

## Curbing Corruption or Dissent: NGOs within the Ambit of Lokpal



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## Lead Essay

### Curbing Corruption or Dissent: NGOs within the Ambit of Lokpal

By restricting the freedom of civil society organisations governments have attempted to curb the voices of dissent. The Ministry of Personnel, Public Grievances and Pensions had issued three new notifications on June 220, 2016 laying down procedural guidelines with regard to LLA, 2013. A change in section 14(1)(g) and section 14(1)(h) of the LLA, 2013 post which any NGO receiving a grant of more than Rupees one crore annually and the functionaries of those NGOs receiving donation of more than Rupees ten lakh annually from foreign sources under FCRA 2010 will be governed by the LLA, 2013.

The Lokpal and Lokayuktas Act, 2013 (LLA, 2013) is still not implemented. At the behest of this government that the Lokpal and Lokayuktas Amendment Bill, 2014 was introduced which is now pending in the Parliament. And yet the BJP government at the Centre has begun demanding compliance of the provisions of this legislation.

#### The new public servants

Subsequent to these amendments the Director, Manager, Secretary or Officer of an NGO, in short the board members as well as the senior employees will be included within the definition of a 'Public Servant' under Section 14(1) of the Act. And as per the law s/he will have to make a declaration of their assets and liabilities as mentioned in the Act. This declaration has to be made before July 31, 2016 giving the NGOs a little over a month to comply with the amended law. If the members of the NGOs do not make this declaration they will be penalised as per the provisions of the not yet implemented LLA, 2013.

It is also interesting to note that all categories of persons defined under Section 14(g) of the act belong to the government or are employees of government funded organisations. The mentioned DoPT official goes out of the way to create a specific category of foreign funded organisations which would otherwise fall into the private category.

#### To whom will the declarations be made to?

Since there is no 'Lokpal' to whom these assets can be declared to as the Act still remains to be implemented, the DoPT notification<sup>1</sup> has also defined the competent authority for this task. Since there are the government funded and foreign funded NGOs, the definitions of competent authority for both of them also vary.

For the government funded NGOs the Minister-in-charge of the Ministry or Department providing financial assistance will be the competent authority (in case of more than one ministries the one with the highest proportion of grant or donation made will be the competent authority). Thus, the ministry-in-charge is liable to change year to year. For the foreign funded NGOs the Ministry of Home Affairs shall be the competent authority.

#### Issues for consideration

- Is this move an attempt at creating surveillance more than ensuring transparency?

The LLA, 2013 was put together to enquire to allegation of corruption against public functionaries. This compels us to think if foreign funded NGOs otherwise considered as private entities really public functionaries that can be investigated for corruption? Are they answerable to the public at large in a way that government authorities and organizations are? And if they are why the other private organisations are excluded from the ambit of the LLA, 2013?

Having ratified the United Nations Convention Against Corruption India should "prevent corruption involving the private sector".<sup>2</sup> With several basic services such as power and water supply, telephone, education and health services being provided by the private sector there is no reason why this sector should not be under scrutiny for allegations of

<sup>1</sup> <http://ccis.nic.in/WriteReadData/CircularPortal/D2/D02ser/SO-2154E-20062016-Hindi.pdf>, accessed on 21.7.2016

<sup>2</sup> <http://www.dnaindia.com/india/report-ngos-their-executives-asked-to-give-annual-income-details-to-lokpal-2235627>, accessed on 21.7.2016

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corruption. Added to this the relaxation of FDI norms in important sectors only makes a strong case for doing this and not create an unjust classification amongst the private entities.

It is nobody's case that NGOs be seen as a thoroughfare for channelling black money or money gained through unlawful means; but if this is what the concern of the present government is why exclude other private entities that contribute to welfare of the public in the way NGOs do? The term 'public duty' is defined under the Prevention of Corruption Act, 1988 as-

*"means a duty in the discharge of which the State, the public or the community at large has an interest; Explanation.-In this clause "State" includes a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956."*

To be fair NGOs and their activities can be considered to be in the interest of the State, public and the community at large. But so do the activities of banks, power generation and supply companies.<sup>3</sup> Should functionaries of all these organizations be also deemed to be public servants? And if not, why only foreign funded NGOs then? The troubled relationship of the present BJP government at the Centre and the NGOs in the past is telling of the fact that applying LLA, 2013 in this case would be for more than just ensuring transparency.

- Is it wise to force NGO board members to make a declaration of assets?

The NGO functionaries will now have to declare details of movable property such as cash, bank balances, investments, provident fund, loans and advances, vehicles, jewellery, gold and immovable property such as land, house, shops. They would also have to give details of loans taken along with the name of the creditor. Among the primary concerns with regard to the declaration of assets by public servants, now also including NGO functionaries is the fear of extortion.

The rationale behind government functionaries declaring the assets and liabilities is to ensure that public money collected from taxing the citizens is not misused. Also, information regarding the pay scales of government employees is a part of public information. Any further inquiries regarding the same are open to an RTI application. But this is not true in case of foreign funded NGOs. The board members of these NGOs are not dealing with public money or earnings from the NGO. They are not expected to have had an austere life. The donations or grants, often collected by being involved in profit making businesses, made by them are voluntary. It is not shocking therefore to understand their sentiment of feeling vulnerable at parting with this information. Refusal to make such a declaration does not definitely mean that corruption is involved. Possible threat of extortion that could be faced by them is not merely speculation.

While NGOs are already noticing the inclination of board members to resign rather than declare their assets will the public have the most to lose in this war between the government and the foreign funded NGOs is something that only time will tell.

- Is this government interpreting legislations to suit its own need of the hour?

The urgency with which the government has rolled out the DoPT notification to compel the foreign funded NGOs to declare their assets, ignoring the fact that LLA, 2013 remains non-implemented is indeed noteworthy. This event is reminiscent of how the government pushed the Aadhaar Bill, 2016 in the Budget Session this year. The Union Finance Minister told the Rajya Sabha that Aadhaar card is not mandatory as it was an "entitlement" in a 2010 law and remains the same even in the new law passed by the Lok Sabha. And yet today possession of the Aadhaar card is must for receiving UGC scholarships.

<sup>3</sup> [http://fmsfindia.org.in/publication\\_upload/standard/s&n-ls-v9-i3.pdf](http://fmsfindia.org.in/publication_upload/standard/s&n-ls-v9-i3.pdf), accessed on 21.7.2016

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Similar working of the government can be seen with LLA, 2013 too. Not only did this government make additional categories of persons under the definition of public servant under the Act, it also seeks its implementation of the same within little over a month.<sup>4</sup>

This can be squarely seen as a mode to weaken civil society; as one social worker states- the state is encouraging the high level of participation by foreign entities in for-profit enterprises, but we see no attempt to institute similar measures with regard to non-profit organisations.<sup>5</sup>

- Dichotomy regarding foreign funding for NGOs and Corporate's under the Swachh Bharat Mission

This government has been clear about its aversion for unaccounted foreign funding given to the NGOs. And so it comes as a surprise that the home ministry has allowed exemption for contributions to Swachh Bharat Mission from the FCRA Act, 2010. The Mission can accept foreign contribution in cash or kind with retrospective effect from April 24, 2015.<sup>6</sup>

Why the Swachh Bharat Mission is in need of this foreign funding, for which the government has exempted it from the ambit of FCRA is a debate for another day; but the biased manner of policy making favouring one kind of foreign funding over another is atrocious. While each one of the functionaries of NGOs are brought within the definition of 'public servants' under the Act, no such action is taken to scrutinise the foreign funding being received for the Mission.

The criteria being employed by this government to ensure the unscrupulous nature of foreign contributions made to the Mission the qualifying criteria for PSUs or corporate houses is that they should have "clean antecedents and reputation, high credibility and reputation among people and capacity and outreach for engaging with community". With its vague and non-definitive language this criteria leaves enough room for arbitrary decisions on behalf of the government.

While it is no one's case that NGOs should be outside the purview of accountability, it is also no one's case that corporate houses/PSUs will bring in black money. However what is important is that same standards of scrutiny should be levied on NGOs as well as foreign contributors to the Mission.

Is this government attempting to micromanage civil society in India, a very obvious consequence of which would be weeding out of those NGOs that are strong critics of the government? Why is a government backed Mission not covered by the same standards of scrutiny while receiving foreign funds? This dichotomy by the government is illustrative of its double standards and it establishes that the underlying reason for including NGO functionaries in the definition of 'public servants' has more to do with curbing dissent than curbing corruption.

### What about other countries, an international perspective

Presently a crackdown on foreign funded humanitarian organisations especially in the non-western countries is gaining traction. Observers of civil society say that the reasons for increasing restrictions for foreign funding of NGOs across the world can be broadly categorised as-one, an aversion to western interference; two, fear of uprisings, particularly in countries with non-democratic governments; and three, proliferation of counter-terrorism measures which are not well received in some countries.<sup>7</sup>

<sup>4</sup> In response to the issue being raised in the Rajya Sabha, I&B Minister M Venkaiah Naidu said: "We shall keep in mind the sentiments of the House in this regard and see that a broad consensus is evolved on the issue and then move forward. The date will be extended but it depends on the responses of all the political parties."

"Centre Agrees to Extend NGO's Asset Deadline as RS Members Press", The Times of India, July 21, 2016. Available at: <http://timesofindia.indiatimes.com/india/Centre-agrees-to-extend-NGOs-asset-deadline-as-RS-members-press/articleshow/53318587.cms>, accessed on 24.7.2016

<sup>5</sup>"Indian Government is Targeting NGOs Yet Again, Claim Non-Profit Workers", Scroll, July 9, 2016. Available at: <http://scroll.in/article/811436/indian-government-is-targetting-ngos-yet-again-claim-non-profit-workers>, accessed on 21.7.2016

<sup>6</sup> "FCRA Waiver to Swachh Bharat to Attract Clean Foreign Money", July 25, 2016. Available at: <http://economictimes.indiatimes.com/news/politics-and-nation/fcra-waiver-for-swachh-bharat-to-attract-clean-foreign-money/articleshow/53371006.cms>, accessed on 25.7.2016

<sup>7</sup> Ibid

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It can be noticed in the past two years that major countries like China, Russia, and even smaller ones like Cambodia, Hungary, Uganda are increasingly making efforts to prevent foreign support for domestic civil society organizations. In most of the countries new laws are being drafted to muzzle civil society.<sup>8</sup> On one hand, countries like China<sup>9</sup> reacted strongly by introducing a controversial new law that gives security forces control over foreign NGOs operating in the country; on the other hand Israel seeks to cut off foreign funding by introducing a tax and labelling NGOs with external finance as “foreign agents” through legislative process.<sup>10</sup>

Closer home Sri Lanka has been in the international media for its massive clampdown on foreign funded NGOs. Since the opposition is weak in the country, civil society forms the biggest challenge to it, and restricting its dissenting voice has been a way for the government to silence its critics. A directive of the Sri Lankan government bars NGOs from holding press conferences, workshops and training programmes. Instead of focussing on the problems that are plaguing the Sri Lankan society, the ruling government decided to curb.<sup>11</sup> Are we on the same path in India, is something we need to ponder on.

### In conclusion

The question of why trustees of NGOs should be treated as public servants was raised in the Rajya Sabha by Mrs. Anu Aga, a nominated member of the Upper House and a renowned business woman and social worker.<sup>12</sup> To which the government responded by saying that they it would look into deferring the deadline for disclosure. But is the matter at hand simply plagued by the issue of the short deadline? Rather it is a marker of the shrinking space for civil society organisations. Not only is there clamour against this high handedness by the government within the country but it is fast attracting international concern as well. Various humanitarian organisations are concerned about the Modi’s ‘crackdown’ on NGOs, and only recently HIV activists from around the world protested outside the Indian embassy in Durban, South Africa.<sup>13</sup>

The BJP government has made an exception for foreign funded NGOs by including their functionaries within the definition of public servant under Section 14(1) of the LLA, 2013. Those board members unwilling to declare assets and further wanting to escape prosecution have already begun submitting resignations for fear of harassment by the government. The sections of society that benefited the most from the work of these NGOs will have a lot to lose.

To find that India’s policy with regard to foreign funded NGOs is similar to those being followed by countries like non-democratic governments of China and Russia indeed speaks a lot about how receptive the BJP is of the work of NGOs. It is fair to penalise those NGOs being involved in any unscrupulous matter, but creating hardship in the working of the ones with genuine interest is plain spiteful. As the Parliament discusses topics of atrocities against Dalits in Gujarat and excessive use of force to control stone pelting crowds in Kashmir, the need for civil society organisations to represent the disadvantaged sections of the society cannot be trivialised. Does the BJP government at the Centre not want to be drawn in an engaging debate regarding its policies? Through this crackdown is it shying away from criticism for its work?

<sup>8</sup> Thomas Carothers, “The Closing Space Challenge: How are the Funders Responding?”, Carnegie Endowment for International Peace, November, 2015. Available at: <http://carnegieendowment.org/2015/11/02/closing-space-challenge-how-are-funders-responding-pub-61808>, accessed on 22.7.2016

<sup>9</sup> “China Passed Law Imposing Security Controls on Foreign NGOs”, The Guardian, April 28, 2016. Available at: <https://www.theguardian.com/world/2016/apr/28/china-passes-law-imposing-security-controls-on-foreign-ngos>, accessed on 22.7.2016

<sup>10</sup> “Human Rights Groups Face Global Crackdown Not Seen in a Generation”, The Guardian, August 25, 2015. Available at: <https://www.theguardian.com/law/2015/aug/26/ngos-face-restrictions-laws-human-rights-generation>, accessed on 22.7.2016

<sup>11</sup> Snigdha Das, “Sri Lanka Clamps Down on Civil Society Groups”, Down to Earth, July 8, 2014. Available at: <http://www.downtoearth.org.in/news/sri-lanka-clamps-down-on-civil-society-groups-45155>, accessed on 22.7.2016

<sup>12</sup> “Government May Defer Disclosure Deadline Under Lokpal for NGOs”, India Today, July 21, 2016. Available at: <http://indiatoday.intoday.in/story/govt-may-defer-disclosure-deadline-under-lokpal-for-ngos/1/720331.html>, accessed on 22.7.2016

<sup>13</sup> “HIV Activists Voice Concern Over Crackdown on NGOs”, The Hindu, July 22, 2016. Available at: <http://www.thehindu.com/news/international/world/hiv-activists-voice-concern-over-crackdown-on-ngos/article8883329.ece>, accessed on 22.7.2016

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This step by the Modi government although innocuously is only asking for the NGO functionaries to declare their assets and liabilities and running this argument on the edifice of ensuring corruption free working; the larger subtext of this being done to weaken the civil society organisations cannot be ignored. It does not befit this government, elected through engaging in a powerful contemporary rhetoric to identify itself with such a regressive measure. The impact of this will be felt most by people belonging to groups who are unable to voice their concerns loud enough, and who need civil society advocates to fight for them. By compelling organisations that work for preservation of human rights to backtrack, this government has laid bare its insecurities about being questioned and criticised on substantial points of misgovernance, which are no longer anomalous in the current discourse. As only ten odd days remain for the last date to declare assets by NGOs (unless the deadline is extended or the move retracted), how the government responds to the growing unrest in civil society against this move remains to be seen.

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## Headlines

### Can Bharat be 'Swacch' without Sanitation Plans?

(Down To Earth, July 18, 2016)

Ensuring a clean India goes way beyond just wielding broomsticks and sweeping visible garbage off the streets of our cities. It is imperative to also address the issue of the sewage and sludge that is invisible and that flows beneath the ground we walk upon, in our drains and into our water bodies. This is also important in the context of the government's Smart Cities Mission. No city can be termed truly 'smart' without an effective sewage management system.

Read More: <http://www.cseindia.org/content/can-bharat-be-%E2%80%98swacch%E2%80%99-without-sanitation-plans>

Date Accessed: 25.7.2016

## Governance & Development

### *POLITICS AND GOVERNANCE*

#### **25 years after liberalisation: India must realise that wealth isn't development unless it is shared**

(Harsh Mander, Scroll, July 25, 2016)

Levels of absolute poverty have no doubt declined, as have malnourishment and hunger. But the question to ponder is whether these have declined fast enough. Even neighbouring Bangladesh with half India's per capita income has been able to eliminate want and malnourishment far more successfully than India.

Read More: <http://scroll.in/article/812373/25-years-after-liberalisation-india-must-realise-that-wealth-isnt-development-unless-it-is-shared>

Date Accessed: 25.7.2016

#### **Muslims at the Bottom of Higher Education Ladder**

(Charu Bahr, IndiaSpend, July 22, 2016)

Despite almost trebling in the decade ending 2010—from 5.2% to 13.8%—the rate of Muslim enrolment in higher education trailed the national figure of 23.6%, other backward classes (22.1%) and scheduled castes (18.5%). Scheduled tribes lagged Muslims by 0.5%. The rate of enrolment is described as the percentage of actual enrolments in higher education, regardless of age, in a given academic year, to the 18- to 23-year-old population eligible for higher education in that year.

Read more: <http://www.indiaspend.com/cover-story/muslims-at-bottom-of-higher-education-ladder-alongside-backward-tribes-28385>

Date Accessed: 26.7.2016

### *HEALTH*

#### **More a tax topping than health initiative?**

(R.Prasad, The Hindu, July 10, 2016)

The bold step by Kerala in becoming the first State in the country to introduce a 14.5 per cent tax on burgers, pizzas, doughnuts, sandwiches and pasta sold through branded restaurants is one that is expected to have a positive impact on public health. But introducing additional tax on fat-rich food products is a move that has been tried out in other countries with varying degrees of success. Where Denmark has failed, will Kerala's experimentation succeed?

Read More: <http://www.thehindu.com/opinion/op-ed/kerala-fat-tax-r-prasad-column-on-more-a-tax-topping-than-health-initiative/article8829121.ece>

Date Accessed: 25.7.2016

### *TECHNOLOGY*

#### **Shiv Sena Demands Guidelines On 'Pokemon Go' Game**

(NDTV, July 22, 2016)

In view of the craze surrounding Pokemon Go, Shiv Sena today asked the Maharashtra government to issue precautionary guidelines on playing the augmented reality mobile game. Raising a point of proprietary in Legislative Council, Shiv Sena leader Neelam Gorhe asked the BJP-led government to issue the directions considering safety of students.

Read More: <http://www.ndtv.com/india-news/shiv-sena-demands-guidelines-on-pokemon-go-game-1434913>

Date Accessed: 25.7.2016

## Governance & Development

### *LAW AND JUSTICE*

#### **National Commission for Women Questions Centre's Silence on Criminalising Marital Rape**

(Sadia Akhtar, *The Wire*, 15 July, 2016)

Questioning the silence of the women and child development ministry (WCD) on the issue of marital rape in its Draft National Policy for Women 2016, the National Commission for Women (NCW) has recommended that the policy must take it into consideration. NCW has sought that marital rape be recognized under law.

Read More: <http://thewire.in/51781/national-commission-for-women-questions-centres-silence-on-criminalising-marital-rape/>

Date Accessed: 25.7.2016

## Society

### *SOCIAL CONFLICT AND VIOLENCE*

#### **We want no reservation, but protected class status: Hyderabad transgenders**

*(The New Indian Express, July 22, 2016)*

The Cabinet on Wednesday approved the Transgender Persons Bill 2016, guaranteeing what may appear to be a progressive step from the NDA government in mainstreaming the transgender community in India. However, members of the transgender community in the city feel that the bill doesn't benefit them entirely. "We either need a meaningful bill or no bill. We can't be stuck with a bill that shows itself off as a mere charter of rights with no enforcement mechanism and live with it for the next few decades," said Vyjayanti Vasanta Mogli, activist.

Read more: <http://www.newindianexpress.com/cities/hyderabad/We-want-no-reservation-but-protected-class-status-Hyderabad-transgenders/2016/07/22/article3541256.ece>

Date accessed: 22.07.16

## India and World

### *INDIA IN THE WORLD*

#### **The Narendra Modi Government is Spurning Friendly Overtures by China to Move Closer to the US**

(Prem Shankar Jha, *The Wire*, July 25, 2016)

In Delhi, unfortunately, only those closest to prime minister Manmohan Singh and key members of the foreign policy establishment fully grasped the signals that Beijing was sending. The intelligentsia, with only a handful of exceptions, remained too deeply mired in the past to shed its defensive mind-set towards Beijing. This was even more true of the government that Narendra Modi established, for he not only made it a virtue to cut all links with those who had made policy during the UPA regime, but also with those who had done so under Atal Bihari Vajpayee. As a result, the new government treated President Xi's visit more as a bilateral mending of fences, not unmixed with elements of theatre, than the culmination of a long and patiently sought rapprochement.

Read More: <http://thewire.in/53677/narendra-modi-government-spurning-friendly-overtures-china-move-closer-us/>

Date Accessed: 25.7.2016

### *SOUTH ASIA*

#### **Oli's Exit, India's Gain**

(*The Tribune*, July 26, 2016)

The inevitable has happened in Nepal. Two of the three major parties in Nepal have withdrawn support to Nepal Prime Minister KP Oli after an acrimonious nine months in office. The South Block is trying to convey the impression that with Oli's ouster, India is back in business in Kathmandu. From New Delhi's perspective any successor, including Maoist supremo Prachanda who is slated to take over as Prime Minister, will be an improvement over Oli

Read more: <http://www.tribuneindia.com/news/editorials/oli-s-exit-india-s-gain/271119.html>

Date Accessed: 26.7.2016

### *EUROPE*

#### **Turkey MPs approve state of emergency bill allowing rule by decree**

(*The Guardian*, July 21, 2016)

Turkey's parliament has approved a bill declaring a state of emergency in the wake of last weekend's coup attempt and informed the Council of Europe of a partial withdrawal from the European convention on human rights.

Turkey will be required to provide regular updates to the secretary general of the Council of Europe on the measures taken under the state of emergency, according to the terms of the treaty.

Turkey initially said it had informed the Council of Europe that it would suspend the convention entirely, a more wide-ranging measure likely to have drawn criticism from allies.

Read more: <https://www.theguardian.com/world/2016/jul/21/turkey-parliament-expected-to-pass-erdogan-emergency-measures>

Date accessed: 22.07.16

## Opinions/ Books

### BOOKS

#### Why We Do Not Hear the Waters: Amitav Ghosh's 'Great Derangement'

(Raghu Karnad, The Wire, July 12, 2016)

This mysterious absence of climate disaster from contemporary arts and fiction is the central issue in Amitav Ghosh's *The Great Derangement*, another book of genuine importance. The book is about much else as well: It tours around the horizon of cultural life in the present era, the early 'Anthropocene'. But it stops at every point to ask why our pressing concern, that we are wrecking our climate and habitat, is so ignored.

Read More: <http://thewire.in/50791/why-we-do-not-hear-the-waters-amitav-ghoshs-great-derangement/>

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## Opinions/ Books