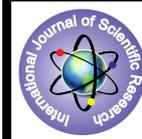


An Illusion of Honest Lokpal/Lokayukt in a Corrupt Democracy



Law

KEYWORDS : Corruption, Democracy, Bureaucracy, Ombudsman, Anti-corruption Law, Whistleblowers, Government.

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ABSTRACT

India is the biggest democratic country, in all over world. But as of 2010, India is amongst the most corrupt government in the world, thought one of the least corrupt in South Asia. Indian Prime Minister said on 18th March, 2011 that, "India needs to deal with the malice of corruption and improve governance in Asia's third largest economy." India tops the list for black money in the entire world with almost US \$1456 billion in Swiss Banks (USD1.4 trillion approximately) in the form of black money. According to the data provided by the Swiss Banking Association Report (2006), India has more black money than the rest of the world combined; Indian Swiss Bank account assets are worth 13 times the country's National Debt. A report by government auditor Controller and Auditor General of India (CAG) has said. "As on March 31, 2010, unutilized committed external assistance was of the order of Rs. 1, 05,339 crores." the CAG said in its report tabled in Parliament on 18 March 2011. In fact the Indian government has paid commitment charges of 86.11 crore (US\$19.12 million) out of taxpayer money during 2009-2010 in the form of penalty for not timely utilizing the aid approved by multilateral and bilateral leading agencies.

Introduction:

India is the biggest democratic country, in all over world. But as of 2010, India is amongst the most corrupt government in the world, thought one of the least corrupt in South Asia. Indian Prime Minister said on 18th March, 2011 that, "India needs to deal with the malice of corruption and improve governance in Asia's third largest economy." India tops the list for black money in the entire world with almost US \$1456 billion in Swiss Banks (USD1.4 trillion approximately) in the form of black money. According to the data provided by the Swiss Banking Association Report (2006), India has more black money than the rest of the world combined; Indian Swiss Bank account assets are worth 13 times the country's National Debt.

The recent scams involving unimaginably big amounts of money, as such as the 2 G spectrum scam, are well known. It is estimated that more than trillion dollars are stashed away in foreign havens, while 80% of Indian earn less the 2\$ per day and every second child is malnourished. Despite this, India is sitting on unused foreign aid of over 100000 crore (US\$22.2 billion) reflecting inadequate planning by ministries like urban development, water resources and energy.

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In a most example of corruption, even as the Enforcement Directorate (ED) probes US\$8 billion worth transaction allegedly involving suspected money launderer Husain Ali Khan evidence available with a news source in India shows that he had transactions of over 112,000 crore (US\$824.86 billion) between year 2005 and 2006. This amount is enough to fund the national drinking water project in all the six lakh (600000) villages in India for the next 10 years.

The N.H. Vohra report revealed that political leaders had become the leaders of gangs. Over the years criminals had been elected to local bodies, state assemblies and even the parliament. In July 2008 The Washington post reported that nearly a fourth of the 540 Indian Parliament members faced criminal Charges, "including human trafficking, immigration rackets, embezzlement, rape, and even murder. In 2005, a study done by International Transparency Agency (TIA) in India found that more than 50% of the people had firsthand experience of paying bribe or peddling influence to get a job done in a public office. Taxes and bribes are common between state borders.

Corruption is the symbol of today's Democracy only politician and Bureaucrats are not playing the leading role, police, judi-

ciary, Armed forces, media, religious Institutions, Private companies, Tax Payees, Mafia Raj in land and property, Doctors, Chemist, Transporters and so many Govt. semi Govt. and Non governmental bodies are bringing it to peak level. Corruption is internationally recognized a major problem, capable of endangering stability and security of society, threatening social, economic and political development and undermining the values of democracy and morality.

Corruption does not mean only taking bribe. It is used in a much larger sense, "Conduct", which is morally unsound and debased. It includes conduct which is blame-worthy or improper. Dr. S. Dutt V/s State of U.P.¹ Corruption and mal-administration are like twin sisters each acts in complement to the other: Corruption has ruined Empires. After completion of his book, "The Decline of Rome Empire" Edward Gibbon, the Great Historian, Writer and Philosopher was asked to reply in one word the reason for the decline Roman Empire, he remarked "Corruption". Corruption in a civilized society is described "disease like cancer. and rdquo, which if not detected in time is sure to malignance the policy of a country leading to disastrous consequences" Honorable Supreme Court of India² is also gives acceptance to this statement; It is shameful for us that in 2010 India was ranked 87th out of 178th countries in transparency international's corruption perceptions Index.

Anti Corruption efforts and their effectiveness

(1) Right to Information Act:

The right to information act (2005) equivalent acts in the states that require government officials to furnish information requested by citizen or face positive action computerization of services and various central and state government acts that established vigilance commissions have considerably reduced corruption or at least have opened up avenues to redress grievances. The 2006 report by Transparency International put India at the 70th place and state that significant improvement were made by India in reducing corruption.

(2) Privatization and Commercialization of Corruption Overhaul System

The Privatization and Commercialization of Corruption Overhaul System (2011) is proposed solution to remove organized corruption by privatizing corruption overhaul system, and providing financial motivation to the private companies working in sector of Corruption finding and probing business. The solution is offered by a group of Indian's named themselves as "Indian Patriots" and they are promoting this solution at their website.

(3) Civil Sector Initiatives: -

Several new initiatives have come up in the civil sector to raise awareness about corruption related issues and to build anti corruption platforms.

(4) Creation of Anti-Corruption Police and Courts :-

Some have called for the Central Government to create an anti-

theft law enforcement agency that investigates and prosecutes corruption at all levels of government, including state and local level, Special courts that are more efficient than the traditional Indian courts with traveling judges and law enforcement agents are being reposed. The proposal has not yet been acted upon by the Indian government.³

(5) Whistleblowers: -

Whistleblowers play a major role in the fight against corruption. India currently does not have a law to protect whistleblowers.

(6) Appointment of Ombudsman/Lokpal/Lokayukta: -

The Lokayukta is an anti- government corruption organization in the Indian states. The institutions are based on the Ombudsman in Scandinavian countries. An amendment to the constitution has been proposed to implement the Lokayukta uniformly across Indian States as a three member body, headed by a retired Supreme Court judge or High Court Justice and Comprise of the state vigilance commission and a jurist or an eminent administrator as other members.

Social welfare worker Anna Hazare who is not linked to any political party has forced for Indian Government to notify the Committee for the implementation of the Lokayukta against corruption as in independent body and also giving enough power to the Lokayukta to also receive corruption complains against politicians bureaucrats and even sitting judges. Anna Hazare has achieved this big success through his non-violence measures like fasting till death at the Jantar Mantar place in Delhi Capital City of India. The public also gave nation wide support to Anna Hazare in his demand for strong and tough anti-corruption law.

The proposed Jan Lokpal Bill can improve existing anti corruption system:

Existing System	System Proposed by Civil Society
No politician or senior officer ever goes to jail despite hug evidence because Anti Corruption Branch (ACB) and CBI directly come under the government. Before starting investigation or initiating prosecution in any case, they have to take permission from the same bosses, whom the case has to be investigated.	Lokpal at centre and lokayutka at state level will be independent bodies. ACB and CBI will be merged into these bodies. They will have power to initiate investigations and prosecution against any officer or politician without needing anyone's permission. Investigation should be completed within one year and trial to get over in next one year. Within two years, the corrupt should go to jail.
No corrupt officer is dismissed from the job because Central Vigilance Commission, which is supposed to dismiss corrupt officers, is only an advisory body. Whenever it advises government to dismiss any senior corrupt officer, it advice is never implemented.	Lokpal and Lokayukta will have complete power to order dismissal of a corrupt officer. CVC and all department vigilance will be merged into Lokpal and state vigilance will be merged into Lokayukta.

No action is taken against corrupt judges because permission is required from the Chief Justice of India to even register an FIR against corrupt judges.	Lokpal & Lokayukta shall have power to investigate and prosecute any judge without needing anyone's permission.
Nowhere to go: People expose corruption but no action is taken on their complaints.	Lokpal & Lokayukta will have to enquire into and hear every complaint.
There is so much corruption within CBI and vigilance department: Their functioning is so secret that it encourages corruption within these agencies.	All investigations in Lokpal and Lokayukta shall be transparent. After completion of investigation, all case records shall be open to public. Complaint against any staff of Lokpal & Lokayukta shall be enquired and punishment announced within two months.
Weak and corruption people are appointed as heads of anti-corruption agencies.	Political will have absolutely no say in selections of chairperson and members of Lokpal & Lokayukta. Selections will take place through a transparent and public participatory process.
Citizens face harassment in government offices. Sometimes they are forced to pay bribes. One cans only complaint to senior officers. No action is taken on complaints because senior officers also get their cut.	Lokpal and Lokayukta will get public grievances resolved in time bound manner, impose a penalty of Rs. 250 per day of delay to be deducted from the salary of guilty officers and award that amount as compensation to the aggrieved citizen.
Nothing in law to recover ill gotten wealth. A corrupt person can come out of jail and enjoy that money.	Loss cause to the government due to corruption will be recovered from all accused.
Small punishment for corruption-Punishment for corruption is minimum 6 months and maximum 7 years.	Enhanced punishment: The punishment would be minimum 5 years and maximum of life imprisonment.

Conclusion:

The Ex-president of India Dr. A.P.J. Abdul Kalam said that “with the rising all-round awareness and a demand for clean and corruption free public life, the burning issue of probity in public life was increasingly coming into focus and the Conduct and behavior in public life are, like never before, under very close scrutiny”. It was essential that the three pillars of democracy- Legislature, Judiciary and Executive-are strong in structure, pure in form and un-corrupted and un-blemished in conduct and rsquo. The Ex-president made it clear that if we cannot make India corruption free, then the vision of making the nation developed by 2020 would remain a dream'. But it is a hard truth that we can not expect easily an honest department or person in a corrupt democracy. Where each organ or brain is suffering from malignancy of corruption how it is possible to get healthy and sound intellectual, dedicated and patriotic mind who will take our country towards the Progress.

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