

ANALYZING THE SYSTEMATIC BARRIERS INVOLVED IN IMPLEMENTATION OF OMBUDSMAN IN INDIA

AUTHOR – JOANNA EVANGELIN, STUDENT AT THE TAMIL NADU DR. AMBEDKAR LAW UNIVERSITY, TARAMANI, CHENNAI

BEST CITATION – JOANNA EVANGELIN, ANALYZING THE SYSTEMATIC BARRIERS INVOLVED IN IMPLEMENTATION OF OMBUDSMAN IN INDIA, *INDIAN JOURNAL OF LEGAL REVIEW (IJLR)*, 4 (4) OF 2024, PG. 89-93, APIS – 3920 – 0001 & ISSN – 2583-2344.

ABSTRACT

This paper talks about the challenges that are involved in implementation of Ombudsman system in India. The Ombudsman system in India plays a critical role in ensuring transparency, accountability, and justice within public administration and various financial sectors. The Ombudsman has the authority to operate as an independent body where they receive complaints from the public which entails issues such as poor management, corruption and complaints against government entities and other financial institutions including the banking as well as the insurance sector, the objective of the complaint mechanism is to facilitate a more efficient and cheaper system of grievance redressal, but this may not be possible because of bureaucracy, public ignorance, resource scarcity and others. This paper seeks to explore such constraints by way of case studies & secondary data and study about the effects they have on the functioning of the Ombudsman system of India. This article has also looked into some potential reforms to help improve the ombudsman institutions and enhancement of the Ombudsman as a defender of the citizen's rights.

Keywords: Ombudsman, India, grievance redressal, public administration, systemic barriers, Lokpal, accountability.

Introduction:

The concept of Ombudsman has originated from Sweden, a Scandinavian state, in 1809. Ombudsman is a public official appointed to investigate the individual's (citizen's) complaints and the grievances against the public authority. The ombudsman is a separate body that acts as a institution that makes sure that the rights of the citizens are protected and acts as a check and balance for the governmental power and makes sure the rule of law is upheld. Ombudsman in administrative law stands as a guardian of the individual rights and makes sure that the authorities at fault are held responsible and accountable for their

actions and there is transparency in governance and improvement in the functioning of the state. In India, the idea of an Ombudsman has been in discussion since the 1960s, with the introduction of the Lokpal and Lokayuktas, specifically targeting corruption and maladministration.

The Lokpal and Lokyukta Act 2013, was passed as a step towards addressing corruption in public life. The Lokpal at the central level and the Lokyuktas at the state level are meant to investigate the complaints that are presented by the citizen about corruption and maladministration. Despite the enactment of these laws there is various systematic barriers

as to the legal, political, bureaucratic, and structural challenges that acts as a hindrance in the effective functioning of the Ombudsman in India.

Origin and History:

As stated above the origin of the concept of Ombudsman originated in 1809 with the official inauguration of the institution of ombudsman in Sweden, following the Second world war the institution of ombudsman developed and grew more significantly, countries like New Zealand and Norway also adopted the system in the year 1962, the Great Britain adopted the institution of ombudsman in the year 1967 on the recommendation of the Whyatt Report of 1961. Through the adoption of such a system Great Britain became the first eminent democratic nation to have an anti-corruption institution. After Great Britain Guyana emerged as the first developing nation to adopt the concept of ombudsman in 1966 this concept was further adopted by Mauritius, Singapore, Malaysia and India.

In India, the former law minister Ashok Kumar Sen was the first Indian to propose the concept of constitutional ombudsman in Parliament in the early 1960s. Dr. L.M. Singhvi coined the term Lokpal and Lokayukta. In the Year 1966, the First Administration Reform Commission passed the recommendation setting up two independent authorities at the central and state levels to look into complaints against public functionaries, including the parliament as well.

The Lokpal bill was passed in Lok Sabha in 1968 but lapsed due to the Dissolution of Lok Sabha. Till 2011 eight attempts were made to pass the bill but was unsuccessful. A commission headed by M.N. Venkatachaliah, was set up in the year 2002 to review the working of the Constitution this commission recommended the appointment of Lokpal and Lokayukta. Following that a second administrative reforms commission was headed by Veerappa Moily this committee also suggested that the Lokpal needs to be established without any delay.

In the year 2011 the government formed a committee with the formed a group with the group of ministers and the former President Pranab Mukherjee the committee observed and suggested measures to tackle corruption. "India Against Corruption" was led by Anna Hazare to exert pressure on the UPA government at the centre this led to the passing of the Lokpal and Lokayuktas Bill 2013 in the both the houses of the parliament and came into force on 16th January 2014.

The Lokpal and Lokayukta Act, 2013:

The Lokayukta and Lokpal Act of 2013:

The national Lokpal was founded by the Lokpal and Lokayukta Act, and it has the power to look into allegations of corruption involving members of parliament and central government workers. Conversely, lokayuktas work similarly and are operative at the state level. Corruption allegations against public officials, including the prime minister, are handled by both the Lokpal and Lokayuktas, but with specific safeguards in place. Based on their conclusions, they carry out studies and experiments. The Act does not specify the scope of the powers, but it does permit the establishment of Lokayuktas with specific authorities in each state. As a consequence, different governments' Lokayuktas have differing powers. Additionally, the Act requires each state to create an office of the Lokpal and/or Lokayukta within a year of the Act's passage, the Lokpal and/or Lokayukta. To establish consistency, it is suggested that Lokayuktas be applied equally in each state of India. The Lokpal is composed of a chairperson and up to eight members. The membership is composed of judges in half and women, minorities, and members of SC, ST, and OBC in the other half. Under the recently passed Lokpal Act, government officials' corruptly acquired property may be taken and attached even while judicial action against them is still pending. All public officials are required by law to disclose their financial details, including the assets and liabilities of any dependents. The Whistle Blowers Protection Act was enacted as a supplementary statute to enhance this function. For public employees who come out, it also provides protection.

Structure of Lokpal & Lokayukta:

Lokpal is concerned over the central level and lokayukta is concerned over the state level. The

body the 'Lokpal' consists of a Chairperson and eight Members out of whom four are Judicial Members. The Chairperson and the Members are appointed by the Hon'ble President of India by warrant under his hand and seal and hold office for a term of five years from the date on which they enter upon the office or until they attain the age of 70 years, whichever is earlier. The salary, allowances and other conditions of services of the Chairperson are the same as that of Chief Justice of India. The salary, allowances and other conditions of services of the Members are the same as that of a Judge of the Supreme Court of India. Lokpal has two main branches in the form of Administrative Wing and Judicial Wing to discharge the functions tasked to it by the Lokpal and Lokayukta Act, 2013.

The Body of 'Lokayukta' consist of a Chairman, two judicial members and two Non-Judicial members the various wings of the Lokayukta is Judicial wing, Administrative wing and Inquiry wing. Retired Supreme Court judge Pinaki Chandra Ghose was appointed as the first Lokpal of India by a committee consisting of Prime Minister Narendra Modi and Chief Justice of India Ranjan Gogoi and Lok Sabha speaker Sumitra Mahajan and Eminent Jurist Mukul Rohatgi on 17 march 2019.

Systematic barriers involved in the implementation of Ombudsman:

- ❖ **Lack of Independence:** Ombudsman offices may not be fully independent from the government. The involvement of the ruling party in the decision making process may affect their ability to act impartially, appointment of ombudsmen may be politicized leading to bias in the investigation of the cases and the decision making process.
- ❖ **Lack of Awareness:** People are unaware of the existence and the role of ombudsman in the country as far as it concerns India. India is a vast country and has a major rural population with zero knowledge about Ombudsman, In

countries with low trust and higher amount of corruption the public may not trust the Ombudsman to act in their interest, discouraging people from using the service.

- ❖ **Challenges in Accessibility:** In countries like India with a large rural population the services related to ombudsman may not be accessible as well the lack in digital literacy can prevent individuals from filing complaints online.
- ❖ **Lack of Transparency:** Lack of transparency in the decision making and appointment of the officers creates a sense of disappointment and discourages the persons to approach the authorities.
- ❖ **Loopholes in Ombudsman:** Jurisdiction of the Lokpal included the Prime Minister except on allegations of corruption relating to international relations, security, the public order, atomic energy and space. The Lokpal does not have jurisdiction over Ministers and MPs in the matter of anything said in Parliament or a vote given there. These loopholes are to be taken advantage.
- ❖ **Utilization of Resources:** The Lokpal was allocated Rs 33.32 crore for the 2024-25 financial year. The Lokpal's budget is provided in the Ministry of Personnel, Public Grievances and Pensions' Demand No. 74 under Major Head 2062 (Vigilance) and Minor Head 00.102 Lokpal (Charged) even with this allotment the Ombudsmen offices often struggle with inadequate resources, limiting their capacity to large number of cases and ensure proper staffing.
- ❖ **Limited Jurisdiction and Authority:** Some Ombudsman offices have limited scope of authority, preventing them from addressing certain complaints or holding particular institutions accountable, even when the Ombudsman finds wrongdoing, they

may lack the legal authority to enforce decisions, relying on voluntary compliance. Legal barriers may also limit access to information needed for investigations.

- ❖ **Implementation:** The act has faced challenges in the implementation, including the delay in the appointment of the members of the Lokpal. Five years have passed since the Lokpal and Lokayuktas Act 2013 was passed by parliament, but not a single Lokpal Authority has been appointed. This indicates the **lack of political will**. The Lokpal act also called upon states to appoint a Lokayukta within a year of its coming to force. But only 16 states have established the Lokayukta.

Suggestion:

In order to tackle the problem of corruption, the **institution of the ombudsman should be strengthened** both in terms of functional autonomy and availability of manpower. Sections and clauses have to be enacted in order to prevent the ruling parties' influence in the investigation process. The government should address the issues based on which people are demanding a Lokpal. Educating people about the importance of Ombudsman and creating opportunities and creating alternatives for the filing of complaints. Merely adding to the strength of investigative agencies will increase the size of the government but not necessarily improve governance. The slogan adopted by the government of "less government and more governance", should be followed in letter and spirit. Utilization of the resources that is allotted to maximum is necessary as well as the recruitment if the Human resources needed should be done. Moreover, Lokpal and Lokayukta must be financially, administratively and legally independent of those whom they are called upon to investigate and prosecute. Lokpal and Lokayukta appointments must be done transparently so as to minimize the chances of the wrong sorts of people getting in. The

authority of the Ombudsman is legally limited which may prevent the proper investigation process. This had to be resolved by amending the acts as well as giving more powers to the Ombudsman authorities. There is a need for a multiplicity of decentralized institutions with appropriate accountability mechanisms, to avoid the concentration of too much power, in any one institution or authority. **Greater transparency, more right to information and empowerment of citizens and citizen groups** is required along with a good leadership that is willing to subject itself to public scrutiny. Appointment of Lokpal in itself is not enough. Implementation that is the appointment of the Chairperson and the members, have to be done efficiently as this would affect the functioning of the organisation overall and the delay in the appointment would lead to a major drawback in the investigation of the cases and making the people accountable.

Conclusion:

The implementation of the ombudsman has been hindered by various systematic barriers as stated above. These include the Bureaucratic Inefficiencies, political interference, lack of public awareness and lack of independence of the ombudsmen institutions. The regulatory framework often lacks the teeth required for enforcing accountability and transparency across various sectors. Furthermore, challenges in ensuring adequate funding, resources, and jurisdictional clarity limit the effectiveness of ombudsman bodies.

To overcome these obstacles, reforms are needed to strengthen the independence and authority of ombudsman institutions, enhance public trust, and create a culture of transparency in governance. Public awareness campaigns and simplified complaint mechanisms could encourage more citizens to utilize the ombudsman's services. Additionally, a focus on institutional autonomy, collaboration with civil society, and ensuring proper legislative backing are crucial steps toward creating a

robust ombudsman system in India. Only then can it fulfill its role as a guardian of citizen rights, addressing grievances effectively and fostering accountability in the public and private sectors.

Reference:

- **Ombudsman in India**–Sarojini Sharan, The Indian Journal of Political Science 32 (2), 158–174, 1971
- **Ombudsman in India**–Rajni Ranjan Jha, Indian Political System, 257, 2018
- **The “Ombudsman”: A Super Administrator or a Grievance-Man**–RB Jain, Indian Journal of Public Administration 21 (3), 511–539, 1975
- **A Study of Ombudsman System in India with Special Reference to Lokayukta in Maharashtra**–Preeti Dilip Pohekar, Gyan Publishing House, 2010
- **India’s anti-corruption authorities: Lokpal and Lokayukta**–Rajani Ranjan Jha, Indian Journal of Public Administration 64 (3), 502–517, 2018
- **The Journey of Lokpal in India: Background and Challenges**–Rajesh Bohra INTERNATIONAL JOURNAL FOR INNOVATIVE RESEARCH IN MULTIDISCIPLINARY FIELD, 130, 2022
- **indiacode.nic.in**
- **wbsche.wb.gov.in**
- **dopt.gov.in**
- **lokpai.gov.in**
- **tamilnadulokayukta.tn.gov.in**
- **nregaplus.nic.in**



GRASP - EDUCATE - EVOLVE