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ijirset@gmail.com

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LOKAYUKTA AS AN ANTI CORRUPTION AGENCY IN RAJASTHAN

Dr. Vinod Kumar

Assistant Professor of Political Science
SRRM GOVT. COLLEGE, JHUNJHUNU

Abstract

Maladministration is like a termite which slowly erodes the foundation of a nation and hinders administration from completing its task. Corruption is the root cause of this problem. Most of the anti-corruption agencies are hardly independent. Even Supreme Court has termed CBI as a "caged parrot" and "its master's voice"¹. Establishment of an institution like Ombudsman is being adopted globally as a measure for the prevention of corruption. In 1809, the institution of ombudsman was inaugurated officially in Sweden. India has adopted the institution of ombudsman as lokpal at the national level and Lokayukta at the state level. Rajasthan is among the first states to introduce the office of Lokayukta. This research paper is an attempt to analyse the importance of Lokayukta to curb corruption and maladministration in Rajasthan. Lokayukta in Rajasthan was established by Rajasthan Lokayukta and Up-Lokayukta Act 1973 to counter corruption in Rajasthan. In these 49 years, has this institution been upto the expectations and able to achieve the goal for which it was established or if any changes are required for effective functioning of this institution.

Keywords: Corruption, Lokayukta, Lokpal, Ombudsman

Introduction:

According to World Bank, Corruption is defined as the abuse of public office for private gain and covers a wide range of behaviour, from bribery to theft of public funds.² In its simplest sense, corruption may be defined as an act of bribery or misuse of public position or power for the fulfilment of selfish motives or to gain personal gratifications. It has also been defined as "Misuse of authority as a result of consideration of personal gain which need not be monetary". Suresh Kohli believes that India's economic progress has been negatively affected due to corruption. He believes that solution to the problem is not possible without noble conduct by the political leadership.³ Corruption in India is a consequence of the nexus between Bureaucracy, politics and criminals.

Corruption breaks trust, weakens democracy and hampers the economic development of a country. Due to corruption, inequality, poverty, social division and the environmental crisis have

¹ www.reuters.com

² <https://www.worldbank.org>

³ Kohli, Suresh, corruption in India, Chetan Publishers, New delhi,1987



increased in India. Moreover, it takes many forms. For example, a public servant demanding or taking money or favour in exchange for services. Some other incidents include a politician misusing public money or granting public jobs or contracts to their sponsors, friends and families, or corporations bribing officials to obtain lucrative deals.

While India is at the threshold of becoming superpower, the progress of the country is getting eaten up by the corrupt people of the country. A unique form of corruption is administrative corruption. Any action that was in contrary with laws and regulations, and there is a motivation for personal benefit, will be considered administrative corruption. Some examples of corruption are: bribery, extortion, influence-peddling, nepotism, fraud, speed money, and embezzlement. Effective and strong steps need to be taken to prevent and curb administrative corruption so that effective implementation of policies can take place.

History of office of Lokayukta of Rajasthan:

On January 5, 1966, the first Administrative Reforms Commission was constituted under the chairmanship of Shri Morarji Desai. This commission, in its interim report of the year 1966 related to "Problem of Redress of Citizen's Grievances", considering the widespread resentment against corruption in the system, inefficiency spread all around and the administration's insensitivity towards the needs of the general public. It was recommended that Lokpal should be established in the centre and Lokayukta in the states for the investigation of complaints alleging corruption and injustice arising out of malpractices.⁴ But this recommendation was not accepted for a sufficiently long time. It has been accepted now but its implementation has not yet materialized.

Lokpal was first established in the year 1970 in Orissa, In the year 1971 in Maharashtra, in 1973 in Rajasthan and after that Lokayukta institution was established in more than 20 states.⁵ Even before this, there was a Public Prosecution Redressal Department, but there was no provision in this system of the government for any such institution, through which complaints of abuse of office, corruption and inaction against ministers, secretaries and public servants were addressed.

Consequently, in order to increase the confidence and sense of satisfaction among the public and to provide clean, honest and efficient administration, the ministers, secretaries and public servants are free to look into and investigate complaints of abuse of office, corruption and inaction etc. The creation of the agency was immediately considered necessary and to achieve this objective, the Rajasthan Lokayukta and Up-Lokayukta Ordinance was passed in the year 1973, which came into effect from February 3, 1973 in Rajasthan. It got the assent of His Excellency the President on 26 March 1973 and since then it is effective in the state as an Act.

⁴ Problems of redressal of citizens grievances, First administrative reforms commission report, 1966

⁵ <http://Lokayukta.rajasthan.gov.in>



THE RAJASTHAN LOKAYUKTA AND UP-LOKAYUKTAS ACT, 1973:

With the objective of providing good governance to the public, to conduct independent and impartial investigation and investigation of complaints of corruption and abuse of office against public servants and to increase the sense of confidence and satisfaction in the public and to provide clean transparent, sensitive, efficient and honest administration, It was considered necessary to set up an independent agency in Rajasthan to do this And for this purpose, Rajasthan Lokayukta and Up-Lokayukta Act No. 3 was promulgated on 24 January 1973, which was published on 25 January 1973 in the Rajasthan Gazette and informed that this ordinance would come into force from 3 February 1973.later This Ordinance was replaced by the Rajasthan Lokayukta and Up-Lokayukta Act 1973, which was approved by the President on 26 March 1973 and published in the Rajasthan Gazette on 27 March 1973.⁶

The Rajasthan Lokayukta and Up-Lokayukta Act 1973 has a total of 23 sections and a schedule. The name of this Act is Rajasthan Lokayukta and Up Lokayukta Act 1973 because it is applicable in the whole of Rajasthan and this Act came into force on 3rd February, 1973.

Appointment of Lokayukta and Up-Lokayukta:

The provision related to the appointment of Lokayukta and Up-Lokayukta is in section 3 of the Rajasthan Lokayukta and Up-Lokayukta Act, 1973.

The Lokayukta shall be appointed after consultation with the Chief Justice of the High Court and the Leader of the Opposition in the Legislative Assembly, or if there be no such Leader, a person elected in this behalf by the Members of the Opposition in that House in such manner as the Speaker may direct. The Up-Lokayukta or Up-Lokayuktas shall be appointed after consultation with the Lokayukta.Provided further that the first Up-Lokayukta shall be the person who is holding the office of Vigilance Commissioner immediately before the commencement of this Act.Prior to the enactment of this Act, Shri K P Menon was the Rajasthan Vigilance Commissioner.Therefore, he was appointed as the first Deputy Lokayukta.After this till date no appointment has been made on the post of Up Lokayukta.

Oath:

The Lokayukta and Up-Lokayukta shall, before holding office, take oath before the Governor or a person appointed by him in this behalf.

⁶ Rajasthan Lokayukta and Up-Lokayukta act,1973,government central press



Terms and conditions of service of Lokayukta and Up-Lokayukta:

The provision related to the terms and conditions of service of Rajasthan Lokayukta and Up-Lokayukta is in section 5 of the Act. When the Act came into force, a provision of 3 years was made for holding the office. But the term of First Up Lokayukta will be Such as may be determined by the Governor, but in no case exceeding five years. By the Rajasthan Lokayukta and Up-Lokayukta Amendment Ordinance 1978, the term of Lokayukta was increased from 3 years to 5 years.⁷ Prior to this, the Lokayukta and Up-Lokayukta can resign his office by resignation letter addressed to the Governor. In the event of a vacancy in the office of the Lokayukta, the duties of the Lokayukta shall be performed by the Up-Lokayukta, if there are more than one Up-Lokayukta, such Up-Lokayukta as the Governor may direct.

In case the post of Up Lokayukta becomes vacant, the duties of Up-Lokayukta shall be discharged by the Lokayukta himself or by another Operative Up-Lokayukta on the direction of the Lokayukta. If both the posts of Lokayukta and Up-Lokayukta are vacant, then the duties of the office of Lokayukta shall be performed by a Judge of the High Court of Rajasthan, who may be nominated by the Chief Justice of the High Court on the request of the Governor, but such Judge shall discharge the duties of the Lokayukta In addition to his own duties.

No person shall, once appointed to the post of Lokayukta or Up-Lokayukta, hold any office under the Central or State Government, a local authority, a corporation, a public company or a society.

If the person to be appointed to the post of Lokayukta or Up-Lokayukta, if a member of Parliament or State Legislature, holds any office of profit, he shall have to resign. If he belongs to any political party, then he has to sever ties with it or if someone is running and managing business then he will have to remove himself from it.

Pay scale:

The salary, allowances, pension and service conditions of Lokayukta and Up Lokayukta will be the same as that of Chief Justice or Judge of Rajasthan High Court and no unfavourable change can be made in them after their appointment.

Procedure for removal of Lokayukta and Up-Lokayukta:

The grounds and procedure for the removal of Lokayukta and Up-Lokayukta from their posts are mentioned in section 6 of the Rajasthan Lokayukta and Up-Lokayukta Act, 1973.⁸

Grounds for removal.

Subject to the provisions of Article 311 of the Constitution, the Governor can remove the Lokayukta and Up-Lokayukta from his office on the ground of proved misconduct and incapacity.

⁷ Rajasthan Lokayukta and Up-Lokayukta amendment act,1996

⁸ Section 6, Rajasthan Lokayukta and Up-Lokayukta act,1973,government central press,Jaipur,2015



Jurisdiction of Investigation:

The right of Lokayukta to inquire into the statements related to corruption alleged against ministers and public servants in certain cases has been mentioned under Section 7 of the Rajasthan Lokayukta and Up Lokayukta Act, 1973.⁹ The Lokayukta has been empowered to investigate the following alleged allegations against State ministers(except chief minister), secretaries, heads of departments, public servants, heads and deputy heads of district councils, heads and deputy heads of panchayat samitis, presidents of standing committees of district councils and panchayat samitis, mayors and deputy mayors of municipal corporations, city council and municipalities and presidents and vice presidents of city development trusts, public companies, presidents and employees of the boards and corporations.

Provided that the Lokayukta or the Up-Lokayukta shall not conduct any investigation in respect of the proceedings in respect of which a formal and public inquiry has been ordered under the Public Servants Act 1850 with the previous concurrence of the Lokayukta or directed for inquiry under the Commission of Inquiry Act, 1952 has been done. By the notification issued under section 19 of Lokayukta and Up-Lokayukta Act, the judges, officers of judicial service, presiding officers and employees of all courts, Chief Minister, all the officers and employees of the central government and the corporate bodies under the Central act, chairman and members of Rajasthan Public Service Commission ,Election Commissioner and Chief Electoral Officer, officers and employees of Legislative Assembly Secretariat, MP, MLA, Sarpanch, Panch and retired public servant are exempted from investigation by Lokayukta.¹⁰ Apart from this, a complaint in which the allegation is involved but the complaint has been made after a lapse of 5 years from the date of the action Lokayukta cannot investigate.

Complaint provisions:

The provisions relating to complaints are mentioned in section 9 of the Rajasthan Lokayukta and Up-Lokayukta Act 1973-

1. Complaints can be filed only against the public servants of the state of Rajasthan.
2. A complaint may be made by any person other than a public servant, but in the event of the aggrieved person dying or being incapacitated for any reason, the person who inherited the property or a person authorized by him can complain on his behalf.
3. Matters relating to personal disputes cannot be complained to the Lokayukta.
4. The complaint has to be submitted along with the prescribed format and affidavits. The complainant will have to complete all the entries specified in the complaint form and mention the details of the alleged allegations clearly and specifically.

⁹ Section 7, Rajasthan Lokayukta and Up-Lokayukta act, 1973, government central press, Jaipur,2015

¹⁰ Section 19, Rajasthan Lokayukta and Up-Lokayukta act, 1973, government central press, Jaipur,2015



5. It will be mandatory for the complainant to submit an affidavit in respect of the complaint on a non-judicial stamp of 10. If there is more than one complainant, an affidavit submitted by one complainant will also suffice.
6. Such cases, in which more than 5 years have elapsed, cannot be reported, but this time period will not be applicable in case of continuous work.

Investigation Process:

The investigation process in respect of Lokayukta and complaints is based on the principle of punishment to the guilty public servant and protection of the innocent. The Lokayukta tries to reach the seriousness and veracity of the matter after in-depth examination of the complaints received against the public servants. The Lokayukta has the powers of a civil court under the Code of Civil Procedure 1908 for preliminary inquiry and investigation of complaints. If the alleged allegation in the complaint is not yet clear during the trial, a factual report may be sought in respect of the allegations. On receipt of the factual report, the complainant is given an opportunity to present his dissatisfaction with respect to the report. After examining the objections and factual report of the complainant, if the allegations are not proved, then the complaint is closed and if the allegations are found to be true, orders are issued for preliminary inquiry or investigation. The Lokayukta can initiate investigation and maintenance proceedings against a public servant not only on receipt of a complaint but also on grounds of suo moto cognizance.

Powers of Lokayukta and Up-Lokayukta in relation to investigation:

Under Section 11(2) of the Rajasthan Lokayukta and Up-Lokayukta Act, 1973, the powers of a civil court will be available under the Code of Civil Procedure 1960 for preliminary inquiry and investigation of Lokayukta and Up-Lokayukta.

1. To issue summons to any person and cause him to appear and examine him on oath.
2. To require the discovery and production of any relevant document.
3. Obtaining evidence on affidavit
4. Obtaining public record or copy thereof from any office and court.
5. Issue of commission for the examination of witnesses and documents.

In addition, if in the opinion of Lokayukta or UpaLokayukta, any public service or other person capable of giving information related to investigation and maintenance or to produce any such information will be allowed to produce any such document.

No public servant shall be entitled by any law or act to maintain confidentiality and privileges to such information as may be sought by the Lokayukta and any Up-Lokayukta. But Section 11(5) of the Act provides that the it shall not be required to receive information from the proceedings of Cabinet or any of its Committees relating to security, defence and international relations.



Confidentiality of information:

Section 15 of Rajasthan Lokayukta and Up Lokayukta 1993 provides that the information and witnesses received by Lokayukta and Up-Lokayukta for any investigation under the Act shall be confidential and notwithstanding anything contained in the Indian Evidence Act, 1872, no court shall have the right to compel the Lokayukta, Up-Lokayukta or any public servant to give evidence in respect of such information, but this provision shall not apply to the proceedings to be taken on the report of investigation for any offense under the Official Secrets Act 1923, The offense of giving or reading false evidence under IPC 1860 or otherwise.

The Governor, after consultation with the Lokayukta, may, by order in writing, assign the following additional functions to the Lokayukta and Up-Lokayukta –

1. The Governor may, after consultation with the Lokayukta, confer additional functions for the eradication of corruption by notification in the Official Gazette.
2. The Governor, after consultation with the Lokayukta, may, by order in writing, confer powers to supervise any agency, authority or class of officials of the State Government, to the Up-Lokayukta and any Up-Lokayukta.

The Lokayukta and Up-Lokayukta will also get all the powers conferred under the Act for the additional functions assigned by the Governor.

Second administrative reforms commission and Lokayukta:

The Government of India, by a resolution dated August 31, 2005, constituted the Second Administrative Reforms Commission under the chairmanship of Shri M. Veerappa Moily, to give a proactive response at all levels of the Government, considering measures to achieve the goal of efficiency and sensitivity. In its Fourth Report on "Governance in Ethics" presented in January 2009, it made the following recommendation regarding Lokayukta at the state level.¹¹

1. Provision should be made by amending the constitution that The establishment of Lokayukta is mandatory for any state governments and general principles regarding its composition, powers and functions should be determined.
2. The Lokayukta should be a multi-member body with a judicial member holding the post of chairman and an ex-officio member of the State Vigilance Commissioner.
3. The chairperson of the Lokayukta should be selected by a committee consisting of the Chief Justice of the High Court and the Leader of the Opposition in the Legislative Assembly from a panel of retired Supreme Court judges and retired Chief Justices of the High Court.
4. There is no need for selection of Up-Lokayukta.

¹¹ Ethics in governance, fourth report, second administrative reforms commission, 2009



5. The scope of the Lokayukta's jurisdiction should be limited to cases involving corruption only and the work of investigation of complaints of common people should not be placed under the purview of Lokayukta.
6. The investigation of corruption cases against ministers and MLAs should be brought under the jurisdiction of Lokayukta.
7. State Vigilance Commission should be constituted and entrusted with the task of investigating corruption cases against the officers of the State Government.
8. A person should be appointed as the chairperson and members of the Lokayukta only once and once appointed as the chairperson and members should not be appointed to any office of public benefit under the government.
9. Lokayukta should have its own agency for investigation and should take steps to recruit its own cadre and they should be given proper training.

Suggestions:

The need of the hour is to bring about a change in the traditional attitude towards the institution of Lokayukta. Some suggestions regarding ensuring effective role of Lokayukta institution are as follows.

1. The institution of Lokayukta should be given constitutional recognition.
2. Lokayukta needs an independent investigative agency of its own so that effective and efficient investigation can be done for grievance redressal.
3. The general public should be made aware about the institution of Lokayukta. The media and the press can play an important role in this regard.
4. Adequate human and physical resources should be made available to the Lokayukta institution.
5. Favorable amendments are required in various provisions of Rajasthan Lokayukta and Up Lokayukta Act 1973.
6. An effective system should be developed to ensure their timely performance as recommended by the Lokayukta.

Conclusion:

The establishment of Lokayukta in Rajasthan was a commendable step towards the prevention of corruption. It was established with the belief that this institution would be successful in curbing the corruption prevalent in the administration, but it proved to be only a fantasy. It has become an advisory body mainly due to weak powers of Lokayukta. The Lokayukta has become a toothless institution. It is useless to expect this to reduce the rampant corruption in the administration. Due to lack of political and administrative will, this institution is proving weak in curbing corruption. In such a situation, it is necessary that the Lokayukta needs to be empowered by making necessary amendments in the Rajasthan Lokayukta and Up-Lokayukta Act as per the Lokpal and Lokayukta Act 2013.



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