC recommendations.

The Lokpal Bill, 1968 was considered and amended by a Joint Committee of the two Houses of Parliament. On the basis of the Committee's report the Bill was passed by the Lok Sabha in May 1969. But the bill, then pending in Rajya Sabha, lapsed due to the dissolution of the fourth Lok Sabha in December 1970. Again on August, 11 1971 the same bill was reintroduced the Lok Sabha as 'Lokpal and Lokayukta Bill, 1971'. This Bill also suffered from the same fate as the 1968 Bill on the dissolution of the fifth Lok Sabha in 1971. Apparently, the bill could

7. See, address of Dr. Zakir Hussain, then President of India, to joint session of both the Houses of Parliament on 12 February 1968, p.7.

8. Out of 17 States, Andhra Pradesh, Haryana, Kerala, Mysore, Nagaland, West Bengal and Jamu and Kashmir did not agree to the ARC's proposal. Another five States Maharashtra, Madhya Pradesh, Orissa, Punjab and Rajastan did not send any reply to the Central Governments' communication. And of the Union Territories Himachal Pradesh and Pondichery failed to agree to the proposal.
not be passed due to national and international crises such as declaration of National Emergency in 1975 by Mrs. Gandhi's government and Indo-Pak war 1971. Obviously, when security of India was at stake, the out-cry against corruption in public life receded into the background for the time being. It is worthwhile to note here the difference between the 1971 Bill modelled on the lines of ARC recommendations and the actual recommendations made by ARC itself. First, the jurisdiction of Lokpal and Lokayukta under ARC Bill was to be extended to the whole of India. Under the 1971 Bill the jurisdiction of these authorities was to cover Public servants serving even outside India (Clause 1(2)). Second, ARC Scheme proposed that central and state Ministers and Secretaries should be included within the jurisdiction of Lokpal. But the 1971 Bill limited its scope to Ministers and Secretaries of the Union only. Third, reappointment of the Lokpal/the second term the as proposed under ARC Bill was outright dropped in 1971 Bill. Fourth, the power of inquiry by the Lokpal suo moto is present in the ARC proposal and lacking in 1971 Bill. Fifth, ARC scheme provides that annual report or any report shall be made to Lok Sabha or Legislative Assembly of the concerned State whereas the 1971 Bill provided the Lokpal or Lokayukta will submit the report to the President who will lay it before the Parliament. Sixth, ARC scheme is silent as to the continuance of Lokayukta in the office in absence of Lokpal. But the 1971 Bill includes such a provision,
opening the door to manipulate in delaying the appointment of Lokpal.

On July 28, 1977, the Janta Government introduced in the Lok Sabha the Lokpal Bill, 1977 for the third time as per commitment in the election manifesto. The Bill of 1977 contained fundamental modifications over the provisions of 1971 Bill. It covered only allegations against 'public men' and acts of their misconduct. Necessarily it departed from Ombudsmanic culture which is supposed to investigate public grievances. Civil servants were excluded from its jurisdiction. The Bill also conferred certain punitive powers on the Lokpal to try offences summarily. Further, the provision for the appointment of special Lokpal(s) was conspicuously absent in previous Bills. Then this bill was referred to a Joint Committee of both the houses of Parliament which submitted its report on 20th July, 1978. While this Bill as reported by the Committee was under consideration of the House it lapsed in May 1979 owing to prorogation and subsequent dissolution of the Sixth Lok Sabha. With the passage of time it is to be noticed that Mrs. Gandhi's phase-II administration is silent as to the establishment of public grievance redressal machinery. However, the new Government of Rajiv Gandhi promised three legislations, one each on anti-defection, anti-corruption and the Lokpal. The earlier two have been brought on the statute book. But the Lokpal Bill 1985, which was introduced in Lok Sabha by the Union Minister Asok Sen on August 26, 1985 at the initiative of Mr. Rajiv Gandhi
could not be passed. Now it is pertinent to consider the salient provisions of the Lokpal Bill 1985.

SALIENT PROVISIONS OF THE LOKPAL BILL 1985

The Lokpal Bill, 1985 is a bill to provide for the appointment of a Lokpal to inquire into allegations of corruption against Union Ministers and for matters connected therewith. As such, according to specifications of International Ombudsman Institution, 1982, it does not qualify as genuine Ombudsman as it has no power to deal with grievance cases.

The 1985 Bill provides that the Lokpal shall be appointed by the President of India after consultation with the Chief Justice of India.

The person to be appointed must be qualified to be appointed as a Judge of Supreme Court. Further, the Lokpal shall not: (i) be a Member of Parliament or a Member of any State Legislature; (ii) hold any office of trust or profit; (iii) be connected with any political party and; (iv) carry on any business or practise any profession.

The office of Lokpal has a fixed tenure of five years and shall not be eligible for reappointment for a second term. On ceasing to hold the office of the Lokpal shall be ineligible for further employment under
the Government of India or the Government of a State. The salary, allowances, pension and other conditions of service shall be the same as those of the Chief Justice of India.

In order to be independent in the discharge of functions the Lokpal cannot be easily removed from his office. The Bill provides a stringent procedure for the removal of the Lokpal: "The Lokpal shall not be removed from his office except by an order made by the President on the ground of proved misbehaviour or incapacity after an inquiry made by the Chief Justice of India, or as the case may be, by such other Judge of the Supreme Court, as the Chief Justice of India may nominate in this behalf". The Bill also provides that the Lokpal should be informed of the charges against him and be given a reasonable opportunity of being heard in respect of those charges.

For the efficient discharge of the functions assigned to him the Lokpal shall appoint a Secretary and such of other officers and employees as the President may determine from time to time in consultation with the Lokpal. Further, to deal with complaints the Lokpal may secure the services of any officer or employee or investigating agency of the central government or a State government with the concurrence of that Government. It can also secure the services of any other persons or
agency. And in performing the functions, the officers, employees and agencies referred above shall be subjected to the exclusive administrative control and direction of the Lokpal.

The Lokpal may inquire into any matter involved in or arising from or connected with any allegation made in a complaint\(^9\) against a public functionary\(^{10}\). Also the Lokpal may conduct any inquiry into any act or conduct of any person other than the public functionary concerned, if he considered it necessary to do for the purpose of his inquiry into any allegation. While inquiring the Lokpal shall give the persons ample and reasonable opportunity of being heard and produce evidence in his defence. A novel feature of the Bill is that no matter should be referred to any Commission under the Commissions of Inquiry Act, 1952, (Act 60 of 1952) without the concurrence or recommendations of the Lokpal.

The Lokpal is specifically debarred from making any inquiry into allegations against or any act or conduct of (a) the President, (b) the Vice-President; (c) the Prime Minister; (d) the Speaker of Lok Sabha; (e) Chief Justice or any other Judge of the Supreme Court; (f) Comptroller

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10. 'Public functionary' means a person who holds or has held office of a Minister, Minister of State, Deputy Minister or Parliamentary Secretary of the Union. See Clause 2(e).
and Author-General of India; (g) the Chief Election Commissioner of India and; (h) Chairman and any other members of Union Public Service Commission. Moreover, the Lokpal shall not have jurisdiction over matters:

a) in respect of any person if he has any bias in respect of such person or matter.

b) which have been referred for inquiry under the Commissions of Inquiry Act 1952. (60 of 1952).

c) made after a period of five years from the date of the Commission of the offence mentioned in the complaint.

Any person other than public servant11 may make a complaint under this Act to the Lokpal. The complaint shall be accompanied by a deposit fee of Rupees one thousand and an affidavit to that effect. However, the Lokpal on his satisfaction shall treat the letter of a person in jail or other place of custody or in any asylum or other place for insane persons as a valid complaint without legal and financial formalities. The police officer or other person in charge of the above mentioned places are directed to forward the letter without opening the

11. Public servant here means any person: (i) who is a member of Defence Service (ii) or of a civil service of the Union or State (iii) or of an All India Services or (iv) hold any post connected with Defence or any civil post under the Union or State or (v) in the service or pay of a local authority, a corporation established by or under a Central, Provincial or State Act or a Government Company, as defined in Section 617 of the Companies Act 1956 (1 of 1956).
same to Lokpal. Such a provision was also made in the Lokpal Bill of 1971.

Procedure of Investigation

On receiving the complaints the Lokpal after scrutiny may either dismiss the complaint or propose to conduct enquiry. The former case arises, if the complaint: (i) is not made within the period of five years as noted earlier; (ii) is frivolous or vexatious or is not made in good faith; (iii) contains no sufficient reasons or grounds for inquiring and; (iv) is referred for inquiry under the commissions of Inquiry Act. And in that case he shall communicate the appropriate non-action with reasons to the complainant and to the competent authority. In the latter case, the Lokpal: (i) shall forward a copy of the complaint to the competent authority; (ii) may make such orders as to the safe custody of documents relevant to the inquiry as he deems fit; (iii) shall, if he considers appropriate, forward a copy of the complaint to the public functionary concerned and afford him an opportunity to represent his case. Moreover, as per provisions, every such inquiry shall be conducted in Camera.

The Lokpal, thus, will close the case, if the allegation has not been substantiated either wholly or partly and intimate the complainant, the public functionary and the competent authority accordingly. On the contrary,

12. According to Clause 2(a) of the Bill 'Competent authority' means the Prime Minister.
if the allegations made in the complaint have been substantiated wholly or partly, the Lokpal shall communicate its recommendations and findings to the competent authority, that is, the Prime Minister. Also it will intimate the same to the public functionary and the complainant. The Prime Minister shall examine the report forwarded and communicate the action taken or proposed to be taken to the Lokpal within stipulated period of three months.

Miscellaneous Powers of the Lokpal

The Lokpal, under clause 13 of the Bill has the powers to issue, in certain circumstances, directions for deferring or suspending investigation into an offence by any police officer under the code of criminal Procedure, 1973 (2 of 1974). However, the Lokpal can not give such direction in respect of any investigation to be made in pursuance of an order of any court.

The Lokpal may require the services of any public servants to furnish any information or produce documents. And the proceedings before the Lokpal shall be deemed to be judicial proceedings within the meaning of Section 193 of the Code of Criminal Procedure 1973. But no person is bound to produce information prejudicial to the security or defence, or international relations of India or the investigation or detection of crime. Further, he refuses to
disclose if it involves the disclosure of proceedings of the cabinet of the union government or any committee of such cabinet.

Under clause 15 of the Act the Lokpal has the power of search and seizure of such documents as are relevant to the inquiry.

The Lokpal shall present annually a consolidated report on the administration of the Act to the President. The President shall cause the same, together with an explanatory memorandum, to be laid before each House of Parliament within 90 days of receipt of report from the Lokpal. The expenditure incurred by the Lokpal is to be charged on the Consolidated Fund of India. Any information relating to matter under investigation shall be treated as confidential. Notwithstanding anything contained in the Indian Evidence Act 1872 (1 of 1872), no court shall be entitled to compel the Lokpal and other informants, referred above, to produce the evidence relating to the inquiry by the Lokpal. Further, the Lokpal has the power (clause 19) to provide punishment for intentional insult or interruption to or bringing the Lokpal into disrepute. The Lokpal, also, has the power to try certain offences and punish persons giving false evidence, etc. in any proceedings before him or committing offences under Sections 175, 178, 179 or 180 of the Indian Penal Code. Again, disclosure of information and publication of false information in respect of complaints and proceedings
under this Act and lodging of false complaint are punishable under the Act.

The President by order requires the Lokpal to enquire into any allegation specified in the order in respect of any public functionary.

The complaint shall be in a prescribed form and shall be accompanied by an affidavit in support of particulars, a deposit of one thousand rupees and a certificate showing the deposit. However, the Lokpal has powers to exempt a complainant from the prescribed fee for sufficient cause to be recorded in writing. Further, the deposit shall be forfeited to the Central Government if the complaint is of frivolous or vexatious in nature or is not made in good faith. The Lokpal shall also direct for reason's recorded in writing to utilize the sum for compensating the public functionary complained against. In any other case it is to be refunded to the complainant.

The Lokpal shall determine the amount which shall be paid to the complainant by way of such compensation or reward. The case arises if allegations made in a complaint have or have been substantiated wholly or partly.

The Lokpal, its staff and the informant Officer, employee, agency or person are protected from suit, prosecution or other legal proceedings. Moreover, no proceedings, or decision of Lokpal shall be liable to be challenged, reviewed, quashed or called in question in
any court. However, the powers of Lokpal with regard:
(i) to try certain offences summarily (ii) to provide
punishment in cases of disclosurer of information and
(iii) false complaint are not absolute and unfettered.
As to the first, the person convicted has the right of
appeal to the High Courts. Again, so far as second and
third categories of cases are concerned, the convicted
person can appeal to Supreme Court within thirty days
of such conviction.

The Lokpal may delegate to officers, employees
or agencies under him any powers or functions except
the following: (i) exemption of deposit fee; (ii) the
power to dismiss a complaint under; (iii) the power to
close a case and make reports and; (iv) the power to try
certain offences and provide punishment for disclosure
of information and false complaints.

The President may by notification in the
official Gazette make rules for the purpose of carrying
into effect the provisions of this Act. The rules may
relate to; (a) prescribed form for making complaints;
(b) deposit of fee; (c) authority to whom deposit is
paid; (d) form of certificate showing deposit; (e) matters
relating to evidence and (f) any other matter which may
be prescribed.

This Bill was sent to Joint Committee of Parliament.
But recently on 6th December 1988, Government withdrew the
bill with a view to bringing forward a more comprehensive legislation to deal with the redress of public grievances. To be categorical, Government plans to promulgate the Prevention of Corruption Act 1982 and set up a directorate of public grievances headed by an official of the level of Secretary. A thorough analysis of the fact stated above makes it clear that Government's motive behind the withdrawal of Lokpal Bill 1985 was unconvincing. The Lokpal Bill 1985 was introduced when the Prevention of Corruption Act 1947 was already in force. Side by side provisions relating to corruption are also there in the Indian Penal Code. Inspite of this, institution of Lokpal was proposed to render speedy and impartial justice. Further, the proposal for the so called Directorate of Grievance does not appear to be an adequate substitute for an Ombudsman like institution.

It must be noted here that for the fourth time the Lokpal Bill, duly introduced in the Parliament, could not become an Act. Right from the presentation of ARC Report and Draft Bill to the Prime Minister on 20th October 1966 to the withdrawal of Lokpal Bill 1985 on December 1988 a certain amount of callousness has been exhibited by ruling governments at the centre. The reasons for non-action over Lokpal Plans can be ascribed to lack of political will and also to lack of pressure of public opinion.
Comparative Analysis of Lokpal Plans under 1968, 1971 and 1985 Bills

As noted above, to lessen the often expressed public outcry against the prevalence of corruption and to rejuvenate efficiency and responsiveness the Lokpal plan was formulated in the ARC recommendations, and in the Lokpal Bills of 1968, 1971, 1977 and 1985. It would be of interest to have a comparative and critical analysis of the proposed plans of pre 1985 and post 1985 era. Mainly, the Lokpal plan under 1971 Bill bears much similarity to the Lokpal Bill 1968 and is grounded on ARC recommendations. The 1977 Bill and 1985 Bill are to be vividly analysed with regard to appointment, Status, jurisdiction and work procedure of the Lokpal institution, the Indian version of Ombudsman.

The Ombudsman plan as enshrined in 1968 and 1971 Bills provided for the appointment of a Lokpal and one or more Lokayuktas. The jurisdiction of Lokpal and Lokayuktas were limited to public officials directly under central government or central government undertakings. The bills provided that Lokayuktas will investigate actions taken by public servants except the actions of the Ministers and Secretaries which will be investigated exclusively by the Lokpal. But in all other plans only one Lokpal is to be appointed. However, in 1977 Bill there was provisions for appointment of Special
Lokpal(s) on the recommendation of the Lokpal; and the Special Lokpals enjoy an equal status with that of the Lokpal. But, the 1985 plan did not provide either for Lokayuktas or for Special Lokpals; by providing only for the office of the Lokpal the 1985 Bill was free from the objection of making any hierchical arrangement as to the institution of the Ombudsman.

The 1968 and 1971 Bills provided for the appointment of a Lokpal by the President of India after consultation with the Chief Justice of India and Leader of Opposition in the Lok Sabha. The statutory provision ensures the confidence of the Parliament in the Lok Sabha. The Bill of 1977 modified the appointment procedure and asserted that in appointing the Lokpal the President shall consult the Chief Justice of India, Chairman of Rajya Sabha and the Speaker of Lok Sabha. However, the plan under 1985 Bill kept the opposition out from the whole procedure of appointment. And the involvement of opposition like government in the process of appointment is necessary for the Lokpal to play an effective role as the Supervisor of the administration. But in practice with disunited...
opposition professing diverse principles it is just not possible for them to have a consensus over the person to be appointed as Lokpal in India.

As to qualification and disqualification of the Lokpal all the Bills provide for the same qualifications. Among them the severance of party affiliation and party membership is of paramount importance. All the four plans, hence, prohibited the appointment of active politician to the office of Lokpal. The provision, to debar active politician to hold the delicate position of Ombudsman, is highly desirable for Indian political system with rising corruptions by political elites\textsuperscript{15}.

The term of office of the Lokpal is five years in all the plans and neither Bill prescribed the upper age limit. And in no plans provision for reappointment was inserted except in ARC's recommendations. Also on relinquishing office, the Lokpal is forbidden from accepting employment under Government of India or Government of a State.

With regard to removal of the Lokpal all the four bills empowered the President to do so. However, he can

do so on the ground of proved misbehaviour or incapacity after an inquiry made by the Chief Justice or any other judge of Supreme Court nominated by Chief Justice. But here the President's power is restricted by the provisions of 1977 Bill. The President shall not do this unless an address by each House of the Parliament supported by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting has been presented to the President in the same session for such removal on the ground of proved misbehaviour or incapacity. The provision for 'absolute majority' is not inserted in the scheme of 1985. The provision will necessarily ensure the independence of the office from executive control and legislative influence.

The 1968 and 1971 Bills vested in the Lokpal the power to investigate any action which is taken by or with the general or specific approval of a Minister, or a Secretary or any other public servant of a class or sub-class notified by the Central Government in consultation with the Lokpal in this behalf. But 1977 Bill extended the jurisdiction of Lokpal by bringing selected 'Public Men' into ambit of its jurisdiction. The 'Public Men' according to the Bill includes Prime Minister, Ministers including Deputy Ministers in the Union Cabinet, State Chief Ministers, Member of Parliament, Members of Legislative Assemblies of the States and Union Territories,
a member of Executive Council under the Delhi Administration Act 1966 and the Mayor of a Municipal Corporation in any Union Territory. The plan, therefore, affected the federal principle in extending jurisdiction over State Chief Ministers and Member of Legislative Assembly.

Under 1971 Bill, Lokpal was empowered to look into allegation against higher civil service. But in all other three plans of 1968, 1977 and 1985 he is debarred from investigating the charges levelled against them. Probably, the arrangement is aimed at appeasing the bureaucracy. Thus, the last 1985 plan narrowed down the jurisdiction of Lokpal as it covers only public functionary which means Cabinet Minister, Ministers of State, Deputy Ministers and Parliamentary Secretaries of the Union.

According to specifications genuine Ombudsman should deal with allegations and grievances. The Lokpal's jurisdiction under 1971 Bill, comprised of dealing with complaints of "allegation" as well as "grievance". Allegation


17. See clause 3 of the Lokpal Bill 1977. It provided that a public man will be deemed to have committed 'Misconduct': if he directly or indirectly allowed his position to be taken advantage of by any of his relatives or associate persons or causes harm or undue hardship to another person; if he abuses or attempts to abuse his position or; if he is guided by personal interest or corrupt motives.
means a 'public servant' has: (1) abused his position
to obtain any gain or favour to himself or to any other
person or cause undue harm or hardship to any persons;
(2) been guided by personal interest or improper or
corrupt motives in discharging official function; and
(3) been guilty of corruption or lack of integrity.
While 'grievance' means a claim by a person that he
sustained injustice or undue hardship in consequence of
maladministration. The plans of 1977 and 1985, on the
contrary exclude the investigation of Public grievance
from the purview of the Lokpal. Under the 1977 scheme
he is supposed to inquire into allegation of misconduct
against public men. It thus enlarged, substantially, the
scope of Lokpal to look into all kinds of corruption,
misuse or abuse of authority and abetment in the commission
of such offence. The Lokpal, then was designed to function
as a bulwark of democratic government against corruptions
by political elites. In contrast, 1985 plan, as noted
earlier empowered the Lokpal to look into any matter made
in 'complaint', against, public functionary committing
offence punishable under Chapter IX of the IPC (45 of 1860)
or under the Prevention of Corruption Act, 1947 (20 of 1947).
Moreover, in 1971 Bill the Lokpal is empowered to undertake
an 'investigation'. But the word investigate is substituted
by the

by the term 'inquiry' in 1977 and 1985 Bills, thus giving Lokpal the status of a Permanent Tribunal of Inquiry.

In respect of procedure of investigation or inquiry all the four bills are more or less alike. The envisaged work of Lokpal is primarily quasi-judicial and only investigatory and not adjudicatory. The work of Lokpal starts with a complaint by any person other than a 'public servant' as prescribed in 1977 and 1985 Bills. The complaint shall be in the prescribed form accompanied by an affidavit in support of allegation and a deposit of rupees one thousand in a required manner. However, as per 1971 specification no fee was required for filing a complaint. To check the floodgates of filing complaints these two provisions (Legal and financial formalities), besides deterrent punishment for frivolous complaints, are of great help.

Besides, the 1985 bill like the 1971 Bill is equipped with the provision for filing a complaint from persons in Jail or Police custody or from insane persons through a letter addressed to Lokpal.

19. The distinction between 'inquiry' & 'investigation' is fundamental. Section 2(G) of the Criminal Procedure Code defines inquiry to mean "every inquiry, other than a trial, conducted under this code by a magistrate or court". On the other hand, clause (h) defines investigation to include proceedings for the collection of evidence conducted by a police officer. See A.G. Noorani Sins of Commission, India Today, April 30, 1989, pp.44-45.

20. Public Servant shall have the same meaning as in Section 21 of the IPC, clause 2(h), the Lokpal Bill 1977. But 1985 Bill defined public servant in detail. See clause 10(1), of the Lokpal Bill 1985, as given in appendix.
In relation to investigation, if the Lokpal is satisfied that the complaint is justified, he can make a report to the competent authority concerned. The report comprises recommendations concerning the remedies for wrong done to aggrieved citizen within stipulated period of three months. Also he could make a special report to the President if he was not satisfied that appropriate action was taken. Moreover, he is required to present annual report on the administration of this Act. The President shall within 90 days cause to lay the report before each House of Parliament, though this 90 days period is not specifically mentioned in 1977 Bill.

Another dimension to structural analysis relates to miscellaneous provisions concerning the Lokpal's power of punishment in case of disclosure of information and publication of false information and lodging of false complaint. Essentially, it provides adequate safeguards for maintenance of secrecy with regard to complainant and public functionary against whom complaint is lodged. If any person is convicted of this offence under code of criminal procedure, 1973 (2 of 1974), he is sentenced

21. In New Zealand under Section 22(3) of the 1975 Act the Ombudsman can make recommendations on various scores e.g., that the administration should have given reasons, the decision should be cancelled or voided or an omission rectified. See G.B. Sharma, Op.cit., p.109.

with a fine of ten thousand or imprisonment up to six months or both. Apart from that if a person makes false complaint and if it is proved by the trial under the code of Criminal Procedure, 1973 (2 of 1974), he is awarded with a sentence of imprisonment not less than one year subject to maximum of three years and a fine of Rupees fifty thousand. The underlying object of the provision is perhaps to discourage vexatious, frivolous and false complaint. As far as time limit is concerned the Lokpal under the four bills is circumscribed to take action on any complaint of allegation after the expiry of five years from the date of occurrence. Besides, the provisions relating to investigation or inquiry, evidence, reports, secrecy of information, contempt of Lokpal, conferment of additional functions on Lokpal, protection, power to delegate, power of the President to make rules are almost similar in 1971, 1977 and 1985 plans. Again, additional provisions relating to Lokpal's power of search and seizure to try certain offences summarily, disposal of deposits are similar in 1977 Bill and 1985 Bill. As pointed out earlier special provisions relating to 1977 Bill were made in respect to complaints against Prime Minister and establishment of Special Lokpal(s). Likewise special provision of 1985 Bill relates to power of Lokpal to issue, in certain circumstances, directions for deferring or suspending investigation.

23. Time limit for filing a complaint in Norway, Denmark, New Zealand & U.K. is one year from the date of occurrence. But Sweden & Finland fixed no time limit in this regard.
Thus two novel features of 1977 and 1985 Bill and one of 1977 Bill deserve a special consideration here. As to first, pertaining to search and seizure, the Lokpal in India is fortified with powers to fight against corruption in more strategic manner than Ombudsman in Nordic countries. The Second, feature is concerned with Lokpal's power to try certain offences summarily. In this regard it would be more akin to a Tribunal of Inquiry. Like Swedish and Finish counterparts the Indian Lokpal enjoys a wide range of punitive power. Yet, he is less than the Swedish and Finish Ombudsman. Because in Sweden and Finland Ombudsman can punish judges for wrong doings unlike India.