

Legislative Brief

The Right of Citizens for Time Bound Delivery of Goods and Services and Redressal of their Grievances Bill, 2011

The Bill was introduced in the Lok Sabha on December 20, 2011. The Bill was referred to the Department Related Standing Committee on Personnel, Public Grievances, Law and Justice (Chairperson: Mr. Shantaram Naik). The Report was submitted on August 30, 2012.

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Highlights of the Bill

- ◆ The Bill seeks to create a mechanism to ensure timely delivery of goods and services to citizens.
- ◆ Every public authority is required to publish a citizens charter within six months of the commencement of the Act. The Charter will detail the goods and services to be provided and their timelines for delivery.
- ◆ A citizen may file a complaint regarding any grievance related to: (a) citizens charter; (b) functioning of a public authority; or (c) violation of a law, policy or scheme.
- ◆ The Bill requires all public authorities to appoint officers to redress grievances. Grievances are to be redressed within 30 working days. The Bill also provides for the appointment of Central and State Public Grievance Redressal Commissions.
- ◆ A penalty of up to Rs 50,000 may be levied upon the responsible officer or the Grievance Redressal Officer for failure to render services.

Key Issues and Analysis

- ◆ Parliament may not have the jurisdiction to regulate the functioning of state public officials as state public services fall within the purview of state legislatures.
- ◆ This Bill may create a parallel grievance redressal mechanism as many central and state laws have established similar mechanisms.
- ◆ Companies that render services under a statutory obligation or a licence may be required to publish citizens charters and provide a grievance redressal mechanism.
- ◆ The Commissioners may be removed without a judicial inquiry on an allegation of misbehaviour or incapacity. This differs from the procedure under other legislations.
- ◆ Appeals from the Commissions' decisions on matters of corruption will lie before the Lokpal or Lokayuktas. The Lokpal and some Lokayuktas have not been established.
- ◆ Only citizens can seek redressal of grievances under the Bill. The Bill does not enable foreign nationals who also use services such as driving licenses, electricity, etc., to file complaints.

PART A: HIGHLIGHTS OF THE BILL¹

Context

The Bill refers to a 'citizens charter' which is a document that defines the standard of services to be provided by an entity. The citizens charter will also provide the time frame within which goods and services are to be provided. The concept of citizens charter was introduced in the United Kingdom in 1991 and subsequently was adopted by various countries such as Belgium (1992), Malaysia (1993) and Australia (1997).²

In 1997, at a chief ministers' conference, an Action Plan was approved requiring the central and state governments to formulate citizens charters for enterprises with a large public interface.³ In 2007, the Second Administrative Reforms Commission recommended that citizens charters should stipulate penalties for non-compliance.⁴ In 2008, the Standing Committee on Personnel, Public Grievances, Law and Justice recommended giving statutory status to grievance redressal mechanisms.⁵ The Central Information Commission also recommended that grievance redressal systems should be strengthened to reduce the use of the Right to Information Act, 2005 to redress grievances.⁶

The President, in her address to Parliament in June 2009, had stated that the government would focus on ensuring effective delivery of public services.⁷ The Standing Committee that had examined the Lokpal Bill, 2011 recommended the creation of a separate legislation to deal with citizens charter and grievance redressal. The Parliament on August 27, 2011 while adopting the 'Sense of the House' Resolution on Lokpal, agreed in principle to the establishment of a citizens charter.⁸

Currently, government departments deal with grievances internally. Persons may also approach the High Court through writ petitions. As of January 2011, 131 citizens charters were finalised by the central government departments and 729 citizens charters were finalised by state government departments.⁹ Additionally, by March 2012, several states had enacted laws providing for grievance redressal mechanisms.¹⁰

Key Features

The Bill requires public authorities to publish a citizens charter within six months of enactment of the Bill. The charter should specify the services and the quality of services to be provided by the public authority. The head of departments are responsible for disseminating and updating the citizens charter.

Public Authority

- Public authorities include: (a) constitutional and statutory authorities; (b) entities established under a notification; and (c) public-private partnerships. They also include NGOs that are substantially government funded, government companies, and companies that provide services under a licence or a statutory obligation.
- Public authorities are required to establish Information Facilitation Centres for efficient and effective delivery of services and redressal of grievances. Information Facilitation Centres may include customer care centres, call centres, help desks and people's support centres.

Public Grievance Redressal Commissions

- The Bill establishes Central and State Grievance Redressal Commissions. Each Commission would consist of a Chief Commissioner and up to 10 Commissioners. The Commissioners would be appointed by the President (Governor) on the recommendation of a selection committee. This committee would consist of the Prime Minister (Chief Minister), the Leader of the Opposition in the Lok Sabha (Legislative Assembly) and a sitting Supreme Court (High Court) judge.
- The Commissioners should be: (a) present or former Secretaries to the central (state) government; or (b) present or former Supreme Court judges or Chief Justices of a High Court (district court judges for 10 years, or High Court judges); or (c) eminent persons with at least 20 years (15 years) of experience in social sectors with a post graduate degree in a relevant sector. The Commissioners may be removed by an order of the President (Governor) under certain conditions.

Complaint mechanism

- **Complaint:** Any citizen may file a complaint for: (a) failure in delivery of goods or services listed in the citizens charter; (b) the functioning of the public authority; and (c) any violation of a law, policy, programme, order or scheme. Complaints have to be redressed within 30 working days.

- Complaints have to be made to the Grievance Redressal Officer (GRO). GROs are to be appointed by each public authority at the central, state, district, sub-district, municipality and panchayat levels. The GRO is required to: (a) ensure that grievances are redressed within 30 working days; (b) ensure that disciplinary action is taken against a defaulting officer if he has acted negligently; and (c) recommend penalties and compensation where an individual has wilfully neglected to deliver services or there is a *prima facie* ground for a case under the Prevention of Corruption Act, 1988. The GRO has to inform the complainant about the action taken on the complaint.
- **Appeal:** The orders of the GRO may be appealed before the Designated Authority (DA). The DA shall be an officer above the rank of the GRO and outside the concerned public authority. (According to a statement made by the Minister of State for Personnel, Public Grievances and Pensions, the DA shall be an officer at the district level.¹¹) The DA shall dispose of appeals within 30 working days of their receipt. If a complaint with the GRO is not redressed within 30 working days, the GRO has to forward it as an appeal to the DA. The DA may penalise the defaulting officers.
- **Second Appeal:** The DA's orders may be appealed before the Central or State Public Grievance Redressal Commission within 30 working days. Appeals relating to complaints arising out of functioning of the central (state) departments would lie before the Central (State) Commission. The Commissions have to dispose of the appeal within 60 working days.
- **Third Appeal:** In relation to an offence under the Prevention of Corruption Act, 1988, an appeal against the decision of the Commissions shall lie with the Lokpal or the Lokayukta.
- **Suo motu mechanism:** The Central and State Commissions can *suo motu* refer matters related to non-delivery of goods and services to the heads of government departments. The Commissions may also initiate *suo motu* inquiry if they believe that there are reasonable grounds to inquire into the matter.
- Complaints may also be made to the Commissions in certain cases. It is the duty of the Commissions to inquire into complaints by persons: (a) who are unable to file appeals before the DA; (b) who are refused redress of grievances; (c) whose complaints are not disposed of within 30 days; and (d) who are denied access to the citizens charter because it has not been prepared or has not been widely disseminated.

Penalties

- **GRO:** The Bill requires the GRO to recommend penalties to the DA when: (a) he is convinced that the default was due to wilful neglect by an officer; or (b) when there is *prima facie* evidence of corruption.
- **DA and Commissions:** The Bill empowers the DA and the Commissions to impose a maximum penalty of Rs 50,000 upon the defaulting officer and the GRO. Penalties may be imposed upon the defaulting officer when he has acted in a mala fide manner or has failed to discharge his responsibility in a proper manner. A portion of the penalty may be awarded as compensation to the complainant.
- If there is evidence of corruption against the defaulting officer, the DA and the Commissions would have to refer the matter to appropriate authorities. Additionally, the DA may initiate proceedings in such cases.
- Disciplinary proceedings may be initiated by the GRO, DA and the Commissions against the defaulting officer if there is evidence of mala fide action.
- In any appeal proceeding, where it is alleged that the grievance has not been redressed by the GRO, the burden of proof shall be on the GRO.

PART B: KEY ISSUES AND ANALYSIS

Parliament's jurisdiction to regulate state public officials

The Bill regulates the functioning of departments and public officials at the central and state level. It also establishes Commissions at the central and state level. 'State public services; State Public Service Commission' is included in the State List (Entry 41) of the Seventh Schedule of the Constitution. This implies that the power to make laws to regulate the functioning of state public officials lies solely with state legislatures. Thus, Parliament may not have jurisdiction to enact laws governing such services and officials. In this regard, the Ministry has stated that the provisions of the Bill relate to 'actionable wrongs' which comes under the concurrent list. This view was accepted by the Standing Committee.

The Supreme Court has held that, “Wrong means an actionable wrong and it must consist of: (a) an act or omission amounting to an infringement of a legal right of a person or a breach of legal duty towards him; and (b) the act or omission must have caused harm or damage to that person in some way, the damage being either actual or presumed”.¹² Under the Bill, complaints may be filed for violation of any policy or scheme. The claims under these schemes and policies may be non-justiciable (unenforceable by courts). It is unclear whether schemes and policies which are not justiciable would fall under the meaning of ‘actionable wrong’.

Several states such as Delhi, Punjab and Bihar have also enacted their own grievance redressal laws. The mechanism provided under these laws is different from that provided under the Bill. (See Appendix 1, page 6)

Lack of clarity on the meaning of public authority

Clause 2(n) It is not clear whether the Bill applies to private entities only if they are established or constituted under a notification. The term ‘public authorities’ has been defined broadly to mean authorities constituted under: (a) the Constitution or under any central or state law; (b) an agreement between the government and a private entity as a PPP; and (c) any entity established under a notification or order of the government. This definition also includes: (i) non-governmental organizations that receive government finances either directly or indirectly, and (ii) other companies that are supplying goods or services to fulfil a statutory obligation, or under a license or authorisation by law. It is not clear if these organisations are required to be established under a notification.

It is pertinent to note that the Right to Information Act, 2005 includes private entities as long as they are controlled or financed by the government. Private sector companies are covered by other laws such as Consumer Protection Act, 1986 and the Competition Act, 2002. Inclusion under this Bill may lead to multiple dispute settlement forums being available for the same dispute. For instance, grievances related to services to be provided under a contract would fall under the Consumer Protection Act and this Bill.

Multiplicity of Grievance Redressal Forums

Clause 2(f) This Bill provides grievance redressal under several circumstances including violation of any law, policy or scheme. Some existing and proposed laws provide their own grievance redressal mechanisms, for instance, the Mahatma Gandhi National Rural Employment Guarantee Act, 2005, Right of Children to Free and Compulsory Education, 2009, National Food Security Bill, 2011, and the Public Procurement Bill, 2012. There could be an overlap of jurisdictions in some cases, as grievances under these legislations may be covered under this Bill as well. It is unclear as to which mechanism may be approached first, and whether seeking relief under one law bars remedies under the other.

Furthermore, the commissions established under these legislations are specialised in nature. They comprise persons of eminence in the field to which the laws relate. For instance, commissions under the National Food Security Bill, 2011 comprise persons with experience in the field of food security, agriculture and health.¹³

Exclusion of non-citizens

Clause 2(f) A complaint may only be filed by a citizen. However, certain services may be used by both citizens and foreign nationals. For example, a foreign national is eligible to apply for a driving license under Indian law. The rationale for excluding foreign nationals from the purview of the redressal mechanism is unclear.

Under some state laws, the criterion for accessing grievance redressal mechanism is the eligibility of the complainant and not his citizenship. The Punjab Right to Services Act, 2011 and the Rajasthan Guaranteed Delivery of Public Services Act, 2011 provide access to the redressal mechanism to all ‘eligible persons’. Under these Acts an ‘eligible person’ is defined as ‘any person who is eligible for the notified services’. The Standing Committee has recommended that the Ministry review whether non-citizens can be brought under the Bill.

Inconsistencies in the appeals procedure

Clause 47, 28 and 44 Under the Bill, if the Commission is satisfied that a *prima facie* case of corruption exists, it will refer the matter to the ‘appropriate authority’. The Bill also provides that the Commissions’ decisions related to corruption may be appealed before the Lokpal or the Lokayuktas. This raises three issues.

First, under the Bill, the Commission is not empowered to adjudicate matters related to corruption. It is only empowered to refer the matter to the appropriate authority. It is unclear how an appeal may be made before the Lokpal or the Lokayuktas in the absence of the Commissions’ power to decide on cases of corruption.

Second, the Bill does not provide a process to appeal against the Commissions' orders that do not relate to corruption. Third, the Lokpal is yet to be instituted at the centre and a number of states have not yet established Lokayuktas.

The Standing Committee has recommended that appeals to the Lokpal and Lokayuktas should not be provided. It observed that the Lokpal and Lokayuktas are anti-corruption agencies, whereas, the Bill addresses the issue of delivery of services. It also noted that the Bill already provided for three levels of appeal, and that a fourth appeal to the Lokpal or the Lokayuktas is not required.

Removal of members of the Central and State Grievance Commissions

Clause 20
and 37

Members of the Commissions can be removed by an order of the President or the Governor. The Bill states that the government may by rules regulate the investigation procedure for removal of the Commissioners for misbehaviour or incapacity. However, it does not require a judicial inquiry to be conducted in case there is an allegation of misbehaviour (acquisition of financial or such other interest) or incapacity of the Commissioners.

This is different from the process provided under some legislations. For example, the Competition Act, 2002, the Right to Information Act, 2005 and the Protection of Human Rights Act, 1993 require a judicial inquiry to be conducted before removal of the Commissioners when there is an allegation of misbehaviour or incapacity against them. The Electronic Delivery of Services Bill, 2011 and the Lokpal and Lokayuktas Bill, 2011 also have a similar inquiry procedure.

Inconsistency between the powers of the DA and the Commissions

Clause
11(10) and
28

The Bill provides for two levels of appeals by a complainant: first to the DA, and then to the Commission. There is an inconsistency between the powers of the two. If there is a *prima facie* indication of corruption, the DA may either refer the matter to the appropriate authority or initiate proceedings. However, if the complainant appeals against the DA's decision to the Commission, it can only refer the matter to the appropriate authority. Unlike the DA, the Commission does not have the power to initiate proceedings.

Notes

1. The brief has been written on the basis of the Right of Citizens for Time Bound Delivery of Goods and Services and Redressal of their Grievances Bill, 2011 introduced in the Lok Sabha on December 20, 2011.
2. 'Citizen's Charter - A Handbook', Department of Administrative Reforms and Public Grievances, available at <http://darpg.gov.in/ArticleContent.aspx?category=184>.
3. 'Citizens charter: Indian Experience' available at <http://darpg.gov.in/ArticleContent.aspx?category=182>.
4. Fourth Report of the Second Administrative Reforms Commission on 'Ethics in Governance', January 2007.
5. Twenty Ninth Report of the Standing Committee on Personnel, Public Grievance, Law and Justice, on 'Public Grievance Redressal Mechanism', October 21, 2008.
6. Annual Report of the Chief Information Commission 2005, p. 64 available at <http://www.cic.gov.in/AnnualReports/AR-200506/MainReport.pdf>.
7. Address by the President of India to Parliament on June 4, 2009 available at <http://presidentofindia.nic.in/sp040609.html>.
8. Sense of the House Resolution, Lok Sabha debate on August 27, 2011 p. 428.
9. 'Citizens charters in Government of India', Department of Administrative Reforms and Public Grievances, <http://goiCharters.nic.in/Charter.htm>.
10. Madhya Pradesh Lok Sewaon Ke Pradan Ki Guarantee Vidheyak, 2010, Uttar Pradesh Janhit Guarantee Adhiniyam, 2011, Jammu and Kashmir Public Services Guarantee Act, 2011, Bihar Right to Public Services Act, 2011.
11. 'Under the New Bill Citizens' Grievances to be redressed at Block Level: V. Narayanasamy', Press Information Bureau, Ministry of Personnel, Public Grievances and Pensions, December 23, 2011.
12. *State of Tripura vs. The Province of East Bengal* 1951 AIR (SC) 23.
13. Section 22(3)(a), The National Food Security Bill, 2011.

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APPENDIX: Comparison with some Acts on Right to Public Services

Table 1: Comparison between the Central Bill and State laws

Issues	Central Bill	J&K	Delhi	Bihar/MP/UP/Rajasthan	Punjab/Uttarakhand	Himachal Pradesh
Complainants	Citizens of India.	All persons eligible to obtain the services.	Citizen of India.	All persons eligible to obtain the services.	All persons eligible to obtain the services.	All persons eligible to obtain the services.
Entities to which the Bill/law applies	(a) constitutional and statutory authorities; (b) entities notified by government; (c) NGOs; (d) some private entities.	State government.	(a) constitutional and statutory authorities; (b) entities notified by the government, (c) NGOs; and (d) state agencies.	State government.	State government.	State government.
Procedure	Application for services to the designated officer with four rounds of appeal. The third round of appeal is before Commissions at the Centre or the State. In corruption cases, an appeal would lie before the Lokpal or Lokayukta.	Application for services to the designated officer with two rounds of appeal. If a designated officer or the first appellate authority is aggrieved by the order of the second appellate authority he may file a revision before the special tribunal.	Application for services is to be filed with concerned department, with one round of appeal for the public official.	Application for services to the designated officer with two rounds of appeal. An aggrieved designated officer or the first appellate authority may file a revision before a nominated officer.	Application for services to the designated officer with three rounds of appeal. The third round of appeal is before the Commission. Any person may file a revision against orders of second appellate authority before the Commission.	Application for services to the designated officer with two rounds of appeal.
Penalty	Maximum penalty of Rs 50,000 on the designated officer or the grievance redressal officer.	Penalty of Rs 500 – Rs 5,000 on the designated officer for non-delivery of services and on first appellate authority for delay in case disposal. Delay may be penalised with Rs 250 per day not exceeding Rs 5,000.	Every government servant who fails to deliver the services within the stipulated time period shall be liable to pay cost at Rs 10 per application.	Penalty of Rs 500 – Rs 5,000 on the designated officer for non-delivery of services and on first appellate authority for delay in disposal of case. Delay may be penalised with Rs 250 per day not exceeding Rs 5,000.	Penalty of Rs 500 – Rs 5,000 on the designated officer for non-delivery of services. Delay may be penalised with Rs 250 per day not exceeding Rs 5,000.	Penalty of Rs 1000 – Rs 5,000 on the designated officer for non-delivery of services.
Disciplinary action	The DA may recommend to the disciplinary authority to initiate action against the designated officer.	Disciplinary action may be recommended against the designated officer or the first appellate authority.	In case of habitual offenders the competent officer can take appropriate administrative action.	Disciplinary action may be recommended against the designated officer or the first appellate authority.	Disciplinary action may be recommended against the designated officer or other officials.	Disciplinary action may be recommended against the designated officer.
Compensation	Not mandatory. Amount shall not exceed the penalty imposed and it shall be deducted from the penalty.	Not mandatory. Amount shall not exceed the penalty imposed and it shall be deducted from the penalty.	Mandatory. Amount not specified.	Not mandatory. Amount shall not exceed the penalty imposed and it shall be deducted from the penalty.	Not mandatory. Amount shall not exceed the penalty imposed and it shall be deducted from the penalty.	Not mandatory. Amount shall not exceed the penalty imposed and it shall be deducted from the penalty.
Commissions	At the central and state level.	No provision.	No provision.	No provision.	Punjab: 5 Commissioners. UK: 3 Commissioners.	No provision.

Sources: Madhya Pradesh Lok Sewaon Ke Pradan Ki Guarantee Vidheyak, 2010; Uttar Pradesh Janhit Guarantee Adhiniyam, 2011; Jammu and Kashmir Public Services Guarantee Act, 2011; Delhi (Right of Citizen to Time Bound Delivery of Services) Act, 2011; Bihar Right to Public Services Act, 2011; Himachal Pradesh Public Services Guarantee Act, 2011; Rajasthan Guaranteed Delivery of Public Services Act, 2011; Uttarakhand Right to Service Act, 2011; Punjab Right to Service Act, 2011; Right of Citizens for Time Bound Delivery of Services and Redressal of their Grievances Bill, 2011; PRS.