

Can Corruption be Checked by A Lokpal Act Only ?

Madhubrata Mohanty

Though the concept of Lokpal is not of recent origin, but as it is being discussed on such a large scale for the last two years, it was never before. The concept of 'Lokpal' has been in circulation for more than four decades. Yet it is confined within the bounds of Commission reports, Parliamentary debates, researchers and academicians. However, even after so many hue and cry in the newspapers and television channels, very few would be able to explain the meaning and significance of the office of the Lokpal.

Corruption in public life and administration is fatal to economic growth. Corruption also erodes the authority of the state, promotes crime and violence, and undermines the rule of law and the very foundations of a democratic polity. The issue of corruption in India merits consideration as a national issue at least on a par with secularism, stability, reservation in services, political empowerment of women, etc. The late Jaya Prakash Narayan championed the fight against corruption as a national and priority issue. However, sometimes wrong priorities focusing non-issues and divisive factors by some leaders on the national agenda lead to negative consequences. The concept of establishing an independent body to look into the citizens' grievances in India dates back to the year 1952, when for the first time it was discussed in the

Parliament during a discussion on the Prevention of Corruption Bill. Seven years later the need for Ombudsman type of institution in India was effectively articulated by the then Chairman of the University Grants Commission and former Minister of Finance, Shri. C. D. Deshmukh, who observed that 'an uneasy public hears of nepotism, high-handedness, gerrymandering, feathering of nests through progeny, and a dozen other sins of omission and commission, and yet is helpless for lack of precise data, facts and figures, evidence and proof'.¹ He even came forward to make a beginning by lodging half a dozen complaints if a high-level, impartial standing judicial tribunal to investigate and report on complaints or lying of information was set up.

Again regarding the need of an independent agency to look into the grievances of citizens was highlighted by M.C. Setalwad, the then Attorney General of India, in the Third All India Law Conference held on 12-14th August 1962. However it was the relentless effort of the great Parliamentarian Dr. L. M. Singhvi who fought rigorously for setting up of an Ombudsman type of institution in India. Dr. Singhvi said that 'the institution of Ombudsman would enable the citizen to effectively ventilate his grievances; that the question hour in Parliament and writing letters to Ministers are no substitute for it; that the available

judicial remedy is not adequate as the courts are hide-bound by limitations of procedures and technicalities; that through it Parliament would effectively function in individual cases; and that it would ensure independent impartial justice in matters of administrative excesses in individual cases'.² Thereafter, Dr. Singhvi made several efforts to make the Government establish the Ombudsman, but failed. At this time Prime Minister Jawaharlal Nehru in his address to the All-India Congress Committee at Jaipur (November 3, 1963) observed that 'while the system of Ombudsman fascinated him, since the office would have overall authority to deal with charges even against the Prime Minister and would command respect and confidence of all, he, nevertheless, felt that its introduction was beset with difficulties in a big country like India.³

Subsequently, Shri P. B. Gajendragadkar, the then Chief Justice of India, raised the issue of Ombudsman and he commended for careful examination of the idea of an independent authority for the redress of public grievances.⁴ The Provincial Bar Association of Madras supported the creation of the institution of Ombudsman in their meeting held in October 1963. A number of other Committees also like the Committee on Prevention of Corruption (1962), Administrative Reforms Commission of Rajasthan, Special Consultative Group of Ministers of Parliament, Administrative Reforms Commission [ARC] (1966 and 2007), the National Commission to Review the Working of the Constitution, all have recommended the setting up of the institution of Ombudsman or Lokpal. The Administrative Reforms Commission [ARC] set up in 1966 under the Chairmanship of late Shri Morarji Desai have recommended the idea of setting up two types of Ombudsman institutions, namely (1) the Lokpal [protector of people) and (2) the Lokayukta [commissioner of the people]. As per the recommendation of the ARC, the Lokpal was

expected to deal with the complaints against the Ministers and the Secretaries of government posted at the Centre and in the States, whereas the Lokayukta in each State and one for the Centre to look into the complaints against public officials other than Ministers and Secretaries to the Government.

In August, 1969, in the debate before the Lokpal Bill was passed in the Lok Sabha, the only time it went that far, one Swatantra Party member of Lok Sabha from Kalahandi in Odisha Shri P.K. Deo, claimed that the idea of a Lokpal was rather an old concept, nearly about 50 years. He further said that it was his party which demanded for an ombudsman-type of institution to check corruption at its national convention held at Patna in 1959 and that it was reiterated at every national convention after that. "The institution of the Ombudsman is one of the main planks of the Swatantra Party platform and we have been agitating for it,"⁵ he declared proudly.

The recent protests over the immediate need for the enactment of a Lokpal Bill by Parliament to tackle corruption at the central and state levels have led to a public debate on the issue. This is not the first instance of the idea of a Lokpal being instituted to tackle grievances (corruption in financial matters and accountability of public officials) of individual citizens against public officials. The Lokpal Bill was first introduced in Parliament in 1968 and since then has been introduced in Parliament on 8 subsequent occasions, the last time being on August 4, 2011.

Need for Establishment of Lokpal

The need for the establishment of any institute definitely depends upon a specific and pertinent cause. Likewise, the need for establishment of the institute of Lokpal is the outcome of the issue of rampant growth of corruption in almost every sphere. It is not that

the evil of corruption is of recent origin, rather is as old as governance. In fact, when the question of governance comes, the possibilities of misgovernance by the rulers become more visible. Regarding corruption in governance even, Kautilya in his Arthashastra, has described the king as a servant of the state having no personal likes and dislikes and rather following the likes and dislikes of the servants means his people. Kautilya's treatise on governance says that the gods, who failed to bring the people under their control through benevolence, assigned the duty of protecting people to a king in human form after taking the qualities of beauty, lustre, prowess, victory, renunciation and restraint from the Moon, the Sun, Indra, Vishnu, Kubera and Yama respectively. When the king insisted upon obtaining the help of the law (dharma) for fulfilling his task of protection, the gods created the coercive authority (danda) of the ruler. The Danda, here, is the cause of dharma and the king who knows this should inflict danda even upon his guilty father. Thus, the theory of divine creation of the temporal ruler does not make him immune to the use of danda or coercive authority even upon himself in person.⁶ Kautilya points out how corruption was rampant amongst the administrative officers and the law enforcers of his time and how it affected the treasury. He writes in the Arthashastra. "All undertakings depend upon finance. Hence foremost attention shall be paid to the treasury. Public prosperity, rewards for good conduct, capture of thieves, dispensing with the service of too many government servants, abundance of harvest, prosperity of commerce, absence of troubles and calamities, diminution of remission of taxes, and income in gold are all conducive to financial prosperity."

Kautilya further observes that for those who guard the treasury, the temptation to be dishonest is almost a natural instinct. He says, "Just as it is impossible not to taste the honey or

the poison that finds itself at the tip of the tongue, so it is impossible for a government servant not to eat up at least a bit of the king's revenue. Just as fish moving under water cannot possibly be found out either as drinking or not drinking water, so government servants employed in the government work cannot be found out while taking money for themselves.

"It is possible to mark the movements of birds flying high up in the sky; but not so is it possible to ascertain the movement of government servants of hidden purpose".⁷

Corruption in India has been a problem ever since the country had been having a multilayered administration by officers, ministers and other administrative chiefs. The corruption problem in ancient India, coupled with bribery, kept infesting the society more and more in an increasing rate. This is quite clear from the way the contemporary writers like Kshemendra and Kalhana, who lived in 990-1065 BC, have condemned the government officials, as well as other employees of different levels, in their celebrated works.⁸ Kshemendra has advised the king to remove all the officials, ministers, generals and priests from office with immediate effect, who were either taking bribes themselves or have been indulging in corruption in some other way. Yet another work by Kshemendra, called Narmamala, depicts corruption, bribery spreading fast like rampant maladies. He also found an answer to the much discussed question how to stop corruption in India of his time; he has explicitly addressed the contemporary intelligentsia to step forward and shoulder the responsibility of purging their folks.

Though Ombudsman or Lokpal was intended to look into maladministrations and misuse of official powers, there has been a shift in this approach. Increasingly it is felt that the Ombudsman should also look into allegations of

corruption and bribery. Particularly in India there is a demand for an agency, which will curb corruption.

The objectives of the institution of Ombudsman are to improve the quality of administration and to provide a mechanism for individuals to obtain redress by:-

- (a) identifying instance of defective administration through independent investigations
- (b) by encouraging agencies to provide remedies for members of the public affected by defective administration.
- (c) identifying legislative, policy and procedural deficiencies, and encouraging systematic improvements to overcome those deficiencies; and
- (d) contributing to advise to the government on the adequacy, effectiveness and efficiency of the various means of review of administrative action.⁹
- (e) In general the need for establishment of an institution like Lokpal is required for three reasons :-

Firstly, The major source of grievance of the public is the discretionary powers enjoyed by the public officials. In many cases neither these powers are codified nor is there any check if it is misused. The presence of Lokpal in itself will act as a deterrent to the official. If the public official knows that his decisions relating to the citizens will be subject to a review by the Ombudsman, he will think twice before using his powers arbitrarily. As such the Ombudsman or Lokpal will act as citizens' defender. As rightly observed by R. K. Dhawan, the usefulness of new institution (Ombudsman) will lie much more in what it prevents from happening than in the grievance it redresses.

Secondly, corruption is so deep rooted in our surroundings that there is a general feeling among the citizens that all public officials are corrupt. The Lokpal through his investigation will try to correct this misconception. Again by weeding out frivolous and vexatious complaints, the Lokpal will also try to send a message to the public officials that here is an institution, which will protect them from baseless allegations, thus acting as a protector of the officials also.

Finally, though not directly, but indirectly the Ombudsman will help in improving the administrative procedures. While redressing the grievances of the citizens, if the Ombudsman will feel that some systematic changes are required, he may suggest to the Government to bring in new legislations and procedures or amend the existing ones.

The main advantages of the Ombudsman were summed up as follows by the U. N. Seminar on judicial and other Remedies against Abuse of Administrative Authority:-

- (a) The Ombudsman is not only an instrument of Parliament for supervising the administration but also a protector of the rights of the individual. The institution not only affords a fulfillment of the sense of justice and fair play inherent in every individual but also provides supervision on behalf of the people of the day-to-day activities of their government even if the government is elected by the people at specified periods.
- (b) There is the principle of impartial investigation by an authority entirely independent of the administration.
- (c) An investigation can be started by the Ombudsman not only on a complaint by an individual but also on his own initiative as a result of information he might acquire from inspections, press reports or other sources. Courts, on the

other hand, are seized of a case only upon complaint by the interested parties.

(d) The investigation by the Ombudsman is conducted informally. In the investigation of complaints, the Ombudsman has free access to all the files of the administration and he can demand explanations from the officials or authorities concerned. Administrative tribunals and courts on the other hand are bound by formal rules in hearing cases and have more limited powers of inspection.

(e) The Ombudsman has considerable flexibility in the form of action which he can take. In a given case various forms of actions are open to him. If after investigation he finds that an official has handled a case wrongly or unjustly or made an erroneous or improper decision, the Ombudsman can recommend that proceedings be instituted against such an official or he may administer a reprimand and include the case in his report to Parliament. His intervention may also take the form of persuasion instead of a critical report.

An independent institution like Lokpal or Ombudsman is necessary because the existing government machinery is not adequate to deal with complaints from the public. Secondly, a complaint is generally examined by the same person against whose decision (or the decision in which he had a hand) it is made. In the normal channel there are no time limits within which citizens' grievances are to be redressed.

The Administrative Reforms Commission advanced the following four important reasons for the establishment of Ombudsman:

1. The Ombudsman will help to arrest deterioration in the people's faith and confidence in the administration and in the political executives, by providing independent, impartial and effective channels for redress of citizens' grievances. Such

faith and fair amount of satisfaction with the administration are of utmost importance for the success of Indian democracy.

2. The institution of Ombudsman would not only serve as an impartial forum of enquiry against acts of maladministration and corruption, but also ensure speedy and cheap remedy to the aggrieved.

3. The new machinery, by investigating complaints, would help correct the current exaggerated notions of corruption, inefficiency and lack of fair play in higher quarters in government. Allegations without leading to enquiries are distorting the image of administration and political executives. An independent machinery will help to redress the citizens' genuine complaints, to sort out the unjustified complaints and to protect the public officials in the right exercise of discretion.

4. The very existence of the institution would act as a deterrent to acts of maladministration. The new machinery is vital to all other reforms which the Commission may recommend, in as much as it would establish a built-in mechanism to make the administration continuously responsive to the citizens' genuine difficulties and needs. It will release new forces and pressures for reform.

The Lokpal Bill as proposed by the Government only includes the higher bureaucracy and the elected representatives while leaving both the judiciary and the Prime Minister out of the ambit of Lokpal. In contrast the Jan Lokpal proposes to bring all these persons i.e., the judiciary, bureaucracy and elected representatives within the ambit of one overarching body. It also seeks to include grievance redressal and protection to whistleblowers within the same Act.

At the outset, it is high time to discuss the problems regarding the practical difficulties to be faced by the institution :-

1. that setting up only one institution is not the answer to the systemic corruption that exists in India today. Because there are about 42 lakhs Central Government employees in contrast as of date and to address the corruption within this one category of government servants itself (excluding judiciary and elected representatives), definitely runs the risk of the Lokpal being burdened with huge backlog of cases.

2. It also has the disadvantage of placing too many powers in the “supposed infallibility” of one institution.

In this context, it is necessary to understand some of the points mentioned in the bill drafted by Aruna Roy led NCPRI (National Campaign for People’s Right to Information):- First and foremost, NCPRI focuses on a “Lokpal Basket of Measures” as opposed to one sacrosanct institution that is being proposed by the other bills. The logic of having one powerful institution is borne out of the skepticism that a single institution might become too unwieldy and powerful to tackle corruption effectively at levels of the government. The measures are a mixbag including strengthening of existing institutions as well as building new institutions. On one hand, it supports the Lokpal Bill and the legal creation of an independent body but it purports to do so by equally strong simultaneous measures by strengthening of the already existing institutions.

Corruption as it exists in India today permeates every branch of the government as well as corporate sectors. It is necessary to recognize that the ambit of corruption in India covers the bureaucracy (both State and Central) – at both the higher and lower levels, the judiciary at all levels and the elected representatives of the people (Central, State and District level) and even the private sector. It is through this prism that the measures proposed by the NCPRI should be perceived which recognizes that corruption as it

exists in India today cannot be solved by a single approach and requires a multi-pronged strategy at different levels of the government.

It envisages strengthening of the Central Vigilance Commission as well as the State Vigilance Commission to tackle corruption in the middle level and lower bureaucracy. The Central Vigilance Commission as of date lacks the adequate power to investigate cases of corruption and it is proposed that the CVC Act be amended to give the body a separate prosecution and investigative wing. It will co-exist with the proposed Lokpal Body as proposed by the Jan Lokpal Bill whose primary focus will be handling corruption cases of elected representatives and “Group A” officials of the Central Government.

So far as judiciary is concerned, the NCPRI bill leaves the judiciary out of the ambit of the Lokpal, and focuses instead on strengthening the Judicial Accountability and Standards Bill which is pending in Parliament, as the bill will cover both professional misconduct and corruption simultaneously. In fact, this will have a dual impact i.e. preserving the independence of the judiciary by keeping it separate from the legislature and the executive and also ensuring that corruption at all levels of the judiciary is tackled effectively. This provision addresses the concerns voiced by both the proponents of the Government sponsored bill as well as the Jan Lokpal Bill.

Another important aspect of the NCPRI Bill is that the grievance redressal mechanism should be tackled by a separate body i.e. Public Grievance Commission instead of being covered within the ambit of Lokpal. The Commission will tackle corruption from a conceptually different angle i.e. the delivery of public services.

The NCPRI Bill has also emphasized on another proposal which has been hitherto overlooked i.e. regarding the position of the whistleblower which is covered under the Public

Interest Disclosure and Protection of Persons making the Disclosure Bill, 2010. The previous version of the government bill was perceived as too weak by many civil society groups has recently got a fillip from a Parliamentary Standing Committee which has recommended the inclusion of ministers, lower and higher judiciary, armed forces, security and intelligence agencies under the ambit of the Public Interest Disclosure and Protection to Persons Making Disclosures Bill, 2010. To protect the identity of the complainant, a foolproof mechanism under the ambit of the bill is also being discussed, because without it the anti-corruption architecture in India will lack a vital link in the process to tackle corruption. Another contentious area for the Public Interest Disclosure and Protection of Persons making the Disclosure Bill, 2010 is that on matters of protection of whistleblowers or even taking the requisite action on the basis of their complaints, the implementation agency i.e. the Central Vigilance Commission has been accused in the past of being inefficient. The question of strengthening the CVC or instituting a new body within the proposed bill is also another question that needs to be considered.

However, the question which has drawn the most polarized reactions from different groups is regarding the inclusion of the Prime Minister within the ambit of Lokpal. At the outset, it is necessary to understand certain things that though the Prime Minister too is a public servant and all countries which have an ombudsman like body in their governance structure have brought the Prime Minister under their ambit, but at the same time, it is also highly essential to understand the importance of the position and function performed by the Prime Minister in a parliamentary democratic set up. In reality it is a fact that the functions of the Prime Minister on issues of foreign policy and some other matters, the need for immunity are a pre-requisite.

Now it is high time to move with caution and consider all divergent views expressed by both the government and members of the civil society, as the bill which will eventually emerge is not only about tackling corruption in financial matters but also about how it can strengthen the vitality of institutions critical to the delivery of public services thereby providing a strong foundation for a vibrant and healthy democracy, otherwise it would simply be another addition to the bulk of legislations that already exist.

Footnotes :

1. Shri. C. D. Deshmukh, in his lecture delivered on 11th July 1959 at Madras.
2. During the debates in the Lok Sabha for demands for the grants of Law Ministry, on April 3, 1963.
3. Quoted in 'Lokpal : Ombudsman in India' M. P. Jain, First Edition 1970, page 2.
4. Justice Shri. P. B. Gajendragadkar in his analysis of the 'Role of Administration in a Democratic Welfare State'.
5. In the 1969 Lok Sabha Debate on the introduction of the Lokpal and Lokayukta's Bill.
6. Indian Idea of Good Governance: Revisiting Kautilya's Arthashastra" by Dr. Sanjeev Kumar Sharma.
7. Chapter IX. "Examination of the (Conduct of Government Servants)" in Book-II, "The Duties of Government Superintendents" of the Arthashastra of Kautilya).
8. Kshemendra in his famous book "Desopadesha"
9. As explained by the former Australian Commonwealth Ombudsman, Dennis Pearce.

Madhubrata Mohanty, Asst. Professor, SOA National Institute of Law (SNIL), Bhubaneswar.