

Anti Land-Grabbing Action Committee

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13.05.2017

To

**Sri Narendra Modi
Hon'ble Prime Minister of India,
South Block, Raisina Hill,
New Delhi-110011.**

Sub: Regarding 1. imposing cooling off period for Judges and government servants who, after retirement / voluntarily retirement / resignation from Service join political parties and 2. Bringing transparency in appointments and addressing the issue of corruption within important constitutional/statutory bodies and investigative agencies.

Hon'ble Prime Minister,

I am an ex-MLA from Karnataka and presently the Convenor of the Anti Land-Grabbing Action Committee. I had addressed two letters dated 12.01.2016 and 24.06.2016 to Your Honor regarding curbing black money and tackling corruption. In my letter dated 24.06.2016 on tackling corruption, I had particularly mentioned about the issue of massive grabbing of government lands all over India, drawing Your Honor's attention to the large scale land grabbing in Karnataka alone done by creating fictitious documents for government land.

Now I would like to bring to Your Honor's notice two other important long pending issues i.e 1. Imposing cooling off period for Judges and government servants who, after having retired/voluntarily retired/resigned from Service join political parties and 2. Lack of transparency in appointments to posts in constitutional/statutory bodies and investigative agencies and the persons occupying such posts indulging in corruption. We firmly believe that tackling these two basic issues effectively is of utmost importance for Your Honor's dream of *Corruption-free India* to become a reality and hence this lengthy letter. Without

making sincere efforts to address these two critical issues, genuine changes cannot happen.

Issue No 1:

Need to impose cooling off period for Judges and government servants who, after having retired/voluntarily retired/resigned from Service join political parties:

As is well established, in a democratic set up the Legislature, the Executive and the Judiciary function independently and have distinct roles to play in the welfare of the nation. The policies framed by the Legislature comprising elected representatives are implemented by the Executive comprising government servants at different levels in the administrative machinery and adjudicated by the Judiciary comprising Judges and judicial officers. Unholy nexus between these three independent wings is bound to cause immense harm to the nation.

Often, the civil servants, especially the All India Service officers influence the very making of a policy, putting them in a powerful position. Bureaucrats, like everyone else, can have more than one interest which is very dangerous and against public interest. Interests outside the job might influence decision making in an adverse manner. It is often seen that Bureaucrats take decisions favouring a particular private company, especially during the fag end of their career and in turn are appointed by the same private companies soon after retirement. It is a clear case of quid pro quo at the stake of public interest. It is to address this that presently one year cooling off period has been imposed for bureaucrats to join private sector jobs after retirement. Though not fool proof, it is one way of instituting checks and balances to protect the integrity of decision making.

Another more dangerous trend is the bureaucrats joining political parties soon after retirement and some even taking voluntary retirement to do so. While a bureaucrat taking up private sector job favours that particular private body, a bureaucrat joining a political party favours a whole set of politicians, by taking decisions favouring a large number of elected representatives of a particular political party. In the initial years of his career, a bureaucrat often acts according to the whims and fancies of his political masters to get good postings and promotion. By the time he reaches senior level postings, he tends to get inclined towards a particular political party and enters into an unwritten understanding to favour that party. He would have already made a decision to join that party soon after retirement. So naturally, all his decisions are likely to be prejudiced to benefit that party.

There is a need to insulate the bureaucrat's decision making from inappropriate influences, be it in relation to private sector or political parties. While the issue of taking up private jobs soon after retirement has been minimally addressed, the issue of bureaucrats joining political parties is lying low.

In fact, in 2004, the Committee of Civil Service Reforms under the Chairmanship of Sri P.C.Hota highlighted the issue as follows:

5.50 Of late, there is a growing tendency on the part of some members of the AIS and Central Services to join political parties when they are about to retire on superannuation, or immediately after superannuation/ resignation from service. We came across a few instances where serving officers were asked by political parties to resign from service/ take voluntary retirement and offered tickets immediately thereafter to contest elections to the State Legislature or the Parliament. Such instances shake the confidence of the public in the neutrality and apolitical character of civil servants.

As the Committee has rightly pointed out, it raises suspicion on each and every decision taken by a bureaucrat who later joins a political party. All the decisions tend to assume a political colour which is certainly not in the interest of good governance.

The electoral process today has denigrated to such low levels that it is a filthy display of money power by political parties. Officers holding key positions, in particular the IAS officers who control 80% of public money indulge in massive corruption misusing their official position to fund the political party of their choice in return for a promise of an election ticket or an important position soon after joining the party. Thus the bureaucrat supplying funds to the party gets elected from the party thereby side lining a large number of party workers who have tirelessly worked for the party from a very long period of time which certainly demotivates the honest political workers causing a negative effect on the party itself. If it is a case of an officer privy to classified information joining the opposition political party, it is more dangerous as the national security may be at stake. The retired officers who join political parties may wield power over serving officers even after retirement to get favourable decisions. Often the corrupt officers who have nexus and enjoy the patronage of a particular political party even resign from the Service to join that party at get the benefit of protection against prosecution and also to keep their ill-gotten wealth secure. Assuming for a moment that retired officers join political parties to do public service, we are of the opinion that electoral politics is not the only arena to do public service. Public will be served better if the officer while in Service as a government servant carries out his duties with integrity and due diligence.

Judges with political ambitions who make their judicial power a launching pad for a political career after retirement are far more dangerous than bureaucrats joining political parties. There are a few instances of judges entering the political arena which has shaken the faith of the citizens in judiciary, as judiciary is expected to punish the erring politicians and bureaucrats. Once a judge, he shall always be one and hence the title Justice is retained even after retirement. Such being the case, a judge entering electoral politics after retirement has far reaching consequences which instils a sense of fear in the citizens about the independence of judiciary itself. There has been instances in the past of judges being appointed Governors of States by ruling parties which is purely a political appointment and this practice inheres within the danger of the judge adjusting and twisting his jurisprudence to please the executive, while in office.

It is matter of grave concern that of late, corruption in judiciary is being discussed more openly which is very shocking in a democratic set up as the people expect at least judiciary to be clean and untouched by corruption as Courts are the last resorts for justice. Judges joining political parties or being appointed as Governors of States by ruling parties soon after their retirement certainly gives room to doubt the possibility of exchange of money for judgments passed by those judges. In fact, in the second report of the Joint Legislative Committee on Land encroachments in Bangalore Urban District given in 2007 under my Chairmanship, we had mentioned the following:

In the retreating standards of public morality, the people still perceive the Judiciary as the last bastion of redress, relief, remedy and justice. Therefore, the Judiciary should be, like Sita or Ceasar's wife, above and far removed from the least odor of suspicion of indiscretion and impropriety.

Doubts about the Judiciary are damaging in a democratic set up and we therefore appeal to Your Honor to take all possible measures to prevent such things and keep the public trust in judiciary intact.

The practice of retired IAS officers being appointed to head Regulatory bodies, Central level and State level Commissions is prevalent from a long time. There is a near-complete dominance of IAS appointees in all these important decision making bodies when in fact experts from various fields are eligible for these posts. People holding posts in all such bodies cannot take up commercial employment once their term ends as a cooling off period of two years has been fixed. This discourages many mid-career applicants having expertise in various fields such as economics, education, law etc., from applying for these

posts which has only helped the bureaucrats to occupy these important positions. It is an open secret that only officers who toe in line with their political masters end up occupying these posts as the selection process lacks transparency and is seldom based on merit. It is important to note that the post which has a cooling period once the terms ends does not prescribe any cooling period for the bureaucrats to be appointed to those posts as a result of which we often notice that a retired bureaucrat gets appointed to these posts the very next day after his retirement, of course on quid pro quo basis. Now, if a bureaucrat is allowed to join a political party soon after retirement, it is likely that many of his seniors would be occupying the posts in all important regulatory bodies and Commissions. Using his connections with these officers, the bureaucrat who has joined a political party may try to influence the decisions of these bodies which may have damaging effects on the welfare of the nation. The Hon'ble Supreme Court has declined a petition seeking direction to the government to observe a cooling off period of two years before a retired senior civil servant is offered re-employment with the government in a case filed by retired IPS officer Sri Prakash Singh. In its judgement the Hon'ble Court ruled that it was for the competent authorities to decide on the re-employment of a retiring civil servant making it clear that it is the government which should take a decision in the matter. Hence, even if a PIL is filed in the Courts to get a direction to impose a cooling off period for bureaucrats to join a political party, the same verdict will hold good. Therefore it is the government and the government alone which can decide on this matter. Keeping the Executive apolitical and barring the bureaucrats from joining a political party is in fact a pre requisite for free and fair elections which is the basis of parliamentary democracy. It is best described in the words of a former Chief Secretary of West Bengal in an interview to the Gulf News, in which he stated that he had declined to join a political party in spite of several offers:

“We may suggest the government bar people holding some position from joining politics, Just imagine if a former election commissioner joins a political party, the very idea of a free and fair election will become questionable, which can lead to anarchy.”

Thus the issue of imposing cooling off period for bureaucrats and Judges joining political parties needs to be addressed instantly to retain the sanctity and independence of the three arms of democracy.

Recommendations have been made in the past to impose cooling off period for bureaucrats joining political parties after retirement. The P.C. Hota committee on Civil Service Reforms in its report in 2004 recommended as follows:

We are of the opinion that there should be a cooling off period of at least two years after retirement or even resignation of a civil servant, before he can join a political party and contest elections for any political office. No civil servant can be appointed as Governor of a State unless a period of two years elapses between his resignation/ retirement and his appointment as a Governor.

In 2012, the Election Commission of India recommended that any bureaucrat before joining any political party must have a cooling period post his retirement so that there is no conflict of interest between bureaucracy and politics. The Election Commission had written to the Department of Personnel and Training (DoPT) and Law Ministry after it got concerned over a number of “senior civil servants” jumping into the electoral fray and hence asked the government to bring in a “cooling off period” clause between leaving the government job and joining a political party by these officials. It had also suggested that suitable amendments in Service rules of IAS, IPS and other class ‘A’ services officials to enable this protocol. Based on the Attorney General’s advice that such imposition of cooling period will not be in conformity with the Constitution, The DoPT, had rejected the recommendations. The AG had said “that any such restriction (against officials joining politics or contesting polls) whether by way of services rules or by way of an amendment of the Election laws may not stand the test of valid classification under Article 14 of the Constitution of India” and the Legislative department of the ministry said this “would not be in harmony of the provisions of the Constitution.”

The Election Commission in its reply clarified that it had recommended the cooling off period for bureaucrats to join political parties and not for contesting elections independently and once again requested the government to consider its proposal. In its reply the Commission clarified that:

"Cooling off period for joining a political party has been misconstrued as cooling off period for contesting elections. It is clarified that Commission in order to maintain such independence and neutrality had recommended cooling off period for a person on his ceasing to be a government employee, from joining any political party, and not from contesting elections, as the interpretation of the learned AG is related to contesting elections. Further, the right to contest an election is a statutory right and not a Fundamental right (as opined by the learned AG)... hence any such restriction in service rules would be quite reasonable and justifiable and certainly will not be in contravention of the provisions laid down under Article 14 of the Constitution of India,"

I am sure that the Central government might have received many letters disagreeing with the reasons used by the DoPT for not accepting the proposal of the Election Commission.

A retired IAS officer Sri MN.Vijayakumar from Karnataka, in a letter dated 7.10.2013 addressed to the Secretary, DoPT, while he was still in Service, stated as follows:

...While the rights of retired bureaucrats as citizens is given by DoPT as an excuse to reject the proposal of the Election Commission, I would like to remind you that it was the same DoPT which rejected the Parliamentary Standing Committee's suggestion to make whistle blowing mandatory for Government servants on par with citizens totally in contravention of the IPC(As you are aware, I was the only AIS officer in the country who gave written/oral evidences and suggestions before the Parliamentary Committee which examined the Whistle Blowers Protection Bill). I had also suggested to make whistleblowing mandatory purely because of AIS Rules require all AIS officers to work with absolute integrity at all times. By rejecting the proposal of the Election Commission, officers with doubtful integrity can from now onwards more openly illegally favor political parties long before they retire from service and even join the political party which assures maximum position/protection ...

The officer in his letter has clearly brought out the DoPT's double standard of using the excuse of the status of citizens to their convenience. In fact, the officer, who had documented the damage caused by post retirement appointments of IAS officers, in his letter dated 27.09.2006 addressed to the Chairman, the Second Administrative Reforms Commission, requested for a recommendation of a five year cooling off period for bureaucrats to join a political party.

In spite of the clarification by the Election Commission, the matter was not pursued by the government and was put in cold storage. But when a Home Secretary who had retired in June 2013 joined the party in opposition after six months after his retirement, the issue came to the forefront again. In January 2014, the office of the PMO issued a statement that the government was open to the idea of banning bureaucrats from joining a political party immediately after retirement and that it was veering towards the view that a cooling-off period of two years may be necessary for retiring bureaucrats before they can formally join any political party to avoid "conflict of interest". It also stated that the opinion of the Attorney General has been sought in the matter.

Thereafter, the general elections were held and the new government under Your Honor's leadership has till now not taken up the matter. We would like to emphasize that such an imposition is long overdue and must be considered and effected immediately with suitable amendments in law if necessary and changes in the Service Rules to make it fool proof.

Further the Hon'ble Supreme Court in its judgment recently on 24.04.2017, while ordering the re-instatement of Kerala DGP has observed that :

"There is a difference in the role of the chief secretary as the chief executive of the state and the DGP of a state - their roles cannot be equated. While the chief secretary can be removed if he or she does not enjoy the confidence of the chief minister or does not have a complete rapport and understanding with the CM, the removal cannot be questioned unless there is a violation of some statutory or constitutional provision. But that is not so with the state police chief,"

The above observation gives an impression that it is enough if Chief Secretaries are trusted by the Chief Ministers alone and public interest does not matter, while Heads of the Police having only the trust of Chief Minister alone is not in public interest. This will potentially be misused by Chief Ministers against Chief Secretaries who do not toe in line. Thus senior eligible officers who wish to remain apolitical and work in public interest may opt out (or even be denied) from becoming Chief Secretaries thereby making it easy for pliable officers, promised election tickets and positions in political parties after their retirement, to occupy the post of the Head of Bureaucracy. The post of Chief Secretary is a post of public trust and certainly the public trust will suffer if a complicit Chief Secretary joins the political party he favoured during his tenure as the Head of Bureaucracy. Here again, it is relevant to quote from the letter dated 07.10.2013 addressed to the Secretary DoPT by Sri MN. Vijayakumar:

You must be certainly knowing the case of a Chief Secretary from Karnataka who joined politics and was given an office in New Delhi within less than 24 hours after his superannuation! It is foolish to assume that, before his retirement, he did not misuse his position to favour the party which he joined on the very day he retired from service...

Thus, Legislators being law makers and Bureaucrats being the instruments through which state policies are implemented, there should be no room for unholy nexus between the two.

Issue No 2:

Lack of transparency in appointments to the various posts in important Constitutional/statutory institutions and investigative agencies and the persons occupying such posts indulging in corruption:

As pointed out earlier in this letter, the Chairpersons/Chief Commissioners and Members of all Constitutional/statutory institutions are mostly occupied by either retired or serving IAS officers while there is provision for experts from various fields to occupy these posts. The omissions/commissions and dereliction/abdication of duties by these officers while

they were in Service are suppressed from the selection Committee itself in order to make them eligible for those posts. Many officers so appointed, never hesitate to indulge in corrupt/unfair methods to show gratitude and favour the persons who appointed them. Selection to these posts are seldom done on the basis of merit and often, the officers who have taken decisions favouring the political party in power during their Service end up occupying such positions which may lead to these institutions being compromised. These are all fixed tenure posts with the privilege of constitutional immunity. While the process of appointment to these posts are relatively simple, the removal/prosecution procedure is difficult with ample scope for easy misuse of position. Recently, the filing of corruption case against a Member of the Karnataka Public Service Commission was quashed by the Hon'ble Karnataka High Court merely because sanction for prosecution from appropriate authority was not obtained thereby letting off the Member even though bribes taken had been proved. The recent case of a political party offering Rs. 50 crores bribe the Election Commission of India itself for obtaining a party symbol has shaken the faith of ordinary citizens in the Constitutional body which is vested with the responsibility of conducting free and fair elections, which is the very basis of democracy. The case of the former Karnataka Lokayukta facing corruption charges presently on bail is even shocking as it has caused immense damage to the faith of people in the institution of Lokayukta itself. Therefore appointments to these positions have to be made with utmost transparency giving due consideration for expertise and merit which is presently lacking.

The integrity of people who occupy these strategic heights of governance must be above board so that these institutions are not compromised under any circumstance. Unfortunately, today we are witnessing corruption/corrupt practices within these institutions itself. The infamous Vyapam scam, the 2011 KPSC recruitment scam etc., have established beyond doubt that large scale corruption is taking place in these institutions due to the unholy nexus between politicians, constitutional authorities, senior officials and the businessmen. The case of a former Karnataka Lokayukta who has been charge sheeted for abetting corruption has exposed the need to watch and control corruption in the very institution meant to be an Anti-Corruption Watchdog. Just last week, the CBI has filed a corruption case against its own former Director accusing him of scuttling and influencing probe into the coal block allocation cases. The Hon'ble Supreme Court of India struck down the appointment of the Chief Vigilance Commissioner in 2011 who was an accused in a case of criminal conspiracy after a Public Interest Litigation was filed. The Hon'ble Court observed that persons eligible for these posts should be without blemish

whatsoever. Public have no other option but to approach the Courts when such appointments are made by concealing the misdeeds of such persons. These are only a few instances which have been exposed and some action has been inevitable since the cases are under media glare. Even in such cases, the investigation revolves round the bribe giver and no action will be taken against the person in the sensitive position who misused his authority to indulge in corruption. Things are far worse in cases which do not become public. For instance, even in the cases of printing and circulation of fake notes, which is a criminal act of betrayal of the nation, the culprits get away unpunished because of the connivance of the officers investigating such crimes. Consequently, such crimes are continuing without fear of punishment whatsoever. Therefore, selection and posting to these posts should be made with utmost caution and it must be ensured that the integrity of persons occupying such posts should be above board.

When the conduct of persons occupying posts in the so called independent Constitutional institutions themselves are compromised, it is imprudent to assume that the integrity of officers in the Income Tax Department, Enforcement Directorate and agencies engaged in enforcing the anti-corruption laws and laws to prevent money laundering etc., which are directly under the control of the government will be above board. Corruption in such departments only allow wrongdoers to get away without punishment and the whole intent of Anti-Corruption laws is lost. Therefore appointments to these sensitive posts should also be made with extreme caution and the conduct of persons occupying such posts should be constantly watched, and cases of corruption by the persons should be properly dealt with culminating in punishment. Comprehensive checklists must be used to determine the eligibility of persons to these posts. Moving away from the present norm of mostly appointing retired IAS officers, efforts should be made to encourage and appoint people with expertise drawn from various sections of the society after allowing public scrutiny. In fact, we want to reiterate what we had mentioned in our letter dated 26.06.2016 addressed to Your Honor about tackling corruption:

...All Commissions/Constitutional bodies which have been set up to help citizens should be strengthened by giving them more statutory powers and should be allowed to work independently. The appointments of Chairpersons and Members of the Commissions should be done by following checklists in a transparent manner allowing public participation in the scrutiny... Appointment and posting of unsuitable persons for key positions is one of the major reasons for corruption to thrive. Only right people occupying right positions can bring improvements in the systems. No action has been initiated against any of the senior officers, who have connived in the past to loot the public. The government of India should come out with uniform comprehensive checklists to be followed throughout

the nation while posting officers to key positions, at least while posting All India Service officers of the grade of Secretary and above...

Thus, in the present scenario of brazen massive corruption, dirty role of money in electoral politics, blatant misuse of position by public servants, non-existence of Lokpal/Lokayuktas (Even where Lokayuktas exist, they are made powerless), not notifying the Whistle-blower's Protection Act, etc., and especially in the wake of the Hon'ble Supreme Court's judgment in the recent Kerala DGP's case, we are of an opinion that there should be a cooling off period of at least five years for bureaucrats and judges to join a political party.

With regards to corruption in the constitutional institutions and agencies meant to enforce anti-corruption laws, there should strict adherence to checklists for appointments to these institutions and the corruption within these bodies should be sternly dealt with and the integrity of the institutions should be so maintained as to instil public trust. This top down approach of initially tackling corruption within the highest constitutional institutions is bound to have positive effect on the main administrative machinery also leading to good governance.

Hence, we are of the opinion that immediate appropriate action on the two important issues mentioned above is inevitable for upholding the democratic principles and integrity of our nation. The issue of imposing cooling off period for government servants to join political parties needs to be addressed immediately as otherwise a large number of officers retiring soon may have already started deliberating with political parties to join them soon after retirement. It is an open secret that deliberation involves paying huge money which the officers would have made by indulging in corrupt practices during their Service to the political parties they intend to join.

The exposing of many corruption cases involving persons occupying posts in constitutional institutions is a matter of concern and hence should be tackled appropriately to tackle the menace of black money and corruption. **The officers, obviously the IAS officers at the helm of affairs in the Central government have always come up with excuses to block actions on these matters. As Your Honor has been repeatedly informing the citizens of this country that Your Honor has *political will* to take any tough decision in the interest of the country, I sincerely request Your Honor to**

immediately effectively address these issues to break the unholy quid pro quo chain.

We sincerely believe that Your Honor will give these matters the due attention they deserve so that its impact can be seen in the next general elections and consequently on the development of the country.

Thanking you,

Yours sincerely,



(A.T. Ramaswamy)
Convener

Copies to:

- 1. Dr Nazim Zaidi, the Chief Election Commissioner, Nirvachan Sadan, Ashoka Road New Delhi – 110 001 - with a request to once again demand Government of India to bar bureaucrats and judges from joining political parties immediately after retirement, particularly in the light of the Hon'ble Supreme Court's recent judgment in the case of Kerala DGP.**
- 2. Sri Pradeep Kumar Sinha, IAS, the Cabinet Secretary, Government of India, Cabinet Secretariat, Rashtrapathi Bhavan, New Delhi – 100 004 - to place all relevant facts before the Hon'ble Prime Minister to enable him to take such decisions to prevent further loss of faith of citizens in the bureaucracy headed by the Cabinet Secretary himself.**
- 3. Sri. Bhanu Pratap Sharma, IAS, the Secretary , Department of Personnel and Training, North Block, New Delhi – 110 001 - to make public immediately the names of all AIS officers who joined political parties (along with the name of parties) within one year after their retirement or after taking voluntary retirement. He is also requested to get a checklist prepared to be followed while making appointments for the posts in Constitutional/statutory institutions and anti-corruption agencies.**