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THE REQUIREMENT OF A LOKAYUKTA IN INDIA

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ABSTRACT

Studies indicate that corruption in developing countries is one of the primary reasons for lack of economic development and growth. Corruption is seen to have a cascading effect on investment- domestic as well as foreign- that further retards the economy of a country. Growing concerns pertaining to the increasing corruption in India has led to several social movements across the country. These movements have been led by several groups and political organizations and their demands focus on more accountability from government officials. Transformation of existing framework and change in transparency requirements for expenditure of public money also form part of these demands. In this paper, the author shall examine the viability of a Lokpal as a check on corruption by discussing the existing Lokpal and Lokayukta regimes that currently exist in Indian states.

KEYWORDS*: Lokpal, Lokayukta, Indian Polity*

INTRODUCTION

The idea of a 'Lokayukta' owes its origin to the office of Ombudsman that exists in Scandinavian countries to address issues of governance lapses, such as inordinate delay in obtaining documentation, fixing leakages in the Public Distribution System et al. India's first Attorney General M.C. Setalvad, inspired by this system, first mooted the idea of having a similar instituion in the All India Lawyer's Conference in 1962; this then formed the basis for a proposal taken up by the Morarji Desai-led Administrative Reforms Commission. (Jain & Jain,2007*)* The Commission, in its report, recommended the formation of a two-tier watchdog, with a Lokpal at the Centre, and Lokayuktas in the states. It was also proposed to give these bodies wide-ranging powers, including the authority to order searches and arrests, and to prosecute corruption-related offences involving elected officials and bureaucrats. Corruption is widely recognised to be one of the principal problems in India. There exist massive issues concerning leakages in PDS, 'fixing' of public contracts, crony capitalism and kickbacks which regularly undermine confidence in the political process. This loss of public confidence brings in its wake a host of other problems- economic losses, drying up of capital flow and foreign investment, and a general disregard for established regulatory mechanisms and legal processes.

Lokayuktas are governed by state legislation; their powers vary according to the autonomy afforded them by these legislations, as well as the relationship that exists with the state government, which is often in a position to hamper the effective functioning of Lokayuktas, since the latter depend upon them for assistance with regard to enforcement of orders, directives etc. This has often resulted in the office being rendered nothing more than a 'parking spot for retired bureaucrats' with little to no real power; however, in certain states like Karnataka, the institution has been really effective, due to there being no dependence on the state government for assistance in enforcing authority. (Dhawan 2Nd Edn)

In this paper the authors attempt to understand the nature of Lokayukta system that could be effective in India. In this context, in the first part of the paper the authors examine the need for a Lokayukta to begin with. Part two highlights the inconsistencies in the various Lokayukta state legislations. The next part discusses the machinery set-up under the Lokayukta Act, especially the framework in Karnataka and in Gujarat. Karnataka and Gujarat were specifically chosen to compare and contrast implementation of laws in different states and the consequences of such implementation. The final part criticises the existing set-up of Lokayuktas in India.

NEED FOR A LOKAYUKTA

The Anna Hazare agitation in 2012 served to remind us of the existence of institutional corruption in government, and also highlighted the woefully low confidence of the public in their elected leaders. This is further compounded by the poor quality of accountability that exists in our country, with so-called 'independent'

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institutions like the Comptroller and Auditor General and the Election Commission of India not being fully insulated from political influence and/or interference.

While the idea of establishing the office of Lokpal at the Centre remains a distant pipe-dream despite regular lip-service by the government, and seems to be likely to remain so in the near future, nineteen states have, till date, adopted the office of Lokayukta. These States are: Orissa (Orissa Lokpal and Lokayukta Act, 1995), Rajasthan (The Rajasthan Lokayukta and Up-Lokayuktas Act, 1973), Maharashtra (The Maharashtra Lokayukta and Up-Lokayuktas Act, 1971), Uttar Pradesh (The U.P Lokayukta and Up-Lokayukta Act, 1975), Bihar (The Bihar Lokayukta Act, 1973), Andhra Pradesh (The Andhra Pradesh Lokayukta and Upa-Lokayuktas Act, 1973), Karnataka (The Karnataka Lokayukta Act, 1984), Madhya Pradesh (The Madhya Pradesh Lokayukta and Upa-Lokayuktas Act, 1975), Gujarat (The Gujarat Lokayukta and Upa-Lokayuktas Act, 1975), Delhi (Delhi Lokayukta and Up-Lokayukta Act, 1995), Kerala and Uttarakhand (Uttarakhand Lokayukta Act, 2011), Himachal Pradesh (The H.P Lokayukta and Upa-Lokayuktas Act, 1973), Assam (The Assam Lokatukta and Upa-Lokayuktas Act, 1985), Chattisgarh (Chhatisgarh Lok Aayog Adhyadesh, 2002), Goa (The Goa Lokayukta Act, 2013), Haryana (The Haryana Lokayukta Act, 2002), Jharkhand (Jharkhand Lokayukta Act, 2001), Punjab (Punjab Lokauyukta Act, 1996).

Institutional accountability issues in India have been compounded by the sweeping powers that governments, both at the Centre and in the states, have appropriated in the name of social welfare and economic development; any effort to introduce further checking mechanisms have usually been met with arguments that this hampers the government's welfare functions and agenda. This has also resulted in the negation of any sort of moral legitimacy that the government may enjoy in this regard; thus, as a corrective measure, the Administrative Reforms Commission proposed the adoption of the Scandinavian 'independent Ombudsman' system, in light of the ineffectiveness of existing redressal mechanisms. (Dhawan)

INCONSISTENCY IN THE STATE LOKAYUKTA ACTS

It is a well known fact that there exist different circumstances in every state, these differences arise as a result of demography, size, political party holding office etc. These differences make it extremely difficult for all states to stick to the same Model Bill. Therefore, to ensure efficient functioning, certain changes have been made by individual states. While the intention for modification was to ensure effective functioning, the results have shown us otherwise. There does not exist much information regarding the nature of complaints that the Lokayutkas receive in several states, however from the little information that is available it is evident that police torture, police inertia and accepting illegal gratification are pressing concerns.

An overview of the state laws on Lokayukta shows the lack of uniformity in the provisions in different states. For instance, several states consider complaints against the state administration to be a part of the jurisdiction exercised by the Lokayukta, while many states do not recognize the jurisdiction of the Lokayukta to extend to include the same. Another point of difference between states is the inclusion of public functionaries within the purview of the Lokayukta, while some states have systemically excluded them, other states go so far as to even extend the scope of the Lokayukta's power to include actions of Registrar's and Vice chancellors of Universities.

THE MACHINERY FOR A LOKAYUKTA IN STATES IN INDIA

After a through overview of the need for a Lokayukta framework, in this part the author attempts to analyze the theoretical aspects of the functioning of the Lokayukta in Karnataka and Gujarat, both of which have been widely discussed in the press earlier.

KARNATAKA

The Lokayukta set-up in Karnataka is by and large similar to the Andhra Pradesh Model, however there do exist minor modifications. For one, the Chief Minister of Karnataka is not beyond the reach of the Lokayukta. Moreover, the appointment of the Lokayukta is done by the Governor in consultataion with the speaker of the Vidhan Sabha, the Chief Justice of the High Court, the Chairman of the Vidhan Parishad and the leaders of opposition in both houses of the state legislature. Despite minor differences, Karnataka like Andhra Pradesh has a provision for Up-Lokayuktas to be appointed. The High Court of Karnataka in 1998 examined several provisions of the Lokayukta Act in *Hottepaksha Rangaswamy v. Chief Secretary, Govt. of Karnataka* (AIR 1998 Kant 383). The Court held that the Act was intended to extend to "grievances" as well as "allegations". Furthermore, reasons why action can be initiated against a public officer range from corruption to nepotism and include favouritism and lack of integrity as criteria. It is widely acknowledged that the Lokayukta in

Karnataka is one of the most powerful Lokayukta in the country. The reason for this is that the Karnataka Lokayukta Act, 1984 provides for sufficient independence to the Lokayukta to function and take tough decisions. Not only is the framework provided to the Lokayukta in Karnataka supportive but as compared to other states Karnataka has also been the most efficient with handling complaints. In 2013, it resolved a total 5558 disputes, which is a significantly high number when compared to other states. The disposal rate of complaints in Karnataka exists despite the fact that the office of the Lokayukta is extremely understaffed. (Dhawan)

The framework provided by the Karnataka Lokayukta Act, 1984 allows for the Lokayukta to function autonomously. In fact, this is precisely why the Lokayukta in Karnataka has a reputation for being fierce and resolute when it comes to incriminating high ranking officials. This can be observed in the mining scandal, in which the Chief Minister of Karnataka was implicated. The then Lokayukta Santosh Hegde submitted a report of the illegal mining activities to the Governor, which ultimately resulted in the Chief Minister B.S Yeddyurappa resigning from office. His report estimated the loss to the state exchequer to be over Rs. 16,000 crore over a period of four years. According to the report, such a massive scam could take place as more than 500 public officials were involved. In fact, soon after uncovering the mining scandal, Santosh Hegde offered to redraft the Lokayukta Bill in Bihar, as he could provide practical expertise. *Karnataka Illegal Mining Report,* Karnataka Lokayukta, The Hindu, available at http://www.thehindu.com/multimedia/archive/00736/Report_on_the_refer_736286a.pdf) Finally, what makes the Lokayukta Act in Karnataka so effective is the fact that the people who are appointed Lokayuktas have qualifications and credentials that match the requirements of the position, another example of such a Lokayukta is Justice N Venkatachala, wherein during his term as Lokayukta he uncovered wealth of politicians and public officials running into thousands of crores.

GUJARAT

Unfortunately, the success story of the Karnataka Lokayukta has not been repeated in every state that has a legislation for Lokayuktas. The position of the Lokayukta had been vacant for seven years, since the passage of the Act in Gujarat. The justification provided for such apathy was that the leader of opposition in the assembly and the Chief Justice could not reach a consensus on deciding the Lokayukta. Further, when Justice Mehta was appointed as the Lokayukta, the party in office challenged his appointment that was made by the Governor. The matter was heard before the Supreme Court, where the ruling party relied on *Ram Nagina Singh v. S.V.Sohni* (AIR 1971 Pat 36) in this case the Lokayukta of Bihar's appointment was challenged through a writ petition. The Patna High Court while dismissing the petition held that even when statute confers powers on the Governor to appoint a Lokayukta, such powers cannot be exercised in isolation but must be exercised with the aid of the Council of Ministers. The appellants further relied on Article 163 of the Constitution stating that the Governor of a state must act in accordance with "*the aid and advice of the State government."* Taking this argument one step further, they contended that considering the council of ministers is headed by the Chief Minister the Governor cannot act in a manner that is against the wishes of the Chief Minister.

In another case The High Court passed a decision in favour of the governor on a two is to one split. On appeal by the state government, a division bench of the Supreme Court, ruled against the state government and dismissed the appeal. Justice Chauhan, in the Supreme Court stated that there was no confusion with respect to the facts, it was evident that the governor followed due process of consultation with the Chief Justice. The Court also recognized the *"sorry state of affairs"* in Gijarat with respect to the Lokayukta. It had been nearly nine years that the position of Lokayukta had been vacant, after the previous Lokayukta resigned. While acknowledging that appointment of the Lokayukta was not illegal, the Court reprimanded the Governor for minimizing the role of the Council of Ministers while appointing the Lokayukta. The Court stated that "*Such an attitude is not in conformity or in consonance with the democratic set-up of government envisaged in our Constitution."*

This case merely highlights the indifference and lack of support given by the administration towards the position of the Lokayukta. It is natural for any administration to avoid setting up a Lokayukta in the first place because the very purpose of the Lokayukta is to constantly keep a check on their activities. Therefore, the government may go to any lengths to keep the position vacant, Gujarat is a perfect example of this problem. However, even if the seat is not vacant there are several activities the government can undertake to ensure that the Lokayukta does not have sufficient independence or authority to act. The 13th Finance Commission report suggested a measure to remedy this situation, it

recommended the setting up of an independent boy to investigate any complaints against public officials. (Finance Commission of India, Government of India, 13th Financial Commission Report, available at http://fincomindia.nic.in/ShowContentOne.aspx?id=28&Section=1)

CRITICISM OF THE EXISTING LOKAYUTKA SET-UP

Institutions that follow the model of an Ombudsman are a requirement that need to be created to check the power and authority that is given to the Administration, in this day and age, however while due to political pressure institutions such as the Lokayukta are created the Executive goes to lengths to make it a hollow organization, with no real control. This works in two ways, either the government can ensure that the framework itself is so weak that the Ombudsman has no real authority or it can control the appointment of the Ombudsman such that a pliable individual is selected, such that their recommendations are not relied upon. For instance to decrease the credibility of the Lokayukta, in 1976, when the Mahahrashtra Lokayukta levelled charges against two ministers for corruption and malpractice, they filed a suit against the Lokayukta himself who was a former Chief Justice of the Bombay High Court. (Dhawan) Another example of such a situation is when the appointment of the Lokayukta was challenged in Bihar when the Lokayukta was investigating a complaint against the minister, while this challenge was unsuccessful and the petition was quashed, the entire process serves as deterrent itself.

Additionally, Lokayuktas are often perceived to be inaccessible to the public, because of the manner in which complaints are recorded. The fact that complainants must visit the Lokayukta's office, in order to file an affidavit to record complaints often cause these individuals to abandon their claim. This is evidenced by the Maharashtra Lokayukta First Annual Report in 1973, wherein he stated that the Lokayukta is particularly not helpful for the people below the poverty line as well as majority of the rural population. In the report, the Maharashtra Lokayukta also made references to other problems such as jurisdiction of public contracts and their review.

Furthermore, while the supposed purpose of the Lokayukta legislation is to allow the Lokayukta to investigate charges of corruption especially in public office, the provisions of several state statutes indicate that they are drafted with an intention to hide more than to reveal. For instance, if we take a look at the Lokayukta Act in Orrisa, once a complaint in lodged against a minister, there is no provision for a public hearing, all hearings take place in camera, further no lawyers are permitted to argue and the only man taking a decision is the Lokayukta.

In other states, where legislations may be strong, the position of the Lokayukta remains vacant for years on end. The most relevant example would be that of Bihar where no Lokayukta was appointed for more than 3 years. In 1999, the Apex Court issued a notice to the State Government of Bihar asking them for an explanation for the same. A press release indicated that the justification of the government for not appointing a Lokayukta was that government could not ensure the appointment of the nominee of their choice.

CONCLUSION

It is imperative to understand that the present institutional setup is woefully inadequate to address problems of corruption and governance failure. The existing institutions enjoy too little independence, and, until the issue of executive influence over these institutions is addressed, there is no point in further legislation. It is necessary for there to be some sort of legal check on this influence- this can be achieved by having a single central legislation, with limited delegation of rule-making power to the states. This will ensure a uniform framework for grievance redressal; of course, it is necessary for the central law to be watertight and fair, and to provide for independent enforcement mechanisms to effect the orders of the 'watchdog' authorities.

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