



# **PARLIAMENT OF INDIA RAJYA SABHA**

## **REPORT OF THE SELECT COMMITTEE OF RAJYA SABHA ON THE LOKPAL AND LOKAYUKTAS BILL, 2011**

**(PRESENTED TO THE RAJYA SABHA ON 23<sup>RD</sup> NOVEMBER, 2012)**

**RAJYA SABHA SECRETARIAT  
NEW DELHI  
NOVEMBER, 2012 / KARTIKA, 1934 (SAKA)**



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**COMPOSITION OF THE COMMITTEE  
(Constituted on 15<sup>th</sup> June, 2012)**

1. Shri Satyavrat Chaturvedi — *Chairman*

**MEMBERS**

2. Shri Shantaram Naik
3. Shri Shadi Lal Batra
4. Shri Arun Jaitley
5. Shri Rajiv Pratap Rudy
6. Shri Bhupender Yadav
7. Shri Satish Chandra Misra
8. Shri K.N. Balagopal
9. Shri Shivanand Tiwari
10. Shri D. Bandyopadhyay
11. Shri Tiruchi Siva
12. Shri D.P. Tripathi
13. Prof. Ram Gopal Yadav
14. Dr. V. Maitreyan
15. Dr. Ashok S. Ganguly

**SECRETARIAT**

Shri Deepak Goyal, Joint Secretary  
Shri K.P. Singh, Director  
Shri Ashok Kumar Sahoo, Joint Director  
Shri B.M.S. Rana, Deputy Director  
Smt. Niangkhanem Guite, Assistant Director  
Smt. Catherine John L., Committee Officer

**REPRESENTATIVES OF THE MINISTRIES**

**MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES & PENSIONS**

**DEPARTMENT OF PERSONNEL & TRAINING**

1. Shri Alok Kumar, Joint Secretary;
2. Shri P.K. Das, Joint Secretary;
3. Ms. Mamta Kundra, Joint Secretary;
4. Shri Ashok K.K. Meena, Director;
5. Shri V.M. Rathnam, Deputy Secretary; and
6. Shri Amarjit Singh, Deputy Secretary.

(i)

**MINISTRY OF LAW AND JUSTICE**

**(I) LEGISLATIVE DEPARTMENT**

1. Dr. Sanjay Singh, Additional Secretary;
2. Dr. G. Narayana Raju, Joint Secretary & Legislative Counsel;
3. Shri Diwakar Singh, Deputy Legislative Counsel; and
4. Shri K.V. Kumar, Deputy Legislative Counsel.

**(II) DEPARTMENT OF LEGAL AFFAIRS**

1. Shri D. Bhardwaj, Joint Secretary and Legislative Counsel; and
2. Dr. R.J.R. Kasibhatla, Deputy Legal Advisor.

## INTRODUCTION

As the Chairman of the Select Committee of Rajya Sabha on the Lokpal and Lokayuktas Bill, 2011 and having been authorized by the Committee to submit the Report on its behalf, I present this Report on the Bill.

2. The Lokpal and Lokayuktas Bill, 2011 was introduced in the Lok Sabha on the 22<sup>nd</sup> December, 2011. The Bill provides for the establishment of a Body of Lokpal for the Union and Lokayuktas for States to inquire into allegations of corruption against certain public functionaries and for matters connected therewith or for incidental thereto. The Lok Sabha took up the consideration of the Bill on the 27<sup>th</sup> December, 2011 and passed the same with certain amendments. The Bill, as passed by the Lok Sabha, was taken up in Rajya Sabha. On the 21<sup>st</sup> May, 2012, the Rajya Sabha adopted a Motion that the Bill, as passed by the Lok Sabha, be referred to a Select Committee of the Rajya Sabha, comprising of 15 Members of Rajya Sabha, for examination of the Bill and report thereon to the Rajya Sabha by the first day of the last week of the Monsoon Session, 2012.

3. The Committee held nineteen sittings in all.

4. As the Committee was not in a position to present its Report to the House within the period stipulated in the Motion for appointment of the Committee, the House granted, on a Motion being moved to that effect on the 31<sup>st</sup> August, 2012, an extension of time for presentation of the Report, upto the last day of the first week of the ensuing Winter Session.

5. The Committee, in its first sitting held on 25<sup>th</sup> June, 2012, had a general discussion on the issues involved in the Bill and deliberated upon the course of action and the procedure for examination of the Bill. As is the practice, the Committee decided to invite views and suggestions from interested individuals / organizations / stakeholders/experts by issuing a Press Release in the form of an advertisement in English, Hindi and other vernacular languages in major leading national and regional newspapers and also through Prasar Bharti. Accordingly, a Press Release was published in leading national and regional newspapers and was also telecast on Doordarshan for involving all sections of society in the examination of the Bill. The Committee also decided to elicit the opinion of the State Governments on the provisions of the Bill. In response thereto, the State Governments of Mizoram, Chhattisgarh, Karnataka,

(iii)

West Bengal, Maharashtra, Nagaland, Tamil Nadu, Haryana, Manipur, Arunachal Pradesh, Uttar Pradesh and Union Territories of Andaman and Nicobar Administration, the Administration of Daman & Diu and Chandigarh Administration furnished their written comments on the Bill.

6. In its second sitting held on the 4<sup>th</sup> July, 2012, the Committee heard the presentation of the Secretary, Department of Personnel and Training on the provisions of the Bill.

7. In its third sitting held on the 5<sup>th</sup> July, 2012, the Committee heard the Secretary, Department of Legal Affairs on the Bill and sought clarifications on the complex legal issues.

8. In its fourth sitting held on the 13<sup>th</sup> July, 2012, the Committee heard the views of Director, Central Bureau of Investigation on the Bill and interacted on functional autonomy and independence of the premier investigative agency of the country.

9. In its fifth sitting held on the 25<sup>th</sup> July, 2012, the Committee heard Shri Nripendra Mishra, Director, Public Interest Foundation, Delhi; and Shri Shekhar Singh and colleagues, NCPRI and received valuable inputs from them.

10. In its sixth sitting held on the 6<sup>th</sup> August, 2012, the Committee heard the views of Ld. Attorney General of India.

11. In its seventh sitting held on the 14<sup>th</sup> August, 2012, the Committee heard the views of Justice A.P. Shah, Former Chief Justice of High Courts of Madras and Delhi.

12. In its eighth sitting held on the 30<sup>th</sup> August, 2012, the Committee authorized the Chairman to move a motion in the House seeking extension till the first day of the last week of the ensuing Winter Session, for completing the work of the Committee.

13. In its ninth sitting held on the 5<sup>th</sup> September, 2012, the Committee heard Shri Harish N. Salve, Senior Advocate, Supreme Court of India and the representatives of PRS Legislative Research.

14. In its tenth sitting held on the 6<sup>th</sup> September, 2012, the Committee heard the views of Dr. Jayaprakash Narayan, Lok Satta.

15. In its eleventh sitting held on the 14<sup>th</sup> September, 2012, the Committee heard oral evidence of Shri Ashok Kapur, IAS (Retd.), Director General, Institute of Directors, International Academy of Law, New Delhi; Er. V.K. Agarwal & Er. H.C. Israni, Bharastachar Niwaran Samiti, Delhi; Deepak Tongli, Hyderabad; Shri Hansraj Jain, Delhi; Shri Dinesh Nath, Delhi; Shri M.K. Rajput, Delhi; Shri Kulamani Mishra, Odisha; Shri K.K. Swami & Shri Dalip Kumar Babhoota, Akhil Bhartiya Grahak Panchayat, Delhi; Shri J.K. Palit, Gaya; Shri Manoj Nandkishor Agrawal, Pune; and Shri Mahesh Pandya, Ahmedabad.

16. At its sittings held on the 9<sup>th</sup>, 10<sup>th</sup>, 19<sup>th</sup>, 20<sup>th</sup>, 30<sup>th</sup> & 31<sup>st</sup> October and 9<sup>th</sup> November, 2012, the Committee took up clause by clause consideration of the Bill.

17. In response to the Press Release issued seeking suggestions/ views on the Bill, approximately 128 responses were received and out of these, 15 were treated as memoranda as per list at Annexure-I.

18. The Committee also received suggestions from some of its Members in the course of consideration of the Bill. The suggestions so received are placed at Annexure-II.

19. The Committee considered and adopted its draft Report on the Bill at its sitting held on the 19<sup>th</sup> November, 2012.

20. The Committee wishes to place on record its gratitude to the representatives of the Ministry of Personnel, Public Grievances & Pensions (Department of Personnel and Training), Central Bureau of Investigation and Ministry of Law and Justice (Legislative Department and Department of Legal Affairs) for furnishing necessary information/ documents and rendering valuable assistance to the Committee in its deliberations. The Committee also wishes to express its gratitude to all the distinguished persons who appeared before the Committee and placed their valuable views on the Bill and furnished written notes and information in connection with the examination of the Bill.

New Delhi,  
19<sup>th</sup> November, 2012

**SATYAVRAT CHATURVEDI**  
*Chairman,*  
*Select Committee of Rajya Sabha on*  
*the Lokpal and Lokayuktas Bill, 2011*



# **REPORT**

The Lokpal and Lokayuktas Bill, 2011 seeks to provide for the establishment of a body of Lokpal for the Union and Lokayukta for States to inquire into allegations of corruption against certain public functionaries and for matters connected therewith or incidental thereto.

2. The Statement of Objects and Reasons appended to the Lokpal and Lokayuktas Bill, 2011 when it was introduced in the Lok Sabha, states that the need to have a legislation for Lokpal has been felt for quite sometime. In its interim report on the "Problems of Redressal of Citizens' Grievances" submitted in 1966, the Administrative Reforms Commission, inter alia, recommended the setting up of an institution of Lokpal at the Centre. To give effect to this recommendation of the Administrative Reforms Commission, eight Bills on Lokpal were introduced in the Lok Sabha in the past from time to time. However, these Bills lapsed consequent upon the dissolution of the respective Lok Sabha except the Bill of 1985 which was subsequently withdrawn after its introduction.

3. India is committed to pursue the policy of 'Zero Tolerance against Corruption'. India ratified the United Nations Convention Against Corruption by deposit of Instrument of Ratification on the 9<sup>th</sup> May 2011. This Convention imposes a number of obligations, some mandatory, some recommendatory and some optional on the Member States. The Convention, inter alia, envisages that State Parties ensure measures in the domestic law for criminalization of offences relating to bribery and put in place an effective mechanism for its enforcement. The obligations of the Convention, with reference to India, have come into force with effect from 8<sup>th</sup> June 2011. As a policy of Zero tolerance against Corruption the Bill seeks to establish in the country, a more effective mechanism to receive complaints relating to allegations of corruption against public servants including Ministers, MPs, Chief Ministers, Members of Legislative Assemblies and public servants and to inquire into them and take follow up actions. The bodies, namely, Lokpal and Lokayuktas which are being set up for the purpose will be constitutional bodies. This setting up of these bodies will further strengthen the existing legal and

institutional mechanism thereby facilitating a more effective implementation of some of the obligations under the aforesaid Convention.

4. The Bills viz., The Lokpal and Lokayuktas Bill, 2011 and The Constitution 116<sup>th</sup> Amendment Bill, 2011 were taken up for consideration by the Lok Sabha on 27.12.2011. The Lokpal and Lokayuktas Bill, 2011 was passed with certain amendments whereas the Constitution 116<sup>th</sup> Amendment Bill, 2011 could not be passed for want of the requisite majority required for Constitutional amendments. The Bill was listed for consideration in Rajya Sabha on 29<sup>th</sup> December, 2011, when some Hon'ble Members had expressed the view that more time was needed for consideration of the Bill. The debate on the Bill continued till midnight on 29<sup>th</sup> December, 2011 but the Bill could not be taken up for consideration and passing at that time. On 21<sup>st</sup> May, 2012, the House adopted a motion that the Lokpal and Lokayuktas Bill, 2011, as passed by Lok Sabha, be referred to a Select Committee of the Rajya Sabha, with instructions to report to the Rajya Sabha.

### **Salient Features of the Bill**

5.0. The Bill seeks to establish the institution of Lokpal at the Centre and Lokayukta at the level of the States. Thus, it seeks to provide a uniform vigilance and anti-corruption road-map for the nation, both at the Centre and the States. The Bill also institutionalises separation of investigation from prosecution and thereby removing conflict of interest as well as increasing the scope of professionalism and specialization.

5.1. The Lokpal will consist of a Chairperson and a maximum of eight Members, of which fifty percent shall be judicial Members. Fifty per cent of members of Lokpal shall be from amongst SC, ST, OBCs, Minorities and Women. There shall be an Inquiry Wing of the Lokpal for conducting the preliminary inquiry and an independent Prosecution Wing. The selection of Chairperson and Members of Lokpal shall be through a Selection Committee consisting of :-

Prime Minister;

Speaker of Lok Sabha;

Leader of Opposition in the Lok Sabha;

Chief Justice of India or a sitting Supreme Court Judge nominated by CJI;  
Eminent jurist to be nominated by the President of India.

5.2. A Search Committee will assist the Selection Committee in the process of selection. Fifty per cent of members of the Search Committee shall also be from amongst SC, ST, OBCs, Minorities and Women.

5.3. Prime Minister has been brought under the purview of the Lokpal with subject matter exclusions and specific process for handling complaints against the Prime Minister. Lokpal cannot hold any inquiry against the Prime Minister if allegations relate to international relations; external and internal security of the country; public order; atomic energy and space. Any decision of Lokpal to initiate preliminary inquiry or investigation against the Prime Minister shall be taken only by the Full Bench with a "2/3<sup>rd</sup> majority". Initially, the Bill had provided for a "3/4<sup>th</sup> majority" which has been reduced to "2/3<sup>rd</sup> majority" by the Lok Sabha while passing the Bill. It has also been provided that such proceedings shall be held in camera.

5.4. Lokpal's jurisdiction will cover all categories of public servants including Group 'A', 'B', 'C' and 'D' officers and employees of Government. On complaints referred to CVC by Lokpal, CVC will send its report of PE in respect of Group 'A' and 'B' officers back to Lokpal for further decision. With respect to Group 'C' and 'D' employees, CVC will proceed further in exercise of its own powers under the CVC Act subject to reporting and review by Lokpal. All entities funded/ aided by the Government and those receiving donations from foreign source in the context of the Foreign Contribution Regulation Act (FCRA) in excess of Rs. 10 lakhs per year are brought under the jurisdiction of Lokpal.

5.5. The Bill also incorporates a number of other significant features. For instance, no prior sanction shall be required for launching prosecution in cases enquired by Lokpal or initiated on the direction and with the approval of Lokpal. Provisions have also been made for attachment and confiscation of property acquired by corrupt means, even while prosecution is pending. A high powered Committee, chaired by the Prime Minister, with Leader of Opposition in Lok Sabha and Chief Justice of India as Members, will recommend selection of the Director, CBI. Lokpal shall be the final appellate authority

on all decisions by public authorities relating to provision of public services and redressal of grievances containing findings of corruption. Lokpal will have power of superintendence and direction over any investigation agency including CBI for cases referred to them by Lokpal.

5.6. The Bill lays down clear time lines for:

- Preliminary enquiry - three months extendable by three months.
- Investigation - six months which may be extended by six months at a time.
- Trial - one year extendable by one year.

5.7. The Bill proposes to enhance maximum punishment under the Prevention of Corruption Act from seven years to 10 years. The minimum punishment under the Act will now be 2 years.

6. The Committee deliberated at length on the various provisions of the Bill and also heard the views of a cross section of experts and organizations including the Attorney General of India, former High Court Judge, eminent jurists, NGOs and legal experts. The Committee also took into account the suggestions contained in the memoranda received on the Bill.

7. The Committee, after having gone through the memoranda, background notes, other documents and evidence tendered before it, as well as the views expressed by its Members on the provisions of the Bill, recommends enactment of the legislation with certain additions and modifications in the Bill as detailed below :

### **Clause 3: Establishment of Lokpal.**

8.0. Clause 3 of the Bill deals with the establishment of Lokpal. It includes its constitution, the eligibility conditions for appointment as a Member of the Lokpal and the category of persons prohibited from holding the position of the Chairperson or a Member of the Lokpal. The Committee had detailed discussions on the following issues under Clause 3 :-

**(i) Holding the position of Chairperson Lokpal by an “eminent person” referred to in Clause 3 (3) (b)**

8.1. As per clause 3 (2) (a) an eminent person referred to in clause 3 (3) (b) can also be appointed as the Chairperson of the Lokpal. While considering the provisions of Clause 3(2)(a), a question arose before the Committee about the appropriateness of having the “eminent person” in terms of Clause 3(2)(b) as the Chairperson of the Lokpal. As per the provisions of Clause 3, the Lokpal consists of a Chairperson and such number of members not exceeding eight out of whom 50 per cent shall be Judicial Members. A Judicial Member has to be an existing / former judge of Supreme Court or Chief Justice of a High Court. The Bill, in clause 3 (3) (b), prescribes the eligibility criteria in the case of a Member, other than a Judicial Member. He/She has to be a person of impeccable integrity and outstanding ability having special knowledge and expertise of not less than 25 years, etc.

8.2. The Committee had some apprehensions about the workability of the institution of Lokpal if it had a non-Judge as its Head (Chairperson) with Members (half of the total strength) who would be sitting/former Judges of Supreme Court/Chief Justice of High Courts. The Committee, however, accepted the provisions of Clause 3(2)(a) which provide equal opportunity to persons from both judicial and non judicial background for holding the post of the Chairperson of the Lokpal. **Accordingly, the Committee does not recommend any change in the provisions of Clause 3 (2) (a).**

**(ii) Inclusion of sitting / former Judges of High Courts for appointment as Chairperson / Member of Lokpal.**

8.3. Under the existing provisions of Clause 3, only sitting / former Judges of the Supreme Court and Chief Justice of the High Courts are eligible for holding the post of Chairperson / Member of the Lokpal. Keeping in view the scarcity of former Supreme Court Judges, a view emerged in the Committee that the Judges of the High Court may also be made eligible for appointment as Chairperson/Member of the Lokpal. After detailed deliberations, the Committee decided not to effect any change in the existing provisions. The Committee felt that the Judges of the High Court could be an appropriate

option for the post of Lokayuktas in the States. **Accordingly, the Committee does not recommend any change in the provisions of Clause 3(3)(a).**

**(iii) Ineligibility of persons ‘connected’ with any political party for holding the post of Chairperson / Member of the Lokpal.**

8.4. Clause 3(4) of the Bill lays down who all are ineligible for holding the post of Chairperson / Member of the Lokpal. It provides that the Chairperson / Member of the Lokpal shall not, *inter-alia*, ‘be connected with any political party’. The Committee had detailed deliberations on these provisions of the Bill and it felt that the word ‘connected’ appearing in Clause 3(4) carried a wide connotation and it might be difficult to construe the exact meaning and purport of this term. The Committee felt that the spirit behind this provision seems to be to keep persons having a political bias away from this institution. **In order to overcome this ambiguity associated with the word ‘connected’, the Committee recommends that the words ‘connected with any political party’ may be replaced by the words ‘affiliated with any political party’. In the opinion of the Committee, the word ‘affiliated’ has a definite connotation and would well serve the desired objective.**

**(iv) Provision for SC, ST, OBC, Minorities and Women to the extent of not less than 50% among Members in the Lokpal**

8.5. The proviso to Clause 3(2)(b) provides that ‘not less than fifty per cent of the members of the Lokpal’ shall be from amongst the persons belonging to Scheduled Castes, Scheduled Tribes, Other Backward Classes, Minorities and Women. There was a strong view in the Committee that such a provision in the Bill does not have a constitutional basis and may not be sustainable. The Committee sought inputs on this issue from the DoPT as well as the Department of Legal Affairs. The DoPT were of the view that these provisions were in the nature of ‘representation’ and not ‘reservation’ and hence they were sustainable. The Department of Legal Affairs commenting on this issue stated that ‘an affirmative action in favour of women following the philosophy underlying the provisions of Article 15(3) of the Constitution may not be inapposite’.

8.6. Members of the Committee raised concern whether such provisions in Lokpal would be valid as the Constitution does not provide for reservation to the minorities.

Some Members of the Committee felt that such a reservation would be outside the Constitutional scheme. Moreover, the word “minority” is incapable of specifying a particular group or class. For example, such a term would include members of Hindu community from J&K, Punjab or any other State, where they are in minority and similarly the linguistic minorities would also be included in the meaning of the term minority. The Committee also heard the views of experts/ legal luminaries for this issue and found them almost divided on both sides.

8.7. The Committee takes note of the fact that there is no concept of reservation either in the higher judiciary or among men falling in the category of persons with outstanding ability from among whom the Chairperson/Members of the Lokpal are to be selected. Thus, the reservation principles are not applicable in such a high profile body.

8.8. The Committee, however, notes that Articles 15 and 16 of the Constitution provide reservation for certain categories of persons. The Committee is of the considered view that the intention behind these provisions in the Bill is to ensure that there is a representation of atleast 50% of Members of Lokpal from diverse sections of the society. This being the intent and purpose in the legislation, the Committee is inclined to endorse the existing proviso to Clause 3(2)(b) of the Bill.

8.9. Some Members of the Committee also expressed reservation on the words ‘not less than’ 50 per cent appearing in the proviso to Clause 3(2). They felt that not less than 50 per cent could also mean even 100 per cent. It was further pointed out by the Members that exceeding the ceiling of 50 per cent in such matters is against the settled law of the country through judicial pronouncements that put a cap of fifty percent on all categories of reservations taken together.

**8.10. The Committee notes that these provisions merely aim at providing representation to the diverse sections of the society in the institution of Lokpal and hence the rules of reservation are not involved in this case. Accordingly, the Committee does not recommend any change in the proviso to Clause 3(2)(b) that indicates the quantum of representation and not reservation.**

**Clause 4 : Appointment of Chairperson and Members on  
Recommendations of Selection Committee**

9.0. Clause 4(1) provides for a Selection Committee consisting of Prime Minister as Chairperson, Speaker, Lok Sabha, Leader of Opposition, Lok Sabha, Chief Justice of India or the Judge of the Supreme Court, nominated by him and one eminent jurist, nominated by the President, to be the Members of the Selection Committee. The Committee in the first place had an apprehension that the present Selection Committee was tilted in favour of the Government. The Committee came across some suggestions during the course of its deliberations like, the Selection Committee may include the outgoing Lokpal, serving CEC or the Comptroller and Auditor General. However, in the opinion of the DoPT, the Selection Committee carried a fine balance and needed no change.

9.1. The Committee, however, could not find itself in agreement with the Government's point of view. In order to correct the tilt in favor of the Government in the Selection Committee, the Committee felt that the fifth person in the Selection Committee i.e., an eminent jurist could, instead of being nominated by the President, be recommended by the first four Members of the Selection Committee as mentioned in Clause 4(1) (a) to (d). Such a recommendation may go to the Government and the Government after taking the Cabinet's approval, could forward the same to the President. Thus, the appointment of the fifth Member of the Selection Committee, may be done by the President, but, his selection would be done by the first four Members of the Selection Committee and not by the President.

**9.2. In the light of the above position, the Committee recommends that the Clause 4 (1) (e) be substituted as under :**

**“one eminent jurist as recommended by the members of the Selection Committee as at Clause 4(1)(a) to (d) to the Government and appointed by the President- member”.**

**Clause 14 : Jurisdiction of Lokpal**



10.0. Clause 14 of the Bill deals with the jurisdiction of Lokpal. As per Clause 14(1), the Prime Minister falls under the jurisdiction of Lokpal. However, there is an exception to this under Clause 14(1) in favour of the Prime Minister in the area of International relations, external and internal security, public order, atomic energy and space. In this context, the Committee noted with concern whether the subject specific exemption that has been granted to the P.M. should be extended to the PMO and officials of the Departments of Government handling the specified areas of work. The Committee wondered whether the objective of providing for subject specific exemption to the P.M. would be lost if the PMO or for that matter the officials of the concerned Departments of Government referred to above were retained under the jurisdiction of the Lokpal. The Committee after detailed discussion noted that under the scheme of the Bill, the exemption has been provided only to the P.M. and that too if the allegations of corruption relate to the specified areas of activity. In terms of Clause 14(1)(a), if the charge of corruption against the P.M. fall in other than the said category, then, the inquiry is supposed to be carried out in camera. The Bill further provides that in case, on inquiry, the Lokpal comes to the conclusion that the complaint deserves to be dismissed, the record of inquiry shall not be made public.

**10.1. The Committee notes that in the scheme of the Bill, the exemption has been created only in respect of the P.M. and there are adequate safeguards to protect information of sensitive nature in the areas specified in Clause 14(1)(a)(i). Accordingly, the Committee does not recommend any change in Clause 14(1)(a).**

10.2. Clause 14 of the Bill also deals with the jurisdiction of the Lokpal over the officers/officials of a society or association of persons or trust (whether registered or not) wholly or partly financed or aided by the Government or in receipt of donation from the public. The Committee deliberated at length on the relevant provisions in the Bill in this regard i.e., Clause 14(1)(g) &(h) and suggested certain modifications as enumerated in the succeeding paragraphs.

10.3. Taking up Clause 14(1)(g), the Committee noted that the jurisdiction of Lokpal extends to Officers/officials of Societies, Association of persons, Trusts etc., which are

“wholly or partly financed or aided by the Government” and the annual income of which exceeds such amount as the Central Government may by notification specify. The Members of the Committee observed that the word “aided” leaves scope for plethora of entities to be covered within the jurisdiction of Lokpal. Given the meaning of the term ‘aided’ and as supplemented by the judicial pronouncements from time to time, this is likely to include within the jurisdiction of Lokpal petty organisations, which might have received aid in one form or the other. For example, the category of “aided” would cover bodies that have received land at subsidized rates or get exemption under the Income Tax Act. In Committee’s view, inclusion of such institutions or entities would flood the Lokpal with large number of complaints, thereby diverting it from tackling big ticket corruption. The Committee is of the considered view that only these bodies, organisations, Societies, Trusts etc., should be brought under the jurisdiction of Lokpal, which receive support from the Government directly in the form of funds and not indirectly in other forms, within the meaning of the term “aided”. **The Committee, therefore, recommends that the word “aided” in Clause 14(1)(g) may be omitted.**

10.4. Clause 14(1)(h) brings under the jurisdiction of Lokpal, Societies, Associations and persons or Trusts receiving donations from the Public, which exceed such amount as the Central Government may notification specify and also such organizations that receive donations from foreign source under the Foreign Contribution (Regulation) Act, 2010 in excess of Rs. 10 lakhs in a year. A suggestion, however, came before the Committee that entities not connected with the affairs of the State or not receiving any financial support from the Government in the form of funds need not be brought under the Lokpal.

10.5. The Committee discussed the issue in detail and its considered view was that the bodies receiving funds from Government wholly or partly are since covered under Clause 14(1)(g) whereas, the clause 14(1)(h) specifically refers to those organizations, which receive donations from Public above the limit as specified by the Central Government by a notification to that effect. Thus, under Clause 14(1)(h), entities receiving donations from the Public, have also been brought under the jurisdiction of the Lokpal. The Committee having considered the matter at length, is of the view that the legislation provisionally is meant to enquire into matters of corruption of public functionaries and in

that sense, the entities that takes private donations do not strictly fall into that category. In the opinion of the Committee, entities that are neither working in connection with the affairs of the State and which are not receiving any funds from Government by way of aid do not fall in the category of public functionary. In Committee's view, only such entities should essentially be brought under the jurisdiction of Lokpal that are (i) wholly or partially financed by Government or controlled by it, (ii) working in connection with the affairs of the State or (iii) receiving donations above specified limit from foreign source under Foreign Contribution (Regulation) Act, 2010. The Committee felt that if such entities taking donations from the public, are brought under the Lokpal, it would be unmanageable. It would bring under Lokpal all domestic bodies, which raised money from the Public and may cover bodies like the Rotary Club, School, Dharamshalas, Resident Welfare Association, etc. **The Committee, accordingly, recommends that in Clause 14(1)(h), the words "from the public and the annual income of which exceeds such amount as the Central Government may, by notification- specify or" be deleted.**

#### **Clause 20 : Provisions relating to complaints and preliminary inquiry and investigation by the Lokpal**

11.0. The Committee had extensive deliberations on the provisions of Clause 20 of the Bill. The Committee's efforts were directed towards bringing the provisions of Clause 20 in consonance with the accepted and time tested principles of criminal jurisprudence. The Committee made an attempt to rationalize the provisions of Clause 20 of the Bill related to seeking of comments from the public servants and affording to them an opportunity to be heard during the course of inquiry/investigation. The modifications in the provisions of Clause 20 that have been suggested by the Committee seek to ensure that the public servant against whom a complaint has been received by the Lokpal does not get any chance to destroy or vitiate vital evidence against him while he is asked to offer comments or is heard during the course of inquiry/investigation. The Committee has also dealt with the issue of sanction and sought to put in place a balanced mechanism by vesting the power to grant sanction with the Lokpal after hearing the public servant as

well as the concerned Government Department. The Committee's deliberations in relation to Clause 20 have been enumerated in the succeeding paragraphs.

11.1. Clause 20(1) provides that the Lokpal shall, on receipt of a complaint first decide whether to proceed in the matter or close the same and if the Lokpal decides to proceed further it shall order the preliminary inquiry by its Inquiry Wing or any agency (including Delhi Special Police Establishment) to ascertain whether there exists a *prima facie* case for proceeding in the matter.

11.2. The Committee contemplated a situation where the Lokpal may receive complaints, in which a *prima facie* case is made out against the public servant from the facts/ information given in the complaint and hence, may be a fit case to be referred directly, for investigation by any agency. The Committee was of the opinion that Clause 20(1) does not envisage such a course of action on complaints. Members raised concern over the provision of Clause 20(1) whereby the Lokpal, if it decides to proceed, shall invariably have to order preliminary inquiry against any person to ascertain whether there exist a *prima facie* case. The Members questioned the need for preliminary inquiry where a *prima facie* case is made out from the facts / information given in the complaint itself or there is substantial evidence for the same. In such a situation holding a preliminary inquiry may not be appropriate and instead, the Lokpal should proceed for the investigation, directly. **In order to deal with such situations, the Committee recommends that Clause 20(1) may be amended to read as follows :-**

**“The Lokpal on receipt of a complaint, if it decides to proceed further, shall order the preliminary inquiry against any public servant by its Inquiry Wing or any agency (including the Delhi Special Police Establishment) to ascertain whether there exists a *prima facie* case for proceeding in the matter or may order investigation by any agency (including the Delhi Special Police Establishment) where there exists a *prime facie* case”.**

**11.3. The Committee recommends the Clause may accordingly be amended.**

11.4. Clause 20(2) provides that during the preliminary inquiry, the Inquiry Wing or any agency (including Delhi Special Police Establishment) shall conduct a preliminary inquiry and on the basis of material, information and documents collected seek the comments on the allegations made in the complaint from the public servant and the competent authority and after obtaining the comments of the concerned public servant and the competent authority, submit, within sixty days from the date of receipt of the reference, a report to the Lokpal.

11.5. Clause 20(2) provides that the inquiry wing or any agency conducting the preliminary inquiry is mandatorily required to seek comments on the allegations made in the complaint from the public servant and the competent authority. The Members felt that the Inquiry Wing of the Lokpal or any agency may be given discretion for seeking comments from the public servant at this stage. The Committee felt that it should not be made binding on the Lokpal or the agency to seek comments of the public servant in cases, where there is *prima facie* evidence towards the commission of the offence. **In view of this the Committee recommends insertion of the word “may” after the words “documents collected” in Clause 20(2).**

11.6. Clause 20(3) provides that a bench consisting of not less than three Members of the Lokpal shall consider every such report received from its Inquiry Wing or any agency and after giving an opportunity of being heard to the public servant decide as to whether there exists a *prima facie* case, and make recommendations to proceed, with one or more of the following course of action :

- (i) investigation by any investigating agency or the Delhi Special Police Establishment, as the case may be;
- (ii) initiation of the departmental proceedings or any other appropriate action against the concerned public servant by the competent authority; or
- (iii) closure of the proceedings against the public servant and take action to proceed against the complainant under clause 46.

11.7. Clause 20(3) *inter alia* provides for an opportunity of being heard to the public servant at preliminary inquiry stage in order to decide whether there exists a *prima facie*

case or not. The Members of the Committee expressed their strong reservations about the public servant being given an opportunity of being heard at this stage. Some Members even felt that the opportunity to hear the charged official at PE stage may be done away with in order to retain the element of surprise. The Members took note of the fact that nowhere in criminal procedure such an opportunity is given to any accused at the inquiry stage. The Committee, therefore, was of the view that no such opportunity be given to the public servant at this stage. **The Committee, accordingly, recommends that in Clause 20(3) the words “and after giving an opportunity of being heard to the public servant,” be deleted.**

11.8. Clause 20(7) provides that every report received under sub-section (6) from any agency shall be considered by a bench consisting of not less than three members of the Lokpal which may decide to file charge sheet or closure report before the special court against the public servant or initiate the departmental proceedings or any other appropriate action against public servant by the competent authority.

11.9. The Committee had detailed deliberations on the issue whether granting the sanction by Government to prosecute a public servant should be done away with completely or be retained and placed with the Lokpal. It was felt that doing away with the sanction completely may erode the protection given to the public servant for taking *bona fide* decisions and retaining the power of sanction will ensure that such *bona fide* decisions are protected and also the interest of justice is served. Retention of the sanction is also required for protecting honest public servants, the Committee felt. Members also noted that object of sanction has always been positive and that today, in 80 per cent of the cases sanction is not required. Illustrating on this point, it was pointed out in the deliberations that when a public servant is caught taking bribe, it is not part of his official duty or, similarly, if he is caught with disproportionate assets it is also not part of his official duty and hence, no sanction was called for. In view of this, the Committee was of the view that power to grant sanction be retained. But this power of sanction could be shifted to the Lokpal in place of Government. However, in order to further rationalize the procedure, the Lokpal may be required to seek comments of the competent authority and the public servant before taking such decision. Such a dispensation in Committee's view

would strike an all round balance not only in the inquiry/investigation procedure but would also retain the safeguard of sanction needed to protect the interest of honest public servants. **The Committee, therefore, recommends that the Clause 20(7) may be amended to read as under:**

**A bench consisting of not less than three Members of the Lokpal shall consider every report received by it under sub-section (6) from any agency (including the Delhi Special Police Establishment) and after obtaining the comments of the competent authority and the public servant may ---**

- (a) grant sanction to its Prosecution wing or the investigating agency to file charge-sheet or direct the closure of report before the Special Court against the public servant;**
- (b) direct the competent authority to initiate the departmental proceedings or any other appropriate action against the concerned public servant.**

**11.10. The Committee also recommends the further consequential changes wherever necessary in other provisions of the Bill.**

11.11. Clause 20(8) provides that the Lokpal, after taking a decision under sub-section (7) on the filing of the charge sheet direct its Prosecution Wing to initiate prosecution in the Special Court in respect of cases investigated by any agency (including the Delhi Special Police Establishment). The Committee considered the existing dispensation under Clause 20(8) and felt that it would be a better and useful option if the Lokpal has the discretion either to direct its own Prosecution Wing or the Investigating Agency (through its Prosecution Wing) to initiate proceedings in the Special Court. This, in Committee's view, would add to the resource of the Lokpal, which the latter could utilize through exercise of discretion, depending on the requirements. Accordingly, the Committee recommends that in addition to the Prosecution Wing of Lokpal, the Investigating Agency may also be allowed to initiate prosecution. **The Committee recommend that the Clause 20(8) may be amended, as under:—**

**“The Lokpal may, after taking a decision under sub-section (7) on the filing of the charge-sheet, direct either its own Prosecution Wing or the investigating agency (including the Delhi Special Police Establishment) to initiate prosecution in the Special Court in respect of the cases investigated by the agency”.**

**Clause 23 : Previous sanction not necessary for investigation and Initiating prosecution by Lokpal in certain cases.**

12.0. This Clause does away with the requirement of sanction by the Lokpal before ordering preliminary inquiry or investigation or filing of any charge sheet or closure report on completion of investigation before the Special Court under Section 197 of the Code of Criminal Procedure, 1973 or under Section 6A of the Delhi Special Police Establishment Act, 1946 or Section 19 of the Prevention of Corruption, Act, 1988.

12.1. While considering Clause 20, the Committee has recommended that the provisions regarding grant of sanction to initiate prosecution be retained. However, the power to grant sanction is proposed to be vested with the Lokpal in place of the Central Government. The Committee, accordingly, has proposed to amend Clause 20(7) of the Bill.

12.2. **The Committee notes that the power to sanction preliminary inquiry or an investigation into any complaint against a Public servant or filing of any charge sheet or closure report on completion of investigation before the Special Court is proposed to be vested in the Lokpal. Accordingly, the provisions of Clause 23 of the Bill need to be revised and suitably adapted to the dispensation recommended by the Committee under Clause 20 of the Bill. The Committee, accordingly, recommends that Clause 23 of the Bill may be revised suitably.**

**Clause 25 : Supervisory powers of Lokpal read with Part II of Schedule to the Bill suggesting amendment to the Delhi Special Police Establishment Act, 1946.**

13.0. Clause 25 of the Bill vests in the Lokpal the power of superintendence and direction over the Delhi Special Police Establishment in respect of matters referred by the Lokpal for preliminary inquiry or investigation to the DSPE. These powers of



superintendence and directions shall be exercised by the Lokpal in such a manner so as not to require the investigative agency to investigate or dispose of any case in a particular manner.

13.1. There had been elaborate discussion in the Committee on the role of the CBI in the process of inquiry/investigation into complaints received by the Lokpal. The Committee also discussed at length the efficacy of the mechanism provided for in the Bill which vests the investigative function with the CBI and gives to the Lokpal the power of superintendence and direction over it. Besides this, serious concerns were also raised regarding the independence of the CBI vis-à-vis the Central Government. In this backdrop various suggestions were received in the Committee which aimed at putting in place a system which has efficient investigation and prosecution processes, free from any outside influence. Some important suggestions received in the Committee are enumerated hereunder:-

- The CBI will have two wings. Director, CBI will head the entire organization. Under him a separate Directorate of Prosecution should function.
- The Investigative Wing and Prosecution Wing of the CBI should act independently.
- The Director of CBI and Director of Prosecution should be appointed by a collegium comprising the Prime Minister, Leader of Opposition, Lok Sabha and Chairman of Lokpal.
- Both the Director CBI and Director of Prosecution must have a fixed term.
- Both Director, CBI and Director, Prosecution shall not be considered for re-employment in Government
- The power of superintendence and direction of the CBI in relation to Lokpal referred cases must vest with the Lokpal.
- If an officer investigating a case is sought to be transferred for any reason whatsoever, the prior approval of Lokpal should be required.
- The panel of Advocates who appear for and advise the CBI should be independent of the Govt. Advocates. They can be appointed by the Director, Prosecution after obtaining prior approval of the Lokpal.
- Separate demand for grant should be generated from Consolidated Fund of India and Director, CBI to be the Grant Controlling Authority and Chief Accounting Authority for this grant. The Director, CBI to exercise power of Secretary to Government of India as provided under the Delegation of Financial Power Rules, 1978.

- Director, CBI should have full authority in appointment, extension and curtailment of tenure of officers up to the rank of DIG in CBI.
- Director, CBI should be included as a member of Selection Committee for appointment of other officers above the rank of DIG in CBI. Section 4C of DSPE Act should be amended, accordingly.
- Director, CBI should also have powers for engaging special counsels and specialists of different disciplines.

13.2. The Committee took note of the various suggestions as enumerated above. The Committee was convinced that the institution of CBI has been assigned a vital role in the implementation of the Lokpal and Lokayuktas Bill, 2011. The Bill foresees the CBI as the investigating agency in respect of most of the complaints received by the Lokpal. In view of this, the Committee is convinced that a strong and independent CBI is *sine qua non* for an effective implementation of the Lokpal and Lokayuktas Bill, 2011. **Accordingly, keeping in view the various suggestions that arose during the course of its deliberations, the Committee recommends as follows:-**

- (i) **The CBI shall have a separate Directorate of Prosecution under a Director, who shall function under Director of CBI. The Director of CBI shall be the head of the entire Organisation.**
- (ii) **Director of CBI will be appointed by a collegium comprising of the Prime Minister, Leader of Opposition in Lok Sabha and Chief Justice of India.**
- (iii) **Director of Prosecution will be appointed on the recommendation of the CVC.**
- (iv) **Director of Prosecution and Director of CBI shall have a fixed term of two years.**
- (v) **The power of superintendence over and direction to CBI in relation to Lokpal referred cases must vest in Lokpal.**
- (vi) **Officers of CBI investigating cases referred by Lokpal will be transferred with the approval of Lokpal.**
- (vii) **For Lokpal referred cases, CBI may appoint a panel of Advocates, other than the Government Advocates, with the consent of Lokpal.**

**(viii) The Government shall make available all such expenditure, which in the opinion of Director, CBI is necessary for the conduct of effective investigation. The Director, CBI shall be responsible for all expenditure sanctioned and spent by CBI, for the conduct of such investigation.**

**13.3. The Committee desires that necessary consequential amendments, may be carried out in this Bill as well as in other related legislations for implementing its recommendations as above.**

**Clause 37 : Removal and suspension of Chairperson and Members of Lokpal.**

14.0. This clause makes provision for handling of complaints against the Chairperson and Members of the Lokpal.

14.1. The Committee considered the removal procedure in the light of suggestions that came before it and also the amendments moved by Government in the Rajya Sabha. One suggestion that came before the Committee was that the President's discretion in filtering complaints before forwarding the same to the Supreme Court needs to be curtailed. The suggestion was that complaints could also be made directly to the Supreme Court. The Department of Personnel and Training informed the Committee that since the President is the Appointing Authority in respect of the Chairperson and Members of the Lokpal, the power to make reference to the Supreme Court and suspend them has to be exercised by the President and not by any other authority. It was further stated that empowering citizens to approach the Supreme Court directly would result in flooding the Supreme Court with large number of petitions. Some Members of the Committee expressed their apprehension that if the power of removal is given to the executive, it would destroy the independence of the Lokpal.

14.2. As per the existing provisions of Clause 37(2), the reference to the Supreme Court for removal from Office of the Chairperson/Member of the Lokpal can be made (i) by the President, or (ii) by the President on a petition signed by atleast 100 Members of Parliament, or (iii) by the President on receipt of a petition made by a citizen of India and where the President is satisfied that the petition should be referred. The Committee takes

note of the proposed Government amendment relating to these provisions whereby the existing three options are proposed to be replaced by only one option, viz., “on a reference being made to it by the President on a petition signed by atleast 100 Members of Parliament”.

**14.3. The Committee, while taking note of the concern expressed by the Members regarding fair and discreet exercise of powers by Government in the matter of suspension/removal of the Chairperson/Member of the Lokpal, agrees with the proposed Government amendment and recommends that Clause 37(2) of the Bill may be amended accordingly.**

14.4. The Committee had extensive deliberations on Clause 37(3) regarding President’s power to suspend from the Office of the Chairperson or a Member of Lokpal in respect of whom a reference has been made to the Supreme Court until the President has passed the orders on receipt of the Report of the Supreme Court on such a reference. There was a suggestion before the Committee that power of suspension should not be with the President but with the Supreme Court. The Government’s view was that since the President is appointing authority, the power to suspend should also lie with the President. The Members in the Committee were not in favour of the Government’s point of view. They were of the opinion that there has to be a judicial application of mind and that it could not be an executive decision. **The final view that emerged in the Committee was that the suspension of Chairperson/ Members of Lokpal shall be operative only after the recommendation/interim orders of the Supreme Court to that effect. The Committee recommends that the Clause 37(3) be amended, accordingly.**

**Clause 46 : Prosecution for false complaints and payment of compensation, etc., to Public Servant.**

15.0. Clause 46 of the Bill provides for a punishment with imprisonment for a term which may extend to one year and with fine which may extend to Rs.1 lakh in case of a complaint that is found to be false and frivolous or vexatious.

15.1. The Committee is in agreement with the above provisions in as much as they provide a filter against those who may attempt to misuse the system for some ulterior motives. But, at the same time, the Committee is also concerned about those complainants who might have made the complaints in good faith but, on inquiry a case is not made out. **The Committee feels that such complainants need to be protected from imposition of any penalty. The Committee is of the view that if the complaints are made in good faith, the same should be protected even if it turns out to be untrue. Further, the term "good faith" should be interpreted as "with due care and caution, and a sense of responsibility" in line with Section 79 of the IPC. The Committee recommends that the provisions of Clause 46 of the Bill may be amended, accordingly.**

#### **Clauses 63 to 97 : Establishment of Lokayukta**

16.0. The Part-III of the Bill seeks to provide for establishment of a Lokayukta in every State. The provisions relating to Lokayukta for the States are on the lines of the Lokpal at the Centre. There has been an intense debate in the Committee on the issue of the competence of Parliament to provide for Lokayuktas in the States through the Bill in hand. In this context, there have been references to Articles 252 and 253, Article 246 along with Entry 13 of List-I under the Seventh Schedule of the Constitution. The Committee took note of the Government amendment No.150 moved in the Rajya Sabha which provide for substitution of Clause 1(4) regarding commencement of the Bill as follows:-

“(4) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for different provisions of this Act, and any reference in any provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision:

Provided that Part III of this Act shall be applicable to a State, if –

- (a) the Legislature of that State adopts a Resolution to the effect that Part III shall apply to that State with or without modifications from a date specified in that Resolution; or
- (b) instead of adopting a Resolution as aforesaid, the State Legislature enacts a law for that State having regard to the provisions of Part III of this Act as a model legislation:

Provided further that every State Legislature shall adopt a Resolution or enact a law as specified in the first proviso”.

16.1. The question of competence of Parliament to provide for institution of Lokayukta in the States was discussed with various experts in the judicial field, NGOs as well as the non-official witnesses who appeared before the Committee. There were varied views from them on the said issue. Some of the witnesses endorsed the route of Article 253 and felt that the Bill in hand could withstand judicial scrutiny. There were other witnesses/experts who did not endorse the course of action followed in the Bill. There was a strong view in the Committee that the route of Article 253 of the Constitution does not lie. After the pronouncement of the Supreme Court in the Keshavanand Bharati case (1973), federalism is a part of basic structure of the Constitution and is inviolable. Therefore, Government cannot, by following the route of Article 253, legislate on matters that fall within the jurisdiction of the State Governments. In this context, it was further pointed out that even the UNCAC, *vide* Article 6 has stated that the implementation of the Convention in the Member countries may be subject to their internal laws.

16.2. The Committee was, however, unanimously in agreement about the requirement of the institution of Lokpal both at the level of the Centre and States. The Committee took note of the fact that all States except five already have a Lokayukta.

16.3. On detailed deliberations on this issue, the Committee agreed upon as follows:-

- (i) **Every State to mandatorily have a Lokayukta within a period of one year from the date of notification of the present Bill.**

- (ii) **The Lokpal Bill may be sent to all States as a model through executive instruction, but States to have absolute freedom in determining the nature and type of the institution of Lokayukta, depending upon their needs/requirements.**
- (iii) **Necessary consequential changes may be carried in the remaining provisions of the Bill.**

**16.4. In view of the consensus in the Committee as above, Part III of the Bill may be substituted as follows:-**

#### **ESTABLISHMENT OF THE LOKAYUKTA**

**16.5. Clause 63: Establishment of Lokayukta for a State**

**There shall be established a body called “Lokayukta” in every State through enactment of a law by the State legislatures within a period of 365 days from the date of commencement of this Act.**

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**MINUTES OF  
THE MEETINGS OF  
THE COMMITTEE**



## I

### FIRST MEETING

The Select Committee of the Rajya Sabha on the Lokpal and Lokayuktas Bill, 2011 met at 11.00 A.M. on Monday, the 25<sup>th</sup> June, 2012 in the Committee Room 'A', Ground Floor, Parliament House Annexe, New Delhi.

#### PRESENT

1. Shri Satyavrat Chaturvedi - *Chairman*

#### MEMBERS

2. Shri Shadi Lal Batra
3. Shri Arun Jaitley
4. Shri Rajiv Pratap Rudy
5. Shri Bhupender Yadav
6. Shri K.N. Balagopal
7. Shri Shivanand Tiwari
8. Shri Tiruchi Siva
9. Prof. Ram Gopal Yadav

#### SECRETARIAT

1. Shri Deepak Goyal, Joint Secretary
2. Shri K.P. Singh, Director
3. Shri K.N. Earendra Kumar, Joint Director
4. Smt. Catherine John L., Committee Officer

2. The Chairman welcomed the Members to its first meeting and explained to them the objective behind it, viz., to decide upon the procedure and the modalities to be followed in the consideration of the Lokpal and the Lokayuktas Bill, 2011. He apprised the Members of the procedure prescribed for the Select Committees and solicited the views/ suggestions of the Members in this behalf.

3. The Committee took note of contentious issues highlighted in the background note of the Ministry of Personnel but it felt that there could be some more such issues even. A suggestion came before the Committee that persons/ organizations having strong views for or against on the said issues could be heard by the Committee. There was another suggestion before the Committee to hear the experts in the field of investigation and criminal law so as to have a proper appreciation of the mechanism of investigation and prosecution sought to be put in place in the Bill under consideration.

4. It was also decided that a Press Communiqué may be issued to solicit views/ suggestions from the public at large on the provisions of the Bill and also ascertaining if any of them were interested to depose before the Committee in person. The Committee

agreed upon to draw a list of experts/ witnesses based upon the response to the Press Communiqué as well as suggestions received from Members of the Committee in this behalf.

5. The Committee while deliberating further on the course of action, decided to hear the administrative Ministry i.e., the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel & Training) and the Secretary, Ministry of Law & Justice (Department of Legal Affairs) on the constitutionality and the legality of various issues in the Bill including the tenability of setting up of Lokayuktas in the States through a central legislation.

6. It was further agreed that since the Bill touches upon the issues particularly relating to Lokayuktas, the views of Governments of States/ Union Territories may be obtained in writing.

7. The Committee decided to hold its next meetings on the 4<sup>th</sup> and 5<sup>th</sup> July, 2012 to hear the Secretaries of DoPT and Department of Legal Affairs, respectively.

8. A verbatim record of proceedings of the meeting was kept.

9. The Committee adjourned at 11.30 A.M.

## II

### SECOND MEETING

The Select Committee of the Rajya Sabha on the Lokpal and Lokayuktas Bill, 2011 met at 11.00 A.M. on Wednesday, the 4<sup>th</sup> July, 2012 in Committee Room 'E', Basement, Parliament House Annexe, New Delhi.

#### PRESENT

1. Shri Satyavrat Chaturvedi - *Chairman*

#### MEMBERS

2. Shri Shantaram Naik
3. Shri Shadi Lal Batra
4. Shri Arun Jaitley
5. Shri Rajiv Pratap Rudy
6. Shri Bhupender Yadav
7. Shri Satish Chandra Misra
8. Shri K.N. Balagopal
9. Shri Shivanand Tiwari
10. Shri D. Bandyopadhyay
11. Shri Tiruchi Siva
12. Shri D.P. Tripathi
13. Prof. Ram Gopal Yadav
14. Dr. V. Maitreya
15. Dr. Ashok S. Ganguly

#### SECRETARIAT

1. Shri Deepak Goyal, Joint Secretary
2. Shri K.P. Singh, Director
3. Shri K.N. Earendra Kumar, Joint Director
5. Smt. Niangkhanem Guite, Assistant Director
4. Smt. Catherine John L., Committee Officer

#### WITNESSES

#### MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES & PENSION

##### Department of Personnel & Training

7. Shri P.K. Misra, Secretary;
8. Shri S.K. Sarkar, Additional Secretary;
9. Shri Alok Kumar, Joint Secretary; and
10. Shri Ashok K.K. Meena, Director.

#### MINISTRY OF LAW AND JUSTICE

##### Legislative Department

1. Dr. Sanjay Singh, Additional Secretary; and
  2. Dr. G. Narayana Raju, Joint Secretary.
2. The Chairman at the outset welcomed the Members of the Committee to the meeting. He also welcomed Secretary, DoPT and senior officers of DoPT and Legislative

Department. He then requested Secretary, DoPT to make a presentation on the Lokpal and Lokayuktas Bill, 2011.

3. The Secretary, DoPT while making a power point presentation on the Bill, highlighted the salient features of the Bill as passed by the Lok Sabha and the comments of the Department on the major amendments proposed in the Rajya Sabha by various Members of Parliament. While responding to the queries raised by the Members of the Committee, he clarified that the preliminary inquiry envisaged in clause 11 of the Bill, can be conducted by any agency decided upon by the Lokpal. He stated that the separation of investigation from the prosecution mechanism is a well accepted principle in western democracies.

4. On the issue of providing for Lokayuktas in the Central legislation, he said that the Government had moved an amendment that either the States can adopt the Lokayukta as given in part 3 of the Bill, or it could adopt it with some modifications, but keeping the general spirit in tact, or if they have an existing Lokayukta, they can bring it in line with the provisions of Lokayukta as in the Central legislation or retain it as it is.

5. The Chairman of the Committee desired that a preliminary exercise may be carried out to ascertain the immediate staff requirement for the Lokpal. One of the Members of the Committee pointed out certain inconsistencies in providing for Lokayuktas in the Bill through Article 253 of the Constitution, when the United Nations Convention Against Corruption itself stated that the measures taken under the Convention should be in accordance with the fundamental principles of domestic law. Further, since matters relating to State Government employees come under the State List in the Constitution, provision for them through a Central legislation may not be in order. Some of the Members raised doubts as to the legality of giving opportunity of hearing to the accused public servant at the preliminary inquiry stage; constitutionality of giving representation to minorities and women in the Bill and the timelines proposed in the Bill.

6. The Secretary responded to the queries raised by the Committee.

*(The witnesses then withdrew)*

7. A verbatim record of proceedings of the meeting was kept.

8. The Committee adjourned at 1.26 P.M.

**III**  
**THIRD MEETING**

The Select Committee of the Rajya Sabha on the Lokpal and Lokayuktas Bill, 2011 met at 11.00 A.M. on Thursday, the 5<sup>th</sup> July, 2012 in Committee Room 'D', Ground Floor, Parliament House Annexe, New Delhi.

**PRESENT**

1. Shri Satyavrat Chaturvedi - *Chairman*

**MEMBERS**

2. Shri Shantaram Naik
3. Shri Shadi Lal Batra
4. Shri Arun Jaitley
5. Shri Rajiv Pratap Rudy
6. Shri Bhupender Yadav
7. Shri Satish Chandra Misra
8. Shri K.N. Balagopal
9. Shri Shivanand Tiwari
10. Shri D. Bandyopadhyay
11. Shri Tiruchi Siva
12. Shri D.P. Tripathi
13. Prof. Ram Gopal Yadav
14. Dr. V. Maitreya
15. Dr. Ashok S. Ganguly

**SECRETARIAT**

1. Shri Deepak Goyal, Joint Secretary
2. Shri K.P. Singh, Director
3. Shri K.N. Earendra Kumar, Joint Director
5. Smt. Niangkhanem Guite, Assistant Director
4. Smt. Catherine John L., Committee Officer

**WITNESSES**

**I. MINISTRY OF LAW AND JUSTICE**

- **Department of Legal Affairs**
  1. Dr. B.A. Agrawal, Secretary; and
  2. Shri d. Bhardwaj, Joint Secretary & LA.

**II. MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES & PENSION**

- **Department of Personnel & Training**  
Shri Alok Kumar, Joint Secretary.

**MINISTRY OF LAW AND JUSTICE**

- **Legislative Department**

1. Dr. Sanjay Singh, Additional Secretary; and
2. Dr. G. Narayana Raju, Joint Secretary.

2. The Chairman welcomed the Members and Secretary, Department of Legal Affairs and senior officers of the Department of Personnel & Training and Legislative Department to the meeting. He then requested the Secretary to make a presentation on the Lokpal and Lokayuktas Bill, 2011.

3. The Secretary, while presenting his Department's views on the Bill before the Committee, stated that the Lokpal and Lokayuktas Bill, 2011 is proposed to be enacted for effective implementation of the U.N. Convention against Corruption and in exercise of the powers of Parliament under Article 253 of the Constitution. In this context, he clarified that the Parliament cannot, in the name of implementing a treaty, change the basic structure of the Constitution. The Hon'ble Supreme Court in its judgments, has upheld that federalism is one of the basic features of the Constitution. The Secretary added that there is no requirement for identical laws to be made for the Centre and the States and that a model legislation could, however, be made for the States for adoption as per their respective needs.

4. The Secretary informed the Committee that when the proposal for enactment of the Bill was examined in the Department of Legal Affairs, it was felt that the proposal to do away with the requirement of previous sanction under Section 197 of the CrPC or Section 19 of the Prevention of Corruption Act, where prosecution is proposed by Lokpal, would be against the principle of protection needed for public servants. He further stated that inclusion of Group 'C' and 'D' Central Government employees under the purview of Lokpal is Constitutionally permissible and that the exclusion given to the PM under the Bill, does not apply to the PM's Secretariat.

5. The Secretariat responded to other clarifications sought by the Chairman and Members of the Committee.

*(The witnesses then withdrew)*

6. A verbatim record of proceedings of the meeting was kept.

7. The Committee adjourned at 12.39 P.M.

**IV**  
**FOURTH MEETING**

The Select Committee of the Rajya Sabha on the Lokpal and Lokayuktas Bill, 2011 met at 11.00 A.M. on Friday, the 13<sup>th</sup> July, 2012 in Committee Room 'A', Ground Floor, Parliament House Annexe, New Delhi.

**PRESENT**

1. Shri Satyavrat Chaturvedi - *Chairman*

**MEMBERS**

2. Shri Shantaram Naik
3. Shri Shadi Lal Batra
4. Shri Arun Jaitley
5. Shri Rajiv Pratap Rudy
6. Shri Bhupender Yadav
7. Shri Satish Chandra Misra
8. Shri K.N. Balagopal
9. Shri Shivanand Tiwari
10. Shri D. Bandyopadhyay
11. Shri Tiruchi Siva
12. Shri D.P. Tripathi
13. Prof. Ram Gopal Yadav
14. Dr. V. Maitreyan
15. Dr. Ashok S.Ganguly

**SECRETARIAT**

1. Shri Deepak Goyal, Joint Secretary
2. Shri K.P. Singh, Director
3. Shri K.N. Earendra Kumar, Joint Director
5. Smt. Niangkhanem Guite, Assistant Director
4. Smt. Catherine John L., Committee Officer.

**WITNESSES**

**I. CENTRAL BUREAU OF INVESTIGATION**

1. Shri A.P. Singh, Director;
2. Shri A.K. Pateria, Joint Director;
3. Shri Rajiv Sharma, Joint Director (STF Zone); and
4. Shri Saurabh Tripathi, DG (P).

**II. MINISTRY OF LAW AND JUSTICE**

• **Legislative Department**

1. Dr. Sanjay Singh, Additional Secretary; and
2. Dr. G.Narayana Raju, JS & LC.

**III. MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES & PENSIONS**

• **Department of Personnel & Training**

1. Shri Alok Kumar, Joint Secretary.

2. At the outset, the Chairman welcomed the Members of the Committee, Shri A.P. Singh, Director CBI and senior officers of the CBI, the representatives of the DoPT & Legislative Department. He briefly traced the deliberations of the Committee held so far on the Lokpal and Lokayuktas Bill, 2011 and then requested the Director, CBI to make his presentation on the Bill.
3. The Director CBI in his presentation emphasized that the CBI should be the only investigating agency to file a report under Section 173 of the Code of Criminal Procedure and any attempt to dilute the role of CBI or tamper with the present role and structure of CBI would have serious consequences on the Anti-Corruption machinery in the country. He further stated that there has to be synergy between the proposed Lokpal and the CBI in order to bring about an effective anti-corruption agency. He also stressed the need to give full functional autonomy to the CBI.
4. In response to the queries raised by the Members of the Committee regarding inordinate delay in trial of corruption cases by the Courts, the Director, CBI admitted that trials continue for years together, sometimes without any result and creates frustration in the public. On the queries of separation of investigation from prosecution, he stated that conviction rate is better when both the investigation and prosecution wings work in coordination, and, therefore, there is no need for change in the existing system. He, however, submitted that the Selection Procedure of Director of Prosecution may be reviewed by the Government.
4. On the issue of the Anti-Corruption wing of CBI to be merged with the Lokpal, he opined that it would not be possible for the CBI to function without the Anti-Corruption wing since the Anti-Corruption wing deals with different kinds of crimes like economic offences and special crimes which in most cases are interlinked. and cannot be separated. Clarifying the stand of CBI with regard to the established practice of obtaining sanction from the Government for prosecution, the Director CBI stated that the existing procedure regarding sanction should continue.
5. The Members of the Committee sought clarifications from the Director CBI regarding the efficacy of the anti corruption Machinery sought to be put in place through the Lokpal and the Lokayuktas Bill, 2011, particularly with reference to the likely effect on the CBI. The queries of the Member were responded to by the Director CBI.
6. A verbatim record of proceedings of the meeting was kept.
7. The Committee adjourned at 1.27 P.M.



## V

### FIFTH MEETING

The Committee met at 3.00 P.M. on Friday, the 25<sup>th</sup> July, 2012 in Main Committee Room, Ground Floor, Parliament House Annexe, New Delhi.

#### PRESENT

1. Shri Satyavrat Chaturvedi - *Chairman*

#### MEMBERS

2. Shri Shantaram Naik
3. Shri Shadi Lal Batra
4. Shri Arun Jaitley
5. Shri Rajiv Pratap Rudy
6. Shri Bhupender Yadav
7. Shri Satish Chandra Misra
8. Shri K.N. Balagopal
9. Shri Shivanand Tiwari
10. Shri D.P. Tripathi
11. Prof. Ram Gopal Yadav
12. Dr. V. Maitreya
13. Dr. Ashok S. Ganguly

#### SECRETARIAT

1. Shri Deepak Goyal, Joint Secretary
2. Shri K.P. Singh, Director
3. Shri K.N. Earendra Kumar, Joint Director
4. Shri B.M.S. Rana, Deputy Director
5. Smt. N. Guite, Assistant Director.
6. Smt. Catherine John L., Committee Officer

#### NON OFFICIAL WITNESSES:

#### REPRESENTATIVES OF PUBLIC INTEREST FOUNDATION

Shri Nripendra Mishra, IAS (Retd.), Director.

#### REPRESENTATIVES OF NCPRI

1. Shri Shekhar Singh;
2. Ms. Anjali Bhardwaj;
3. Shri Nikhil Dey;
4. Shri Venkatesh Nayak;
5. Ms. Amrita Johari;
6. Ms. Nandini Dey; and
7. Anaita Sobhikhi.

#### OFFICIAL WITNESSES:

#### Ministry of Personnel, Public Grievances and Pensions

- Department of Personnel and Training

Shri P.K. Das, Joint Secretary.

**Ministry of Law and Justice**

• **Legislative Department**

1. Dr. Sanjay Singh, Additional Secretary; and
2. Shri Diwakar Singh, Deputy Legislative Counsel.

• **Department of Legal Affairs**

1. Shri D. Bhardwaj, Joint Secretary and Legislative Counsel; and
2. Dr. R.J.R. Kasibhatla, Deputy Legal Advisor.

2. The Chairman welcomed the Members to the meeting of the Committee. He then welcomed the witnesses and senior officers of the Department of Personnel & Training, Legislative Department and Department of Legal Affairs to the meeting and requested the witnesses to express their views on the Lokpal and Lokayuktas Bill, 2011.

3. Shri Nripendra Mishra, while placing his views before the Committee on the Bill, opined that bringing Group 'C' and 'D' employees under the jurisdiction of Lokpal would overburden the Body and that it might ultimately lead to sub-optimal results. On the issue of setting up Lokayuktas in the States, he suggested that the entire Chapter on Lokayuktas should be removed from the Bill and that Parliament could make a guideline in this regard, which could be adopted by the States. He supported the procedure given in the Bill for appointment of Director, CBI and was of the view that if Group 'C' and 'D' employees are brought under the jurisdiction of CVC, the Central Vigilance Commissioner may also be made a Member of the Lokpal. He responded to the points raised by the Chairman and Members of the Committee.

*(The witness then withdrew.)*

4. The Committee then heard the views of the representatives of NCPRI on the Bill. Shri Shekhar Singh, while raising his concern about the bias in favour of Members of the Government in the Selection Committee, suggested that there should be a three Member Committee to appoint the Lokpal, consisting of the PM, Leader of Opposition and one Judge of the Supreme Court nominated by the Chief Justice of India. He flagged the issue of independence of CBI and opined that CBI should be totally brought under the Lokpal. He further highlighted the need for greater clarity regarding the investigative agencies at the State level for the Lokayuktas. He was of the view that the President may not be

given the power to decide whether complaints against the Chairperson and Members of Lokpal should be referred to the Supreme Court or not and also the power of suspension of Chairperson and Members. He suggested in this regard that such power should be given to the Supreme Court.

5. He voiced his reservation regarding the timelimit given in the Bill for completion of trial and expressed his apprehension regarding the likelihood of cases being kept pending till the prescribed time limit, so that they are ultimately dropped. He further opined that bringing all NGOs receiving donation from the public under the jurisdiction of Lokpal, would create chaos. The witnesses replied to the queries raised by the Committee.

*(The witnesses then withdrew.)*

6. A verbatim record of the meeting was kept.
7. The Committee adjourned at 5.04 PM.

**VI**  
**SIXTH MEETING**

The Select Committee of the Rajya Sabha on the Lokpal and Lokayuktas Bill, 2011 met at 11.00 A.M. on Monday, the 6<sup>th</sup> August, 2012 in Committee Room 'D', Ground Floor, Parliament House Annexe, New Delhi.

**PRESENT**

1. Shri Satyavrat Chaturvedi - *Chairman*

**MEMBERS**

2. Shri Shantaram Naik
3. Shri Shadi Lal Batra
4. Shri Arun Jaitley
5. Shri Bhupender Yadav
6. Shri Satish Chandra Misra
7. Shri K.N. Balagopal
8. Shri Shivanand Tiwari
9. Shri D. Bandyopadhyay
10. Shri Tiruchi Siva
11. Shri D.P. Tripathi
12. Dr. Ashok S.Ganguly

**SECRETARIAT**

1. Shri Deepak Goyal, Joint Secretary
2. Shri K.P. Singh, Director
3. Shri K.N. Earendra Kumar, Joint Director
4. Shri B.M.S.Rana, Deputy Director
5. Smt. Niangkhanem Guite, Assistant Director
6. Smt. Catherine John L., Committee Officer.

**WITNESS**

Shri G.E. Vahanvati, Attorney General for India

**Ministry of Personnel, Public Grievances & Pensions:**  
**(Deptt.of Personnel and Training)**

Shri Alok Kumar, Joint Secretary

**Ministry of Law and Justice:**  
**(Legislative Department)**

1. Dr. Sanjay Singh, Additional Secretary;
2. Shri Diwakar Singh, Deputy Legislative Counsel; and
3. Shri K.V. Kumar, Deputy Legislative Counsel.

2. Chairman welcomed the Members of the Committee, the Learned Attorney General of India Shri G.E. Vahanvati, and the officers of the DoPT and the Legislative

Department to the meeting. Recapitulating the business transacted by the Committee so far on the Lokpal and Lokayuktas Bill, 2011 the Chairman highlighted the various issues having legal connotations deliberated upon. He then requested the witness to make a presentation and enlighten the Committee specifically on the issues in the Bill that had legal ramifications.

3. The Ld. Attorney General, during his presentation, stated that creation of the Lokayuktas in the States is the only provision in the Bill, which is likely to be challenged on the ground of legislative competence of the Parliament. He opined that as long as the legislation pertaining to the States would be recommendatory and projected as a model legislation for the States to follow, it would not invite challenge from the States.

4. Referring to the provisions contained in Clause 20 of the Bill, the Ld. Attorney General of India hinted at the possibilities of conflicts between the Lokpal and the CBI in the process of prosecution, since in respect of cases referred to by the Lokpal, an investigative agency including the Delhi Special Police Establishment is required to submit its report to the court and a copy thereof to the Lokpal. He, therefore, suggested that this aspect of law may be deliberated at length. He also dwelled upon various issues relating to mode of receipt of complaints by the Lokpal. It was also pointed out that the terms "Bench" and "Lokpal" occurring in Clause 20 of the Bill may lead to confusion as regards their connotation and the same needed to be addressed.

5. Members, thereafter, sought clarification on various related issues, like, the jurisdiction and legislative competence of the Parliament to enact laws for the States, on the basis of international conventions under Article 253 of the Constitution, the plausibility of *suo-moto* jurisdiction of Lokpal in the conduct of inquiry and investigation, the prudence of including judges as part of a prosecuting agency, whether it was proper to entrust prosecution work with the Lokpal and other related issues.

6. The witness responded to the queries. Thereafter, the meeting was adjourned

7. A verbatim record of proceedings of the meeting was kept.

8. The Committee adjourned at 12.44 P.M.

## VII

### SEVENTH MEETING

The Committee met at 3.00 P.M. on Friday, the 14<sup>th</sup> August, 2012 in Committee Room 'A', Ground Floor, Parliament House Annexe, New Delhi.

#### PRESENT

1. Shri Satyavrat Chaturvedi - *Chairman*

#### MEMBERS

2. shri Shantaram Naik
3. Shri Shadi Lal Batra
4. Shri Arun Jaitley
5. Shri Bhupender Yadav
6. Shri Shivanand Tiwari
7. Dr. Ashok S. Ganguly

#### SECRETARIAT

1. Shri Deepak Goyal, Joint Secretary
2. Shri K.P. Singh, Director
3. Shri K.N. Earendra Kumar, Joint Director
4. Shri B.M.S. Rana, Deputy Director
5. Smt. Catherine John L., Committee Officer

#### WITNESSES:

##### **Ministry of Personnel, Public Grievances and Pensions**

- **Department of Personnel and Training**

1. Shri P.K. Das, Joint Secretary; and
2. Shri V.M. Rathram, Deputy Secretary.

##### **Ministry of Law and Justice**

- **Legislative Department**

1. Dr. Sanjay Singh, Additional Secretary; and
2. Dr. G. Narayana Raju, Joint Secretary & Legislative counsel;
3. Shri Diwakar Singh, Deputy Legislative Counsel; and
4. Shri K.V. Kumar, Deputy Legislative Counsel.

- **Department of Legal Affairs**

1. Shri D. Bhardwaj, Joint Secretary and Legislative Counsel; and
2. Dr. R.J.R. Kasibhatla, Deputy Legal Advisor.

2. The Chairman welcomed the Members to the meeting of the Committee. He then welcomed the witnesses and senior officers of the Department of Personnel & Training, Legislative Department and Department of Legal Affairs to the meeting and requested Justice A.P. Shah to place his considered opinion on various provisions of the Lokpal and

Lokayuktas Bill, 2011.

3. Justice A.P. Shah, at the outset, expressed his gratitude to the Committee for affording him an opportunity to present his views before the Committee. While elaborating upon his suggestions on the Bill, he stated that the composition of the Selection Committee envisaged in the Bill, is undesirably dominated by the Government with a majority of 3:2 and alternatively, suggested a seven Member Committee or nomination of jurist to be done by all the Judges of the Supreme Court. While articulating his opposition to the power granted to the President to suspend the Chairperson or Member of Lokpal, he proposed that the President may suspend the Chairperson or Member of Lokpal on receiving an interim recommendation from the Supreme Court to this effect.

4. On the issue of removal of Chairperson and Members of Lokpal, the witness was of the opinion that the complaint of a citizen may also be referred to the Supreme Court, without any intervention. While stressing upon the need for strengthening CBI, he underlined the need for administrative control of Lokpal over the premier investigating agency. He stressed upon the need for developing a dedicated cadre of investigating officers in adequate numbers in CBI, based on the projections of the number of complaints likely to be received in future by Lokpal.

5. The witness, while delving on the issue of establishment of Lokayuktas in the States, opined that objections raised in certain quarters against enacting a single anti-corruption law for the entire country do not adequately recognise the extent of Parliament's power to make laws to give effect to international treaties and agreements. He underscored the importance of providing the necessary investigative machinery, to the Lokayuktas in States, which is protected by the same degree of independence enjoyed by Lokpal. He was of the view that Lokpal should have the independence to select competent officers by inviting applications for vacancies of Secretary, in its Inquiry Wing, and administrative staff. He also underlined the need for independence of the Prosecution Wing from undue interference from the Investigation Wing.

6. While touching upon the matter of inclusion of NGOs within the jurisdiction of Lokpal, he pointed out that bringing all NGOs under the purview of Lokpal is

unwarranted and suggested that the roping in of private sector in the scheme of the legislation has to be pondered over. He further pointed out certain inadequacies in clause 20 of the Bill, which in his opinion, would kill the investigating mechanism which is contemplated by the Bill. The witness responded to the queries raised by the Chairman and Members of the Committee.

*(The witness then withdrew)*

7. A verbatim record of the meeting was kept.
8. The Committee adjourned at 4.40 PM.



**VIII**  
**EIGHTH MEETING**

The Committee met at 3.00 P.M. on Thursday, the 30<sup>th</sup> August, 2012 in Room No. 67, First Floor, Parliament House Annexe, New Delhi.

**PRESENT**

1. Shri Arun Jaitley - *In the Chair*
2. Shri Shantaram Naik
3. Shri Shadi Lal Batra
4. Shri Bhupender Yadav
5. Shri K.N. Balagopal
6. Shri Shivanand Tiwari
7. Shri D. Bandyopadhyay
8. Shri D.P. Tripathi
9. Prof. Ram Gopal Yadav
10. Dr. V. Maitreyan
11. Dr. Ashok S.Ganguly

**SECRETARIAT**

1. Shri Deepak Goyal, Joint Secretary
2. Shri K.P. Singh, Director
3. Shri Ashok K. Sahoo, Joint Director
4. Shri B.M.S.Rana, Deputy Director
5. Smt. Niangkhanem Guite, Assistant Director
6. Smt. Catherine John L., Committee Officer.

2. In the absence of Shri Satyavrat Chaturvedi, Shri Arun Jaitley was voted to the Chair. The Chairman then reviewed the progress of examination of the Lokpal and Lokayuktas Bill, 2011. The Members expressed satisfaction over the deliberations held, so far. The Committee decided that an extension till the last day of the first week of the forthcoming Winter Session, 2012 may be sought, from the House for presentation of Report on the said Bill.

3. The Committee authorized Prof. Ram Gopal Yadav in the absence of the Chairman and in his absence, Shri Shadi Lal Batra, to move the Motion for this purposes.

4. The Committee decided to meet next at 3.00 P.M. on the 5<sup>th</sup> and 6<sup>th</sup> September, 2012 to hear the witnesses on the Bill.

5. The Committee adjourned at 3.15 P.M.

## IX

### NINTH MEETING

The Committee met at 3.00 P.M. on Wednesday, the 5<sup>th</sup> September, 2012 in Main Committee Room, Ground Floor, Parliament House Annexe, New Delhi.

#### PRESENT

1. Shri Satyavrat Chaturvedi - *Chairman*

#### MEMBERS

2. Shri Shantaram Naik
3. Shri Shadi Lal Batra
4. Shri Arun Jaitly
5. Shri Rajiv Pratap Rudy
6. Shri Bhupender Yadav
7. Shri K.N. Balagopal
8. Shri Shivanand Tiwari
9. Shri D.Bandyopadhyaya
10. Shri D.P. Tripathi
11. Dr. V. Maitreya

#### SECRETARIAT

1. Shri Deepak Goyal, Joint Secretary
2. Shri K.P. Singh, Director
3. Shri Ashok K. Sahoo, Joint Director
4. Shri B.M.S.Rana, Deputy Director
5. Smt. Niangkhanem Guite, Assistant Director

#### WITNESSES

##### NON-OFFICIAL WITNESSES:

##### **I. Representatives of PRS Legislative Research:**

1. Dr. M.R. Madhavan, Director;
2. Dr. Mandira Kala, Member; and
3. Ms. Harsimran Kalra, Member.

##### **II. Sh. Harish N. Salve, Senior Advocate, Supreme Court of India**

##### OFFICIAL WITNESSES:

##### **I. Ministry of Personnel, Public Grievances & Pensions**

##### **(Department of Personnel & Training)**

Shri P.K. Das, Joint Secretary

##### **II. Ministry of Law and Justice**

##### **(Legislative Department)**

1. Dr. Sanjay Singh, Additional Secretary; and
2. Dr. G. Narayana Raju, Joint Secretary.

2. The Chairman welcomed the Members of the Committee and the representatives of PRS Legislative Research. He then invited the witnesses to present their views on the Bill.

3. Representatives of PRS Legislative Research submitted following points on the Bill in their deposition:-

- a) Safeguards given to the Prime Minister in relation to certain specific sensitive subjects i.e. national security, international relation, space and atomic energy from inquiry by Lokpal under Clause 14 of the Bill should be extended to the Prime Minister's Office and Ministers and Officers in Ministries dealing with those subjects on the analogy of exemption given to certain specific subjects detailed in Section 8 of the Right to Information Act, 2005.
- b) The Lokpal being the final appellate authority in respect of cases relating to delivery of public services and redressal of public grievances under clause 49 of that Bill implies that the decision of the Supreme Court in such cases could be appealed before the Lokpal. This needs to be clarified in the Bill.
- c) Referring to recommendations of Standing Committee on Personnel, Public Grievances, Law and Justice contained in its Fifty Second Report of the Committee on the Right of Citizens for time Bound Delivery of Goods and Services and Redressal of their Grievances Bill, 2011, that Lokpal and Lokayuktas being anti corruption institutions should not be made the appellate authority in matters of grievance redressal and service delivery. This may be suitably reflected in the Lokpal and Lokayuktas Bill, 2011.
- d) Rationalization of penalty for filing frivolous complaint should be maintained since the present penalty appeared to be on higher side which may discourage the ordinary complainant.
- e) Representation of Scheduled Castes, Scheduled Tribes and Minority in the Bench of Lokpal and Selection Committee for Lokpal should not exceed the limit of 50% as laid down by Supreme Court.
- f) The words 'politically connected' in clauses 3(4) and 64(4) of the Bill have wider connotation and may include anybody without having political membership or affiliation within its ambit. The phrase should be reworded properly.

- g) Revision in financial memoranda may be effected to reflect the additional expenditure on creation of additional staff/infrastructure due to inclusion of Group 'C' and 'D' employees under the Lokpal.
- h) Only those NGOs having functional character of the State or having been financed from State treasury may be brought under the Lokpal.

3.1 Members pointed out that immunity given to Prime Minister while dealing with certain sensitive subjects under the Bill is not available in substantive laws such as Indian Penal Code and Prevention of Corruption Act. However, it was noted that inquiry by Lokpal on sensitive subjects is to be held in camera as per the Bill. Queries were raised on the issues *i.e. suo motu* power of Lokpal to take up any complaint, mechanism of handling corruption within the Lokpal, coordination between investigation and prosecution wings in Lokpal matters et.

*(Witness withdrew and meeting adjourned for tea and reassembled thereafter)*

4. The Committee heard Shri Harish Salve, Senior Advocate of Supreme Court on the Bill. The witness opined that the Prime Minister could not be at par with the Chief Minister of the State because of the fact that affairs of the State could be run by President under President's Rule, whereas the country cannot remain without Prime Minister. The Prime Minister is an institution and should not be brought under the purview of Lokpal atleast during currency of his tenure. Freedom of Members of Parliament to speak or vote in the House should also not be brought under the purview of Lokpal. He expressed his opinion on restructuring of CBI, independence of Directorate of Prosecution, appointment of Director Prosecution and Director of Inquiry of CBI by a collegium from the panel prepared by the Search Committee, model law of Lokayuktas keeping in view federalism which is basic structure of Constitution.

4.1 Queries were raised about corruption committed by MPs in relation to a function performed inside the House, propriety of giving opportunity of being heard by Lokpal before commencement of investigation, sanction by the Government to proceed against public servant, consultation with Lokpal in the appointment of Director of Prosecution of CBI. The witness replied to all those queries of Members.

5. A verbatim record of the meeting was kept.

6. The Committee adjourned at 5.31 P.M.

**X**  
**TENTH MEETING**

The Committee met at 3.00 P.M. on Thursday, the 6<sup>th</sup> September, 2012 in Main Committee Room, Ground Floor, Parliament House Annexe, New Delhi.

**PRESENT**

1. Shri Satyavrat Chaturvedi - *Chairman*

**MEMBERS**

2. Shri Shantaram Naik
3. Shri Shadi Lal Batra
4. Shri Arun Jaitly
5. Shri Rajiv Pratap Rudy
6. Shri Bhupender Yadav
7. Shri Satish Chandra Misra
8. Shri K.N. Balagopal
9. Shri Shivanand Tiwari
10. Shri D. Bandyopadhyay
11. Shri Tiruchi Siva
12. Dr. V. Maitreya

**SECRETARIAT**

1. Shri Deepak Goyal, Joint Secretary
2. Shri K.P. Singh, Director
3. Shri Ashok K. Sahoo, Joint Director
4. Shri B.M.S.Rana, Deputy Director
5. Smt. Niangkhanem Guite, Assistant Director
6. Smt. Catherine John L. Committee Officer.

**WITNESSES**

**I. NON-OFFICIAL WITNESSES:**

**Representatives of Foundation for Democratic Reforms (Lok Satta):**

1. Dr. Jayaprakash Narayan;
2. Dr. Ashwin Mahesh, Lok Satta, Karnataka;
3. Ms. Ankita Verma, Lok Satta;
4. Shri Anurag Kejriwal, Lok Satta;
5. Shri Senthil Kumar Arumngam;
6. Shri Sandeep Verma, Lok Satta; and
7. Ms. Tara Krishnaswamy, Lok Satta, Bangalore.

**II. OFFICIAL WITNESSES:**

• **Ministry of Personnel, Public Grievances & Pensions**  
**(Department of Personnel & Training)**

1. Shri P.K. Das, Joint Secretary;
2. Shri V.M. Rathnam, Deputy Secretary; and

3. Shri Amarjit Singh, Deputy Secretary.

- **Ministry of Law and Justice**  
**(Legislative Department)**

1. Dr. G. Narayana Raju, Joint Secretary; and

2. Shri Diwarkar Singh, Deputy Secretary.

2. The Chairman welcomed the Members and the witnesses to the meeting held on the subject of Lokpal and Lokayuktas Bill, 2011. Having informed them about the confidentiality of the meeting, the Chairman invited Dr. Jayprakash Narayan of Foundation for Democratic Reforms, Lok Satta, Hyderabad, to present his views on the Bill.

3. Dr. Narayan, in his presentation highlighted the positive features of the Bill, namely representation of weaker sections, procedure which makes political interference in the functioning of Lokpal impossible, prohibition of Lokpal getting appointment demitting office, bringing Groups 'C' & 'D' of bureaucracy under CVC, retaining protection of Members of Parliament. Then he focused on the areas of concern and contended that giving extraordinary powers to Lokpal to take complaints and action against CVC, CBI and other investigative agencies may not be a wise decision. Then he advocated inclusion of Lokayuktas in the Bill. He argued that the creation of the institution, actual appointment, administrative actions etc. should be entirely within the jurisdiction of the States. On the issue of bringing the CBI under the Lokpal, he opined that when already there are pre-existing institutions which have a significant role in dealing with the CBI like the CVC, it may not be proper to disrupt all these institutions and create a new one at this stage. As far as the issue of prior sanction for initiating investigation, he suggested that this power should lie with Lokpal or Lokayuktas, but before sanctioning prosecution, they can involve the government, same powers can be given to CVC in cases of lower officials.

4. He expressed concern over the absence of *suo motu* powers for Lokpal and also the extension of jurisdiction towards public private partnership projects or institutions. He further threw light on yet another significant omission i.e., Anti Corruption Bureau in the States. He then stressed the need to strengthen the capability of CBI and other such

agencies. Dr. Narayan also opined that the creation of local ombudsman appointed by Lokayuktas would address the problems and grievances of the common public in true sense.

5. He opined that the provision about societies and organizations should be made more explicit, keeping the capacity and limitations of the ombudsman in mind. He submitted that the two Bills namely Services Guarantee Bill and Electronic Service Delivery Bill should be converged and was of the view that a National Judicial Commission with the powers of both appointment and removal should be constituted. This will only strengthen the Lokpal and will be a step towards ensuring impartiality and autonomy of the judicial system. Lastly, he emphasized the need of confiscation of property of corrupt officials to be done in a very firm manner.

6. Thereafter, the Members made queries about maintaining the sanctity of Federalism, removal of Lokpal, protection to Government servants in the Constitution and other related issues. The witness responded to the queries raised by the Members.

7. A verbatim record of the meeting was kept.

8. The Committee adjourned at 4.57 P.M.

## XI

### ELEVENTH MEETING

The Committee met at 11.00 A.M. on Friday, the 14<sup>th</sup> September, 2012 in Committee Room No. G-074, Ground Floor, Parliament Library Building, New Delhi.

#### PRESENT

1. Shri Satyavrat Chaturvedi - *Chairman*

#### MEMBERS

2. Shri Shantaram Naik
3. Shri Shadi Lal Batra
4. Shri Arun Jaitley
5. Shri Rajiv Pratap Rudy
6. Shri Bhupender Yadav
7. Shri Satish Chandra Misra
8. Shri K.N. Balagopal
9. Shri Shivanand Tiwari
10. Shri D. Bandyopadhyay
11. Shri Tiruchi Siva
12. Shri D.P. Tripathi
13. Dr. V. Maitreya

#### SECRETARIAT

1. Shri Deepak Goyal, Joint Secretary
2. Shri K.P. Singh, Director
3. Shri Ashok K. Sahoo, Joint Director
4. Shri B.M.S.Rana, Deputy Director
5. Smt. Niangkhanem Guite, Assistant Director.

#### I. NON-OFFICIAL WITNESSES (MORNING SESSION):

1. Shri Ashok Kapur, IAS (Retd.), D.G., International Academy of Law, New Delhi;
2. Er. V.K. Agarwal, Delhi
3. Shri Hansraj Jain, Delhi;
4. Shri K.K. Swami, Delhi;
5. Shri Kulamani Mishra, Odisha;
6. Deepak Tongli, Hyderabad;
7. Er.H.C. Israni, Delhi;
8. Shri Dalip Kumar Babhoota, Delhi;

#### NON-OFFICIAL WITNESSES (AFTERNOON SESSION):

9. Shri J.K. Palit, Gaya;
10. Shri Manoj Nandkishor Agawal, Pune; and
11. Shri Mahesh Pandya, Ahmedabad.

- **Ministry of Personnel, Public Grievances & Pensions**  
(Department of Personnel & Training)



1. Shri P.K. Das, Joint Secretary;
2. Shri V.M. Rathnam, Deputy Secretary; and
3. Shri Amarjit Singh, Deputy Secretary.

- **Ministry of Law and Justice**  
**(Legislative Department)**

1. Dr. Sanjay Singh, Additional Secretary and
  2. Shri Diwakar Singh, Deputy Secretary.
2. The Chairman welcomed Members and non-official witnesses from the cross Section of Society (in response to the Press Release on behalf of the Committee) to the meeting. Having informed them about the confidentiality aspect of the proceedings of the meeting, he invited the non-official witnesses to present their views/comments on the Lokpal and Lokayuktas Bill, 2011 one after the other without repeating the points covered by the earlier witnesses.
3. Following views were expressed on various provisions of the Bill by the Sh. Ashok Kapur which in his opinion would render the entire Bill unconstitutional:-
- i) Appointment of members, of higher judiciary as the member of Lokpal, which is an executive body, strikes at root of the Doctrine of Separation of Powers which is a Basic Structure of Constitution enunciated by the Supreme Court in the Keshvananada Bharti case;
  - ii) Situation may arise where the conduct of judge of Supreme Court, being member of Lokpal could be called into question in Parliament, which is otherwise barred under Article 121 of Constitution;
  - iii) Involving Supreme Court in investigation into the complaints against Lokpal for latter's removal might go beyond the advisory jurisdiction of Supreme Court under the Constitution;
  - iv) Appointment of All India Service Officers in the staff of Lokpal would lead to taking away the power of appointment of President by the Lokpal;
  - v) Director of prosecution is defined as an Officer of the Court. When the Director of prosecution is appointed by Lokpal, the credibility of that Director may be challenged in the Court of Law;
  - vi) High Courts may be reluctant to interfere in Lokpal referred cases due to presence of Higher Judiciary in the institution of Lokpal.
  - vii) Lokpal being an Executive Body cannot be a final appellate authority.

4. The next witness Sh.V.K. Agarwal stressed upon the need to make the Lokpal an autonomous self financed body. He proposed to broad base the Selection Committee for Lokpal by including Presidents of Bar Council of India, Institution of Chartered Accountants of India, Institution of Cost and Works Accountants of India, Institution of Company Secretaries, Institution of Electronic Engineers (India), Institution of Engineers India, Institution of Surveyors, Medical Council of India, Institution of Values and Indian Science Congress, in addition to the dignitaries mentioned in the Bill.
5. By referring to Indira Gandhi Lokpal Bill submitted by him, the third witness, namely, Sh.Hansraj Jain mentioned about registration of builders, contractors with Lokpal, bringing religious organizations and citizen charters under the purview of Lokpal, etc.
6. The Fourth witness, namely, Sh. K.K. Swami submitted that in- camera inquiry against Prime Minister should be avoided in order to reduce speculation in media and manipulation in inquiry procedure. He mentioned that Chief Ministers of States should be given certain protection like the Prime Minister. The quantum of punishment prescribed under clause 46 of the Bill may discourage the whistle blowers.
7. The fifth witness, namely, Sh. Kulmani Mishra suggested that declaration of assets for last five years may be kept as a mandatory condition for appointment of Members of Lokpal. He further suggested that the corruption in private sector viz real estate, hospitals should be brought under Lokpal. He also suggested increase in the minimum entry age of Lokpal from 45 to 55 years. Wide spread awareness through print and electronic media, encouraging people to report corruption cases, conduct of random inquiry against public servant as deterrent in the mind of the public servant, were emphasized by the said witness.

*(The first batch of witnesses withdrew. The Committee adjourned for lunch and re-assembled thereafter).*

8. The following points on the provisions of Bill were expressed by the non-Official witnesses who appeared before the Committee in the post-lunch Session:-
  - i) The composition of Lokpal should be increased from 8 to 10 in order to

provide representation of all five categories i.e., SC, ST, women, minority, and OBC in the Lokpal within fifty percent limit;

- ii) The former Prime Minister may be brought within the ambit of Lokpal whereas the sitting Prime Minister should not be brought within the ambit for the stability of administration and Government;
  - iii) There are many organizations having received grant but may not be covered when the limit of grant is kept as ten lakhs. Therefore, the limit of 10 lakhs should be brought down to Rs. 5 lakhs for the Non-Government Organizations, Trusts and Societies;
  - iv) Speaker to be included in the Committee for appointment of Director of CBI;
- iv) Corruption in corporate sector may be brought under Lokpal;
- v) High penalty for vexatious and false complaint may be discouraging for the whistle blowers;
  - vi) Lokyayuktas in all States like Lokpal in the centre to be set up; and
  - vii) Annual reward to the honest people in Government organizations.
9. Members posed queries about related issues, which were responded to by the witnesses.
10. A verbatim record of the meeting was kept.
11. The Committee adjourned at 2.55 P.M.

## XII

### TWELFTH MEETING

The Committee met at 11.00 A.M. on Tuesday, the 9<sup>th</sup> October, 2012 in Committee Room 'A' Ground Floor, Parliament House Annexe, New Delhi.

#### PRESENT

1. Shri Satyavrat Chaturvedi - *Chairman*

#### MEMBERS

2. Shri Shantaram Naik
3. Shri Shadi Lal Batra
4. Shri Arun Jaitley
5. Shri Rajiv Pratap Rudy
6. Shri Bhupender Yadav
7. Shri K.N. Balagopal
8. Shri Tiruchi Siva
9. Dr. V. Maitreyan
10. Dr. Ashok S. Ganguly

#### SECRETARIAT

1. Shri Deepak Goyal, Joint Secretary
2. Shri K.P. Singh, Director
3. Shri Ashok K. Sahoo, Joint Direct
4. Shri B.M.S.Rana, Deputy Director
5. Smt. Catherine John L. Committee Officer

#### Ministry of Law and Justice

- **Legislative Department**

1. Dr. G. Narayana Raju, Joint Secretary; and
2. Shri Diwakar Singh, Deputy Secretary.

- **Department of Legal Affairs**

Shri D. Bhardwaj, Joint Secretary and Legislative Counsel.

2. At the outset, the Chairman welcomed the Members and representatives of Departments of Legal Affairs and Legislative Department to the sitting. Referring to journey of the Lokpal and Lokayuktas Bill, 2011 in the Committee since its reference on the 15<sup>th</sup> June, 2012, he mentioned that in the last eleven sittings, the Committee heard official and non-official witnesses and experts on various provisions of the Bill. From their depositions as many as six main contentious issues involved in the Bill were flagged. He then requested Members to express their view points on main contentious issues identified as follows:-

- a) Appointment Procedure of the Lokpal;
- b) Removal Procedure for the Lokpal;
- c) Lokayuktas for States;
- d) Investigative Mechanism;
- e) Inclusion of NGOs under the jurisdiction of Lokpal; and
- f) Reservation/Representation of SC, ST, OBC, Women and minorities in the Lokpal.

After brief deliberations, the Committee decided to take up issues one after the other for arriving at a consensus.

### **Appointment Procedure for Lokpal.**

3. In view of paucity of judges of Supreme Court, the Committee deliberated on the feasibility of including Judges of the High Court for holding the post of Member, Lokpal. After detailed deliberations, it was decided not to effect any change and have High Court judges for being considered for Lokayuktas in States.

4. The Committee deliberated on the issue whether it would not be awkward for the judicial members who are judges of Supreme Court to work under a non-judicial member appointed as Chairperson, Lokpal, from the field of finance, insurance or bureaucracy, since Chairmanship of Lokpal is open to both judicial and non judicial member (eminent person). Delving deep into the rationale for opening avenues of the Chairmanship to non-judicial members, the Committee was appraised by Department of Personnel and Training that it was conscious change suggested by the Department-related Parliamentary Standing Committee on Personnel, Public Grievances, Law & Justice. The Committee, therefore, deemed it fit not to override the recommendations of the Standing Committee and decided to retain the Clause without modification.

5. The Committee deliberated on the provisions of clause 3 which debar persons "connected with a political party" or MPs from holding the position of Chairperson/Member of the Lokpal. Views were expressed in the Committee that the words "connected with a political party" had a wide connotation and may adversely affect the rights of even those persons who are remotely associated with political parties.

Similarly, the Committee also came across a view that eminent Jurists/Judges of Supreme Court might be rendered ineligible for holding the position of Chairperson/ Member Lokpal, if they happened to be MPs. The Chairman directed the Legislative Department to propose alternative phrases to allay the apprehension of the Committee in the next sitting.

6. For the purpose of check and balance in Selection Committee for Lokpal, independence and neutrality of fifth member therein was debated. Following important views were expressed by Members:-

- (i) Having current/outgoing Chairperson of Lokpal as fifth member in the Selection Committee in lieu of eminent jurist to select other members of Lokpal. The first Chairperson of Lokpal may be had as fifth member in the Selection Committee; and
- (ii) Prime Minister, Speaker, Lok Sabha, Leader of Opposition, Lok Sabha, and Chief Justice of India being first four members in Selection Committee to select an eminent jurist as fifth Member to be appointed by President.

7. There was discussion in the Committee on the modalities of selecting the fifth Member of the Selection Committee by the first four Members of the Selection Committee. It was pointed out that the Chief Justice of India or his nominee being a Member of the Selection Committee, to what, extent the other Members of the Selection Committee would exercise their say, was not clear. The Committee, however, noted two factors relevant to this issue, firstly that the head of the Selection Committee was the Prime Minister who has a higher status. Secondly, all Members of the Selection Committee were very senior and veteran and therefore, it may not be too much to expect from them objective actions. The discussion remained inconclusive.

8. A verbatim record of the meeting was kept.

9. The Committee adjourned at 12.55 P.M. to meet at 11.00 A.M. on the 10<sup>th</sup> October, 2011 to resume its deliberation on inconclusive issues on the Bill.

## **XIII**

### **THIRTEENTH MEETING**

The Committee met at 11.00 A.M. on Wednesday, the 10<sup>th</sup> October, 2012 in Committee Room 'A' Ground Floor, Parliament House Annexe, New Delhi.

#### **PRESENT**

1. Shri Satyavrat Chaturvedi - *Chairman*

#### **MEMBERS**

2. Shri Shantaram Naik
3. Shri Shadi Lal Batra
4. Shri Arun Jaitley
5. Shri Rajiv Pratap Rudy
6. Shri Bhupender Yadav
7. Shri K.N. Balagopal
8. Shri Shivanand Tiwari
9. Prof. Ram gopal Yadav
10. Dr. V. Maitreyan
11. Dr. Ashok S. Ganguly

#### **SECRETARIAT**

1. Shri Deepak Goyal, Joint Secretary
2. Shri K.P. Singh, Director
3. Shri Ashok K. Sahoo, Joint Director
4. Shri B.M.S.Rana, Deputy Director
5. Smt. Catherine John L. Committee Officer

#### **Ministry of Personnel, Public Grievances and Pensions**

- **Department of Personnel and Training**
  1. Ms. Mamta Kundra, Joint Secretary; and
  2. Shri Ashok K. Meena, Director

#### **Ministry of Law and Justice**

- **Legislative Department**
  1. Dr. G. Narayana Raju, Joint Secretary; and
  2. Shri Diwakar Singh, Deputy Secretary.
- **Department of Legal Affairs**

Shri D. Bhardwaj, Joint Secretary and Legislative Counsel.

#### **Appointment Procedure of Lokpal**

2. The Committee resumed its deliberation on the issues revolving around phrases- 'connected with political party' in the Clause 3(4) of the Bill to overcome selective debarment of certain genuine category of individuals from being considered for Chairman/Members of Lokpal and requested the representatives of Legislative

Department to suggest alternative precise phrase in lieu thereof.

3. The representative of Legislative Department proposed the phases-‘a person who has taken part in politics’ in lieu of the phrase ‘connected with political party’ in Clause 3(4). Another phase-‘a person having political affiliation’ was also floated by one of the member which was agreed to by the Committee. The Committee recommended amendment to clause 3(4) of the Bill, accordingly.

4. Appointment of independent fifth member in Selection Committee for Lokpal was another inconclusive issue which was taken up by the Committee thereafter. The representative of Legislative Department put forth a formulation much akin to the second option floated in the last sitting proposing appointment of an eminent jurist by President of India after obtaining recommendations of the first four members (Prime Minister, Speaker, Lok Sabha, Leader of Opposition, Lok Saha and Chief Justice of India) in Selection Committee mentioned in sub clause (a) to (d) of Clause 4(1) of the Bill. The Committee agreed to the formulation proposed by Legislative Department.

5. An issue related to the aforesaid formulation about nomination of an eminent jurist in Selection Committee by President came up for discussion. It was pointed out that aid and advice of Council of Minister to President under Article 74 of Constitution may be bypassed due to recommendations of the Selection Committee for appointment of an eminent jurist as its fifth member. It was clarified by the representative of Department of Legal Affairs that harmonious construction between Constitutional provision and provisions of the Bill mean that recommendations of the collegium of Selection Committee would be forwarded by the concerned Minister to the President. This view was also endorsed by the representatives of DOPT. At that point, examples of appointments of members of National Human Rights Commission (NHRC), Judges of Supreme Court and Central Vigilance Commissioner (CVC) on the recommendations of collegium by the President were cited by a member.

6. A view was expressed that since the Chief Justice of India (CJI) is a member of Selection Committee for Lokpal, his views should not be construed as binding on other members in the collegium of Selection Committee even in the selection of judicial



members of Lokpal on the logic that the CJI has best view of judicial member being in that field, thereby making the collegium redundant. The said apprehension was raised in view of contextual interpretation of the words ‘in consultation with CJI’ under Article 124 of Constitution by the Supreme Court in 1993 making it a binding consultation on the executive. It was pointed out that since the legislative intent is to avoid primacy to any one of the five members in Selection Committee it must be expressed in legislation itself by way of explanation to avoid future complication by way of judicial interpretation. It was proposed that the single dissent in Selection Committee should be speaking dissent and reasoning must be attributed to overrule that dissent and in case of more than one dissent dropping of that name in the Selection Committee should be eventually done. The Committee, thereafter, considered following two proposals of Legislative Department:-

- i) The Selection Committee should make recommendation on the basis of consensus; and
- ii) Recommendation of Selection Committee by a majority.

The first proposal was found to be acceptable to the Committee to allay the apprehension raised because the word ‘consensus’ means majority in addition to general opinion of the Selection Committee. However, the Chairman kept it pending and directed the Legislative Department to re-examine the proposal and report back to it in its next sitting.

### **Removal procedure of Lokpal**

7. Taking up procedure of removal and suspension of Chairperson and Members of Lokpal enumerated in Clause 37(2) of the Bill, the Chairman referred to following two suggestions gathered during recording of evidence of witnesses and experts on the Bill:-

- i) Curtailment of discretion given to executive in filtering the complaints against Lokpal before forwarding to the Supreme Court; and
- ii) Vesting power of suspension of Lokpal with the Supreme Court.

In that context he also referred to official amendment No. 153 proposed by Government to the Clause 37(2) whereby removal of members of Lokpal would commence only when a petition signed by 100 Members of Parliament is referred to Supreme Court and the

latter would make recommendations to President after making inquiry into it. The official amendment No. 153 was appreciated by the Committee as a neutral mechanism reducing the role of Government to filter the complaints. It was pointed out that like removal process, the suspension process should be a neutral one requiring judicial application of mind. Thus interim recommendations of Supreme Court must be essential for suspension of members of Lokpal by President of India. Accordingly amendment to clause 37(3) was proposed as under:

*“The President may suspend from office the Chairperson or a member after receipt of recommendations of the Supreme Court to that effect”.*

8. The Committee discussed reasoning for having selective grounds of removal of Lokpal but did not press for any amendment thereto.

### **Lokayuktas for States**

9. Initiating discussion on Part III of the Bill devoted to Lokayuktas for States, the Chairman mentioned that the country is committed to provide an effective anti-corruption mechanism at Centre and in all States, particularly after signing of multi-lateral international treaty on corruption by Government. He then referred to official amendment No. 150 moved by Government to amend Clause 1 of the Bill so as to provide maximum flexibility to States either by adopting Part III of the Bill, with or without modification or enact a new law on Lokayuktas having regard to Part III as a model legislation or continue to have existing law on Lokayuktas in their states. He averred that with the proposed amendment federal spirit of Constitution would not be violated. He invited suggestions of Members on the official amendment No. 150.

10. One of the Members opined that there is general agreement on the substance of the aforesaid amendment i.e. to have a mechanism of Lokayuktas in all States to fight corruption in public life but the procedure adopted to prescribe a model law of Lokayuktas under Article 253 of Constitution would tantamount to invasion on the federal structure of Constitution which is considered as Basic Structure of Constitution enunciated in Keshavananda Bharti case (1973) and S.R. Bomai case (1993) by the Supreme Court in view of the fact that power to take disciplinary action against

employees of State Government is covered in State List – Entry No. 41- State Public Services and the State Government has exclusive rights over this item in the State List. Since the executive action and legislative power coexist, the Union Government cannot legislate a law on Lokayuktas under Article 253 of Constitution to give effect to bilateral or multi-lateral treaty which would lead to transgression of rights of States and thus *ultra vires*. Furthermore, law to give treaty effect should be in consonance with domestic law of the country. It was proposed that a model law on Lokayuktas through enactment of Parliament could be effected only through Article 252 of Constitution wherein the resolution of two or more States is a condition precedent to that enactment.

11. The Chairman pointed out that adoption of route under Article 252 would give scope to those States who do not intent to enact a law on Lokayuktas, not to pass resolution to that effect. In order to meet that eventuality, the Government has reconciled the mandatory aspect of having Lokayuktas for all States under Article 253 alongwith option and latitude to States to formulate their own law on the basis of Part III as a model law under Article 252 as per their specific need. At this point the Chairman sought opinion of Department of Legal Affairs on the official amendment No. 150 to Clause 1 of the Bill.

12. The representatives of Legal Affairs mentioned that passing of resolution by two or more States is a condition precedent for enactment of a model law for States by Parliament. He mentioned official amendment No. 150 to Clause 1 having reference to Part III of the Bill is not in accordance with constitutional scheme. The Union Government can send a model legislation to the States in exercise of its executive power leaving the States concerned to take decision for adoption or adaptation as per the respective needs. It was then agreed to make provision for Lokayuktas for all States mandatory without compromising the federal character of Constitution and in order to battle against corruption in public life in the country. The discussion remained inconclusive, to be resumed in its next sitting.

13. A verbatim record of the meeting was kept.

14. The Committee adjourned at 12.58 P.M. to meet at 11.00 A.M. on 19<sup>th</sup> October, 2011 to continue its internal deliberation.

## XIV

### FOURTEENTH MEETING

The Committee met at 11.00 A.M. on Friday, the 19<sup>th</sup> October, 2012 in Committee Room G-074 Ground Floor, Parliament Library Building, New Delhi.

#### PRESENT

1. Shri Satyavrat Chaturvedi - *Chairman*

#### MEMBERS

2. Shri Shadi Lal Batra
3. Shri Arun Jaitley
4. Shri Bhupender Yadav
5. Shri Satish Chandra Misra
6. Shri K.N. Balagopal
7. Shri Shivanand Tiwari
8. Shri Tiruchi Siva
9. Dr. V. Maitreyan
10. Dr. Ashok S. Ganguly

#### SECRETARIAT

1. Shri Deepak Goyal, Joint Secretary
2. Shri K.P. Singh, Director
3. Shri Ashok K. Sahoo, Joint Director
4. Smt. Mahalakshmi Balsubramanian, Assistant Director
5. Smt. Catherine John L., Committee Officer

#### **Ministry of Personnel, Public Grievances and Pensions**

- **Department of Personnel and Training**

Shri P.K. Das, Joint Secretary.

#### **Ministry of Law and Justice**

- **Legislative Department**

1. Dr. Sanjay Singh, Additional Secretary; and
2. Dr. G. Narayana Raju, Joint Secretary & Legislative Counsel.

- **Department of Legal Affairs**

1. Shri D. Bhardwaj, Joint Secretary and Legislative Counsel; and
2. Dr. R.J.R. Kasibhatla, Deputy Legal Advisor.

#### **Lokayuktas for States**

2. The Chairman welcomed the Members and representatives of DOPT, Legislative Department and Department of Legal Affairs to the sitting. Thereafter, he recapitulated the discussions held on contentious issues relating to appointment and removal procedure of Lokpal and Lokayuktas in States. Initiating discussion on Lokayuktas issues which

remained in-conclusive in the last meeting, the Chairman mentioned that a general consensus had emerged in the Committee for having Lokayuktas in all States to fight corruption in public life. Divergence remained as to the procedure to be adopted by the Union Government for enactment of a law on Lokayuktas for States. He mentioned that the route of Article 253 of Constitution adopted to enact a law on Lokayuktas for States has already been approved by Lok Sabha, whereas the issue of violation of federal spirit of Constitution has been taken up in Rajya Sabha, after which official Amendment No. 150 has been moved by Government *inter-alia* to give option to States to adopt Part III of the Bill as a model, with or without modifications. In that context he mentioned that the special provision to enact a law to give effect to treaty under Article 253 overrides general provisions of law under Article 246(1). At the same time he also pointed out that statute requires the power to be exercised in a particular manner and neglect of that manner will render the exercise of power *ultra vires*.

3. Views contrary to official amendment No. 150 proposed by Government were expressed by many Members. Federalism has been recognized as the Basic Structure of Constitution by the Supreme Court particularly in Kesavanand Bharti case (1973) and the Parliament has no right to alter Basic Structure of Constitution even by amendment to the Constitution. In Federal polity, the Government cannot alter the Basic Structure to implement treaty signed by the Government. It cannot usurp rights of the States in the garb of treaty making power. The views of former Chief Justice of India, (Justice M. Hidayatullah) contained in his book titled 'Constitution Law of India', views of Law Secretary and Attorney General for India expressed before the Committee were alluded to in support of their arguments. The consensus in any Legislative fora should be in conformity with Constitution. Therefore, it was they argued that Article 253 can override general provisions of Constitution but not non-amendable part of the Constitution. It was, however, felt by some Members that a political solution with regard to adoption of route to make law of Lokayuktas for the States to fight corruption was necessary.

#### **NGOs under Jurisdiction of Lokpal**

4. It was felt by many Members that the provisions of Clause 14(1)(h) which allow NGOs to receive donation from public or from foreign source in excess of Rs. 10 lakhs per year under the Lokpal may over burden the institution of Lokpal. Therefore, it was

suggested to amend Clause 14(1)(h) of the Bill to restrict only to NGOs receiving foreign funding in excess of Rs. 10 lakhs although a point was raised for bringing Public Private Partnership (PPP) projects under the purview of Lokpal but it was not acceptable to the Members in view of the fact that contractual agreement in the PPP are subject to arbitration and corruption therein can be covered under general Penal Law (IPC). The Committee also discussed about the feasibility of defining the word ‘corruption’ in the Lokpal and Lokayuktas Bill but after the explanation from the Legislative Department about criminal misconduct under Section 13 of Prevention of Corruption Act, 1988, it did not press for having a definition of the term “corruption”.

5. A verbatim record of the meeting was kept.
6. The meeting adjourned at 12:41 P.M. to meet at 11.00 A.M. on 20<sup>th</sup> October, 2012 to resume its internal deliberations on other contentious issues.

## XV

### FIFTEENTH MEETING

The Committee met at 11.00 A.M. on Saturday, the 20<sup>th</sup> October, 2012 in Committee Room 'A', Ground Floor, Parliament House Annexe, New Delhi.

#### PRESENT

1. Shri Satyavrat Chaturvedi - *Chairman*

#### MEMBERS

2. Shri Shantaram Naik
3. Shri Shadi Lal Batra
4. Shri Arun Jaitley
5. Shri Bhupender Yadav
6. Shri Satish Chandra Misra
7. Shri K. N. Balagopal
8. Shri Shivanand Tiwari
9. Shri Tiruchi Siva
10. Shri D. P. Tripathi
11. Prof. Ram Gopal Yadav
12. Dr. Ashok S. Ganguly

#### SECRETARIAT

1. Shri Deepak Goyal, Joint Secretary
2. Shri K. P. Singh, Director
3. Shri Ashok K. Sahoo, Joint Director
4. Shri B. M. S. Rana, Deputy Director
5. Smt. Catherine John L., Committee Officer

#### Ministry of Personnel, Public Grievances & Pensions

- **Department of Personnel & Training**  
Shri P. K. Das, Joint Secretary.

#### Ministry of Law and Justice

- **Legislative Department**
  1. Dr. Sanjay Singh, Additional Secretary;
  2. Dr. G. Narayana Raju, Joint Secretary & Legislative Counsel; and
  3. Shri Diwarkar Singh, Deputy Legislative Counsel.
- **Department of Legal Affairs**
  1. Shri D. Bhardwaj, Joint Secretary & Legislative Counsel; and
  2. Dr. R.J.R. Kasibhatla, Deputy Legal Advisor.

2. The Chairman welcomed the Members and the representatives of the Department of Personnel & Training, Legislative Department and Department of Legal Affairs to the meeting of Committee. Resuming the discussion on the contentious issues of the Bill, the

Committee took up the issues of investigation mechanism and setting up of Lokayuktas for States.

### **Investigation Mechanism**

3. Initiating discussion on investigation mechanism enumerated under Clauses 20 to 23 of the Bill, the Chairman referred to official amendment Nos. 151 and 152, proposed by Government and requested Members to offer their views.

4. Members referring to Clause 20(1) of the Bill sought clarification about the provision of parallel preliminary inquiries against Government Servants; one by Lokpal and other by Central Vigilance Commission (CVC) mentioned under proviso to Clause 20(1) of the Bill, which might give scope for contradictory findings. The representatives of Department of Personnel and Training clarified that two sets of preliminary inquiries were not simultaneous, rather those were meant for two different types of public servants – (a) public servants other than Government Servants (Ministers and Members of Parliament), (b) Government Servants belonging to categories of Group ‘A’, ‘B’, ‘C’ and ‘D’. He mentioned that first proviso to Clause 20(1) is proposed to be divided into two parts to give discretion to Lokpal to direct any agencies other than CVC to hold preliminary inquiry against public servants, other Government Servants and the Lokpal shall direct the CVC to hold preliminary inquiry against Government Servant. The Committee was informed that the word “shall” may be substituted to “may” for the purpose in first line of that proviso accordingly.

5. Another Member pointed out that affording opportunity to the alleged accused before the commencement of investigation at preliminary inquiry stage, may give scope to the accused to destroy or manipulate incriminating evidence against him. Introduction of principle of natural justice at preliminary inquiry stage might lead to interference with the application of criminal law or even keep the criminal law upside down. It was argued that if opportunity of hearing was introduced at preliminary inquiry stage in order to balance the removal of existing sanction for Government Servant, it is better to bring back sanction rather than disturbing the criminal procedure, which is time tested. Since the purpose of preliminary inquiry is to ascertain existence of *prima facie* case, in the case of *prima facie* case, preliminary inquiry becomes unnecessary otherwise raid, seizure by investigative agency could not be successful. It was agreed to bring back



sanction for public servant in the place of opportunity of being heard at preliminary inquiry stage but difference remained whether it should remain with the Government or Lokpal. The Committee directed that representatives of Department of Personnel and Training, Department of Legal Affairs & Legislative Department to relook to Clause 20 in the light of observations of the Committee.

### **Lokayuktas for States**

6. While deliberating upon the issue of Lokayuktas for States, the Committee opined that the Bill may comprise of two parts. The first Part dealing with the Lokpal, would also make it binding for States to constitute Lokayuktas under Article 246 of the Constitution. The second Part of the law relating to the Lokayuktas, would be enacted under Article 252 of the Constitution. In this regard, the Committee directed the concerned three Departments to examine the issue and inform the Committee whether a law can be enacted under two different Articles of the Constitution.

7. A verbatim record of the meeting was kept.

8. The Committee adjourned at 1.13 P.M. to meet at 11.00 A.M. on Tuesday, the 30<sup>th</sup> October, 2012, to resume its deliberations on remaining contentious issues on the Bill.

## XVI

### SIXTEENTH MEETING

The Committee met at 11.00 A.M. on Tuesday, the 30<sup>th</sup> October, 2012 in Committee Room 'A', Ground Floor, Parliament House Annexe, New Delhi.

#### PRESENT

1. Shri Satyavrat Chaturvedi - *Chairman*

#### MEMBERS

2. Shri Shantaram Naik
3. Shri Shadi Lal Batra
4. Shri Arun Jaitley
5. Shri Rajiv Pratap Rudy
6. Shri Bhupender Yadav
7. Shri Shivanand Tiwari
8. Dr. V. Maitreyan

#### SECRETARIAT

1. Shri Deepak Goyal, Joint Secretary
2. Shri K.P. Singh, Director
3. Shri Ashok K. Sahoo, Joint Director
4. Shri B.M.S. Rana, Deputy Director
5. Smt. Catherine John L., Committee Officer

#### **Ministry of Personnel, Public Grievances and Pensions**

##### • **Department of Personnel and Training**

1. Shri P.K. Das, Joint Secretary
2. Sh. Ashok K.Meena, Director.

#### **Ministry of Law and Justice**

##### • **Legislative Department**

1. Dr. Sanjay Singh, Additional Secretary;
2. Dr. G. Narayana Raju, Joint Secretary & Legislative Counsel; and
3. Shri Diwakar Singh, Deputy Legislative Counsel.

##### • **Department of Legal Affairs**

1. Shri D. Bhardwaj, Joint Secretary and Legislative Counsel; and
2. Dr. R.J.R. Kasibhatla, Deputy Legal Advisor.

2. At the outset, the Chairman referred to consensus arrived at in the past sittings of the Committee on various issues of the Bill including appointment procedure of Lokpal. He then referred to another issue i.e. whether exemption given to Prime Minister on certain specific sensitive subjects should be extended to Senior Officers in Prime Minister

Office and related Ministries/Departments of Government of India. He invited Members to express their views on this issue.

### **Appointment Procedure of Lokpal**

3. A Member pointed out that there could be an equality among Members of Selection Committee of Lokpal on both sides while selecting the eminent jurist as the fifth Member of that Selection Committee. After some deliberations, the Committee felt that as all Members in the Selection Committee were of high stature, it would be appropriate to leave to their wisdom and discretion to select an eminent jurist as the fifth Member of Selection Committee.

### **NGO under Lokpal**

4. The Chairman, referred to the consensus arrived at in the Committee relating to Clause 14(h) of the Bill about inclusion of NGOs in the purview of Lokpal which were receiving funds from foreign source. On the issue of Government funded or aided NGO it was pointed out that NGOs aided by Government could be any charitable institutions or religious organizations, hospitals, schools which would be in large number and it would be unmanageable for the Lokpal to entertain complaints against them. The Committee, accordingly, decided to confine the jurisdiction of Lokpal to only those NGOs which were funded by Government and exclude "aided" NGOs in the form of tax exemption or free/concessional land, etc. from the purview of Lokpal. The Committee recommended to amend Clause 14(g) of the Bill, accordingly.

### **Preliminary Inquiry by Lokpal**

5. The Chairman referred to the next issue related to opportunity of hearing given to public servant at preliminary enquiry stage which remained inconclusive in the last sitting of the Committee and requested Members to deliberate thereon.

6. It was pointed out by a Member that preliminary enquiry being a part of internal procedure of investigative mechanism was a good procedure to eliminate many frivolous complaints but the same is not provided in criminal law. It was also mentioned that opportunity of being heard is a concept under administrative law which has been

imported into criminal law through this Bill. But this puts upside down the criminal investigation because the documents collected by the investigating team if shown to the alleged accused at this stage, would give him opportunity and scope to manipulate and even destroy the incriminating evidence against him. It was suggested that opportunity of being heard can be made available to the alleged accused only after investigation had taken place. In that context the response of DOPT was sought by the Committee.

7. The representatives of DOPT mentioned that opportunity of being heard provided to the alleged accused at preliminary enquiry stage mentioned under Clause 20(3) may be dispensed with. He referred to two alternatives suggested by the Committee in the last sitting, - keeping sanction for prosecution with the Government or giving it to Lokpal who can hear the Government servant and seek comments of Government before granting sanction for prosecution. The Chairman directed the Secretariat to prepare an alternative draft on Clause 20.

### **Lokayuktas for States**

8. Initiating discussion on the Lokayukta issue which remained inconclusive in the last sitting, the Chairman sought opinion of the Department of Legal Affairs about legality and constitutionality of enacting two parts of an Act under two different Articles of Constitution. The representatives of Legal Affairs mentioned that there is no legal or constitutional objection to the two parts of same Act being enacted under different provisions of the Constitution. But passing of resolution by the Legislature or two or more States would be essential for exercise of the powers under Article 252 of the Constitution.

9. The Chairman raised his apprehension that passing of resolution by two or more States for the Lokayuktas may consume time and floated an alternative i.e., providing for States to mandatorily have a Lokayukta in first Part of the Bill and Part III of the Bill may be deleted. Further the Bill may be passed without Part III and the States may have freedom about the nature and type of Lokayukta they wish to have for their State. In this process, the present Bill could be treated as a Model which could be sent to the States as Model through executive orders. The time frame of one year may be given to all States to enact a law on Lokayuktas.

### **Exclusion of PMO and other related officials**

10. On the issue of exclusion of Prime Minister Office and other Ministries dealing with sensitive subjects, it was discussed that exemption to Prime Minister on certain specific sensitive subjects in the Bill should remain and consequent amendment in CrPC may be carried out for the purpose; officials in PMO and other Ministries /Departments dealing with those sensitive subjects should not be excluded from the purview of Lokpal ; and enquiry against officials dealing with these subjects may be held in camera by the Judge by recording reasons therefor.

11. The Chairman appreciated the co-operation and contribution of the Members of the Committee for arriving at consensus on the contentious issues. He requested Members to co-operate further to clear the remaining contentious issues in the next sitting.

12 A verbatim record of the meeting was kept.

13. The Committee adjourned at 1.05 P.M. to meet at 11A.M. on Wednesday 31<sup>st</sup> October, 2012 to resume its deliberation on remaining contentious issues of the Bill.

## XVII

### SEVENTEENTH MEETING

The Committee met at 11.00 A.M. on Wednesday, the 31<sup>st</sup> October, 2012 in Committee Room No. 53, First Floor, Parliament House, New Delhi.

#### PRESENT

1. Shri Satyavrat Chaturvedi - *Chairman*

#### MEMBERS

2. Shri Shantaram Naik
3. Shri Shadi Lal Batra
4. Shri Arun Jaitley
5. Shri Rajiv Pratap Rudy
6. Shri Bhupender Yadav
7. Shri K. N. Balagopal
8. Shri D. P. Tripathi
9. Dr. V. Maitreyan

#### SECRETARIAT

1. Shri Deepak Goyal, Joint Secretary
2. Shri K. P. Singh, Director
3. Shri Ashok K. Sahoo, Joint Director
4. Shri B. M. S. Rana, Deputy Director
5. Smt. Catherine John L., Committee Officer

#### Ministry of Personnel, Public Grievances & Pensions

- **Department of Personnel & Training**
  1. Shri P. K. Das, Joint Secretary; and

#### Ministry of Law and Justice

- **Legislative Department**
  1. Dr. Sanjay Singh, Additional Secretary;
  2. Dr. G. Narayana Raju, Joint Secretary & Legislative Counsel; and
  3. Shri Diwakar Singh, Deputy Legislative Counsel.
- **Department of Legal Affairs**
  1. Shri D. Bhardwaj, Joint Secretary & Legislative Counsel; and
  2. Dr. R.J.R. Kasibhatla; Deputy Legislative Counsel.

2. Recapitulating the discussion held on the issue of Lokayukta in its last sitting, the Chairman referred to the two options floated in the Committee and mentioned that a consensus in the Committee is seen for passing of Lokpal Bill without Part III, pertaining to Lokayukta, which can be sent to States as model law on Lokayukta through an executive order of Union Government. On the issue of investigation procedure, he

mentioned that comments of competent authority as well as opportunity of being heard to Government Servant would be given before giving sanction for prosecution by the Lokpal. On the basis of discussion held in last sitting, the Committee redrafted Clause 20 and directed the Legislative Department to suitably reflect it in the Bill, to be appended with report.

### **Independence of CBI**

3. It was pointed out by a Member that the superintendence and direction of Lokpal over CBI in Lokpal referred cases to be effective require the restructuring of CBI to make it autonomous. In that context, it was suggested that appointment of CBI Director should be made by Prime Minister, Leader of Opposition, Lok Sabha and Chairman of Lokpal. Similarly, the Director of Prosecution in the CBI should also be appointed by the same panel. It was further suggested that a panel of lawyers, under the Directorate of Prosecution, should be prepared in consultation with Lokpal. Accordingly, amendments to the Delhi Special Police Establishment Act, 1946 were suggested. It was pointed out by the Chairman that aforesaid suggestions would require exhaustive changes to the Delhi Special Police Establishment Act, 1946 which probably do not fall under scope of the Bill and it may not be appropriate for the Committee to do so. The Committee sought the views of the Legislative Department on this point.

4. The representatives of Legislative Department mentioned that as per legislative practice, consequential or minor amendments could be effected to the particular Bill mentioned in the Schedule, but comprehensive amendment thereto could be effected only by bringing a new Bill to that effect before the Parliament.

5. It was pointed out by Members that without meaningful amendment to the Delhi Special Police Establishment Act, 1946, the Lokpal would be toothless. Further, it was pointed out that amendments proposed to the CVC Act did appear to be miniscule.

### **Representation of Minority in Lokpal**

6. It was pointed out that the Constitution does not provide representation to SC, ST, OBC, women and minority but reservation to SC, ST, OBC and women only. Members

pointed out that the representation to minority mentioned in the Bill would be difficult in view of the fact that a group, which is a religious or a linguistic minority, in a particular area, may be majority in some other area. Also, reservation for minority is not permissible, constitutionally. The words “not less than 50 percent” in Clauses 3&4 of the Bill could mean exceeding the limit of 50 percent, which is not permissible as per Supreme Court’s observation in Indira Sawhney case. The Chairman sought the appropriate words for the given phrase from the Legislative Department. The Legislative Department suggested that the words “not less than 50%” could be replaced by the words “as nearly as may be fifty percent”. The Committee noted the suggestion. The Committee decided to resume further discussion on CBI in its next sitting.

7. A verbatim record of the meeting was kept.

8. The Committee adjourned at 12.52 P.M. to meet at 11.00 A.M. on Friday, the 9<sup>th</sup> November, 2012, to resume its deliberations on remaining contentious issue on the Bill.



## XVIII

### EIGHTEENTH MEETING

The Committee met at 11.00 A.M. on Friday, the 9<sup>th</sup> November, 2012 in Main Committee Room, Ground Floor, Parliament House Annexe, New Delhi.

#### PRESENT

1. Shri Satyavrat Chaturvedi - *Chairman*

#### MEMBERS

2. Shri Shadi Lal Batra
3. Shri Arun Jaitley
4. Shri Rajiv Pratap Rudy
5. Shri Bhupender Yadav
6. Shri Satish Chandra Misra
7. Shri K.N. Balagopal
8. Shri Shivanand Tiwari
9. Shri D.P. Tripathi
10. Shri Prof. Ram Gopal Yadav
11. Dr. V. Maitreya
12. Dr. Ashok S. Ganguly

#### SECRETARIAT

1. Shri Deepak Goyal, Joint Secretary
2. Shri K.P. Singh, Director
3. Shri Ashok K. Sahoo, Joint Director
4. Smt. Catherine John L., Committee Officer

#### Ministry of Personnel, Public Grievances and Pensions

- **Department of Personnel and Training**

Shri P.K. Das, Joint Secretary.

#### Ministry of Law and Justice

- **Legislative Department**

1. Dr. Sanjay Singh, Additional Secretary;
2. Dr. G. Narayana Raju, Joint Secretary & Legislative Counsel; and
3. Shri Diwakar Singh, Deputy Legislative Counsel.

- **Department of Legal Affairs**

1. Shri D. Bhardwaj, Joint Secretary and Legislative Counsel; and
2. Dr. R.J.R. Kasibhatla, Deputy Legal Advisor.

2. The Chairman welcomed the Members of the Committee, the representatives of the Department of Personnel and Training, Legislative Department and the Department of Legal Affairs to the meeting of the Committee. At the outset, the Chairman stated that out

of the six contentious issues that were identified for consideration, the Committee has been able to arrive at a consensus on five issues and that a disagreement prevails on the issue of reservation/representation in the Lokpal and the Search Committee. With these observations, the Committee moved over to the next issue.

3. The Committee took up for discussion the issue of status of CBI with reference to the Lokpal and the Lokayustas Bill. There was divergence of opinion on the point whether the amendments to the Schedule to the Bill, proposed by some Members, in the previous meeting, were of consequential or substantive nature. The Chairman raised doubts as to whether the suggested amendments would fall within the scope of the mandate of this Committee. Some Members opined that the amendments proposed were required for the purpose of achieving the objective of this Bill. They further opined that the Committee was well within its mandate to make such amendments in the Bill.

4. Shri Satish Chandra Mishra, Member proposed certain amendments *inter alia* in relation to the CBI, for making the Lokpal Bill more effective.

5. The Committee adjourned at 12.55 PM.

6. A verbatim record of the meeting was kept.

## **XIX**

### **NINETEENTH MEETING**

The Committee met at 11.00 A.M. on Friday, the 19<sup>th</sup> November, 2012 in Committee Room 'E', Basement, Parliament House Annexe, New Delhi.

#### **PRESENT**

1. Shri Satyavrat Chaturvedi - *Chairman*

#### **MEMBERS**

2. Shri Shantaram Naik
3. Shri Shadi Lal Batra
4. Shri Arun Jaitley
5. Shri Rajiv Pratap Rudy
6. Shri Bhupender Yadav
7. Shri Satish Chandra Misra
8. Shri K.N. Balagopal
9. Shri Shivanand Tiwari
10. Shri D. Bandyopadhyay
11. Shri Tiruchi Siva
12. Shri D.P. Tripathi
13. Prof. Ram Gopal Yadav
14. Dr. V. Maitreyan
15. Dr. Ashok S. Ganguly

#### **SECRETARIAT**

1. Shri Deepak Goyal, Joint Secretary
  2. Shri K.P. Singh, Director
  3. Shri Ashok K. Sahoo, Joint Director
  4. Smt. Catherine John L., Committee Officer
2. The Chairman welcomed the Members to the meeting of the Committee. He thanked them for the tremendous co-operation extended by them through-out the deliberations on the Lokpal and Lokayuktas Bill, 2011. The Members also placed on record their appreciation for the Chairman for conducting the proceedings of the Committee remarkably and the incredible effort made by him to achieve consensus on vital issues.
3. The Committee then took up for consideration and adoption, draft Report on the Bill.
4. During the discussions which ensued thereafter, some Members suggested that in

para 13.2 of the draft Report, it may modified so to provide fixed tenure of Director, Prosecution and Director of CBI, say, two years. The Members stressed upon the need for financial autonomy of CBI, and it was agreed that a formulation in this regard may be incorporated in para 13.2 of the Report. With regard to the appointment of Director of Prosecution of CBI, it was decided that the appointment may be made on the 'recommendation' of the CVC. After some deliberation on the first and second proviso of clause 20 (1) of the Bill, the Committee concurred with the existing provisions in the Bill and recommended their retention without change. The Committee, authorized the Chairman of the Committee to finalise the Report and arrange to carry out necessary changes in the Bill, subject to modifications/corrections of drafting in nature.

5. The Committee adopted the Report, with these modifications.
6. The Committee also decided that the evidence tendered before it on the Bill should also be laid on the Table of the House alongwith the Report.
7. The Committee authorized Shri Arun Jaitley, and in his absence, Shri Shantaram Laxman Naik to present the Report in the House.
8. In the last, the Chairman appreciated the co-operation extended by the representatives of the Legislative Department, the Department of Legal Affairs and the Department of Personnel & Training and the Officers and staff of the Secretariat during the consideration of the Bill and in the preparation of the draft Report.
5. The Committee adjourned at 12.45 PM.
6. A verbatim record of the meeting was kept.

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# **ANNEXURES**

## **ANNEXURE - I**

[vide para 17 of Introduction]

### **LIST OF EXPERTS/ORGANIZATIONS/INDIVIDUALS WHO SUBMITTED THEIR MEMORANDA**

- | <b>Sl. No.</b> | <b>Name and Address</b>  |
|----------------|--|
| 1.             | Ms. Aruna Roy and others, National Campaign for People's Right to Information, 278, SFS Apartments, DDA Flats, Hauz Khas, New Delhi-110016.  |
| 2.             | Shri Aswathi Muralidharan, From Anna Hazareji's Office, India Against Corruption, A-119, Kaushambi, Ghaziabad - 201010.  |
| 3.             | Shri Manoj Nandkishor Agrawal, 2 <sup>nd</sup> floor, Chandramouli Building, Backside of Effector Gym, Parijat Colony, Hadapsar, Pune-411028.  |
| 4.             | Shri Ramanathan Subramanian, <a href="mailto:sramanathan6@gmail.com">sramanathan6@gmail.com</a>  |
| 5.             | Shri Amit Kumar Maihan, A-45, 46, Gandhi Vihar, Delhi - 110009.  |
| 6.             | Shri G.K. Agarwal, Advocate, Delhi High Court, III-K-106, Nehru Nagar, Rakesh Marg, Ghaziabad-201001.  |
| 7.             | Shri P.V. Surendranath, Advocate, Convenor, AILU Legislative Sub Committee, All India Lawyers Union, 4 Asoka Road, New Delhi-1.  |
| 8.             | Shri Mahesh Pandya, Paryavaran Mitra, 502, Raj Avenue, Bhaikakanagar road, Thaltej, Ahmedabad-380059.  |
| 9.             | Shri Ashok Kapur, IAS (Retd.), Director General, Institute of Directors & Member, International Academy of Law, M-52 (IInd Floor) Greater Kailash Part-II, Market, New Delhi-110048. |
| 10.            | Shri M.R. Madhavan, PRS Legislative Research, Centre for Policy Research, Dharma Marg, Chanakyapuri, New Delhi-110021.   |
| 11.            | Public Interest Foundation, New Delhi.   |
| 12.            | Shri C.K. Chaturvedi, Working President, All India Judges Association, B 64, Saket District Court Residential Complex, Saket, New Delhi-110014.                                      |
| 13.            | Shri P.G. Babu and others, Indira Gandhi Institute of Department Research, Mumbai.   |
| 14.            | Dr. Jayaprakash Narayan, Flat No. 801 & 806, Srinivasa Towers, Beside ITC Kakatiya Hotel, Begumpet, Hyderabad-500016.  |
| 15.            | Justice A.P. Shah, Chief Justice (Retd.), Madras and Delhi High Courts.  |

**ANNEXURE - II**

[*vide* para 18 of Introduction]

**SUGGESTIONS RECEIVED FROM SOME MEMBERS OF  
THE COMMITTEE DURING THE COURSE OF  
CONSIDERATION OF THE BILL**

**SUGGESTIONS RECEIVED FROM SOME MEMBERS OF  
THE COMMITTEE DURING THE COURSE OF CONSIDERATION  
OF THE BILL**

**(A) Shri D. Bandyopadhyay:**

I. The power of sanction of prosecution against the public servants by the Government should not be interfered with. This protection is derived from the Article 311 of the Constitution. In cases of external or internal emergencies or natural disaster, public servants may have to violate established laws, rules or procedures for immediate action. Only the Government would know the circumstances under which the public servants had to do so. Hence, the power should remain with the Government. The Lokpal may ask for detailed reasons in cases of refusal of permission.

II. There was a lot of discussion on the autonomy of the CBI. In the name of autonomy of the CBI, which is a police organization, we should not create a Frankenstein's monster. Already under different High Court's and the Supreme Court's order police investigation enjoys immunity from external interference. That element maybe strengthened by some legal provisions. One should not forget that the CBI personnel are as fallible as anyone public servant. No immunity should make them totally unaccountable either to the Courts or to Lokpal or to the Government.

III. States should be fully empowered to make their own Lokayukt laws. Provisions regarding Lokayukt may remain in the Lokpal Bill as a model which the States may or may not follow or may enact a totally new law of their own. Otherwise one of the basic features of the Constitution ie. the federal character, may be violated.

I shall be deeply grateful if you could consider placing these points before the Committee as and when these issues would come up for consideration.

Sd/-  
**(D. Bandyopadhyay)**  
**Member, Rajya Sabha**



**(B) Shri Arun Jaitley, Shri Rajiv Pratap Rudy and Shri Bhupender Yadav:**

We are in receipt of the communication from the Secretariat asking us to place on record suggestions, if any, in relation to the subject of “The Lokpal and Lokayukta Bill, 2012” under discussion, to the Bill as approved by the Lok Sabha and having regard to certain amendments – Amendment No. 148 to 164 placed by the Government, we have the following suggestions to offer :-

**I. The provision for constitution of Lokayukta under the State Legislation:**

India is a union of States. Federalism is a part of the basic structure of our Constitution. A Lokayukta constituted by the States will deal with penal action against public servants as also the departmental proceedings. Whereas the power to initiate penal proceedings is the subject of on the Concurrent List, the power to deal with services of the State is entirely a State subject (Entry 41 of List-II of VIIth Schedule of Constitution, “State Public Services; State Public Service Commission). Thus, a Lokayukta constituted by a Central legislation would be wholly ultra vires the legislative competence of the Central Parliament. Lokayuktas are to be constituted by the States, it is a settled proposition that Legislative and Executive jurisdictions co-exist. It is, thus, only a State which can provide for a Lokayukta in the State.

We are of the opinion that the provision of Article 253 for giving effect to Treaty obligations of the Union cannot be invoked in the present circumstances for the reasons –

- (a) Federalism is a basic part of the Constitution. Post 1973, In the Keshvanand Bharati case 1973 (4) SCC 225, the Hon’ble Supreme Court has held that :- the basic structure of the Constitution cannot be amended either by legislation or even a Constitutional amendment. The Constitutional provisions cannot be altered in the garb of making legislation for giving effect to international agreements. The basic structure of the Constitution in the pre-1973 law in this regard is highly doubtful in view of the basic structure doctrine.
- (b) Even otherwise the UN Convention against Corruption categorically states that a legislation will be enacted by all signatory States with regard to their domestic laws. The domestic laws of India will encompass the federal polity of India wherein a law dealing with the services of the States will only be acted upon by the States.
- (c) No where does the UN Convention against Corruption state that the law so enacted could breach domestic legal provisions.

In view of the above we are of the opinion that the preamble of the law which indicates that it is a legislation being framed under Article 253 of the Constitution will need to be amended. Our proposal in this regard thus is –

- (i) The law so enacted can state that it shall be mandatory for every State to have a Lokayukta and States may enact the necessary Act.

- (ii) It would be a preferred option if Part-III of the law dealing with the Lokayukta issue be enacted under Article 252 wherein the Parliament may pass a resolution to legislate for two or more States.
- (iii) Alternatively, the opinion expressed by some members in the Committee that the approved law may be enacted on the pattern of the Lokpal Bill and be sent to the States for enactment with or without amendments.

## **II. Appointment of Lokpal**

We believe that clause 4 of the draft Bill needs to be amended. The Selection Committee for appointment of the Lokpal is loaded in favour of the government of the day. Thus category (e) which provides for an eminent jurist being nominated by the President would effectively mean that the jurist is being appointed on the initiative of the Government. We would, thus, suggest that clause 4(e) be suitably amended to incorporate that the eminent person, who shall be the fifth member of the Committee, shall be nominated by consensus between the Prime Minister, Speaker of the House of People, Leader of Opposition in the house of People and the Chief Justice of India.

## **III. Removal of the Lokpal**

The provisions relating to removal of the Lokpal in clause 37 should be suitably amended. The present Bill read with the amendment proposed by the Government in the Rajya Sabha gives the power to the Govt. of India to suspend any member of the Lokpal during the pendency of the enquiry. This power should be vested in the Supreme Court and not in the Government of India. The effect of this power vesting in the Government of India is that it can be misused to remove an inconvenient member of the Lokpal who initiate a proceeding against the Government of India.

## **IV. Staff and other Officers of the Lokpal**

The draft Bill provides for Director of Enquiry, Director of Prosecution and other staff members to be appointed in the Lokpal from a panel of names suggested by the Government of India. The Lokpal should be empowered to call for certain specific officials if he so desires.

## **V. Jurisdiction of the Lokpal**

Clause 14 needs to be amended. The Lokpal should cover predominantly such public servants who either work for the government, instrumentalities of the State or such bodies which are wholly or partly financed by the government. The Lokpal has to look at the misuse of the funding by the government. Private bodies should be kept out of the jurisdiction of the Lokpal.

Thus, two amendments are necessary in the following manner :-

- (a) In clause 14(1)(g) the word ‘or aided’ in the 4<sup>th</sup> line should be deleted.
- (b) In clause 14(1)(h) from third to fifth line the words “or the public and the annual income of which exceeds such amount as the Central government may by notification specify or” be deleted. The object of this amendment

would be that such NGOs which are funded by the Government or funded by International Agencies will only be covered under the Lokpal.

## **VI. Procedure for Investigation**

The procedure for investigation mentioned in clause 20 is confused, congregated and capable of creating difficulties. It should be amended keeping the following principles in mind.

- a) The Lokpal on receipt of a complaint can either send the matter for investigation or order a preliminary inquiry through its own inquiry agency or any agency including CBI.
- b) For the preliminary inquiry, the Inquiry agency would have complete focus on going through all materials on record and after seeking comments of the department and public if it so desires.
- c) If on completion of preliminary inquiry, the Inquiry Agency recommends closure of the case, the report should be so forwarded to the Lokpal for its final decision.
- d) If, however, the Inquiry Agency is of the opinion that the Lokpal may refer the matter to any other investigating agency which may include the CBI also.
- e) After completion of the inquiry the investigating agency shall submit a report to the Lokpal who shall either order the closure of the case, or ask the case to be filed under the provisions of the Criminal Procedure Code or shall invite comments from the public servant and the concerned department of the government in order to determine whether sanction for prosecution should be granted or not and whether sanction for prosecution is necessary or not.
- f) The Lokpal may thereafter direct the investigative agency through its prosecution wing to prosecute the public servant or may direct its own Prosecution Wing to prosecute the public servant.

## **VII. Reservation in the appointment of the members of the Lokpal and Selection Committee**

Any form of reservation which uses the word 'not less than' is capable of being interpreted to include 100 % reservation. Such a reservation would be constitutionally ultra vires. This provision needs to be amended so that the extension of reservation is in terms of the cap as provided by the Supreme Court. The provision for reservation includes reservation to certain categories such as minorities. This reservation is not constitutionally permissible. We are of the opinion that only such reservation may be permitted as is constitutionally permissible. Any form of reservation outside the constitutional scheme would be ultra vires the Constitution. The word 'minority' is incapable of specifying a particular group or class. Would such a word include members of the Hindu community from J&K or Punjab or any other State where they are in

minority. Alternatively, would the linguistic minorities be included in the meaning of minority.

In the matter of Bal Patel & Ors. Vs. Union of India reported as 2005(6) SCC 690, the Supreme Court cautioned that the State has no religion and no section or distinct group of people can claim to be in majority.

### **VIII. Position of CBI as an investigative agency**

The Schedule to the Bill mandates amendments in the provision to various acts, such as Delhi Police Special Establishment Act, Prevention of Corruption Act and Criminal Procedure Code.

The amendment sought in the Delhi Police Establishment Act deals with the functioning of CBI which is the principal investigative agency. In this regard several important witnesses particularly, Shri A.P. Singh, Director CBI, Shri GE Vahanvati, Attorney General, Shri A.P. Shah, Former Chief Justice, Delhi High Court have appeared before this Committee. The comments made by each of them are duly highlighted below :-

**Shri G.E. Vahanvati, Attorney General of India :** “I am told that one of the suggestions is that the CBI would give its own report under section 173 to the court and the Lokpal would also give its own report to the court. Now, obviously, there is a possibility of a conflict here. Suppose the Lokpal says that the case must be closed and the CBI denies ‘closure’ because there is a case for prosecution”.

“The Bill in the present form does not deal with this part. Look at it from the other way round. Suppose the CBI, in its report, says that it has to be closed and the Lokpal says that they would like him to be prosecuted. A person may argue that when he was dealt with only by the CBI then, he would have faced closure but, he has been exposed to a discriminatory procedure where there is another report by the Lokpal which says that there is a case for prosecution. These are the grey areas which should be ironed out so that there is no scope for challenge. There is another part where there can be a challenge. This does not pertain to the challenge to the Bill. This relates to a person who has been prosecuted or investigated by the CBI without reference to the Lokpal. He does not get the benefit of any hearing on the preliminary enquiry. CBI has a preliminary enquiry and then, it decides to register a case. At that time, he is not heard. Such a person could tell us to look at the provisions of the Lokpal Act. A person who is proceeded under this Act gets a right to be heard. He may say, “I am similarly situated but, I have no right to be heard because I am being investigated by the CBI and there is no question of the CBI hearing me until the matter actually reaches the court.” So, these are areas where there could possibly be a challenge under Article 14. But, we will have to wait

for such cases, I would suggest that all these areas may be looked at a little carefully, I have spoken to the Law Minister on this”.

**Shri A.P. Singh, Director, CBI :** “Sir, my purpose in making this presentation here today is to convince the Select Committee that CBI is the most important cog in this whole anti-corruption structure and without the CBI the Lokpal is a non-starter right from the beginning. You cannot have the Lokpal without the CBI or with a truncated CBI or a split CBI or a divided CBI. If Lokpal comes, it can only be successful if CBI is an integral part. The basic investigating machinery of the Lokpal can only be the CBI. That is what I wanted to emphasise. Any attempt to dilute the role of CBI or tamper with the present structure would have serious consequences to the anti-corruption machinery in the country. Moreover, Sir, this would also be an opportunity for the Select Committee to consider means of strengthening this Agency and institutionalize its autonomy, both financial and administration”.

**Hon’ble Mr. Justice A.P. Shah :** “It is my belief that the CBI is pliable. There are several instances; I do not want to quote those, recent times where the CBI did remarkable changes in its position before the courts. I feel that it is really not advisable to have administrative control over the CBI when corruption cases are referred to the Lokpal body. There are some other aspects which I would place before you. Please see para 6 of my note on page 6: While the nine member Lokpal will provide leadership to the corruption combating institution, its effectiveness will be determined by the quality of the staff and investigative machinery that is made available to it. Indeed, a larger part of the debate around the previous version of the Lokpal Bill has been about the investigative arm of the Lokpal, whether to lend the services of the Central Bureau of Investigation (CBI) part-time or full-time for the purpose of investigation, the levels of the bureaucracy which should be under the jurisdiction of the Lokpal and the inadequacies associated with the functioning of the CBI in high profile cases involving politicians accused of corruption”.

“The public perception of the CBI is that while it is effective in investigating corruption cases involving low-ranking bureaucrats and launching prosecutions it is open to manipulation by the ruling party or alliance when cases involve high ranking politicians or other powerful individuals who are co-accused in corruption scandals”.

**Shri Shekhar Singh, representative of NCPRI :** “We have also suggested that for those officers of the CBI, who are dealing with cases which have been referred to them by the Lokpal, the Lokpal should become the final receiving authority of their ACRs. So, it is not the initiating or the reviewing authority, which is part of the hierarchy, but the final receiving authority. We feel that this would make sure that neither can the Lokpal run wild with the CBI nor the Government can totally run wild with them. It is a double check and balance. We feel very strongly about it. We would request you to consider that some such mechanism needs to be put into position so that the CBI gets some amount of independence. I should mention here that we are not in favour of having a totally independent CBI-CBI which is neither under the Government nor under the Lokpal. We feel that it is dangerous for bodies of police because they do not have any answerability. It can lead to difficult situation. We are not personally in favour of that”.

On the basis of the above we are of the categorical opinion that considering the enormous amount of misuse of political clout the CBI has lost its credibility. It has therefore become important to correct this aberration. The control of CBI thus requires to be transferred from the Deptt. of Personnel GOI to the Lokpal in relation to all corruption cases which are referred to Lokpal. Alternatively in order to maintain independence of CBI and enable it to get immunity from political interference, we make the following suggestions amongst others :-

- The CBI will have two wings. Director CBI will head the entire organization. Under him a separate Directorate of Prosecution should function.
- The Investigative Wing and Prosecution Wing of the CBI should act independently.
- The Director of CBI and Director of Prosecution should be appointed by a collegium comprising the Prime Minister, Leader of Opposition, Lok Sabha and Chairman of Lokpal.
- Both the Director CBI and Director of Prosecution must have a fixed term.
- Both Director CBI and Director Prosecution shall not be considered for re-employment in government.
- The power of superintendence and direction of the CBI in relation to Lokpal referred cases must vest with the Lokpal.
- If an officer investigating a case is sought to be transferred for any reason whatsoever, the prior approval of Lokpal should be required.
- The panel of Advocates who appear for and advise the CBI should be independent of the Govt. Advocates. They can be appointed by the Director Prosecution after obtaining prior approval of the Lokpal.

Thanking you.

1. **Sd-**  
**(Arun Jaitley)**  
**Member, Rajya Sabha.**
  
2. **Sd/-**  
**(Rajiv Pratap Rudy)**  
**Member, Rajya Sabha.**
  
3. **Sd/-**  
**(Bhupender Yadav)**  
**Member, Rajya Sabha.**

**(C) Shri Satish Chandra Misra:**

This is in reference to the communication sent by the Secretariat asking to place on record the suggestions, if any, in relation to the subject of "Lokpal and Lokayukta Bill, 2011" under discussion.

I have the privilege of receiving the comments of Shri Arun Jaitley given to the Committee, copy of which has been circulated to the Members. I agree with the suggestions given by him in respect to THE PROVISIONS FOR CONSTITUTION OF LOKAYUKTA UNDER THE STATE LEGISLATION.

I also do agree with the suggestions given by him in respect to the Appointment of Lokpal, Removal of the Lokpal, Staff and other Officers of Lokpal & Jurisdiction of the Lokpal.

However, I am in respectful disagreement in making amendment with regards to the provisions of Reservation in the appointment of the Members of Lokpal and Selection Committee, which I feel is extremely necessary that all sections of the society, specially the deprived and downtrodden classes which include SC, ST, OBC and Minority categories adequately represented so that persons belonging to the said category are not meted with injustice or discrimination in the matters coming before Lokpal. Experience goes to show that wherever there is no reservation, there is no representation of these classes e.g. in the appointment of Judges of High Court and Supreme Court. Since there is no reservation, there is representation of these categories.

With regard to the PROCEDURE FOR INVESTIGATION, I have following suggestions :

- a) No comments.
- b) Seeking comments of the public servant during preliminary enquiry is not desirable as it may compromise with the secrecy of the enquiry and would render subsequent searches futile.
- c) The enquiry agency should have complete independence in its enquiry which would include the power to decide the final outcome of the enquiry. Thereafter, the report should be sent to the Lokpal. Lokpal may examine it and may seek any clarification on the report, if required, from the enquiry agency.
- d) No comments.
- e) The independence of investigation process needs to be protected, importance of which has been upheld by the Hon'ble Supreme Court in various judicial pronouncements. (viz. Abhinandan Jha Vs Dinesh Mishra : AIR 1968 SC 117, Vineet Narayan Judgments, etc.). As per Section 173 Cr. P.C., the police report can be filed in the competent court only by a police officer. The power of taking a final decision as to whether a final report of closure should be filed or a charge sheet should be filed after conclusion of investigation is very much part of the investigation process,

which can only be taken by the police and by no other authority, as has been upheld by the Hon'ble Supreme Court.

As regards the power for granting sanction for prosecution, it is hitherto vested with the competent authority of the department concerned. This power should be retained as such, who after obtaining the comments of the Lokpal, and the competent authority concerned, may decide the issue of sanction for prosecution. However, the suggestions for seeking the comments of concerned public servant may not be appropriate, who in any case is given an opportunity to submit his defence during the investigation. Such opportunity will only lead to avoidable delays. In my view if the power of sanction is given to the Lokpal who has himself initiated the proceedings, the action and purpose of granting or refusing sanction would render in fructuous as it will be a case of Lokpal judging his own case.

- f) The prosecution in the court may be conducted by the Prosecution Wing of the Lokpal or the Prosecution Wing of the Investigation Agency concerned. However, the submission of the police report in the competent report is the prerogative of the investigating agency as per the provisions of Cr.P.C.

With regard to POSITION OF CBI AS AN INVESTIGATING AGENCY, my comments are as under :

The CBI is a premier investigation agency of the country, which not only investigates the corruption cases, but investigates all hues of crimes including conventional crimes, narcotics crimes, wildlife crimes, fake currency cases, human trafficking, cyber crimes, etc. also. Therefore, the total control of CBI cannot be transferred to Lokpal, which would be mandated only with the corruption cases against a certain categories of public servants.

Similarly any existing or proposed institution can only be vested with the powers of superintendence on the investigation agency in order to ensure independence of investigation process, as has been clearly laid down by the Hon'ble Supreme Court in Vineet Narayan judgment. Based on this judgment, section 8 (1)(b) of the CVC Act clearly lays down that the powers of superintendence or giving direction cannot be exercised in such a manner so as to require the investigation agency to investigate or dispose of any case in a particular manner.

Therefore, the proposal institution of Lokpal may also be vested with the similar powers of superintendence/direction in respect of the corruption cases referred by it to the investigation agency and not the general power of control over the investigation agency.

The powers and structure of CBI should not be diluted in any manner in order to protect the effectiveness of the organization. There cannot be two authorities viz. Director of CBI and Director of Prosecution selected through the same collegium. A successful prosecution requires a great team work of good pairvi and prosecution of cases.



The powers of superintendence and directions on CBI by the Lokpal in relation to Lokpal referred cases should be in accordance with the principles laid down by Vineet Narayan judgment as quoted above.

Lokpal should not be ideally interfering in the administrative matter of CBI/investigation agency and the powers of assigning the investigation to a particular investigating officer should be vested with the Director CBI/Head of the investigating agency. In case the Lokpal has any issue with regard to appointment/transfer of any particular investigating officer, the same may be referred to the Director CBI/Head of Investigating Agency by the Lokpal for reconsideration.

The selection of advocates to appear for and advise the CBI/investigation Agency should be the prerogative of the head of the concerned agency in consultation with the Director of Prosecution and the panel should not be restricted to non-government advocates only.

### **AUTONOMY OF CBI :**

For proving more autonomy to CBI, it is proposed that :-

- (i) Separate demand for grant should be generated from consolidated fund of India and Director CBI will be Grant Controlling Authority and Chief Accounting Authority for this grant. The Director, CBI would exercise power of Secretary to Government of India as provided under the delegation of financial power rules, 1978.
- (ii) Director CBI should have full authority in appointment, extension and curtailment of tenure of officers upto the rank of DIG in CBI.
- (iii) Director, CBI should be included as a member of Selection Committee for appointment of other officers above the rank of DIG in CBI. Section 4C of DSPE Act should be amended accordingly.
- (iv) Director CBI should also have powers for engaging special counsels and specialists of different disciplines.

Sd/-  
**(Satish Chandra Misra)**  
**Member, Rajya Sabha**

**(D) Dr. V. Maitreyan:**

Having gone through the Report of the Select Committee of Rajya Sabha on the Lokpal and Lokayuktas Bill, 2011, I wish to place on record the views of my party, the AIDMK, on certain provisions of the bill.

1. Clause 14 of the Bill deals with the jurisdiction of Lokpal. As per clause 14(1), the Prime Minister falls under the jurisdiction of Lokpal. My party is of the strong view that the Lokpal Bill should exclude the Prime Minister since the Prime Minister is already covered under the Prevention of Corruption Act and any misconduct by the Prime Minister can be investigated by the CBI.

The functioning of the Lokpal inclusive of the Prime Minister will pave the way for a parallel Government which would undermine the authority of the office of the Prime Minister.

In consonance with our view that the Prime Minister should be kept out of the Lokpal, for the very same reason the Chief Minister of the State should also be kept out of the purview of the State Lokayukta.

2. Clause 20(7)-regarding non requirement of grant of sanction to initiate prosecution. This should be deleted since sanction of prosecution acts as a safeguard against witch hunting and therefore provides safety to the honest officers.
3. Clause 46- prosecution for false complaints and payment of compensation etc. to public servant. I do not agree with the views mentioned in the report regarding protection from imposition of any penalty to the complainants. No lenience should be shown to those who make false and frivolous complaints and it is difficult to say if a complaint is made in good faith or not. Anybody who makes a false complaint can take refuge under "Complaint made in good faith".
4. Clause 63 to 97- Establishment of Lokayukta. Since Article 246 of the Constitution of India provides for both Parliament and State Legislatures to make laws with respect to any of the matters enumerated in List III of the VII schedule of the Constitution. Also Federalism is a part of the basic structure of the Constitution and is inviolable. Hence the choice of constituting the Lokayukta should be left to the State Government and the State Government may enact a legislation if it deems it necessary.

Hence clauses 63-97 and the Government amendment No. 150 should be deleted altogether in too.

Sd/-  
**(Dr. V. Maitreyan)**  
**Member, Rajya Sabha**

**(E) Shri D. P. Tripathi:**

I have gone through the draft report of the Select Committee on the Lokpal & Lokayukta Bill 2011. I have the following suggestions to offer:-

1. The Select Committee is proposing certain amendments in clause 20 in the Lokpal & Lokayukta Bill as passed by the Lok Sabha with the objective to ensure that the existing arrangement as per the Cr. P C with regard to deciding the outcome of investigation and filing of the police report in the competent court are not tampered with. It is also being proposed that the Lokpal will be vested with the powers to accord the sanction for prosecution under section 19 of the P.C. Act 1988, in respect of the public servants in Lokpal referred cases. However, the draft amendments still leave scope for ambiguity which needs to be clarified and corrected.

To ensure the above objective, amendments in sub clauses 20 (5) and 20 (6) would be required, which have not been proposed. Therefore, I propose that these clauses may be amended to clarify that the investigative agency will submit its police report to the competent Court directly and give a copy to the Lokpal.

Further, the proposed amendment in sub clause 20(8) should clarify that the Prosecution wing of the Lokpal would initiate prosecution only after filing of police report by the investigative agency (including the DSPE) in the competent court. The sub clause 12(2) needs to be amended accordingly and the sub clause 12(3) needs to be deleted.

On the same grounds, clause 24 would also require suitable amendment.

2. As the powers of the investigative agencies with regard to deciding final outcome of the investigation are being retained, the same position needs to be maintained with regard to deciding the outcome of the preliminary inquiries. This would entail suitable amendments in sub clause 20(2) and clause 28.
3. Since the powers to accord sanction for prosecution under section 19 of the P. C. Act 1988 are being proposed to be vested with the Lokpal, clause 23 needs to be amended to clarify that the courts will take cognizance against the public servants only after previous sanction of the Lokpal, wherever required.
4. The existing Bill proposes amendments in the section 8 of the CVC Act to give powers of deciding the outcome of inquiry/ investigation to CVC on the lines of proposed powers of the Lokpal. As the Committee has already taken a view not to tamper with the existing arrangement as per the Cr. P C with regard to deciding the outcome of investigation, the proposed amendments in this section would need to be suitably redrafted.

5. Para 13.2 of the report mentions various recommendations by the Committee regarding Central Bureau of Investigation (CBI). However, it does not include any recommendation to strengthen the CBI by enhancing its financial and administrative autonomy. This may be considered for inclusion in the report, as mentioned in para 13.1 of the draft report. I am of the strong view that providing more financial and administrative autonomy to CBI is a prerequisite for ensuring its functional autonomy and thereby providing teeth to effective fight against corruption.

Sd/-  
**(D. P. Tripathi)**  
**Member, Rajya Sabha**

**(F) Shri K.N. Balagopal:**

**I**

The following points may be considered while finalising the Draft Report on Lokpal Bill by the Select committee.

The Prevention of Corruption Act, 1988 has defined the offences that constitute a corrupt act. This definition requires to be widened. The linkage between misuse of public power for private gain or enrichment is a highly restrictive understanding of corruption. In many cases, power is misused to benefit an entity like a private company which is not a “person” as required under the PCA 1988. Often, there may be no traceable kickbacks or embezzlement but there may be a huge loss to the public exchequer and breach of public trust for example through sale of PSUs due to a willful misuse of power.

The definition of corruption has to be widened to include “willfully giving any undue benefit to any person or entity or obtaining any undue benefit from any public servant in violation of laws or rules”.

Members of Parliament: At present, the scrutiny of the conduct of Members of Parliament with regard to any corrupt practice is weak and unsatisfactory. For Members of Parliament, Article 105 of the Constitution provides protection with regard to freedom of speech and voting. The real issue is how to ensure that this freedom and protection does not extend to acts of corruption by Members of Parliament.

This can be done through an amendment to Article 105, on the lines recommended by the National Commission to Review the Working of the Constitution”.

Alternatively, if feasible, there can be legislation that if any Member of Parliament indulges in any act of corruption that motivates his or her action in Parliament (voting, speaking etc.), then this act falls within the purview of the Prevention of Corruption Act and the IPC.

The recent exposures in the 2G spectrum allocation case, CWG scam etc. have shown how thousands of crores worth of public resources have been illicitly cornered by a section of corporates, bureaucrats and ministers. What is worse, tainted ministers have been allowed to remain in office for months and the investigations manipulated, in order to obstruct the course of justice. While corruption in high places has been a feature of our political system for many decades, what has emerged as a dominant trend in the post-liberalization period is a thorough distortion of the policy-making process at the highest levels of the government. A nexus of big corporates, politicians and bureaucrats have matured under the neoliberal regime and is threatening to subvert our democracy. It is clear that the current economic regime has made our system more vulnerable to cronyism and criminality.

Lokpal should be given powers to investigate cases which involve business entities and to recommend cancellation of licenses, contracts, lease or agreements if it was obtained by corrupt means. The Lokpal should also have the power to recommend

blacklisting companies from getting government contracts and licenses. Similarly, if the beneficiary of an offense is a business entity, the Lokpal should have the power to recommend concrete steps to recover the loss caused to the public exchequer.

The corruption related to the PPP Projects (from allocation to operation) is to be viewed very seriously from the current revelations of unbelievable stories of corruption. The Licensing and operation of Rare Monopolistic Natural Resources to private entities also needs specific inclusion under Lokpal provisions. Public sector and Public properties are camouflaged from massive looting under the name PPP, which are not at any moment comes under public scanner. This area needs special intervention. It is extremely necessary in such a time when almost all major Infrastructure Projects are going to PPP sector and which substitutes majority of the earlier Sovereign Functions of the State. Wealth of State and Management by Private Entities. Thus in a system where Majority of the Government's activities are with Private hands and if it is not properly safeguarded by Lokpal from corruption the Lokpal initiative will not serve it's purpose.

## II

The Prevention of Corruption Act, 1988 has defined the offences that constitute a corrupt act. This definition requires to be widened. The linkage between misuse of public power for private gain or enrichment is a highly restrictive understanding of corruption. In many cases, power is misused to benefit an entity like a private company which is not a “person” as required under the PCA 1988. Often, there may be no traceable kickbacks or embezzlement but there may be a huge loss to the public exchequer and breach of public trust for example through sale of PSUs due to a willful misuse of power.

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This can be done through an amendment to Article 105, on the lines recommended by the National Commission to Review the Working of the Constitution”.

Alternatively, if feasible, there can be legislation that if any Member of Parliament indulges in any act of corruption that motivates his or her action in Parliament (voting, speaking etc.), then this act falls within the purview of the Prevention of Corruption Act and the IPC.

Regarding the public servant-corporate nexus and corruption, this Bill is very weak in ensuring the best possible punishment to what we call the “supply side” of corruption. A look at the recent scams like 2G, coal, PPP in airports, hydrocarbon production sharing contracts, Commonwealth Games and Ultra mega power projects, the beneficiaries had been big corporate like Reliance (firms run by both the brothers), GMR, Tatas and others. Credibility of such big industrialists are under question.

The recent exposures in the 2G spectrum allocation case, CWG scam etc. have shown how thousands of crores worth of public resources have been illicitly cornered by a section of corporates, bureaucrats and ministers. Tainted ministers have been allowed to remain in office for months and the investigations manipulated, in order to obstruct the course of justice. While corruption in high places has been a feature of our political system for many decades, what has emerged as a dominant trend in the post-liberalization period is a thorough distortion of the policy-making process at the highest levels of the government. A nexus of big corporates, politicians and bureaucrats have matured under the neoliberal regime and is threatening to subvert our democracy. It is clear that the current economic regime has made our system more vulnerable to cronyism and criminality.

The corruption related to the PPP Projects (from allocation to operation) is to be viewed very seriously from the current revelations of huge corruption. The Licensing and operation of Rare Natural Resources by private entities also needs specific inclusion under Lokpal provisions. Public sector and Public properties are camouflaged from massive looting under the name PPP, which are not at any moment comes under public scanner. This area needs special intervention. It is extremely necessary in such a time when almost all major Infrastructure Projects are going to PPP sector and which substitutes majority of the earlier Sovereign Functions of the State. Thus in a system where Majority of the Government's activities are with Private hands and if it is not properly safeguarded by Lokpal from corruption the Lokpal initiative will not serve its purpose.

It has been the policy of Central and several State Governments to move away from building infrastructure and hand over the construction and management of ports, airports, highways, power projects, irrigation works and mines etc. to private players. There are information to prove that 90 per cent funds for the PPP projects were from public exchequer.

These companies were either awarded licenses to handle natural resources or were partners of the Government in PPP projects. Under the present Bill, Lokpal will not be able to take any action against private players involved in corruption using a PPP project. That is, the Lokpal will not be able to do anything to book the corrupt corporates or public servants in the above mentioned sensational scams. In fact the present wave of Lokpal Movement is got a momentum from the reports of various scams and corruption

resulted from the PPPs and licencing of natural resources, which is a new kind of Delegation of Sovereign Rights to Private sector.

The Lokpal, now can investigate corruption charges against the private entities which receives Rupees Ten Lakhs of Government Funds ,but can not investigate a PPP project of Rs. Ten Thousand Crores Government Assets!

There are no proper auditing mechanisms to find out how public funds are being utilised in PPP projects. The Comptroller and Auditor General has been demanding that it should be given the right to audit PPP projects too. PPP projects should be brought under Lokpal to check the flow of public money into the hands of private players through corruption. It is astonishing that today, PPPs are galvanised from RTI Act ,and they are free to hide all matters which involves Tens and Thousands of Crores of Public Asset.

The trade of public resources has been a major source of corruption in the country. There should be provisions in the Bill to bring all institutions, be it private or public, that handle natural resources such as water, air, spectrum, forests and mines under the purview of the legislation. There is a big nexus between the private players and public servants so that the natural resources, which belong to the people of this country, could be handed over to a few persons staying here and abroad. We have witnessed this in allotment of coal mines, iron ore and the spectrum. In the present policy scenario, the Lokpal must be able to investigate in cases which involve corporate houses, it should have the power to ask the Governments to cancel the licences, contracts and lease or agreements of companies indulging in corruption. The Lokpal could also be able to recommend blacklisting of such companies so that they will not get government contracts and licences in future.

Losses incurred to the public by such entities should be recovered on Lokpal's recommendation and there should be provisions in the Bill that the government should normally accept such recommendations from the anti-corruption panel and act upon it.

Sd/-  
**(K.N. Balagopal )**  
**Member, Rajya Sabha**

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