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POWERS AND FUNCTIONS OF LOKPAL: AN OVERVIEW

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ABSTRACT

Law is something which need to be handled by efficient person/ agency to implement the same in efficient manner. If there is any agency which having power to control the unlawful activities of public servant then it will work as deterrent method to prevent them in indulging such activities. The agency of Lokpal is created to supervise the activities of government servant and resolve the hurdles coming in functioning of agencies having power to take action in unlawful activities in which government servant is involved. Corruption is evil from which whole society is suffering which was alarming whole legal system to establish such agency to acts as watchdog and take actions against corrupt public servants. The dream of constitutional makers will go into vain if public servants left uncontrolled.

KEYWORDS: *Lokpal, Powers, Administrative, Investigation.*

1.1 INTRODUCTION:

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.

After India attained independence, M.K. Gandhi's call to his colleagues in the freedom struggle to convert their association into Lok Sevak Sangh and engage in social constructive work was followed by a few of its true colleagues, one of them is Shri Shambhu Dutta Sharma who had refused to serve under the British and joined him in India's struggle for independence. They later formed a Lok Sevak Sangh as a sister organization of the Servants of People Society (founded by Lala Lajpat Rai and inaugurated by M.K. Gandhi in 1921) and undertook the constructive social work during which they came face to face with pervasive corruption which they found as the greatest impediment and hindrance to any developmental work. They identified political corruption as the mother of all corruption and just as in the case of a staircase we have to begin the clean-up from top, it decisively undertook the initiative to eliminate corruption, criminality and abuse of authority from Indian politics, which they termed it as political reform work that they undertook as a critical constituent of civil society in association with

many fraternal NGOs (Lok Sevak Sangh: April 2000). The administrative reform committee of Rajasthan and Maharashtra recommended the establishment of this institution at state level. On 16th December 1963 in parliament the Home Minister also admitted the importance and urgency of providing machinery for looking into the grievances of citizen against administration. The Ist Administrative Reform Commission (ARC) set up in 1966 under the Chairmanship of Morarji Desai in its very first interim report on the problem of redress of citizens Grievances‖ recommended the constitution of a two-tier machinery of a Lokpal at the Centres and Lokayuktas in the states, as it will remove the sense of injustice from the minds of citizens and also instil the public confidence in the efficiency of administrative machinery[1].

In the year 2002, another Commission was set up under the chairmanship of former Chief Justice of India, Shri M.N. Venkatachaliah in the name of "The National Commission to Review the Working of the Constitution." The Commission recommended the establishment of the institution of the Lokpal as a constitutional authority so that a cleaner Government could be achieved. More specifically, the Commission recommended two things- (1) The Constitution should provide for the appointment of the Lokpal and make it obligatory for States to establish the institution of Lokayukta; and (2) the office of the Prime Minister should be kept out of the purview of the Lokpal. Again in 2007, the Second Administrative Reforms Commission under the chairmanship of Dr Veerappa Moily was set up, which also recommended to amend the Constitution so as to provide for a national Ombudsman called the Rashtriya Lokayukta. The Commission further recommended that the role and jurisdiction of the Rashtriya Lokayukta should be defined in the Constitution, but the composition, mode of appointment and other details can be decided by Parliament through legislation. All Ministers, Chief Ministers and Members of Parliament, except the Prime Minister, should come within the purview of the Rashtriya Lokayukta. Regarding the composition and appointment of the Rashtriya Lokayukta, the Commission suggested that it should consist of a serving or retired Judge of the Supreme Court as the Chairperson, an eminent jurist as Member and the Central Vigilance Commissioner as the ex-officio Member. The Chairperson and Members should be selected by a committee consisting of the Vice-President, the Prime Minister, the Leader of the Opposition, the Speaker of the Lok Sabha and the Chief Justice of India. The Commission has said that the Chairperson and Member should be appointed for only one term of three years and they should not hold any public office later, except the office of Chief Justice of India, if they are eligible[2].

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[3].

After many sincere efforts, the Lokpal and Lokayuktas Act, 2013 had received presidential assent on January 1, 2014 and came into force from January16, 2014. The Lokpal and Lokayuktas Act, 2013 The Lokpal and Lokayukta Act, 2013 commonly referred as the Lokpal Act, seeks to provide for

[1] Dr. Atanu Mohapatra, Lokpal and The Role of Media in Propping Up Anti-Corruption Movement In India, IJSSIR, Vol. 2 (3), March (2013).
[2] Madhubrata Mohanty, The Lokpal Act, 2013- Still Waiting for The Sunrise, SCC Online Web Edition, Web Edition: https://www.scconline.com.
[3] Government of India (2007), Second Administrative Reforms Commission (4th Report), Ethics in Governance.

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.

1.2 POWERS AND FUNCTIONS OF LOKPAL:

Lokpal and Lokyuktas Act, 2013 conferring various powers on Lokpal which is backbone of the Act and must for legal system as well. Powers and Functions of Lokpal are as follow:

Provisions relating to complaints and preliminary inquiry and investigation:

Sec. 20 says that the Lokpal on receipt of a complaint, if it decides to proceed further, may order-

(a) preliminary inquiry against any public servant by its Inquiry Wing or any agency (including the Delhi Special Police Establishment) to ascertain whether there exists a prima facie case for proceeding in the matter; or

(b) investigation by any agency (including the Delhi Special Police Establishment) when there exists a prima facie case:

The Lokpal shall if it has decided to proceed with the preliminary inquiry, by a general or special order, refer the complaints or a category of complaints or a complaint received by it in respect of public servants belonging to Group A or Group B or Group C or Group D to the Central Vigilance Commission constituted under sub-section (1) of section 3 of the Central Vigilance Commission Act, 2003 (45 of 2003):

The Central Vigilance Commission in respect of complaints referred to it under the first proviso, after making preliminary inquiry in respect of public servants belonging to Group A and Group B, shall submit its report to the Lokpal in accordance with the provisions contained in sub-sections (2) and (4) and in case of public servants belonging to Group C and Group D, the Commission shall proceed in accordance with the provisions of the Central Vigilance Commission Act, 2003 (45 of 2003):

The Lokpal shall call for the explanation of the public servant so as to determine whether there exists a prima facie case for investigation:

Provided also that the seeking of explanation from the public servant before an investigation shall not interfere with the search and seizure, if any, required to be undertaken by any agency (including the Delhi Special Police Establishment) under this Act.

During the preliminary inquiry, the Inquiry Wing or any agency (including the Delhi Special Police Establishment) shall conduct a preliminary inquiry and on the basis of material, information and documents collected seek the comments on the allegations made in the complaint from the public servant and the competent authority and after obtaining the comments of the concerned public servant and the competent authority, submit, within sixty days from the date of receipt of the reference, a report to the Lokpal.

A bench consisting of not less than three Members of the Lokpal shall consider every report received from the Inquiry Wing or any agency (including the Delhi Special Police Establishment), and after giving an opportunity of being heard to the public servant, decide whether there exists a prima facie case, and proceed with one or more of the following actions, namely:

(a) investigation by any agency or the Delhi Special Police Establishment, as the case may be;

(b) initiation of the departmental proceedings or any other appropriate action against the concerned public servants by the competent authority;

(c) closure of the proceedings against the public servant and to proceed against the complainant under section 46.

Further, every preliminary inquiry shall ordinarily be completed within a period of 90 days and for reasons to be recorded in writing, within a further period of ninety days from the date of receipt of the complaint.

If Lokpal decides to proceed to investigate into the complaint, it shall direct any agency (including the Delhi Special Police Establishment) to carry out the investigation as expeditiously as possible and complete the investigation within a period of six months from the date of its order but

Lokpal may extend the said period by a further period not exceeding of six months at a time for the reasons to be recorded in writing.

Any agency (including the Delhi Special Police Establishment) shall, in respect of cases referred to it by the Lokpal, submit the investigation report under that section to the court having jurisdiction and forward a copy thereof to the Lokpal.

A bench consisting of not less than three Members of the Lokpal shall consider every report received by it from any agency (including the Delhi Special Police Establishment) and after obtaining the comments of the competent authority and the public servant may:

(a) grant sanction to its Prosecution Wing or investigating agency to file charge-sheet or direct the closure of report before the Special Court against the public servant;

(b) direct the competent authority to initiate the departmental proceedings or any other appropriate action against the concerned public servant.

The Lokpal may, after taking a decision on the filing of the charge-sheet, direct its Prosecution Wing or any investigating agency (including the Delhi Special Police 13 Establishment) to initiate prosecution in the Special Court in respect of the cases investigated by the agency.

The Lokpal may, during the preliminary inquiry or the investigation, as the case may be, pass appropriate orders for the safe custody of the documents relevant to the preliminary inquiry or, as the case may be, investigation as it deems fit.

The Lokpal may retain the original records and evidences which are likely to be required in the process of preliminary inquiry or investigation or conduct of a case by it or by the Special Court[4].

Lokpal may require any public servant or any other person to furnish information, etc:

Sec. 22, says that for the purpose of any preliminary inquiry or investigation, the Lokpal or the investigating agency, as the case may be, may require any public servant or any other person who, in its opinion, is able to furnish information or produce documents relevant to such preliminary inquiry or investigation, to furnish any such information or produce any such document[5].

Power of Lokpal to grant sanction for initiating prosecution:

As per section 23, the Lokpal shall have the power to grant sanction for prosecution which crucial part for initiating prosecution against public servant. No prosecution shall be initiated against any public servant accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, and no court shall take cognizance of such offence except with the previous sanction of the Lokpal.

There is one limitation under this provision which says that where persons holding office in pursuance of the provisions of the Constitution and in respect of which a procedure for removal of such person has been specified therein then Lokpal cannot exercise its powers[6].

Action on investigation against public servant being Prime Minister, Ministers or members of Parliament:

Sec. 24 says that where, after the conclusion of the investigation, the findings of the Lokpal disclose the commission of an offence under the Prevention of Corruption Act, 1988 (49 of 1988) by a public servant, the Lokpal may file a case in the Special Court and shall send a copy of the report together with its findings to the competent authority[7].

[4] Sec. 20, The Lokpal and Lokayuktas Act, 2013.
[5] Sec. 22, The Lokpal and Lokayuktas Act, 2013.
[6] Sec. 23, The Lokpal and Lokayuktas Act, 2013.
[7] Sec. 24, The Lokpal and Lokayuktas Act, 2013.

Supervisory powers of Lokpal:

The Lokpal shall have the powers of superintendence over, and to give direction to the Delhi Special Police Establishment in respect of the matters referred by the Lokpal for preliminary inquiry or investigation to the Delhi Special Police Establishment under this Act. While exercising powers of superintendence or giving direction under this sub-section, the Lokpal shall not exercise powers in such a manner so as to require any agency (including the Delhi Special Police Establishment) to whom the investigation has been given, to investigate and dispose of any case in a particular manner.

The Central Vigilance Commission shall send a statement, at such interval as the Lokpal may direct, to the Lokpal in respect of action taken on complaints may issue guidelines for effective and expeditious disposal of such cases.

Further this provision is saying that the Delhi Special Police Establishment may, with the consent of the Lokpal, appoint a panel of Advocates, other than the Government Advocates, for conducting the cases referred to it by the Lokpal[8].

Search and seizure:

Sec. 26 Provides that If the Lokpal has reason to believe that any document which, in its opinion, shall be useful for, or relevant to, any investigation under this Act, are secreted in any place, it may authorise any agency (including the Delhi Special Police Establishment) to whom the investigation has been given to search for and to seize such documents. If the Lokpal is satisfied that any document seized may be used as evidence for the purpose of any investigation under this Act and that it shall be necessary to retain the document in its custody or in the custody of such officer as may be authorised, it may so retain or direct such authorised officer to retain such document till the completion of such investigation: Provided that where any document is required to be returned, the Lokpal or the authorised officer may return the same after retaining copies of such document duly authenticated[9].

Lokpal to have powers of civil court in certain cases:

Sec.27 says that for the purpose of any preliminary inquiry, the Inquiry Wing of the Lokpal shall have all the powers of a civil court, under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit in respect of the following matters, namely:

(i) summoning and enforcing the attendance of any person and examining him on oath; (ii) requiring the discovery and production of any document;

(iii) receiving evidence on affidavits;

(iv) requisitioning any public record or copy thereof from any court or office;

(v) issuing commissions for the examination of witnesses or documents: Provided that such commission, in case of a witness, shall be issued only where the witness, in the opinion of the Lokpal, is not in a position to attend the proceeding before the Lokpal; and

(vi) such other matters as may be prescribed.

Any proceeding before the Lokpal shall be deemed to be a judicial proceeding within the meaning of section 193 of the Indian Penal Code (45 of 1860)[10].

Confirmation of attachment of assets:

Sec. 30 provides that, the Lokpal, when it provisionally attaches any property under sub-section (1) of section 29 shall, within a period of thirty days of such attachment, direct its Prosecution Wing to file an application stating the facts of such attachment before the Special Court and make a prayer for confirmation of attachment of the property till completion of the proceedings against the public servant in the Special Court. (2) The Special Court may, if it is of the opinion that the property provisionally attached had been acquired through corrupt means, make an order for confirmation of attachment of

[8] Sec. 25, The Lokpal and Lokayuktas Act, 2013.
[9] Sec. 26, The Lokpal and Lokayuktas Act, 2013.
[10] Sec. 27, The Lokpal and Lokayuktas Act, 2013.

such property till the completion of the proceedings against the public servant in the Special Court. (3) If the public servant is subsequently acquitted of the charges framed against him, the property, subject to the orders of the Special Court, shall be restored to the concerned public servant along with benefits from such property as might have accrued during the period of attachment. 16 (4) If the public servant is subsequently convicted of the charges of corruption, the proceeds relatable to the offence under the Prevention of Corruption Act, 1988 (49 of 1988) shall be confiscated and vest in the Central Government free from any encumbrance or leasehold interest excluding any debt due to any bank or financial institution[11].

Power of Lokpal to give directions to prevent destruction of records during preliminary inquiry:

Sec.33 talks about the Lokpal may, in the discharge of its functions under this Act, issue appropriate directions to a public servant entrusted with the preparation or custody of any document or record:

(a) to protect such document or record from destruction or damage; or

(b) to prevent the public servant from altering or secreting such document or record; or (c) to prevent the public servant from transferring or alienating any assets allegedly acquired by him through corrupt means[12].

1.3 SUPREME COURT VIEW ON LOKPAL:

In State of Gujarat & Another v. Justice R.A. Mehta (RTD.) & Others[13], Hon'ble Supreme Court observed that the office of Lokayukta was lying vacant in the State of Gujarat since 24-11-2003. On 29-12-2009, the Private Secretary to the Governor of Gujarat addressed a letter to the Registrar General of the High Court of Gujarat, requesting that a panel of names be suggested by the Chief Justice, so that the same could be considered by the Governor with respect to their possible appointment to the post of Lokayukta. The Chief Justice vide letter dated 24-2-2010, suggested the names of four retired Judges, taking care to stipulate that the said names were not arranged in any order of preference, and that any one of them could thus be chosen by the Governor. The Chief Minister, the Leader of the Opposition and the Governor were fully involved thereafter, but it did not lead to the appointment of a Lokayukta for various reasons.

Thereafter, the Governor instead sought the opinion of the Attorney General for India as regards the nature of the process of consultation required to be adopted in the matter of appointment of the Lokayukta. The Attorney General in his opinion dated 23-4-2010 stated that the Chief Justice ought to have sńggested only one name and that he could not have recommended a panel of names. The Chief Justice on 27-4-2010 wrote to the Governor stating that, in his opinion, one of the persons nominated earlier for the post of Lokayukta would be the more appropriate choice. However, despite this, the Governor did not issue a letter of appointment to anyone and requested the Chief Justice vide letter dated 3-5-2010 to recommend only one name as opined by the Attorney General vide his letter dated 23-4-2010. After certain more communications between the Chief Justice, the Chief Minister and the Governor, the Chief Justice vide letter dated 7-6-2011, recommended to the Governor that Justice M be appointed as Lokayukta and the said recommendation was also sent by the Chief Justice to the Chief Minister. The Governor on the same day i.e. 7-6-2011, requested the Chief Minister to expedite the process for the appointment of Justice M, as Lokayukta.

The Chief Minister vide letter dated 16-6-2011 requested the Chief Justice to consider certain objections raised by him against the appointment of Justice Mas Lokayukta. The Chief Justice vide letter dated 2-8-2011 replied to the aforementioned letter of the Chief Minister, and in a detailed manner rejected all the objections raised by the Chief Minister to the appointment of Justice Mas g Lokayukta. Hence, the Governor vide letter dated 16-8-2011 requested the Chief Minister to process the

[11] Sec. 30, The Lokpal and Lokayuktas Act, 2013.
[12] Sec. 33, The Lokpal and Lokayuktas Act, 2013.
[13] (2013) 3 SCC 1.

appointment of Justice M as Lokayukta. The Leader of Opposition also wrote a letter dated 16-8-2011 to the Chief Minister informing him of the fact that he had already been consulted by the Governor as regards the said issue and that in connection with the same he had agreed to the appointment of Justice M as Lokayukta. At this juncture, the Governor issued the requisite hwarrant from her office on 25-8-2011 appointing Justice M (the respondent herein) as Lokayukta.

When legislative attempts to thwart the efficacious functioning of the Lokayukta were thwarted by the Governor, the State of Gujarat ultimately filed a writ petition thereagainst, but the same was rejected by a two-Judge Bench, but a even on reference to a third Judge due to some differences between the two Judges, the appointment of Justice M as Lokayukta was affirmed. Hence, the State of Gujarat was before the Supreme Court by special leave there against.

Dismissing the appeals of the State of Gujarat, confirming the appointment of Justice M as Lokayukta, and directing that Justice M assume the office of Lokayukta forthwith with full cooperation from the State of Gujarat, the Supreme Court held: As per the proviso to Section 3(1) of the 1986 Act the Governor can appoint a Lokayukta even when there is no Council of Ministers in existence or the Legislative Assembly stands dissolved or suspended. The aforesaid statutory provisions make it mandatory on the part of the State to ensure that the office of the Lokayukta is filled up without any delay as the Act provides for such filling up even when the Council of Ministers is not in existence. In the instant case, admittedly, the office of the Lokayukta has been lying vacant for a period of more than 9 years.

Under the scheme of our Constitution, the Governor is synonymous with the State Government, and can take an independent decision upon his/her own discretion only when he/she acts as a statutory authority under a particular Act. or under the exception(s) provided in the Constitution itself. Therefore, the appointment of the Lokayukta can be made by the Governor, as the Head of the State, only with the aid and advice of the Council of Ministers and not independently as a statutory authority.

When the Governor does not act as a statutory authority, but as the Head of the State, being Head of the State Executive and appoints someone under his seal and signature, he is bound to act upon the aid and advice of the Council of Ministers. The Governor's version of events stated in her letter dated 3-3-2010 to the effect that she was not bound by the aid and advice of the Council of Ministers and that she had the exclusive right to appoint the Lokayukta is most certainly not in accordance with the spirit of the Constitution. It seems that this was an outcome of improper legal advice and the opinion expressed is not in conformity with the rule of law. However, the advice of the Attorney General to the Governor in all other respects was based on the judgments of the Supreme Court and the Chief Minister was also aware of each and every development in this regard.

Examining the statutory provisions of the Act, the statutory construction itself mandates the primacy of the opinion of the Chief Justice for the simple reason that Section 3 provides for consultation with the Chief Justice. The purpose of giving primacy of opinion to the Chief Justice is for the reason that he enjoys an independent constitutional status, and also because the person eligible to be appointed as Lokayukta is from among the retired Judges of the High Court and the Chief Justice is, therefore, the best person to judge their suitability for the post. As the Chief Justice has primacy of opinion in the said matter, the non- acceptance of such recommendations by the Chief Minister remains dinsignificant. Thus, it clearly emerges that the Governor, under Section 3 of the 1986 Act has acted upon the aid and advice of the Council of Ministers since Section 3 of the 1986 Act does not envisage unanimity in the consultative process. Leaving the finality of choice of appointment of the Lokayukta to the Council of Ministers would be akin to allowing a person who is likely to be investigated to choose his own judge.

In exceptional circumstances the Governor may exercise his discretionary powers under Art. 163 of the Constitution.

In Justice Chandrashekharaish (RTD.) v. Janekere C. Krishna & Others[14], SC held that the Governor, as per Section 3(2)(a) of the Act is empowered to appoint the Lokayukta on the advice tendered by the Chief Minister, in consultation with the Chief Justice of the High Court of Karnataka, the

[14] (2013) 3 SCC 117.

Chairman, Karnataka Legislative Council, the Speaker, Karnataka Legislative Assembly, the Leader of the Opposition in the Karnataka Legislative Council and the Leader of the b Opposition in the Karnataka Legislative Assembly. All the above five dignitaries have to be consulted before tendering of advice by the Chief Minister to the Governor of the State. Section 3(2)(b) of the Act stipulates that, so far as the Upa-Lokayukta is concerned, he shall be a person who has held the office of a Judge of the High Court and shall be appointed on the advice tendered by the Chief Minister. The Chief Minister has to consult the same five dignitaries as in the case of the Lokayukta. The appointment has to be made by the Governor on the advice tendered by the Chief Minister in consultation with those five dignitaries.

CONCLUSION:

The establishment of the Lokpal in India marks a significant milestone in the country's ongoing efforts to combat corruption and ensure transparency in governance. The Lokpal, an anti-corruption ombudsman, possesses extensive powers and functions designed to investigate and address corruption in public offices.

Among its key powers, the Lokpal can initiate inquiries into allegations of corruption against public officials, including the Prime Minister, Ministers, Members of Parliament, and other public servants. The Lokpal has the authority to request assistance from various investigative agencies, including the Central Bureau of Investigation (CBI), to ensure thorough investigations. Additionally, the Lokpal can recommend disciplinary actions and initiate prosecution based on its findings.

The functions of the Lokpal encompass a wide range of activities aimed at preventing corruption. It receives and examines complaints from the public, ensuring that grievances related to corruption are addressed promptly. The Lokpal also promotes transparency by directing public authorities to provide necessary information and cooperating with state Lokayuktas for a more cohesive anti-corruption strategy across the nation.

Moreover, the Lokpal plays a pivotal role in creating public awareness about corruption and the mechanisms available for addressing it. By working towards systemic reforms and promoting ethical standards in public administration, the Lokpal contributes to fostering a culture of integrity and accountability.

In conclusion, the powers and functions of the Lokpal are crucial in strengthening India's anti-corruption framework. By providing a robust mechanism for addressing corruption at various levels of government, the Lokpal ensures that public officials are held accountable and that the principles of good governance are upheld. This institution not only acts as a deterrent to corrupt practices but also empowers citizens to actively participate in the fight against corruption, thereby enhancing the overall integrity of the Indian democratic system.