

## **LOKAYUKTA- POWERS, PREROGATIVES AND RESTICTONS**

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Providing efficient and corruption free administration and thereby ensuring good governance is the paramount responsibility of every democratic Government. It is said that corruption is the friend of the rich and the enemy of the poor. Besides causing irreparable damage to the trust and public confidence in systems that affect people's daily lives, corruption threatens security of the country. Corruption undermines political, social and economic stability. Corruption leads to maladministration. Where there is no good governance, there cannot be a contented citizen in the society.

In the case of *State of M.P. Vs Ram Singh*, while dealing with the disastrous consequences of the all pervasive evil of corruption, Honourable Supreme Court observed thus:

*“Corruption in a civilized society is a disease like cancer, which if not detected in time, is sure to malignise the polity of the country leading to disastrous consequence. It is termed as plague, which is not only contagious but if not controlled spreads like a fire in a jungle. Its virus is compared with HIV leading to AIDS, being incurable, it has also been termed as royal thievery. The socio-political system exposed to such a dreaded communicable disease is likely to crumble under its own weight. Corruption is opposed to democracy and social order, being not only anti people, but aimed and targeted against them. It affects the economy and destroys the cultural heritage, unless nipped in the bud at the earliest, it is likely to cause turbulence- shaking the socio-economic-political system in an otherwise healthy, wealthy, effective and vibrating society”.*

India is a signatory to United Nations Convention against corruption adopted by the United National General Assembly in its resolution dated 31<sup>st</sup> October 2003. Article 36 of the Convention, reads thus:

*“Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement. Such body or bodies or persons shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State Party, to be able to carry out their functions effectively and without any undue influence. Such persons or staff of such body or bodies should have the appropriate training and resources to carry out their tasks.”*

With the advent of the concept of Welfare State, there has been considerable increase in the programmes of the Government meant for the welfare of the people. Simultaneously, there has been number of complaints that the benefits of such welfare measures do not reach the intended beneficiaries, particularly the poor and weaker sections of the society. Lack of devotion to duty and greed for bad money on the part of the public servants who are saddled with the responsibility of implementing the welfare measures results in maladministration, in turn affecting the common man. In such circumstances, creation of an ombudsman like the institution of Lokayukta provides a venue for the aggrieved to complain against administrative lapses and so also, a mechanism to the citizens to give more ventilation to their grievances. Institution of Lokayukta thus plays a vital role in ensuring good governance.

The Administrative Reforms Commission in its First Report dated 31<sup>st</sup> August, 1966 recommended the setting up of Lokpal and Lokayukta Institutions by appropriated legislation for the purpose of improving the standards of public administration by authorizing the Lokpals or Lokayuktas to be appointed there under to investigate into complaints against administrative actions, including cases of corruption, favoritism, nepotism and official indiscipline in administrative machinery and give reports to the concerned Governments. Considering the said recommendation, Government of Karnataka, enacted the Karnataka Lokayukta Act, 1984 and by the said Act, provisions have been made for the appointment and functions of certain authorities

for making enquiries into administrative action relatable to matters specified in List-II and List-III of Seventh Schedule to the Constitution of India taken by or on behalf of the Government of Karnataka or certain public authorities in the State of Karnataka (including any omission or commission in connection with or arising out of such action) in certain cases and for matters connected therewith or ancillary thereto. The Karnataka Lokayukta Act, 1984 came into force on 15.01.1986.

For the purpose of conducting investigations and enquires in accordance with the provisions of Karnataka Lokayukta Act (for short 'the Act'), a Lokayukta and one or more Upalokayuktas can be appointed and a person to be appointed as Lokayukta shall be a person who has held the office of a judge of the Supreme Court or that of the Chief Justice of a High Court. A person to be appointed as an Upalokayukta shall be a person who has held the office of a Judge of a High Court, Both Lokayukta and Upalokayukta have fixed terms of five years and they are not eligible for another term. These incumbents have security of tenure and can be removed as provided in the Act only.

Lokayukta has jurisdiction over any action taken by or with the approval of the Chief Minister, any other Minister or Secretary or a Member of the State Legislature or any other public servant notified by the State Government. As notified by the State Government recently, all public servants holding a post or office carrying either a fixed pay, salary or remuneration of more than rupees twenty thousand per month or a pay scale the minimum of which is more than rupees twenty thousand, as may be revised from time to time, come within the jurisdiction of Lokayukta. All other public servants come within the jurisdiction of Upalokayukta. In respect of the public servants coming within the jurisdiction of Upalokayukta, the Upalokayukta has got *Suo moto* powers to investigate any action taken by such public servants. Originally such power was available to the Lokayukta in respect of the public servants coming within his jurisdiction. However, by an amendment to the Karnataka Lokayukta Act made in 1986, the *suo moto* power vested in the Lokayukta was taken away. Though proposals have been sent to the Government to bring in suitable amendments to the Act conferring power to initiate *suo moto* action against the public servants coming within the jurisdiction of Lokayukta, such proposal has not met with any favorable response from the persons in power.

In *Prof. S.N. Hegde and another Vs the Lokayukta*, Bangalore and others, Honourable High Court while dealing with the powers of Lokayukta to investigate into allegations and grievances which are exclusively to be investigated by Upalokayukta, when no Upalokayukta is appointed, held that Lokayukta has no jurisdiction to investigate the complaints which are to be investigated by the Upalokayukta, in the absence of the Government referring the complaint to Lokayukta under Section 7(2A) of the said Act. It is further held that Section 7(4) of the Act attracts to a case where Upalokayukta is in being but not able to discharge his functions because of absence of illness or any other cause. In the above ruling, commenting on the inaction of the then Government, in not appointing Upalokayukta, it is observed by the High Court as follows:

*“Any Government which has a commitment to eradicate corruption in public life cannot be so insensitive in not appointing a Lokayukta or Upalokayukta which is a statutory obligation cast upon them. In democracy when the Government does not perform its statutory obligations and when it concerns performing a public duty, a responsible opposition also owes an obligation to the public to highlight these matters thus compelling the Government to perform its duty”.*

I may mention here that in situations like the above, even the Advocates whose duty is to assist the persons concerned in administration of justice to provide justice to the citizens, who are affected by the maladministration, can put pressure on the persons in power to discharge their statutory obligations.

In view of the above ruling of the High Court in *Prof. S.N. Hegde and another Vs the Lokayukta*, in number of cases where recommendations have been made by the then Lokayukta to the Government after investigating the complaints against public servants, during the period when no Upalokayukta was appointed, such recommendations have been set aside and the cases are remanded reserving liberty to Upalokayukta to take appropriate action, resulting in considerable delay in taking action against the erring Government servants. Of course, the above judgment has been challenged in Writ Appeal and the same is pending disposal before the High Court. I may also mention here that the Government has been already requested to bring in suitable amendments to the Act to overcome the difficulties in this regard and for more effective

functioning of the Lokayukta institution and the said proposal is pending before the Government since a long time.

To assist the Lokayukta or Upalokayukta in their functioning, officers from Judiciary and Government departments of Police, Prosecution, Public works, Statistics and State Accounts are taken on deputation in the Lokayukta organization. Provision has also been made in Section 15(3) of the Act to take the assistance of any officer of the State and Central Government or any other agency, for the purpose of conducting investigation. In this regard, this institution is taking the assistance of retired judges, retired Police Officers of the rank of Director General of Police and Inspector General Police, retired Town Planning Director and other retired Government officers who have vast experience in their respective fields. This institution is also taking the assistance of former Vice Chancellor of Health University and other persons having experience in the health sector, to redress the grievances of the citizens in respect of complaints in relation to health services provided by the State.

General perception of the public at large about Lokayukta institution is that it is an institution to investigate cases of corruption involving public servants. It requires to be mentioned here that the main function of Lokayukta institution is to redress the grievances of the citizens. Without any fear of contradiction, it can be said that efficiency in administration cannot be achieved in the absence of a credible mechanism for redressal of the grievances of the citizens. As already stated, the institution of Lokayukta has powers to redress grievances of the citizens and also to make investigations into allegations made against public servants. Any person who has sustained injustice or undue hardship in consequence of mal-administration can make a complaint to the institution of Lokayukta. If a public servant has abused his position to obtain any gain or favour to himself or to any other person or to cause undue harm or hardship to any other person or was actuated in the discharge of his functions by personal interest or improper or corrupt motive or is guilty of favoritism or nepotism or lack of integrity or has failed to act in accordance with the norms of integrity and conduct, then also a complaint can be made against such public servant. Such complaint will have to be made in a prescribed form referred to as Form No.1 supplied by the Lokayukta Office. It should be supported by an affidavit in Form No-2. The affidavit has to be sworn to before a Judicial Magistrate of First Class or Notary

Public or Oath Commissioner or a Judicial Officer working on deputation in the Karnataka Lokayukta or any other Gazetted officer who has been authorized to administer oath. Form Nos.1 and 2 can be downloaded from the Lokayukta Website [WWW.Kar.nic.in/lokyukta](http://WWW.Kar.nic.in/lokyukta) or can be obtained from the office of the Lokayukta situated at Bangalore or from any of the offices of Lokayukta Police in the State.

Apart from a citizen giving complaint to the Lokayukta, the Government may also entrust investigation to the Lokayukta or Upalokayukta. In good number of cases, investigations have been done and recommendations have been made to the Government in cases referred to Lokayukta or Upalokayukta. As already mentioned above, the Upalokayukta can initiate *suo moto* investigation against the public servants who come within his jurisdiction. In many cases, *suo moto* investigation has been taken up relying on media reports and appropriate recommendations have been made to the Government and acting on such recommendations, actions have been initiated against the concerned public servants.

If after the investigation conducted under the Lokayukta Act, the Lokayukta or Upalokayukta is satisfied that injustice or undue hardship is caused to the complainant or to any other person, recommendations will be made to the Competent Authority for redressal of the grievance within a specified time. Similarly, if after investigation it turns out that the allegations are substantiated, then a recommendation will be made to the Competent Authority to initiate disciplinary proceedings against the concerned public servant. If within the time specified no action is taken by the Competent Authority, a special report can be sent to the Governor of the State, who has to make arrangements for placing the report with his note before both Houses of the State Legislature. Karnataka Lokayukta has taken recourse to such actions also in number of cases.

In *State of Karnataka and another Vs Kempaiah (AIR1998 SC 3047)*, it is held by the Honourable Supreme Court that investigation cannot be initiated under Section 7 of the Act in respect of an allegation of amassing wealth since the same does not fall within the meaning of

the word 'action' in Section 2(1) of the Act and that the scope of the investigation under Section 7 of the Act is confined to a grievance or allegation made in respect of an 'action' within the meaning of Section 2(1) of the Act, I may mention here that suitable amendment to the relevant provision in the Act has been proposed to the Government, to overcome this hurdle but such proposal has not received any favorable response from the Government, so far.

Karnataka Lokayukta Act provides that after investigation if the Lokayukta or Upalokayukta is satisfied that the public servant against whom a complaint is made and the allegation in such complaint is substantiated and that such public servant should not continue to hold the post, a declaration will have to be made to that effect in the report under section 12(3) of the Act and if within three months from the date of receipt of the report, the declaration is not rejected, it shall be deemed to have been accepted. Lokayukta institution has made such declarations in respect of Ministers in the State Government.

If after the investigation conducted by the Lokayukta institution, it turns out that the concerned public servant has committed a criminal offence, the Lokayukta or Upalokayukta may order for prosecution of the said public servant and in such cases if any sanction is required, it shall be deemed to have been granted. Such prosecutions have been launched by the Lokayukta institution against Members of the State Legislative Assembly. If a false or frivolous or vexatious complaint is made to the Lokayukta Institution, then, the complainant can be prosecuted and on conviction, he can be sentenced to undergo imprisonment for a minimum term of six months and an maximum term of three years and to pay a minimum fine of Rs.2,000/- and a maximum of Rs. 5,000/-.

There are certain matters that do not fall within the purview of investigation by the Lokayukta institution. Firstly, matters covered by the Second Schedule of the Lokayukta Act cannot be investigated. They are matters relating to security of the State, a decision regarding taking the matter to court, matters relating to contracts in respect of commercial transactions (under certain circumstances), appointments, removals, pay, discipline, superannuation and other matters relating to service conditions of public servants, grant of honours and awards. However,

action taken relating to claims for pension, gratuity, provident fund and other claims that arise on retirement, removal or termination of service, can be subject matter of investigation under the Act. If the complainant has a remedy of preferring an appeal or taking up any proceedings before any court or any other authority, in such a case, the Lokayukta institutions cannot conduct an investigation. If with the prior concurrence of the Lokayukta or Upalokayukta, a public enquiry has been ordered or the matter is referred under the Commission of Inquiry Act, then also an investigation cannot be conducted by the Institution of Lokayukta in respect of an action taken in such matter.

Investigation under the Act cannot be conducted in respect of a grievance if the complaint is made after six months and in respect of an allegation, if the complaint is made after five years. However, if sufficient cause is shown, the delay can be condoned. If the complaint is frivolous or vexatious or not made in good faith, investigation cannot be done by the Institution of Lokayukta. If there is no sufficient ground for investigating or continuing the investigation, in such cases, the Lokayukta or Upalokayukta may refuse to investigate or to continue the investigation. Further, if other remedies are available to the complainant and in the circumstances of the case, it would be proper for the complainant to avail such remedies, the Lokayukta or Upalokayukta may refuse to investigate or cease to investigate.

For the purpose of any investigation or enquiry, the Lokayukta or Upalokayukta is empowered to issue a search warrant for production of documents or things, if he is of the opinion that the concerned public servant may not produce the same. Similarly, during such enquiry or investigation, summons can also be issued to give evidence or produce documents and the Act provides that in such cases, the Lokayukta or Upalokayukta shall have all the powers of a Civil Court.

Intentionally insulting or causing any interruption to the Lokayukta or Upalokayukta while conducting any investigation or enquiry under the Act is made punishable with simple imprisonment for a term which shall not be less than six months but may extend to one year or with fine or with both. By an amendment made to the Act in 1988, Lokayukta and Upalokayukta



are empowered to punish for contempt and the provisions of Contempt of Court Act, 1971 is made applicable in this regard. The Act provides that no proceedings or decision of Lokayukta or Upalokayukta shall be liable to be challenged or called in question in any court of ordinary civil jurisdiction.

Except Government servants, all other public servants coming within the jurisdiction of Lokayukta (i.e. Chief Minister, other Ministers, Members of both the Houses of State Legislature, etc.) should submit a Statement of Assets and Liabilities of themselves and their family members before 30<sup>th</sup> June of every year to the Lokayukta. If within the prescribed time the statement is not submitted, then, a report will have to be sent to the Contempt Authority. If two months after sending such a report, the statement is not submitted, then, the names of such public servants are published in three newspapers having wide publicity in the State.

In *Hottepaksha Rangaswamy Vs. The Chief Secretary, Government of Karnataka* (1998 (5) Kar LJ 123), a Division Bench of the High Court while dealing with Section 22 of the Karnataka Lokayukta Act which mandates the public servants other than Government servants to submit statement of assets and liabilities to the Lokayukta before 30<sup>th</sup> June every year, held that apart from publishing the names of defaulters in three newspapers, Lokayukta can take action against such public servants, since failure on the part of the public servant to file the statement of assets and liabilities, amounts to failure to act in accordance with the norms of integrity and conduct which are to be followed by the said public servant. In the said case, High Court was pleased to direct the writ petition filed before the court to be treated as complaint under Section 9 of the Act, for taking further action in the matter.

I may mention here that in cases where the Members of the Legislature have made untrue declaration in their statements of assets and liabilities, action has been taken against such legislators, where there were complaints in that regard. Last year, complaints have been filed against four legislators in the criminal court for the offence under Section 177 of the Indian Penal Code and such criminal cases are pending. This year also, complaints have been received against some legislators alleging that they have made false declarations in the statement of assets and liabilities and the said complaints are under investigation.

The Police Wing of the Lokayukta investigates cases under Prevention of Corruption Act. If any public servant demands or accepts bribe for doing any official work, a complaint can be made to the Lokayukta Police who after registering such complaint, make an investigation and file a charge sheet in the court. Similarly, if it is found that a public servant has amassed wealth disproportionate to his known sources of income, then also the Lokayukta police can make an investigation and prosecute such public servant. An officer of the cadre of Additional Director General of Police is heading the Police wing of Lokayukta institution. Officers of different ranks, work under him in the Police wing. I may mention here that during this year so far in 229 cases, public servants have been trapped, while accepting bribe and in 67 cases of public servants amassing wealth disproportionate to known source of income have been detected. Lokayukta institution has appointed Special Public Prosecutors to conduct prosecution in cases under the Prevention of Corruption Act in each district of the State of Karnataka. Special Counsel cum Special Public Prosecutors are also appointed to represent the Lokayukta institution and its officers before the High Court and Karnataka Administrative Tribunal and conduct such cases.

*In C. Rangaswamaiah and others Vs Karnataka Lokayukta and others*, while considering whether the investigations under Section 17 of the Prevention of Corruption Act. 1988 can be entrusted to the Police Officers of the State, who are on deputation to the Police wing of the Karnataka Lokayukta, it is held by the Apex Court that entrustment of such investigation is permissible with the approval of Lokayukta and the public servants against whom such investigations are conducted, cannot question the same.

Taking recourse to the provisions of the Lokayukta Act, citizens can make complaints involving allegations or grievances against the public servants: (i) that the public servant has abused his official position to obtain any gain or favour to himself or to any other person to cause undue harm or hardship to any other person, (ii) that the public servant was actuated in the discharge of his functions by personal interest or improper or corrupt motives, (iii) is guilty of corruption, favoritism or lack of integrity in his capacity as such public servant; or (iv) that the public servant has failed to act in accordance with the norms of integrity and conduct, which ought to be followed by a public servant of the class to which he belongs. Such grievance against the public servant could be that the citizen has sustained injustice or undue hardship on account

of mal-administration, that is, by the action taken or purported to have been taken by a public servant in the exercise of his administrative functions.

The Lokayukta and Upalokayukta hear the complaints from the public regarding their grievances personally. Besides, the Lokayukta and Upalokayukta visit different parts of the State to hear the grievances of the public and to receive the complaints if any against the public servants and issue suitable directions to the concerned public servants to take remedial steps and thereby redress the grievances. Lokayukta has its offices in all the District Headquarters manned by senior police officers with supporting staff. The Police Officers working all over the State in the Police Wing of Lokayukta, are and also instructed to receive complaints from the citizens with regard to their grievances and make all efforts to redress the grievances of the citizen, by contacting the concerned public offices/public servants.

In Lokayukta institution, we have a 24x7 Helpline through which persons from anywhere can contact the office of Karnataka Lokayukta and convey information about any commission or omission on the part of any public servant in the discharge of his duties in any Government office or in departments of the Government, consequent to which, the officers of Lokayukta will contact the concerned public servant and redress the grievance. The 24x7 Helpline which is a recent measure taken up by the Lokayukta Institution, to facilitate the aggrieved citizen to knock at the doors of the Lokayukta Institution, cost free and without loss of time, has been of immense help to citizens particularly during emergencies like need for urgent medical assistance, police assistance etc. In addition to the same, the facility to provide information to Karnataka Lokayukta through its website helps the public to provide information to Lokayukta institution online regarding amassing of wealth disproportionate to their known sources of income by public servants and so also with regard to other malpractices committed by public servants, which end up in harassment to the citizens. These are certain citizen friendly measures launched by the Lokayukta institution in the recent past.

To sum up, the institution of Ombudsman popularly known as Lokayukta in India is an effective mechanism for dealing with the grievances arising out of administrative malfunctioning mainly on account of negligence, undue delay or corruption on the part of the public servants. To

conclude, it may be stated that the role of Lokayukta institutions in India is not confined to combating corruption and on the other hand, it extends to redressal of public grievances and making investigation into allegations against public servants. The Lokayukta institution in Karnataka is making sincere efforts to play very proactive role in preventing corruption and ensuring good governance.

In this context, it is worthwhile to quote certain observations of the Honourable Supreme Court on the need for strengthening the hands of Lokayukta institutions in the country. Apex Court while emphasizing the independence of Lokayukta institutions, in *Institute of A.P. Lokayukta Vs T. Rama Subba Reddy* {(1997) 9 SCC 42}, observed that the legislative intent behind the enactment to establish such ombudsman institutions is to see that the public servants covered by the sweep of the Lokayukta Act should be answerable for their actions as such to the Lokayukta or Upalokayukta as the case may be, so that the said statutory authorities can work as real ombudsman for ensuring that the people's faith in the working of the said public servants is not shaken. In the said decision it is further held:

*“These statutory authorities are meant to cater to the need of the public at large with a view to seeing that public confidence in the working of public bodies remains intact. When such authorities consist of high judicial dignitaries it would be obvious that such authorities should be armed with appropriate powers and sanctions so that their orders and opinions do not become mere paper directions. The decisions of Lokayukta and Upa-Lokayukta, therefore, must be capable of being fully implemented. These authorities should not be reduced to mere paper tigers but must be armed with proper teeth and claws so that the efforts put in by them are not wasted and their reports are not shelved by the disciplinary authorities concerned.”*

Hereinabove, I have discussed the powers and prerogatives of Lokayukta. Hereinafter, I am referring to the restrictions imposed on the actions of the Lokayukta under the Act as well as by the Administration. The first thing to be noted herein is that all the recommendations, reports and other findings conveyed to the Government after elaborate enquiry are only recommendatory in nature and not binding. The desire to enforce depends upon the will of the Government of the

day. Consequently, many such recommendations and reports of the Lokayukta have either been rejected or are gathering dust in the Government. In *Hotte Paksha Rangaswamy's case (supra)*, while discussing the default under Section 22 of the Karnataka Lokayukta Act, the Honourable High Court had held, if a default under the said Section is committed by an elected representative who is holding an office in the Government, like Minister, then he is deemed to have vacated that office. After I took over at Lokayukta in August 2006, on a complaint I held enquiry in respect of two ministers of the then cabinet, in regard to default in filling their statements of assets and liabilities, I found that the allegation in the complaint was proved and hence following the above judgment, I recommended for removal of the said two ministers from the cabinet. But the then Government has rejected my recommendation holding that the punishment recommended was disproportionate to the misconduct, forgetting the ratio of the judgment of the High Court of Karnataka.

Similarly, there are restrictions at various stages of the functioning of the Lokayukta. When the Lokayukta police conduct a raid under the provisions of the Prevention of Corruption Act, 1988 and find the public servant either demanding and accepting bribe or having amassed wealth beyond known sources of income, which are offences under Section 7 and 13 of the Prevention of Corruption Act, a sanction has to be obtained under Section 19 of the said Act to prosecute such public servant. The Supreme Court in a series of cases pertaining to some Chief Ministers like Lalu Prasad Yadav, Prakash Singh Badal, has held that in the cases of offences committed by public servants under Prevention of Corruption Act, sanction is automatic. In spite of the same, when I took over as Lokayukta there were more than 102 cases, including cases against senior officers and the Government had not given sanction to prosecute them. As a matter of fact, grant of sanction today has become an exception and refusal is rule of the day. This is major hindrance in prosecuting corrupt officers.

Even serious misconduct held proved in discharge of official duties against public servants when brought to the notice of the Government for taking necessary disciplinary action, the same is put in cold storage. The *suo moto* power which was once vested with the Lokayukta to investigate allegations against senior officers was withdrawn, while the Upalokayukta has such powers against lower level officers. Certain patent *lacunae* in the Act, which really do not

affect the right of anybody, but only creates procedural confusion, when sought to be changed, the Government does not respond to the same thinking that there must be hidden agenda on the part of the Lokayukta for making such recommendation for change. Ultimately, what is being said publicly is, Lokayukta is an institution which is similar to a toothless tiger.

I thank the organizers for having afforded this opportunity of presenting my memorial paper and I also thank the Honourable Chief Justice of Karnataka and the audience for patiently listening to me.