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Subject: [HumJanenge] Fwd: Orissa lawyers for a drastic overhaul of Jan Lokpal Bill

To
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Sub: Request for drastic recast of Jan Lokpal Bill version 2.2 in line with its original mandate- Resolution of the Second Seminar on Legal Aspects of Jan Lokpal Bill held at Cuttack, Orissa by Progressive Lawyers Association on 26th April 2011

Esteemed Annaji,

Greetings from Progressive Lawyers Association!

Hopefully, you might have gone through and appreciated the Report of our first Seminar on Legal Aspects of Jan Lokpal Bill version 2.1 held on 18th April 2011 at Cuttack, Orissa. In that report we have pointed out various omissions and commissions in the Jan Lokpal Bill proposed by India Against Corruption Team and called for its drastic overhaul in keeping with its original mandate.

Meanwhile the 2nd Seminar on the above subject was held on 26th April 2011 attended mostly by Advocates of Orissa High Court along with a section of social activists. In this Seminar we have located some more omissions and commissions, which are both serious and silly in nature in the Jan Lokpal Bill version 2.2.

While forwarding herewith the complete Report of the 2nd Seminar, we earnestly request you to kindly do the needful to address to the existing omissions and commissions in the draft Jan Lokpal Bill so as to provide for an effective and foolproof anti-corruption law covering both Centre and States.

A line in reply shall be highly appreciated.

With regards,

Kshirod Kumar Rout, Dt 29.4.2011
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Orissa lawyers for a drastic overhaul of Jan Lokpal Bill
Second Seminar on Legal Aspects of Jan Lokpal Bill
Orgd. by Progressive Lawyers Association
at Basundhara, Cuttack, Orissa on 26th April 2011

After the first Seminar on Legal Aspects of Jan Lokpal Bill was held on 18th April by Progressive Lawyers Association, the 2nd one was held on 26th April at the same venue i.e. Basundhara, Bidanasi, Cuttack in the evening around 6.30 to 8.30 pm. The list of participants is appended hereto. It was presided over by Mr.Khirood Rout, Advocate Orissa High Court, President of the Association.

The President while declaring the Seminar open apprised the house that the proceedings of the first Seminar were mailed to Mr.Anna Hazare with a forwarding note on the need for amending the Draft Bill (version 2.1) and its copy circulated to Justice S.Hegde, India Against Corruption Team and also to such NAC members as Mrs.Sonia Gandhi Chairperson National Advisory Council and Mrs.Aruna Roy, Mr.Harsh Mander, and Dr.N.C.Saxena members of NAC among others. While some participants of the last Seminar were given the proceedings through mail others received it in hard copy.

Further the President informed that meanwhile version 2.2 has replaced the version 2.1 of Jan Lokpal Bill and requested the participants each to speak precisely and in reference to the provisions made in the latest version of Jan Lokpal Bill.

The first Speaker was **Mr. Bibhu Prasad Nayak, Advocate Orissa High Court** who strongly supported the ongoing move for an effective anti-corruption law in the shape of Jan Lokpal Act to act as a deterrent against the rampant corruption in every sphere of public life.

The next speaker **Mr. Dipak Kumar Das, Advocate Orissa High Court** pointed out some specific omissions and commissions in version 2.2 of Jan Lokpal Bill. In respect of Section 7 (Removal of Chairperson or members), he showed the following anomalies-

- The Section 6 (2)(b) says, “Any person, who was ever chargesheeted for any offence under IPC or PC Act or any other Act or was ever penalized under CCS Conduct Rules” shall not be eligible for appointment as Chairperson or Member of Lokpal. As is well known, there are many minor, petty, compoundable offenses covered under IPC and some other Acts, should can't be equated with seriousness of charges made under Prevention of Corruption Act 1988. This provision should therefore restricted its reference only to PoC Act or conversely mentioned the specific provisions of IPC and other relevant Acts, the charge-sheeting under which shall render a person ineligible for appointment for the above posts.

- The Sub-section (5) of Section 6 (Appointment of the Chairman and Members) which provides for the composition of Selection Committee should have mentioned the Speaker of Lok Sabha and Charirman of Rajya Sabha as its members among others. Further, the provision for including ‘two youngest Judges of Supreme Court’ and ‘two youngest Chief Justices of High Court’ in the Selecion Committee needs clarification, especially for its reference to the words ‘two youngest’.

- The Section 6(8) which provides for selection of members of Search Committee in its Clause (a)(a) says, “Any person who has had any substantive allegation of corruption against him” shall not be eligible for membership of the said Committee. The expression ‘substantive allegation of corruption’ needs to be defined. Further, the Section 6(8) in its Clause (a)(b) says, “Any person who has either joined any political party after retirement or has had strong affiliations to any political party” shall not be eligible for membership of the said Committee. Here the expression “strong affiliations to any political party”, in absence of a definition is likely to give rise to multiple interpretations and unwarranted ambiguities.

- The Section 6(8) which provides for selection of members of Search Committee in its Clause (b) says, “The five members selected above shall nominate five members from civil society”. The word ‘civil society’ being a too broad expression should be defined in the Bill, and the criteria to be followed for nomination of civil society members should also be specified.

- The Section 6(9)(c) says, “The Search Committee shall invite recommendations from such class of people as it deems fit. The recommendations should, inter alia, contain the following details”. One of such details as mentioned there-under is “his work against corruption in the past with documentary evidence”. The expression ‘documentary evidence’ needs to be defined.

- While Section 7 (3)(b)(iv) says that the Supreme Court shall directly, “if the grounds are proved, recommend to the President for removal of the said member or Chairperson”, the Section 7(3)(h) says a different thing- “On receipt of a recommendation from the Supreme Court under clause (b)(iv) supra, the Prime Minister shall immediately recommend the removal of the

member(s) or Chairperson of Lokpal to the President, who shall order the removal of the said member(s) or Chairperson within a month of receipt of the same”.

- There is omission of Clause (c) and Clause (d) in Section 7(3). After Clause (b), there is abrupt mention of clause (e).

- Section 19A (Punishments for offences) mentions that for offenses committed under such instruments of law as “Chapter-III of Prevention of Corruption Act, the proviso to Section 2(4) of this Act and Section 28A of this Act shall not be less than one year of rigorous imprisonment and may extend upto life imprisonment”. Then it is said, “Provided that the punishment shall be more severe if the accused is higher in rank”. This proviso needs to be clarified with reference to words such as ‘more severe’ and ‘higher in rank’. Further, the proviso to Section 2(4) says, “Provided that if any person obtains any benefit from the government by violating any laws or rules, that person along with the public servants who directly or indirectly helped that person obtain those benefits, shall be deemed to have indulged in corruption”. This provision aiming at punishing the bribe-giver seems to be unwarranted, because a lot of people who don’t want to pay any bribe to get their work done are often compelled to do so because the public servants don’t do the works of the public without being bribed.

At this point **President Mr.Kshirod Rout** raised another issue in regard to the proviso under Section 2(4). He observed that if both bribe taking public servant and bribe giving common person are both punished as per Section 2(4), the common man who under the force of circumstances feels compelled to pay bribe, would never come forward to complain about the occurrence of bribery in the concerned public office, lest he would undergo the same punishment as would be meted out to the bribe taking public servant. In the end, no case of corruption would ever be reported to Lokpal.

Advocate Mr. Das also raised the question whether necessary ‘protection’ has been provided to Lokpal under the Bill. To this query, **Mr.Chitta Ranjan Behera, Advocate** clarified that Section-27 (Protection) has been provided for the purpose in Jan Lokpal Bill.

The next speaker **Mr.Chitta Ranjan Behera, Advocate** at the outset shared with the participants a heartening development that has taken place meanwhile since the first Seminar on Jan Lokpal Bill was held here itself on 18th April last. After deliberating on 2.1 version of JL Bill, the last Seminar had then arrived at a consensus that the civil society Bill instead of limiting its purview to Centre only, should have covered both Centre and States in keeping with the promise of the founding fathers of the Jan Lokpal Bill as an alternative to the Government proposed Bill that had a Centre-centric purview. Fortunately enough, the current 2.2 version of Jan Lokpal Bill carries a forwarding note that reads, “The following Bill has been drafted only for setting up an institution of Lokpal at the centre. We propose that in this same Bill, provisions on the same model may be made for setting up similar institution of Lokayukta in each state”. While our purpose has been partially fulfilled, it would have been better if the preamble of the Bill would have been amended to read as follows, “An act to create effective anti-corruption and grievance redressal systems at Centre and in States so that effective deterrent is created against corruption and to provide effective protection to whistleblowers” and the relevant provisions in the text of the Bill recast accordingly.

Then Mr. Behera made a detailed presentation on his findings on the wide ranging exemptions allowed to different categories of public servants from the investigative and punitive purview of the Jan Lokpal Bill. Before proceeding further he cautioned the participants not to be subjectively judgmental in assessing the quality of this Bill but to assess its provisions objectively by the mandate which the founding fathers had themselves projected to be the rationale of the alternative Bill. Quoting from the briefs circulated by the www.indiaagainstcorruption.org along with the Jan Lokpal Bill, Mr. Behera mentioned 3 such mandates, namely; (1) a single, apex, independent and effective anti-corruption agency to be set up covering both Centre and States, and any complaint of corruption to be investigated and tried in a time bound manner so that a corrupt public servant, be he a politician, officer or judge be sent to jail within two years of the complaint so lodged, (2) A grievance redressal machinery to be set up to redress the grievance of any person within a month of the filing of his grievance relating to denial of any lawful entitlement besides penalizing the guilty official and paying the penalty amount as compensation to the deprived citizen, and (3) Immediate Protection to be provided to the anti-corruption whistle-blowers along with stern punishment to the concerned public servants who might have attacked, threatened or harmed in any manner the whistle blowers to fulfill their evil designs.

Now let us see how far Jan Lokpal Bill in its version 2.2 caters to the above mentioned promises. First of all, as already mentioned, the current Bill concerns itself with Centre only, where only 10% of country's total corruption takes place, whereas as Justice Santosh Hegde observed a few days back, the common man is harassed by 90% of corruption taking place at the level of States across the country. Thus, sooner the Bill is made inclusive of both Centre and States, better for everybody.

Secondly, the definition of 'Public Servant' as provided under Section 2(11) is not as inclusive as it should have been, since such constitutional authorities as President, Vice-President and Speaker of Lok Sabha are not covered there-under.

Thirdly, the proviso to Section 18 (8) says, "Provided that the provisions of this section shall not apply to the Prime Minister". The Section-18 is captioned as 'Provisions relating to complaints and investigations'. Thus, going by the above proviso, no complaint can be lodged against the Prime Minister nor any enquiry or investigation made into his conduct.

Fourthly, the Section 18(8) says that even if the allegation of corruption against a Minister is substantiated and he should therefore not continue to hold that post, 'Lokpal shall make such recommendation to the President, who shall decide either to accept such recommendation or reject it within a month of its receipt'. In case the President rejects the recommendation of Lokpal for removal of the concerned Minister, Lok Pal has no power to do anything about it.

Fifthly, as per Section 28B (2), "For an allegation against a Member of Parliament that he has taken a bribe for any conduct in Parliament, including voting in Parliament or raising question in Parliament or any other matter, a complaint could be made to the Speaker of Lok Sabha or the Chairperson of Rajya Sabha, depending upon the House to which that member belongs". Then it is said that a complaint of such nature shall be forwarded to the Ethics Committee within a month of its receipt, and then "The Ethics Committee shall, within a month, decide whether to .

.”. It is interesting to know that the last line is an incomplete sentence conveying no meaning as such. What is striking here above all is that there is no mention of the word Lok Pal in the entire provision. It clearly says that Lok Pal has no power to receive, let alone dispose of a complaint of corruption against a Member of Parliament in respect of his conduct in Parliament.

Sixthly, Section 18(iii) says, “The conduct of an investigation under this Act against a public servant in respect of any action shall not affect such action, or any power or duty of any other public servant to take further action with respect to any matter subject to the investigation”. It plainly means that the very alleged act of corruption by a public servant into which Lok Pal may be investigating, shall continue in force as before and that too with the unfettered involvement of all other concerned public servants.

Seventhly, in a similar vein Section 18(iv) says, “If, during the course of a preliminary inquiry or investigation under this Act, the Lokpal is prima facie satisfied that the allegation or grievance in respect of any action is likely to be sustained either wholly or partly, it may, through an interim order, recommend the public authority to stay the implementation or enforcement of the decision or action complained against, or to take such mandatory or preventive action, on such terms and conditions, as it may specify in its order to prevent further harm from taking place”. Then it goes on to say, “The public authority shall either comply with or reject the recommendations of Lokpal under this sub-section within 15 days of receipt of such an order”. If the concerned public authority rejects such recommendation, which is very much likely to happen, a nonplussed Lokpal, “if it feels important, may approach appropriate High Court for seeking appropriate directions to the public authority”. Thus, any small or big public authority has been privileged with the discretion to reject Lok Pal’s recommendation, and alternatively, once the case moves on to High Court at the instance of Lok Pal himself, there is no predictability about the time-limit or ultimate outcome of the case so lodged in the High Court, since either party, who might lose at the level of High Court, may move the Supreme Court to vindicate his position vis-à-vis that of the opposite party.

Eighthly, the Bill’s provision is made such that Lok Pal’s recommendation to a public authority to transfer or suspend any of its officer/employees held guilty prima facie can be defied by that authority with impunity. The Section 18(vi) says, “If during the course of investigation or enquiry into a complaint, the Lokpal feels that continuance of a public servant in that position could adversely affect the course of investigations or enquiry or that the said public servant is likely to destroy or tamper with the evidence or influence the witnesses, the Lokpal may issue appropriate recommendations including transfer of that public servant from that position or his suspension, if he is a government servant. The public authority shall either comply with or reject the recommendations of Lokpal under this sub-section within 15 days of receipt of such an order. Lokpal, if it feels important, may approach appropriate High Court for seeking appropriate directions to the public authority”. The implication of a helpless Lok Pal approaching the High Court to salvage the matter has already been dealt with above. Thus there would be a veritable scope legally available to the Government servant to manipulate the evidence and witness so as to influence final outcome of the investigation in his favour.

- Ninthly, the Jan Lokpal Bill in its Section 18(vii) says, “The Lokpal may, at any stage of inquiry or investigation under this Act, direct through an interim order, appropriate authorities to

take such action as is necessary, pending inquiry or investigation.- (a) to safeguard wastage or damage of public property or public revenue by the administrative acts of the public servant; (b) to prevent further acts of misconduct by the public servant; (c) to prevent the public servant from secreting the assets allegedly acquired by him by corrupt means.” Then like in some previous instances, the public authority is privileged with the discretion to ‘comply with or reject the recommendations of Lokpal . . . within 15 days of receipt of such an order’. In the event of rejection of such recommendation, Lokpal, as in earlier instances, ‘if it feels important, may approach appropriate High Court for seeking appropriate directions to the public authority’, thus leading to endless lingering of the case at different levels with the public servant being enabled to carry on his acts of misappropriation of public wealth, misconduct and stashing of black money in safe havens.

Tenthly, though Section -15 (Making a complaint to the Lokpal) in its sub-section (1) says inter alia that “any person may make a complaint under this Act to the Lokpal”, the sub-section (1) of Section 8 (Functions of Lokpal) provides no scope to Lokpal for receiving complaints against Judges or Minister/MPs.

Eleventh, though Section-16 (Matters which may be investigated by the Lokpal) provides sweeping power to Lokpal for investigating into any complaint made against any public servant, Section 17 (Matters not subject to investigation) in its sub-section (1) provides too many exceptions under which “the Lokpal shall not conduct any investigation under this Act in case of a grievance”. As per this provision, those grievances of a complainant for which “any remedy by way of appeal, revision, review or any other recourse before any authority provided in any other law and he has not availed of the same” shall not be investigated by the Lokpal. Again, if a complaint is under consideration by ‘a judicial or quasi-judicial body’ and the complainant can’t prove malafides, it can’t come under investigative purview of Lokpal. Then also, “If the substance of the entire grievance is pending before any court or quasi-judicial body of competent jurisdiction”, it won’t be investigated by the Lokpal. Lastly, another qualification, the meaning of which is not clearly comprehensible, also limits Lokpal’s powers to investigate a public grievance- “any grievance where there is inordinate and inexplicable delay in agitating it”.

President **Mr.Kshirod Rout Advocate** intervening in the discussion added that the sub-section (2) of Section 17 is another great factor constricting Lokpal’s purview of investigation. It says, “Nothing in this Act shall be construed as authorising the Lokpal to investigate any action which is taken by or with the approval of the Presiding Officer of either House of Parliament”. Thus not only any alleged act of corruption by the Speaker or Chairman of Rajya Sabha, but also that of any Minister, MP or official who are in the good book of Speaker or Chairman of Rajya Sabha shall enjoy immunity from the investigative scanner of Lokpal.

Twelfth, continuing his talk **Mr. Chitta Ranjan Behera Advocate** observed that the parental mandate of redressing the grievance of a deprived or defrauded citizen within a month of the receipt of his complaint along with penalization of the guilty official and payment of the penalty amount to the harassed complainant by way of compensation has also been belied by the Jan Lokpal Bill version 2.2. Ironically, the Chapter titled ‘Grievance Redressal Systems’ which deals with the related provisions (Sections 21, 21A and 21B) doesn’t provide for any space to Lokpal to receive or adjudicate any grievance of this sort at all. Instead, the procedure prescribed therein

for the disposal of a grievance is multilayered, time killing and confusing to no end. Surprisingly there are two separate Sections (Annual Integrity Audit, and Allegations of Misconduct) bearing the identical Serial Number i.e. 21B. Let's now see how the multi-stage grievance redressal procedure is laid out in this Chapter. Firstly, Section 21(3) says, "Each public authority shall designate an official called Public Grievance Redressal Officer, whom a complainant should approach for any violation of the Citizens Charter". But Section 21A (1) says a different thing- "The Chief Vigilance Officer of any public authority shall declare such number of Vigilance Officers, as it deems fit, to be known as Appellate Grievance Officers, to receive and dispose grievances related to that public authority". Then again, Section 21A (2) announces a new position saying, "If a citizen fails to receive satisfactory redressal to his grievance within a month of making a complaint to Public Grievance Redressal Officer, can make a complaint to Appellate Grievance Officer". Next, it is true, the Section 21A (3) prescribes a duration of one month from the date of the receipt of the complaint, within which the Appellate Grievance Officer shall dispose of the grievance, but peculiarly enough, if it relates to an issue falling outside the Citizens' Charter. The Section 21 A (4) defines 'vigilance angle' and the next provision Section 21A (5) endows the Appellate Grievance Officer with the power to penalize a guilty officer with a fine at the rate of Rs.250/- per day for the entire period of delay in delivering the unjustly withheld entitlement to the aggrieved person and compensate the aggrieved complainant with the penalty amount so realized. But the time limit within which the Appellate Grievance Officer shall pronounce his decision on the grievances relating to Citizens' Charter, which is in fact a crucial element in the whole matter, is not clear at all from these provisions. Further, the Section 21A (6) provides for penalties against the guilty officers under the CCS Conduct Rules, thereby leaving out the Officers of All India Services like IAS, IPS and IFS from the ken of penal action by Lokpal.

Now let us see what kind of endless, multi-layered, labyrinthine appellate process the aggrieved citizen is made to pass through in search of elusive justice. As per Clause (1) of Section 21C the Vigilance Officer, otherwise known as Appellate Grievance Officer "shall conduct an enquiry into each case within 3 months of its receipt and present its report to the Chief Vigilance Officer". Mind it, prior to this, the complainant must have passed through one month of appeal before the concerned Public Grievance Officer as per the earlier referred Section 21A(2). The Clause (2) of Section 21C says, "Within a fortnight of receipt of report, the Chief Vigilance Officer shall constitute a three member bench of Deputy Chief Vigilance Officers other than the one who conducted enquiry at clause (1) above". Then, the Clause (3) and Clause (4) read together provide that the said Bench shall hold a summary hearing of the vigilance officer who conducted enquiry, the complainant and the guilty officers and pass an order 'within a month of the constitution of the bench' 'imposing one or more of the minor or major penalties on the accused government servants', "provided that such order shall be in the form of a recommendation to the appropriate appointing authority". However, the matter is not finished there. The Clause (5) says, "An appeal shall lie against the order of the bench before the Chief Vigilance officer, who shall pass an order within a month of receipt of appeal, after giving reasonable opportunity to the accused, the complainant and the vigilance officer who conducted enquiries". It is to be noted here that the said appeal before the CVO can be lodged by anyone of the 3 parties including accused officers and vigilance officer to reverse the decision on penalty made by the bench.

To recapitulate, the PGRO shall take one month, followed by Appellate Grievance Officer who shall take 3 months to enquire and report to the CVO, then by CVO who shall take half a month to constitute the Bench for summary hearing, by the Bench which shall take a month to pass its orders, and then by the CVO who shall take one month to dispose of the appeal. Thus the whole process for disposal of a single grievance shall take at least six and half months, and then again there is also no guarantee that the concerned public authority shall execute the order of CVC, since it is not mandatory but recommendatory in nature. Just contrast this weird provision with the tantalizing promise, “you could approach Lokpal if your ration card or passport or voter card is not being made or if police is not registering your case or any other work is not being done in prescribed time. Lokpal will have to get it done in a month’s time”.

Mr.Behera summed up his talk with the observation that the draft Jan Lokpal Bill in its present avatar is worse than its official counterpart. and if enacted shall further widen the floodgate of corruption in the country. The civil society in whose name this draft Bill has ironically been bloated out of proportions has the moral obligation to tailor it to the pristine mission that had triggered off the exercise in scripting an alternative to the official bill.

Following the deliberation by Mr.Behera, the **President Mr.Kshirod Rout** placed his concluding remarks. He suggested that as in the case of previous Seminar, the proceedings of this Seminar pointing out a fresh series of omissions and commissions in the Draft Jan Lokpal Bill shall be mailed to Mr.Anna Hajare and other concerned persons associated with the drafting of Jan Lokpal Bill. The date and venue of the next Seminar on the legal aspects of Jan Lokpal Bill shall be intimated soon. **Mr.Basant Kumar Prusty Advocate Orissa High Court** moved a vote of thanks to the chair, speakers and participants, who all made the Seminar a success. He also thanked Basundhara for having facilitated the logistics of the Seminar and **Mrs.Saila Behera Secretary Basundhara** for her keen participation in the proceedings of the Seminar.

LIST OF PARTICIPANTS

Mr.Khirood Rout, Advocate	President
Mr.Chitta Ranjan Mohanty, Advocate	Speaker
Mr.Asit Kumar Jena, Advocate	
Mr.Subha Bikash Panda Advocate	Speaker
Mr.Dipak Kumar Dash, Advocate	Speaker
Mr.Tushar Kanta Nayak Advocate	
Mr.Chitta Ranjan Behera, Advocate	Speaker
Mr.Bikash Mohanty, Advocate	
Mr. Ramesh Sahoo, Advocate	
Mrs.Rini Mohanty, Basundhara	
Mr.Harihar Nayak, Basundhara	
Mr.Raj Kishore Singh, Social activist	
Mrs. Saila Behera, Secretary Basundhara	Speaker
Mr.Chitta Ranjan Nanda, Advocate	
Mr. Bhramarbar Sahu, Trade Unionist	

Mr.Bibhu Prsaad Nayak, Advocate
Mr.Basant Kumar Prusty, Advocate
Mr.Sailendu Ghosh, Social Worker
Dr.Prashant Kumar Mishra, Advocate
Mr.Prashant Paltasingh
Mr.Giridhari Nayak, Basundhara
Mr.Akshay Kumar Swain, Basundhara
Mr.Subhasis Patnaik

Speaker
Vote of thanks
