



सूचना के जन अधिकार का राष्ट्रीय अभियान

NATIONAL CAMPAIGN FOR PEOPLE'S RIGHT TO INFORMATION

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Shri Manmohan Singh
Prime Minister
Government of India

February 9, 2014

Dear Shri Manmohan Singhji,

While welcoming the passing of the Lokpal and Lokayukta Act (L&L Act), we would like to bring to your notice a very serious anomaly in the L&L Act, which we suspect is inadvertent. Essentially, the L&L Act does not set aside the requirement in section 6A of the Delhi Special Police Establishment Act that:

“The Delhi Special Police Establishment shall not conduct any enquiry or investigation into any offence alleged to have been committed under the Prevention of Corruption Act, 1988 (49 of 1988) except with the previous approval of the Central Government where such allegation relates to
(a) the employees of the Central Government of the Level of Joint Secretary and above ;and
(b) such officers as are appointed by the Central Government in corporations established by or under any Central Act, Government Companies, Societies and local Authorities owned or controlled by that Government.”

As this anomaly would, for all practical purposes, make the Act ineffective, we have taken the liberty to suggest that the Government of India urgently invoke its powers under section 62 of the L&L Act and rectify this anomaly without further delay. The details are in the annexed note (annexure I)

We have also been distressed by the rules that the Department of Personnel has notified for the L&L Act- “Search Committee (Constitution, Terms and Conditions of appointment of members and the manner of selection of Panel of Names for appointment of Chairperson and Members of Lokpal) Rules, 2014”. These rules contain some very retrograde provisions that would, if allowed to stand, severely inhibit the efficacy of this otherwise progressive law. As these rules still have to be laid before each House of Parliament, we sincerely hope that the Government would immediately amend them taking into consideration the various points outlined in the enclosed note (annexure II).

With kind regards,

Aruna Roy, Anjali Bhardwaj, Shekhar Singh, Nikhil Dey, Venkatesh Nayak, Rakesh Dubbudu, Bhaskar Prabhu

ANNEXURE I

Inadvertent Omission in the Lokpal and Lokayukta Act

Unfortunately section 6A of the Delhi Special Police Establishment Act of 1946, which specifies that the CBI cannot inquire or investigate into any offence committed by an officer of the rank of a Joint Secretary or above of the Government of India, and of equivalent rank in government owned or controlled bodies, without the previous approval of the Central Government has not been specifically amended or overridden in this Act. Though in section 23(1) of the L&L Act it is specified that the Lokpal shall have the right to order prosecution, notwithstanding anything contained in section 6A referred to above, it does not similarly talk about inquiry or investigation. However, this appears to be an oversight as the general tenor of the L&L Act, and many specific sections, suggest that the Lokpal should be able to order the CBI to inquire or investigate without seeking permission of the Central Government. Nevertheless, this anomaly needs to be corrected, otherwise it could make the Lokpal a non-starter for, though the Lokpal can ask agencies other than the CBI to inquire or investigate, presently there are very few such at the central level.

Therefore, in order to empower the Lokpal to do what it has been set up to do, and to remove internal inconsistencies in the law, the Government urgently needs to invoke the powers provided under section 62 of the Lokpal and Lokayukta Act, and add the words “enquiry, investigation or” after “power to grant sanction for”, and “clause (a) and (b) of sub-section (1), sub-section (5), and” after “prosecution under”, as indicated below (added words underlined), in section 23(1) of the L&L Act:

23(1) “Notwithstanding anything contained in section 197 of the Code of Criminal Procedure, 1973 or section 6A of the Delhi Special Police Establishment Act, 1946 or section 19 of the Prevention of Corruption Act, 1988, the Lokpal shall have the power to grant sanction for enquiry, investigation or prosecution under clause (a) and (b) of sub-section (1), sub-section (5), and clause (a) of sub-section (7) of section 20.”

ANNEXURE II

Note on the “Search Committee (Constitution, Terms and appointment of Chairperson and Members of Lokpal) Rules, 2014

On January 17, 2014, the DOPT issued the “Search Committee (Constitution, Terms and appointment of Chairperson and Members of Lokpal) Rules, 2014”. This note highlights some of the sections of the rules which, the NCPRI believes, are in violation of the letter and/or spirit of the Lokpal & Lokayukta Act.

1. Only secretaries to the Government of India, or equivalent, can be non-judicial members

Section 10 (4) of the Lokpal rules relates to appointment of chairperson and members of the Lokpal. It states that : *“In case of persons falling under clause (b) of sub-section (3) of section 3 of the Act, such persons having special knowledge and expertise of not less than twenty-five years in matters relating to,-*
(i) anti-corruption policy, public administration, vigilance or law and such persons must have held or must be holding the post of Secretary to the Government of India or any equivalent post thereto under the Central Government or a State Government;

This is in violation of Section 3 (3) (b) of the Lokpal Act which lays out the eligibility criteria for appointment of the members of Lokpal. Section 3 (3) (b) states that,

“A person shall be eligible to be appointed,—.....

b) as a Member other than a Judicial Member, if he is a person of impeccable integrity and outstanding ability having special knowledge and expertise of not less than twenty-five years in the matters relating to anti-corruption policy, public administration, vigilance, finance including insurance and banking, law and management.”

The proposed rules effectively add further elements to the criteria of eligibility, as specified in the Act, and thereby contradict and violate both the letter and spirit of the Lokpal Act. Either adding to the provisions of the Act, or contradicting the letter and spirit of the Act, cannot be done through rules and can only be done by the Parliament amending the Act. By limiting the scope of eligibility, a large pool of people with requisite experience in the categories listed in the Act will be disqualified. These rules will ensure that the Lokpal will comprise almost exclusively of judges and bureaucrats.

If Parliament intended that only retired and serving civil servants should become members of the Lokpal, it would have stated that, as it has done in various other laws. Clearly the Parliament intended to provide for a much more diverse Lokpal body. The DoPT has no *locus standi* to go against the will of the Parliament.

It is also an unfortunate and totally illegitimate tendency of the bureaucrats to consider only bureaucrats and retired bureaucrats as having “impeccable integrity and outstanding ability”. Surely many other persons in society could lay claim to such virtue.

2. Only chairmen/CEOs of banks, or equivalent, can be finance members

Similarly, 19(4)(iii) of the rules state: *“In case of persons falling under clause (b) of sub-section (3) of section 3 of the Act, such persons having special knowledge and expertise of not less than twenty-five years in matters relating to,-*

(ii) finance including insurance and banking, and management and such persons must have held or must be holding the position of Chairman, Managing Director or Chief Executive Officer of a Public Sector Undertaking or of a relevant private institution of comparable status, and who have attained outstanding achievements or acquired eminence in the fields aforesaid:

This is again in violation of the spirit and letter of the law, and of the will of Parliament, as discussed earlier.

3. Giving exclusive power to the government to short list candidates

Section 10 (1) of the Lokpal rules state that, *“The Search Committee shall prepare a panel of persons to be considered by the Selection Committee for appointment as the Chairperson and Members of the Lokpal, from amongst the list of persons provided by the Central Government in the Department of Personnel and Training.”*

This section is extremely problematic, as it could potentially empower the Central government to decide which names should be forwarded to the search committee and the search committee would be bound to pick from only those name while preparing a panel for the selection committee.

High powered selection committees, consisting of the PM, Leader of opposition etc, often do not have the time to search out appropriate candidates. Therefore, the rationale of setting up a search committee was to do away with the prevalent practice where the dealing department, in effect, determines who is to be appointed by putting up a pre-selected list to the selection committee. If the Central Government is again allowed to control the pool from which the search committee can select a panel of names, then we will be back to the old system where good candidates, who are not favoured, could be kept out, and the decision could be steered to a few favoured candidates by packing the list with other clearly unsuitable or undesirable candidates, so that the favoured candidates are the only ones left that could be reasonably selected.

The rules, therefore, must specify that the Central Government will provide the list of all applicants who have applied or whose names have otherwise been recommended and/or received. At best, the Central Government can indicate which candidates, in their view, are unsuitable, as per the provisions of the Lokpal Act. It must be left to the search committee and finally the selection committee to consider and reject or accept these views. Under no circumstances should the Central Government be allowed to delete any names on their own.

4. Unclear role of the Secretary, DoPT

Section 3 (3) of the Lokpal rules state that: *“The Secretary to the Government of India in the Department of Personnel and Training shall function as the convenor of the Search Committee”*

Section 4(3) of the Lokpal Act makes it clear that the search committee would be constituted by the selection committee. Therefore, it must be made amply clear here that the DoPT secretary would be a non-member convenor, unless the selection committee specifically nominates him to be a member of the search committee.

5. Illegitimately restricting the size of the search committee

Section 3 (1) of the Lokpal rules state that, *“The Selection Committee shall constitute the Search Committee consisting of eight persons from the fields and the categories of persons specified in sub-section (3) of section 4 of the Act.”*

There is no rationale for specifying that the number of persons in the search committee should be eight since Section 4(3) of the Act states that the Search Committee shall consist “...of *at least seven persons*...”. It is much better to leave it as it is so that the selection committee has some flexibility, especially as it needs to ensure that at least half the members must be from among a specified category.

Perhaps it would be useful to suggest to the selection committee a procedure for selection of members of the search committee. One possible procedure could be that each member of the Selection Committee nominates two persons on the search committee – one of whom must be a woman or from amongst persons belonging to the Scheduled Castes, the Scheduled Tribes, Other Backward Classes, or Minorities.