



Lok Ayukta Justice Koshal: long way to go

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Lok Ayukta: Watchdog?

The Karnataka Lok Ayukta, which has the power to try even the chief minister, is yet to make headway

The Lok Ayukta Bill was Karnataka chief minister Ramakrishna Hegde's first specific indication of fighting corruption. The Bill which received the President's assent in January 1985, was the only one among other Lok Ayukta bills which brought the chief minister's office also under its jurisdiction. But the early cynicism that greeted the Lok Ayukta still survives. The only serious complaint that was brought against the chief minister was unceremoniously dismissed by the Lok Ayukta, Justice A.D. Koshal. There has not yet been any other significant complaint against politicians. Instead the body which was meant to be a sort of ombudsman of politicians' morals has how been reduced to investigating vague complaints against bureaucrats. Will the

Karnataka Lok Ayukta, the most powerful body of its kind in the country, shrivel into insignificance or will it evolve into the body that corrupt men fear?

The Karnataka Lok Ayukta Bill has often been termed the best such piece of legislation in the country. Said Justice A.D. Koshal, "My first reaction was not to accept because from my knowledge these Acts are just an eyewash. Most of the eight or nine states that have a Lok Ayukta do not meet the requirements of a proper organisation that the Lok Ayukta must have. But I thought the Karnataka Bill was the best such piece of legislation in the country."

Upalok Ayukta S.C. Mittal, a retired High Court judge from Chandigarh, who had handled the Pratap Singh Kairon assassination case, shares his views. He says that at a conference of Lok Ayuktas

held in Shimla in May 1986, the Karnataka Act came in for high praise. "It can easily be said to be the best in the country," he says.

What sets the state's Act apart is that every public servant, from the chief minister downwards, comes under the net of the Lok Ayukta, or the Upalok Ayukta. Also, unlike in some other states, the scope of the Lok Ayukta's investigative powers stretches beyond allegations to grievances as well. That means that not only can a corruption charge against an official be brought into the Lok Ayukta's office, a complainant can also seek redressal for undue delays, unreasonable or unjust actions and even discrimination. Many petitions that reach the Upalok Ayukta, for instance, demand the speeding up of overdue pensions, or the sanction of revenue

khaatas. Because the law is so new, and many people remain unaware of the narrow confines of the Lok Ayukta's jurisdiction, several petitions simply cannot be entertained. Says Justice Mittal, "A lot of precious time is wasted because people do not know the restrictions on us." Sometimes, people even come in with marital disputes in vain hope of redressal.

The Karnataka Lok Ayukta has a fairly well developed administrative structure under him, with a staff of around 150 officials all over the state, each office acting as a full-fledged police station. The staff is divided into three broad wings, the police wing, the technical and accounts cell and the judicial wing, each with distinct areas of operation. The jurisdiction is so divided between the Upalok Ayukta and the Lok Ayukta, that any official over the rank of under-secretary must be tackled by Koshal's office, while Mittal's vast territory spans downwards from under-secretaries to clerks and peons.

Justice Koshal frankly admits that the structure needs some improvements to be really effective. "All my officers are on deputation from the government," he says, "and there is no sense of belonging." Ideally, the Lok Ayukta should have a separate administration, he suggests. He feels the current structure is not fully conducive to independence. "One cannot get away from the idea that the staff may not be dependable, especially when they are expected to conduct enquiries against high officials," he says. Koshal hastens to add that he has not faced such a difficulty to date.

Koshal, like most other Lok Ayuktas in the country, also feels that it is not enough that the institution should be a recommendatory body only. "Its recommendations should have a binding effect," he says. As it stands, however, the Lok Ayukta can only file a report to the competent authority, which in good faith, should act on the recommendations in the report. The Lok Ayukta cannot enforce them in any way. However, Justice Mittal, who handles the bulk of the cases, says, "I have made a large number of recommendations and so far the government has not written back once to say it cannot implement them." That may be an indication of its commitment to the Lok Ayukta.

"Show me one case where the Lok Ayukta has caught a politician," Nage Gowda says. "What is the use of only punishing bureaucrats and officials: why do you need a Lok Ayukta for that? The whole purpose of the Lok Ayukta is to catch politicians. And this very purpose has failed."

the rank of MLA, MLC or even a corporation chairman has come to light.

In a government that has been steadily losing its image as a value-based institution, what the public really is looking for is the big catch, the MLA or the minister. Koshal admits that it is not very easy to catch the big fish, because they are more subtle at the game. "We are doing a very difficult job," he says. He adds that most cases are brought to him, after the act. "Then it becomes a mountain of a job to prove it," he says.

It was A.K. Subbaiah, ex-MLC who first put the institution to its greatest test. In 1986, he took a complaint against the chief minister, his son, Bharat, and some police officers to the Lok Ayukta. His charge: Bharat Hegde had accepted a bribe of around Rs two lakhs in exchange for a medical college seat for the daughter of C.P. Bharatan. But his attempt failed.

Justice Koshal, using the vast powers of dismissal of petitions that he possesses under the Act, rejected the case on insufficient grounds for investigation. The case received a lot of press coverage, and Hegde drew much mileage from the dismissal of the complaint. The Subbaiah case left its mark on the institution. A watchful opposition promptly jumped to the conclusion that

Nage Gowda: no faith in Lok Ayukta

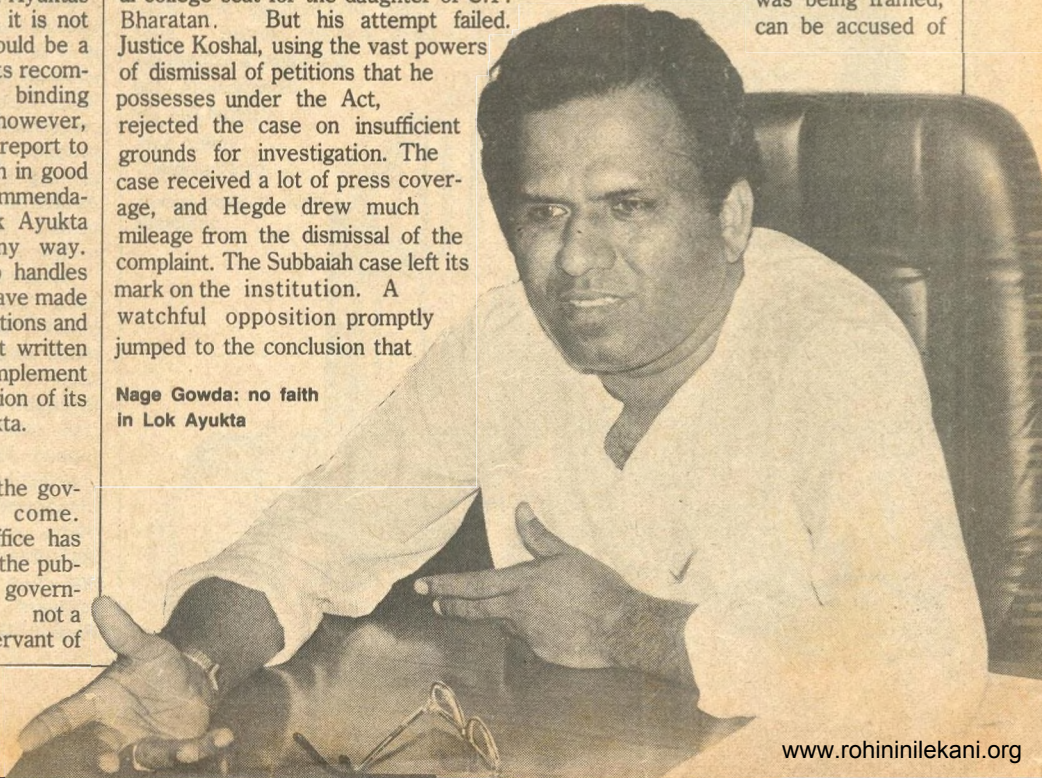
the Lok Ayukta's office was an inadequate forum. Says Veerappa Moily, who was very active during the framing of the Lok Ayukta Bill, "After Subbaiah's case, we became frustrated. We thought there was definitely an escape clause. Now the institution of the Lok Ayukta is not in a position to inspire confidence."

Subbaiah himself is still smarting from his experience. He is surprised that the case along with many other cases he filed, was rejected for lack of *prima facie* evidence for investigation. "How can we provide the evidence ourselves?" he asks. "It is for the Lok Ayukta to investigate a charge. If your house is robbed, do you have to prove it?" Although he says his earlier enthusiasm has now waned, Subbaiah has not quite given up. Some more cases against the chief minister and others, he says, are still pending with the Lok Ayukta.

If there is a growing cynicism about the Lok Ayukta, it also has a lot to do with widespread frustration among the people about the functioning of the government all over the country. There is so much corruption, so much misuse of authority, people feel powerless before it, and do not have faith in any institution created by the same government that is perpetuating the corruption.

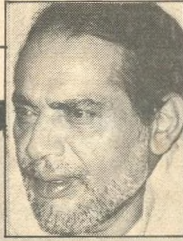
But not everyone agrees. Says IIM professor and Janata Party MLC, B.K. Chandrashekhar: "One way of battling this cynicism is precisely by initiating procedures with the Lok Ayukta. If you refuse to use an institution, you are guilty of undervaluing it."

Certainly the Congress(I), which was very much a participant while the bill was being framed, can be accused of



this. None of the Congress(I) leaders, who are so vociferous in their allegations against the Janata government has ever taken a case against its functionaries, to the Lok Ayukta. Take K.N. Nage Gowda, for instance. He has alleged impropriety against Hegde for diluting the government's shares in the state sector NGEF-AEG company. The issue has snowballed to the extent that the share transfer has been termed by an eastern daily, *The Statesman*, as "Hegde's black deal". But at no point did Nage Gowda, in spite of overt challenges by some Janata ministers, take the case to the Lok Ayukta. Says he in explanation, "I cannot go to the Lok Ayukta every day. The people are my Lok Ayukta." In fact, Nage Gowda asked the government to refer the case *suo moto*. And eventually, it was after *The Statesman's* report that Hegde did file the case before Justice Koshal. If Justice Koshal accepts the case, it will be one of the most crucial tests that the institution has been subjected to so far.

But K.N. Nage Gowda says that he too has no faith in the institution of the Lok Ayukta. The politician in him attributes this to the fact that the Lok Ayukta is Hegde's creation. "Show me one case where the Lok Ayukta has caught a politician," he says. What is the use of only punishing bureaucrats and officials? Why do you need a Lok Ayukta for that? The whole purpose of the Lok Ayukta is to stop political corruption, to catch politicians. And this very purpose has failed."



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Interestingly, although the Lok Ayukta has wide-ranging powers to issue search and seizure warrants, not once has his office had the occasion so far to issue such a warrant against any public servant of the rank of legislator or minister. Nobody has ever brought a legitimate complaint against a public servant of that level. "It is inherent in the very nature of things," says Justice Koshal. "Corruption is a sort of misdemeanour which suits the victim as well as the instigator."

Unfortunately, the Lok Ayukta cannot himself initiate proceedings *suo moto* against a public servant. He can only act upon a complaint.

Significantly, the original Act did confer *suo moto* powers

Prof. Chandrashekar: optimistic

upon the Lok Ayukta. But an amendment to the Act in 1986 did away with it. Now only the Upalok Ayukta retains *suo moto* privilege, and his jurisdiction ends at the under-secretary level.

But the Lok Ayukta Act offers yet another deterrent for corruption. Under Section 22, every public servant must submit to the Lok Ayukta a yearly statement of his assets and liabilities, and also that of the members of his family. Last year, many legislators let the 30th June deadline slip. But the matter does not end there. If the Lok Ayukta does not receive such statements even after a reminder, he can publish the names of the offenders in three newspapers. Last year some names were published. This year looks to be the same. The deadline is long past, and some public figures are yet to file their returns. Soon, Justice Koshal will avail of his privilege to publicly print their names for all the voters to see.

Meanwhile, what does Ramakrishna Hegde himself think of the Lok Ayukta he helped create? Surprisingly, he says he has not yet made any assessment. However, replying to a question as to why no senior politician had yet been prosecuted, Hegde says, "Just wait and see. Now that we are taking certain measures to root out corrupt elements in the administration, we will get more and more information." He was referring to his government's brand new drive to repair its nationally soiled image.

For those who are assessing the Lok Ayukta, however, Justice Koshal has a word of caution. "The Lok Ayukta is not a panacea for all ills," he says, "but it has a great value as a deterrent." Professor Chandrashekar adds, "The Lok Ayukta is a new political value. It is not the ultimate insurance, but at least it provides some protection against unbridled corruption and arbitrary acts." The problem of identifying corruption and proving it are as difficult to the Lok Ayukta as to any court of law, according to him. "Its limitations are not peculiar to the Lok Ayukta."

Somewhat cynically, Justice Koshal says, "Corruption has seeped into our blood." He believes it has to do with a much larger erosion of values in our society. Even then, as the nation goes through a collective soul-searching exercise over the current crisis at the Centre, Justice Koshal must have some satisfaction that in spite of the crusty bureaucratic exterior of his paper-ridden office, inside stands a powerful new institution that has the potential to stall, and even bring down any corrupt government.

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