Head: Notification Casts Dissension Between NPOs and Government

*“A lack of transparency results in distrust and a deep sense of insecurity.”*

* Dalai Lama

One of the sound principles that is a pivot of democracy is the requisite of having a system of checks and balances. While the opposition ensures within the four walls of the parliament that the ruling party is kept on task, other agencies perform a similar function outside. And by other agencies, we are conveniently referring to non-profit or non-government organizations. But by way of a recent notification released by the Ministry of Personnel, Public Grievances and Pensions, the Government has obliquely tried to convey it has taken offence and will unconditionally have the upper hand in the game of checks and balances.

The said ministry issued three Notifications, numbered 1541, 1542 and 1543, dated June 20, 2016, by virtue of which it provided procedural guidelines with regard to The Lokpal and Lokayuktas Act, 2013. The said which intends to regulate and control corruption in public functionaries. Noteworthy is that the rules of the Act which was commenced in Q1 of 2014 have been notified a couple of years later.

In a nutshell, the immediate aftermath of these notifications is that those who handle the everyday operations of non-government organizations (NGOs), precisely the *director, manager, secretary or other officer* will be treated as public servants and must disclose their assets and liabilities if the organization receives government funding exceeding a mark of ₹1crore or foreign funding over that of ₹10 lakhs a year. The last date stipulated to file the returns, according to the office memorandum released by the Department of Personnel and Training of the said ministry, is July 31, 2016.

These notifications are being perceived by the NGOs as an attempt of the government to shoo away notable personalities holding key positions in these organizations. For instance, the news of Nawshir Mirza, an independent director on the Tata Power board, who also serviced on the board of many NPOs deciding to sever his associations with them has spread like wildfire. Notably, while the senior personnel of NGOs have been brought under the radar of the Lokpal, private corporations have been exempted from the same.

Section 14 (1) (g) of the Lokpal and Lokayuktas Act, 2013 says: *Subject to the other provisions of this Act, the Lokpal shall inquire or cause an inquiry to be conducted into any matter involved in, or arising from, or connected with, any allegation of corruption made in a complaint in respect of the following, namely - any person who is or has been a director, manager, secretary or other officer of every other society or association of persons or trust (whether registered under any law for the time being in force or not), by whatever name called, wholly or partly financed by the Government and the annual income of which exceeds such amount as the Central Government may, by notification, specify.* The notification numbered 1541 in the first and second paras make it explicit that the ‘competent authority’ for any person referred to in Section 14 (1) (g) (a), shall the Ministry or Department of the Government of India that provided maximum financial assistance in the year for which the declaration of annual return is being filed. In para 2 of the same notification, it’s been stated that the annual returns shall continue to be filed by said public servants until the entire financial assistance allowed to such society or association of persons or trust stands fully utilized for the purposes for which it was allowed (para 2 (ii)). Para 2 (iii) implies that the competent authority may thus, vary from year to year based on the Ministry or Department whose contribution is highest in a particular year.

While the Notification No. 1542 sets out the upper limit for the grant such organization receive from the government as one crore rupees so as to make them subject to the Act, Notification No. 1543 states that the competent authority in relation to public servants referred to in Section 14 (1) (h) (any person who is or has been the director, manager, secretary or other officer of such organizations which receive foreign donation under the Foreign Contribution (Regulation) Act, 2010 in excess of ten lakh rupees in a year) of the Act shall be the Ministry of Home Affairs.

The law will apply to the functionaries and officers of the NGOs and not the NGOs per se. In case where Public Servants or Directors and Officers of NGOs do not make declaration of their assets, it will be treated as an offence and will be subject to inquiry by the Lokpal, and also vulnerable to confiscation of their assets.

It is clear that since these notifications are only procedural in nature, not bringing in any new coercive or unfair element in the existing Act, and only clarify the procedures and timelines of filing the returned by the deemed ‘Public Servants’, they cannot be legally challenged. If something can be challenged, it would be the Lokpal and Lokayuktas Act, 2013 itself. In the case of *Venkateshwara Theatre* v. *State of Andhra Pradesh and Others*, 1993 (3) S.C.C. 677, the Apex Court made it clear that one particular class cannot be singled out for a special or adverse treatment. In the absence of any *intelligible differentia*, in the case of FC registered organization, it is a clear violation of Article 14 of the Constitution as it singles it out as the only class of private organizations brought under the ambit of the Act. There are a number of bilateral international agencies who fund into India without the requirement of FCRA. Apart from NGOs, many companies with foreign investments are involved in various activities that bring direct impact in the life of the common people. It would be unfair to categorize on FC registered organizations for having Public Duty and others (like that of companies) to be deemed as mere private initiatives. Also, apart from FC registered organizations, that hold funds for public purposes, even charitable or public religious organizations hold funds for public purposes. In such conspicuous circumstances, imposing liabilities only on organizations registered under the FCRA appears to be a manifest violation of the Article 14 of the Constitution.

At last, it shouldn’t come as a surprise that these notifications have been issued without any consultation of affected stakeholders, that is, the said organizations.