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Golden Research Thoughts

GRT

ROLE OF LOKPAL AND LOKAYUKTA IN CURBING CORRUPTION IN INDIA- AN ASSESSMENT WITH SPECIAL REFERENCE TO THE STATE OF KARNATAKA



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ABSTRACT

Anti-Corruption agencies are necessary to curb corruption effectively. The institution of Lokpal and Lokayukta have an important role to play in the fight against corruption. This paper shall discuss about Lokpal at the central level and Lokayukta at the state level. It also discusses about the Karnataka Lokayukta and the problems it has been facing due to the recent developments relating to collusion of some of its officials and the resultant revival of Anti-Corruption Bureau.

KEYWORDS :Corruption, Lokpal, Lokayukta. Anti-Corruption Agencies.

METHODOLOGY

The Methodology used is doctrinal in nature. Information has been obtained from primary and secondary sources.

“Power tends to corrupt, absolute power tends to corrupt absolutely.”- British Historian Lord Acton

INTRODUCTION :

Prafulla Kumar Nayak says that “Corruption and its influence are in



itself a perennial spring of prodigality and of all disorder it loads us more than a million of debt, takes away vigor from our arms wisdom from our authority and credit from the most vulnerable parts of our constitution. So scrupulous honesty is rare we give and take bribes on the spheres of education, Government departments, private services, all branches of administration like trade, commerce, industries are not free from it. Most of our politicians, legislators indulge in it without qualms of conscience.”

The fight against corruption has been recently placed high on the agenda of the modern states. No Country, however, democratic is free from corruption. Corruption is a symptom of weakness in

political, social, economic and legal system.

Except for some primitive societies, no society past or present, developed or developing, communist or capital, democratic or dictator has ever remained politically or publicly immune from the vice of corruption. Being a sociological concept, the phenomenon of corruption tends to have different overtones in different societies. As a behavioural virus causing decay in the moral fiber of political and public life, corruption appears to be an eternal and universal phenomenon.

The Preamble to the United Nations Convention Against Corruption was adopted on October, 31st 2003 states that the International community “is concerned about the seriousness of problems and threats posed by corruption to the stability and security of societies, undermining the institutions and values of democracy, ethical values and justice and jeopardizing sustainable development and the rule of law, about the links between corruption and other forms of crime, in particular organized crime and economic crime, including money laundering, further about cases of corruption that involve vast quantities of assets, which may constitute a substantial proportion of the resources of States, and that threaten the political stability and sustainable development of those States, corruption is no longer a local matter but a transnational phenomenon that affects all societies and economies, making international cooperation to prevent and control it essential, that a comprehensive and multidisciplinary approach is required to prevent and combat corruption effectively, that the availability of technical assistance can play an important role in enhancing the ability of States, including by strengthening capacity and by institution-building, to prevent and combat corruption effectively, the illicit acquisition of personal wealth can be particularly damaging to democratic institutions, national economies and the rule of law”.

Corruption breeds inefficiency as incompetent people get into position by corrupt methods, it undermines democracy and good governance and also facilitates criminal enterprises such as money laundering and human trafficking. Corruption is harmful since it is anti-national, anti-poor and anti-economic development.

The role of the state in preventing corruption and punishing the corrupt has been unsatisfactory, Innumerable instances of corruption have occurred during the last 65 years post-independence in which politicians and bureaucrats were involved. Very rarely they are subject to prosecution and punishment. This is social, legal, political, administrative, ethical, moral and economic problem having multi facet and multi-dimensional angles leading to ambiguity and controversy relating to the meaning of the term itself.

A UNDP Report on Human Development in South Asia reports that if corruption levels in India are reduced to those of Scandinavian countries, investment would increase annually by 10% and GDP growth by 1.5%. Corruption adversely impacts on development, growth, investment, anti-poverty schemes, socio-economic equity, human rights, national security and finally the very legitimacy of the state itself.

Corruption is not a problem unique to India which has been struggling with corrupt governance for the last many centuries, starting with the East India Company and the British Raj, India suffered all kinds of corrupt practices, it is not to say that there was no corruption before the afore mentioned period but it was not so well organized. Since Independence India has been witnessing the growth of corruption which has reached alarming proportions in recent years.

DEFINING CORRUPTION

The Santhanam Committee on the prevention of corruption in India defines the corruption as “any improper or selfish exercise of power and influences attached to a public office or to the special

position one occupies in a public life.”

Transparency International defines corruption as “Corruption involves behavior on the part of officials in the public sector, whether politicians or civil servants, in which they improperly and unlawfully enrich themselves, or those close to them, by the misuse of the public power entrusted to them.”

Macmillan Dictionary defines Corruption as “dishonest or illegal behaviour by officials or people in positions of power especially when they accept money in exchange for doing things for someone”.

According to Concise Law Dictionary corruption is “something against law, something forbidden by law, as certain acts by arbitrators, election or other officers, trustees; an act done with intent to gain an advantage not consistent with official duty and the rights of others.

Concise Oxford English Dictionary defines Corruption as “willing to act dishonestly in return for money or personal gain.”

Lokpal in India

Citizens have to face arbitrary or unjustified decisions of the administration and there is no effective machinery to get them redressed. So there is a need for an institution like the ombudsman to redress the grievances of the citizen's. In India ombudsman is referred as Lokpal at the central level and Lokayukta at the state level. The concept of ombudsman in India is borrowed from Finland, Norway, Sweden, Denmark, United Kingdom and New Zealand. In England and New Zealand the Ombudsman is known as Parliamentary Commissioner while in USA, he is known as Inspector General for Army Affairs and Procurator in Russia.

According to Black's Law Dictionary Ombudsman is an ‘official or semi official office to which people may come with grievances against the government. The ombudsman stands between and represents the citizen before the government.”

Concise Oxford English Dictionary defines Ombudsman as “as official appointed to investigate individual complaints against maladministration, especially that of public authorities.”

The ombudsman finds its origins in the Swedish "Justitieombudsman" (ombudsman for justice) instituted in 1809. The institution has crossed the Swedish borders in the twentieth century and other Scandinavian countries have adopted it. Finland in 1919, Denmark in 1955 and Norway in 1962, New Zealand in 1962, the United Kingdom in 1967, most Canadian provinces in 1967, Tanzania in 1968, Israel in 1971, Puerto Rico in 1977, Australia in 1977, France in 1973, Portugal in 1975, Austria in 1977, Spain and the Netherlands both in 1981 and finally India has got it in the year 2013..

Features of the Lokpal and Lokayukta Act, 2013

As per Section 3 of the Lokpal and Lokayukta Act, 2013 the Lokpal will consist of a chairperson and a maximum of eight members, of which 50 % shall be judicial members, 50 % of members of Lokpal shall be from SC/ST/OBCs, minorities, and women.

As per Section 4 of the Act, The selection of chairperson and members of Lokpal shall be through a selection committee consisting of Prime Minister, Speaker of Lok Sabha, Leader of Opposition in the Lok Sabha, Chief Justice of India or a sitting Supreme Court judge nominated by CJI, eminent jurist to be nominated by the President of India on the basis of recommendations of the first four members of the Selection Committee. The Prime Minister has been brought under the purview of the Lokpal. Lokpal's jurisdiction will cover all categories of public servants. All entities receiving donations from foreign source in the context of the Foreign Contribution Regulation Act (FCRA) in excess of Rs 10 lakh per year are brought under the jurisdiction of Lokpal.

The Lokpal will have the power of superintendence and direction over any investigation agency including CBI for cases referred to them by Lokpal. The Directorate of Prosecution will be headed by a Director. The officers of CBI who are investigating cases referred to them by Lokpal cannot be transferred without prior approval of Lokpal. The Act lays down clear time lines for preliminary enquiry and investigation and trial and towards this end and provides for setting up of special courts. The Act also provides for setting up of the institution of Lokayukta through enactment of a law by the State Legislature within a period of 365 days from the date of commencement of the Act.

Lokayukta in States

In the wake of the recommendations of the first Administrative Reforms Commission, many State Governments have enacted legislation to constitute the Lokayukta to investigate allegations or grievances arising out of the conduct of public servants including political executives, legislators, officers of the State Government, local bodies, public enterprises and other instrumentalities of Government including cooperative societies and universities. By virtue of such legislation, a member of the public can file specific allegations with the Lokayukta against any public servant for enquiry. It is also open to the Lokayukta to initiate a suo-moto inquiry into the conduct of public servants.

The Lokayukta is generally a retired Judge of the High Court or the Supreme Court and normally appointed for a five-year term on the basis of a joint decision involving the Chief Minister, the Chief Justice, the Speaker of the House and leader of the Opposition. However, in many states, the Lokayukta does not have an independent investigating authority at its disposal and is therefore dependent on Government agencies to carry forward its investigations. The Maharashtra and Orissa Lokayukta assume more the character of a grievance redressal organization rather than an Ombudsman for cases of corruption.

Only 19 Indian States have Lokayukta they are Andhra Pradesh, Assam, Bihar, Chhattisgarh, Delhi, Goa, Gujarat, Haryana, Himachal Pradesh, Jharkhand, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Orissa, Punjab, Rajasthan, Uttarakhand and Uttar Pradesh.. Maharashtra was the first State to introduce the institution of Lokayukta through The Lokayukta and Upa-Lokayuktas Act, 1971. There are no Lokayuktas in Arunachal Pradesh, Jammu, and Mizoram, Nagaland, Sikkim, Tamil Nadu, Tripura, Meghalaya and West Bengal. There is no uniformity in the provisions of the enactments, with fundamental differences regarding their functions.

While in all states the Lokayukta deal with issues of corruption, in some, they also deal with other grievances. In a few states, a wide range of functionaries including Chief Ministers, Vice Chancellors and office bearers of cooperatives have been brought within the Lokayukta's purview; in others, the coverage is quite restrictive.

In some States, investigative powers are vested in them with an investigation machinery attached. Some also provide for powers of search and seizure in the course of the investigation. The expenditure on the Lokayukta is, in some States, charged on the consolidated fund of the State providing requisite financial independence for the institution. Some Lokayuktas have powers to punish for contempt.

Orissa instituted and then abolished the institution. In Haryana, the institution of Lok Pal was abolished overnight through an Ordinance as the serving High Court Judge functioning as the Lok Pal had protection against summary dismissal. The Punjab Government also repealed the Act through an Ordinance as a fallout of a matter in which the Lok Pal had received eight complaints against former Ministers in the previous ministry in the State.

The Rajasthan Lokayukta was forthright in recommending to the Government in its annual

report in 1996 that there was no use of continuing the institution as the institution had not proved to be effective.

Even though the Madhya Pradesh Lokayukta had indicted two Ministers in a land deal and certain other Ministers were also held responsible for wrong doing, no action whatsoever was taken against any of them. Here too, in its annual report for 1997-98, the Lokayukta had advised the Government that unless adequate powers were given to it there was no need for continuance of the institution.

Lokayukta in Karnataka

The Karnataka Lokayukta which has been a very active institution, is headed by a retired Judge of the Supreme Court and has jurisdiction over all public servants including the Chief Minister and Ministers, it has unfettered power to enquire or investigate into cases of misconduct and deals both with allegations and grievances. However, though the Karnataka Act provides for the submission of property returns to the Lokayukta by the Chief Minister, Ministers and all legislators, few have submitted these returns so far and no action has been taken against those who have not done so.

Different eminent persons have held the office of Lokayukta in Karnataka. The details are as under. The term of office for Lokayukta is for a period of five years.

Table No1

Name of the Lokayukta	In office
A.D. Kaushal	1986–1991
Rabindranath Pyne	1991–1996
Abdul Hakim	1996–2001
N. Venkatachala	2001–2006
Santosh Hegde	2006 – June 2010
Shivaraj Patil	July 2011 – September 2011
Y Bhaskar Rao	Feb 2013 – December 7 th , 2015

Justice Venkatachala is best known for rejuvenating the department of Karnataka Lokayukta. A number of complaints the office of Lokayukta was receiving dramatically increased from 20-25 per day to 200-250 per day while Venkatachala was in tenure. He personally led hundreds of raids often lashing out at corruption in political life. In his four and a half years in office, he had looked into more than 50,000 cases of misconduct and complaints from members of the public.

N. Santosh Hegde, former Lokayukta of Karnataka, uncovered one of the biggest mining scams of the country in 2011. His activism and strong evidences resulted in the then Chief- Minister Yeddyurappa being jailed for 21 days in October 2011. He has also conducted several raids and complaints against officials were on the rise during his tenure.

Conviction rate has been stagnant in Karnataka Lokayukta in the recent years. The details are as under.

Table No 2
Cases filed and the Conviction Rate for the Years 2012-2014

YEAR	CASES FILED	CONVICTION RATE
2012	417	38.20%
2013	525	30.80%
2014	401	31.60%

The discussion about the Karnataka Lokayukta will not be complete without discussing about the extortion racket in Lokayukta and revival of Anti-Corruption Bureau to deal with corruption cases.

LOKAYUKTA IN-HOUSE GRAFT SCAM

In May 2015 A PWD Engineer got a message asking him to call back and when he called he was told by a Lokayukta official to give 1 crore bribe for not conducting raid against him. The Engineer complained to senior Lokayukta officials who ordered Lokayukta SP Sonia Narang to investigate the matter. After investigation she submitted a report to the Registrar. The preliminary report by Lokayukta SP Sonia Narang revealed that the extortioner had operated from the Lokayukta office and three of the officials were involved in it. After this Upa Lokayukta Justice Subhas Adi on Tuesday, June 23rd, 2016 ordered Lokayukta SP Sonia Narang to conduct a free and fair inquiry and submit a report to him, but till that date the Lokayukta Justice Bhaskar Rao has maintained public silence.

Lokayukta Justice Bhaskar Rao requested the State Government to conduct an independent investigation into the allegation of extortion. Upa Lokayukta Justice Subhas Adi says that probe must be done by the CBI. While Karnataka Chief Minister Siddaramaiah has said that since the Lokayukta is an autonomous body the State Government has no power to probe it. Before approaching the Government the Lokayukta Justice Bhaskar Rao had tried to transfer the investigation to Central Crime Branch Bangalore which turned down his request.

The Lokayukta police are going to file a First Information Report in the case while State Government has finally ordered a probe by a Special Investigation Team headed by Additional Director General Police {prisons} Kamal Pant.

The First Information Report was filed by Lokayukta police naming Justice Bhaskar Rao’s son Ashwin who used the name Krishna Rao to commit his extortion racket, meanwhile the Karnataka High Court asked the Lokayukta and Upa Lokayukta not to conduct any enquiry into the matter until the Special Investigation Team gives its report.

The Sim cards used in this extortion racket mostly were provided by private mobile phone service providers without proper customer verification. The addresses are genuine but the customers, in whose names the SIM cards have been bought are fake. Lokayukta Justice Y Bhaskar Rao had said on June 26 that the CCTV footage in Lokayukta office building was available and would be handed over to police. However, Lokayukta Registrar H R Deshpande on Wednesday told the Special Investigation Team that the recording facility was introduced only in June 2015 and there is no recording of the month of May 2015 crucial to this extortion racket.

The Special Investigation Team have arrested many persons in relation to the extortion racket. They arrested Ashok Kumar, Journalist and RTI activists Srinivas Gowda, Shankar Gowda, Syed Riyazathullah Joint Commissioner of Police {Public Relations} Lokayukta, Ashwin, RTI activist V. Bhaskar on 22nd July 2015, 23rd July 2015, 26th July 2015, 27th July 2015, and August 5th 2015 respectively.

Lokayukta Justice Y Bhaskar Rao went on leave since 27th July 2015 when his son was arrested and extended his leave many times till he gave his resignation letter on December 7 which was accepted

by the Hon'ble Governor of Karnataka on December 8th, 2015. Because of this the office of Lokayukta in matters to be dealt by the Lokayukta was nonfunctional.

The voice samples of the accused will be sent for test to the Foreign Science Laboratories in Madivala, Bangalore, to get a scientific report that the voice of the people speaking in the telephonic conversation, which are collected by the Special Investigation Team and the voice of the accused are one and the same.

Exactly four months after the Lokayukta extortion scam came to light, Lokayukta Justice Y Bhaskar Rao was grilled for almost 10 hours at his Hyderabad house by sleuths of the Special Investigation team.

The investigation is yet to complete and is still going on in a special court, but from the above said things it is understood that an extortion racket took place inside the Karnataka Lokayukta due to which the image of this prestigious institution was tarnished badly.

Due to this scam the Karnataka Legislature brought an amendment to Karnataka Lokayukta Act 1984 Under the new law the process of removal of the Lokayukta or Upa Lokayukta can be initiated if one third of the legislators in either house sign a motion and present it to the heads of the Vidhan Parishad or the Vidhan Sabha, the new law mandates support from two-third of legislators for removal of the Lokayukta after a probe by the Chief Justice of the Karnataka High Court. The new law facilitates suspension of a judge from carrying out the duties of the Lokayukta as soon as a motion for removal is initiated. The Governor has given his assent to the bill on August 13th, 2015 and now the amendments are in force.

With this Amendment, the Legislature brought motions to remove the Lokayukta and Upa Lokayukta, but as on December 8th the Lokayukta has resigned only the matter relating Upa Lokayukta is now pending in High Court of Karnataka and report by the Chief justice is awaited for taking Action against Upa Lokayukta Justice Subhas Adi.

REVIVAL OF ANTI-CORRUPTION BUREAU

Former Lokayukta Justice N. Santosh Hegde has said that "in Karnataka the Anti-Corruption Bureau had existed before 1984. It was headed by a senior police officer but due to non-satisfactory working of the Anti-Corruption Bureau. It was merged with Karnataka Vigilance Commission." And when Karnataka Lokayukta Act 1984 was passed, Section 26 of the Act repeals the Karnataka Vigilance Commission and all cases pending were transferred to Upa Lokayukta.

Former Lokayukta Justice N. Santosh Hegde has objected to the revival of the Anti-Corruption Bureau. He opined that "I don't know what made the government think of reviving an old agency, which was scrapped because it did not work well enough. It is a deliberate act by the government to weaken the Lokayukta institution and destroy its police wing,"

He also says that "Also, when the ACB will function directly under a cabinet minister, how can anyone expect it to function impartially?" he demands, pointing out that once the ACB comes into force, the policemen in the Lokayukta will be jobless. If the ACB handles all cases under the Prevention of Corruption Act, 1988, the Lokayukta police cannot conduct raids or lay traps as they normally do. And the ACB, functioning directly under the government, may come under pressure from various quarters at one time or the other," he warns.

Justice Hegde recalls that prior to 1984, the state had a Karnataka Vigilance Commission headed by a judge to investigate wrongdoing by the government and an Anti-Corruption Bureau headed by a senior police officer. "But neither performed to the satisfaction of the people of Karnataka and so were merged. This led to the setting up of the Karnataka Lokayukta, which began functioning in 1986," he

notes.

States like Maharashtra, Andhra Pradesh, Kerala, Goa and others have both a Lokayukta and an Anti-Corruption Bureau. Even Delhi has both agencies. The ACB will function under the Department of Personnel and Administrative Reforms and be headed by an officer of the ADGP rank. It will have a sanctioned strength of 322 policemen

The Anti-Corruption Bureau was notified on March 14 to look into cases registered under the Prevention of Corruption Act, 1988, The Anti-Corruption Bureau has the power to register First Information Report's against all politicians and bureaucrats against whom charges of corruption are leveled under the Prevention of Corruption Act 1988 and it reports directly to the Chief Minister of Karnataka. Currently, there are about 800 corruption cases being probed by Lokayukta police with the creation of Anti-Corruption Bureau. All that cases will be transferred to it and the probe may start fresh. The state government has appointed senior IPS officer K.V. Gagandeep who was Secretary, Home Department as Additional Director General of Police Anti-Corruption Bureau. He will head the institution while his deputy will be Additional Commissioner of Police (Traffic) M.A. Saleem who has been appointed as Inspector General of Police of Anti-Corruption Bureau.

The state government sent a directive to Lokayukta police not to receive any complaints on Corruption cases and from Monday, March 21, 2015, the anti-corruption watchdog stopped receiving complaints following the government order, this order is given even before the Anti-Corruption Bureau starts to function. Mr. Om Prakash the state's Director General and Inspector General of Police on 30-3-2016 has issued standing orders to all the 965 police stations in Karnataka to complaints under the Prevention of Corruption Act, 1988 until the Anti-Corruption Bureau police stations start functioning. The Anti-Corruption Bureau police stations are to be set up in all districts of Karnataka.

How the revived Anti-Corruption Bureau will function and curb corruption is yet to be known as the agency will start functioning in a few weeks time and how it will conduct the investigation in 800 cases transferred to it by Lokayukta is yet to be ascertained.

CONCLUSIONS AND SUGGESTIONS

The office of Lokpal is yet to start functioning, but the Lokayukta's in states have played an important role in curbing corruption, barring a few minor incidents, the Lokayukta have been successful in curbing corruption. The Lokayukta of Karnataka has been a role model for all states in curbing corruption except for the in-house graft charges which involved Lokayukta officials the Lokayukta of Karnataka has been up to the mark in curbing corruption, the conviction rate of the Lokayukta of Karnataka had been high and many were conducted during the periods of Justice Venkatachala and Justice N. Santosh Hegde.

The Lokpal law came into force on January 16, 2016, but till date there is no appointment of Lokpal and its officials even after two years of enforcement of the Act. The Government of India needs to appoint a Lokpal as soon as possible then only it will be possible to curb corruption at the Central level.

The Lokayukta of all 19 states and including states which have no Lokayukta should have a Lokayukta and the Act constituting Lokayukta must be made uniform with a single legislation and must same powers, personnel, then only corruption can be curbed effectively in states. More personnel also must be provided to carry out investigation effectively.

In Karnataka the Government is yet to appoint a Lokayukta after the resignation of Justice Bhaskar Rao and also the institution of Lokayukta is toothless because the State Government has revived Anti-Corruption Bureau which will deal with corruption cases.

The Karnataka High Court has criticized the State Government for crippling the Lokayukta and for its haste in constituting the Anti-Corruption Bureau, and also has been given time till April 18th 2016 to put in place an effective mechanism to fight corruption. Justice AN Venugopala Gowda, who is monitoring the progress of strengthening the Lokayukta, cited several apex court judgments on corruption and noted that neither the Anti-corruption Bureau nor Lokayukta police is able to discharge their duties at present. Also the Karnataka High Court on April 7th 2016 has passed an interim order barring the transfer of pending corruption cases from Lokayukta police to the Anti-corruption Bureau.

Former Lokayukta Justice Santhosh Hedge has said that "It's better the government closes it down. With the Prevention of Corruption Act cases going to the Anti-Corruption Bureau, the Lokayukta might as well become a retirement and rehabilitation center for retired judges and government officials."

In view of the above discussion, the following suggestions are made.

SUGGESTIONS

- The Central Government needs to appoint Lokpal as more than two years have passed since the passage of Lokpal Act.
- The Institution of Lokpal must be given Constitutional status.
- The different State Governments must fill up the posts of Lokayukta and Upa Lokayukta which are lying vacant in their respective States.
- There must be a uniform Act for Lokayuktas as each State Government has different Act which contains different rules. The institution of Lokayukta must be uniform in all States.

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