

## CRITIQUING THE DRAFT OFFICIAL *LOKPAL* BILL

The draft *Lokpal* bill made public by the Government of India (June 21<sup>st</sup> version) does not yet have clearance from the Cabinet, but is most likely to be the version that will be introduced in Parliament. Therefore, it is important to critique it and suggest ways of improving it at this stage. Once it gets introduced in Parliament it is far more difficult for citizen's to get their voices heard, and far more difficult to get the government to respond to those voices and agree to make the required changes. This exercise, consequently, is an effort to establish a tradition of pre-legislative public consultations on proposed laws, even though in this case what is available is an unofficial draft.

The critique of the bill that is being offered is an outcome of a series of consultations that the NCPRI, in collaboration with other associated groups and organizations, has been holding over the last nearly three months, to formulate an optimal anti-corruption and grievance redress strategy.

In a meeting held on 16<sup>th</sup> April 2011 at the Nehru Memorial Museum and Library, the consensus that emerged was that the best way of tackling corruption and redressing grievances at all levels would be through a basket of measures involving a multiplicity of institutions and measures, rather than expecting one institution to do everything for everyone. Based on this discussion, a set of general principles were drawn up and put in the public domain, detailed in the note on *Collective and Concurrent Lokpal Anti-Corruption and Grievance Redress Measures*. The current critique of the draft government Lokpal bill is based on these general principles and subsequent consultations.

### Scope and Coverage of the Draft *Lokpal* Bill

Perhaps the most significant weakness of the draft *Lokpal* bill (henceforth the Bill) as a measure for combating corruption and redressing grievances is its very limited scope and coverage. Specifically:

1. The Bill takes cognisance of complaints regarding only the Prevention of Corruption Act. Perhaps, in order to more comprehensively cover all forms of corruption, it should also take cognisance of complaints relating to violations under Chapter IX of the Indian Penal Code, Prevention of Money laundering Act, and any other law or legal instrument that the Government of India may, from time to time, notify;
2. The bill does not cover the Prime Minister. We feel that the Lokpal should cover the Prime Minister with specific conditions.
3. This bill, apart from covering Ministers and MPs, is applicable only to grade A officers of the central government. We feel that there should be concurrent measures evolved to cover other levels of the bureaucracy, as detailed in our note on *Strengthening the Central Vigilance Commission and Departmental Enquiry Processes*.
4. The bill does not cover the higher judiciary and there is no indication of how the higher judiciary will be made accountable. We feel that an alternate and appropriate institution for the higher judiciary needs to be concurrently set up as detailed in our note on *Judicial Values and Accountability*.
5. The grievance redress mechanisms in this bill are totally inadequate and, in fact, there is no provisions for any action to be taken once a grievance is filed. We feel that grievance redress is a very important issue which requires to be dealt separately by grievance redress commissions, as detailed in our note on *Lokshikayat Grievance Redress Commissions*.
6. This bill does not even mention the need to provide protection to whistleblowers. We feel that there should be appropriate provisions in the bill to protect whistleblowers who have either made complaints or appeared as witnesses in front of the *Lokpal*. This should be in addition to a comprehensive whistleblower protection bill brought in concurrently, as detailed in our note on *Loksuraksha Whistleblowers Protection Bill*.

### **Inappropriate and Unacceptable Provisions in the Draft *Lokpal* Bill**

There are many specific provisions of the bill that are either inappropriate or unacceptable. Specifically:

1. It is not clear why the President of the National Academy of Sciences or the senior most National Professor has been singled out to be a member of the selection committee for the chairperson and members of the Lokpal. Though it is desirable to have eminent academics in the selection committee, their number should be increased to two and one should be explicitly from the humanities and social sciences, perhaps by rotation. Perhaps two vice-chancellors from among vice-chancellors of the long established central university can be picked on a rotational basis, with one being from the sciences and the other from humanities and social sciences. (Section 4(1)(i))
2. It should be clarified that the cabinet secretary would be the secretary, and not member secretary of the selection committee. (Section 4(1)(j))
3. The setting up of a search committee should be made mandatory and should not be optional, as specified in Section 4(3). Experience with other appointments, like those of information commissioners or the CVC, suggest that high powered selection committees rarely have the time to get into the details and, therefore, the selection is significantly and unfairly influenced by the department which does the short listing. This can be established by the fact that a large number of senior officials of concerned departments nominate themselves for various sought after positions.
4. Section 9(2) allows a member of the Lokpal to be elevated to the chairmanship. This could create a conflict of interest where members would be tempted to be in the good books of the government in order to be considered for elevation.
5. The various provisions in the Bill relating to allocation of budgets and management of finances of the Lokpal don't seem to provide the required autonomy to the Lokpal. (Sections 16, 43, 44 and 46)
6. Section 38(2) of the Bill specifies that all trials must be completed within two years. Whereas it is desirable that cases are finished speedily, putting a final limit of two years might be problematic. The Bill does not say what should be done if a case is not finished in two years, but if it means that it would then be closed, then this is not acceptable.
7. The Bill gives the President the power to decide which complaints against the Chairperson and members of the Lokpal would be referred to the Chief Justice of India, and what action should be taken, based on the advise of the CJI. However, unless the Bill specifies that this power of the President is independent of any advice that the government might give, it would actually be the government that would be exercising these powers, thereby compromising the independence of the Lokpal (Section 40).
8. The Lokpal should not be the sole authority for disposing complaints against its own officers, as this would be against the spirit of the Lokpal Act. There should be a provision for an Ombudsman or some other such authority/body, appointed by the Chief Justice of India, to hear appeals against the decisions of the Lokpal in matters relating to its own officers. (Section 41)
9. The provisions relating to imposition of penalty for so called false and frivolous or vexatious complaints is totally unacceptable. Apart from the impossibility of uniformly defining and objectively determining what is frivolous or vexatious, this would be an effective deterrence to people wanting to file even genuine complaints against important and powerful people. In order to discourage false and malicious complaints, proof of malafide intent must be a necessary pre-condition for any penal action on a false complaint, and the penalty must be restricted to a reasonable fine. (Section 50)
10. Section 57 is confusing, especially if read with Section 55. In actual fact, any offence that is cognisable under the Lokpal bill by the Lokpal should automatically not be cognisable by any other agency. This needs to be clarified.

Detailed presentations on these and other issues would be made at the meeting on 6 July 2011. The relevant notes (referred to above) will also be distributed.