
UNIT 9 LOKAYUKTA*

Structure

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9.0 OBJECTIVES

After studying this Unit, you should be able to:

- Understand the evolution, need and significance of Lokayukta at the state level;
- Discuss the organisational structure of Lokayukta;
- Highlight the appointment system of Lokayukta;
- Explain the powers and functions of Lokayukta; and
- Examine the role of Lokayukta in redressal of public grievances.

9.1 INTRODUCTION

Lokayukta is an anti-corruption ombudsman organisation in the states of India. In this context, the Lokpal and Lokayuktas Act, 2013 paved the way for establishment of the institution of Lokpal at the centre; and Lokayuktas at the state levels to inquire into allegations of corruption against public functionaries, and for related matters. It is known fact that corruption is a major problem, which endangers stability and security of the nation; threatens socio-economic and political development; and undermines the values of democracy and morality. An inefficient administrative mechanism; inept handling through archaic methods of governance; lack of transparency, responsiveness and accountability in the functioning of governmental institutions; and ineffective public service delivery system affected the ultimate outcome of the governmental initiatives. It has a detrimental effect in terms of corrupt practices in administration; and becomes a natural outcome of any such system, where objectivity and rule of law are replaced by subjectivity and rule of thumb. The phenomenon of corruption has become one of the major causes for tardy progress in implementing ambitious projects and policies of the

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government, resulting in huge loss of revenue to the exchequer. The existence of corruption has become ubiquitous with corrupt practices percolating to all levels of the economy, polity and society. Thus, the First Administrative Reforms Commission (ARC) of India recommended the setting up of two special authorities as “Lokpal” and “Lokayukta” for the redressal of Citizens’ grievances.

The Lokpal and Lokayuktas Act (2013) contains a mandate for setting up of the institution of Lokayukta through enactment of a law by the State Legislature within a specified period of 365 days, from the date of commencement of Act. In this regard, the Act provides opportunity and freedom to the states to decide upon the contours of the Lokayukta mechanism in their own states.

Even much before the enactment of the Act itself, many states in India had already setup the institutions of Lokayuktas. In this unit, we will focus on the need and significance of the Lokayuktas in states. It has been observed that the structure of Lokayuktas varies from one state to other state. Thus, keeping in view the status of the Lokayuktas in states, we will discuss the appointment system, tenure, jurisdiction, organisational structure of the Lokayukta; and analyse their working.

9.2 LOKAYUKTA: EVOLUTION, NEED AND SIGNIFICANCE

The origin of Lokayukta can be traced to the Ombudsmen in Scandinavian countries. An Ombudsman is generally regarded as a person who is appointed to protect citizens against any form of maladministration. Sweden was the first country to have the institution of Ombudsman in the year 1809. The Indian government’s initiatives towards making the administrative system free from corruption and malpractices resulted in government’s creation of two anti-corruption watchdogs, that is, Lokpal and Lokayukta. In this context, it is pertinent to trace the historical journey through which these institutions have been evolved.

The first ARC recommended the setting up of two special authorities designated as “Lokpal” and “Lokayukta” for the redressal of citizens’ grievances. The two significant institutions were to be setup on the pattern of the institution of Ombudsman in Scandinavian countries, and the Parliamentary Commissioner for Investigation in New Zealand.

The Lokayukta is created as a statutory authority with a fixed tenure to enable it to discharge its functions independently and impartially as per the recommendations of the ARC. The person appointed is usually a former High Court Chief Justice or former Supreme Court Judge. The state of Maharashtra created the institution of lokayukta in 1972, followed by Rajasthan (1973), Uttar Pradesh (1975), Madhya Pradesh etc. In few states, there is a provision for Lokayukta and Up-Lokayukta (for instance in Maharashtra and Rajasthan).

The Second Administrative Reforms Commission (SARC) in its report, entitled ‘Ethics in Governance’ has recommended that the Lokayukta should be a multi-member body consisting of a Judicial Member as the Chairperson, an eminent jurist or eminent administrator with credentials as member and the Head of the State Vigilance Commission as an ex-officio member. The Chairperson of the Lokayukta should be selected from a panel of the retired Supreme Court Judges or retired Chief Justice of the High Court, by a committee consisting of the Chief Minister, Chief Justice of the High Court and Leader of the Opposition in the Legislative Assembly of the State. The same Committee

should also select the second member from amongst eminent jurists/administrators. The SARC however, does not favour the appointment of any Up-Lokayukta in the state. Further, the SARC underscores the point that the jurisdiction of the Lokayukta would extend to only those cases, which involve corruption, while the matters of general public grievances will be left outside its purview. The Lokayukta should have its own independent machinery for investigation of cases (Second Administrative Reforms Commission, 2007 <https://darp.gov.in/sites/default/files/ethics4.pdf>).

Even if the Governor is constitutionally correct, the problem might crop up before the Lokayukta of soliciting and receiving the active cooperation of the state government, especially in obtaining the required information and records for deciding on cases referred to it. Likewise, the action to be taken on the Lokayukta's recommendations would also require the state government's cooperation and support.

An amendment to the Constitution has been proposed to implement the Lokayukta uniformly across Indian states, on the lines suggested by the first ARC, to deal with the pertinent problems of maladministration and administrative injustice. After many sincere efforts, the Lokpal and Lokayuktas Act, 2013 had received presidential assent on January 1, 2014 and came into force from January 16, 2014.

The Lokpal and Lokayuktas Act, 2013

The Lokpal and Lokayukta Act, 2013 commonly referred as the Lokpal Act, seeks to provide for the establishment of Lokpal for the Union; and Lokayukta for state to inquire into allegations of maladministration or corruption against government officers. The Act extends to whole of India, and is applicable to "public servants" within and outside India.

The Lokayukta, along with the Income Tax Department and the Anti-Corruption Bureau will act as a safeguard in our democratic framework; and help people to highlight corruption cases. There is a discernible divergence in the patterns of the structure; and role of Lokayuktas in various states. In the early part of the first decade of the twenty first century, it appeared that a proposal is to adopt a common pattern for all Lokayuktas on the pattern of model legislation. The initiative, however, was blocked by the state governments. Unless the Central Government takes the lead and wins over the consent of the states, such uniformity is unlikely to materialise. Nevertheless, following suggestions given by experts in the field require serious attention:

- Former ministers and civil servants should also be covered in the legislations.
- The Chief Minister should invariably come within the jurisdiction of the Lokayukta.
- Lokayuktas should have power to start inquiries, suo moto.
- Lokayuktas should have their own independent investigation agencies or when they entrust investigations to other agencies, these should be conducted expeditiously.
- References made by the Lokayukta to the government should be accorded top priority by government officials. Those who deliberately delay in providing the required information should be punished under the law.
- A committee on the Lokayukta's should be setup to monitor the follow up of the proper implementation of the recommendation(s).

However, the Lokpal and Lokayuktas Act, 2013 was amended to include certain enabling provisions in 2016. One of the provisions states that in case of the absence of leader of the opposition party, the leader of the single largest party of the opposition in the Lok

Sabha/ Legislative Assembly would be the member of the selection committee so constituted to select the Lokpal/Lokayukta. To further ensure transparency, the public servants will have to make declaration of their assets and liabilities.

9.3 ORGANISATIONAL STRUCTURE OF LOKAYUKTA

The structure of Lokayukta does not follow a uniform pattern in all the states. Some states such as Rajasthan, Karnataka, Andhra Pradesh and Maharashtra have created the Lokayukta as well as Up-Lokayukta, while some others like Uttar Pradesh and Himachal Pradesh have created only the Lokayukta. There is no Lokayukta or Up-Lokayukta, in Jammu and Kashmir.

To assist the Lokayukta and the Up-Lokayukta, the organisation in Madhya Pradesh is divided into following four functional wings:

i) **Administrative and Enquiry Section**

The section is headed by Secretary, who is a senior IAS officer and functions as Head of the Department for entire organisation. S/he is assisted by one Deputy Secretary, Under Secretary, Accounts Officer, Section Officers and subordinate staff.

ii) **Legal Section**

To assist the Lokayukta and the Up-Lokayukta in dealing with legal matters and conducting enquiries, officers of the rank of District Judge are posted as Legal Advisors and an officer of Chief Judicial Magistrate rank is posted as Dy. Legal Advisor. They are on deputation from the High Court.

iii) **Special Police Establishment (SPE)**

The SPE is constituted for the investigation of certain offences, which affect the public administration and those falling under provisions of prevention of corruption Act that is a Central Act. It is headed by the Director General, who is in the rank of Director General or Additional Director General of Police Madhya Pradesh. S/he is assisted by the Inspector General of Police, Deputy Inspector Generals of Police, Superintendents of Police, Deputy Superintendents of Police, Inspectors and men of the other ranks. It is to be noted that the superintendence of investigation by Madhya Pradesh SPE vests with the Lokayukta.

iv) **Technical Cell**

The Technical Cell deals with inquiries of technical nature. It is headed by the Chief Engineer, under whom there are Executive Engineers, Assistant Engineers and Technical Assistants.

District Vigilance Committees

There are seven Divisional Committees in Madhya Pradesh, which enquire into the complaints referred to them by the Lokayukta or the Up-Lokayukta; and submit a report to the concerned authority.

9.4 APPOINTMENT OF LOKAYUKTA

Lokayukta and Up-Lokayukta are two independent and impartial functionaries created to investigate the actions and decisions of public servants. These functionaries are held at par with the Judges of the Supreme Court and High Court; and independent of the legislature and executive.

In states, the Lokayukta and Up-Lokayukta are appointed by the Governor. At the time of appointment, the Governor, generally, consults the Chief Justice of the State High Court, and Leader of Opposition in the State Legislative Assembly.

Qualification and Term of Office

For the Lokayukta, judicial qualifications are prescribed in the States of Uttar Pradesh, Himachal Pradesh, Andhra Pradesh, Gujarat, Odisha and Karnataka. However, no specific qualifications are prescribed in the states of Bihar, Maharashtra and Rajasthan. The term of office fixed for Lokayukta in majority of states, is of five years duration or 70 years (Himachal Pradesh) of age, whichever is earlier; and the Lokayukta is not eligible for reappointment for a second term.

Jurisdiction

At the state level, there is no uniformity in case of the jurisdiction of Lokayukta. In this regard:

- i) The Chief Minister is included within the jurisdiction of Lokayukta in Himachal Pradesh, Andhra Pradesh, Madhya Pradesh and Gujarat, while s/he is excluded from the purview of Lokayukta in the states of Maharashtra, Uttar Pradesh, Rajasthan and Bihar.
- ii) Ministers and higher civil servants are included in the purview of Lokayukta in majority of states. However, the Maharashtra has also included former ministers and civil servants.
- iii) Members of the state legislatures are included in the purview of Lokayukta in Andhra Pradesh, Himachal Pradesh, Gujarat and Uttar Pradesh.
- iv) The authorities of the corporations, companies and societies are included in the jurisdiction of the Lokayukta in majority of the states for example, Himachal Pradesh.

The Lokayukta of a state is usually responsible to the state legislature. Its annual report is presented in the legislature; and conventionally its recommendations are accepted by the House.

Check Your Progress 1

Note : i) Use the space given below for your answers.

ii) Check your answer with those given at the end of the Unit.

1) Discuss the need and significance of Lokayukta.

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2) Explain the organisational structure of Lokayukta in any state of India.

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3) Examine the jurisdiction of Lokayuktas in states of India.

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9.5 LOKAYUKTA: POWERS AND FUNCTIONS

The institution of the Lokayukta is considered as an anti-corruption agency, which is responsible for addressing citizens' grievances pertaining to corruption, nepotism, favouritism arising out of maladministration. In this context, the Lokayukta has:

- Supervisory powers, that is, powers of superintendence over and to give direction regarding matters referred for preliminary inquiry or investigation;
- Power of Search and seizure;
- Power of civil court in certain cases;
- Power to utilise services of officers of the State Government;
- Power of provisional attachment of assets;
- Power regarding confirmation of attachment of assets;
- Power related to confiscation of assets, proceeds, receipts and benefits arisen or procured by means of corruption, in special circumstances;
- Power to recommend transfer or suspension of public servant connected with allegation of corruption;
- Power to give directions to prevent destruction of records during preliminary inquiry; and
- Power to delegate. In this context, the Lokayukta may direct that any administrative or financial power conferred on it, may also be exercised or discharged by its officer (Himachal Pradesh Lokayukta Act, 2014, <http://www.bareactslive.com/HP/hp142.htm>).

On the basis of above mentioned powers, the Lokayukta undertakes following functions to improve the standards of Public Administration:

- Accepts complaint against administration from any citizen.
- Accepts grievance against the accused person or body of persons, the Lokayukta provides the chance to the complainant for defending, after duly informing her/him/them.
- The Lokayukta carry out fair and impartial investigations, based on facts against the accused person by taking the assistance of special investigating agencies.

- If the Lokayukta is satisfied with the validity of the complaint, s/he can recommend her/his proposal through written request to the competent authority.

The Lokayukta has a separate office, staff and budget, which is essential for conducting an impartial inquiry. Sometimes s/he takes the assistance of the state investigating agencies for conducting inquiries; and getting access to relevant files and documents necessary for the investigation. S/he also enjoys the power to inspect and visit government organisations, which are being investigated. However, it is significant to note that the Lokayuktas in many states except Himachal Pradesh and Uttar Pradesh (just examples) have been empowered to start the investigations based on their own initiatives.

The Lokayukta can consider the cases of grievances and allegations, just to quote examples, in Maharashtra, Uttar Pradesh, Bihar and Karnataka. However, in Himachal Pradesh, Rajasthan and Gujarat, the job of Lokayuktas is confined to investigating allegations regarding corruption; and not grievances in case of maladministration. “The Maharashtra Lokayukta Institution came into being from 25th October, 1972 and has been successful in redressing the grievances in about 60-70% of the complaints” (Lokayukta Maharashtra, <http://lokyukta.maharashtra.gov.in>).

The Karnataka Lokayukta Act gives powers to investigate; and report on allegations or grievances related to the conduct of public servants. The Lokayukta has police and prosecution wings. On receiving a complaint, the Lokayukta has powers to initiate investigation against any public servant, ranging from Group D employees to the office of the Chief Minister. In case of officials, s/he can take up cases suo moto as well. In most of the states, the Lokayukta can initiate investigations either on the basis of a complaint received from the citizen against unfair administrative action or suo moto. In case of initiation of Prosecution “If after investigation, the Lokayukta is satisfied that the public servant has committed any criminal offence, he may initiate prosecution without reference to any other authority. Any prior sanction required under any law for such prosecution shall be deemed to have been granted” (Karnataka Lokayukta, Karnataka Lokayukta Act, 1984 <http://lokyukta.kar.nic.in>).

The Karnataka Act empowers the Lokayukta and Up-Lokayukta with judicial and investigative powers and functions to investigate the decisions of the bureaucratic officials. However, certain government functionaries do not fall within the ambit of the Lokayukta and Up-Lokayukta. They are the Judges, Speaker of the Assembly, Chief Election Commissioner, Chairman and Members of the Karnataka Public Service Commission.

The Lokayukta presents consolidated report on performance, annually, to the Governor. S/he places this report with an explanatory memorandum before the State Legislature. Hence, the Lokayukta is responsible to the State legislature. “Indeed, the organization functions as an instrument of control over the executive by the legislature as its annual reports are submitted to the Governor to be laid and discussed in the State Legislative Assembly”. It is worth mentioning that from 14th February to 31st March 2018 on the basis of 2952 cases, of 2017 (Gazetted) and 2533 (Non- Gazetted) public servants were punished on the recommendations (Madhya Pradesh Lokayukta, Statistical Reports, Table 8 <http://mplokyukt.nic.in/Org-back.htm>).

For conducting inquiries, s/he takes the help of the state investigating agencies. In this process, the Lokayukta can call for relevant files and documents from state government departments. It is to be noted that its recommendations are only advisory and not binding on the government.

9.6 ROLE OF LOKAYUKTA: A CRITICAL ANALYSIS

The Reports of the Lokayuktas show that the largest number of complaints have been regarding the departments of public works, health, irrigation, civil supplies, municipalities and cooperative societies. In this regard, sometimes genuine complaints by affected citizens made to the state Lokayuktas are rejected for want of jurisdiction, anonymity and triviality. On the other hand, Lokayuktas complain that they do not get sufficient information from the government departments, and State investigating agencies. As a result, complaints filed with Lokayuktas are not cleared expeditiously; and thus, citizens do not get speedy justice.

A close look at the performance of Lokayuktas in Indian states does not create a very positive impression. In fact, in some states, the overall performance has been far from being satisfactory. One of the pertinent problems relating to its function is hindered by the single institution of Lokayukta looking after the complaints of corruption as well as dealing with maladministration issues, which negatively impacts its efficient functioning. There is so much that could have been done, and much more that should have been avoided.

The present times have witnessed the growing popularity of the institution of Lokayukta. This could be due to massive expansion of government activities; and corrupt practices. Further corruption is anti-economic growth, which affects the development; and even some corrupt government officials endanger the security of the nation. Thus, additional measures were suggested to ensure greater transparency, and probity in public dealings. In November 2012, after conclusion of the 11th All India Lokayukta Conference, as many as sixteen Lokayuktas sent following recommendations to the Government of India:

- Make Lokayukta the nodal agency for receiving all corruption complaints;
- Accord Lokayukta jurisdiction over State-level probe agencies;
- Bring bureaucrats under the ambit of the Lokayuktas;
- Accord powers of search and seizure, and powers to initiate contempt proceedings;
- Provide administrative and financial autonomy to the Lokayukta for better functioning; and
- Bring Non-Governmental Organisations (NGOs), funded by the government, under the Lokayukta's jurisdiction.

The Lokpal and Lokayuktas Act, 2013 is perhaps the only legislation in the history of independent India, which has been so widely discussed, both inside and outside Parliament and has, thus generated so much awareness in the public about the need to have an effective institution of Lokayukta to tackle corruption. However, the Act passed hitherto has many loose ends, which needs to be addressed and has numerous cross references. There are few enabling features that are missing in this law:

- No protection to whistleblowers: This was one of the main demands in the Jan Lokpal Bill. The Act has no provision for whistleblower protection. We have to have a separate law for that.
- There is only one section on Lokayukta in the Act, which states that within one year, the states shall enact the Lokayukta Act. However, there is nothing regarding

their composition, powers etc. In fact, states are free to define how their own Lokayuktas would be appointed, how they would work and under what circumstances they would serve.

- There are no provisions related to Citizen’s charter.
- There are no adequate provisions to appeal against the Lokayukta, as it cannot conduct inquiry against itself.

In the earlier sections, we have analysed the performance of Lokayuktas in various states, which has been uneven. The Lokayuktas of various states have not shown similar orientation towards their respective roles. Some have been more enthusiastic and assertive than others, while a few others have been over-cautious and conservative in interpreting their roles. A few Lokayuktas could make a mark during certain periods due to support of the state political leadership, while most have suffered on account of the apathy of state governments. It proves that the success of the Lokayukta depends upon the neutrality and personal charisma of the Lokayukta.

Check Your Progress 2

Note : i) Use the space given below for your answers.

ii) Check your answer with those given at the end of the Unit.

1) Discuss the powers of Lokayukta.

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2) Analyse the role of Lokayukta in a State.

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3) Suggest the necessary measures to strengthen Lokayukta.

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9.7 CONCLUSION

The scope of democracy and development depends, to a greater extent, on the efficiency of the government machinery. In a democracy, people should have opportunities to ventilate their grievances through an efficient and effective system of redressal. Democratic aspirations of the people and authoritarian attitude of administration produced tension between them. In this regard, common grievances of citizens against administration are identified on the basis of corruption, favouritism, nepotism, neglect of duty, discrimination, delay, and maladministration.

The entire debate on setting up a strong and robust Lokayukta is based on the touchstone of transparency and probity in public life. Best practices in public administration will be realised, only when the integrity in public services is maintained. The pertinent issue of corruption in the developing countries retards the development; thereby this unit has focused on the need for concerted efforts to remove corruption. In this unit, we have observed that the Lokpal and Lokayuktas Act, 2013 paved the way for establishment of the institution of Lokayukta at the state level. In addition, we have discussed the evolution, need, and significance of the Lokayukta. The study has highlighted on the structure, appointment, jurisdiction, functions, and role of the Lokayukta.

9.8 GLOSSARY

Corruption	: It is a form of dishonesty or criminal activity undertaken by a person or an organisation entrusted with a position of authority, often to acquire illicit benefit.
Maladministration	: It is an action of the government or bureaucratic apparatus, which can be seen as causing injustice due to administrative delay, incorrect action or failure to take any action.
Citizens' Grievances	: It refers to the complaints of the citizens due to lack of citizen's satisfaction. While the term "Grievance Redressal" primarily covers the receipt and processing of complaints from citizens. In this context, wider definition includes actions taken on any issue raised by them to avail services more effectively.

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9.10 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

Check Your Progress 1

- 1) Your answer should include the following points:
 - See section 9.2

- 2) Your answer should include the following points:
- Refer Section 9.3
- 3) Your answer should include the following points:
- The Chief Minister is included within the jurisdiction of Lokayukta in Himachal Pradesh, Andhra Pradesh, Madhya Pradesh and Gujarat, while s/he is excluded from the purview of Lokayukta in the states of Maharashtra, Uttar Pradesh, Rajasthan and Bihar.
 - Ministers and higher civil servants are included in the purview of Lokayukta in majority of states. However, the Maharashtra has also included former ministers and civil servants.
 - Members of the state legislatures are included in the purview of Lokayukta in Andhra Pradesh, Himachal Pradesh, Gujarat and Uttar Pradesh.
 - The authorities of the corporations, companies and societies are included in the jurisdiction of the Lokayukta in majority of the states for example, Himachal Pradesh.

Check Your Progress 2

- 1) Your answer should include the following points:
- Refer Section 9.5
- 2) Your answer should include the following points:
- Refer Section 9.6
- 3) Your answer should include the following points:
- Make Lokayukta the nodal agency for receiving all corruption complaints.
 - Accord Lokayukta jurisdiction over state level probe agencies.
 - Bring bureaucrats under the ambit of the Lokayuktas.
 - Accord powers of search and seizure, and powers to initiate contempt proceedings.
 - Provide administrative and financial autonomy to the Lokayukta for better functioning.
 - Bring Non-Governmental Organisations (NGOs), funded by the government, under the Lokayukta's jurisdiction.