The Institution of Lokpal and Lokayuktas: Their Role in Combating Corruption

Introduction

In countries having a democratic form of government; it is observed that in recent times vast powers including discretionary powers are conferred on officers and officials in charge of administration.\(^1\) It is also observed that while exercising powers, there is scope for abuse or misuse of such powers by persons manning the administration, leading to corruption and maladministration.\(^2\) Where the greater power has been given to the executive in the field of governance, and then, there is greater need to safeguard the citizen from arbitrary and unfair exercise of power. In the countries which follow the common law system, control upon administrative powers or excesses is being done normally through courts. The superior courts review administrative decisions in the light of principles of administrative law. In India, the power of judicial review of administrative action does not have any value itself with the merits of the administrative decisions as a court is not to substitute its views on officials to whom the power is conferred by law. The efficacy of the power of judicial review of administrative action is very limited because in decision making process by courts there are several salutary principles which have been evolved over a period of time. In democratic countries, in the realm of the concepts of welfare state and good governance, with the growth and variety of administrative actions, the need to control such administrative actions not only by judiciary, but by an internal mechanism also, has become imperative, which conveniently can check or control such administrative actions. The quest for having a proper and effective mechanism to control administration had led to the birth of the institution of “Ombudsman” or Lokpal. It is said that the institution of *Ombudsman* has been in vogue in the Scandinavian countries for over a century and was adopted in Sweden as early as in 1809. Amongst the Common Law countries having parliamentary form of government, New Zealand was the first country which adopted the system of *Ombudsman* in the year

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of 1962. In England it was established as a system in the year of 1966. In modern times, the administration has a decisive role in making the socio-economic order of the society.

The past experience has showed that vesting of much discretionary powers in administration generates opportunities and possibilities to abuse of such powers by public functionaries or authorities which resulted in the maladministration and corruption. In the flush of such discretionary powers the public authorities or functionaries exhibit a tendency to disregard individual rights and welfare of people. In this regard, Wheare observed that “it is not eccentric to conclude that if there is more administration, there will be more maladministration”.

Therefore, there is an urgent need to develop an adequate, proper and effective mechanism which can control the vast powers of administration to safeguard individual rights and also to lay down the procedure for redress of individual grievances against public administration. Essentially, the system of Ombudsman acts as an external agency, outside the administrative hierarchy to probe into administrative faults. The object of it is to setting up and maintaining the standard of the concept of good governance in the functioning of government departments. The Ombudsman receives complaints of the citizens which can be investigated by him or by his experienced staff. After investigation, the Ombudsman can give relief to the aggrieved party in certain situation. The Ombudsman does not have any powers to quash or reverse administrative action or decision because it has to be done by the superior courts in exercising the power of judicial review. The Ombudsman follows inquisitorial procedure and it establishes the truth in the matters of certain administrative actions which has taken by the executive.

In India, the misuse of discretionary powers by public authorities is very common. Here, it is useful to refer the case, Chandra Bansi Singh v. State of Bihar. In this case an order to acquire a large tract of land belonging to several persons was issued by the

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3 Ibid.
4 Ibid.
5 Wheare, Maladministration and Its Remedies, 3 (1973).
6 Supra note 1
government. Later, it exempted a piece of land belonging to one family from the purview of the order. The Supreme Court held that the release of this piece of land from the purview of order was a pure and simple act of favouritism without there being any legal or constitutional justification for the same. The court held that the release of such order was bad and \textit{non est} under article 14 of the Constitution of India. An interesting aspect of the case is that while the petitioner sought striking down the entire notification so that his land would also be released from acquisition but the court, on the other hand, held the entire notification as originally issued is valid after cancelling the exemption of the land is question. In respect of administrative actions or decisions the efficacy of the power of judicial review has diluted by several factors and therefore the number of administrative actions does not fall within the purview of this power. Often, the legislature does not lay down any clear norms, guidelines and procedure for exercising the discretionary powers which has to be given to the public authorities. The need for an institution of Lokpal in India can be described under following heads.

\section*{Lack of judicial control upon administrative action}

The courts have very limited task to review the administrative action. The courts work on the assumption that the administration functions according to law. Exercising its power of judicial review, the court can quash administrative action on the grounds such as ultra-vires, malafides, and exercise of power for improper and interior purpose, irrelevant or extraneous considerations, failing to take into account relevant consideration or a patent error of law. Due to above limited grounds of judicial review it is not easy to get relief sought by individual. Further, it is very crucial to prove such grounds as malafides, improper purpose etc. The burden of proof lies upon the individual, who is going to challenge the specific administrative action and it is not easy to do so as he has no access to governmental record. Further, in the writ petitions, which are most common technique to challenge the administrative action, the courts go by the affidavits filed by concerned parties. They do not call for oral testimony or cross-examination. The affidavits may be in detail and informative but often they seek to hide more than they reveal. The power of judicial review does not cover many facts of the working of
administration. The judicial proceedings are dilatory, formal, time-consuming and costly. The court fees are needed. The lawyers have to be engaged to prosecute individual grievances. It makes very difficult to poor people of India to seek judicial redress of their grievances against administration.

Besides the judicial control the administration itself has its own internal control mechanism but its internal control mechanism has been found very inadequate. Pointing out the inadequacies of administrative review of its own decisions, the New Zealand Ombudsman has stated\(^8\) that while dealing with the large number of complaints against discretionary administrative action it has often become clear to him that an off repeated review of a decision within the department is no guarantee of the wisdom and fairness of the ultimate decision. What usually happens is that the first decision is made at a lower level of administration, and as it goes up to a higher level for review, it starts building up its own defenses within the department. A process of rationalization generally brings out arguments in favour of the original decision that may not have been known to the person who made the earlier decision. The official bias is towards maintaining and supporting the original decision by inventing fresh arguments in its support. In this atmosphere, only representation of a good case by a responsible and independent person can generally ensure a genuine review by the internal control mechanism of administration.\(^9\) It has therefore been felt that an external agency, falling outside the administrative hierarchy, is absolutely necessary to detect and check administrative lapses and faults and to supervise the administration so that the rights of the individuals are not unduly jeopardized.

**Lack of legislative control over administration**

There are three organs of the government in a democracy viz; judiciary, executive, and legislature. The legislature is responsible to make the laws for the nation. Its traditional function is to oversee the administration. But at present, the legislature is not able to oversee the administration properly. With the development of the party system,


\(^9\) Ibid.
instead of the legislature controlling the executive, it is the executive which largely controls the legislature.\textsuperscript{10} It is a big body and is usually engaged in discussing policy matters and proposals for legislation and taxation. With the pressure of work, it has very lack of time to oversee the administration. The number of bills remains pending before the Parliament for enactment. There are no more chances left for addressing individual grievances on the floor of the House. The legislature has no mechanism to probe into administrative faults and lapses in individual cases. Thus, it becomes clear that the traditional organs in a democracy do not provide any adequate and effective control mechanism over the administration.

**The institution of Lokpal: a conceptual analysis**

The functioning of the institution of Lokpal is as an external agency and it has no place into administrative hierarchy\textsuperscript{11}. The Lokpal has been given the responsibility to probe into administrative fault. It is a projection of the legislative function for the supervision of administrative function. The Lokpal is an appointee of the legislature and acts as its eyes and report to it. Therefore, the institution of Lokpal cannot be regarded as foreign with the parliamentary form of government. It does not supplant, but only supplements, the traditional legislative role of overseeing the administration. The institution of Lokpal is to help the legislature in its traditional supervisory function. With the help of Lokpal, the legislature becomes more capable and efficient to perform its traditional supervisory function upon administration. It has to be free from various defects which exist in the present control mechanism of the administration through courts, legislature and the administration itself.\textsuperscript{12} The main sanction behind the Lokpal is the backing which he receives in his functioning from the legislature. Lokpal has power to report to the legislature on the result of his enquiries and investigations and therefore, not any one department of government wants to be discussed in Parliament or got adverse publicity in media. Due to these reasons the recommendations made by Lokpal generally accepted by the government. The Lokpal is a very strong authority to redress individual

\textsuperscript{10} *Ibid.*

\textsuperscript{11} *Ibid.*

\textsuperscript{12} *Ibid.*
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grievances which arises from the administration. The Lokpal has to access the departmental files on complaint being made to him against the administration. The Lokpal is duty bound to satisfied himself by looking into the relevant papers whether there is any fault on the part of government or not. The complainant is not required to lead for evidence, or to prove his case before Lokpal. The Lokpal himself is duty bound to find out that the complaint made before him is justified, genuine or not. The court fee is not payable for filing complains before Lokpal. There is no need to engage a lawyer because the Lokpal himself is a lawyer of complaint. Lokpal works silently and discreetly and the administration gets chance of rectifying its mistakes without much loss of face. The Lokpal can give relief to an individual on many such grounds on which the courts usually are not able to give same relief. The proceedings of the Lokpal are not formalized and do not take much time to be completed. The work of Lokpal is complementary to the work of the court.

The Lokpal serves as a valuable tool to investigate complaints against government departments. The complaints of the people against administration are investigated by experienced staff of Lokpal. The members of investigating team work under the supervision of Lokpal. The findings of the Lokpal and his reasoned conclusions related to a complaint may ultimately be published and thus error and mistakes committed by government officials in handling citizen's affairs are exposed. The complainant is not required to establish a breach of law. There is enough, only to establish maladministration which causes injustice. Thus, the Lokpal seeks to hold the balance between the citizen and state and contributes to ensure the greater efficiency and humanity in administrative process. The functioning and the value of the institution of Lokpal are curative as well as preventive. The Lokpal gives relief to aggrieved party in certain situations. He induces more care in the administration and eliminates the major grievances to the people. He protects and preserves the rights of the poor people and Lokpal removes doubts about fairness in administration and improves the image of administration in public eyes. Removal of individual grievances keeps the public satisfied. Even when no remedy has been given by Lokpal in a particular case, the mere fact that an independent authority has reviewed the matter, removes the sense of
dissatisfaction from the complaint's mind. Thus, the Lokpal helps in removing the crisis of confidence between the administration and public and it becomes sign of public satisfaction\(^{13}\). The basic differences between the courts and Lokpal may be noted as\(^ {14}\):

“The Lokpal has no powers to quash an administrative decision but the Lokpal can suggest the various types of remedies to the aggrieved. The Lokpal does not follow any elaborate court procedure and take action very fast. The procedure and functioning of Lokpal is not expensive, while the ordinary court procedure is very time-taking and costly. Ordinary courts are able to intervene very swiftly to prevent the recurrence or continuance of wrongful acts, because they can grant injunctions, declarations, writs etc. while Lokpal has no such powers”.

The very purpose of Lokpal is to control the administration and to give protection to the citizen against injustice brought by faulty administration. The institution of Lokpal is closely concerned with the correct functioning of administration. Its main function is to trace the fault in public administration and it does not upset the process of governance. If there is no element of maladministration, then the Lokpal has to takes decision on merits. The institution of Lokpal works as a frontier with the law. It can deal with many facts of administration and administrative action with which the courts may not have any concern. The Lokpal can provide remedy to the individual for delay in administrative action. The Lokpal can give relief when the complainant does not receive any answer from the concerned department. Lokpal can also give relief when the departmental biasness occurs in decision making process. Thus, the Lokpal helps in improving the process of governance. He makes recommendations for the modification in the process of governance. Its functioning leads to setting up and maintaining the standards of governance. Thus, the institution of Lokpal can help in developing a body of principles of administrative due process. It is argued that the institution of the Lokpal or Ombudsman

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\(^{13}\) *Id.* paras 1 & 3 at 909-910.

\(^{14}\) *Id.* para 2 at 910.
will supplant the parliamentary system and undermine ministerial responsibility to Parliament. The Australian Ombudsman has refuted this view as follows\textsuperscript{15}:

“Experience has shown that far from eroding such traditional systems, the institution of Ombudsman has reinforced and supported their functions. It is, I think, significant that on more than one occasion government ministers, as private members, have chosen to lodge complaints with my office on behalf of the constituents. Similarly, it is noteworthy that in a number of cases ministers have, as a result of investigations by my office of official actions, reviewed decisions in the light of information not previously known to them. On the other hand, I quite often receive complaint under the Ombudsman Act where it is apparent to me that resort to the political process might well have a better chance of achieving a result the complaint would like”.

The institution of Lokpal in India: a historical perspective

The word Ombudsman is originally Swedish and means representative. In the Scandinavian countries, the Sweden is the first country which adopted the institution of Ombudsman in 1809\textsuperscript{16}. Finland adopted it in 1919; Denmark in 1953 and Norway in 1963\textsuperscript{17}. New Zealand adopted the system of Ombudsman in 1962\textsuperscript{18}. Next is England...
which established the Ombudsman system in 1966\textsuperscript{19}. Australia has established the Ombudsman system both at centre and state level also. The institution of Ombudsman has been adopted in all these countries with the basic idea to improve the process of governance and to control the activities of maladministration. The Administrative Reforms Commission in its interim report on the “Problems of Redressal of Citizen’s Grievances” recommended the setting up of an institution of Lokpal at the centre.\textsuperscript{20} The Commission argued in favour of its recommendations that the redress of citizen’s grievances is basic to the functioning of the democratic government. It will strengthen the hands of the government in administering the laws of the land and its policies without any fear or favour or affections or ill will. It also will ensure the public faith and confidence in administration. The main issue before Commission was to suggest for an independent institution or authority to which the people of India have easy access for the redresses of their grievances. Bearing in mind that the individual himself has very strong feeling of grievances and it is the duty of the state to satisfy to him. The individual has to be given a reasonable opportunity to present his case before an independent and impartial authority. Such, authority should be different from the traditional hierarchy of the administration. It would be in itself a source of satisfaction to the citizen even the result of his case is not in favour to him. In the present circumstances, it is very difficult to ensure that the abuse of discretionary power by administrative authorities cannot be occurred. Therefore, there is need to ensure the integrity in administrative machinery. The parliamentary supervision by itself cannot fully ensure the integrity over the entire area covered by administrative discretion. Only various administrative tiers and hierarchies cannot be proved adequate for that purpose. An assumption of unquestionable superiority of the administration or a feeling of the sanctity of the authority on the part of superior authorities may prevent to the citizen from obtaining justice. Therefore, an institution to redress the grievances must be provided within the democratic system of governance. It has to be an institution in which the average citizen will have faith and confidence and through which he will be able to secure quick and inexpensive justice.

\textsuperscript{19} Available at: www.google.co.in/webhp?sourceid=chrome-instant&ion=1&espv=2&ie=UTF-8#q=history+of+ombudsman+in+england Last visited: on 04/04/1016.

\textsuperscript{20} N.K. Acharya, Commentary on the Lokpal and Lokayuktas Act, 2013 (Asia Law House, Hyderabad, 2014) at 01.
Keeping in mind the above objectives, the Commission proposed to setting up an institution of Lokpal or Ombudsman in India.

The Government of India accepted the recommendations of the Commission. In 1969 to establish the system of Ombudsman in India, the Lokpal and Lokayuktas Bill, 1968 was introduced in Lok Sabha. There were a few deviations in the Bill from the model which was suggested by the Commission. One major deviation made by the Bill was to confine the jurisdiction of the Ombudsman to the central sphere only, leaving the States out of its purview whereas the Commission had suggested one comprehensive scheme covering the centre-state administration as a whole. The Bill lapsed due to dissolution of Lok Sabha. In 1971, another Bill was introduced in the Lok Sabha but again the Bill was lapsed due to dissolution of Lok Sabha. A third attempt was made in 1977, when a new Bill, entitled the Lokpal Bill, 1977 was introduced in Lok Sabha. The Bill was referred to the Joint Select Committee of Parliament which presented its report to Parliament in July, 1978. But the Bill lapsed again with the dissolution of the Lok Sabha. To give effect to the recommendations of the Administrative Reforms Commission eight Bills on Lokpal were introduced in the Lok Sabha in the past. Each time these Bills had lapsed due to dissolution of respective Lok Sabha except in the case of 1985 Bill which was withdrawn after its introduction.

The salient features of the Lokpal and Lokayuktas Bill, 1971

The Lokpal and Lokayuktas Bill, 1971 was dealt with only to central administration. It provided for the appointment of one Lokpal, and one or more Lokayuktas at the Centre. The Lokpal was to be appointed by the President after consultation with the Chief Justice of India and the Leader of the Opposition of the Lok Sabha. The Lokayuktas were to be appointed by President after consultation with the Lokpal. The appointment of the Lokpal and Lokayuktas was to be done by the President on the advice of Prime Minister with the theory of parliamentary form of government. He was to hold office for five years and a complete ban was imposed on his re-employment. He was given a security of tenure just like a judge of the Supreme Court. The salary of Lokpal and Lokayuktas was fixed by the Bill and was not to be varied to his disadvantage after his appointment.
These provisions were made to keep immune the Lokpal and Lokayuktas from the executive and parliamentary influences. The Lokayuktas were to be subject to the administrative control of the Lokpal. The Lokpal was given the power to issue general or special directions to the Lokayuktas to ensure the convenient disposal of investigation. But the Lokpal was not empowered to act as an appellate or revisory authority over the Lokayuktas. The Lokpal was not to question any finding, conclusion or recommendation of Lokayuktas. The Lokpal was empowered; to investigate an action falling within the purview of the Lokayuktas but it was needed to give reasons in writing for the same. A Lokayuktas was to officiate as the Lokpal, in case of vacancy or inability to perform his duties.

The function of Lokpal was to investigate any action which was taken by a minister or with his approval. The Prime Minister was excluded from the purview of Lokpal. He was also to investigate any action which was taken by a secretary or any other public servant belonging to that class which had been notified by the Central Government in consultation with the Lokpal for that purpose. Such an investigation could be undertaken if a person made a complaint involving any grievance or allegation. A grievance was a claim by a person that he had sustained injustice or undue hardship in consequences of maladministration\(^\text{21}\). An allegation in relation to a public servant meant any affirmation that such public servant had abused his position as such to obtain any gain or favour to himself or to any other person or to cause undue hardship or harm to any other person; or was actuated in discharge of his function as such public servant by personal interest or improper or corrupt motives; or was guilty of corruption or lack of integrity in his capacity as such public servant\(^\text{22}\).

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\(^{21}\) The word maladministration was defined as: “an action taken in exercise of administrative functions in any case where such action or the administrative procedure or practice governing such actions was unreasonable, unjust, oppressive or improperly discriminatory; or where there, had been negligence or undue delay in taking such action or the administrative procedure or practice governing such action involved undue delay” cited in Jain, supra note 8 at 926.

\(^{22}\) Jain, supra note 8 at 926.
The above definition of “allegation” covered circumstances of political corruption as well. The word “action” had been defined broadly so as to mean action taken by way of decision, recommendation or finding or any other manner and included failure to act. The Lokpal could also initiate investigation *suo motu* without a complaint having been filed, if in his opinion an administrative action could be the subject of a grievance or allegation\(^{23}\). Similarly, a Lokayuktas could investigate any action taken by or with the approval or a public servant other than one who fell within the jurisdiction of the Lokpal, if such an action amounted to grievance or allegation either on a complaints or *suo motu*.\(^{24}\) Some types of administrative actions were exempt from being investigated by Lokpal or Lokayuktas. Such as the action taken in a matter affecting the relationship between the government of India and other countries or international organizations; action taken under the Extradition Act, 1962 or Foreigners Act, 1946; action taken in matters arising out of a commercial contracts; action relating to service matters; grant of honours and awards etc. The entire judicial setup was also exempt from the jurisdiction of Lokpal and Lokayuktas. A grievance was not to be investigated by Lokpal, if the complaint had a remedy available by way of proceeding before a tribunal or court. The time limit for making a complaint involving an allegation was five years from the date on which the alleged action have taken place. In the case of a “grievance” the time was twelve months from the date on which the complaint had come to know. It is also to be noted that the immunity was given to discretionary decisions from being questioned by Lokpal and Lokayuktas except when the discretion was not properly exercised. That immunity was given only in respect of complaints of maladministration but it was not available in respect of complaints of corruption. The reason for this was that most of corruption cases arise out of discretionary powers and exclusion of such decisions would provide an undue protection to corrupt public servants.\(^{25}\) Before conducting an investigation the Lokpal was required to forward a copy of complaint to concern public servant and competent authority also. The public servant was entitled to offer his comments. It was prohibited to disclose the identity of the complainant at any stage of

\(^{23}\) *Ibid.*  
\(^{24}\) *Ibid.*  
\(^{25}\) *Id.*, para 3 at 927.
investigation. The frivolous or vexatious complaint was to be rejected. He could refuse to investigate any complaint which was not made in good faith. The reason for not entertaining a complaint was to be given to the complainant. If after investigation it was found that the content of complaint was true then the Lokpal was empowered to recommend remedial measures and fix time to take action to competent authority.\textsuperscript{26} The competent authority was to report back to Lokpal within one month about what he had action taken. If the Lokpal was not be satisfied with which action was taken by competent authority, he could made a special report to the President which was to be laid before Parliament. An annual report was also to be made to the President by Lokpal which was to be laid before Parliament. Provisions were made to punish for contempt of Lokpal and Lokayuktas. The primary idea of the Ombudsman in the Scandinavian and Common Law countries where the institution of Ombudsman has been introduced is to tackle the problem of maladministration, such as negligence, delay, inefficiency, bias and abuse of power which may not amount to corruption but in India the emphasis was for the both on maladministration and corruption.

In 1977, the third attempt was made to introduce the Lokpal Bill, 1977 in Parliament.\textsuperscript{27} The western idea of Ombudsman was completely thrown in the Bill. The jurisdiction of the Lokpal was confined only to the “public men”. The Prime Minister, central ministers, members of Parliament, members of the Legislative Assembly of the Union Territories and a few other elected functionaries was included in the term of “public men”. The government servants were beyond the purview of the Lokpal. The proposed Lokpal was not concerned with the cases of maladministration; it was only concern with the cases of corruption. Thus, the whole purpose of the Bill was to control political corruption. The Bill as it was originally introduced in the Parliament had included a state Chief Minister within the purview of the Lokpal. However the Joint Committee of the Parliament recommended the deletion of this provision as the Chief Minister is primarily answerable to state Legislative Assembly. On May 10, 1979 an

\textsuperscript{26} Id., para 2 at 928.

amendment was moved by the government, by which the original position was restored.\textsuperscript{28} Under the provisions of Lokpal Bill, 1977, the Lokpal was to be appointed by the President after consultation with the Chief Justice of India; chairman of the Rajya Sabha; and the Speaker of the Lok Sabha. The last two functionaries were required to consult with the leaders of the various parties in their respective Houses. Special Lokpal could be appointed by the President, if it was needed. In case of Prime Minister, the competent authority\textsuperscript{29} was Speaker of Lok Sabha. In case of a minister, the competent authority was Prime Minister and for the members of the Parliament the competent authority was chairman of Rajya Sabha or Speaker of Lok Sabha as the case may be. The power was given to Lok Sabha to try some offences summarily. A person convicted by Lokpal was allowed to appeal in the High Court. Many other provisions were same as those of the 1971 Bill. Thus, the maladministration which is primary concern of the Ombudsman in the other countries was kept out from the purview of the Indian Lokpal under the Bill of 1977.

**A brief survey of the working of Ombudsman system in other countries**

In New Zealand, the Ombudsman system was adopted in 1962, when the Parliamentary Commissioner (Ombudsman) Act, 1962 was enacted\textsuperscript{30}. It was replaced by Ombudsman Act, 1975 which was provided for one or more Ombudsman and also extent their jurisdiction. Each Ombudsman is appointed by the Governor-General on the recommendation of House of Representative. Thus, the Ombudsman is a nominee of the House of Representative and therefore, he gets support from all sections of House and his work has command for respect and credibility. His appointment by the House of Representative shows that he is independent from the executive. Besides this, he has a security of tenure. He holds office for a term of five years and he can be re-appointed\textsuperscript{31}.


\textsuperscript{29} In the original Bill, the Prime Minister was the competent authority in respect of complaints against him. The Joint Committee was substituted the Speaker of Lok Sabha as the competent authority.


He can be removed from his office by the Governor-General upon an address from the House of Representative on certain grounds such as misconduct, neglect of duty, disability or bankruptcy.\footnote{M.P. Jain, “The Ombudsman in New Zealand”, 6 \textit{JILI} 307, 1963; Ombudsman Act, 1975 section 6; available at: \url{http://www.legislation.govt.nz/act/public/1975/0009/latest/DLM430984.html} Last visited: on 08/04/2016.} Any person who is aggrieved from an administrative action can make a complaint to the Ombudsman. He can undertake investigation \textit{suo motu} also. He can refuse to look into frivolous or vexatious complaints. He has power to review an administrative action even it is declared final by a statute. In case of doubt about the Ombudsman’s jurisdiction, he can refer the matter to Supreme Court for a declaratory order. He has power to review the administrative action on the various grounds such as the administrative action is contrary to law, unreasonable, unjust, oppressive, discriminatory, wrong, is based on mistake of law or discretionary power is exercised on irrelevant grounds etc. Thus, it is clear that the Ombudsman has responsibility to examine the basic reasonableness of law. He has to satisfy that the law is just fair and reasonable.

It is the firm rule of procedure that an official whose action is going to be investigated must be informed. But no person can claim to be heard by the Ombudsman as of right. The jurisdiction of the Ombudsman extends to “a matter of administration” and this phraseology excludes “matter of policy” from his purview.\footnote{Report of the Chief Ombudsman, 37 (1984), cited in M.P. Jain & S.N. Jain \textit{supra} note 8 at 913. The New Zealand Ombudsman characterizes such a view as “altogether too simplistic”. The Ombudsman Act makes no such distinction. According to Ombudsman, it is impossible to separate matters of policy from matters of administration.} Many a time, the questions of policy and administration are inextricably mixed up. No statutory test has been laid down to decide whether the governmental action is a policy matter or merely an act of administration. The underlying theory to draw a distinction between policy and administration is that the legislature only is responsible for policy matters. The decisions of the Ombudsman are not generally reviewed in a court of law. It is necessary to mention here that the Ombudsman himself does not make executive order. He only makes recommendation to the concerned department and the department has to take corrective step for the same. If the department fails to take action within the reasonable time, he may send a copy of the report to the Prime Minister and to Parliament also. The recommendations of the Ombudsman mostly implemented by departments; because of the fear of adverse publicity. The Ombudsman is also required to make annual report to
Parliament. Thus, the ultimate arbiter is parliament. This is in consonance with the principle of parliamentary form of government and ministerial responsibility.

The reports made by Ombudsman to Parliament throw more interesting light on the working style of administration. He has criticized the issue of defective and confusing circulars and also giving wrong information to the people.\textsuperscript{34} He has given relief for departmental mistakes and criticized undue delay in deciding matters. He has pointed out lacunae in administrative procedures. He has awarded damages for injury suffered by maladministration. At time, the officers having discretionary powers had adopted a firm rule of practice or a rule of thumb in each and every case which came before them without looking into special facts and circumstances of the case. The Ombudsman had criticized such official attitude. In some cases, the Ombudsman even suggested the amendment of law or regulations. Thus, the Ombudsman in New Zealand has been able to exercise the good deal of influence upon administration.

The British Ombudsman is officially known as Parliamentary Commissioner. It was established by the Parliamentary Commissioner Act, 1967.\textsuperscript{35} The British Ombudsman is appointed by the Crown. He holds office till the age of 65 years. Sub-section 2a and 2b of the Parliamentary Act, 1967, as inserted by Schedule 8 of SI 2006, now specifies the seven years term. In practice an open competition is held for the post and an interview panel makes the final selection. The chairman of Public Administration Select Committee participates in the process and the panel has an external assessor from the Public Appointment Commissioner’s office to ensure that the appointment is made fairly according to the Commissioner’s Code of Practice.

To indicate the constitutional importance of the Ombudsman, the salary is paid from the consolidated fund, standing services, in the same way as a High Court judge. He can be removed from his office only on an address from both Houses of Parliament. The

\textsuperscript{34} Case No. W15089 in the Annual Report, 1980 at 24, cited in M.P. Jain & S.N. Jain, supra note 8 at 912. A customs officer gives incorrect advice to the complainant. This led to his importing a car which he would not otherwise have done. He was charged the duty not under the normal tariff but on the concessionary basis as if the advice was correct.

departments placed under his jurisdiction are listed in second schedule of the Act. The additional department can be added in the list by an order of executive council without amending the statute. Certain matters having national or public interest are excluded from his jurisdiction. The Ombudsman does not normally investigate the matters which come within the purview of court. In *Re Fletcher's Application* 36, the court declined to question the Parliamentary Commissioner’s discretion whether or not to undertake an investigation. There is a restrictive feature in functioning of Ombudsman in England. The complaint does not reach directly to Ombudsman. A person has to send his complaint through a member of the House of Commons. The underlying idea behind this provision is that the traditional function of the members of the Parliament is to seek Redressal for the grievances of the people. The House of Commons may also do a preliminary screening of the petitions so that the Ombudsman is not overloaded with work. The British Ombudsman has powers to compel to any authority, minister, or member of department to furnish information or produce document relevant to his investigation. He has powers to compel for the attendance and examination of witness. The Crown has no privilege in respect of to the production of document or giving of evidence. However, the cabinet proceedings are exempted from purview of Ombudsman and cannot be divulged. The Ombudsman sends a report of investigation to concern department or authority and to the Member of Parliament who sponsored the complaint. If it appear to him that injustice has been caused to the complainant, he can laid a special report before each House of Parliament. Each year he lays a general report before each House of Parliament.

The Ombudsman in England has to investigate the complaints in which it has claimed that injustice has been caused due to maladministration on the part of government in exercise of administrative action. The administrative action includes failure to act. The term “maladministration” is not defined in the statute and the British Ombudsman has interpreted it in a broader sense. By interpretation the bias, neglect, inattention, delay, incompetence, ineptitude, perversity, turpitude, arbitrariness and so on has included within the meaning of maladministration 37. The decisions which are thoroughly bad in

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36 (1970) 2 All ER 527

37 Available at: www.google.co.in/webhp?sourceid=chrome-instant&ion=1&espv=2&ie=UTF-8&q=history+of+ombudsman+in+england Last visited: on 08/04/2016.
quality or clearly wrong were also added in term of maladministration by the Ombudsman on the advice of Select Committee. The Ombudsman now criticizes the discretionary decisions which are simply bad on their merits. Bad decisions are bad administration and bad administration is maladministration.\textsuperscript{38} Wheare has described what according to him may constitute maladministration as\textsuperscript{39}:

“Transgression of law by the administrative authority, this could arise from failure to carry out a duty imposed by law; action going beyond the powers conferred by law; use of legal power for a purpose for which it was not intended; not following a procedure laid down by law; making of arbitrary or unreasonable decisions in the application of legal powers. Action of officials actuated by bribery or corruption, in this regards, influence may be used to persuade officials either to act or not to act in an area where they have discretion. Maladministration though not necessarily illegal such as delay in reaching a decision; discourtesy or rudeness; unfairness; bias; incompetence; ignorance; high-handedness; mistakes; failure to answer a letter; losing paper; giving misleading statements to citizens about their legal position; getting the facts of a case wrong; failure to take into account the facts which the department ought to have taken into account; negligence; misconduct. He emphasizes that bad law or bad rules necessarily produce maladministration. Here actions in accordance with law will constitute maladministration. Law may be ambiguous, obscure, self-contradictory, obstructive, or may embody in itself principles of discrimination, bias, injustice and all this will inevitably produce maladministration”.\textsuperscript{40}

Thus, the Ombudsman system has become a well-established feature in England. It helps to set and maintain standards of good administration for the government department. To make the Ombudsman system in Britain more effective several suggestions have been made. Earlier, he was appointed by the Crown merely on the advice of Prime Minster. It was not satisfactory. It was argued that he was an official of Parliament, not a servant of the executive and therefore the Parliament ought to be

\textsuperscript{38} Wade, Administrative Law, 83 (1982) cited in M.P. Jain & S.N. Jain, supra note 8 at 917
\textsuperscript{39} Wheare, supra note 5.
\textsuperscript{40} Id., at 917
consulted in his appointment. Now, the Prime Minister consults from chairman of the Select Committee before making an appointment. It has been suggested that the complainants have direct access to the Ombudsman.\(^\text{41}\) It has also been suggested that the Ombudsman should have power to suggest changes in administrative procedure and law. At present, the Ombudsman is working within a very restricted frame viz; maladministration causing injustice. It is regarded very narrow jurisdiction to Ombudsman because he cannot question the merits of a decision, if it is taken without maladministration. It has been suggested by *Justice* in 1977 that the Ombudsman should be given broader jurisdiction to enable him to give relief for unreasonable, unjust, oppressive action.\(^\text{42}\) But the British Ombudsman commenting on the Justice report stated that the limitations found on his power by *Justice* were more theoretical than practical and as it was there was no difficulty in his powers to investigate complaints involving unjust, oppressive or unreasonable administrative action.

In Australia, the Commonwealth Ombudsman was established by the Ombudsman Act, 1976\(^\text{43}\). There is two tear Ombudsman system in Australia. Both, the centre and states has its own separate Ombudsman. The Australian Ombudsman, which is known as Commonwealth Ombudsman consists; a Commonwealth Ombudsman; three Deputy Commonwealth Ombudsman and a Defense force Ombudsman. All of them hold office for seven years. The Commonwealth Ombudsman is eligible for re-appointment. He is appointed by the Governor-General and retires at the age of 65 years. He can be removed from his office on an address moved by both Houses of Parliament on the ground of misbehavior or mental incapacity. Thus, the Australian Ombudsman is an executive appointee because the Parliament plays no role in his appointment. The Ombudsman has jurisdiction to investigate complaints against action taken by government department or prescribed authority. The Ombudsman has to make investigation either on a complaint or *suo motu* against actions taken by a government department or authority into a matter of administration. Taking of action includes the making of a decision, recommendation,


\(^{42}\) *Ibid*.

formulation of a proposal, and failure or refusal to take any action. Thus, the positive “taking of action” includes the negative “failing to take action” also. The Act does not define to the words “a matter of administration” into which the Ombudsman can enquire. It is because of the inherent difficulty to do so. It is very difficult to make demarcation between a matter of administration and a matter of policy.\textsuperscript{44} Thus, the Ombudsman has much flexibility to take a wider view. In this regard, ultimately, the Australian Ombudsman has noted\textsuperscript{45} that the Act did not exclude a matter from being a “matter of administration” on the basis that it might also be a “matter of policy” and he suggested that the Act might therefore authorize him to investigate all actions of a department or a prescribed authority. Usually, the Ombudsman does not investigate a matter if the complainant has right of access to a court or tribunal. If any doubt has been raised about the jurisdiction or power of the Ombudsman the Ombudsman can refer it to the Federal Court and Court can resolved it. The Ombudsman has to look into faults of administrative action on the grounds that:\textsuperscript{46}

“the action appears to be contrary to law, or is unreasonable, unjust, oppressive, or improperly discriminatory; is in accordance with a rule of law or a provision of an enactment or practice, but that rule or provision or practice is unreasonable, unjust, oppressive or improperly discriminatory; is based either wholly or partially on a mistake of law or fact; or otherwise in all circumstances is wrong”. The significance of the word “oppressive” has been explained interpreted by the Australian Ombudsman as follows:\textsuperscript{47}

“The word oppressive is to be interpreted according to the plain dictionary meaning of describing an action which is burdensome, harsh, intimidatory, merciless, cruel or tyrannical. Oppressive conduct included an act or decision intended to bully a citizen or having the effect of overburdening a complainant in the pursuit of his legal entitlement, e.g. where an authority requests more information than it needs to make a decision. If an

\begin{footnotesize}
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\item \textsuperscript{44} Commonwealth Ombudsman, First Annual Report, 1978 at 20, cited in Jain \textit{supra} note 8.
\item \textsuperscript{45} Fifth Annual Report, at 24 cited in Jain, \textit{supra} note 8 at 921.
\item \textsuperscript{46} Jain, \textit{supra} note 8 at 921.
\item \textsuperscript{47} \textit{Id.}, Commonwealth Ombudsman, Fourth Annual Report, 16 (1982 & 83).
\end{enumerate}
\end{footnotesize}
authority used its superior knowledge or position to place the citizen at a substantial disadvantage, it acts oppressively”.

The Ombudsman has no power to set aside a decision of administrator. He may suggest only remedial measures. If a department does not take action as recommended or suggested by Ombudsman within a reasonable time, he can report to the Prime Minister. He can also make a special report to the both Houses of Parliament. This makes Ombudsman's role very effective. He has to make an annual report to the Parliament. A large number of cases were completed without the Ombudsman resorting to the formal technique of investigation. In evaluating the work of Ombudsman, it has been said that he deals effectively with a number of complaints and that he provides very useful assistance to ordinary citizens who are in conflict with the administration. His activities have led to several procedural reforms within the administrative structure.

The Australian Prime Minister has said that the institution of Ombudsman has helped the government administration to be “responsible, adaptive and sensitive” to the needs of the citizens. According to the Prime Minister, the institution has not either come in the way of ministerial responsibility nor has prejudiced in any way the role of the members of the Parliament.

**The passage to passing the Lokpal and Lokayuktas Act, 2013**

Since independence, the necessity for the statutory institution of Lokpal has been felt in India. In the year of 1966, the Administrative Reform Commission in its interim report had recommended setting up of an institution of Lokpal in India and in pursuance of the recommendations of the Administrative Reform Commission; time to time eight Bills on Lokpal were introduced in the Lok Sabha but not any one finally got to pass. In the year of 2010, the government of India had gone to formulate a new Lokpal Bill and therefore the process had started to enact the Lokpal and Lokayuktas Act, 2013. Further, to pursue the efforts to setting up the institution of Lokpal a Joint Drafting Committee had

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49 *Id.*, at 923.

50 Statement of Objects and Reasons of the Lokpal and Lokayuktas Act, 2013.
constituted by government of India on 8\textsuperscript{th} April, 2011. Keeping in mind the different views and opinions of the members of the committee which were emerged during course of discussion and deliberation it was became imperative for the government of India to introduce a revised and new Lokpal Bill and therefore on 4\textsuperscript{th} August, 2011 the new Lokpal Bill, 2011 was introduced in Lok Sabha. Further, the Bill was referred to Parliamentary Standing Committee for their examination and report, to both the Houses of Parliament. After extensive discussion with number of stakeholders, the committee has suggested major amendments with the regard of scope and contents of institution of Lokpal which were proposed under Lokpal Bill, 2011. It was also suggested that Lokpal at the centre and Lokayuktas at the states should be conferred constitutional status.\footnote{Id.} Upon consideration of the recommendations of the Standing Committee it was decided to withdraw the Lokpal Bill, 2011 which was pending in Lok Sabha and to introduce a revised Bill for carrying out the necessary amendments for setting up of institution of Lokpal and Lokayuktas as constitutional bodies.\footnote{Id.} In the month of December, 2011 the revised Lokpal and Lokayuktas Bill, 2011 was introduced in Lok Sabha. However, the Bill was passed by Lok Sabha, but due to various objections raised by opposition parties it was not passed in Rajya Sabha.

The government of India is heading toward the policy of zero tolerance against corruption in India and therefore India has adopted and ratified the United Nations Convention against Corruption on 9\textsuperscript{th} May, 2011. By adopting that Convention the government of India has accepted a number of obligations to fight against corruption. The United Nation Convention against Corruption envisages that the concern state parties of convention have duty to ensure the existence of a proper and effective legal mechanism in their domestic laws for criminalization of offence of bribery. In our country, the convention has come into force with effect from 8\textsuperscript{th} June, 2011. The preamble of the Lokpal and Lokayuktas Act, 2013, it makes clear that the aforesaid Act is being enacted for more effective implementation of United Nations Convention against Corruption and also to provide a law for just and fair investigation and prosecution for
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offences of corruption. Thus, the setting up of the institutions or bodies of Lokpal and Lokayuktas will further improve the existing legal and institutional mechanism thereby facilitating a more effective implementation of some of the obligations under the aforesaid convention.53

In the month of May, 2012 to develop and take a consensus oriented decision on the disputed issues of the Bill, it was referred to Select Committee. In the month of November, 2012 the Select Committee has submitted its report before both Houses of Parliament. Keeping in mind the report of Select Committee, the various amendments was proposed in the Bill and ultimately, it was passed by Rajya Sabha on 17 December, 2013.54 The amended version of the Bill was sent back to the Lok Sabha and it was passed by Lok Sabha on 18 December 2013.55 After it, the Bill was presented before President of India and received the assent of the President on 1st January, 2014 and thereby it became, The Lokpal and Lokayuktas Act, 2013.56

The object of the Act is to prevent and control corruption by the setting up of an independent and empowered body of Lokpal. It would receive the complaints of corruption against the specified categories of public servants. It has also to ensure that the complaints of corruption are being properly investigated and prosecuted. All of it has to be done in a time bound manner, with the help of special courts which has to be set up for that purpose. The Act also makes it incumbent for each state to pass within a year, a law setting up a body of Lokayuktas at the state level, but leaves it to the states to work out the details.

It is noted here that before the passing of the Lokpal and Lokayuktas Act, 2013, the great social activist Anna Hazare had mobilized the large masse of people including the youth, women and children of India. He also received the support of elite of India for his movement India against Corruption. Through social media, he and his team also, got unprecedented support for setting up an independent and empowered body of Lokpal.

53 Ibid. at 2.
54 Id.,
55 Id.,
56 Act No.1 of 2014.
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The government accepted many of the suggestions from the Hazare team but differences remained on some important aspects mainly to the extent of coverage by the Lokpal.57

The Hazare team wanted all government officers to be brought under the Lokpal who would also look into all the complaints of failure to implement the duties under the proposed citizen’s charters prescribed for public servants.58 The government, many other social activists and commentators also differed upon this issue mainly on the ground that this would lead for an overburden Lokpal. It also would lead to a potential extent for abuse of power by a body supervising both integrity and performance of the entire range of official machinery.59

Salient features of the Lokpal and Lokayuktas Act, 2013

The Act provides for setting up a body of Lokpal at the centre. It makes mandatory for states to set up Lokayuktas within the period of one year from the date of commencement of the Act, but the nature and type of Lokayuktas has been left to the discretion of the state legislatures.

Under the Act, the chairperson of Lokpal and its eight members has to be selected by a committee consisting of the Prime Minister, the Speaker of the Lok Sabha, the Leader of Opposition in the Lok Sabha, the Chief Justice of India or a judge of the Supreme Court nominated by the CJI and one eminent jurist as recommended by the other four members of the committee.60 A search committee of at least seven members has to be constituted to shortlist a panel of eligible candidates for the post of chairperson and members of the Lokpal.61 The panel of shortlisted members has to be put up before the selection committee. At least half of the members of the search committee and the institution of Lokpal shall be from amongst persons belonging to the schedule castes, the scheduled tribes, other backward classes, minorities and women. The chairperson and members shall be appointed by the President after obtaining the recommendations of the

58 Id.,
59 Id.,
60 The Lokpal and Lokayuktas Act, 2013, section 4(1) (a), (b), (c), (d) and (e).
61 Id., section 4 (3).
selection committee headed by Prime Minister. The half members of the Lokpal shall be judicial members. It is provided that the Lokpal would receive complaints of corruption against the Prime Minister, Ministers of Central Government, Member of Parliaments, and all level officers of the Central Government. Lokpal would also receive complaints of corruption against functionaries of any entity which is wholly or partially financed by the government with an annual income above a specified limit and also all entities receiving donations from foreign sources in excess of 10 lakh per year. The Act states that on receipt of complaints against any public servant, except the officials belonging to group A, B, C, or D of Central Government, the Lokpal may order for preliminary inquiry or investigation.

Under the scheme of the Act, it seems that for the purpose of preliminary inquiry and investigation the public servants have been divided into three categories viz., public functionaries including political public servants i.e. M.P., ministers of union government, chairperson of autonomous bodies established by an Act of Parliament etc.; public servants belonging to group A and group B officers of Central Government; and public servants belonging to group C and group D officials of Central Government. It is provided under the Act that on receipt of the complaint against the first categories of public servants as stated above, the Lokpal will order for preliminary inquiry or investigation. The preliminary inquiry shall be conducted by inquiry wing of Lokpal or CBI to whomsoever the Lokpal directs. The complaints against groups A and group B officers and public servants belonging to groups C and group D shall be referred to CVC for preliminary inquiry. The preliminary inquiry has to be completed within the maximum period of ninety days and has to be submitted to Lokpal.

In respect of public servants belonging to group A, or group B the CVC after completion of the preliminary inquiry will submit its report to the Lokpal. In cases of public servants belonging to group C, or group D, the CVC will proceed in accordance

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63 Id.
64 The Lokpal and Lokayuktas Act, 2013, section 20 (1), proviso (1).
65 Johri, Bhardwaj & Singh, supra note 62 at 10.
with the provisions of the CVC Act 2003.\textsuperscript{66} Upon receiving the report of the preliminary enquiry the Lokpal will give an opportunity to the public servant to be heard. If a \textit{prima facie} case has been made out, then the Lokpal may order for an investigation by the CBI or by any other agency, or order for departmental proceeding against concerned public servant\textsuperscript{67}. The investigation has to be completed within the maximum period of one year and the report has to be submitted before Special Court. A copy of report has also to be sent to the Lokpal.

The investigation report has to be considered by a minimum three member’s bench of Lokpal. The Lokpal may grant permission to its own prosecution wing or to the investigating agency to file a charge sheet in the Special Court. The Lokpal may also instruct to file closure report or direct to initiate for departmental proceedings against concerned public servant. Apart from providing that the Lokpal would have its own Prosecution Wing, the Act provides for amending the Delhi Special Police Establishment Act, 1946 to set up a Directorate of Prosecution headed by a Director of Prosecution under the overall control of the CBI director for the purpose of deciding cases arising out of the Prevention of Corruption Act, 1988. The Act provides for setting up of Special Courts. All trials in the Special Courts have to be ordinary completed within one year, extendable to another one year for reasons to be recorded in writing.

The chairperson and other members of the Lokpal can be removed from his office by President of India on the ground of misbehavior.\textsuperscript{68} The President may refer the question of misbehavior on the part of chairperson or any other member of Lokpal to Supreme Court. After an enquiry of the Supreme Court, the chairperson or any member of Lokpal shall be removed from his office by the President. The Prime Minister, Members of Parliament of both Houses is covered by Lokpal. The power to permit the Lokpal to conduct inquiry against Prime Minister is vested in Parliament. The Prime Minister's action relating to international security, public order, atomic energy and space

\textsuperscript{66} \textit{Id.},
\textsuperscript{67} \textit{Ibid.} at 11
\textsuperscript{68} The Lokpal and Lokayuktas Act, 2013, section 37.
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have been kept out from purview of Lokpal. The inquiry relating to Prime Minister's activities on other subject matters can be initiated by Lokpal by the decision of two-third majority of the full bench of Lokpal. In respect of the matters referred by the Lokpal for preliminary enquiry or investigation to C.B.I., the supervisory power upon C.B.I. has been given to the Lokpal. The Lokpal has jurisdiction to constitute an Inquiry and a Prosecution Wing separately. The Lokpal can take action only on a complaint filed before it. He cannot take action suo moto.

The Lokpal and Lokayuktas Act, 2013: a critical analysis

The Lokpal at central level and Lokayuktas at the state level which are similar to Ombudsman in foreign countries are recommendatory bodies and not disciplinary authorities with powers to punish offenders. The Lokpal has jurisdiction to inquire into allegations of corruption against the officials of the Central Government and the persons occupying political offices such as M.P.s, ministers and also such other persons who occupying the statutory posts. The Lokpal has no jurisdiction to inquire into the allegations of corruption against private individuals. In criminal jurisprudence, there are three stages for the conviction to an offender. The first is investigation by police which followed by the inquiry of the magistrate. It ends with the framing of charges. The second stage is trial which includes the examination and cross-examination, receiving and consideration of evidence including documents. The third stage is hearing of argument and renders the judgment which may be either in conviction or acquittal. The role of Lokpal is being involved only in the first stage. The Lokpal has no power to conduct trial or render judgment. Lokpal after investigation and inquiry makes a report to

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69 The Lokpal and Lokayuktas Act, 2013, section 14 (1) (a).
70 Id., section 14 (1) (b).
71 The Lokpal and Lokayuktas Act, 2013, section 25.
72 N.K. Acharya, supra note 20 at iii.
73 Ibid.
74 Ibid.
75 Ibid.
the competent authority to take disciplinary action against the offenders and to prosecute them in criminal court in accordance with the Law.\textsuperscript{76}

The Lokpal and Lokayuktas Act, 2013 is divided into three parts and fifteen chapters. It contains 63 sections. There is one schedule of the Act which is divided into five parts. Part one of the Act is “Preliminary” and part third of the Act deals with the “Establishment of the Lokayukta” in states. Part two containing sections 2 to 62 deals with “Lokpal for the Union”. This part two of the Act has been divided into fifteen chapters. Chapter one deals with definitions.

**Preamble of the Act**

The preamble describes the policy and purpose of the Act. Every section of the Act will have to be interpreted in accordance with that policy and purpose. The preamble is the key or guide to understand the Act. Being part of the enactment, preamble governs all provisions of the Act. Every provision of the Act is to be interpreted within the scope and limits of the preamble. According to preamble, the Lokpal is a body for Union of India to inquire into allegations of corruption against certain public functionaries and the Lokayuktas is a body for states for the same. The preamble, further states that India has ratified the United Nations Convention against Corruption and the government of India is committed to clean and responsive governance. Its commitment must be reflected in effective bodies to punish the acts of corruption. Therefore, the Lokpal is a body to ensure more effective implementation of the United Nations Convention against Corruption and to provide fair investigation and prosecution in cases of corruption. Thus, the purpose and policy of the Act is to deal with only cases of corruption. Maladministration which is the primary concern of the Ombudsman in other countries has been kept out from purview of the Indian Lokpal. The Jurisdiction of Lokpal is limited to hold enquiries or investigations into the corrupt practices, against certain public functionaries. The Lokpal has also jurisdiction to initiate the prosecution against offenders, but it has no jurisdiction to decide the culpability or punish the offenders.

\textsuperscript{76} Ibid.
Commencement of the Act

The Act applies to whole of India. The usual expression excluding Kashmir is not included in the Act. It means that the Act applies to state of Jammu and Kashmir also. It is so because the subject of Lokpal is not included in the understanding between Indian and Maharaja of Jammu and Kashmir, at the time of its accession. Moreover, the Parliament has power to make any law for whole or any part of India for implementing any treaty, agreement or convention which is has to be made with any other country, association or body. The Act applies to Indian officials residing in India or abroad or functioning within the state of Jammu and Kashmir also. The officers, who are employed and working in embassies abroad have been kept within the purview of Lokpal. The members of Parliament, elected from states and officers of the union functioning in states are also covered by Lokpal. The Act shall come into force on the date to which the Central Government may decide by notification.

Definitions

Section 2 (1) (a) defines the word “bench”. It means a bench of the Lokpal. The “chairperson” means the chairperson of the Lokpal. It is an innovative expression because the chairperson may be male or female. Under section 2 (1) (c) the word “competent authority” has been defined in relation to various functionaries of Central Government. The competent authority has to take disciplinary action against concerned public functionary. The Lokpal has to submit its report to competent authority for further action. The competent authority cannot dispute or disagree with the findings and

77 The Lokpal and Lokayuktas Act, 2013, section 1 (2).
78 Constitution of India, art 253.
79 The Lokpal and Lokayuktas Act, 2013, section 1 (3).
80 The Lokpal and Lokayuktas Act, 2013, section 2 (1) (b).
81 According to section 2 (1) (c) of Lokpal and Lokayuktas Act, 2013, the Lok Sabha is competent authority in relation to Prime Minister. In relation to a member of the Council of Ministers, the Prime Minister is competent authority. In relation to a member of parliament, other than a minister, in case of Rajya Sabha, the chairman of Rajya Sabha is competent authority and in Lok Sabha the Speaker of Lok Sabha is competent authority. In relation to an officer who is serving under the Ministry or Department of Central Government the concerned Minister in-charge of the Ministry or Department is competent authority.
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recommends the institution of Lokpal. The “complaint” means a complaint, alleging that a public servant has committed an offence punishable under the Prevention of Corruption Act, 1988. The body of Lokpal is not an individual. It is an institution. Minister is defined as Union Minister only; it does not include Prime Minister. The public servant means a person referred to in clauses (a) to (h) of sub-section (1) of section 14 of the Lokpal and Lokayuktas Act, 2013.

Establishment of Lokpal

Under the Act, it is mandated that the government of India shall establish a body called Lokpal. The Lokpal shall consist, a chairperson and maximum eight members. Half of the members of Lokpal shall be from judicial background. A person who is or has been Chief Justice of India or is or has been a judge of Supreme Court or an eminent person shall be appointed as chairperson of Lokpal. Half of the members of Lokpal shall be appointed from the community of schedule castes, scheduled tribes, other backward classes, minorities and women. A present or retired Judge of Supreme Court or a present or retired Chief Justice of a High Court shall be eligible for the appointment as the judicial member of Lokpal. A person of impeccable integrity and outstanding ability who has special knowledge and expertise of minimum twenty five years in the matters related to anti corruption policy, public administration, vigilance, banking, finance, insurance, law and management shall be eligible for appointment as the non judicial member of Lokpal. A person who is less than forty-five years of age shall not be appointed as chairperson or member of Lokpal. A person who is a Member of

82 The Lokpal and Lokayuktas Act, 2013, section 2 (1) (e).
84 The Lokpal and Lokayuktas Act, 2013, section 2 (1) (k).
85 Id., section 2 (1) (o).
86 The Lokpal and Lokayuktas Act, 2013, section 3 (1) reads: On and from commencement of this Act, there shall be established, for the purpose of this Act, a body to be called the “Lokpal”.
87 The Lokpal and Lokayuktas Act, 2013, section 3 (2), (a) and (b).
88 Id., section 3 (2), (b).
89 Id., section 3 (2), (a).
90 Id., section 3 (2), proviso.
91 Id., section 3 (3), (a).
92 Id., section 3 (3), (b).
93 Id., section 3 (4), (iii).
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Parliament\textsuperscript{94} or State Legislature\textsuperscript{95} or Panchayat\textsuperscript{96} or Municipality\textsuperscript{97} shall not be eligible for the appointment as member or chairperson of Lokpal. A person who is convicted for the offence of moral turpitude\textsuperscript{98} or has been removed or dismissed from the service of union or state\textsuperscript{99} shall also be ineligible for the appointment as chairperson or member of Lokpal.

After obtaining the recommendations of a selection committee the chairperson and members of the Lokpal shall be appointed by the President of India.\textsuperscript{100} The selection committee\textsuperscript{101} shall consist, a chairperson and four other members. Any appointment of chairperson or a member of Lokpal shall not be invalid by reason of any vacancy in the selection committee.\textsuperscript{102} A search committee of at least seven members having special knowledge and expertise in matters related to anti-corruption policy, public administration, vigilance, policy making, finance, banking, law and management shall be constituted\textsuperscript{103} by selection committee\textsuperscript{104}. The search committee will suggest a panel of names of eligible candidates for the post of chairperson and members of Lokpal. The selection committee may also consider the name of any other person whose name has not been recommended by search committee\textsuperscript{105}. The President shall take all necessary steps for the appointment of chairperson and members of Lokpal at least three months before the expiry of term of ongoing chairperson or members of Lokpal.\textsuperscript{106} Thus, the President shall initiate the procedure for appointment of chairperson or members of Lokpal in

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\textsuperscript{94} Id., section 3 (4), (i).
\textsuperscript{95} Ibid.
\textsuperscript{96} Id., section 3 (4), (iv).
\textsuperscript{97} Ibid.
\textsuperscript{98} Id., section 3 (4), (ii).
\textsuperscript{99} Id., section 3 (4), (v).
\textsuperscript{100} The Lokpal and Lokayuktas Act, 2013, section 4 (1).
\textsuperscript{101} The Prime Minister shall be chairperson of selection committee. The Speaker of Lok Sabha, Leader of Opposition of Lok Sabha, Chief Justice of India or a judge of Supreme Court nominated by him and an eminent jurist nominated by President on the recommendation of other four members shall be members of selection committee.
\textsuperscript{102} The Lokpal and Lokayuktas Act, 2013, section 4 (2)
\textsuperscript{103} Id., section 4(3). According to section 4(3) proviso (1) of the Act, half members of the search committee shall be from the community of scheduled castes, scheduled tribes, other backward classes, minorities and women.
\textsuperscript{104} Ibid.
\textsuperscript{105} Id., section 4 (3), proviso (2).
\textsuperscript{106} The Lokpal and Lokayuktas Act, 2013, section 5.
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advance at least three months ago. The chairperson and every member of Lokpal, who is appointed by President, shall hold office for a term of five years or until he attains the age of seventy years, whichever is earlier.107 He may resign by writing under his hand and addressed to the President from his office.108 The chairperson or any member of Lokpal may be removed from his office by the President in the manner as provided under section 37 of the Act109. The salary, allowances and other conditions of service of the chairperson of Lokpal shall equal to the Chief Justice of India110. Other members of Lokpal shall be entitled, the same salary and allowances, as a judge of the Supreme Court111. It is also provided that the salary, allowances, pension and other conditions of service of the chairperson or members of Lokpal shall not be altered to disadvantage after his appointment.112 The Chairperson and members of Lokpal shall be ineligible for re-appointment.113 He shall also be ineligible for any diplomatic assignment or any other appointment which is required under any law to be made by President.114 His further employment to any other office of profit under the government of India or state is also prohibited.115 He is prohibited to contest any election of President, vice-President, M.P., M.L.A., Municipality or Panchayat for a period of five years from the date of his retirement.116 It is further provided that a member of Lokpal shall be appointed as

108 Id., section 6, proviso (a).
109 Id., section 6, proviso (b). The Lokpal and Lokayuktas Act, 2013, section 37 (2) reads: Subject to the provisions of sub-section (4), the Chairperson or any member shall be removed from his office by order of the President on grounds of misbehavior after the Supreme Court, on a reference being made to it by the President on a petition signed by at least one hundred Members of Parliament has, on an inquiry held in accordance with the procedure prescribed in that behalf, reported that the Chairperson or such member, as the case may be, ought to be removed on such ground. Further section 37 (4) reads: Notwithstanding anything contained in sub-section (2), the President may, by order, remove from the office, the Chairperson or any member if the Chairperson or such member, as the case may be:
   a. is adjudged an insolvent; or
   b. engages, during his term of office, in any paid employment outside the duties of his office; or
   c. is, in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body.
110 The Lokpal and Lokayuktas Act, 2013, section 7.
111 Ibid.
112 Id., section 7, proviso (2).
113 The Lokpal and Lokayuktas Act, 2013, section 8 (1) (i).
114 Id., section 8 (1) (ii).
115 Id., section 8 (1) (iii).
116 Id., section 8 (1) (iv).
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chairperson but his term of office shall not be more than five years in aggregate as the member and chairperson of Lokpal.\textsuperscript{117}

In the event of occurrence of any vacancy in the office of chairperson by reason of his death or resignation, the President may appoint to senior-most member as the acting chairperson of Lokpal.\textsuperscript{118} If the chairperson is not able to discharge his duties due to being unavailable or ill health or is on leave, the President may appoint the senior-most member as chairperson to discharge his duties.\textsuperscript{119} There shall be a Secretary to the Lokpal\textsuperscript{120}. He shall be to the rank of Secretary to government of India and he shall be appointed by the chairperson from a panel of names sent by Central Government\textsuperscript{121}. There shall be a Director of Inquiry and a Director of Prosecution and he shall also be appointed by the chairperson from a panel of names sent by the Central Government\textsuperscript{122}. The Director of Inquiry and Director of Prosecution shall be separate from each other. It is so because investigation should be independent from prosecution. Other staff of Lokpal, including officers shall be appointed by the chairperson or any other member of Lokpal to whom the power is specifically delegated.\textsuperscript{123} The appointment of other staff of Lokpal has to be made after consultation with the Union Public Service Commission.\textsuperscript{124}

Inquiry Wing of Lokpal

The Lokpal shall constitute an inquiry wing headed by a Director of Inquiry\textsuperscript{125}. Inquiry wing shall conduct preliminary inquiry into offence alleged to have been committed by public servants punishable under the Prevention of Corruption Act, 1988.

\begin{footnotesize}
\begin{enumerate}
\item Id., section 8 (2).
\item The Lokpal and Lokayuktas Act, 2013, section 9 (1).
\item Id., section 9 (2).
\item Id., section 10 (1).
\item Ibid.
\item Id., section 10 (2). Director of inquiry and Director of Prosecution of the Lokpal shall not be below to the rank of Additional Secretary to government of India.
\item Id., section 10 (3).
\item Id., section 10(3) proviso (1).
\item The Lokpal and Lokayuktas Act, 2013, section 11.
\end{enumerate}
\end{footnotesize}
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Under the Act, it is not necessary to issue a public notification to constitute the inquiry wing of Lokpal.

Prosecution Wing of Lokpal

The Lokpal shall constitute a prosecution wing by notification published in official Gazette. Prosecution wing will be headed by a Director of Prosecution. The Prosecution wing will help to Lokpal to prosecute the public servants in anti-corruption courts. On direction of Lokpal, the Director of Prosecution will file a case on the basis of findings of investigation report in anti-corruption court and take all necessary steps for prosecution of public servants. The report of Lokpal shall be treated as the report of investigation filed under section 173 of the Code of Criminal Procedure, 1973.

Expenses of Lokpal

The all administrative expenses including all salaries, allowances and pensions of chairperson, members, secretary, and other staff of Lokpal shall be charged upon the Consolidated Fund of India. Any fees or moneys taken by the Lokpal shall be part of the Consolidated Fund of India. The items to be spent from the Consolidated Fund of India need not to be subject matter of discussion by the Parliament. Thus, the Parliament is not competent to increase or decrease the expenses of Lokpal. The purpose of this provision is to ensure the financial independence of Lokpal.

Jurisdiction of Lokpal in respect of inquiry

The Lokpal has been made empowered to conduct inquiry into any allegation of corruption against the present or ex-Prime Minister of India. But, under the proviso of section 14 (1) (a), some restrictions are imposed upon this jurisdiction of Lokpal. The Lokpal is not empowered to make inquiry into such allegations of corruption against

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126 The Lokpal and Lokayuktas Act, 2013, section 12 (1).
127 Ibid.
128 Id., section 12 (2).
129 Id., section 12 (3).
130 The Lokpal and Lokayuktas Act, 2013, section 13.
131 The Lokpal and Lokayuktas Act, 2013, section 14 (1) (a).
Prime Minister which relates to international relations, external and internal security, public order, atomic energy and space.\textsuperscript{132} All the proceedings of inquiry against Prime Minister shall be initiated only by the two-thirds majority in the full bench of Lokpal.\textsuperscript{133} Further, it is provided that all the proceedings of inquiry against Prime Minister shall be held in camera.\textsuperscript{134} If the Lokpal comes to the conclusion that the complaint deserves to be dismissed, the records of enquiry shall not be published or made available to anyone.\textsuperscript{135} The Lokpal would receive the complaints of corruption against present or ex-ministers of the government of India,\textsuperscript{136} members of both Houses of Parliament\textsuperscript{137} and all level, group A or B or C or D, or equivalent to them officials\textsuperscript{138} of Central Government. He also would receive the complaints of corruption against any chairperson, member, officer or employee of a governmental or semi-governmental body established by an Act of Parliament.\textsuperscript{139} The Lokpal has jurisdiction to make inquiry into allegations of corruption against any person who is director, manager, secretary or any officer of a governmental, or semi-governmental society, association of person or trust, whether it is registered or not, and which annual income exceeds to a limit specified by the Central Government\textsuperscript{140} or receives donations from foreign sources in excess of ten lakh per year.\textsuperscript{141} Abettors and conspirators with all above have also been kept within the purview of Lokpal.\textsuperscript{142}

**Benches of Lokpal**

Lokpal is an institution. It consists of a chairperson and eight other members. The Bench of Lokpal may be a division bench, three member’s bench, five member’s bench, seven members bench or full bench. There is nothing like single member bench. In every

\textsuperscript{132} Id., section 14 (1) (a), proviso (1) (i).
\textsuperscript{133} Id., section 14 (1) (a), proviso (1) (ii).
\textsuperscript{134} Id., section 14 (1) (a), proviso (2).
\textsuperscript{135} Ibid.
\textsuperscript{136} Id., section 14 (1) (b).
\textsuperscript{137} Id., section 14 (1) (c).
\textsuperscript{138} Id., section 14 (1) (d).
\textsuperscript{139} Id., section 14 (1) (e).
\textsuperscript{140} Id., section 14 (1) (g).
\textsuperscript{141} Id., section 14 (1) (h).
\textsuperscript{142} Id., section 14 (3).
bench at least one of the members shall be judicial member and the judicial member only shall preside over the bench. It is the chairperson's prerogative to constitute benches, allot the work, withdraw and transfer cases from one bench to another. However, he cannot transfer the case from the one bench to another *suo moto*. The benches normally sit at New Delhi.

**Procedure for inquiry and investigation**

Under the scheme of Lokpal and Lokayuktas Act, 2013, in respect of public functionaries and officials of the Central Government all complaints of corruption has to be made before Lokpal. Thus, the Lokpal is the receiving authority of all complaint of corruption against the public functionaries of union of India. After receiving the complaints the Lokpal shall examine the content of complaint and if the Lokpal is satisfied about of the content of complaint then the Lokpal shall pass an order for conducting a preliminary inquiry or investigation into the case. Under section 20 (1) clause (a), it is provided that the Lokpal on receipt of a complaint, if decides to proceed further may make an order for preliminary inquiry against concerned public servants. The purpose of preliminary inquiry is to ascertain whether there is in existence, a *prima facie* case or not. Further under section 20 (1) clause (b), it is provided that where on receipt of a complaint, it is found that there exists a *prima facie* case of corruption, then the Lokpal may pass an order for investigation into case. Thus, the Lokpal can go into the procedure of investigation without any preliminary of the case. Under section 20 (1) clause (b), it is not necessary for Lokpal to make an order for preliminary inquiry, if on receipt of complaint the Lokpal is satisfied that the *prima facie* case of corruption has been made out. The preliminary inquiry has to be done by its own inquiry wing or CBI.

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144 *Id.*, section 16 (2).
145 The Lokpal and Lokayuktas Act, 2013, section 18.
146 The Lokpal and Lokayuktas Act, 2013, section 16 (1) (f).
147 The Lokpal and Lokayuktas Act, 2013, section 20 (1) (a).
148 The Lokpal and Lokayuktas Act, 2013, section 20 (1) reads: The Lokpal on receipt of a complaint, if it decides to proceeds further, may order:
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There are four provisos have been put under section 20 (1) clause (a) and (b) of the Act. Under proviso (i) of section 20 (1) clause (a) and (b), it is provided that, if Lokpal under section 20 (1) clause (a) has decided to proceed with preliminary inquiry, then the complaints or category of complaints in respect of public servant belonging to group A, B, C, or group D, official of Central Government shall be referred by Lokpal to CVC for preliminary inquiry.

It means that the preliminary inquiry into complaints or category of complaints belonging to public servants other than group A, B, C, or group D, such as Prime Minister, Union Ministers, Member of Parliaments, chairperson of a autonomous bodies established by an Act of Parliament etc., as enumerated under section 14 (1) clauses (a) to (c) and clauses (f) to (h) and has been kept within the purview of Lokpal, has to be done by Lokpal through its own inquiry wing or CBI. Further it is also provided that on receipt of complaint, if Lokpal has decided to proceed under section 20 (1) clause (b) for investigation against concerned public servant then the Lokpal before making an order for investigation, shall give an opportunity to concerned public servant for their explanation. Seeking of such explanation shall not be any bar or interfere with any search and seizure which is required by investigating agency.

The complaints or category of complaints which has referred under proviso (i) of section 20 (1) clause (a) and (b) to CVC for preliminary inquiry, the CVC shall cause a preliminary inquiry into complaints through its Directory of Inquiry. Upon completing the preliminary inquiry, in respect of public s
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ervant belongings to group A or B, the CVC will submit its report to the Lokpal and in respect of public servants belonging to group C or D, the CVC will proceed in accordance with the provisions of CVC Act, 2003.\textsuperscript{152} Under sub-section (2) of section 20, it is provided that on the basis of material, information and documents which have been collected during preliminary inquiry, the inquiry agency will seek comments on the allegations made in complaint from concerned public servant and competent authority too.\textsuperscript{153} After obtaining the comments, the inquiry agency will submit its report to Lokpal within sixty days from the date of receipt of the complaint.\textsuperscript{154} Further, sub-section (4) of section 20 provides that every preliminary inquiry shall ordinarily be completed within a period of ninety days and for reasons to be recorded in writing, within a further period of ninety days from the date of receipt of the complaint.\textsuperscript{155} Thus, there is a clear discrepancy between section 20 (2) and section 20 (4) of the Act.

Under sub-section (2) of section 20, on receipt of every preliminary inquiry report from any Inquiry Wing or agency, a bench not less than three members of Lokpal shall consider the report and after giving an opportunity of hearing to concerned public servants; the Lokpal shall take one or more following actions:\textsuperscript{156}

\begin{itemize}
  \item[a.] Investigation by any agency or CBI, as the case may be;
  \item[b.] initiation of the departmental proceedings or any other appropriate action against the concerned public servant by the competent authority;
  \item[c.] closure of proceedings against public servant and to proceed against the complainant under section 46 of the Act.
\end{itemize}

If Lokpal decides to proceed for investigation into case, then the investigation shall be carried out expeditiously and shall be completed within the period of six months,

\textsuperscript{152} The Lokpal and Lokayuktas Act, 2013, section 20 (1) proviso (ii).
\textsuperscript{153} \textit{Id.}, section 20 (2).
\textsuperscript{154} \textit{Ibid.}
\textsuperscript{155} \textit{Id.}, section 20 (4).
\textsuperscript{156} \textit{Id.}, section 20 (3).
which is extendable to another maximum period of six months.\textsuperscript{157} Notwithstanding anything contained in section 173 of Cr.P.C, the investigating agency shall submit its investigation report to Special Court having jurisdiction in that regard and also shall forward a copy of investigation report to Lokpal.\textsuperscript{158} Every report of investigation shall be considered by a bench not less than three members of Lokpal and after obtaining the comments of competent authority and public servant too, the Lokpal may:\textsuperscript{159}

a. grant sanction to Prosecution Wing or investigating agency to file charge sheet or closure report before Special Court;

b. direct the competent authority to initiate the departmental proceedings or any other appropriate action against concerned public servant.

If, it has decided to grant sanction to Prosecution Wing or investigating agency to file charge sheet before Special Court then the Lokpal may direct to its Prosecution Wing or investigating agency to initiate prosecution in Special Court.\textsuperscript{160} During preliminary inquiry or investigation may pass an appropriate order for safe custody of documents which are relevant and necessary for preliminary inquiry or investigation.\textsuperscript{161} The Lokpal may retain the original records and evidences which are likely to be required in the process of preliminary inquiry or investigation or trial of the case in Special Court.\textsuperscript{162}

Notwithstanding anything contained is section 197 of Cr.P.C. or section 19 of P C Act, or section 6A of DSPE Act, the Lokpal has power to grant sanction for prosecution against public servants.\textsuperscript{163} After investigation, if it is found that the offence has been committed by Prime Minister, or a Union Minister, or a Member of Parliament, the

\textsuperscript{157} Id., section 20 (5).
\textsuperscript{158} Id., section 20 (6).
\textsuperscript{159} Id., section 20 (7).
\textsuperscript{160} Id., section 20 (8).
\textsuperscript{161} Id., section 20 (9).
\textsuperscript{162} Id., section 20 (11).
\textsuperscript{163} The Lokpal and Lokayuktas Act, 2013, section 23.
Lokpal may file a case in Special Court and will send a copy of report to its findings to the competent authority.\textsuperscript{164}

**Powers of Lokpal**

The supervisory powers over CBI have been given to Lokpal. The Lokpal, also, has power to give direction to CBI.\textsuperscript{165} But the power of superintendence over CBI or the power to give direction to CBI, has to be exercised by Lokpal only in those matters which have been referred to CBI, by the Lokpal for preliminary enquiry or investigation.\textsuperscript{166} These power of Lokpal shall not be exercised such a manner, which requires to investigate or dispose of any case in a particular manner.\textsuperscript{167} The Lokpal has power to issue guideline for effective and expeditious disposal in those matters which have been referred to CVC for its preliminary inquiry under section 20 (1) of the Act.\textsuperscript{168} Any officer of CBI, who is conducting investigation into a case, referred by Lokpal, shall not be transferred without prior approval of Lokpal.\textsuperscript{169} The Lokpal may authorize to any investigating or inquiry agency to make search in any place and seize documents, if there is reason to believe that such documents may be relevant for investigation of the case.\textsuperscript{170} It is so because the search and seizure is an essential part of any investigation. Therefore it is necessary that the Lokpal should have power to direct search and seizure of any document or object which is required for further action. For the purpose of preliminary inquiry, the inquiry wing of Lokpal has powers of civil court in respect of following matters\textsuperscript{171}:

i. Summoning and enforcing the attendance of any person and examining him on oath;

ii. Requiring the discovery and production of any document;

\textsuperscript{164} The Lokpal and Lokayuktas Act, 2013, section 24.
\textsuperscript{165} The Lokpal and Lokayuktas Act, 2013, section 25.
\textsuperscript{166} Ibid.
\textsuperscript{167} Id., section 25 proviso (1).
\textsuperscript{168} Id., section 25 (2).
\textsuperscript{169} Id., section 25 (3).
\textsuperscript{170} The Lokpal and Lokayuktas Act, 2013, section 26.
\textsuperscript{171} The Lokpal and Lokayuktas Act, 2013, section 27.
iii. Requisitioning any public record or copy thereof from any court or office;
iv. Requisitioning any public record or copy thereof from any court or office;
v. Issuing commissions for the examination of witnesses or documents. Such commission shall be issued only where the witness, in the opinion of Lokpal, is not in a position to attend the proceeding before the Lokpal;
vi. Such other matters as may be prescribed.

The Lokpal may utilize the services of central or states government for the purpose of conducting inquiry or investigation.

Attachment of assets

The Lokpal is authorized to attach the properties which are believed to be the proceeds of corruption. The Lokpal may authorize to any other officer for attachment. Before issuing the order of attachment, the Lokpal or authorize officer will record his satisfaction in writing to the effect that if attachment is not made, the property may not be available for confiscation at a later stage. Such attachment has to be made for the period of ninety days. As soon as the order of attachment is made, a copy of order with all other materials shall be sent to the Special Court which may extend the period of attachment. Any person interested in the property may approach to Special Court for appropriate order of attachment. The attachment will not affect the person who is in possession of the attached properties. He can continue to be in possession and in his enjoyment.

Confirmation of attachment

Within the period of thirty days the Lokpal shall approach the Special Court for confirmation and continuation of attachment. For this purpose the Lokpal shall direct the prosecution wing to file necessary application before Special Court to extend the

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172 The Lokpal and Lokayuktas Act, 2013, section 29 (1).
173 Ibid.
174 Id., section 29 (2).
175 Id., section 29 (4).
attachment.\textsuperscript{176} If the Special Court is of the opinion that the attached properties had been acquired through corrupt means, he can extend the attachment till the completion of proceedings before him.\textsuperscript{177} If the public servant is acquitted by Special Court, the property attached shall be returned to the public servant.\textsuperscript{178}

**Transfer and suspension of public servants**

The Lokpal has power to recommend to Central Government to suspend or transfer the public servant during pendency of preliminary inquiry or investigation.\textsuperscript{179} It is for the reason that the accused officer may temper with evidence or may affect enquiry, adversely. Ordinarily the government shall accept the recommendations of Lokpal. If for any reason of administrative necessity, the government is not agreeing to suspend or transfer to the concerned public servant, it shall state the reasons in writing.\textsuperscript{180} The Lokpal may issue appropriate directions to public servant who is entrusted with the preparation or custody of any document or records:\textsuperscript{181}

\begin{itemize}
  \item a. To protect such document or record from destruction or damage; or
  \item b. To prevent the public servant from altering or secreting such document or record; or
  \item c. To prevent the public servant from transferring or alienating any assets allegedly acquired by him through corrupt means.
\end{itemize}

**Constitution of Special Courts**

To hear and decide the cases arising out of the Prevention of Corruption Act, 1988 or this Act, such number of Special Court as recommended by the Lokpal shall be constituted by Central Government.\textsuperscript{182} The Special Court shall ensure that each trail must be completed within the period of one year from the date of filing of the case in

\begin{itemize}
  \item \textsuperscript{176} The Lokpal and Lokayuktas Act, 2013, section 30 (1).
  \item \textsuperscript{177} \textit{Id.}, section 30 (2).
  \item \textsuperscript{178} \textit{Id.}, section 30 (3).
  \item \textsuperscript{179} The Lokpal and Lokayuktas Act, 2013, section 32 (1).
  \item \textsuperscript{180} \textit{Id.}, section 32 (2).
  \item \textsuperscript{181} The Lokpal and Lokayuktas Act, 2013, section 33.
  \item \textsuperscript{182} The Lokpal and Lokayuktas Act, 2013, section 35 (1).
\end{itemize}
Further, it is provided that in case where, the trial cannot be completed within the prescribed period of one year, the Special Court, by time to time and the reasons to be recorded in writing may extend the period for three months at once. Such extensions are limited so that the trial must be completed within the total period of two years, from the date of the institution of case in court. It is noted here that there is nothing anything in section 35 of the Act, about the things, that what should happen if the case is not decided within the prescribed maximum period of two years and further, what should happen if the Lokpal is not satisfied with the reasons recorded by Special Court for not completing the trial within the prescribed period of two years.

Shortcomings of the Lokpal and Lokayuktas Act, 2013

No doubt in our country there is a urgent need for a body which can function with highest degree of independence and integrity and therefore the institution like Lokpal or Ombudsman should be properly setup to command the respect and confidence of the people. The institution of Lokpal and Lokayukta and mechanism for it provided under the Lokpal and Lokayukta Act, 2013 is very weak. There are various loopholes and lacunae in the Act. The appropriateness and efficacy of the Act can be discussed under the following heads.

Lack of independent investigative wing

There is no provision for separate and independent investigative wing under the Lokpal and Lokayuktas Act, 2013. The key success of any organization is to put corrupt in judicial process by carrying out fair and impartial investigation. On that account the Lokpal and Lokayuktas Act, 2013 fails miserably. The investigation is the foundation of any case and the independence of the investigation team makes all difference.
is no shortage of critical comment by the Supreme Court over the fact that the CBI is working under the umbrella of executive.\textsuperscript{189} Under the Lokpal and Lokayuktas Act, 2013 the government retains administrative control over CBI including transfer, posting and promotions.\textsuperscript{190} It means that every officer of the CBI is looking to the government for carrier advancement.\textsuperscript{191} In fact, the director of CBI shall be chosen on recommendation of committee consisting Prime Minister, Leader of Opposition and the Chief Justice of Supreme Court. However, the only the director cannot ensure the independence and institutional integrity of his officer, when his career path is to be determined by the ministry. Under the Act, the CBI has been made answerable to the Lokpal only in those cases specifically, which are referred by Lokpal to CBI.\textsuperscript{192} It can be said that the government has merely added one more authority to the various other that the CBI is already accountable to such as CVC, Department of Personnel and Law Ministry and Lokpal will work as just one more anti-corruption agency having no primacy.\textsuperscript{193} Therefore, it is urgently needed that the investigative wing or agency should be brought fully, administratively and functionally, under control of Lokpal or the Lokpal should have its own cadre of investigators.\textsuperscript{194} It is provided in the Act that the Lokpal will have powers of superintendence over the CBI. But such powers are meaningless without instruments to ensure actual administrative control.\textsuperscript{195} The Act states that the transfer of CBI officers investigating cases referred by the Lokpal can be done only after the approval of Lokpal\textsuperscript{196}. It ensures only partial administrative control over CBI and it is not adequate to provide the required functional independence to the CBI.\textsuperscript{197} Despite this, the central government still controls the budget of CBI, appoints its officials and is the receiving authority for the annual confidential reports of senior CBI officials thereby

\textsuperscript{189} \textit{Ibid.} at 11
\textsuperscript{190} \textit{Ibid.}
\textsuperscript{191} \textit{Ibid.}
\textsuperscript{192} The Lokpal and Lokayuktas Act, 2013, section 25 (1).
\textsuperscript{193} The Lokpal and CBI, \textit{supra} note 186.
\textsuperscript{194} Sriram Panchu, \textit{supra} note 57
\textsuperscript{195} Amrita Johri, Anjali Bhardwaj & Shekhar Singh, \textit{supra} note 62 at 11
\textsuperscript{196} The Lokpal and Lokayuktas Act, 2013, section 25 (3).
\textsuperscript{197} \textit{Id.}, at 11
making them vulnerable to pressure from the government.198 It would have been much better if the CBI had been brought under the comprehensive administrative and financial control of Lokpal,199 whose own expenditure is chargeable to the Consolidated Fund of India.200 At the last, the appointment and removal of senior CBI officers should have to be made with the approval of Lokpal.201 The Lokpal should also be made the receiving authority for the annual confidential reports of the CBI officers.202 These measures were suggested by various civil society groups but ignored by the government.

Reservation within the institution of Lokpal

Minimum 50% reservation has been given in Lokpal to the persons belonging to scheduled caste, scheduled tribes, and other backward classes, minorities and women. The purpose of reservation in education and employment is to ensure the advancement and upliftment of the marginalized group in society. It is to provide special benefit by reservation to these groups to advance their educational and employment prospects. Now the question is that; what is the nexus between the representation mandated for these groups and the purpose of the Act. Whether the corruption is connected with anyone's caste, gender or religion? The result of it may be that any person belonging to these categories, when would be charged with corruption would like to pitch a special appeal before the members of that groups, to seek their sympathy or support.

Fixing the period of time for completion of trial, arbitrarily

The Act mandates that the any trial before special court will be completed within one year, extendable to another one year. The Act does not specify what would happen in those cases, where despite the best efforts, the trial does not complete within the prescribed period of two years.203 This would give an incentive for the accused to delay

198 Ibid.
199 Ibid.
200 Ibid.
201 Ibid.
202 Ibid.
203 Ibid.
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the proceedings.\textsuperscript{204} This ambiguity could lead to the proceedings being abandoned just because they could not be completed in time and the accused getting off scot-free.\textsuperscript{205}

Further, to ensure the speedy trial, the time period should also be fixed by the higher judiciary in its own proceedings related to cases of corruption.

\textbf{Discrepancy in procedure lay down for preliminary inquiry}

There is a clear discrepancy between sub-section (2) and (4) of section 20 of the Act. The section (20) sub-section (2) specifies the time period for preliminary inquiry as sixty days, while section 20 sub-section (4) provides that every preliminary inquiry shall be completed within a period of ninety days and for reasons to be recorded in writing, within a further period of ninety days from the date of receipt of the complaint.

\textbf{Establishment of Lokayuktas in states: lack of powers and jurisdiction}

It is provided under section 63 of the Act, that every state shall establish a body to be known as the Lokayukta for the state, to deal with complaints relating to corruption against certain public functionaries within the period of one year from the of commencement of the Act. It makes mandatory for states to establish a body of Lokayukta but the states legislatures are free to determine the powers and jurisdiction of the Lokayukta. Thus, the nature and type of Lokayuktas is left to the discretion of the state legislatures. The apprehension is that it can lead to be set up very weak and ineffective Lokayuktas in states. More and more cases of corruption affects the common people of India occurs within the jurisdiction of states. The corruption violates the basic human rights of the citizen of India and the absence of strong and effective body of Lokayuktas will not be able to protect the rights of people against corruption. It is argued by some scholars that the setting up of an institution of Lokpal and Lokayuktas for the

\textsuperscript{204} The Parliamentary Standing Committee Report in its 48\textsuperscript{th} report had also stated that; the Committee believes that it cannot be the intention of law that where acts and omissions by the accused create an inordinate delay in the preliminary inquiry or other factors arise which are entirely beyond the control of the Lokpal, the accused should get the benefit or that the criminal trial should terminate. For that purpose it is necessary to insert a separate and distinct provision which states that clauses 23 (2), 23(8) or other similar time limit clauses elsewhere in the Lokpal Bill, 2011, shall not automatically give any benefit or undue advantage to the accused and shall not automatically thwart or terminate the trial (48\textsuperscript{th} Report of the Standing Committee, on The Lokpal Bill, 2011, 09/12/2011).

\textsuperscript{205} Amrita Johri, Anjali Bhardwaj & Shekhar Singh, \textit{supra} note 62 at 11
country as a whole by one statute of Parliament will violate the federal principal of Constitution and Lokayuktas can only be created by state legislature since it has jurisdiction over ministers and officers at state level.\textsuperscript{206} However this argument cannot sustain, successfully because Article 253 of the Constitution itself provides that; the Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or body. The Lokpal and Lokayuktas Act, 2013 is expressly made in pursuance of the United Nations Convention against Corruption. India has ratified the Convention on 9 May, 2011. Thus, a comprehensive law establishing the institution of Lokpal and Lokayuktas to fight against corruption at the centre and state level would be within the legislative competence of Parliament.\textsuperscript{207} Further, it can be argued very safely that Entry I in the Concurrent List is criminal law and the Lokpal is meant to enforce the Prevention of Corruption Act, 1988 which is a Parliamentary statute and criminalizes the acts of corruption throughout the country. The Prevention of Corruption Act, 1988 provides punishments irrespective of whether the offence is committed in relation to Central or State Government.

\textbf{Period of limitation}

The Act states that the Lokpal shall not inquire or investigate into any complaint, if the complaint is made after the expiry of a period of seven years from the date on which the offence mentioned in such complaint is alleged to have been committed.\textsuperscript{208} It seems to be unnecessarily restrictive, especially when, the large and complex scams are being exposed in India from time to time. Such complex scams involve high level public functionaries and unearthed only when political regime had changed. Therefore, if a complaint is accompanied with credible proof, there is no reason why it should not be examined by the Lokpal.

\textsuperscript{206} Ibid.
\textsuperscript{207} Ibid.
\textsuperscript{208} The Lokpal and Lokayuktas Act, 2013, section 53 reads: The Lokpal shall not inquire or investigate into any complaint, if the complaint is made after the expiry of a period of seven years from the date on which the offence mentioned in such complaint is alleged to have been committed.
Improper mechanism for complaints of corruption against Lokpal and its staff

The President can make a reference on the ground of misbehavior to Supreme Court against chairperson or a member of Lokpal on the petition signed by at least one hundred members of Parliament. In this regard, civil society group had suggested that the ordinary citizens also be empowered to make complaints against members of Lokpal but it was not accepted by the Select Committee. The Select Committee in its report has noted that it was felt that “empowering citizens to approach the Supreme Court directly would result in flooding the Supreme Court with large number of petitions”. Further, it is provided in the Act that the Lokpal would itself deal with complaints of corruption against its own staff. It is against to the principle of that the all complaints of corruption should be dealt with by an independent institution or body.

Workability of Lokpal

Under the Lokpal and Lokayuktas Act, 2013 all public servants belonging to group C and group D are covered by CVC. There are near about 30 lakh public servants of these groups. The Act does not specify that how a CVC, located in Delhi would receipt complaints, conduct preliminary inquiries and exercise superintendence and issue directions on investigations against lakh of employees who are spread across thousands of post offices and manned railway crossings, and in the villages of India.

The inclusion of non-governmental organization

The Lokpal and Lokayuktas Act, 2013 envisages that an officer of a NGO which receives money from the government or public or foreign sources is deemed to be a

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209 The Lokpal and Lokayuktas Act, 2013, section 37.
210 Interestingly, the Standing Committee, has accepted this suggestion and recommended in their report that: “the committee recommends that clause 8 (1) (iv) be added in the existing Lokpal Bill, 2011, to provide, specifically, that anyone can directly approach the apex court in respect of a complaint against the Lokpal (institution or individual member) and that such complaint would go through the normal initial hearing and filter as a preliminary matter before the normal bench strength as prescribed by Supreme Court rules, but that if the matter is admitted and put for final hearing, the same shall be heard by an apex court bench of not less than five members. It is but obvious that other consequential changes will have to be made in the whole of section 8 to reflect the addition of the aforesaid clause 8 (1) (iv). (48th Report of the Standing Committee, on The Lokpal Bill, 2011, 09 /12/ 2011), para 16-16A.
211 Select Committee Report, para 14.1 as quoted by Amrita Johari, supra note 62 at 13.
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public servant and hence, he is under the purview of Lokpal. NGO’s are not part of the structure of governance. They do not have the power of decision making. They influence the decision making process, consequently, corruption takes place. It does not mean that they are equal to official organs of state. Dishonesty in running the affairs of an NGO should certainly invite penal action. But it should be by way of deregistration, denial of tax exemptions, inquiry and remedial action under statutes governing societies and trusts. The Lokpal is designed to combat high-level official corruption. The Lokpal is not meant to have the same catchment area as the Prevention of Corruption Act. There are huge numbers of NGO's running in India. The Lokpal will then not be able to focus on political and bureaucratic corruption.

Lokpal cannot take action **suo moto**

The Lokpal will take action only on a complaint filed before it. He cannot take action **suo moto**. After the receipt of complaint the Lokpal will examine whether the application contains all the particulars required or in the form and manner it is required to be filed. If the Lokpal is satisfied, about the form and content of the application it shall direct the investigation wing which will conduct the investigation into the complaint. It is noted here that under Karnataka Lokayukta Act, 1984\(^{212}\) (hereinafter is referred as K L Act) the Lokayukta or Uplokayukta is empowered to take action **suo motu**.\(^{213}\) As far as the state of Karnataka is concerned, the Karnataka Lokayukta Ordinance, 1984 was promulgated and thereafter the Karnataka Lokayukta Act, 1984 was enacted and the Act has come into force with effect from 15-01-1986.\(^{214}\) In the objects and reasons of the K.L.Act, it has been stated that the institution of Lokayukta was proposed to be set up for the purpose of improving the standards of public administration, by looking into complaints against administrative action’s including cases of corruption, favouritism and official indiscipline in administrative machinery. Thus, it is clear that the K.L.Act does not deal with only to an allegation of corruption. The allegation may be in relation to so

\(^{212}\) Act No. 4 of 1984.

\(^{213}\) B.S. Yeddyurappa v. Sirajin Bahsa (2014) Cr. L.J. 1469 at 1473 para 12 Ker

\(^{214}\) *Id.*, para 25
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many other forms of abuse of public office, lack of integrity, favouritism etc. 215 Therefore, the Karnataka Lokayukta has jurisdiction to enquire into complaints not only involving allegations of corruption but also allegations involving other types of misconduct and maladministration. 216 The object of the K.L Act is to uphold purity in administration. 217 The Lokpal and Lokayuktas Act, 2013 does not confirm such wide jurisdiction upon Lokpal in India.

The Lokpal has not given constitutional status

The institution of Lokpal which has to be established under the Act has not been given constitutional status. A pure statutory body is weaker than a constitutional body and therefore only a statutory body of Lokpal cannot be a substitute for anti-corruption laws. Under the constitutional scheme we have a strong and independent Election Commission of India. Democracy, which implies free and fair election, is a basic feature of Constitution. Under the Constitution the Election Commission of India has assigned a constitutional duty for conducting free and fair election. Despite of facing so many challenges from political parties, the Election Commission of India has proven its ability for conducting free and fair election in India. As far as problem of corruption is concerned, and to tackle it effectively, a National Commission against Corruption a kin to the Election Commission of India should be established.

In this regards, Hong Kong provides a useful model for an Independent Commission against Corruption (ICAC). The OECD 218 has explained the procedure for investigation and prosecution in the cases of corruption which is adopted by the Hong Kong Independent Commission against Corruption. It is as followed:

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215  Id., para 67
216  Id., para 108
217  Ibid.
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i. ICAC Report Centre receives a complaint (by individuals, legal persons, ICAC regional offices or by other governmental departments) about corruption;

ii. The complaint is examined by ICAC and categorized with a view to pursue or not pursue further action;

iii. For complaints with further action recommended, investigation will be carried out by ICAC’s Operations Department;

iv. For complaints with substantiated evidence, relevant details will be submitted for the institution of prosecution to the secretary for justice, head of the Department of the Justice of the Hong Kong Special Administrative Region Government;

v. Prosecution of corruption will be conducted by the two ICAC sections (public sector and private sector corruption) of the Commercial Crime and Corruption unit, Prosecution Division, Department of Justice. It advises ICAC and handles its prosecutions;

vi. Report will be subsequently made to ICAC’s operation Review Committee.

Lokayuktas in states

The Lokpal and Lokayukta Act, 2013 makes it mandatory to establishment of a body of Lokayukta in every state. The 12 states already have enacted the Lokayukta laws in India. The states are Orissa, Maharashtra, Rajasthan, Bihar, Uttar Pradesh, Madhya Pradesh, Karnataka, Haryana, Chhattisgarh and Uttaranchal.219 Left states of India would be established the institution of Lokayukta within the period of one year from the date of commencement of Lokpal and Lokayuktas Act, 2013. The above state Acts does not follow any uniform pattern. In some of states, the task assigned to the institution of Lokayukta is to look into cases of corruption as well as maladministration. In other some states the task assigned to Lokayukta is confined only to mala administration. Thus, there is no uniform pattern followed in states in this respect. In a conference of Lokayuktas

219 Jain, supra note 8 para 3 at 931
draft of a model Act was finalized expecting that all states will adopt the same by amending their respective state Act. But this has not happened. The Lokpal and Lokayuktas Act, 2013 also does not make any provision in this regard. Speaking generally, the Lokayuktas under the States Act is a retired judge of Supreme Court or retired Chief Justice or Judge of a High court. His appointment is made by the Governor after consultation with Chief Minister, Leader of Opposition and concern Chief Justice of High Court. The term of appointment is for 5 or 6 years. In some states the provision is also made for appointment of Uplokayukta to reduce the workload of Lokayuktas. But the complaint against ministers and officers of the rank of secretary are enquired into by the Lokayuktas. After enquiry, if it is found that some action is required to take against officer, then the report is to be submitted to government for same. If the recommendation of Lokayukta is accepted by government, a full-fledged departmental enquiry is to be held against concerned officer and he would be punished according to rules applicable to him in such enquires. But the recommendations of Lokayukta are not binding upon the government and the tradition to honor the recommendations of Lokayukta has not yet developed in Stats of India. In same states like Karnataka and Madhya Pradesh, the Lokayukta have assistance of police establishment. Such police establishment functions under the superintended of Lokayukta. The Lokayukta can direct police investigation against ministers or officers. If charges are established, the Lokayukta can submit a report for grant of sanction. After obtaining the grant of sanction from competent authority, the Lokayukta police will file charge sheet in competent court. In the case, \textit{M.P. Special Police Establishment v. State of M.P.} Supreme Court held that the Governor may act independently in the matter of grant of sanction for prosecution against the Chief Minister or any minister or even ex-minister also. In these matters, there is real danger of bias in rendering of opinion by Council of Ministers. In case, \textit{Justice K.D. Mahapatra v. Ram Chandra Nayak}, Supreme Court held that the functions of Lokayuktas are of utmost importance to expose the practice of maladministration and to maintain the unpolluted administration within states. The investigation by Lokayukta is quasi-judicial

\footnotesize{\textsuperscript{220} \textit{Ibid.}}

\footnotesize{\textsuperscript{221} (2004) 8 SCC 788 at 799-800}

\footnotesize{\textsuperscript{222} (2002) 8 SCC 1, para 12 : AIR SC 3578}
in nature. The record of Lokayuktas organizations is not very impressive in tackling maladministration and corruption. But there are number of instance, where ministers had to resign on the report of Lokayukta. There is need to fill the lacunae in state's enactment, for Lokayukta through a comprehensive nationwide enactment. Despite number of short coming in states enactments, the Lokayuktas in some states has achieved greater success against corruption. In case *Andhra Pradesh Lokayukta/Up-Lkayukta, A.P. & other v. T. Ramasubba Reddy & Another*[^223] the Hon'ble Supreme Court has opined that the legislative intent behind the enactment is to see that the public servants covered by the sweep of the Act should be answerable for their actions, so that the authorities under the Lokayukta worked as real Ombudsman for ensuring the people’s faith in working as public servant is not shaken. The authorities under the Lokayukta are meant to cater the needs of the people at large with a view to see that public confidence in the working of the public bodies remains intact.

**Concluding remarks**

Corruption has spread like a virulent epidemic in the genetic code of Indian society. No one can ignore the basic truth that no magic wand or special button has been invented which can eliminate or reduce the problem of corruption within a short time. There is need to put in place a holistic and multi-pronged approach to fight against corruption. In working of anti-corruption institutions, high level of professionalism and objectivity is must. Constitutional status should be conferred upon the institution of Lokpal. No doubt, the Lokpal and Lokayuktas Act, 2013 is a positive step to fight against corruption, subject to the weakness described above. If the Act is properly implemented, it may provide a significant deterrent of corruption, especially the high level of corruption that seems to have become increasingly common in India.

[^223]: [(1997)] (9) SCC 42