CHAPTER 2
LOKPAL IN INDIA

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2.1 INTRODUCTION
In this chapter, it is proposed to review the system to control corruption and maladministration in the Indian set up over a period of time. With the spreading of literature on Ombudsman institutions, mainly in the western countries, beginning in the Scandinavian nations, the idea of introducing such measures in India at the central as well as at the state level, has emerged. Especially, the rising incidents and magnitude of corruption in the country has given an impetus to this process resulting in the enactment of Lokayuktas in one after another states. Lokayukta in Maharashtra is the focus of this study. In order to understand and analyze the Lokayukta in Maharashtra, it is necessary to go into the details depicting the overall working of different institutional set up functioning prior to the introduction of Lokayukta in the state. It is also necessary to study the system of Lokayukta’s working for 35 years in various states of Indian union.
Therefore, this chapter is divided into 3 sections.
The first section deals with the device and the machinery to curb corruption and to reduce maladministration.
The second section is on the Lokayukta and it’s functioning in the States.
The third section describes the efforts taken to pass the Lokpal Bill in the Parliament. It also looks upon the progress made with setbacks & suggestions on planned ‘Lokpal Bill’ at the central level. This exercise
will help us to understand Lokayukta in Maharashtra, which will be dealt with in chapter III.

SECTION 1

2.2 DEVICES TO CURB CORRUPTION AND MALADMINISTRATION

Ever since Independence, India is committed to secure the life, property and freedom of the citizens. Our constitution provides equality before law, various freedoms, right to life in the chapter on ‘Fundamental Rights’. ‘Directive Principles of the State Policy’ is concerned with socio-economic rights leading to social justice. They are the directives towards to the state to increase the standard of life, to reduce inequality and concentration of wealth, etc. It is necessary to make administrative apparatus effective, responsive and sensitive to fulfill these objectives given in the constitution. In order to achieve these objectives with a view to streamline administration in this direction, various efforts have been undertaken. There are number of such devices operating at various levels. They have been introduced at different times. All of them may not directly aim at controlling corruption. But, some of them are primarily concerned with administrative reforms and supplementing the existing Judiciary. They can be categorized into different types, such as:

1) Commissions and Committees—deliberately appointed either for general problem or for a particular incident of corruption such as Santhanam Committee, etc.;

2) Judiciary—a constitutional machinery;
3) Regulations based on law, government resolution, a creation of Parliamentary Committee such as Corruption Prevention Act, etc.;
4) Special institutions such as Central Vigilance Commission, Central Bureau of Investigation, etc.
5) The processes - the result of democratic functioning such as PIL
6) Democratic devices - individuals and NGOs
7) Other agencies

2.2.1 COMMISSIONS AND COMMITTEES

Table 1 introduces some of the Committees or Commissions---

<table>
<thead>
<tr>
<th>No.</th>
<th>Name of Committee/Commission</th>
<th>Headed by</th>
<th>Year</th>
</tr>
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<tbody>
<tr>
<td>1</td>
<td>Report on the Health of Public Administration</td>
<td>A.D. Gorwala</td>
<td>1951</td>
</tr>
<tr>
<td>2</td>
<td>Report on Survey of Public Administration in India, Cabinet Secretariat</td>
<td>Paul H. Appelby</td>
<td>1953</td>
</tr>
<tr>
<td>3</td>
<td>The Committee on Prevention of Corruption (Santhanam Committee)</td>
<td>K. Santhanam</td>
<td>1964</td>
</tr>
<tr>
<td>4</td>
<td>Administrative Reforms Commission</td>
<td>Morarji Desai/K. Hanumanthaiya</td>
<td>1966</td>
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TABLE - 2.1
COMMISSIONS AND COMMITTEES ON MALADMINISTRATION AND CORRUPTION
2.2.1 GORWALA REPORT

Prof. A.D. Gorwala presented a ‘Report on the Health of Public Administration’ based upon his study on Indian Administration. This 70 pages report tried to make administrative functions more dynamic in India. The major suggestions of the Report include:

1) The minister should hold consultations with high civil officials on all official matters.

2) To maintain discipline and responsibility in the civil service, better pay scales and proper system of punishment be introduced.

3) Responsibility of inspection and direction be entrusted to senior officials and of more responsible work be assigned to the junior officials.

4) The working procedure of the Cabinet be improved. These suggestions made by A.D. Gorwala were effective in removing the defects in the original administrative reforms in Indian administration. Unfortunately, the government didn’t show interest in implementation of these suggestions and hence a very important opportunity of administrative reform was lost.

2.2.2 APPELBY REPORT

The Government of India invited a well-known American expert Paul H. Appleby to study and suggest administrative reforms in India. He visited various Indian states, studied government documents, papers and met the officials and Ministers and submitted his report on the basis of his observations on 15 Jan, 1953. There were 12 main recommendations in 3000 words report. Some of the important recommendations were:

1) There should be integrated system in Indian civil services.
2) For proper study of Public Administration, there should be an Institute of Public Administration at the national level.

3) The mismanagement in staff and line should be controlled.

Appleby revisited India in 1956 and made some more recommendations as follows:

1) The applied principle of delegation of powers should be adopted in administrative system.

2) The Executive Ministers should develop their ability to handle financial and budgetary matters.

3) The Parliament should discharge positive and constructive responsibility with regard to the progressive administration.

Besides these suggestions, he made comments on a control of crooked in administration. He said that it is necessary to impose prompt and sufficient penalties. He said the ungracious suggestions reported against the colleagues be welcomed and those making them be protected against harm being done to them. Better laws for securing honest administration would do a good deal in this Matter.\textsuperscript{2} Appleby advocates homogeneity among civil servants working as an agency or as a task force. He suggested doing well by homogeneity.\textsuperscript{3} Though, the government itself invited Appleby, it is surprising that the government didn’t take any interest in implementing the recommendations.

Gorwala and Appleby’s recommendations would have been useful in correcting the rising maladministration in India those days. But, no due attention was given to the recommendations made by both the experts. This negligence of their suggestions resulted in increasing
maladministration, which only gives birth to the widespread corruption in Indian administrative system.
Thus, there was an urgent need to think of growing corruption in society led to committees and commissions.

2.2.3 SANTHANAM COMMITTEE

To investigate and combat corruption and to suggest administrative reforms, a Committee was appointed in 1962 chairing K. Santhanam. It submitted its report to the government in 1964. The most important suggestions made by the committee were as follows:

1) To establish the Vigilance Commission with its autonomy.
2) To review the public services and practical steps to be taken to make anti-corruption measures more effective.
3) The committee referred to the steps to be taken to fix the responsibilities of each department for checking corruption.
4) It also aimed at the changes in law, which would ensure speedy trial of cases of bribery; corruption and criminal misconduct and make the law otherwise more effective.

The committee in order to liberalize the existing rules under section (5) of its recommendations suggested to form the central vigilance commissioner. Accordingly, the commission was constituted in 1964. The jurisdiction, powers, status, & role of commission were also dealt with in the Act. (it is discussed in 2.5.2)
2.2.4 ADMINISTRATIVE REFORMS COMMISSION
Administrative Reforms Commission was set up on Jan. 5, 1966 to examine the public administration and make necessary recommendations. Morarji Desai was the first Chairperson. But as he became the Deputy Prime Minister, the chairmanship was assigned to K. Hanumanthaiya, an expert and a well-known Civil Servant. Its final interim report was submitted on Oct. 28, 1966. The commission was advised to give its report on the problem of Redressal of Citizens Grievances. In May 1970, the commission submitted a comprehensive report containing 578 recommendations.⁶ some of the recommendations that are as follows:

1) There should be 2 agencies for removing the public grievances against public officials-
   (a) ‘Lokpal’ at the National level and
   (b) ‘Lokayukta’ at the State level.

2) The size of Union Council of Ministers should be limited and be determined in accordance with the requirement.

Though, the government did not accept all its recommendations, yet some of them were accepted and implemented. The government accepted the recommendation of appointing ‘Lokpal’ and ‘Lokayukta’.

These 4 commissions and committees are important in the study of Indian administration, as well as for the present study. Gorwala and Appleby Reports tried to reorganize Indian administration to tackle maladministration, whereas, Santhanam and Hanumanthaiya committees attempted to offer a remedy to curb growing corruption and maladministration. All the recommendations made by these
experts were not implemented. The result was supporting to the present illnesses in administration. However, wide discussion on the problem of corruption and maladministration took place on the reports of these commissions. An urgency of a redressal of citizens’ grievance was felt right from 1969 due to the experts’ reports. This can be treated as positive aspect of the commissions.

2.3 JUDICIARY
Justice is a cold virtue. A common man is offered security and safety by judiciary. In the present circumstances when people’s expectations and aspirations are being totally ignored by both the legislature and executive, it is the Court, which has to come to their rescue. The judiciary has done a remarkable job, which cannot be brushed aside. It is significant that structurally the judiciary is independent of the Executive; but habitually, the executive interference into the judiciary is experienced. Judiciary has been playing an important role in protecting citizen’s rights for a long time. Judiciary has been the basement of a Welfare State since the ancient days. The Laws were not made by the Committees or Commissions or experts; but were followed by the kings and the citizens in ancient India. Justice was administered according to Smritis. It was king’s responsibility to give protection to the people as well as proper & impartial administration of justice. Kautilya in ‘Arthashastra’ speaks about 2 types of courts: Dharmasthiya & Kantakshodhana⁸ — the first was to dispose off the cases of violation, of traditional rules & regulations- and the second was for the police, public safety, criminal punishment & other serious offences. Asoka’s judicial system was based upon Dandaniti. The
justice was very quick & inexpensive in not only ancient days but also in Mughal period. Mughal justice was tempered by circumstances of the age and the fear of God, popular discontent & rebellion. It was also impartial & prompt though it did not depend on any written laws. Modern judiciary is depended upon the Laws & Acts.

In order to understand the advantages and disadvantages of judiciary, it would be necessary to discuss the Rules and the Acts with which it exercises its powers.

2.3.1 ROLE OF JUDICIARY IN CONTROLLING CORRUPTION

"The judicial system had a great role to play in ensuring the smooth functioning of democracy", says P.R. Gokulkrishnan, the former Chief Justice, High Court, Madras. Judicial gods in India have appropriate power to take action against corruption.

To know the present position of judiciary in controlling corruption, we talked to some of the District Judges informally. The discussion concludes that 2 cases are admitted monthly in the courts & 7 cases are acquitted yearly due to lack of evidence and proof and non-co-operation of the sanctioning authority concerning corruption matters, is an information given by the District Judge, Nasik. It makes clear how far judiciary plays an active role in controlling corruption. The judiciary, which has to control corruption, seems occasionally corrupt. In the ancient days, during the case hearing, judges were not allowed to discuss the matter or to have any personal talk with the accused. The judgement was supposed to consider the nature of crime, the age and the motive of the criminal and with humanistic approach. The cost was Brahman 100 cows, a Kshatriya 55 cows, a Vaishya 100 cows
and a Shuddra by wriggled an important factor in the judgment—the murderer of a Brahmin 10 cows. Accordingly, the judgment in the corruption or bribery cases was based upon caste system. The judiciary was independent and impartial but it considered caste. The caste system was based upon profession-i.e. economic condition of an accused.

The ancient judiciary was all in all humanistic and timid. Today, judiciary is a hope to tackle corruption and maladministration—appropriately; it is trapped in the corrupt practices.

2.3.2 CORRUPTION AND OTHER LIMITATIONS OF JUDICIARY
Bhrigusamhita suggested the punishment for corrupt or perverse judgment by twice the amount of fine inflicted on the guilty party. It makes clear that there was corruption in judiciary in ancient days. In modern times, it has become a common practice.

It was said that Indira Gandhi, the Ex-Prime Minister offered bribe to the Chief Justice of High Court, Allah bad, who boldly refused. It was only when various charges of corruption against Justice V.Ramaswami came in light that the long arms of justice began moving openly. During emergency, Indira Gandhi transferred 14 judges and 40 were allowed to file a suit when she was ousted from power for the injustice done to them. The integrity and independence of judiciary thus became doubtful. E.S. Venkataramaiha, former Chief Justice, India says, “Nearly half of our mails are related to the charges of corruption and communal bias against High Court Judges.” The misbehaviour of judges is also not new. There was a popular saying in
Mughal period, “to trust a Quazi* is to court misfortune.”\(^{17}\) The problem has worsened. The five of the forty-four judges serving in Bombay High Court had relatives practicing.\(^{18}\) Favoritism is there in not only politics but also in judiciary. Another 167 lawyers in the same Association proposed the resolution for the Supreme Court Judges also in which A.H.Ahemedi himself was included.\(^{19}\)

Nepotism and favoritism are hurdles in judiciary. Fighting corruption is an act of constitutional necessity. It can be done at the expense of truth. Judicial accountability is impossible without an effective and responsible exposure by the bar and the media.

This corrupt practice in judiciary is the major difficulty in controlling corruption in the society.

There are a few limitations of judiciary due to which the courts cannot deal with the problem of corruption and maladministration effectively.

1) Delay in justice  
2) Lengthy process  
3) Prolonged vacancies of judges  
4) Indirect remedy  
5) Costly

2.4 ACTS AND REGULATIONS
The Parliament as well as State Legislatures has enacted laws time to time to prevent corruption and maladministration. Together these enactments provide formal legal structure to control corruption and maladministration. Resolutions. The major acts are ‘The Prevention of Corruption Act, 1947 and 1988’.

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* Highest Judicial officers in Mughal period
2.4.1 PREVENTION OF CORRUPTION ACT, 1947 AND 1988

Prevention of Corruption Act, 1947 was meant for the public servants only. Other political or social elements were not subjected to the Act. According to the section 5(1) (d), of this Act, it is necessary to prove that the accused received bribe was gratification—prosecution must prove that money paid was not towards any unlawful collection.20 Phenolphthalein powdered currency from an accused was one of the main sources to be presented to the wants. In ‘Yashwant Nanibhai Pingle Vs. The State Of Maharashtra’, the Bombay High Court declared that the powdered currency is not quiet a sufficient proof to satisfy the sanctioning authority.21

But, at the time of this result, the Act was modified and became outdated due to the effect of ‘Corruption Prevention Act, 1988.’ Before that, with the help of powdered currency, many accused were sentenced punishment.

The 1947 Act was amended in 1952 & 1964. The Act was not preventive in the sense that it has created new offences as penal offences and thereby sought their prevention.22 On many backgrounds, it was not sufficient to curb corruption; hence, there was another Act passed in the Parliament on September 8, 1988, namely, ‘Prevention of Corruption Act, 1988’. It is multi-faced piece of legislation. The relevant provisions, which were scattered, previously related to bribery, corruption and criminal misconduct are to be found at one place in this act.23 Today, the Anti-Corruption Bureau implements the Act; but unfortunately, there are a few cases in the courts involving offences of corruption. So far, disposal of cases is concerned, hardly 2 cases monthly are subjected in the District Courts on the matter of
corruption and not a single case is admitted for maladministration, nepotism, favoritism, etc...is the conclusion of informal discussion with the District Judge, Nashik. It seems that though there are provisions in the act, there is very little response from the citizens as well as public servants. The overall atmosphere is not conducive for citizens to come forward in large number.

2.4.2 SPECIAL POLICE ESTABLISHMENT
In 1941, during the World War-II, Government of India established the ‘Special Police Establishment.’ The aim was to investigate the cases of bribery and corruption in ‘The War & Supply Department’. After the War, the Central Government needed an agency to investigate the bribery and corruption by the employees of central government. Therefore, the government decided to enact the ‘Delhi Special Police Establishment Act’. It was formulated in 1946. The Act was for the Union Territories; but under Section 3(1) Of the Act, Central Government had power to extend it to the States also.24 The present Central Bureau of Investigation was established under this Act. The Central Bureau of Investigation investigates the offences notified by the Central Government under the Delhi Special Police Establishment Act.25 As per the decision of Supreme Court in 1997, the Central Vigilance Commission supervises Central Bureau of Investigation. (It is discussed in 2.5.1) Presently, neither the machinery nor the Act is an effective solution to curb corruption and maladministration.
2.4.3 MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSION
In addition to the acts, there are executive agencies and departments established to deal with matters relating corruption and maladministration.

One of the major efforts made by PMO to revamp administration is the establishment of the ‘Ministry Of Personnel, Public Grievances And Pension.’ Rajeev Gandhi, the then Prime Minister was, instrumental for the organization of this department, which was constituted in 1985. The Ministry is the central agency responsible for policy and co-ordination of all activities in the sphere of public personnel management, including administrative vigilance, reservation for Scheduled Castes, Tribes and other categories in services, machinery for joint consultation and compulsory arbitration, staff, welfare, pensions, administrative reforms and public grievances.26

The work of ministry covers in all Ministries, Departments, Subordinate offices and Public Sector undertakings. As part of procedure, on every Wednesday in the morning from 10 a.m. to 1 p.m. all the Deputy secretary level officers are supposed to be available for attending the grievances.

2.4.4 DIRECTORATE OF PUBLIC GRIEVANCE
This process strengthened the grievance redressal activity as a result, an independent authority in the form of the Directorate of Public Grievances has been functioning in the Cabinet Secretariat since April 1, 1988. The Directorate handles grievances related to the Department of Railway, Post, Telecommunication and also of to the Civil
Aviation, Surface Transport and Urban Development Department from Oct. 1, 1989. The quarterly meetings of various Departments/Ministries are held. The powers of calling of papers and making recommendations on the basis of scrutiny of the relevant files are vested with this Directorate.

2.4.5 ADMINISTRATIVE TRIBUNAL

Justice is a multi-dimensional action. Judicial power controls administrative bodies within the limits of the law and the constitution. Delay and huge backlogs of cases are bad patches of the courts. An administrative body may sometimes exercise judicial functions—when it does so, it is called a quasi-judicial administrative body or tribunal. For disputes and complaints related to recruitment and conditions of service of persons appointed to public services and of posts in connection with the affairs of the Union and State governments, the Administrative Tribunals Act, 1985 was passed by the Parliament. Under this Act, Central Administrative Tribunal (CAT) was set up on Nov. 1, 1985 to provide speedy and expensive justice to the central government employees in respect of their service matters. Tribunals are other than the courts. Tribunals are schemed in constitution under Article 323(A)* by 42nd amendment.

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* Article 323 (A)—"Notwithstanding anything in this chapter, the Supreme Court may, in it's discretion grant special leave to appeal from any judgment, decree, determination, sentence or order in any case/matter passed/made by Court or Tribunals in the territory of India."
A tribunal is an adjudicatory agency, which is not deemed to be a Court. Its function is due to the rapid growth of civilization. The rising problems faced by administration and the overburdened judiciary can be given its rationale. Tribunals can be established at the central and at the state level, too. Tribunal takes the adjudication of disputes related to the recruitment and conditions of service of the persons appointment to public services or posts of the union and of the state, out of hands of the civil courts & high courts and puts them into those of the administrative tribunals for the union or for the States. Different tribunals include:

1) Labor Tribunal
2) Bank Debit Appellate Tribunal
3) Income Tax Appellate Tribunal
4) Claims Tribunal
5) Rent Tribunal
6) Compensation Tribunal
7) Motor Licensing Tribunal

By way of difference between Tribunals and courts it can be said that tribunals deal with the related and specific grievances. These are not hamstrung by adherence to rigid judicial procedures. The judicial processes used by the Tribunals are flexible. Again, Tribunals are cheaper than the courts of law. The Tribunal system is well established and deeply rooted in France and U.S.A. compared to the Great Britain. These countries have had an ad-hoc tribunals.

It is true that tribunal is easily accessible, free from technicality, expeditious and with expert knowledge of a particular subject; but as mentioned above the tribunals can deal with the specific subject with
a limitation. Tribunals can deal with the cases related to the corruption and the maladministration in a particular field. Even though Tribunal is not machinery engaged in dealing corruption and maladministration, yet it can work as deterrent for government servants so that they will behave properly with the citizens.

2.4.6 LOK-ADALAT
As way of promoting the voluntary settlement of disputes inexpensively and expeditiously disposable, judges of the Supreme Court in 1986-87 proposed the Lok-Adalats and subsequently the Act was passed to promote the social justice with the provision of such Lokadalats. They are forced at the state and district level. The State or District is authorized to organize the Lok-Adalat at convenient places. The Lok-Adalats have wide jurisdictions. If they will run more effectively, it will be a strong arm of judiciary as the tribunals. There are possibilities of cases pertaining to corruption and maladministration appears before these Lok-Adalat.

2.5 SPECIAL INSTITUTIONS
There are special devices to face the problem of corruption and maladministration besides these machineries.

2.5.1 CENTRAL BUREAU OF INVESTIGATION
The Central Bureau of Investigation was established on April 1, 1963 under the Special Police Establishment Act, 1946. It is basically investigating agency. The Central Bureau of Investigation is involved in collecting criminal intelligence pertaining to 3 main areas of
operation; viz.: anti-corruption, economic crimes and special crimes. Central Bureau of Investigation broadly handles the cases of corruption, fraud or malpractices by public servants of central government departments, central public sector, agencies as well as state services sectors. The Bureau of Investigation has handled high-level cases against Ministers, Chief Ministers, Secretaries, high-level Government Officers, Chief Managing Directors Of Banks, Financial Institutions, etc. The Central Bureau of Investigation investigates the major crimes and cases of corruption in the country. On an average, it investigates about 1,200 cases every year of a serious nature out of which 80% of the cases are related to bribery, corruption, misappropriation, cheating etc. involving public servants.\textsuperscript{32} For example, in initial stages, the Bureau had taken initiative in investigating the Bofors case, but after some time, it lost its enthusiasm it is said simply because the Ex-Prime Minister of the country was one of the accuse.\textsuperscript{33} In its premier days, Central Bureau of Investigation was very efficient. An enquiry by Central Bureau of Investigation had status and reputation. But now a days its authenticity is viewed with a doubt and the reason is the inevitable political interference in investigation and the registration of cases, filing of charge-sheets, examination of witnesses as well as in the posting, transfer, promotion of Central Bureau of Investigation officers, etc. Formerly, the bureau was under the Ministry of Home Affairs but Indira Gandhi transferred it to PMO\textsuperscript{34} which has paved the way for direct and high level interference in its investigation. In Hawala Scandal, Central Bureau of Investigation took over 2 years to start the investigation since the
PMO wanted it to be delayed.\textsuperscript{35} Deliberating, the machinery which is created to explore corruption—is itself going to be corrupt; i.e. Central Bureau of Investigation becoming weak and inefficient.

On December 18, 1997 a three-person bench of Supreme Court headed by V.S.Varma settled down new rules, which made the Central Bureau of Investigation free from politicians. Accordingly, the court emphasized that the ministers should not have any right to interfere in the investigation and prosecution of the Central Bureau of Investigation in any individual case and should not seek permission to investigate government officials and bank officials.\textsuperscript{36} The result expected was that the Central Bureau of Investigation should be more free and efficient.

This discussion concludes that the Central Bureau of Investigation determines more proficiency and freedom. A special Act to retard corruption and maladministration signifies that maximum cases registered/charge sheeted by Central Bureau of Investigation largely belong to victimize the public servants or the private persons. However, the politicians remain unaffected from Central Bureau of Investigation's charges. In nutshell it can be agreed that the bureau proved to be effective deterrent against corrupt politicians. Hence, absolute and liberal machinery needed besides all present machineries.

2.5.2 CENTRAL VIGILANCE COMMISSION
With a view to have a machinery with teeth, the Central Vigilance Commission was set up in February 1964 on the recommendation of the Committee on Prevention of corruption,. The significant thing to
note about this Commission is that it is free from executive control. In 1998, in the case of ‘Vinnet Narain Vs. Union Of India’, the Supreme Court had directed the Central Government to confer statutory status to the CVC. Accordingly the CVC which was previously just an advisory body, is now as per this act is a statutory body. CVC is independent body and directly responsible to the Parliament. The CVC is not merely an investigating or enquiring agency. It is empowered to enquire or cause enquiries to be conducted into offences alleged to have been committed under the Prevention on Corruption Act, 1988. The commission covers the vigilance over the Ministries, Departments of Central Government, Nationalized Banks, Government Sectors, Public Undertakings, etc. The commission can enquire about the executive body. But, whether it should enquire about the Prime Minister is not made clear anywhere. The commission may enquire about the executive body; but the judiciary and legislature are out of CVC’s jurisdiction. There is no proper reason given to keep them away from its jurisdiction. Since 1997, following the Supreme Court’s order, CVC enjoys the supervisory power over CBI. But in the result, it was not mentioned whether it pertains to charge sheets also. To clear up some doubts, CVC decided to approach the apex court in the Hinduja brother and the judgment in Hawala case. However, the judgment is awaiting in this regard.

The CVC always tries to solve the case through penalties or administrative actions. After all its efforts, if the case is not solved or facts are not caught then CVC hands it over to CBI. The rising number of cases of corruption shows that CBI could not succeed in controlling it, hence, the CVC needs to strengthen its functioning.
According to the ‘Corruption Perception Index’ published by ‘Transparency International’ in 1998, India has ranked 66 out of 85 countries. N. Vital, the then Central Vigilance Commissioner assured that before leaving his charge on September 2, 2002, India’s rank should be improved to 40 at least. On other hand, in his lecture on late B. Dorieswamy Iyengar Memorial Lecture Series held at Shimoga on January 7, 2000, he was compelled to state that India listed 66th in 1998 out of 85 countries in 1999. He pessimistically added pointing out that India’s rank has gone down from 66 to 73. Actually, the list is going from the less to the most corrupt countries. Going on to 73 from 66, India becomes more corrupt- besides, he explained that from the bottom, there were 19 countries in 1998 that were more corrupt than India and in 1998, there were 27 countries more corrupt than India. He concluded that the index is improving with India.

In India there is no Ombudsman i.e. Lokpal at national level. However, maximum states have Lokayukta and the State level Vigilance Commissions. The State Vigilance Commission plays an important role; e.g., the Commission in Punjab raided Chief of Punjab Public Service Commission, put charges against the Vice-Chancellor of the University and teachers running private coaching classes in Punjab. The State Vigilance Commission has its own investigating machinery but it has its limitations. Machinery is trying at its best.

The CVC is not very successful in reducing corruption and maladministration in India. Central Vigilance Commission could be an alternative in curbing corruption and maladministration to other commissions and committees. It is not an absolute solution. In the view of the suggestions for appointing Lokayukta, some of the states
abolished or suspended the working of vigilance commissioner as if it was felt that the appointment of the new agency will render vigilance commissioner superfluous.\textsuperscript{42} It is clear that the states running with Vigilance Commissions are demanding some alternative to the machinery which is more bold than the commission.

2.6 THE PROCEESS OF PIL
Besides all the committees, commissions, institutions, laws and acts there is a process of public interest litigation to fight against corruption.

2.6.1 PUBLIC INTEREST LITIGATION
Under Articles (226) and (32) of Indian constitution, the High Courts and the Supreme Court can issue writs against public authorities \textsuperscript{43} for violation of fundamental rights. Recently the High Courts and Supreme Court are hearing the type of cases, which are described as Public Interest Litigation. The PIL is fundamentally different from private law litigation. Under PIL, people can demand action against exploitation of laborers by contractors, the use of children as bonded labor, illegal detention under trials, torture while in custody, etc. The PIL cases provided socio-economic justice to the people. The court has preventive and remedial power in PIL. PIL is the name give to efforts to provide legal representation to interests that historically have been un-represented and under-represented in the legal process. These includes not only the poor and disadvantaged, but ordinary citizens who because they cannot afford lawyers to represent them have lacked access to court rooms, administrative agencies and other legal basic policy decisions affecting their interests.\textsuperscript{44}
PIL are blamed for delay, inefficiency, misuse and over burden. So far it is successful in curbing corruption and maladministration.

2.7 DEMOCRATIC DEVICES
So far the present research problem is concerned, these constitutional and the non-constitutional device are not quite effective in tackling corruption and maladministration. In any democratic society, a common man is expected to be important element. It is implied that people’s participation is necessary in each governmental and non-governmental action. Swami Vivekananda quoted, “all the wealth of the world cannot help one little Indian village if the people are not taught to help themselves.”

This participation expects the mental and emotional involvement. The participation can be made through involvement of voluntary agencies and individuals, e.g. ‘Jan-Andolan’ by Anna Hazare is one of the major efforts in this regard. He compelled two corrupt ministers to resign on the charges of corruption. He fought against political corruption as well as administrative corruption. Shiv Khera also fights against central ministerial corruption through his agency namely, ‘country first’. Arun Bhatia is one more name in this context. It is because of his initiative that the inquiry of corruption in Dhulia Employment Guarantee Scheme involving non-officials and IAS officers was conducted.

It can be said that these are the islands giving a strong fight against the ocean in corruption. Unfortunately, they are not supported strongly by people. Obviously, it appears that all the efforts of the individuals will go in vain in fighting against corruption.
2.8 OTHER MACHINERIES
Besides all these central/national machineries, there is state level/local machinery, which tries to curb corruption and to evolve clean the administration. In Andhra Pradesh, the Government launched a scheme called ‘Projala Vaddaku Paalana’. * It remarkably tried to improve the services to the people of Andhra Pradesh, which treated it as a leading state in information Technology. In Aug.1997, with the help of NIC the government initiated ‘Computer Aid Administration of Registration Department’ (CARD). The computerized administration proved to be speedy, accurate, and transparent. In Assam, ‘Lok Adalats’ and ‘Rajah Adalats’ had been set up for speedy redressal of public grievances. Other states and the union territories are also trying for the same. For example, Bihar Government launched ‘Janta Darbars’ at the panchayat level under the Deputy Collector of the district to redress the public grievances relating to the Government departments in Bihar and Chandigarh. The Delhi state government has devised a public grievances officer in every department. Karnataka Chief Minister undertakes ‘Janta Darshans’ and audiences for petitioners. Kerala Vigilance Department has been empowered to be pro-active and carry out investigations and made arrests in Prima-facie cases, rather than being reactive and proceed only after government’s sanction as was the procedure earlier. This is remarkable improvement. Madhya Pradesh has Lokayukta at state as well as divisional level. Manipur has Public Grievances Redressal

* Administration at Door Step of the people.
Committee for hearing public grievances and redressing the grievances on the spot. In Manipur, some districts have adopted computerization of the public grievance. Orrissa has a separate Directorate for Prevention and detention of corruption by public servants. Pondichery has a citizen’s charters in every department. Punjab has started a programme to sort out the grievances on the spot; namely, ‘Sangat Darshan’. Vigilance Bureau in Punjab is quite active. Grievance Committee at Rajas than tries to make a time frame within which the applications for distribution of public goods or grievances redressal would be disposed of at the block & district level. Tripura has introduced the system of holding administrative camps in the remote areas to listen grievances of the people. Uttar Pradesh also has a computerized Public Grievances Directorate to curb corruption in offices. This part from anti-corruption measures, there are a lot of efforts at the state and at national level. As against of these, there are some states where not any strong and effective machinery is available; e.g. Haryana, Sikkim, Lakshadvip, etc. (Maharashtra is discussed in third chapter)

Thus there are some constitutional, legal, institutional devices emerged and developed in the last 50 years. Besides, the Parliament has enacted laws. The government many times was forced to establish Commissions and Committees to enquire into the acts of corruption including the measures to improve the administration. The special establishments such as CBI, CVC constitute by this time, the routine machinery in this direction. Added to them is the welcome feature of PIL in recent time. The efforts of NGOs and the conscious people and the activists have definitely played a role in bringing out
the incidences/affairs involving corruption. However, corruption-free society has remained a distant dream. It is not surprising as these are the institutional devices and legal framework to discover and reduce if not eliminate corruption. The real question is how far these institutional devices and legal structures are rigorously enforced by the concerned. Hence, the search for more and more of new devices goes on. The Lokpal at the central and Lokayukta at the state are the steps in this regard.

SECTION 2
LOKPAL IN INDIA
On this background, there have been several efforts made to pass the 'Lokpal Bill' in Parliament during last 30 years. Before discussing these efforts, it is necessary to see the background of the very idea of Lokpal.

2.9 GENESIS OF AN IDEA OF LOKPAL
C. D. Deshmukh, the then Finance Minister and Chairman University Grants Commission, made a formal proposal for an Ombudsman like institute. He forwarded the idea in July 1959 in his lecture in Madras. He asked for the establishment of a high level, impartial, standing judicial tribunal to investigate & report on the complaints or lying of information.46 This was the first and formal element of the machinery of redressal of grievances expressed publicly. Just after some months, K.M.Munshi, the renowned legal expert and member of Constituent Assembly, in a debate suggested for the institution in the form of permanent tribunal of enquiry in Feb 1960. Another notable person
who expressed his opinion on this issue was M.C. Setalvad, India’s first Attorney General. In his inaugural speech in the third All-India Law Conference in August 1962, he referred to such an institution. In July 1963, L. M. Singhvi, MP and Legal expert raised the issue in Parliament. P. B. Gajendragadkar, the then Chief Justice of the Supreme Court of India spoke on the importance of the institution of Ombudsman. On April 22, 1964 Mr. Singhvi moved the resolution on Lokpal in the Loksabha. He say in his resolution, “An officer of parliament to be known as the people Prosecution, broadly analogous to the institution of Ombudsman in Sweden and other countries should be appointed under suitable legislation for the purpose of providing effective and impartial investigation machinery for public grievances.”

Nehru was fascinated by the idea of Ombudsman type institute. There was a long discussion on this issue. Mr. H. C. Chatterji was in favor of such institution whereas Sinhasan Singh, S. N. Chatutvedi, S. M. Banerjee and Yashpal Singh opposed it. J. H. Hathi, the then Minister of State in the Ministry of Home Affairs stated that Government was thinking of evolving suitable machinery for redressal of public grievances; hence, Mr. Singhvi withdrew his resolution. Meanwhile, there was an appointment of the Committee on Prevention of Corruption in 1964. The Central Vigilance Commission was established on the recommendations made by the Committee.

Again, in November 1967, the ARC strongly recommended the appointment of Lokpal & Lokayukta with the following features:

1] They should be demonstrably independent and impartial.
2] The investigations and proceedings of these functionaries should be conducted in private and should be informal.

3] The appointment should be non-political.

4] The status should be equivalent to that of the highest judicial functionaries.

5] They should have discretionary field to decide cases.

6] The proceedings should be free from interference of the judiciary.

7] They should not look forward to any benefit or pecuniary advantage from the executive government.

The Government accepted the recommendations made by Administrative Reforms Commission for the machinery of redressal of citizen's grievances. In December 1967, P K Deo moved a private Bill on the basis of ARC draft bill in the Parliament. Finally, 'The Lokpal & Lokayukta Bill, 1968' was introduced and was referred to the Joint Select Committee of both houses of Parliament in May 1968. After that for several times, the bill was introduced in Loksabha or Rajyasabha. Several times, it was discussed at length but has not passed yet.

Here are chronological aspects of the deliberation on Lokpal Bill.

THE LOKPAL & LOKAYUKTA BILL, 1968

According to the bill, there should be a 'Lokpal' for central Government with 'Lokayukta' as its second member. The bill was introduced on May 9, 1968 and was sent to the Joint Select Committee of parliament. The bill made amply clear that the public servants working outside India would also be amendable to the
jurisdiction of Lokpal & Lokayuktas. One more important thing was that the complainant was not required to pay any fee along with complaint. The bill was referred to the JSC. It gave its report on March 21, 1969. The witnessing gist of the report given by Mr. Bagwan Sarup Bhatnagar, Mr. N. N. Wnchoo, was, “Lokpal should be the most powerful limb of the Parliament.”51 There were some changes made by the committee in the original bill. The Prime Minister was included but later was excluded by the JSC. The bill was forwarded in Loksabha in 1969.

LOKPAL & LOKAYUKTA BILL IN 1969

The revised version of the Bill by the JSC was moved by Vidya Charan Shukla on August 20, 1969.52 The Bill previously included the PM. But when the bill was discussed in JSC, majority excluded the PM. The argument was made that if the PM was required to vacate his post the whole government automatically ceases. While discussing the Bill in Loksabha, V. P. Mandal, MP, Savepura proposed that the jurisdiction of Lokpal should include the cases of caste violence, atrocities which were not accepted.53 On the same day the bill was passed in Loksabha but was not discussed in Rajyasabha. President of India in December 1970 dissolved the Loksabha for midterm poll. The attempt to pass the bill proved unsuccessful.

LOKPAL BILL IN 1971

In August 1971, the bill was again introduced in Loksabha with minor changes. At that time the Prime Minister was included in the jurisdiction of Lokpal bill. However, a major drawback of the bill was
that the State Government Servants were out of the sphere of Lokpal. The Bill again was approved after discussion. But meanwhile Maharashtra, Rajasthan and other States established the State Lokayukta. The country was passing through a critical political situation in this period. Therefore, no serious and urgent attention was given to pass the bill. Even though, the Lokpal at the center could not be introduced at this juncture, Maharashtra and Rajasthan established Lokayukta in their states by enacting the laws by respective State Legislature. Besides, in Assam, the law was almost ready.

LOKPAL BILL IN 1977
Once again, on July 28, 1977 the bill was proposed and moved. It included the cases of corruption, nepotism and abuse of position, but did not cover the grievances of maladministration. One more lacuna was the camera inquiry, which was not incorporated in the bill. Similarly, the procedure regarding the transfer of complaints to competent authority to review the system was such that Lokpal could directly deal with the ‘middle man’ without aggrieved. At this time, the Bill firstly included the provision of Lokpal for speedy disposal of cases. It contained a provision of a fee of Rs 1,000 to be deposited by the complainant along with the complaint. Basically, the bill remained a permanent commission of inquiry against political officers; because the government servants were excluded from its jurisdiction. The bill was sent to the Joint Select Committee of the House which excluded the CMs of the states from the jurisdiction of the Lokpal. But, the Home Minister recommended the Chief Ministers be brought in the
purview of Lokpal. It was a period of emergency and for this reason; the bill became invalid in the House.

**LOKPAL BILL IN 1985**

The then Union Minister Mr. A K Sen on August 26, 1985 again introduced the Lokpal Bill. The object was the same as it was in the past. Again it was referred to the JSC for the 4th time. The PM & CM were excluded from the jurisdiction of Lokpal. Lokpal had the jurisdiction to punish any insult or the causes while discharging of his duties. The Bill also did not cover public servants. However, it maintained the fee clause.\(^5\) The bill was withdrawn without giving any strong reason.

**LOKPAL BILL IN 1989**

The Lokpal Bill was reintroduced on December 29, 1989 during the 9th Loksabha. The bill was similar to one 1985 Bill; except inclusion of Deputy PM in the jurisdiction of Lokpal.\(^6\) Due to the defeat of the government on the floor of the Loksabha, the bill once again became invalid.

**THE LOKPAL BILL, 1996**

Once again an effort was made for the formation of Lokpal on 13 September 1996 by introducing the bill in Loksabha.

The sailent features of the Bill are:

1. Structure: There shall be multi-member body of Lokpal. A chairperson shall be a Chief Justice of India or a Judge of
Supreme Court. Other two members should be persons of knowledge and experience of judiciary and administration.

2. Appointment procedure: The Lokpals shall be appointed by the President in consultation with the Chief Justice of India, the leader of the opposition in Loksabha and the Speaker of the Loksabha.

3. Age and tenure: The Lokpals shall hold the office for 5 years. They shall not be removed except by an order made by the President on basis of the recommendation made by the Chief Justice or any other authority.

4. Under the scheme of the bill, Lokpal shall inquire into complaints allegations against public functionary as defined in the bill for an offence punishable under the Prevention of Corruption Act, 1988.\textsuperscript{58}

At this time also the bill was not passed.

**LOKPAL BILL, 1998**

On 23\textsuperscript{rd} July 1998, by M. R. Janardhanan kept the statement of the Bill. According to the article 11(2) of the Bill.\textsuperscript{59} Lokpal shall not inquire into any matter concerning any person if the chair person or any other member has any bias in respect of such matter or person and if any dispute arises in this behalf; the President shall on an application made by the party aggrieved, obtain in such manner as may be prescribed in the opinion of the Chief Justice of India and decide the dispute in conformity with such opinion. The bill again was dropped.
LOKPAL BILL, 2001:
The repeated acts of presenting the Lokpal bill does not end here. It was again introduced on July 9, 2001. Vasundhara Raje, the then Minister put up the Lokpal Bill, 2001. A major change in the bill this time was the requirement of tenure of Lokpal. It required that there should be a chairperson with two members for a fixed tenure. It added with a view to ensure independence of the Lokpal and to discharge its functions without fear or favor and shall not remove except by an order of the President. To enable the Lokpal to function effectively and in a quasi-judicial manner the power of the civil court in respect of summoning and enforcing the attendance of any person and examining him on the data requiring the discovery and production, any document and receiving evidence etc. have been confirmed.

The PM was included the bill whereas Judges of Supreme Court and Election Commissioners were kept out of his purview. The Bill sought to make special provision for discouraging, frivolous, vexatious and false complaints.

14 AUG. 2001:
On 9th July, the Bill was again presented on the table. On 14th Aug, it was discussed in detail. In this Bill article 10(1) provides that the Lokpal shall not enquire into the matter involved in or arising from or connected with any such allegation against the PM in so far as it relates to national security and maintenance of public order.

The Constitution Review Committee also considered this bill. At this time, it was referred to the Parliamentary Standing Committee. On June 28, 2003 it was again kept for discussion. The cabinet agreed to
keep the PMO in its purview. Sushma Swaraj, the then Parliamentary Affairs Minister told that it would be a simple measure and not a constitutional amendment. The cabinet also agreed that the bill would be passed in monsoon session of the Parliament. However, could not stick to its words. Once again efforts to establish the Lokpal had gone vain.

The forgoing discussion about the introduction of the bill several times in the Parliament is presented in following table:

<table>
<thead>
<tr>
<th>No.</th>
<th>Date and Year</th>
<th>Feature of the Bill</th>
<th>Position about inclusion of Prime Minister</th>
<th>Fate of the Bill</th>
</tr>
</thead>
</table>
| 1.  | May 9, 1968   | a) Public Servants were included   
b) Complaints without any fees | Yes | Referred to the Joint Select Committee |
| 2.  | August 20, 1969 | 4) Cases of castism should be included   
( suggestion was not accepted) | Yes | Passed in Loksabha— but not passed in Rajyasaba due to dissolution of Loksabha for midterm poll |
<table>
<thead>
<tr>
<th></th>
<th>Date</th>
<th>Event Description</th>
<th>Decision</th>
<th>Outcome</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.</td>
<td>August, 1971</td>
<td>a) Central Government Servants were included</td>
<td>Yes</td>
<td>Left without discussion</td>
</tr>
<tr>
<td></td>
<td></td>
<td>b) State Government Servants were not included</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4.</td>
<td>July 28, 1977</td>
<td>a) Complainant was required to pay Rs. 1000/- as fees</td>
<td>Yes</td>
<td>Referred to the Joint Select Committee</td>
</tr>
<tr>
<td></td>
<td></td>
<td>b) Excluded cases of maladministration</td>
<td>(Excluded (Chief Ministers of States)</td>
<td></td>
</tr>
<tr>
<td>5.</td>
<td>August 26, 1985</td>
<td>a) Complainant was required to pay Rs. 1000/- as fees</td>
<td>No</td>
<td>Referred to the Joint Select Committee</td>
</tr>
<tr>
<td></td>
<td></td>
<td>b) Excluded Central Government Public Servants</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6.</td>
<td>December 29, 1989</td>
<td>Deputy Prime Minister was included</td>
<td>No</td>
<td>The bill was lapsed</td>
</tr>
<tr>
<td>7.</td>
<td>September 29, 1996</td>
<td>a) Inclusion of public functionaries</td>
<td>No</td>
<td>Lapsed due to dissolution of Loksabha</td>
</tr>
<tr>
<td>8.</td>
<td>July 23, 1998</td>
<td>a) Inclusion of public functionaries</td>
<td>No</td>
<td>Lapsed due to dissolution of Loksabha</td>
</tr>
<tr>
<td>No.</td>
<td>Date</td>
<td>Description</td>
<td>Decision</td>
<td>Status</td>
</tr>
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<td>-----</td>
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<td>-----------------------------------------------------------------------------</td>
<td>----------</td>
<td>-------------------------------------</td>
</tr>
<tr>
<td>9</td>
<td>July 9, 2001</td>
<td>a) Judges of Supreme Court and Election Commissioner were excluded</td>
<td>No</td>
<td>Presented but was not discussed</td>
</tr>
<tr>
<td>10</td>
<td>August 14, 2001</td>
<td>a) Judges of Supreme Court and Election Commissioner were excluded</td>
<td>No</td>
<td>Referred to the Constitution Review Committee</td>
</tr>
<tr>
<td>11</td>
<td>June 28, 2003</td>
<td>a) To be formed as a public grievance redressal</td>
<td>Yes</td>
<td>Cabinet approved and agreed to move the bill—but was not passed</td>
</tr>
</tbody>
</table>

2.12 PRESENT SITUATION OF THE BILL

Historically, the Bill remained without passing with delay, uncertainty and callous neglect on the part of the Cabinet and the Indian Parliament for a long period of 35 years. There was lack of consensus among lawmakers about the exact functions of the Lokpal and whether to include the office of the prime minister in the definition of public servant. I. K. Gujral, the Ex-Prime Minister and Subhash Kashyap, a Parliamentary Secretary were not in favor of inclusion of the Prime Minister. Vajpayee himself was in favor of including Prime Minister, under its purview. In October, former Prime Minister Narasimha Rao and his ex-cabinet colleague Buta Singh were sentenced to three years in jail by a special court in a vote-buying case. The case involved allegations that in 1993 Rao tried to influence a parliamentary vote of no confidence by bribing four lawmakers of a
regional group. In a country where ex-Prime Minister—a supreme authority is charged as a corrupt is difficult to speak about a clean government. A recent survey by a private agency showed 2/3rd or more than 2,500 people who were questioned thought that there is corruption in Indian government high offices that took a country back by 25 years. Nearly half of those interviewee said they or someone close to them had given a bribe to obtain a government service. While the introduction of the Bill in the Parliament is a step forward, there are many more hurdles to be crossed before the Lokpal Bill is finally passed by the Parliament, receives assent of the President and is notified officially. There are already rumblings and murmurs among the Members of Parliament that the Bill should not be made applicable to them.

2.11 SALIENT FEATURES OF PROPOSED LOKPAL BILL

Even though the process of enactment of Lokpal Bill is incomplete, considering the provisions of the Lokpal Bill, 2003 salient features are as given below:

1) ESTABLISHMENT:

Lokpal shall be appointed by the President in consultation with the Chief Justice, Supreme Court as well the leader of the opposition party. He shall hold the office for the term of 5 years. There should be 2 members to assist him. There is no mention of age limit of the person. The status or the position of the Chairman i.e. Lokpal shall be the same as that of the Chief Justice of India. Others shall be the same as judges of Supreme Court.
2) TENURE:
Every member in Lokpal shall hold office for 5 years\textsuperscript{67} and shall not be removed except by an order of the President on the ground of the proved misbehavior or in capacity after an inquiry to be made by the Chief Justice of India or by other judge of the Supreme Court of India.\textsuperscript{68} For that, misbehavior or incapability of the chairperson/member shall be proved in the Legislature.

3) JURISDICTION:

a) According to Clause 9 (1) the Lokpal may inquire into any matter involved in or arising from or any complaint alleging the public functionary* has committed any offence punishable under the Prevention of Corruption Act, 1988.

b) Lokpal may inquire into any act or conduct of any person other than a public functionary in so far the purpose of its enquiry into any allegation.

c) Referring to Clause 7(1), the President can ask the Lokpal to inquire into any allegation specified in the order in respect of public functions and not withstanding anything contained in the Act. The Lokpal shall comply with such order.

\* Public Functionary Under The Act Means A Person Who-

a) Holds The Office Of Prime Minister, Minister Of State/Deputy Minister Of Union.

b) Is, Or Has Been A Member Of Either Those Of Parliament.
4) MATTERS OUT OF JURISDICTION:
The clause (10) of the bill requires that the Lokpal shall not inquire into any matter in respect of any person or matter, or into any matter that has been referred for inquiry under the commission of Inquiry Act, 1952 on its recommendation or with its prior concurrence.

5) MISCELLANEOUS:

a) The Lokpal has been provided with the power to search and seize any document, which in its opinion will be useful for, or relevant to any inquiry.

b) The Lokpal is authorized to punish any person with simple imprisonment for a term that may extend to 6 months or with a fine or with both in case of intentional insult or interruption to or bringing into disrepute the institution of Lokpal.

c) The Lokpals have to report the President annually.

d) The Lokpal can award or reward the compensation.

e) The Lokpal can sentence imprisonment for a term of 1-3 years or fine up to Rs. 50,000 to a false complainant.

f) The Lokpal can hold the inquiry as expeditiously as possible and complete it within 6 months from the date of complaint is received.

g) The Lokpal shall discharge his functions to the sub-ordinates. Under clause 8(1) of the Act, he can appoint a secretary in consultation with the president. He can secure the services of any officer who shall be subject to the exclusive administrative control and the direction of the Lokpal.
These provisions carry no meaning as long as they are not statutory.

2.12 WHY LOKPAL IS DELAYED?
The following reasons can be by way of consolidated positions for constant delay incurred to pass the Bill.
   1) Ambiguity in the draft of the bill.
   2) Controversial nature of the bill.
   3) Ignorance and non-seriousness of the ruling as well as opposition parties.
   4) Fear among the politicians about the Lokpal institution.
   5) Lack of political will towards passing of the bill.
   6) Lack of strong public support.
   7) Lack of adequate interest shown by NGOs, media, experts and the people in general.

This long and callous delay to the enactment of Lokpal Bill clearly indicates the absence of desire and initiative on the part of society and the government. It needs an organized effort.

2.13 SHORTCOMINGS OF THE BILL
There are certain shortcomings that can be pointed out in the proposed Bill.

   a) The Bill is restricted to merely offences punishable under the Prevention of Corruption Act, 1988.
   b) A complainant is required to pay the fees Rs. 1000/-.
c) The Bill excluded the Civil Servants from its jurisdiction for political corruption that can be dealt with the political functionaries.

d) The political corruption, which occupies larger area in corruption, is excluded from the jurisdiction of proposed Lokpal. The Civil Servants are supposed to report cases of administrative corruption. This is probably the inference from this provision.

e) One of the defects in this bill is that the power of the Lokpal is confined to the offences punishable under the Prevention of Corruption Act, 1988. The act covers the cases of illegal gratification and possession to the lawful sources of income. That is why, the cases of corruption arising from nepotism or other motivating factors would not fall within the ambit of the Lokpal.

The institution of Lokpal should be thought of as an alternative & absolute solution to the present machinery on corruption & maladministration. But, with the present defects and drawbacks in the bill, there is possibility that the institution will be rendered inefficient and week. Hence, there is need to give over it and adequate changes be incorporated in it.

2.14 SUGGESTIONS

Let us hope there shall be a Lokpal in future. Some of the suggestions for this future office shall be:

1) Lokpal should have sue-motto power of investigation to protect community right.
2) The public servant constitutes the major factor in the cases of corruption and maladministration. Hence, he should be included in the purview of Lokpal at different levels-national, state or local. For example, in Denmark, civil administration is under the Ombudsman’s purview that is exclusive of the courts. But, it is controlled due to consideration of the Ombudsman.

3) In Sweden, Ombudsman is the constitutional body and has a status in the governmental system. Lokpal in India should be given a constitutional status so that it can get a high position in the governmental process.

4) Lokpal should create confidence in people and should build up image like Swedish Ombudsman.

5) Lokpal should not only investigate the complaints made by the citizens against the administration; but also seeks to create a better image of administration like one in Sweden.

6) Foremost important thing is that Lokpal should be explicitly free from the Government, mainly from the Executive.

7) Lokpal should have the power to publicize the cases involving serious offences of maladministration. The recommendations of Lokpal also should be publicized. It would be in tune with right to information.

8) Lokpal should have its own investigation agency on the line of Scandinavian and European countries.

9) Like Ombudsman in Sweden, Lokpal should exercise great restrain on unnecessary fact finding and panelizing officials.

10) In a poor country like India, it is advisable not to charge any fee for the complaints to the Lokpal or there should be a nominal
charge of fees like the Scandinavian countries such as Finland and Denmark.

The constitution has created a few independent machineries. But it has been observed in the studies that many a times adequate funds and other facilities are not made available to them. Considering this it should be made obligatory on the part of the Government to provide funds and facilities from time to time to Lokpal. This will also help to activate the Lokpal. This will help also in building confidence among the functionaries as well as the people about the mission to create corruption-free society.

SECTION 3

LOKAYUKTA IN INDIAN STATES

There are quite good number of efforts for the ‘Lokpal’ at the Center. The Lokpal Bill is yet to be enacted. But fortunately, nearly half of the states in India have adopted the Lokayukta in their states. They are - Orissa, Maharashtra, Rajasthan, Bihar, Uttar Pradesh, Andhra Pradesh, Gujarat, Himachal Pradesh, Assam, Madhya Pradesh, Karnataka, Kerala, Goa, Punjab. We have the beginning of this safeguard system against corruption in the country through the Lokayukta system. It has been well settled in those states by this time. Following is the brief account of emergence of Lokayukta in the states--

ORRISA:

Orissa is the first State, which has passed the Lokayukta Bill. The ‘Lokpal and Lokayukta Act, 1970 was passed on 28th October 1970 and started its implementation in 1983. In 1983, the Act with a view
to include the Chief Minister in Lokayukta’s purview was amended. In Orissa, as per the act, ‘Lokpal’ is the head of the institute to curb corruption, maladministration and nepotism—‘Lokayukta’ is the second one after ‘Lokpal’. Thus, there are two persons in the office of the Lokayukta. Maharashtra is the second state that passed the act and first that implemented the Lokayukta institution at state level.

RAJASTHAN:
The Administrative Reforms Committee Rajasthan recommended in September 1963 for the appointment of an independent and high-powered body in the nature of an Ombudsman. Rajasthan Administrative Reforms Commission was the first to speak on Ombudsman in India. The Rajasthan Lokayukta & Upa-Lokayukta Act, 1973’ was presented in the Assembly on August 28, 1973 and was passed. Mr. Inder Dev Gupta took over as the first Lokayukta in Rajasthan.

BIHAR:
Bihar constituted ‘Lokayukta’ on May 28, 1973 by appointing Dr. S. V. Sohani as the first Lokayukta as per ‘The Bihar Lokayukta Act, 1973’. The Chief Minister was excluded from the act earlier; but by the amendment made on April 1983 he was included. Bihar Lokayukta has to submit his Annual Report to the Chief Minister and Governor. Both of them send their comments on its reports, which are confidential. Then the report is submitted to the House.
UTTAR PRADESH:
The ‘Uttar Pradesh Lokayukta and Upa-Lokayukta Act, 1974’ was passed in 1975 and B.Dayal the former Chief Justice of Madhya Pradesh High Court was appointed as the first Lokayukta of Uttar Pradesh.\textsuperscript{73} The Uttar Pradesh Lokayukta can operate for the Ministers, Public servants, all Government officials at the District and at the local level, however, the Chief Minister is excluded from its jurisdiction.

ANDHRA PRADESH:
The report of the Administrative Reforms Committee, Andhra Pradesh recommended for appointment of a receptionist of the rank of U.D.C. in each Collectorate with the purpose of streaming administration.\textsuperscript{74} With the passing of ‘Andhra Pradesh Lokayukta and Upalokayukta Act, 1981’, the state Government in Andhra Pradesh adopted Lokayukta on September 4, 1982. Mr. Avula Samba Siva Rao was sworn in as the first Lokayukta in 1983. For a long period, the common man in Andhra Pradesh was unknown about the existence of the office of Lokayukta. In July 2002, R. Ramanujam took over the post and made lots of efforts to popularize the office.\textsuperscript{75} This is the first effort in Andra Pradesh in that direction. N. Chandrababu Naidu, the then Chief Minister, Andhra Pradesh also expressed his opinion to strengthen the office to check corruption in administration. A complainant in Andra Pradesh is required to pay Rs. 150/- as a fee by draft or money order along with the complaint. A remarkable point is that Lokayukta has its own investigating team led by an officer of the rank of IGP. So far the jurisdiction of Lokayukta is concerned, it
cannot deal with the all India public servants. The Chief Minister is excluded from its purview.

GUJRAT:
The 'Gujrat Lokayukta and Upa-Lokayukta Bill, 1974' was introduced in the Gujrat Legislative Assembly and could not be passed. But in 1983, the Chief Minister Madhav Singh Solanki announced the decision of the government to appoint the Lokayukta. According to the 'Gujarat Lokayukta Act, 1986' the state has appointed the Lokayukta to curb corruption and maladministration.

HIMACHAL PRADESH:
In Himachal Pradesh the 'Himachal Pradesh Lokayukta and Upa-Lokayukta Bill' was introduced in 1975, but it was lapsed. Again in 1980 April and March 1982. It was discussed and finally passed in August 1983. J.V.R. Tatachsr, Jusitce, Himachal Pradesh High Court took over the charge of the first Lokayukta of Himachal Pradesh. Himachal Pradesh Lokayukta office tried to take the institution nearer to the people. In other states, Lokayukta deals with complaints of citizens against civil servants but in Himachal Pradesh, the civil servants also can complaint under the Act. Every citizen has easy access to the Lokayukta.

However, the limitations of the Lokayukta in Himachal Pradesh are-

1) He does not have the power of suo-moto.
2) There is no independent investigating machinery.
3) No prompt action on the reports of the Lokayukta is taken.
An active co-operation by the executive and government is necessary in the successful working of the Lokayukta in Himachal pradesh.

ASSAM:
Assam state Government enacted ‘Assam Lokayukta and Upa-Lokayukta Act 1985’. The Assam Government was achieving for a clean administration through the Lokayukta office as it has been stated in the act. 79

MADHYA PRADESH:
‘Lokayukta and Upalokayukta Bill, 1974’ was passed by Madhya Pradesh Assembly in April 1975 and was forwarded to the President. There after the Assembly was dissolved and obviously the Bill was lapsed. 80 The Bill was again introduced in September 1980 and came into force on September 16, 1981 namely ‘The Madhya Pradesh Lokayukta and Upalokayukta Abhiyan, 1981’. According to this act, the Chief Minister is not included in his jurisdiction. However, there is a provision that if there is any complaint against the Chief Minister, it is to be submitted to the Governor directly. It is obligatory for the Governor to accept the complaint and to ask the Lokayukta to enquire the same.

KARNATAKA:
As per the promise made in the Election Manifesto, Ramkrishna Hegde, the former Chief Minister introduced the ‘Lokayukta and Upalokayukta Bill’ in the Assembly on March 28, 1983. It was passed in both the houses and enacted on Jan. 16, 1986. It is said that the
Karnataka Lokayukta is more independent than other states. It is because he has its own investigating machinery. The Chief Minister & the public servants are accountable to Lokayukta; but MLAs are not included in his jurisdiction. It is to be noted that, S M Krishna, the then Chief Minister of Karnataka expressed his opinion in the Legislative Assembly that MLA, should be under the purview of Lokayukta. In 2001, a case against V. S. Kourji, Agriculture Minister came to the Lokayukta. As the MLA is out of its purview the same could not be investigated. The case was dismissed. Later on, MLAs were brought under Lokayukta’s purview. In Karnataka, the office of Lokayukta is a positive intervention in establishing popular faith in democratic governance. Karnataka is the only state that uses the two-tier system of Lokayukta. Government of Karnataka has transferred some of its powers and functions to the elected body; i.e. The Zillah Parish ad. The Zillah Parishad Officer, who is enjoyed the powers, can act as a Mini-Lokayukta at the district level. Thus, it is a moderate beginning of controlling at local level through Lokayukta. It is yet to be proved whether implementing office like CEO can impartially and objectively conduct the functions of Lokayukta.

KERALA:
The Administrative Reforms Committee, Kerala longback in its report (1965-67) says, “Indiscipline among Government servants has been sweeping the State.” The report emphasizes the importance of integrity and efficiency at all levels as basic to good administration. Kerala has passed ‘The public Men (prevention of Corruption) Act, 1983.
Besides State level Lokyukta, as per with this intension, Kerala Panchayat Act, 2000 Ombudsman for local Government was constituted in Kerala. It consist of 7 members including,

a) The High Court Judge as the head;

b) Two District Judges;

c) Two Public Men;

Ombudsman has its own staff. It can utilize the service of any officer in the Government for enquiries. The officers are required to provide the information if necessary for investigation. The Ombudsman can deal with the public servants including the President, Chairpersons, all the members, secretaries, and other staff of the local Government including the local officials transferred to them.\textsuperscript{85} Kerala Ombudsman for local government is expected to put a check and maintain a balance to make it efficient, autonomous and dedicated. Kerala is an example of two-tier Ombudsman ship.

All the Lokayukta Acts are similar. The main difference is the jurisdiction, mainly whether the Chief Minister is included or not. The acts of Orrisa, Kerala, Karnataka and Gujarat cover up the Chief Minister within the jurisdiction of Lokayukta while others do not. Most of them include public men and public servants, corporations, Universities, all the Government sections and Undertakings. Kerala Lokayukta has a major limitation that it doesn’t have any infrastructure.\textsuperscript{86}

\textbf{GOA:}

Goa titled the act as the ‘Goa Public Men’s Corruption (Investigation and enquiries Act). The Act includes Chief Minister, ministers,
leaders and officers. It is criticized that the title of Act disrespects the public servants- 'Public Men's' refers to the public servants i.e. it is to control the public servants only. Hence, it is required to be changed. The Act includes the complaints of corruption. But it does not include the grievances and allegations of maladministration. Another drawback is that it deals with the public men and not with the government servants; i.e. the secretaries, joint secretaries, under secretaries, officers in panchayats, municipalities, etc. This act is not quite successful in cleaning the Goa administration.

PUNJAB:
In 1992, during the tenure of Beant Singh, 'The Lokpal Bill' was passed in Punjab. Justice S.S.S. Sodhi was appointed as the first Lokpal. In 1999, the Lokpal indicated three ministers of the congress government with 'major corruption changes' in his report submitted by Lokpal Justice H.S. Rai to the Governor. The Lokpal office on this issue has sent a number of reminders to the Punjab Raj Bhawan. The ministers were congressmen and a report was a godsend on the eve of the election. The Governor was also a congressmen at that time. Therefore, he kept mum. The report remained without any discussion. Besides, justifying and changing the concerned ministers on the charge of corruption, the Punjab Lokpal was caught in the crossfire between political parties. Justice Rai was entrusted with reviewing all the complaints lodged with the disbanded Lokpal office. But in this said complaint against Ministers, Governor was not co-operative. This explains the fact that how far the executive is helpful to the Lokayukt in Punjab. It is also clear that Lokayukta
cannot argue in the ministerial cases effectively if the Government is with him.
Tamilnadu has its ‘The Tamilnadu Public Men (Criminal Misconduct) Act, 1974.

**TABLE -2.3**

**TABLE OF THE POSITION OF LOKAYUKTA IN INDIAN STATES**

<table>
<thead>
<tr>
<th>Name of the state</th>
<th>Rank In Corruption List*</th>
<th>The description of the Act</th>
<th>Provision of Upa-Lokayuktas?</th>
<th>Tenure of the Lokayukta</th>
<th>Inclusion of Chief Minister</th>
</tr>
</thead>
<tbody>
<tr>
<td>Orrisa</td>
<td>12</td>
<td>The Orrisa Lokpal &amp; Lokayukta Act, 1970</td>
<td>Yes</td>
<td>5 yrs.</td>
<td>Yes</td>
</tr>
<tr>
<td>Rajas Than</td>
<td>10</td>
<td>The Rajasthan Lokayukta &amp; Upa-Lokayuktas Act, 1973</td>
<td>Yes</td>
<td>3 yrs.</td>
<td>No</td>
</tr>
<tr>
<td>Bihar</td>
<td>1</td>
<td>The Bihar Lokayukta Act, 1973</td>
<td>No</td>
<td>5 yrs.</td>
<td>No</td>
</tr>
<tr>
<td>Uttar Pradesh</td>
<td>2</td>
<td>The Uttar-Pradesh Lokayuktas upa-Lokayuktas, 1985</td>
<td>Yes</td>
<td>6 yrs.</td>
<td>No</td>
</tr>
<tr>
<td>Andra Pradesh</td>
<td>5</td>
<td>The Andra Pradesh Lokayukta &amp; Upa-Lokayuktas, 1983</td>
<td>Yes</td>
<td>5 yrs.</td>
<td>No</td>
</tr>
<tr>
<td>Gujarat</td>
<td>9</td>
<td>The Gujarat Lokayukta Act, 1986</td>
<td>No</td>
<td>5 yrs.</td>
<td>Yes</td>
</tr>
<tr>
<td>Himachal Pradesh</td>
<td>NA</td>
<td>The Himachal Pradesh Lokayukta Act, 1983</td>
<td>No</td>
<td>5 yrs.</td>
<td>Yes</td>
</tr>
<tr>
<td>Assam</td>
<td>4</td>
<td>The Assam Lokayukta &amp; Upa-Lokayukta Act, 1985</td>
<td>Yes</td>
<td>5 yrs.</td>
<td>No</td>
</tr>
<tr>
<td>State</td>
<td>Act Year</td>
<td>Act Details</td>
<td>Yes/No</td>
<td>Duration</td>
<td>Status</td>
</tr>
<tr>
<td>------------------</td>
<td>------------------</td>
<td>------------------------------------------------------------------------------</td>
<td>--------</td>
<td>----------</td>
<td>--------</td>
</tr>
<tr>
<td>Madhya Pradesh</td>
<td>6</td>
<td>The Madhya Pradesh Lokayukta Evam Upa-Lokayukta Adhiniyam, 1981</td>
<td>Yes</td>
<td>5 yrs.</td>
<td>No</td>
</tr>
<tr>
<td>Karnataka</td>
<td>11</td>
<td>The Karnataka Lokayukta Act, 1984</td>
<td>Yes</td>
<td>5 yrs.</td>
<td>Yes</td>
</tr>
<tr>
<td>Goa</td>
<td>NA</td>
<td>Goa Public Men’s Corruption (Investigation And Enquiries Act)</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
</tr>
<tr>
<td>Punjab</td>
<td>NA</td>
<td>The Punjab Lokpal Act, 1992</td>
<td>No</td>
<td>5 yrs.</td>
<td>No</td>
</tr>
<tr>
<td>Tamilnadu</td>
<td></td>
<td>The Tamilnadu Public Men(Criminal Misconduct Act), 1974</td>
<td>-----</td>
<td>-----</td>
<td>-----</td>
</tr>
</tbody>
</table>

**SOURCE**—INDIA TODAY  November 24, 1997

Above table makes it clear that there is uniformity in the Acts. There are number of factors where there is no unanimity and the mode of investigation also differs.

Though, Lokayukta is successful on the state level yet, there is a need for impartial, independent and public oriented machinery. After going through the articles in the newspapers; i.e. The Times of India, Indian Express, The Hindu, etc. on Lokayukta in the states, it seems that it is working successfully. But, all the institutions have teething troubles. All the defeciencies and shortcomings were sorted out at the First All India Lokayuktas’ and Upa-Lokayuktas’ Conference held at Shimla in 1986. Again in 1991, the Third All India Lokayuktas and Upa-Lokayuktas Conference was held at Hyderabad. Under the Chairmanship of Justice A. Sitharam Reddy, the then Lokayukta,
Andhra Pradesh. An Implementation Committee was constituted for this conference. The Committee designed the draft of Model Lokayukta Bill. Following are the points of resolution passed by the Committee:

1) There should be the institution of Lokayukta in every State

2) Lokayukta should be given the Constitutional status.

3) There should be uniformity in the provisions of the various enactments.

The efforts are going on to implement these by the Lokayuktas of various States.

Some suggestions by the way of observation based on the news and articles in the newspapers and periodicals are made in this study on the administration of the State Lokayuktas:

1) The Lokayuktas need administrative reforms in its personnel management.

2) The Lokayuktas need a separate investigation team.

3) The offices of Lokayuktas need autonomy and independence while dealing with the ministerial cases.

4) An active role of the press and media needs to popularize the institute.

5) A large number of people’s active participation is needed.

6) Efforts should be made to frame the model Lokayukta bill followed by all the states.

Summarizing the Lokayuktas in Indian states, it can be said that it can be effective to redress injustice of the citizens. It can also make a balanced and sound relationship between administration and citizens. It can also be said that by and large the states are coming forward to
have this machinery on regular basis and support to the Lokayukta acts. Therefore, the large number of states has come forward to institute Lokpal. However, the range of the appointing Lokayukta from 1970 to 2002 is an indication of a very slow process of adopting the machinery in the states.

The moot problem is how to make a corruption-free country from the national to the local level. To that extent there is an absence of a tool proof machinery. Hence, there is a need of national level machinery i.e. 'Lokpal'. How far Lokayukta in Maharashtra is successful is discussed in third chapter. It’s limitations and difficulties are discussed in the fourth chapter.

2.15 BANKING OMBUDSMAN

Besides Lokayuktas at state level to curb corruption in Government Departments, the banks have also instituted Ombudsman. There is machinery in the banking sectors to control irregularities and corruption. The goal is to accumulate money in the affluent and mobile society. The matters related to finance are going complicated. To solve these complications to the customer’s satisfaction RBI has brought up the Banking Ombudsman in 1995. Corruption has spreaded enormously among bank officers and employees, posing a serious threat to the banking industry. It is not always the small try in banking sector who are involved; but it is the high shots who seldom get wedged are responsible for massive frauds.\footnote{90} Banking Ombudsman is there mainly to check the frauds in the banks. The scheme was brought under the section 35(A) of the banking regulation Act, 1945 by the power conferring on it.\footnote{91} The office of the banking
ombudsmen is established in Bhopal, Bangalore, Chandigarh, Mumbai, New Delhi and Hyderabad. In these cities the office is settled for the redressal of grievances against deficiencies in the services.

The Banking Ombudsmen scheme is applicable to all scheduled commercial banks and scheduled primary co-operative banks in India. The Banking Ombudsman is an expeditious, efficient and prompt in the resolution to customer complaints through expensive. It covers the Indian customers as well as NRI’S in respect of remittances and deposits. Banking industry today requires more socio-economic satisfaction to the customers. The offices need to be more accountable and responsible in respect of various activities relating to customer services. Citizen’s character; i.e. Banking Ombudsman is a customer friendly scheme run by RBI. Banking Ombudsman is continuing to serve the customers to their entirely satisfaction.

2.16 INSURANCE OMBUDSMAN

Life Insurance Corporation has Insurance Ombudsman. It deals with the complaints related to the policy matters of insurance. Its working area is only the complaints against LIC and not other insurance companies.

2.17 CONCLUSION

There are lot many efforts to curb corruption. Many more devices try to control maladministration. But, very little could be achieved through all these efforts. In the Western countries, Ombudsman deals with the problem successfully. In India, the attempts are made to
establish such machinery. One of the failures is a strong opposition to the Lokpal Bill. It shows non-integration in Indian administration. Due to lack of public and politics will, Lokpal Bill is opposed since last 35 years. But, hopefully 15 Indian states have Lokayukta at the state level. While stressing for Lokpal at the central level, it was necessary to see whether the Lokayukta at state level is successful. Besides, some drawbacks, Lokayukta in the States is doing well. Those are discussed in the present chapter in general and Lokayukta in Maharashtra is discussed in particular in the next chapter.
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