Azim Premji University

From the SelectedWorks of Vikas Kumar

January 7, 2012

Lokpal Bill: Lessons from the Karnataka Lokayukta's Performance

Narayana A.
Sudhir Krishnaswamy
Vikas Kumar

Available at: https://works.bepress.com/vikas_kumar/107/

Lokpal Bill: Lessons from the Karnataka Lokayukta's Performance

NARAYANA A, SUDHIR KRISHNASWAMY, VIKAS KUMAR

The debate on the design of the Lokpal has been premised on the questionable assumption that what is needed to combat corruption is a powerful national institution to prosecute and convict the corrupt, but the debate has not drawn on the experience with the existing institutional models, namely the Lokayuktas in the states. An empirical analysis of the performance of the Lokayukta in Karnataka between 1995 and 2011 suggests that any anti-corruption agency, no matter how powerful, that is oriented towards criminal conviction is bound to fail in the absence of judicial reforms.

We are grateful to Manavi Belgaumkar, Dharmendra Chatur, Tasneem Deo, Rajeev Kadambi, Vandana Kamat, and Sumandro C for research assistance, to P G Babu, Poonam Mehra, V Santhakumar, and Alok Tiwari for helpful discussions, and to Azim Premji University for institutional support. The data used in this study was obtained in June 2011 from the public information officer, the Karnataka Lokayukta under the Right to Information Act, 2005. The usual disclaimer applies.

Narayana A *(narayana.gatty@azimpremjifoundation.org)*, Sudhir Krishnaswamy *(krishnaswamysudhir@gmail.com)* and Vikas Kumar (*vikas.kumar@azimpremjifoundation.org*) are at the Law, Governance and Development Initiative, Azim Premji University, Bangalore.

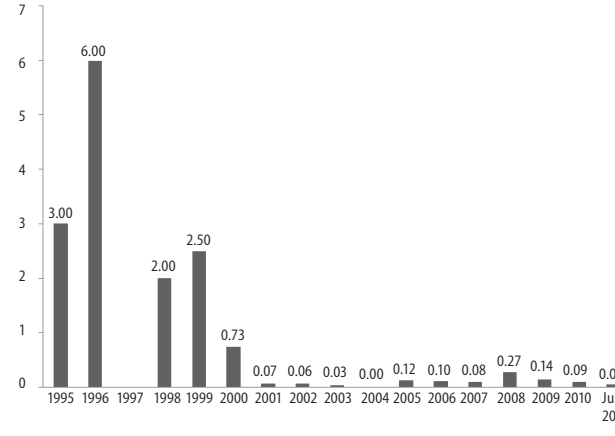
1 Introduction

The debate on policy choices and the institutional design for a new anti-corruption agency at the union and state levels has pervaded every public fora. The ubiquitous debate is characterised by passionate disagreement between familiar opponents who never tire of restating and rehashing their adopted positions which have been informed by their moral or political commitments. Even by the standards of India's loud and noisy democracy the anti-corruption debate has been characterised by a rancour and extraordinary brinkmanship that threatens to derail India's everyday practice of politics.

Despite the polarised debate there is agreement on the core moral imperative to tackle corruption seriously. However, the debate has quickly moved from this agreed premise to the questionable conclusion that we need a powerful national institution to prosecute and convict the corrupt under the criminal law. To our knowledge the choice of appropriate legal instruments to deal with corruption has not been debated. But the idea of an anti-corruption agency is not a new one. It has survived the scrutiny of the National Commission to Review the Working of the Constitution (2000), two Administrative Reforms Commissions (1966 and 2005), four parliamentary standing committees (1996, 1998, 2001 and 2011), and review of eight anti-corruption bills (1968, 1971, 1977, 1985, 1989, 1996, 1998 and 2001). Half of the states and union territories have already legislated on, and constituted anti-corruption agencies. Orissa was the first state to legislate on this matter (1970),[1] while Maharashtra was the first to constitute an anti-corruption agency (1972).[2] These preceding policy debates and existing models in the states have framed our policy choices. But the debate so far has focused extensively on the constitutional status of the Lokpal (L M Singhvi coined the word *Lokpal*, which means "Protector of the People", to indigenise the word Ombudsman (Standing Committee 2011, para 3.3) and the administrative and legal mechanisms necessary for a strong and effective agency without any attempt to learn from an empirical analysis of the performance of existing institutional models.

The best case for a national Lokpal is to show that the existing Lokayukta in the states works. For instance, it is often argued that the Karnataka Lokayukta, constituted under the Karnataka Lokayukta Act, 1984, provides an argument for an anti-corruption agency at the national level. So, it is puzzling that the debate has referenced prior bureaucratic discourse and the National Crime Record Bureau (NCRB) statistics, but there has been no systematic effort to evaluate or assess the experience of existing anti-corruption agencies in the states. The latest Parliamentary Standing Committee Report's use of anecdotes as empirical evidence exemplifies this approach.[3]

Figure 1: Ratio of Raid to Trap Cases (1995-2011)



In this article we hope to bring new insights to this debate by engaging with law in action. Over the last six months, researchers at the Azim Premji University's

Figure 2: Yearly Distribution of Cases Initiated under Karnataka Lokayukta Act, 1984

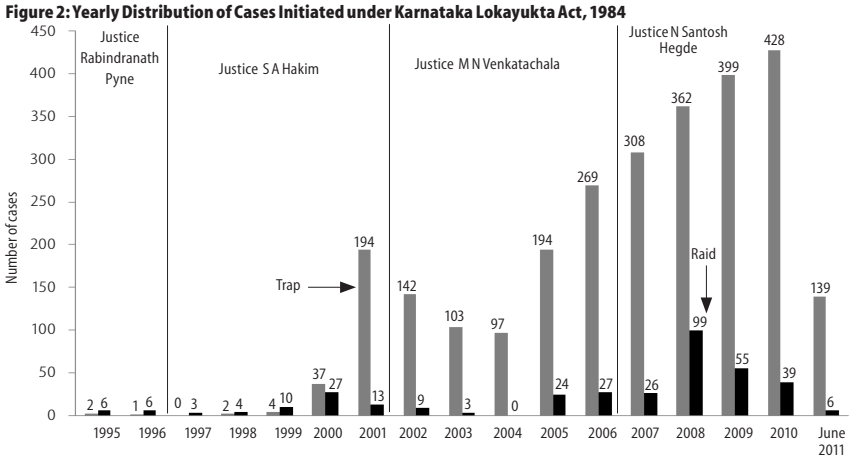


Figure 3: Departmental Distribution of Cases (1995-2011)

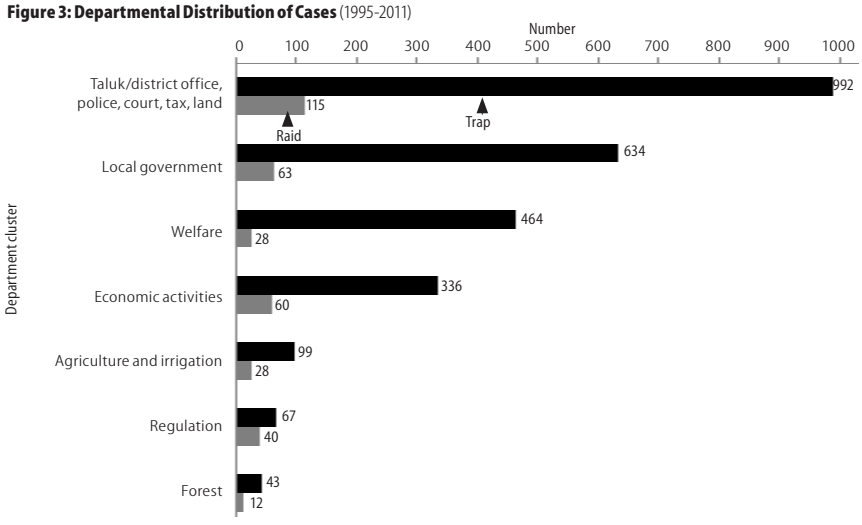
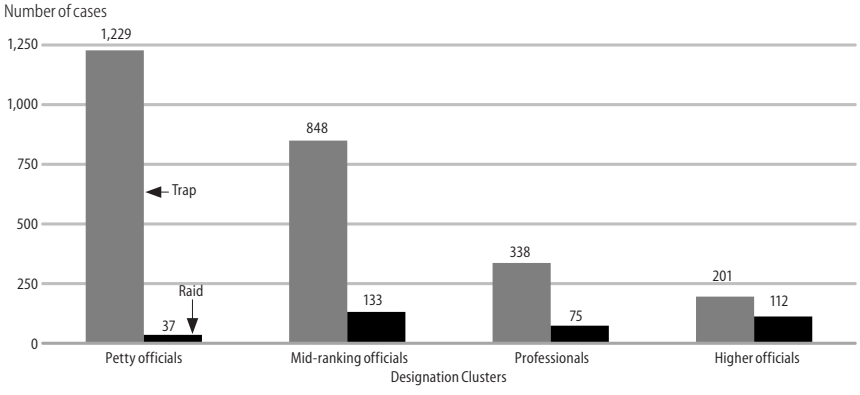


Figure 4: Distribution of Cases across Designations (1995-2011)



Law and Governance Initiative have examined a comprehensive data set of all raid and trap cases handled by Karnataka's Lokayukta between 1995 and 2011. This data was obtained under the Right to Information Act 2005. While our final analysis and conclusions will follow shortly, we hope to contribute to the present debates with our preliminary findings through this article. Our analysis suggests that the policy debate on the Lokpal has focused on issues that have been anticipated and largely resolved by existing legislation and institutional design of the Lokayukta in, say, Karnataka. It has ignored critical issues that may have little or nothing to do with the design of the Lokpal itself but affect its performance. We conclude that a bill that does not assimilate the experience of existing anti-corruption agencies in states like Karnataka is doomed to fail. The rest of the discussion is organised around discrete themes that have been highlighted in the current Lokpal debate.

2 Agency Prosecutions vs Citizen Complaints

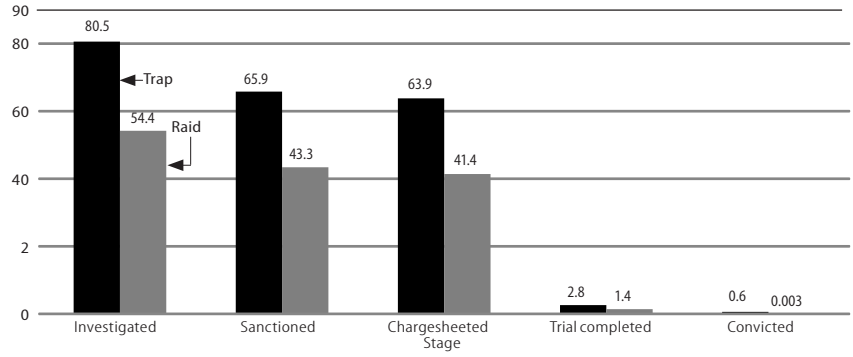
The need to establish a strong Lokpal that initiates criminal investigation against corrupt officials has been a key demand in the current debate. The Karnataka Lokayukta had the power, under the Prevention of Corruption Act 1988, to investigate cases of corruption and recently was endowed with suo motu powers even under the Karnataka Lokayukta Act to initiate criminal investigation.[4] However, between 1995 and 2011, Karnataka's Lokayukta carried out only 357 suo motu raids against individual officials but received and tried to trap 2,681 officials (and 59 private persons) in response to 2,159 citizen complaints.[5] In other words, for every six cases investigated in response to citizen complaints only one is initiated by the department suo motu. Also, the share of raid cases has been decreasing over the years (Figure 1, p 12).

So, a comparison between raid and trap cases suggests one of the most active Lokayuktas is primarily private complaint driven. This in turn suggests that the legal power to initiate action does not determine whether we have a proactive anti-corruption agency. The incentives for administrative action seem to lie elsewhere. Interestingly, institutional leadership is seen to have a significant impact on the agency's performance. For instance, in Karnataka more than 66% of the raid cases by the Lokayukta were initiated between 2006 and 2011, when justice Santosh Hegde was the Lokayukta (Figure 2). Our finding agrees with reports in the media suggesting steep changes in Lokayukta's case load with leadership changes (Aiyappa 2011). But note that during the period covered in our data, raids were conducted under the Prevention of Corruption Act, 1988. The new powers conferred by the recent amendments to the Karnataka Lokayukta Act, 1984 that granted the Lokayukta suo motu powers to investigate cases are yet to have a significant impact on the institutional capacity for proactive intervention.

3 Departmental Distribution

There have been several estimates of the departmental distribution of corruption in India. These studies often rely on survey data of impressions of the public[6] or from self

Figure 5: Processing Rate of Cases (as Percentage of Total Cases) (1995-2011)



disclosure.[7] We carried out a department-wise analysis of cases of corruption to map the focus of the Lokayukta's work (Figure 3, p 13).

Interestingly, more than 80% of the trap cases are related to four essential functions of government: local government (24.06%), administration – taluk/district office, police, court, tax, land, revenue (37.65%), welfare (17.61%), and regulation (2.54%). The rest of the cases are divided between agriculture and irrigation (3.76%), forests (1.63%), and economic activities (12.75%). The corresponding departmental shares for raid cases are as follows: local government (18.21%), administration (33.24%), welfare (8.09%), regulation (11.56%), agriculture and irrigation (8.09%), forests (3.47%), and economic activities (17.34%). Two observations are in order here. One, the distribution is not determined by the Lokayukta as a bulk of the cases arise out of citizen complaints. Two, given the growing importance of the welfare function of the State the overall share of essential functions is likely to increase rather than decrease.

Some participants in the debate have suggested that structural reform of government – the withdrawal of the state from non-core activities – will reduce corruption in India. Our preliminary analysis suggests that this is not a quick fix since at this stage, even a complete withdrawal of the State from economic activities will have only a marginal impact on the level of corruption measured in terms of number of cases of corruption. So, tackling corruption may require a more fundamental restructuring of the administrative process as it is unlikely that reducing the size of government will have a significant impact on the levels of corruption.

4 Petty vs Grand Corruption

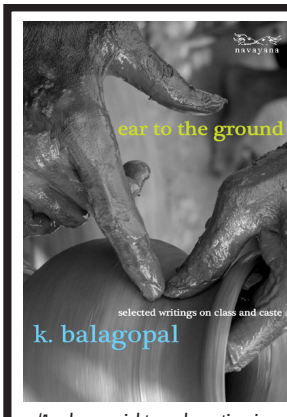
The distinction between petty and grand corruption is a well-established one in the academic literature on corruption. It has emerged as one of the contentious issues in the Lokpal debate with respect to the inclusion of Group C and D officials within its jurisdiction. Though our data is yet to be organised in line with Groups A, B, C and D categorisation it allows us to respond to this issue with greater insight than is currently the case (Figure 4, p 13).

Nearly half of the officials against whom the Karnataka Lokayukta has proceeded against are officials in the lower bureaucratic scale while about 10% are senior officials. Only 24 officials out of 3,038 (0.8%) belong to the Indian Administrative Service (IAS), the Indian Police Service (IPS), Indian Forest Service, and the Karnataka Administrative Service (KAS) cadres. The upshot of this discussion is that there is little doubt that the case docket of a Lokpal that includes officers of all categories will be overwhelmed by cases against the lower bureaucracy. While the current debate seeks to emphasise the blameworthiness and legal culpability of petty and grand corruption equally, the institutional impact on the allocation of scarce prosecutorial resources will be a serious one.[8] Further, it may be more useful to analyse the percentage of prosecuted officers from a particular category from among their total cadre strength but unfortunately this data is unavailable to us at this point.

5 Process of Investigation

The creation of a strong investigation and prosecution arm has been central to the Indian debate on the Lokpal. It is suggested that refusal of sanction for prosecution and the failure of the agency to complete investigations are the key problems that a Lokpal should be designed to avoid (see, for instance, the Jan Lokpal Bill 2011). In Karnataka, our analysis leads to the conclusion that neither of these problems is a critical hindrance for the anti-corruption agency.

Of all the cases, in 65.9% (43.3%) of the trap (raid) cases sanction for prosecution was granted (Figure 5). But when seen as a function of investigated cases, the percentage of cases receiving sanction for prosecution goes up to 94.3 (90.5)% of trap (raid) cases (Figure 6, p 15). Further, the trap (raid) cases in which sanction is



'As a human rights worker active since 1981, and slightly older than Balagopal, I remember him as a magical figure. The writings in this volume help interpret the often chaotic developments in Andhra Pradesh, and provide a model tool for understanding other regional realities of India.'
—BINAYAK SEN

Ear to the Ground
Writings on Class and Caste
K. BALAGOPAL

navayana
www.navayana.org

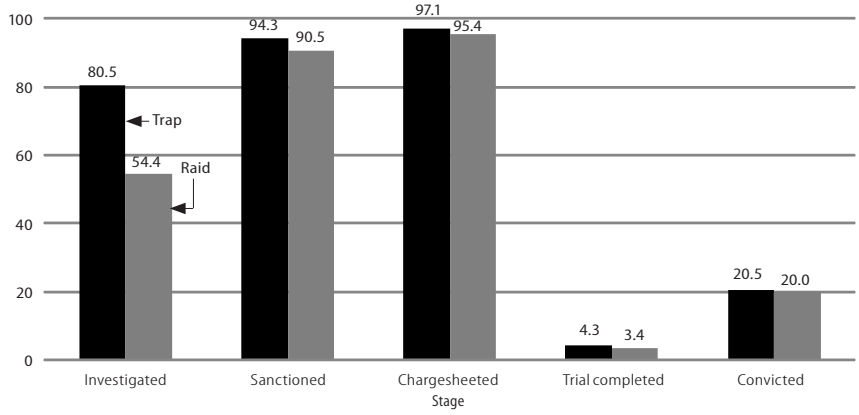
Paperback | 488 pages | 6 x 9.25 in | Rs 550

Balagopal's writings, from the early 1980s till he died in 2009, offer us a rare insight into the making of modern India. Civil rights work provided Balagopal the cause and context to engage with history, the public sphere and political change. He wrote through nearly three tumultuous decades: on encounter deaths; struggles of agricultural labourers; the shifting dynamics of class and caste in the 1980s and thereafter in Andhra Pradesh; the venality and tyranny of the Indian state; on the importance of re-figuring the caste order as one that denied the right of civil existence to vast numbers of its constituents; the centrality one ought to grant patriarchy in considerations of social injustice; the destructive logic of development that emerged in the India of the 1990s, dishonouring its citizens' right to life, liberty and livelihood. This volume comprises essays largely drawn from EPW, to which he was a regular contributor.

Balagopal was too self-effacing to put together his writings into a volume. But it is through his writings that his legacy lives on, giving us a roadmap for future struggles.

Distributed by IPD Alternatives, New Delhi. Ph 011-26492040 ipd.alternatives@gmail.com
Hyderabad Book Trust. Ph 040-23521849 hyderabadbooktrust@gmail.com
Buy online: swb.co.in and Flipkart.com
Navayana Publishing 155, 2nd Floor, Shahpur Jat, New Delhi 110049 Ph 011-26494795

Figure 6: Actual Processing Rate of Cases (1995-2011, in %)



yet to be granted are on an average 1.63 (2.14) years old and the median case in this category is two (three) years old. We do not have further details about the cases in which sanction has not been obtained so far. So, we cannot say if the delay in these cases can be attributed to political and/or bureaucratic interference. However, we can say that almost all the raid cases in which sanction is pending involve senior officials, including IAS, IPS, and KAS cadre officials, and chief engineers. But in an overwhelming majority of the cases the need for sanction for prosecution has not operated as a significant hindrance to the functioning of the Lokayukta in Karnataka.

The public debate has also emphasised the failure to complete investigations as one of the key problems to be resolved in the design of the Lokpal. We analysed the capacity of the Karnataka Lokayukta to resolve this problem within their existing legal and bureaucratic framework.

In 80.5% (54.4%) of the trap (raid) cases, investigation has been completed and this does not vary significantly depending on the rank of official being investigated, except at the very highest level. This high investigation rate is particularly impressive. The trap (raid) cases pending investigation are on an average about 1.1 (2.14) years old and the median case in this category is one (two) year old. Similarly, charge sheets were filed in 97.1% (95.4%) of the trap (raid) cases in which investigations have been completed and sanction for prosecution has been obtained. This processing rate compares favourably with the rate at which criminal cases in general are processed in India. The success of the Karnataka Lokayukta in investigating cases suggests that the existing legislative and bureaucratic framework in Karnataka does not impede investigation of corruption offences. The Indian public debate on the Lokpal has focused extensively on the need to equip the institution with extraordinary powers of investigation. Our analysis leads to the conclusion that much of the Indian debate has sought to extinguish a problem that does not have a very significant impact on the effectiveness of the anti-corruption agency.

6 Criminal Trial: The Core Problem

On the filing of a charge sheet in a special designated court, every case investigated by the Lokayukta enters the criminal justice system. We have noted that the performance of the Lokayukta in Karnataka has been creditable on most parameters discussed above. However, the story changes after charge sheets are filed.

Of the trap (raid) cases in which charge sheets have been filed, 95.7% (96.6%) are under trial. The average age of the trap (raid) cases under trial is 5.1(8) years old and the median case in this category in four (six) years old. Further, of all the trap (raid) cases investigated and under trial only 15 (one) have resulted in convictions. The conviction rate of 20.5% (20%) in trap (raid) cases is much lower than the rate of convictions in criminal prosecutions in anti-corruption cases in India in recent years, which is between 34% and 40% (NCRB 2007, 2008, 2009, Table 9.1, Col 23).[9] This suggests that this is the key problem that lies at the core of a criminal conviction model for tackling corruption in India. The Indian debate on the Lokpal has focused extensively on the remedying institutional inefficiencies at the complaint and investigation stage in the Lokpal. No matter how successful these innovations are, they will not tackle the core problem with a criminal trial in India: the trial stage.[10]

7 Is Karnataka's Lokayukta a Successful Model?

As the above discussion shows, if criminal conviction is used as the measure of success then the best Lokayukta in the country is undoubtedly a failure. But a caveat is in order: the Lokayukta does not administratively control the criminal court. Hence, we should attribute this failure to the choice of a criminal conviction model as the centrepiece of our anti-corruption strategy. Alternatively, the performance of the Lokayukta may be assessed by estimating its political and symbolic impact. While we do not have data to systematically evaluate the function of the Karnataka Lokayukta, maybe the Lokayukta's capacity to occupy media attention through the spectacle of the raid and high profile investigations into politically charged cases that have unseated a chief minister, shifted the public mood and enhanced political accountability, and could be counted as significant successes. However, we should not overstate these effects because the ruling party's candidates have routinely won most by-elections to the Karnataka legislative assembly in the recent past. A third potential measure of success of the Lokayukta as an anti-corruption agency may be its capacity to initiate and affect administrative measures against officials, including recovery of damages. At this stage we do not have the data to estimate or assess these effects and this will be the emphasis for future research. A final assessment of the Lokayukta in Karnataka would need a more fully developed normative framework for assessment. However, even at this stage we may conclude that the Lokayukta fails to achieve its primary purpose: the criminal conviction of corrupt officials.

8 Concluding Remarks

The presumption of a criminal conviction model is at the core of the Lokpal Bill, which means that it will come up against the same environmental limits – the efficacy of the criminal justice system – that the Lokayukta in Karnataka confronts. Without highly contentious legal reforms, an extremely powerful agency, which the

Jan Lokpal Bill promises to establish, can at best marginally improve investigation rates and filing of charge sheet in corruption cases without securing more convictions. The proposal for the Lokpal at the moment fails to address this core problem and for that reason is bound to fail to achieve its primary purpose: the criminal conviction of corrupt officials.

NOTES

1 Orissa Government (nd).

2 Standing Committee (2011, para 3.8).

3 Standing Committee (2011, *passim*) and Stark (2011).

4 Section 7(1)(b) of the Karnataka Lokayukta Act, 1984 as amended by the Karnataka Lokayukta (Amendment) Act, 2010.

5 In a raid case, the police wing of the Lokayukta raids the office and/or residential premises of a public servant to ascertain disproportionate assets. In a trap case, the Lokayukta police lay a trap to catch the public servants red-handed in the act of accepting a bribe. The latter is initiated in response to complaints, while the former is based on the intelligence collected by the Lokayukta police.

6 See, for instance, Transparency International (2005).

7 See, for instance, iPaidaBribe.com (nd) and Paul and Shah (1997).

8 Inadvisability of treating petty and grand corruption alike and using the same agencies and legal instruments to deal with them has been questioned for quite some time (e g, Rowat 1984; Panchu 2011).

9 Conviction rate is calculated by dividing the cases resulting in conviction by the total number of cases in which trial has been completed and judgment passed. Of all the cases, the share of cases leading to conviction is close to 0.5%.

10 Again, this issue has been discussed for long. See, for instance, Palmer (1985), Alexander (1995), and Quah (2003).

REFERENCES

Aiyappa, Manu (2011): "Complaints at Karnataka Lokayukta Dwindle", *Times of India*, 23 November, available at http://timesofindia.indiatimes.com/city/bangalore/Complaints-at-Karnataka-Lokayukta-dwindle/articleshow/ 10836823.cms

Alexander, P C (1995): *The Perils of Democracy* (Bombay: Somaiya Publications).

iPaidaBribe.com (nd): www.IPaidaBribe.com

Orissa Government (nd), http://rtiorissa.gov.in/dept_home.php?id=24&oid=193&sid=2

Palmer, Leslie (1985): *The Control of Bureaucratic Corruption: Case Studies in Asia* (New Delhi: Allied Publications).

Paul, Samuel and Manubhai Shah (1997): "Corruption in Public Service Delivery" in Guhan and Paul (ed.), *Corruption in India: Agenda for Action* (New Delhi: Vision Books).

Panchu, Sriram (2011): "Lokpal: Where Do We Stand Now, and How We Got Here", *Economic & Political Weekly*, XLVI (41), pp 19-21.

Prevention of Corruption Act (1988): available at http://lokayukta.kar.nic.in/preact.htm

Quah, Jon S T (2003): "Combating Corruption in India, Some Lessons from Asian Experiences" in Stephn Howes et al (ed.), *State-Level Reforms in India: Towards More Effective Government* (New Delhi: MacMillan).

Rowat, Donald C (1984): "The Suitability of the Ombudsman Plan for Developing Countries", *International Review of Administrative Sciences*, 50(3), pp 207-11.

Standing Committee (2011): *The 48th Report of the Department Related Standing Committee on Personnel, Public Grievances, Law and Justice on the Lokpal Bill, 2011* (presented to the Rajya Sabha on 9 December, 2011), available at http://www.prsindia.org/uploads/media/Lokpal/SCR%20Lokpal%20Bill%202011.pdf

Stark, Joshua J M (2011): "Kerala's Ombudsman: A Mismatch of Mission and Capabilities", *Governance: An International Journal of Policy, Administration, and Institutions*, 24 (2): pp 389-92.

The Jan Lokpal Bill (2011): available at http://ibnlive.in.com/news/full-text-the-jan-Lokpal-bill/148401-53.html

The Karnataka Lokayukta Act (1984): available at http://www.kar.nic.in/lokayukta/karnataka_ lokayukta_act.htm

The Karnataka Lokayukta (Amendment) Act, (2010): available at http://dpal.kar.nic.in/ a02010%5C250f2010(E).pdf

The National Crime Records Bureau (2007-09): *Crime in India*, available at http://ncrb.nic.in/

Transparency International (2005): *India Corruption Study*, available at http://www. transparency. org/regional_pages/asia_pacific/newsroom/news_archive2/india_corruption_study_2005