

Independent Judicial Lokpal Need Of The Hour

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Abstract:

An independent 'Judicial Lokpal' with power to take up complaints and initiate action against judges should be set up to ensure accountability of the judiciary. There should be an independent institution for lodging complaints against judges. The institution should be independent from both the judiciary and the government like a Judicial Lokpal. The Judicial Lokpal which will have complete power to entertain complaints against judges and take action.ⁱ The independence of the judiciary was being undermined for several reasons, the absence of any concrete system to ensure their accountability. Administration of Justice is under sharp and critical gage of people today because of ever increasing number of court cases and inordinate delays in their resolution, Judges with a class bias, judges with a communal bend of mind, the regionalism, and cases of corruption, nepotism, arbitrariness and indiscipline in administrative machinery. The ombudsman is closely concerned with the correct functioning of the administrative machine. His function is to locate 'mal administration' or faults in administration.ⁱⁱ

Key Words: Ombudsman, Judicial Lokpal, Lokpal

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Introduction:

Ombudsman is a public advocate is an official who is charged with representing the interests of the public by investigating and addressing complaints of maladministration or a violation of rights. Scandinavian block of countries is considered the least corrupt in the world which celebrated its 200th anniversary in Sweden. The concept of the Lokpal was, of course, borrowed from the Scandinavian model of the ombudsman there was a request for the creation of a Judicial Ombudsman - an Ombudsman on the Swedish model to monitor administration of

Justice including the working of Judicial officers, prosecutors, police, jailors without interfering with the independence of judiciary. It may reprimand Judges for misconduct or misbehavior. It is intended to eradicate maladministration in court proceedings. An ombudsman is only a non adversarial adjudicator of disputes he serves as an alternative to the adversary system for resolving disputes, especially between citizens and government agencies. He is an independent and non patrician officer who deals with the specific complaints from the public against the administrative injustice and maladministration.ⁱⁱⁱ

Presently public servants such as government officials, members of parliament, Ministers, Judges, employees of universities, Armed forces officers, officers of the government aided cooperative societies and banks,^{iv} can be penalized under the Prevention Of Corruption Act, 1988, and the Indian Penal code 1860^v. India became signatory to the UN Convention against Corruption in 2005 (Ratified in 2011)^{vi}. In order to tackle the corruption and inefficiency, and redress specific grievances against the administration, the First Administrative Reforms Commission mooted the idea of an Ombudsman in 1966^{vii}. Later various attempts were made to bring Lokpal into existence but all attempts were failed one or the other pretext. The Venkatachaliah commission in 2002^{viii}, and the Second ARC in 2005,^{ix} recommended that the office of the Lokpal be established without delay. Public spirited people also tried to bring the ombudsman system by way of initiating Public Interest Litigations, A review petition filed before the Supreme Court of India to direct the Parliament to enact the legislation and establish institution of Lokpal^x

Following agitation led by the team of Anna Hazare the government constituted a Joint Drafting Committee in April 2011. The committee included government representatives and nominees of Hazare to draft the Lok Pal Bill by June 30, 2011.^{xi} However the two groups could not agree on key points and prepared two drafts of the bill The Draft by Hazare's nominees is Known as Jan Lokpal Bill in which they have demanded to have Judicial Lokpal under the Lokpal Act 2013 but the Government said – "Judiciary would be out of Lokpal." Team of Anna Hazare pointed that if an FIR should be registered against a judge or not, only Chief Justice of India has the power to give that permission. And despite so much evidence against so many judges in public domain, permission had been given only in few cases in the last 20 years. However, the government did not agree saying it would compromise the independence of judiciary the government introduced its version of the bill in Parliament on August 4, 2011^{xii}. But Anna Hazare team said that the independence of judiciary was compromised under the present system which was encouraging corruption. Government said that judiciary should be dealt under Judicial Standards and Accountability Bill. But Anna Hazare team told them that the said

Bill was very bad and would end up protecting corrupt judges rather than punishing them. Also, interestingly, the said Bill does not even talk of punishing and prosecuting "corruption" of judges. It only talks of enquiring against their "Misbehavior". The idea was to create a new mechanism for checks and balances within the system in keeping with the spirit of the constitution. The Lokayuktas and the Lokpal were to function independent of the governments concerned and supplement the judicial institutions. But at last Lokpal established under the Lokpal and Lokayuktas Act 2013 to inquire and investigate into allegations of corruption against public functionaries in and outside India who fall within the scope and ambit of the above Act. Lokpal Act came into force on 16th January 2014, Pinaki Chandra Ghose appointed as the Lokpal of India on 23rd March 2019.

Statement of problem:

1. The impeachment procedure of the Judges as provided in the Constitution of India nor the internal judicial machinery to prevent the corruption of Judges of the Higher Judiciary in India is sufficient.
2. There is necessity to enact judicial ombudsman system under the purview of which the judges of the Supreme Court and the High Court's shall be brought, as the corruption and maladministration is increased.

Independence of the judiciary was being undermined for several reasons, examination of these principles of judicial independence and judicial accountability in greater depth. If it is start with judicial independence, what is judicial independence? In short, judicial independence is freedom from improper control or influence. It has, I think, two aspects: first, "decisional independence," the independence of a judge in deciding cases, and second, "institutional independence," the independence of the court, or judicial branch, or the judiciary as an organization. With respect to decisional independence, it provides that the judge should decide cases solely based on the law and facts that are applicable without regard to political or popular pressure, without regard to the fact that there are some who would corrupt the judicial decision making process for their own advantage, without

regard to partisanship, fear of intimidation, or special interests. The goal of decisional independence is judicial integrity, judicial impartiality, and judicial fairness. Institutional independence seeks to ensure that the court, or judicial branch, or all judicial officers are free from improper influence and interference in the governance and management of the judiciary's own affairs. Its aspects include judicial selection; judicial retention; judicial evaluation, judicial discipline; judicial compensation.

The absence of any concrete system to ensure their accountability, being an organ of the Government, the judiciary is no less answerable than the Legislature and the Executive. Hence do not reduce the importance or independence of the judiciary system nor in their functioning.

A powerful inquiry committee of three successive judges concluded that Ramaswami was guilty of misconducts which justified his removal^{xiii}. However after the impeachment failed^{xiv}, A new technique is urgently required to reestablish the accountability of the judiciary and to check the falling norms of judicial integrity and honesty. There must be a perpetual legal body which should be allowed to investigate grievances against judges and discipline them after the enquiry, if they are found guilty. corruption cases have received immense publicity and exasperating individuals' confidence on the virtue of the judiciary. The conspicuous cases of Justice Soumitra Sen and Justice P D Dinakaran.^{xv} Four senior Supreme Court judges have accused the chief justice of India of misusing his prerogative as master of the roster. The burden of the letter written to the chief justice by the judges, Jasti Chelameswar, Madan B. Lokur, Ranjan Gogoi and Kurian Joseph, is that he has violated convention by allotting important cases to benches that would not by convention have been given them, benches that the letter describes as "of their preference". The letter suggests that cases of national importance have been selectively assigned without good reason to pliant benches^{xvi}.

"Power corrupts, and absolute power corrupts absolutely." – John Emerich Edward Dalberg Acton.^{xvii} The functioning of the collegium has attracted much criticism, largely due to aberrations in certain selections and transfers. Retired Supreme

Court judge, Justice Ruma Pal's revelations in 2011 that consensus in the collegium was often arrived at by "trade-offs" with "disastrous consequences" and that "sycophancy" and "lobbying" had coloured the appointments are ominous. Such actions shake the faith of the public in the judges' functioning. Justice Ruma Pal, had in 2011 called the functioning of the body a "mystique" shrouded in "secrecy".^{xviii} Later the government's attempt to have a National Judicial Appointments Commission (NJAC). On 16 October 2015, the Constitution Bench of Supreme Court by 4:1 Majority upheld the collegium system and struck down the NJAC as unconstitutional after hearing the petitions filed by several persons and bodies with Supreme Court Advocates on Record Association (SCAORA) being the first and lead petitioner. Justices J. S. Khehar, Madan Lokur, Kurian Joseph and Adarsh Kumar Goel had declared the 99th Amendment and NJAC Act unconstitutional while Justice Chelameswar upheld it^{xix}. The system of collegium has continued with its opaqueness and inconsistencies. The Collegium is a judicial creation and the syndrome of the personality cult being beyond accountability. It is bizarre in its performance its selection process is secret and suspect and is subject to no scrutiny. It excludes the executive and is in that respect unique in the world. The most pertinent question here is whether the transfer serves the interests of administration of justice for the people. The Supreme Court cannot function as a sentinel of justice unless it puts its own house in order. Its functions, both judicial and administrative, have to be transparent and accountable. "The apex court's power to transfer is not unfettered and absolute and can only be carried out in public interest for better administration of justice"^{xx}. Courts have in the past held illegal executive orders passed without reason. The same should apply to the administrative actions of the apex court's collegiums. The challenge before the judiciary now is to restore the trust of people in the system by overhauling the Collegium system.

Justice V.R. Krishna Iyer warned in the S.H. Sheth case that "Public power is a lofty trust to be operated and, if private impulses or public aberrations play upon the exercise, the Court shall quash the lawless fiat."^{xxi} The collegium is not a creation of the Constitution, but of the court itself. Yet, when the collegium's decisions are called into question for

having been influenced by extraneous considerations, there is no institutional check.

Judges with a class bias are misfits in a socialist republic. Some judges with a communal bend of mind are on the Bench. The regionalism and communalism of this body called the Collegium has brought down the greatness of India's fine judiciary, Parliament should wake up and implement glasnost and perestroika in the judiciary. In the name of independence, we cannot have judicial absolutism and tyranny.^{xxii}

Sexual harassment by judges for instance Chief Justice of India Ranjan Gogoi accused of sexual harassment by a Supreme Court woman employee. In 2013, former Supreme Court judge Ashok Kumar Ganguly was accused by a woman intern on charges of sexual harassment. After Ganguly, another former Supreme Court judge Swatanter Kumar was accused of sexual harassment by a woman law student.

Ranjan Gogoi can be seen from the fact that he not only got the woman he sexually molested dismissed because she complained against him, but his vendetta was not thereby satisfied. He went after her whole family, and misusing his position as CJI got them sent to jail. And what about his brother/sister judges? They should have asked Gogoi to resign, but many of them protected him, instead of protecting that poor woman and her relatives Shame on them.^{xxiii}

Corruption is rampant in India's court. According to Transparency International,^{xxiv} judicial corruption in India is attributable to factors such as "delays in the disposal of cases. Most disturbing is the fact that corruption has reached the highest judicial forum i.e. Supreme Court of India. Some notable cases include, In April 2017, A judicial Magistrate Debanjan Ghosh gave bail to a murder accused, and it is alleged that it is unusual unless huge money is involved.^{xxv} In December 2015, the Jail strength occupancy at Bagrakot correction home in Darjeeling District reduced to its lowest. It was later analyzed that this was due to large number of undeserving acquittals and undeserving bails by then Additional Chief Judicial Magistrate .

In December 2009, legal activist and Supreme Court lawyer Prashant Bhushan stated in court, "out of the

last 16 to 17 Chief Justices, half have been corrupt"^{xxvi} Prashant Bhushan recently submitted a supplementary affidavit in the Supreme Court of India where he has submitted evidence to back his allegations that "half of the last 16 Chief Justices have been corrupt."

Bhushan has admitted that getting documentary evidence of corruption in the higher judiciary is difficult. Despite this, his historic affidavit throws light on blatant corruption in the top echelons of the Indian judiciary^{xxvii}. In November 2010, former Law Minister, Shanti Bhushan echoed Prashant Bhushan's claim. The senior Bhushan spoke out of turn, He said, "It is my firm belief that there is a lot of corruption in judiciary. I am saying the same thing which Prashant Bhushan had said. The question of apology does not arise. I will rather prefer to go to jail. The judiciary cannot be cleansed unless the matter is brought into the public domain"^{xxviii}.

There have been allegations that judges with doubtful integrity were elevated within the higher judiciary and campaigns held for their impeachment.^{xxix} In November 2011, a former Supreme Court Justice Ruma Pal slammed the higher judiciary for what she called the seven sins. She listed the sins as Turning a blind eye to the injudicious conduct of a colleague. Hypocrisy – the complete distortion of the norm of judicial independence. Secrecy – the fact that no aspect of judicial conduct including the appointment of judges to the High and Supreme Court is transparent. Plagiarism and prolixity – meaning that very often SC judges lift whole passages from earlier decisions by their predecessors and do not acknowledge this – and use long-winded, verbose language. Self Arrogance – wherein the higher judiciary has claimed crass superiority and independence to mask their own indiscipline and transgression of norms and procedures. Professional arrogance – whereby judges do not do their homework and arrive at decisions of grave importance ignoring precedent or judicial principle. Nepotism – wherein favours are sought and dispensed by some judges for gratification of varying manner. In 2011, Soumitra Sen, former judge at the Calcutta High Court became the first judge in the India to be impeached by the Rajya Sabha for misappropriation of funds.^{xxx} Arrest of ex-Orissa HC judge IM Qudusi could

open can of worms on multi-crore dirty court deals.^{xxxi}

Conclusion:

Under our Constitution people are the real masters, and the legislatures must give obeisance to it. A perfect picture of people's disillusionment and unrest with the system emerges when corruption also comes into play with the delays. A careful balance between judicial accountability towards people and its independence needs to be ensured. It can be provided by appointment of judicial ombudsman for various levels. The very existence of ombudsman's office can instill a sense of caution among the judiciary and promote better performance in both on the judicial and administrative side.

The only remedy is to provide a legal conscience and for that there is necessity to enact judicial ombudsman system under the purview of which the judges of the Supreme Court and the High Courts shall be brought, because neither the impeachment procedure of the Judges as provided in the Constitution nor the internal judicial machinery to prevent the corruption of Judges of the Higher Judiciary in India is sufficient.

An effective Judicial Lokpal must be created, the judicial lokpal should not be declared as toothless tiger because the job of the judicial Lokpal was to look into the complaints against administrative actions, including cases of corruption, nepotism, arbitrariness and indiscipline in administrative machinery. A separate Lokpal Bill for Judicial Ombudsman is need of the hour.

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^x Common Cause, A Registered Society v. Union of India & Ors., (1999) 6 SCC 667

^{xi} Resolution No. 1(42) 2004-Leg-I, Ministry of Law and Justice April 8, 2011.

^{xii} "Finance minister statement in the Lok Sabha 27th August 2011" PIB Aug 27, 2011.

^{xiii} Accepting the motion on 12 March 1991, Speaker Rabi Ray constituted a committee composed of Justice P B Sawant of the Supreme Court, Chief Justice Prabodh Dinkarrao Desai of the Bombay High Court and Justice O Chinnappa Reddy, retired judge of the Supreme Court to investigate the affair. The committee found Ramaswami guilty of 11 out of 14 charges.

^{xiv} May 11, 1993 is recognized as the "black day" for Parliament and for the judiciary. As 205 Lok Sabha MPs belonging to Congress(I) party and its partners disrupted the impeachment movement against Justice V. Ramaswami by abandoning their constitutional duty of voting in favor of or against, impeachment procedure failed due to not having the support of majority members of the Parliament.

^{xv} Transfer of Justice Dinakaran to Sikkim High Court from Karnataka High court, The Collegium decided on impeachment motion. He had charges of corruption, land grabbing, unclaimed wealth, and unlawfully securing five housing boards plots in the name of his wife and children and entering into "benami transaction".

xvi <https://www.telegraphindia.com/opinion/grey-eminences/cid/1462821> retrieved on 15 December 2019.

xvii An observation that a person's sense of morality lessens as his or her power increases. The statement was made by Lord Acton, a British historian of the late nineteenth and early twentieth centuries.

xviii Supreme Court Advocates-on-Record Assn. v. Union of India, (2016) 5 SCC 1

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