

Tackling the Menace of Corruption: Need for a Broad Framework

Abstract

Political–bureaucratic corruption has emerged as a big challenge in our country at a time when good governance has become a necessity for survival in a globalized world. In this context, the passage of the Lokpal Bill, 2013 is considered as a positive step which would be helpful in curbing the menace of corruption at the higher level. It is, however; also felt that the Lokpal alone cannot check the menace effectively until and unless it is backed by some other legal-institutional and judicial reforms.

This paper seeks to examine the nature and level of corruption in our country, root causes behind corruption, the pros and cons of the Lokpal act, 2013 and what other steps need to be taken to tackle the menace effectively at all levels. It is suggested that besides rectifying some of the fault lines in the Lokpal act 2013, the government should also make provisions for effective scrutiny of source of funding of political parties, neutral intervention of technology in government's dealing with the public, transparency in acquisition and disposal of national resource, enforcing the judicial accountability and so on .

Keywords: Political – Bureaucratic Corruption, Governance, Transparency, Lokpal, Lokayukta, Substantive, Litigation, E-Court.

Introduction

Political – bureaucratic corruption which involves the misuse of public office for private gains` is not a new phenomena in our country . However, it has become a matter of `intense political discourse in recent years because of series of scams during the previous Upa regime, forceful anticorruption movement launched under the leadership of Anna Hazare, passage of the Lokpal and Lokayukta Bill 2013 and change of government at centre which is considered to be an anti-corruption mandate. The Lokpal Act is considered a ` positive step forward`¹ in the direction of curbing the menace at the higher level , but it is also felt that the Lokpal should not be taken as a ``magic wand that will banish corruption overnight``² In fact, corruption is so pervasive and so deep – rooted in our country that besides the institution of Lokpal, we need a series of legal –institutional reforms to make our fight against corruption more effective.

Extent of Corruption

It is really a `jig- saw puzzle` that despite having a democratic structure of governance, a competitive multi-party system, an independent judiciary, an independent press, we are perceived to be amongst one of the most corrupt countries of the world. According to Transparency International Corruption Perceptions index 2014, our country is ranked 85th among 175 countries³. This is although a slight improvement compared to last year when were ranked 94th, however, it should not be ignored that 84 countries are still better placed than us in the graft index rank.

The independent India`s tryst with corruption began right from the days of Pandit Nehru. Some of his close associates like V.K.Krishna Menon, T.T.Krishnamachari, K.D.Malaviya, Pratap Singh Kairon etc. were alleged to be involved in some scandals.⁴ However, the level of corruption during the early phase was very limited owing to the commitment of majority of leaders to the core values that guided our nationalist struggle for freedom and their desire to serve the society and the nation .

However, with the sharp deterioration of moral standards in public life in the post Nehru-Shastri phase, the level of corruption began to increase substantially and it has assumed a monstrous proportion in recent years. The situation has come to such a pass that a common man`s tryst with corruption begins at the early stage of his life and follows him everywhere till the very end. Ours has become a nation where everything is available for sale – jobs for sale, education for sale, caste certificates and death certificates for sale and even arrest warrants for sale.⁵



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When our country started the process of liberalization, privatisation and globalization (Lpg) of economy in 1991, it was believed that it would minimise the incidence of corruption with the gradual dismantling of the so called 'licence permit raj'. However the facts speak otherwise. The incidence of corruption has rather increased in the globalization phase compared to the pre-globalization phase. We have witnessed some of the biggest scams in recent years like 2G spectrum scam, coal block allotment scam and so on. During the previous Upa regime there was hardly any ministry or department which was not involved in one or the other acts of corruption. The virus of corruption has thus entered our body politic through, thick and thin. At a time when good governance has become a necessity for survival in a globalized world and which demands 'accountability' and transparency in administration, we are considered amongst one of the most corrupt countries of the world. Hence the problem needs close scrutiny regarding its roots and possible solutions.

Roots of Corruption

Roots of corruption can be traced to the very nature of politics. Politics is a game of power and power has a tendency to corrupt. That's why corruption is prevalent in almost all political systems, even in the communist countries where punishments for such crime are very high. However in the countries where public conscience is alive and people vigilant about their rights and obligations, the level of corruption is very low. But in a country like ours, corruption is primarily fuelled by its 'social acceptability' among possessing classes and 'powerlessness of dispossessed'.⁶

Our national conscience seems to be dead as public at large is reconciled to corruption as a way of life. Most of the voters vote not on the basis of the clean image or good performance of a candidate, but on the basis of their caste, communal, linguistic or regional affiliations. Moreover the use of money and muscle power in elections often influence its outcome. That is the reason why tainted politicians get elected on a large scale. Business houses, that have a stake in politicians' decisions, are the most convenient source of funds. They expect 'quid pro quo' in the form of opportunities to make quick money and other favours that results in corruption.⁷

Our legal system is so lethargic and cumbersome that in most of the corruption cases the culprits go unpunished. The conviction rates in our criminal courts is very low and therefore, corruption is considered a 'low risk, high profit' activity in the country.

The other causes of corruption include excessive regulations, complicated taxes and licencing systems, numerous government departments each with opaque bureaucracy and discretionary powers, monopoly by government controlled institutions on certain goods and services delivery and the lack of transparent laws and processes.⁸ Thus, multiplicity of factors are responsible for the growth of corruption in our country.

Anti Corruption Measures

Since corruption involves the loot of public money undermining the process of development and shaking people's faith in the democratic system of governance, it is a matter of serious concern to curb

the menace effectively for almost last five decades in our country. However the moot point remains as to what measures need to be adopted to curb the menace effectively. It has been felt that by making some bold institutional and legal reforms, the level of corruption can at least be minimised if not completely eradicated. It is in this context that the idea of having an ombudsman like institution came into prominence. The administrative reforms commission in its interim report submitted in 1966 recommended for the setting up of an ombudsman like institution to be known as Lokpal and Lokayukta to investigate and report on complaints pertaining to corruption.

The institution was thought of something in the nature of a setup for redress as had not been available through the normal departmental or governmental machinery.⁹ Consequent upon the Arc's recommendations and as a result of general climate which was built up, the government introduced a bill called 'the Lokpal and Lokayukta Bill' in the Lok Sabha on 9th May 1968. The bill was referred to a select committee which submitted its report on 29th March 1969. The Lok Sabha passed it on 20th August 1969 and sent it to Rajya Sabha. While the bill was pending in the Rajya Sabha, the Lok Sabha was dissolved in December 1970 and consequently the bill lapsed.¹⁰ Since then seven more attempts were made to pass the bill, but without any success due to lack of consensus on some key issues. It was ultimately in the ninth attempt that the Lokpal bill got passed by the parliament in 2013.¹¹

The Lokpal Act 2013: Salient Features

The Lokpal and Lokayuktas (L&L) Act 2013 is an anti-corruption Act of Indian Parliament which seeks to provide for the establishment of a body of Lokpal for the union and Lokayukta for states to enquire into allegations of corruption against certain public functionaries and for matters connected therewith or incidental thereto.¹² The Bill was passed by the Parliament on December 18, 2013 and received the assent of the President on January 1, 2014, thereby becoming an Act.

The legislation envisages that the Lokpal would receive complaints of corruption against the Prime Minister, Ministers, Members of Parliament, officers of the central government at all levels, and against functionaries of any entity that is wholly or partly financed by the government with an annual income above a specified limit, and also, all entities receiving donations from foreign sources in excess of 10 lakh per year. On receipt of a complaint against any public servant, except for officers from groups A, B, C or D, the Lokpal will order a preliminary enquiry against the public servant. The inquiry may be done by its own inquiry wing, provided for this purpose, or the Lokpal may direct the Central Bureau of Investigation (Cbi) or any other agency to do the preliminary inquiry. The preliminary inquiry has to be completed within a specified period, ordinarily within 60 to 90 days and a report has to be submitted to the Lokpal. For complaints against public servants belonging to groups A, B, C or D, the Lokpal will refer the Central Vigilance Commission (Cvc) for preliminary inquiry. After the completion of the preliminary inquiry, the Cvc will submit its report to the Lokpal in respect of public servants belonging to group A or B, while in cases of public servants

belonging to group C or D, the Cvc will proceed in accordance with the provisions of the Cvc act, 2003.¹³

Once the report of the preliminary inquiry is received the Lokpal is supposed to give an opportunity to the public servant to be heard, and if it decided that there exists a prima facie case, it should order an investigation by the Cbi (or any other agency) or other departmental proceedings against the concerned public servant. The investigation has to be ordinarily completed within six months, extendable to one year, and a report has to be submitted to the appropriate court having jurisdiction with a copy being sent to the Lokpal. Every investigation report is required to be considered by a bench consisting of at least three members of the Lokpal which may grant sanction to its own prosecution wing, or to the investigating agency to file a charge sheet before a special court, or direct filing of a closure report, or direct initiation of departmental proceedings against the concerned public servant¹⁴

Composition & Selection of Lokpal

The institution of Lokpal shall consist of a Chairperson and such a number of members, not exceeding eight out of which fifty percent shall be judicial members, provided that not less than fifty percent of the members of the Lokpal shall be from amongst the persons belonging to the scheduled castes, the Scheduled Castes, the Scheduled Tribes, Other Backward Classes, minorities and women. A person who is or has been a Chief Justice of India or is or has been a judge of a Supreme Court or an eminent person is eligible to be appointed as a Chairperson. A judicial member shall be a person who is or has been a judge of the Supreme Court or is or has been a Chief Justice of a High Court or a person of high integrity or outstanding ability.¹⁵

The Chairperson and members shall be appointed by the President after obtaining the recommendations of a Selection Committee consisting of the Prime Minister, the speaker of Lok Sabha, the Leader of Opposition in the Lok Sabha, the chief justice of India or a judge of a Supreme Court nominated by him and one eminent jurist, as recommended by the other four members of the committee.¹⁶

The L&L act is definitely a 'great leap forward' in the direction of curbing the menace of corruption in the country. Still however, it has many shortcomings which need to be pinpointed.

Shortcomings of L&L Act

Though the Lokpal may choose any agency to enquire or investigate complaints under its jurisdiction, in actual fact there are very few choices apart from the Cbi which is not functionally independent of the central government. Despite making a change in the process of selection of the Cbi director, the act fails to bring Cbi under the comprehensive administrative and financial control of the Lokpal.¹⁷

While it is a welcome move towards insuring time-bound completion of trial, the Act fails to specify what would happen in those rare cases where, despite best efforts, this was not possible. This ambiguity could lead to the proceedings being abandoned just because they could not be completed in time, and the accused getting off scot-free. This

would also give an incentive to the accused to delay the proceedings.¹⁸

Eventhough the act makes it mandatory for Lokayuktas to be set up in each state within one year, the state legislatures are free to determine the powers and jurisdiction of the Lokayukta. This could result in very weak and ineffective Lokayukta being setup in many of the states.¹⁹

The Act is also weak in so far as fixing responsibility of the Private Sector is concerned. Some recent events have shown that private entities are often in receipt of government patronage in the form of illegitimate profit making opportunities.²⁰ The act also fails to ensure the accountability of the institution and officials of the Lokpal. Any complaint against a member or chairperson of the Lokpal would be taken cognisance of only if it is signed by at least 100 Mps. However, our past experience shows that this is difficult to implement.²¹

The Act has thus, many faultlines that need to be rectified to make it more effective. However, it must be borne in mind that something is always better than nothing. The enactment of Lokpal Act should be taken as a good beginning that needs to be backed up by some other bold reforms to give a boost to anti-corruption efforts.

Scrutiny of Source of Funding of Political Parties

One of the main reasons behind corruption is the link between politicians and political parties and unaccounted money. In this respect what needs to be done is to scrap the current practice which allows political parties not to identify donors who contribute less than Rs 20000. This is the principle (but not only) channel for parties to collect vast amounts of undeclared funds. Every paisa given to political parties, and every paisa they spend, must be accounted for and transacted through auditable and transparent bank transactions which are today capable of being digitally monitored.²² In other words, there is a need to reform the source of funding and financial accountability of political parties.

As per the recommendation of Election Commission, made in 2004, all political parties must compulsorily make public their audited accounts every year. The task of auditing can be done by any firm of auditors recommended by the Comptroller and Auditor general (Cag) of India. Moreover, the financial transactions of political parties should come under the purview of Rti Act.²³

Neutral Intervention of Technology

It is also believed that 'a systematic increase in the neutral intervention of technology into as many areas as possible where the common man has to deal with government' can also minimise the incidence of corruption. It will 'reverse the role of human intermediaries in the interface between citizen and government.' Moreover, all states should be encouraged to adopt a 'Right to Public Services Act'. This Act should clearly identify the services where the ordinary citizens need to interact with the government, modalities to avail these services, a definite time frame for delivery of services and deterrent punishment in case of failure to deliver.²⁴

Transparency in Acquisition and Disposal of National Resources

There is a need to ensure absolute transparency in disposal and procurement of national

resources like land, minerals, forests, spectrum etc. Parliament needs to expeditiously enact a comprehensive law that must include a policy framework for all such transactions, including transparent competitive bidding as a norm. Moreover, it must incorporate rules and procedures to be followed for the selection process, conditions that may require creation of an independent regulatory authority for a specific transaction, use of e-technology to ensure verifiable public scrutiny timely and full public disclosure of all details and penalties that unethical practices would invite.²⁵

Substantive Judicial Reforms

A famous saying goes that 'justice delayed is justice denied'. But this is what happens in our country in most of the cases. Nothing emboldens the corrupt more than the belief that there will be negligible or no consequences for their corrupt behaviour. The Lokpal will hopefully, contribute in some measure to create the nexus between crime and punishment. But we will be fooling ourselves if we think that the real reform in this area will happen until the judiciary sits up and takes steps to reform itself.²⁶

The current litigation system in our country is not only antique in nature but has become cumbersome and time consuming as well. The backlog of cases is increasing day by day affecting the outcome of various cases. We need to expedite our judicial process by filling up vacant posts in various courts, setting up of special courts and time bound disposal of cases. Moreover, the implementation of Information and Communication Technology(Ict) in our courts needs rejuvenation. The successful use of 'e-governance' in our judicial system requires a techno-legal e-court framework. We need 'Ict' training for our judicial system as soon as possible. Further, electronic courts in India must also be supported by active use of online dispute resolution (Odr) to reduce backlog of cases.²⁷

In order to check the incidence of corruption in judiciary, there is a need to immediately pass the 'Judicial Standards and Accountability Bill' which is pending before the Parliament for the last many years. It should be made obligatory for our judges to declare their assets and liabilities.²⁸

Thus, in our fight against corruption we need to adopt multi-pronged strategies.

Conclusion

All in all, it can be said that the fight against political-bureaucratic corruption in our country has gained a new momentum with the enactment of the Lokpal Act. Despite some shortcomings, the Act is a significant step in the direction of curbing the menace at the higher level, but it should not be considered as a 'be all and end all' solution to the problem which has become deep-rooted and pervasive in nature. There is a need to back the institution of Lokpal with some bold legal, institutional and judicial reforms related to the prevention of corruption in one or the other way.

There is a glimmer of hope in the midst of darkness with the rising voices against corruption and increase in the level of consciousness amongst the common people. The forceful civil society movement against corruption launched under the leadership of Anna Hazare, the change of government at Centre which is primarily considered to be an anti-corruption mandate and passage of the Lokpal Bill, 2013 are the

good beginnings in our fight against corruption. The Transparency International Corruption Perception index 2014 has also shown some improvement compared to the last year and which is a good indication. However we have still promises to keep and miles to go in our mission to make India a corruption-free society.

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