



सूचना के जन अधिकार का राष्ट्रीय अभियान

NATIONAL CAMPAIGN FOR PEOPLE'S RIGHT TO INFORMATION

NOTE ON THE LOKPAL AND LOKAYUKTA BILL 2011

The NCPRI believes that the Lokpal legislation is a key measure for fighting corruption and in conjunction with other anti-corruption and grievance redress legislations like the Whistle Blower protection bill and the Grievance Redress bill will ensure better governance. We feel that these legislations must be discussed in the Parliament and passed immediately.

The following note highlights our key suggestions to strengthen the Lokpal and Lokayukta bill which has been tabled in the Parliament by the select committee.

Lokayuktas in states

The select committee has recommended that every state will mandatorily set up a Lokayukta within a period of 1 year of the notification of the Act. The Lokpal Bill may be sent to all states as a model but states have the freedom to determine the nature and type of Lokayukta depending on their requirements.

Much of the corruption that affects the common person, especially the poor and marginalised, is in state government agencies. It would be meaningless to create an anti-corruption agency that leaves out the majority of Indians, especially those who are most in need of its intervention. The Lokpal Bill should therefore must provide for setting up Lokpal at the centre and Lokayuktas in states on the same pattern as the Lokpal bill. Some matters of rule may be left to the States. As the Prevention of Corruption Act is a central Act it is essential that the same procedures of dealing with corruption be followed across the country.

Other suggestions

Independence

1. The investigations of complaints of corruption against Central Government public servants are envisaged to be undertaken by the Central Bureau of Investigation (CBI) which will not

be independent of the government. Though the select committee has recommended that the Lokpal have powers of superintendence and direction over the CBI and that transfer of CBI officers investigating cases referred by the Lokpal be done with the approval of the Lokpal, experience has shown that such powers are meaningless without administrative control, at least in terms of the appointments, transfers and removals, and in terms of writing the annual confidential reports. Therefore, it is essential that the following paragraph be added- ***“Further, all appointments, transfers and removal of group A and B staff of the Delhi Special Police Establishment can only be done with the concurrence of the Lokpal, and that the Chairperson or the concerned member of the Lokpal would be the accepting authority for the annual confidential reports of all those Group A and B officers who have directly or indirectly been involved in any case under the jurisdiction of the Lokpal”.***

2. It is essential that the government in no way be involved in the process of removal of Lokpal and complaints against the members of the Lokpal be received directly by the Supreme Court, who deals with them appropriately.

Accountability

3. The Lokpal should be made accountable to Parliament for the maintenance of ethical standards within the institutions, specifically maintaining impartiality in functioning, especially the absence of political, caste, class, gender and religious bias, the prevention of victimization, and the avoidance of conflict of interests.
4. The Bill envisages that the Lokpal [S. 38] would itself deal with complaints of corruption against its own staff. Considering one of the basis of setting up an independent Lokpal is the principle that all complaints of corruption should be dealt with by independent bodies, and considering the type of powers the Lokpal are likely to have there would be many opportunities by its staff to indulge in corrupt practices, it is important to have a system that is independent of the Lokpal to deal with complaints of corruption against their own staff. The Lokpal should refer such matters to an Ombudsman appointed for the purpose by an independent committee, who will complete the preliminary inquiry into the complaint or allegation made, within a period of thirty days from the date of its receipt.

Workability

5. The Bill envisages that all the nearly sixty lakh group C (and D) public servants would be covered by the Central Vigilance Commission (CVC) [S. 20]. However, it does not specify how a CVC, located in Delhi, would receive complaints, conduct preliminary enquiries, and exercise superintendence and issue directions on investigations, against lakhs of employees who are spread across thousands of post offices and manned railway crossings, for example, in the villages of India. Would they set up thousands of *thanas* in the villages and rural blocks of India, or would they expect villagers to come to Delhi, or to state or

district headquarters, to lodge and pursue complaints and conduct enquiries and oversee investigations? And would it be desirable to have thousands of new CVC (and Lokayukta) *thanas* all over the country? Would these prevent or promote corruption? ***The Bill and/or the explanatory notes accompanying the Bill ought to clarify the envisaged process. Alternatively, the principle of territorial jurisdiction suggested by the NCPRI should be incorporated, with the existing police thanas being the first point of complaint, but with the option of filing a complaint with the Lokayukta offices at the district headquarters against both state and Central Government employees posted in the district. The Lokayukta would have the right to take over the investigation if required, and would be obliged to fix responsibility and initiate action for lapses by the police.***

Miscellaneous

6. The proviso to Section 20(1) states that “*the Lokpal shall if it has decided to proceed with the preliminary inquiry, by a general or special order, refer the complaints or a category of complaints or a complaint received by it in respect of public servants belonging to Group A or Group B or Group C or Group D to the Central Vigilance Commission constituted under sub-section (1) of section 3 of the Central Vigilance Commission Act, 2003*”.

It is not clear why the Lokpal "shall" refer all complaints to only the CVC for preliminary inquiry, even though an inquiry wing of the Lokpal has been set up u/s 11(1). Also, this contradicts section 14(1) and section 20(1). Therefore the Lokpal /Lokayukta should have the option of having the matter enquired and investigated either by its own staff or, for categories other than group A, refer it to the CVC, otherwise the Lokpal will become a mere post office. Also, in part V 2(c)(1) of the schedule only group B, C and D are listed.

7. Section 46(1) states that “*notwithstanding anything contained in this Act, whoever makes any false and frivolous or vexatious complaint under this Act shall, on conviction, be punished with imprisonment for a term which may extend to one year and with fine which may extend to one lakh rupees.*”

This clause should be applicable only where a false complaint has been made knowing that it is false and with malicious intent. Besides, there should be no imprisonment but only a fine, as otherwise it would discourage even genuine complainants.