



PARLIAMENT OF INDIA RAJYA SABHA

48

**DEPARTMENT RELATED PARLIAMENTARY STANDING
COMMITTEE ON PERSONNEL PUBLIC GRIEVANCES,
LAW AND JUSTICE**

FORTY EIGHTH REPORT

ON

THE LOKPAL BILL, 2011

(PRESENTED TO THE RAJYA SABHA ON 9TH DECEMBER, 2011)

(LAID ON THE TABLE OF THE LOK SABHA ON 9TH DECEMBER, 2011)



**RAJYA SABHA SECRETARIAT
NEW DELHI
DECEMBER, 2011/AGRAHAYANA, 1933 (SAKA)**



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- (ii) Shri Ram Jethmalani
- (iii) Shri Ram Vilas Paswan
- (iv) Shri Shailendra Kumar
- (v) Shri Prasanta Kumar Majumdar
- (vi) Shri Pinaki Misra
- (vii) Adv. A. Sampath
- (viii) Shri S. Semmalai

(ix) Smt. Deepa Dasmunshi, Ms. Meenakshi Natrajan and Adv. P. T. Thomas

(x) Shri Vijay Bahadur Singh

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- E - Views of Justice J.S. Verma, former Chief Justice of India on the various provisions of the Bill
- F - Draft of proposed Constitutional Amendment for the Lokpal and Lokayukta*

* To be appended at printing stage.

COMPOSITION OF THE COMMITTEE
(31st August, 2010 - 30th August, 2011)

1. Dr. Abhishek Manu Singhvi* — *Chairman*

RAJYA SABHA

2. Shri Balavant *alias* Bal Apte
3. Shri Ram Jethmalani
4. Shri Parimal Nathwani
5. Shri Amar Singh
6. Shri Ram Vilas Paswan
7. Shri O.T. Lepcha
8. Vacant^
9. Vacant@
10. Vacant&

LOK SABHA

11. Shri N.S.V. Chitthan
12. Smt. Deepa Dasmunsi
13. Smt. Jyoti Dhurve
14. Shri D.B. Chandre Gowda
15. Dr. Monazir Hassan
16. Shri Shailendra Kumar
17. Smt. Chandresh Kumari
18. Dr. Kirodi Lal Meena
19. Ms. Meenakshi Natarajan
20. Shri Devji M. Patel
21. Shri Harin Pathak
22. Shri Lalu Prasad
23. Shri S. Semmalai
24. Shri Vijay Bahadur Singh
25. Dr. Prabha Kishor Taviad
26. Shri Manish Tewari
27. Shri R. Thamaraiselvan
28. Adv. P.T. Thomas (Idukki)
29. Vacant#
30. Vacant\$
31. Vacant%

* Nominated as Chairman of the Committee w.e.f. 26th July, 2011.

^ Due to passing away of Shri M. Rajasekara Murthy w.e.f. 7th December, 2010.

@ Due to induction of Smt. Jayanthi Natarajan in the Council of Minister w.e.f. 12th July, 2011.

& Due to retirement of Shri Shantaram Naik w.e.f. 28th July, 2011.

Due to resignation of Shri Arjun Munda from Lok Sabha w.e.f. 26th February, 2011.

\$ Due to passing away of Shri Bhajan Lal w.e.f. 3rd June, 2011.

% Existing since the constitution of the Committee on 31st August, 2010.

COMPOSITION OF THE COMMITTEE
(Constituted on 31st August, 2011)

1. Dr. Abhishek Manu Singhvi — *Chairman*

RAJYA SABHA

2. Shri Shantaram Laxman Naik
3. Dr. Bhalchandra Mungekar
4. Shri Balavant *alias* Bal Apte
5. Shri Ram Jethmalani
6. Shri Sukhendu Sekhar Roy
7. Shri Ram Vilas Paswan
8. Shri O.T. Lepcha
9. Shri Parimal Nathwani
10. Shri Amar Singh

LOK SABHA

11. Shri Kirti Azad
12. Shri N.S.V. Chitthan
13. Smt. Deepa Dasmunsi
14. Shri D.B. Chandre Gowda
15. Shri Shailendra Kumar
16. Smt. Chandresh Kumari
17. Shri Prasanta Kumar Majumdar
18. Shri Arjun Ram Meghwal
19. Shri Pinaki Misra
20. Kumari Meenakshi Natarajan
21. Shri Harin Pathak
22. Shri Lalu Prasad
23. Adv. A. Sampath
24. Shri S. Semmalai
25. Shri Vijay Bahadur Singh
26. Dr. Prabha Kishor Taviad
27. Shri Manish Tewari
28. Adv. P.T. Thomas (Idukki)
29. Shri Arun Subhash Chandra Yadav
30. Shri Madhusudan Yadav
31. Vacant*

SECRETARIAT

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

* Existing since the constitution of the Committee on 31st August, 2011.

PREFACE BY CHAIRMAN

I consider it a singular privilege and a great pleasure to present the 48th Report of this Committee on the Lokpal Bill, 2011.

It is ironical, and even somewhat paradoxical, that corruption, an issue as old as mankind¹ can generate so much contemporary debate, ignite large volumes of both light and heat. The fact that corruption, which has spread like a virulent epidemic in the very genetic code of society, has been brought to the forefront of our collective consciousness in recent times, is both a compliment to all those who have crusaded for strong anti corruption measures as also a reflection of the public's growing angst, revulsion and disgust at the proportions acquired by this disease.

But no one can afford to, and no one should, ignore the basic truth that no magic wand or special button has been conceived or invented, the activation of which can eliminate or even significantly reduce this scourge within a short time. Nor can anyone be oblivious to the reality that corruption can suffer significant and tangible reduction only by a holistic and multi-pronged approach and that no single initiative in this regard can be even significantly, much less conclusively, efficacious. To ignore the fact that the Lokpal Bill operates only within the limited zone of ex-post facto, punitive or deterrent measures would be to ignore reality itself. Such punitive measures cannot be a substitute for other significant prophylactic initiatives. Corruption flourishes in the interstices of structures, mechanisms, rules, regulations and practices, which not only facilitate it but promote its multiplication like an uncontrollable hydra headed monster. It is those facilitative structures and practices which have to be attacked, if punitive and deterrent measures like the Lokpal Bill are to have any lasting impact. In a nutshell, law has to seek not only to make corruption

¹ In fact, Kautilya in Arthashastra, has given a detailed list, referring to not less than forty ways of embezzlement that the treasury officers in his time were used to practice. The most common of them were pratibandha or obstruction, prayoga or loan, vyavahara or trading, avastara or fabrication of accounts, pariahapana or causing less revenue and thereby affecting the treasury, upabhoga or embezzling funds for self enjoyment, and apahara or defalcation.

painful and hurtful after the event, but to make corruption unnecessary, undesirable and difficult to embark upon at the inception. Indeed many of such prophylactic measures do not need legal changes but intelligent, calibrated and targeted policy changes.

Similarly, even within the punitive and deterrent zone where the Lokpal initiative largely operates, support structures, ancillary provisions and related initiatives are as much, if not more important, than the Lokpal itself. Some are discussed in Chapter 15. Many other vital ones, like initiatives necessary in respect of reducing black money (both domestic and foreign), alteration of rules and practices in the realm of realty transactions, elimination of discretionary powers department-wise, focusing upon and targeting state largesse in areas like mines, contracts and so on and so forth, are not the subject matter of this Report and hence not discussed here. In the ultimate analysis, it is only a synergical and cumulative aggregation of these diverse legal and policy initiatives which can effectively attack and reduce this malignant disease.

Though there are many creative initiatives and "firsts" in this Report, it is not possible to exhaustively list them. They include a specific recommendation to categorically have a statutory provision imparting genuine independence to the CBI by declaring, for the first time, that it shall not be subject, on the merits of any investigation, to either the administrative Ministry or the Lokpal. Secondly, it separates, for the first time, investigation from prosecution, thereby strengthening each and making each more professional and objective, apart from initiating for the first time, the creation of a premier prosecution department under the Lokpal. Thirdly, the Selection Committee, for the first time, includes a joint nominee of the three major constitutional post holders. Fourthly, Lokayuktas and the Lokpal are, for the first time, sought to be subsumed under a common enactment. Fifthly, constitutional status is sought to be conferred, again for the first time, not only upon the Lokpal institution but also upon the proposed Grievances Redressal body. Sixthly, the Report recommends abolition of all sanctions, by whatever name called. Finally, the CVC is,

for the first time , made responsible for the large chunk of class C employees, with a supra added reporting requirement to the Lokpal.

The journey of this Committee has been most exciting and enjoyable, irrespective of the destination, as reflected in the sense of the Committee in this Report or the dissents or the eventual outcome in Parliament. The Committee held fifteen meetings over less than two and a half months between the real commencement of its proceedings on September 23, 2011 and the submission of the actual report in the second week of December, 2011. In individual terms, it interacted with 140 witnesses and its deliberations spanned approximately 40 hours.

Given the contemporary context in which this Bill was referred to the Committee, as also the diverse and extremely large canvas involved, there is an understandable sense of satisfaction in having expeditiously reached the stage of submitting the Committee's report. On an issue like this, which inevitably involves a somewhat uneasy melting pot of law, technicalities, the scrutiny of the nation, pressing exigencies of speed and time, an inevitable dose of politics and an overarching desire to be true to ones' individual and collective consciousness, there is bound to be disagreement and dissension, sometimes even heated. But, personally, I am impressed, indeed astonished, at the high degree of convergence on a diverse number of issues which are addressed in this report and which aggregate over 25. Some may see the glass half full, in the sense of looking at the dissenting notes, but I see the glass well above half full, based on the significant and laudatory degree of convergence on diverse and contentious issues. Even where there were disagreements, only in the last couple of meetings prior to adoption (none before), they did not vitiate the extremely cordial, dignified and principled level of exchanges which have prevailed right from the inception through to the conclusion of the proceedings of this Committee.

I do not think that I am guilty of any error or exaggeration when I say that the members of this Committee started this journey as relative strangers, but finished as friends. Equally, I have no doubt that each member individually, and the Committee

collectively, exemplified and symbolised the Voltairian spirit that wherever they disagreed, they nevertheless upheld the right of the other person to disagree with them, even vehemently.

In the end, all I can say is that we have not tried to please anyone or everyone. We have tried to be true, individually to our respective consciences and collectively to Parliament and the nation. The Report is liable to be judged kindly or harshly by some or, indeed, to be ignored by others. All one can hope for is that the detailed collection and aggregation, not only of each conclusion but of every reason and argument in support of that conclusion, summarised in one chapter (Chapter 17) will be carefully perused before judgment, casual or considered, interim or final, is passed.

I would be failing in my duty if I did not express gratitude for the constructive cooperation which I have received from each member of the Committee, irrespective of convergence or chasm. The witnesses, many of them experts and very eminent, gave willingly and uncomplainingly of their time and effort and all of it, gratis. The response from the public was overwhelming as reflected in the written memoranda received. The Administrative Ministry (Ministry of Personnel) was most helpful and cooperative. Perhaps no Chairman has driven the Secretariat staff harder and longer. Both Saturdays and Sundays, especially when I dictated the Report, with long hours at the Annexe, were par for the course. Mr Deepak Goyal, the head of my team, provided very able leadership to his entire team, and toiled ceaselessly whenever I entrusted anything to him. He was ably supported by Sh KP Singh, Sh K. N. Earendra Kumar, Ms Niangkhanem Guite, Ms. Catherine John, Sh. D.D. Kukreti, Sh. Yogendra Singh and Ms Madhu Rajput and a whole relay chain of stenographers who willingly took eight hour dictations from me on more than three weekends. In a lighter vein, I had expressed the certainty of my belief that the Secretariat were praying and waiting for the day when I would demit office as Chairperson of this august Committee, since they had no other hope of getting respite! I would also like to place on record my deep appreciation for all the assistance and support received from every one, not necessarily named herein, to complete this endeavour expeditiously.

In the ultimate analysis, the responsibility for all the errors rests with me, and, to a lesser extent, with the Committee which adopts the Report as reflective of the broad consensus in the Committee. The reasons for the conclusions flowing from the memoranda, depositions and internal deliberations have formed the Committee's recommendations and are set out in detail at the end of each Chapter. This last section of each Chapter tries to argue and states the persuasive details behind each conclusion. All these end sections from each Chapter have been aggregated and reproduced in the last Chapter, Chapter 17, providing a useful and elaborate summary. All dissent notes have been appended.

(DR. ABHISHEK MANU SINGHVI)

*CHAIRMAN,
COMMITTEE ON PERSONNEL, PUBLIC
GRIEVANCES, LAW AND JUSTICE*

December 7 , 2011.
New Delhi.

REPORT OF
THE
COMMITTEE

CHAPTER - 1

INTRODUCTION

- 1.1 The Lokpal Bill, 2011 was introduced* in the Lok Sabha on 4th August, 2011. It was referred^{§§} by the Hon'ble Chairman, Rajya Sabha to the Department-Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice on the 8th August, 2011 for examination and report
- 1.2 The Bill (Annexure-A) seeks to provide for the establishment of the institution of Lokpal to inquire into allegations of corruption against certain public functionaries and for matters connected therewith or incidental thereon.
- 1.3. The Statement of Objects and Reasons, appended to the Bill reads as under:-

"The need to have a strong and effective institution of Lokpal has been felt for quite sometime. The Administrative Reforms Commission, in its interim report on the 'problems of Redressal of Citizens' Grievances submitted in 1966, inter alia recommended the setting up of an institution of Lokpal at the Centre in this regard. To give effect to this recommendation of the Administrative Reforms Commission, eight Bills on Lokpal were introduced in the Lok Sabha in the past, namely in the years 1968, 1971, 1977, 1985, 1989, 1996, 1998 and 2001. However, these Bills had lapsed consequent upon the dissolution of the respective Lok Sabha except in the case of 1985 Bill which was withdrawn after its introduction.

A need has been felt to constitute a mechanism for dealing with complaints on corruption against public functionaries in high places. In this regard, the Central Government constituted a Joint Drafting Committee (JDC) on 8th April, 2011 to draft a Lokpal Bill.

Based on the deliberation and having regard to the need for establishing a strong and effective institution of Lokpal to inquire into allegation of corruption against certain public functionaries, it has been decided to enact a stand alone legislation, inter alia to provide for the following matters, namely :-

- (i) *to establish an Institution of Lokpal with a Chairperson and eight Members of which fifty per cent shall be Judicial Members;*
- (ii) *to set up Lokpal's own Investigation Wing and Prosecution Wing with such officers and employees as felt by it to be necessary;*
- (iii) *the category of public functionaries against whom allegation of corruption are to be inquired into, namely :-*
 - a. *a Prime Minister, after he has demitted office;*
 - b. *a Minister of the Union;*
 - c. *a Member of Parliament;*

* Published in Gazette of India (Extraordinary) Part-II Section 2 dated 4th August, 2011.
Rajya Sabha Parliamentary Bulletin Part-II (No.1937) dated 9th August, 2011.

- d. *any Group "A" officer or equivalent;*
 - e. *a Chairperson or member or officer equivalent to Group "A" in any body, Board, corporation, authority, company, society, trust, autonomous body established by an Act of Parliament or wholly or partly financed or controlled by the Central Government;*
 - f. *any director, manager, secretary or other officer of a society or association of persons or trust wholly or partly financed or aided by the Government or in receipt of any donations from the public and whose annual income exceeds such amount as the Central Government may be notification specify but the organizations created for religious purposes and receiving public donations would be outside the purview of the Lokpal.*
- (iv) *To provide for a mechanism to ensure that no sanction or approval under section 197 of the Code of Criminal Procedure, 1973 or section 19 of the Prevention of Corruption Act, 1988, will be required in cases where prosecution is proposed by the Lokpal.*
 - (v) *to confer on the Lokpal the power of search and seizures and certain powers of a Civil Court;*
 - (vi) *To empower the Lokpal or any investigation officer authorized by it in this behalf to attach property which, prima facie, has been acquired by corrupt means;*
 - (vii) *To lay down a period of limitation of seven years from the date of commission of alleged offence for filing the complaints before the Lokpal;*
 - (viii) *To confer powers of police upon Lokpal which the police officers have in connection with investigation;*
 - (ix) *To charge the expenses of Lokpal on the Consolidated Fund of India;*
 - (x) *to utilize services of officers of Central or State Government with the consent of the State Government for the purpose of conducting inquiry;*
 - (xi) *To recommend transfer or suspension of public servants connected with allegation of corruption;*
 - (xii) *To constitute sufficient number of Special Courts as may be recommended by the Lokpal to hear and decide the cases arising out of the Prevention of Corruption Act, 1988 under the proposed enactment;*
 - (xiii) *To make every public servant to declare his assets and liabilities, and in case of default or furnishing misleading information, to presume that the public servant has acquired such assets by corrupt means;*
 - (xiv) *To provide for prosecution of persons who make false or frivolous or vexatious complaints.*

The notes on clauses explain in detail the various provisions contained in the Bill.

The Bill seeks to achieve the above objects."

- 1.4. In slight deviation from the normal procedure followed by Standing Committees for examination of Bills, there was a detailed discussion on the statement of the Minister of Finance on the issues relating to the setting up of the Lokpal in both the Houses of

Parliament on the 27th August, 2011. These proceedings were also transmitted to the Committee. The Rajya Sabha Secretariat communication dated the 30th August, 2011 in this behalf addressed to the Chairman, Standing Committee, reads as follows:-

“I am directed to inform you that the Chairman, Rajya Sabha, has desired that the proceedings of the Rajya Sabha and Lok Sabha dated the 27th August, 2011 pertaining to the discussion on the statement made by the Minister of Finance on issues relating to setting up of Lok Pal may be transmitted to the Department-related Parliamentary Standing Committee on Personnel, Public Grievances, Law & Justice for its perusal while formulating its recommendations on the Lok Pal Bill, 2011.

Accordingly, a copy each of the relevant proceedings of the Rajya Sabha and Lok Sabha is enclosed for your kind perusal.”

1.5. The discussion in the two Houses of Parliament was in the backdrop of divergent views in the Joint Drafting Committee constituted by the Government for preparing a draft on the Lokpal Bill. The Committee consisted of five nominees of the Civil Society (led by Shri Anna Hazare) and five nominees of the Government. Initiating discussion in both the Houses, Hon’ble Finance Minister gave a background of the matter leading to holding of discussion in Parliament on the setting up of Lokpal. He enumerated the following six major areas of divergent views in the Joint Drafting Committee:-

- i. Should one single Act be provided for both the Lokpal in the Centre and Lokayukt in the State? Would the State Governments be willing to accept a draft provision for the Lokayukt on the same lines as that of the Lokpal?
- ii. Should the Prime Minister be brought within the purview of the Lokpal? If the answer is in affirmative, should there be a qualified inclusion?
- iii. Should Judges of the Supreme Court and High Courts be brought within the purview of the Lokpal?
- iv. Should the conduct of Members of Parliament inside Parliament, their right to speak and right to vote in the House, be brought within the purview of the Lokpal? Presently such actions of the Members of Parliament are covered by article 105(2) of the Constitution?
- v. Whether Articles 311 and 320 (3) (c) of the Constitution notwithstanding members of a civil service of the Union or an All India Service or a Civil Service of a State or a person holding a civil post under the Union or State, be subject to

enquiry and disciplinary action including dismissal and removal by the Lokpal and Lokayukta, as the case may be?

- vi. What should be the definition of the Lokpal, and should it itself exercise quasi-judicial powers also or delegate these powers to its subordinate officers?"

1.6. Apart from other issues, the following three issues were discussed in both the Houses:-

- i. Whether the jurisdiction of the Lokpal should cover all employees of the Central Government?
- ii. Whether it will be applicable through the institution of the Lokayukt in all States?
- iii. Whether the Lokpal should have the power to punish all those who violate the 'grievance redressal mechanism' to be put in place?

1.7. During the discussion in Parliament, Members demonstrated serious commitment to evolve an effective mechanism to deal with the menace of corruption. The discussion covered several related issues as well, besides the three specific issues referred to above. Members discussed the need to bring all classes of bureaucracy within the fold of the Lokpal while expressing apprehensions about the overburdening of the institution. Similarly, Members were concerned about preservation of the federal spirit of our Constitution. The issue of bringing the grievance redressal mechanism under the Lokpal or having a separate law for this purpose was also discussed.

(A gist of the debate in both the Houses is placed as **Annexure B**).

1.8. In his reply to the debate, the Minister of Finance concluded in both the Houses in these words:-

“ This House agrees in principle on the Citizens Charter, Lower Bureaucracy to be brought under Lokpal through appropriate mechanism and Establishment of Lok Ayuktas in the States. I will request you to transmit the proceedings to the Department-related Standing Committee for its perusal while formulating its recommendations for a Lokpal Bill. ”

1.9. The deliberations in the two Houses of Parliament gave guidance to the Committee in the accomplishment of the task assigned to it. The Committee, however, also had before it vast inputs on the subject from various sources. Recommending an appropriate legislative architecture for the purpose was a complex task for the Committee as it was to propose a solution which harmonized and married the concerns of constitutional validity, operational efficacy and consensus amongst the

diverse views reflected in the Committee's deliberations. The Members of the Committee, however, have put in their best possible efforts to deal with the essence of the opinions expressed by the House collectively. The diverse pool of knowledge of the Members, opinions of eminent experts and the suggestions received from a comprehensive and diverse cross-section of society helped the Committee to formulate solutions taking into account the aspects of functional feasibility and constitutional validity in addition to political consensus.

- 1.10. In order to have a broader view on the Bill, the Committee decided to invite views/suggestions on the issue from desirous individuals/organizations. Accordingly, a press release was issued inviting views/suggestions. In response to the press release published in major English and Hindi dailies all over India on the 20th August, 2011, a number of representations/ memoranda were received. The Committee received approximately 10,000 responses from different sections of society.
- 1.11. The Committee also forwarded 216 select memoranda from out of the ones received from the individuals/organizations to the Department of Personnel and Training for their comments thereon. A list of such memoranda along with the gist of views/suggestions contained therein and the comments of the Department of Personnel and Training thereon is placed at **Annexure- C**.

CHAPTER - 2

COMMITTEE PROCEEDINGS AND TIMELINES

- 2.1 Though the Lokpal Bill, 2011 was referred to the Committee on August 8, 2011, it was followed immediately by a demonstration by Team Anna, a large gathering at Ramlila Maidan and a fast by Shri Anna Hazare. These events occupied the space from 16th to 28th August, 2011.
- 2.2 On August 27, 2011 both the Houses of Parliament discussed the issue and the proceedings were directed to be transmitted to the Standing Committee. This has been summarized in the preceding chapters read with the gist of debates annexed at Annexure B.
- 2.3 Barely four days thereafter, before any work could start, the Standing Committee's term lapsed. In effect, in law and in fact, no Standing Committee of Parliament existed from August 31, 2011 till September 16, 2011. The present Committee could, therefore, become operational only after re-constitution w.e.f. September 23, 2011 when it held its second meeting. Hence, though the Committee had with great alacrity held its first meeting with Team Anna for over two hours on August 10, 2011, a day after the Bill was referred to it, it could, in effect, commence its deliberations on the Lokpal Bill, 2011 only w.e.f. September 23, 2011. The fact that the re-constitution of the Committee is always deemed to be retrospective w.e.f. the date of lapsing (August 31, 2011), does not, however, permit the actual meeting of the Committee during the period between the lapse and its actual reconstitution.
- 2.4 From September 23, 2011 till November 24, 2011, the Committee held 11 sittings spread over approximately 30 hours. During this period, 38 persons / organizations came before the Committee as witnesses to present their views. These included virtually every segment of society, including, lawyers and jurists, former Chief Justices of India, representative organizations like the Bar Council of India, the heads and office bearers of diverse chambers of commerce, the heads and office bearers of diverse print and visual media organizations, NGOs, members of Team Anna (on three occasions spread over approximately 8 hours), religious organizations, representative institutions from small and medium size towns across India, CBI, CVC, eminent writers, think tanks and so on and so forth. In almost all cases the

witnesses were accompanied by several associates and the Committee, therefore, in all, had the presence of 140 witnesses.

- 2.5 The Committee held the first of its internal meetings and deliberations on November 14, 2011. It went on to meet on November 15, 24, 25, 30 and December 1 and finally met on December 7, 2011 to finalise recommendations and to adopt the Report. The Committee is thus privileged to present this Report on December, 9, 2011. A Statement showing the business transacted by the Committee in its different sittings is annexed as ANNEXURE 'D'.
- 2.6. In a nut shell, therefore, this Committee could become legally operational only w.e.f. September 23, 2011 and has completed hearing witnesses on 4th November, 2011. It had its total deliberations including Report adoption spread over 14 meetings, together aggregating 40 hours within the space of ten weeks commencing from September 23, 2011 and ending December 7, 2011.
- 2.7. Though not specific to this Committee, it is an established practice that all 24 Parliamentary Standing Committees automatically lapse on completion of their one year tenure and are freshly constituted thereafter. This results in a legal vacuum, each year, of approximately two to three weeks and occasionally, as in the present case, directly affects the urgent and ongoing business of the Committee. The Committee would respectfully request Parliament to reconsider the system of automatic lapsing. Instead, continuity in Committees but replacement of Members on party-wise basis would save time.

CHAPTER - 3
THE CONCEPT OF LOKPAL :
EVOLUTION AND PARLIAMENTARY HISTORY

- 3.1. There can be no denial of the fact that corruption has always remained a significant and highly relevant issue to be dealt with in our country. This stands corroborated from the findings of various international bodies like the World Bank, Transparency International and other organizations, which have consistently rated India quite low on this facet. Concerns have repeatedly arisen, in and out of Parliament, for putting in place appropriate mechanisms to curb corruption. But the Lokpal concept has had an interesting and chequered history in India.
- 3.2. The initial years following independence witnessed legislators conveying the people's concerns to the Government over the issue of corruption through raising of questions and debates in Parliament. At that time, the scope of the debates was contextually confined to seeking information from the Government about its anti-corruption measures and to discussions regarding the formation of anti-corruption committees/agencies and vigilance bodies to put a check on corruption, but it clearly reflected the seriousness on the issue of corruption in the minds of Members. Acknowledging the need for a thorough consideration of the issue, the Government set-up a Committee under the Chairmanship of Shri K. Santhanam to review the existing instruments for checking corruption in Central Government. The Committee inter alia recommended the creation of an apex body for exercising superintendence and control over the vigilance administration. In pursuance of the recommendations of the Santhanam Committee, the Government established the Central Vigilance Commission through a Resolution on 11.02.1964. The Commission was concerned with alleged bureaucratic corruption and did not cover alleged ministerial corruption or grievances of citizens against maladministration. While laying the report on the creation of the CVC on the table of the House, the then Deputy Home Minister¹, interestingly, recognized that the Commission would be overburdened if the responsibility to redress the citizens' grievances against corruption were to be placed

¹ Statement made by the then Deputy Minister in the Ministry of Home Affairs, Smt. Maragatham Chandrasekhar in the Rajya Sabha on 16th December, 1963, Rajya Sabha Debates, Vol. XLV, No. 21, P.3572.

upon it and the Commission might, as a result, be less effective in dealing with the core problem of corruption.

- 3.3. While the country had been grappling with the problem of corruption at different levels including at the level of Parliament, there emerged globally, and especially in the Scandinavian countries, the concept of Ombudsman to tackle corruption and/or to redress public grievances. A proposal in this regard was first initiated in the Lok Sabha on April 3, 1963 by the Late Dr. LM Singhvi, MP². While replying to it, the then Law Minister observed that though the institution seemed full of possibilities, since it involved a matter of policy, it was for the Prime Minister to decide in that regard³. Dr. LM Singhvi then personally communicated this idea to the then Prime Minister, Pandit Jawahar Lal Nehru who in turn, with some initial hesitation, acknowledged that it was a valuable idea which could be incorporated in our institutional framework. On 3rd November, 1963, Hon'ble Prime Minister made a statement in respect of the possibilities of this institution and said that the system of Ombudsman fascinated him as the Ombudsman had an overall authority to deal with the charges of corruption, even against the Prime Minister, and commanded the respect and confidence of all⁴. Resolutions, in this behalf in April 1964 and April 1965 were again brought in the Lower House and on both occasions, during the course of discussions, the House witnessed near unanimous agreement about the viability, utility and desirability of such an institution⁵. However, in his resolution, the Member of Parliament (Dr. L.M. Singhvi) did not elaborate upon the functions/ powers of the institution, but instead asked for the appointment of a Committee of Members of Parliament who would consider all the complex factors relating to this institution and would come forward with an acceptable and consensual solution. While making a statement in the House on 23rd April, 1965, Dr. L.M. Singhvi elucidated the rationale of the institution as:

² Lok Sabha Debates dated 3rd April, 1963, vol. XVI, P.7556-7558

³ *ibid.*, P.7590-92

⁴ His initial hesitation to this idea was probably due to the Scandinavian origin of the nomenclature of the institution. In a lighter vein, he happened to ask Dr. L.M. Singhvi "To what zoo does this animal belong" and asked Shri Singhvi to indigenize the nomenclature of the institution. Dr. L.M. Singhvi then coined the term Lokpal / Lokayukta to modify the institution of Ombudsman to the Indian context (as related by Dr. L.M. Singhvi to the Chairman of this Committee). Also referred to by Mr. Arun Jaitley M.P. during the Parliament Debate on 27th August 2011. He started the debate in the Upper House thus:-*"Now, 'Ombudsman' was a Scandinavian concept and, coincidentally, on 3rd April, 1963, then an Independent young Member of the Lok Sabha, Dr. L.M. Singhvi, in the course of his participation in a debate for having an Ombudsman in India, attempted to find out what the Indian equivalent could be, and this word 'Lokpal' was added to our vocabulary, the Hindi vocabulary, by Dr. L.M. Singhvi who translated this word."*

⁵ Lok Sabha Debates dated 23rd April, 1965 P. 10839 - 40.

“.....an institution such as the Ombudsman must be brought into existence in our country. It is for the sake of securing justice and for cleansing the public life of the augean stable of corruption, real and imaginary, that such an institution must be brought into existence. It is in order to protect those in public life and those in administration itself that such an institution must be brought into existence. It is to provide an alternative to the cold and protracted formality of procedure in course of law that such an institution should be brought into existence. There is every conceivable reason today which impels to the consideration that such an institution is now overdue in our country....⁶”

- 3.3A. The word Lokpal etymologically, means the "protector of the people". Adopting the famous Lincolnian phrase, it can also be seen as a protection/protector "of the people, by the people, for the people". The word 'Ombudsman', on the other hand, is rooted in the Old Norse language, essentially meaning "representative", i.e. an official charged with representing the interests of the public by investigating and addressing complaints reported by individual citizens. Roman Law has also had a similar counterpart viz. the "tribunitian role" of a person/institution, whose role was to intercede in the political process on behalf of common citizens and in Roman times was fulfilled by elected officials.
- 3.4. These efforts set the stage for evolving an institution like Ombudsman in India and consequently, the idea of Lokpal surfaced in the national legislative agenda. Later, the Government appointed an Administrative Reforms Commission which in its recommendation suggested a scheme of appointing Lokpal at Centre and Lokayuktas in each State⁷.
- 3.5. Thereafter, to give effect to the recommendations of the First Administrative Reforms Commission, eight Bills were introduced in the Lok Sabha from time to time. However, all these Bills lapsed consequent upon the dissolution of the respective Lok Sabhas, except in the case of the 1985 Bill which was subsequently withdrawn after its introduction. A close analysis of the Bills reflects that there have been varying approaches and shifting foci in scope and jurisdiction in all these proposed legislations. The first two Bills viz. of 1968 and of 1971 sought to cover the entire universe of bureaucrats, Ministers, public sector undertakings, Government controlled societies for acts and omissions relating to corruption, abuse of position, improper motives and mal-administration. The 1971 Bill, however, sought to exclude the Prime

⁶ Lok Sabha Debates dated 23rd April, 1965, P. 10844. It is ironic that something described as "overdue" in 1965 by the MP is being enacted in 2011!

⁷ *Problems of Redress of Citizen and Grievances*, Interim Report of the First Administrative Reforms Commission, 1966.

Minister from its coverage. The 1977 Bill broadly retained the same coverage except that corruption was subsequently sought to be defined in terms of IPC and Prevention of Corruption Act. Additionally, the 1977 Bill did not cover maladministration as a separate category, as also the definition of “public man” against whom complaints could be filed did not include bureaucrats in general. Thus, while the first two Bills sought to cover grievance redressal in respect of maladministration in addition to corruption, the 1977 version did not seek to cover the former and restricted itself to abuse of office and corruption by Ministers and Members of Parliament. The 1977 Bill covered the Council of Ministers without specific exclusion of the Prime Minister.

The 1985 Bill was purely focused on corruption as defined in IPC and POCA and neither sought to subsume mal-administration or mis-conduct generally nor bureaucrats within its ambit. Moreover, the 1985 Bill impliedly included the Prime Minister since it referred to the office of a Minister in its definition of “public functionary”.

The 1989 Bill restricted itself only to corruption, but corruption only as specified in the POCA and did not mention IPC. It specifically sought to include the Prime Minister, both former and incumbent.

Lastly, the last three versions of the Bill in 1996, 1998 and 2001, all largely;

- (a) focused only on corruption;
- (b) defined corruption only in terms of POCA;
- (c) defined “public functionaries” to include Prime Minister, Ministers and MPs;
- (d) did not include bureaucrats within their ambit.

3.6. The Lokpal Bill, 2011 enables the Lokpal to inquire into allegations made in a complaint against a ‘public servant’. With the coining of this new term, the current Lokpal Bill, as proposed and as sent to this Committee, is distinct from the previous Bills mainly on the following counts:-

- Its jurisdiction is comparatively wider as it has widened the scope of ‘public servant’ by including the bureaucracy as also institutions and associations, wholly or partly financed or controlled by the Central Government or those who are in receipt of public money.
- It provides for separate investigation and prosecution wings of Lokpal
- It makes the declaration of assets by all ‘public servants’ mandatory and failure to do so liable to the presumption that such assets have been acquired by corrupt means.
- It is far more detailed and more inclusive than earlier versions, with a large number of principal and ancillary provisions not found in earlier versions.

- 3.7. It is thus clear that the concept of the institution of Lokpal has undergone vital and important changes over time keeping in view the changing socio-economic conditions and varying nature, level and pervasiveness of corruption in society.
- 3.8. Though the institution of Lokpal is yet to become a reality at the Central level, similar institutions of Lokayuktas have in fact been setup and are functioning for many years in several States. In some of the States, the institution of Lokayuktas was set up as early as in 1970s, the first being Maharashtra in 1972. Thereafter, State enactments were enacted in the years 1981 (M.P.), 1983 (Andhra Pradesh and Himachal Pradesh), 1984 (Karnataka), 1985 (Assam), 1986 (Gujarat), 1995 (Delhi), 1999 (Kerala), 2001 (Jharkhand), 2002 (Chhatisgarh) and 2003 (Haryana). At present, Lokayuktas are in place in 17 States and one Union Territory. However, due to the difference in structure, scope and jurisdiction, the effectiveness of the State Lokayuktas vary from State to State. It is noteworthy that some States like Gujarat, Karnataka, Bihar, Rajasthan and Andhra Pradesh have made provisions in their respective State Lokayuktas Act for suo motu investigation by the Lokpal. In the State Lokayukta Acts of some States, the Lokayukta has been given the power for prosecution and also power to ensure compliance of its recommendations. However, there is a significant difference in the nature of provisions of State Acts and in powers from State to State. Approximately nine States in India have no Lokayukta at present. Of the States which have an enactment, four States have no actual appointee in place for periods varying from two months to eight years.

CHAPTER - 4

CITIZENS' CHARTER AND GRIEVANCE REDRESSAL MECHANISM

I INTRODUCTION AND BACKGROUND

- 4.1. There has been a consistent, universal and widespread demand for creating a Public Grievances Redressal Mechanism and mandating a Citizens Charter for all government departments and public services in the country. This is to address grievances of the public in their dealing with public offices for issues not related to corruption but including vital issues like procrastination, inactivity, unresponsiveness etc. on the part of public functionaries. Since the Lokpal Bill 2011 drafted by the government restricted itself to issues relating to corruption, the issue of Grievance Redressal was not included. The draft Jan Lokpal Bill presented by the team headed by Shri Anna Hazare includes the issue of grievances redressal/citizens charter to be also addressed by the institution of Lokpal.

During the debate in Parliament on 27th August 2011 on the issue of setting up of Lokpal the Citizens Charter issue was one of the key items of the agenda. The Hon'ble Minister of Finance while summing up the deliberations stated that the House agreed in principle on, inter alia, the Citizens Charter to be brought under Lokpal through appropriate mechanism. Notably the United Nations Convention on Action Against Corruption (UNCAC) does not directly mention that each signatory State should have a Citizens Charter¹.

II SUMMARY OF SUGGESTIONS/OBSERVATIONS RECEIVED THROUGH WRITTEN MEMORANDA

- 4.1A. The memoranda received by the Committee carried the following suggestions/ observations:-
- The concept of Citizens' Charter was first mooted in a White Paper entitled "The Citizens' Charter: raising the standard" presented before the British Parliament in July, 1991.

¹ UNCAC was adopted by the United Nations General Assembly by Resolution 58/4 of 31st October, 2003 and opened up for signature at the high level political signing conference in Merida, Mexico from 9 – 11 December, 2003. The Convention entered into force on 14th December, 2005.

- Basic elements of Citizens' Charter are: (i) transparency (ii) accountability (iii) availability of information (iv) declared standards of service, with a promise to improve upon it and (v) an effective and efficient Grievance Redressal machinery.
- Include Citizens' Charter, Public Grievances, and Whistleblowers also in the Bill.
- Citizens Charter indicating time frame for each work should be introduced and responsibility of Govt. officer to be fixed; should have provisions for penalties, for failure to do so.
- Blue Print of the proposed mechanism
 - (i) Every citizen's letter should be acknowledged within a week.
 - (ii) Every citizen's letter should be replied within a month.
 - (iii) Every official who has public contact must wear a name badge.
- Grievance Redressal Mechanism must be separated from Lokpal / Lokayuktas and be modeled on RTI Act, 2005.
- Slow progress of any citizen's work to be deemed as "corruption".
- A comprehensive legal frame work should be provided under the Central Law by bringing in a separate legislation under Entry 8 of List-III of Seventh Schedule of the Constitution, for the purpose of putting in place an effective Grievance Redressal Mechanism, simultaneously with the Lokpal Bill.
- Needed, but in separate Bill for Central institutions and schemes, and separately for each of the States.
- Statutory back up is needed to provide a time limit; service and penalty as imposed by an appellate authority with Civil Court power; and a second appellate to reviewing authority be provided. The CVC should be the monitoring agency for citizens' charters.
- Enact public service delivery law and strong grievance redressal mechanism to effectively address petty corruption in delivery of services.
- United Nations Convention on Action Against Corruption (UNCAC) doesn't directly mention that each State party should have a "citizens' charter".
- There are many countries which included the principles of service orientation in their legislation in one or the other way.

- UNCAC does not mention about who the independent body or bodies should report to.

III. SUMMARY OF DEPOSITIONS GIVEN BY WITNESSES

- 4.2 The Ministry of Personnel (DoPT) have, in their comments, observed as follows:-

".....For redressal of public grievances, the Government proposes to bring a separate legislation before the Parliament".

- 4.3 Dr. Jayaprakash Narayan, President, Loksatta, while tendering oral evidence before the Committee, stated thus:

".....There is a case for Citizens' Charter and laws governing that. But, it must be applicable only to the notified agencies where there are no supply constraints. This is a very important consideration because an omnibus legislation saying that there will be a Citizens' Charter for every service is, simply, not practicable.....".

- 4.4 He further stated:

".....Then, as far as grievances are concerned, Mr. Chairman, as I mentioned before, there will be hundreds and thousands of grievances everyday. They must not come under Lokpal and Lokayukta. They must come under a separate grievance redressal authority....."

- 4.5 Speaking on this issue, Shri Ashok Kumar Parija (Chairman, Bar Council of India) said:-

".....The third issue is regarding citizen charter and grievances redressal. The Anna Hazare Lokpal Bill provides that each Government Department will have a citizen charter. We are of the view that we could have a different law for citizen charter and not mix it with the Lokpal....."

- 4.6. Shri Shekhar Singh (NCPRI) deposed before the Committee as under:-

".....We are not in favour of the grievance redress or citizen's charter being under the Lokpal. But we have suggested that there ought to be a parallel institution like grievance redress commissions both at the Centre and State levels. My colleagues will give you more details on that....."

- 4.7. Smt. Anjali Bhardwaj (NCPRI), while placing their views before the Committee, stated:-

".....there should be a separate legislation which deals with grievance redressal, and that legislation should focus on setting up an appropriate decentralized structure for dealing with issues of grievances. We feel that grievances और corruption के कैसेज एक साथ में एक बाँड़ी न देखे। हमारे देश में 1.2 बिलियन लोग हैं और सभी के कुछ न कुछ grievances हैं। अगर एक साल में किसी बाँड़ी के पास एक बिलियन से ज्यादा

grievances आ जायेंगे, it will collapse under its own weight, and it will not be effective. Therefore, we feel that a separate body needs to be set up to look into the issue of grievance redress. It needs to be a decentralized body because people often have very immediate nature of grievances....."

- 4.8. Shri Harish Salve, Sr. Advocate, Supreme Court of India, while clarifying his view on the topic, opined thus:-

".....I do not see, Sir, in my respectful submission to you, any specific Entry of the State which would apply to the framing of a Citizens' Charter and which would then put it squarely within the power of the Union Parliament. If you do frame a Citizens' Charter, Sir, then certainly as an incidental power, the Union Parliament can appoint an agency to enforce that Charter. And if that incidentally encroaches on the State's field, that is permitted by our Constitution"

- 4.9. He further opined :

".....What I suggest is, taking a leaf from the current Electricity Act, which we have, a structure should be created under the Union law in which States will appoint grievance redressal authorities. So, that also respects the principle of federalism. We have it already in the Electricity Act where State Commissions are appointed. So, under the Union law, you can always leave it to the State Governments to appoint their own grievance redressal authorities. You can prescribe what the collegium will be and you can prescribe as to how that collegium will appoint the grievance redressal authority but it must be left to the States"

IV. ANALYSIS AND DISCUSSION

- 4.10. At this juncture, the Committee also takes note of its earlier recommendations as contained in its 29th Report on the subject "Public Grievances Redressal Mechanism" wherein the Committee had observed :-

" In support of its foregoing recommendations/observations, the Committee, strongly recommends that the Public Grievance Redressal Mechanism should be envisaged in a statutory form on the line of the Right to Information Act, 2005 which would make it mandatory on all State Governments/ UTs/ Ministries/ Departments /Organisations to pursue the grievance till their final disposal. The Committee also reiterates that like Right to Information Act in the PGRM system there should be a time limit of 30 days and provision of fine on delay should be there".

- 4.11 The wide cross-section of opinion available to the Committee through memoranda and depositions overwhelmingly suggested that there was a dire need for enacting a Public Service Delivery law. Opinion was divided on whether it should be separate and distinct from the Lokpal, i.e., be resident in a separate legislation or be part of the Lokpal, though the preponderant view inclined towards the former.

- 4.12 One of the prime reasons for this separation, as cited by various witnesses, was that the institution of Lokpal would be severely burdened and become unworkable if it also included the jurisdiction of handling public grievances. Public Grievances Redressal, fortified through a Citizens Charter, would necessarily invite millions of complaints on a daily basis and it was, therefore, critical that a separate mechanism was set up more akin to the Right to Information structure.
- 4.13 The other major reason for keeping the Grievance Redressal Mechanism separate is that these are qualitatively different and easily severable from the issue of corruption in political and bureaucratic circles.
- 4.14 Citizens' Charter would involve not only framing, but monitoring of a list of DOs and DON'Ts for the Central Government (and corresponding State Government departments) which may not at all be feasible for a single Lokpal or a single Lokayukta to handle.

V. REASONS AND RECOMMENDATIONS

- 4.15 **The Committee believes that while providing for a comprehensive Grievance Redressal Mechanism is absolutely critical, it is equally imperative that this mechanism be placed in a separate framework which ensures speed, efficiency and focus in dealing with citizens' grievances as per a specified Citizens' Charter. The humongous number of administrative complaints and grievance redressal requests would critically and possibly fatally jeopardize the very existence of a Lokpal supposed to battle corruption. At the least, it would severally impair its functioning and efficiency. Qualitatively, corruption and mal-administration fall into reasonably distinct watertight and largely non-overlapping, mutually exclusive compartments. The approach to tackling such two essentially distinct issues must necessarily vary in content, manpower, logistics and structure. The fact that this Committee recommends that there must be a separate efficacious mechanism to deal with Grievance Redressal and Citizens' Charter in a comprehensive legislation other than the Lokpal Bill does not devalue or undermine the vital importance of that subject.**

4.16 Consequently the Committee strongly recommends the creation of a separate comprehensive enactment on this subject and such a Bill, if moved through the Personnel/Law Ministry and if referred to this Standing Committee, would receive the urgent attention of this Committee. Indeed, this Committee, in its 29th Report on “Public Grievance Redressal Mechanism”, presented to Parliament in October, 2008 had specifically recommended the enactment of such a mechanism.

4.17. To emphasize the importance of the subject of Citizens' Charter and to impart it the necessary weight and momentum, the Committee is of the considered opinion that any proposed legislation on the subject:

- (i)** should be urgently undertaken and be comprehensive and all inclusive;
- (ii)** such enactment should, subject to Constitutional validity, also be applicable for all States as well in one uniform legislation;
- (iii)** must provide for adequate facilities for proper guidance of the citizens on the procedural and other requirements while making requests.
- (iv)** must provide for acknowledgement of citizen's communications within a fixed time frame;
- (v)** must provide for response within stipulated time frame;
- (vi)** must provide for prevention of spurious or lame queries from the department concerned to illegally/unjustifiably prolong/extend the time limit for response;
- (vii)** must provide for clearly identifiable name tags for each employee of different Government departments;
- (viii)** must provide for all pending grievances to be categorized subject-wise and notified on a continually updated website for each department;
- (ix)** must provide for a facilitative set of procedures and formats, both for complaints and for appeals on this subject - along the lines of the Information Commissioners system set up under the RTI;

- (x) must, in the event that the proposed Central law does not cover states, make strong recommendations to have similar enactments for grievance redressal/citizen charter at each State level;
- (xi) may provide for exclusionary or limited clauses in the legislation to the effect that Citizen Charter should not include services involving constraints of supply e.g. power, water, etc. but should include subjects where there is no constraint involved e.g. birth certificates, decisions, assessment orders. These two are qualitatively different categories and reflect an important and reasonable distinction deserving recognition without which Government departments will be burdened with the legal obligation to perform and provide services or products in areas beyond their control and suffering from scarcity of supply.

4.18. The Committee strongly feels that the harmonious synchronization of the RTI Act and of the Citizens' Charter and Public Grievances Redressal Mechanism will ensure greater transparency and accountability in governance and enhance the responsiveness of the system to the citizens' needs/expectations/grievances.

4.19. Lastly, the Committee wishes to clarify that the conclusion of the Hon'ble Union Minister for Finance on the Floor of the House quoted in Para 1.8 above of the Report does not intend to direct or mandate or bind or oblige this Committee to provide for a Citizen's Charter within the present Lokpal Bill alone. The Committee reads the quoted portion in para 1.8 above to mean and agree in principle to provide for a Citizen's Charter/Grievance Redressal system but not necessarily and inexorably in the same Lokpal Bill. Secondly, the reference to 'appropriate mechanism' in para 1.8 above further makes it clear that there must be a mechanism dealing with the subject but does not require it to be in the same Lokpal Bill alone. Thirdly, the reference in para 1.8 above to the phrase 'under Lokpal' is not read by the Committee to mean that such a mechanism must exist only within the present Lokpal Bill. The Committee reads this to mean that there should be an appropriate institution to deal with the subject of Citizen's Charter/Grievance redressal which would be akin to the Lokpal and have its features of independence and efficacy, but not that it need not be the very same institution i.e. present Lokpal. Lastly, the Committee also takes note of the detailed debate and divergent views of those who spoke on the Floor of

both Lok Sabha and Rajya Sabha on this issue and concludes that no binding consensus or resolution to the effect that the Grievances Redressal/Citizen's Charter mechanism must be provided in the same institution in the present Lokpal Bill, has emerged.

- 4.20. Contextually, the issues and some of the suggestions in this Chapter may overlap with and should, therefore, be read in conjunction with Chapter 13 of this report. Though the Committee has already opined that the issue of grievance redressal should be dealt with in a separate legislation, the Committee hereby also strongly recommends that there should be a similar declaration either in the same Chapter of the Lokpal or in a separate Chapter proposed to be added in the Indian Constitution, giving the same constitutional status to the citizens grievances and redressal machinery.
- 4.21. This recommendation to provide the proposed Citizen Charter and Grievances Redressal Machinery the same Constitutional status as the Lokpal also reflects the genuine and deep concern of this Committee about the need, urgency, status and importance of a citizen's charter/grievance machinery. The Committee believes that the giving of the aforesaid constitutional status to this machinery would go a long way in enhancing its efficacy and in providing a healing touch to the common man. Conclusions and recommendations in this regard made in para 13.12 (j) and (k) should be read in conjunction herein.
- 4.22. Furthermore, the Committee believes that this recommendation herein is also fully consistent with the letter and spirit of para 1.8 above viz. the conclusions of the Minister of Finance in the Lower House recorded in para 1.8 above.

CHAPTER - 5
THE PRIME MINISTER: FULL EXCLUSION VERSUS
DEGREES OF INCLUSION

I. INTRODUCTION AND BACKGROUND

- 5.1** The issue of inclusion or otherwise of PM has received disproportionate media attention. The Committee received diverse written and oral suggestions varying from complete exclusion to deferred inclusion to partial inclusion (with subject matter exclusion) to inclusion subject to significant safeguards/ caveats and finally to total inclusion simpliciter. There was, however, one fascinating feature in the internal deliberations of the Committee. The intense debate and divergence during deliberations within the Committee was not over the Government versus the Jan Lokpal or some other draft but was between one group of Committee Members who strongly advocated the total, absolute and complete exclusion of PM and another group which argued for inclusion subject to a few substantive subject matter exclusions in addition to very significant and broad procedural safeguards (including a prior clearance from either a 11 member Lokpal or the full Bench of the Apex Court).

II. SUMMARY OF SUGGESTIONS/OBSERVATIONS RECEIVED THROUGH WRITTEN MEMORANDA

- 5.2** The memoranda received by the Committee carried the following suggestions/ observations:-
- Prime Minister cannot be subjected to Lokpal's jurisdiction in a cavalier manner.
 - The PM should be altogether kept out of the jurisdiction of Lokpal since Parliament is the best forum we can trust to enforce integrity in the office of the PM .
 - Include PM in clause 2(1) (i) with certain caveats.
 - It is necessary to include PM within the purview of Lokpal otherwise, corrupt Ministers/Officers will get away by pleading that they had acted with the approval/knowledge of PM.
 - At present, any criminal investigation into allegations made against Prime Minister are required to be investigated by CBI. Therefore, there is no problem if Lokpal investigates, instead of CBI.
 - Proceedings concerning Prime Minister to be in camera.

- Lokpal may investigate into complaints against PM signed by 50/75/100 MPs; similar method in States for CM.
- Prime Minister is *primus inter pares* or 'first among equals' in the Council of Ministers. Hence viewed from the Constitutional position, the Prime Minister gets the position of 'keystone of the Cabinet arc' only because he is the Head of the Council of Ministers and nothing else. There is nothing inherent in the position of Prime Minister because of which he should be given any special status, especially in matters relating to investigation of corruption.
- Some qualification like 'clearance from the Supreme Court' may be introduced in the Bill to put a wall to prevent black mailing of the Prime Minister.
- Proviso may be added to clause 2(1) (i) of the Bill which may read : "Personnel of Prime Minister's Office, including Minister-in-charge shall be included within this clause."
- Any complaint against Prime Minister to be evaluated by a Full Bench of Lokpal for *prima facie* evidence. Once the Bench finds *prima facie* evidence in the complaint, it may be referred to Full Bench of the apex Court for their opinion. On positive opinion from the apex Court, Lokpal notifies the ruling dispensation of imminent inquiry proceedings with a notice of few days giving them time to re-elect a new Prime Minister.
- No special treatment is needed for Chief Minister since there is provision of President's rule at State Government level and no power vacuum is created if Chief Minister has to resign. Article 356 exists for the States, not for the Centre.
- Office of PM, including the PM should be under Lokpal. However, acts regarding to national interest and public order should be excluded from the purview of Lokpal. Upon indictment, any reference for prosecution action against the PM can be taken only if the decision is endorsed by simple majority of Joint Session of Parliament.
- Bill should include in its ambit, the PM in office; but with certain safeguards like enquiry only after deliberations by the Full Bench of Lokpal, in consultation with the CJI.

- Complaints against PM – all such investigations shall be made in a confidential manner and in camera; if any information about material aspects is leaked out, the Investigation Officer shall be prima facie held responsible for such leakage.
- If the Lokpal finds a prima facie case against the PM in any complaint against him, he shall send a detailed report to the CJI, along with all material evidence, to seek appropriate directions in the matter, and shall not proceed further to file a charge sheet against the PM, until appropriate direction to do so is given to the Lokpal by the CJI, or until the expiry of six months from the date of submission of report by the Lokpal to the CJI, in case the Lokpal does not receive any appropriate direction from the CJI.
- Proviso to Clause 17(1)(a) may be added providing for inclusion of serving Prime Minister if two thirds of members of Lokpal make reference to a sanctioning Committee comprising of Vice-President, Speaker and the Leader of Opposition, Lok Sabha and if that Committee sanctions an inquiry into the conduct of the Prime Minister; and also that no such sanction of inquiry be sought or given against the Prime Minister in respect of allegations on matter to sovereignty and integrity of India and the security of the State.
- Definition of “Minister” should include “Personnel of PMO, including Minister-in-charge” – All important policy matters are laid before the PM for its approval; they pass through PMO with valuable views. Exclusion of PM may protect all those persons who are privy to such decision.
- The personal immunity of PM will cease after he demits office, but if inquiry/investigation into the facts is postponed till then, valuable evidence may be lost and immediate adverse impact on the nation may not be prevented.

Short Global Survey*

- **Afghanistan** – The President heads the executive and His Office is not under the law on anti-corruption, nor is the judiciary; **Bhutan** – Every individual residing in Bhutan, including the Prime Minister, judges and lower bureaucracy, are within ACC Bhutan's jurisdiction; **Indonesia** – all included; **USA** – President Clinton was issued a subpoena to testify before a grand jury that was investigating him for possible federal crimes; the court ruled that President Nixon had to turn over the incriminating White House tapes, rejecting his claim of executive privilege; **UK** – Prime Minister is the head of Government, Prime Minister is subject to the law in the same manner as any member of the public; **Korea** – President is both the head of state & head of Govt. President is subject to the Anti-corruption Act, the Public Service Ethics Act & relevant corruption provisions under the Criminal Act. However, under the constitution, the President is entitled to criminal immunity during his tenure of office except for insurrection or; **Australia** - All MPs, judges, magistrates, holders of judicial office are public officials within the meaning of ICAC Act. It extends to public sector agencies also except Police Force – whose corruption is investigated by the Police Integrity Commission.
- Usually, the criminal investigations against heads of department/state would be closely linked to parliamentary investigations & legal procedures for impeachment of a sitting head of state.

III. SUMMARY OF DEPOSITIONS GIVEN BY WITNESSES

- 5.3 The written comments furnished by the Department of Personnel and Training on this issue are as follows:-

".....In the context of the Indian polity, the Prime Minister occupies a pivotal position in the Government's set up. To ensure that Prime Minister is able to discharge his functions without any interference from any quarter, it is felt that the Prime Minister may be kept outside the purview of the Lokpal. However, after the Prime Minister has demitted the office, he will come within the purview of the Lokpal"

- 5.4 Justice M.N. Venkatachalaiah, while placing his considered views, before the Committee, on this subject matter, opined :-

".....I have made it clear in the Constitution Review Commission Report that the Prime Minister's Office must be kept out of it. You have no idea of what the Prime Minister's Office is in a parliamentary democracy....."

* As extracted from written memoranda submitted by UNDP India to the Committee.

5.5 Dr. Jayaprakash Narayan, while articulating his Party's view on this topic, stated:-

"..... the Prime Minister in our Westminster model is no longer merely first among equals; the Prime Minister of the country is the leader of the nation. A very large complex federal polity like India cannot afford to have the Prime Minister go before a non-Parliamentary body and present himself or defend himself It does not mean that the Prime Minister should not be accountable. The Prime Minister should be accountable to the Lok Sabha. That is what the Constitution envisages. Certainly, if the Lok Sabha feels that there is something seriously wrong, even the parties in power will not allow the Prime Minister to continue because it is politically not feasible and, constitutionally, the Lok Sabha must be supreme in dealing with the accountability of the Government..... it also will lead to a potential situation where there will be roving inquiries without any substance and even if subsequently it is proved that the Prime Minister's conduct is totally honourable, the damage will be done to the country because if the country is destabilized, if a Government is weakened, the damage is irreversible....."

5.6 He further stated:

"..... Mr. Chairman, to ensure that there are very, very strong safeguards and, in those safeguards, we do not believe that judiciary should be the safeguard in protecting the Prime Minister's institution. We believe it must be a Parliamentary body and, therefore, what we propose is that in case the Prime Minister is sought to be brought within the purview of the Lokpal's jurisdiction, then, after Lokpal, on the basis of the prima facie evidence or the material before it, at least, two-thirds majority asks a Parliamentary Committee to sanction permission to inquire. Our humble suggestion is that committee should be a three-member committee -- we could actually have a variant of that -- headed by the Vice-President of India with the Speaker of the Lok Sabha as a Member and the third member being the Leader of the Opposition. Nobody can accuse this body of partisanship because, after all, these are the two high Chairs of the two Houses of the Parliament. The Leader of the Opposition cannot be accused of being partisan in favour of the Government. If anything, the Leader of the Opposition would probably be harshly critical. Perhaps, we can trust these three members to protect the dignity of the Parliament and the nation's institutions and the privileges of the Executive branch. So, if, indeed, it is found necessary to include the Prime Minister under the jurisdiction of the Lokpal, a safeguard of that kind would probably be practical and would probably protect the interests of the country..... the Prime Minister...is not merely first among equals, but he occupies a very pivotal position. There is no equivalent of Article 356 in the Government of India and the Prime Minister is not somebody who can be chosen just like that,....."

5.7 The representative of NCPRI, while advocating their views on this issue, stated that:-

".....So, we have suggested three or four type of safeguards. Number one, we have said that only a full Bench of the Lokpal could recommend investigation against the Prime Minister. Number two that Bench will have to refer the matter to a full Bench of the Supreme Court. This is like a mandatory appeal to the Supreme Court which will also examine if there is sufficient evidence. Number three, the Prime Minister cannot be investigated under vicarious responsibility what somebody else has done, but only what the Prime Minister allegedly himself or herself has done. Number four, that there are certain security and other issues which would be exempt from this....."

5.8 The views of the Bar Council of India, were expressed by its Chairman, in the following words :-

".....So we want the Prime Minister out of the Lokpal. Now what we suggest is if the Prime Minister is required to be included and if there is an inquiry against the Prime Minister, let it be investigated in-camera by a bench of five-judges of the hon. Supreme Court presided by the hon. Chief Justice and five senior judges. These proceedings will be in-camera till a definite conclusion is arrived at....."

5.9 The President, Center for Policy Research while tendering oral evidence before the Committee, put forth his suggestions as under:-

".....the manner in which the Prime Minister should be brought under the Lok Pal is of some importance. My own view is that I think the Lok Pal Bill, as it currently stands, gets it mostly right. It asserts the principle that the Prime Minister is not above the law, therefore, he can be investigated after he demits office. But he makes due allowance for the fact that the Prime Minister is not just an expression of the sovereignty of the people, the risks of needless investigations, frivolous investigations against the Prime Minister as it were holding Government to ransom, keeping the country's interests are not inconsiderable and, therefore, the Prime Minister should be out of the purview of the Lok Pal while he is in office"

5.10 During his deposition before the Committee, he further observed thus:-

".....Sir, I would submit, there are two models which you can look at. The U.K. has excessive exclusions, but it has list of exclusions. Foreign affairs and the affairs relating to the security of the State are two clear examples where, obviously, the Lokpal can have no look-in. The Hong Kong law is far narrower in its exclusions. One can debate individual items, whether they should or should not go; maybe the functioning of the Prime Minister's Office in the economic Ministries needs to be put under the Lokpal. But, outside the economic Ministries, I would suggest it would be hazardous to generally subject the Prime Minister to the jurisdiction of the Lokpal. We have to strike a balance somewhere and I think, that may be a good line to consider on which it can be divided.....As far as the inclusion of the Prime Minister in the ambit of the Bill is concerned, my suggestion was on the balance in India. We must include the Prime Minister, at least, in the working of the PMO in the Economic Ministry and that include the Ministry of Finance, Ministry of Mines, Ministry of Telecommunications, the Ministry of Urban Development, Ministry of all

natural resources, wherever dealing with the taxpayers' money, wherever you are dealing with the finance must come within the purview of the Lokpal Bill"

5.11 The representative of CII, commented on this issue as follows:

".....The first issue is the inclusion of the Prime Minister. We believe that the Prime Minister should be outside the purview of the Lokpal Bill. We also believe that he could be investigated after he demits office. The rationale for our saying this is that the Prime Minister is the head of the Government and he needs to run the Government on a day-to-day basis and anything that hampers his ability to run the Government is something which is not going to be good for the nation....."

5.12 The advocates of the Jan Lokpal Bill, expressed their views on this matter as under:-

".....If any PM works for two consecutive terms, then his works for the first few years cannot be investigated because no case earlier than seven years could be investigated....."

5.13 Shri Amod K. Kanth, while commenting on this issue, stated that :-

".....Anyone who has knowledge of our Constitution and Indian laws knows that the rule of law does not exclude the Prime Minister of India at all. Only the President and the Governors have the constitutional immunity. Even today the Prime Minister can be easily investigated. In fact, to make a special provision for the Prime Minister will be a wrong suggestion....."

5.14 It is significant to note that the Second Administrative Reforms Commission, in its Fourth Report on "Ethics in Governance" had observed that:-

"The Prime Minister's unchallenged authority and leadership are critical to ensure cohesion and sense of purpose in government, and to make our Constitutional scheme function in letter and spirit. The Prime Minister is accountable to the Parliament, and on his survival, depends the survival of the government. If the Prime Minister's conduct is open to formal scrutiny by extra-Parliamentary authorities, then the government's viability is eroded and Parliament's supremacy is in jeopardy... A Prime Minister facing formal enquiry by a Lok Pal would cripple the government. One can argue that such an enquiry gives the opportunity to the incumbent to defend himself against baseless charges and clear his name. But the fact is, one there is a formal enquiry by a Lok Pal on charges, however baseless they might be, the Prime Minister's authority is severely eroded, and the government will be paralysed. Subsequent exoneration of the Prime Minister cannot undo the damage done to the country or to the office of the Prime Minister. If the Prime Minister is indeed guilty of serious indiscretions, Parliament should be the judge of the matter, and the Lok Sabha should remove the Prime Minister from office."

5.15 During the deliberations of the Committee, one of the Members articulated his point of view as follows:-

".....प्राइम-मिनिस्टर की पूरी *liability* तो *vicarious* ही है। अगर मंत्रिमंडल में 20 मंत्री हैं, तो प्राइम-मिनिस्टर कोई विभाग डायरेक्टली नहीं देख रहे हैं। आप इसको व्यावहारिक तौर पर कैसे लाएंगे? अगर संचार मंत्रालय में कुछ गड़बड़ हुई, अगर पेट्रोल वाले मिनिस्टर से कुछ गड़बड़ हुई, तो आप यह जो *vicarious* की सील है, इसको कैसे *implement* करेंगे? दूसरा जब आप खुद कह रहे हैं कि *Anti-corruption Act* और *Prevention of Corruption Act* में वह *covered* है, तो क्या आप यह महसूस नहीं करते कि यह *sufficient safeguard* है?....."

- 5.16 Another Member of the Committee raised a pertinent concern on this topic in the following words :-

".....Second was the inclusion of the Prime Minister within the ambit of the Lokpal. There are a lot of serious issues which could be national security, public order, foreign policy, even there are Ministers, for instance, the Ministers of Defence or Foreign Affairs. What do we do about them? You have your nuclear installations. You have your scientists. You have important issues. What do we do about them? Do we have them in the ambit of the Lokpal? Wouldn't we be compromising on the security and integrity of the country?....."

V. ANALYSIS AND DISCUSSION

- 5.17 The issue of the Prime Minister's inclusion or exclusion or partial inclusion or partial exclusion has been the subject of much debate in the Committee. Indeed, this has occupied the Committee's deliberations for at least three different meetings. Broadly, the models / options which emerged are as follows:

- (a) The Prime Minister should be altogether excluded, without exception and without qualification.
- (b) The Prime Minister should altogether be included, without exception and without qualification (though this view appears to be that of only one or two Members).
- (c) The Prime Minister should be fully included, with no exclusionary caveats but he should be liable to action / prosecution only after demitting office.
- (d) The Prime Minister should be included, with subject matter exclusions like national security, foreign affairs, atomic energy and space. Some variants and additions suggested included the addition of "national interest" and "public order" to this list of subject matter exclusions.
- (e) One learned Member also suggested that the Prime Minister be included but subject to the safeguard that the green signal for his prosecution must be first

obtained from either both Houses of Parliament in a joint sitting or some variation thereof.

- 5.18 It may be added that so far as the deferred prosecution model is concerned, the view was that if that model is adopted, there should be additional provisions limiting such deferment to one term of the Prime Minister only and not giving the Prime Minister the same benefit of deferred prosecution in case the Prime Minister is re-elected.
- 5.19 In a nut shell, as far as the large number of the Members of the Committee are concerned it was only three models above viz. as specified in paras (a), (c) and (d) in para 5.17 above which were seriously proposed.
- 5.20 Since the Committee finds that each of the views as specified in paras (a), (c) and (d) in para 5.17 above had reasonably broad and diverse support without going into the figures for or against or into the names of individual Members, the Committee believes that, in fairness, all these three options be transmitted by the Committee as options suggested by the Committee, leaving it to the good sense of Parliament to decide as to which option is to be adopted.
- 5.21 It would be, therefore, pointless in debating the diverse arguments in respect of the each option or against each option. In fairness, each of the above options has a reasonable zone of merit as also some areas of demerit. The Committee believes that the wisdom of Parliament in this respect should be deferred to and the Committee, therefore, so opines.

VI. REASONS AND RECOMMENDATIONS

- 5.22 **The issue of the Prime Minister's inclusion or exclusion or partial inclusion or partial exclusion has been the subject of much debate in the Committee. Indeed, this has occupied the Committee's deliberations for at least three different meetings. Broadly, the models / options which emerged are as follows:**
- (a) **The Prime Minister should be altogether excluded, without exception and without qualification.**

- (b) The Prime Minister should altogether be included, without exception and without qualification (though this view appears to be that of only one or two Members).**
- (c) The Prime Minister should be fully included, with no exclusionary caveats but he should be liable to action / prosecution only after demitting office.**
- (d) The Prime Minister should be included, with subject matter exclusions like national security, foreign affairs, atomic energy and space. Some variants and additions suggested included the addition of “national interest” and “public order” to this list of subject matter exclusions.**
- (e) One learned Member also suggested that the Prime Minister be included but subject to the safeguard that the green signal for his prosecution must be first obtained from either both Houses of Parliament in a joint sitting or some variation thereof.**

5.23 It may be added that so far as the deferred prosecution model is concerned, the view was that if that model is adopted, there should be additional provisions limiting such deferment to one term of the Prime Minister only and not giving the Prime Minister the same benefit of deferred prosecution in case the Prime Minister is re-elected.

5.24 In a nut shell, as far as the overwhelming number of Members of the Committee are concerned, it was only three models above viz. as specified in paras (a), (c) and (d) in para 5.17 above which were seriously proposed.

5.25 Since the Committee finds that each of the views as specified in paras (a), (c) and (d) in para 5.17 above had reasonably broad and diverse support without going into the figures for or against or into the names of individual Members, the Committee believes that, in fairness, all these three options be transmitted by the Committee as options suggested by the Committee, leaving it to the good sense of Parliament to decide as to which option is to be adopted.

5.26 It would be, therefore, pointless in debating the diverse arguments in respect of each option or against each option. In fairness, each of the above options has a reasonable zone of merit as also some areas of demerit. The Committee believes

that the wisdom of Parliament in this respect should be deferred to and the Committee, therefore, so opines.

CHAPTER - 6
MEMBERS OF PARLIAMENT: VOTE, SPEECH AND CONDUCT
WITHIN THE HOUSE

I. INTRODUCTION AND BACKGROUND

- 6.1 Clause 17(1)(c) of the Lokpal Bill, 2011 enables the Lokpal to inquire into any matter involved in, or arising from, or connected with, any allegation of corruption made in a complaint in respect of any person who is or has been a Member of either House of Parliament. However, sub-clause (2) of this clause specifies that Lokpal shall not inquire into any matter involved in, or arising from, or connected with, any allegation of corruption complaint against any Member of either House of Parliament in respect of anything said or vote given by him in Parliament or any Committee thereof covered under the provisions contained in clause (2) of Article 105 of the Constitution. In other words, MPs and ex-MPs fall under the jurisdiction of the Lokpal for their acts of corruption, except that their acts like speech or voting in the House cannot be inquired into by the Lokpal to the extent they are covered under Article 105(2) of the Constitution. The Committee had received detailed inputs on the issue whether the conduct of MPs in the House (in the form of speech/ vote or action) should also be brought under the jurisdiction of the Lokpal.

II. SUMMARY OF SUGGESTIONS/OBSERVATIONS RECEIVED THROUGH WRITTEN MEMORANDA

- 6.2 Any complaint against a member of any House by Lokpal can be sent to the Presiding Officer of the House, who will, within a limited (well defined) time, either approve the inquiry to be conducted against the Member or if he wants to reject the inquiry, refer it to the Bench of SC/HC which should validate the reasons for such rejection.
- 6.3 To ensure independence of institutions created under the Constitution, only those acts of MPs in the House where there is a case of undue pecuniary benefit should fall under purview of Lokpal. Moreover, for prosecution of MPs, the Lokpal Prosecution/Investigative Committee/Bench should for these specific cases co-opt additional members who are MPs nominated by the Speaker of Lok Sabha and Chairman of Rajya Sabha.

- 6.4 Parliamentary privilege does not cover corrupt acts committed by MPs in connection with their duties in the House or otherwise. Hence, the Bill should include such corrupt practices of MPs, whether done in or outside the House.
- 6.5 The speech of an elected MP inside Parliament cannot be subject to the ideological prejudices of a Lokpal; the vote of an elected Member, if tainted by corruption, must be tackled by Parliament itself as per its rules and norms.
- 6.6 Clause 17(2) of the Bill should be deleted since there is already a decision of a Constitution bench of the Supreme Court supporting what the sub section says and hence it is not necessary to repeat it in the Bill.

II. SUMMARY OF DEPOSITIONS GIVEN BY WITNESSES

- 6.7 The Ministry of Personnel (DoPT) in its comments furnished to Committee clarified the issue in the following terms:-
- ".....It is a matter for examination whether the inquiry by the Lokpal in respect of anything said or vote given by a Member of Parliament would fall under the category 'proceedings before a court of law'. If so, the MPs would certainly have to be kept outside the purview of the Lokpal"*
- 6.8 Chairman of Bar Council of India placed the views of the Bar Council over this issue before the Committee as follows:
- ".....Now so far as conduct of MPs within the Parliament is concerned, our view is they should be excluded from the purview of the Lokpal. What we believe is that conduct of MPs within Parliament should be excluded from the purview of the Lokpal Bill considering the constitutional provisions in respect of privileges of Members in Parliament. However, in terms of Article 105 (3) of the Constitution, the powers, privileges and immunities of each House of Parliament and of the Members and the Committees of each House should be defined by Parliament by a separate law dealing with the subject....."*
- 6.9 The President, Centre for Policy Research, while making a presentation before the Committee, emphasized that Constitutional protection given to MPs need not be changed. He put forward his views as:-
- ".....Now, about inclusion of Members of Parliament, my own view is that the protection provided to the Members of Parliament under article 105 (2)(iii) should be sacrosanct. I think for what you say on the floor of the House and the votes and so forth, there is a reason for that constitutional protection and that should remain....."*
- 6.10 Shri Harish Salve while placing his considered views before the Committee, on this subject matter, opined as follows:-

".....Article 105 is extremely clear. The control over the Parliament must lie within the Parliament. As much as the control within the Courts lie with the Presiding Officers, as much as nobody from outside Court can tell me what to say in the Court, nobody from outside Parliament can tell any parliamentarian how to behave and what to say in the Parliament, and that is far too precious a virtue for us to sacrifice or compromise. But, Sir, do take this occasion to clear up one terrible aberration that has come into our law. Where article 105 applies, there is complete immunity. But, Sir, please clarify that the immunity of article 105 is not a half-way house; the bribe taker is protected and the bribe giver is subjected to scrutiny of the law. That judgment needs to be corrected. If it is established that somebody has taken a bribe to vote in Parliament in a particular way, with the sanction of the Speaker, because Supreme Court read that in, that can be put on a statutory basis, and if the Speaker of the House considers it appropriate, it is a matter which can be put within the domain of the Lokpal for the investigation. And, once the Speaker of the House, which means once the House, feels that it is a fit case for the Lokpal, then this artificial divide between the bribe giver and the bribe taker must go....."

- 6.11 President of CII while apprising the Committee of his views/ comments on the issue, observed as follows:-

".....The next issue is MPs action inside the Parliament. We believe that the existing arrangement should continue. The Privileges Committee should take care of the MPs' action inside the Parliament. If there is any lacuna in the functioning of the Privileges Committee or if the Privileges Committee is lacking any teeth in the manner in which it can act, I believe that needs to be looked at and that needs to be strengthened....."

- 6.12 Shri Shekhar Singh of NCPRI while tendering oral evidence before the Committee, put forth his suggestions as under:-

"..... Let the matter stays as it is though we are not in agreement with what we understand to be the implications of the Supreme Court Order on this matter. We feel that that has gone beyond what the Constitution envisages. So, we would like a position which is strictly in keeping with the Constitutional position. But we would like the Parliament to consider whether it itself wants to review this position especially in the light of some of the past occurrences and, maybe, relax it in a way in which public feel that there is a greater answerability of the MPs even when they are in Parliament....."

- 6.13 Dr. Jayaprakash Narayan during his presentation before the Committee, elucidated upon the issue as follows:-

"As far as Members of Parliament are concerned, article 105(2), the present Bill makes a specific provision of that; I think, it is section 17 (2), if I am not mistaken. Sir, protection of privileges of Members of Parliament for their conduct in the House, what they say, what they believe, and what documents they furnish, that is absolutely inviolable. That is sacrosanct, including their vote Sir until that is undone, for the lower courts of the Country, the judgment of the Supreme Court is final and binding, and therefore there cannot be any prosecution of a Member of Parliament on grounds of corruption for an act committed in the House. Our view is that these two things

must be delinked—the act committed in the House and the corruption, i.e., receiving illegal gratification in order to do a certain thing or not to do in Parliament, in the interest of the Parliament and its dignity. That has to happen only through the Supreme Court pronouncement because Supreme Court has already held; or, it can happen by a law.

Parliament and institutions of Constitution are increasingly under attack and now if the Parliament takes this stand, it will actually undermine Parliamentary democracy and the Constitution. Therefore, very humbly, we submit that this must be delinked and section 17(2) must be deleted....."

IV. ANALYSIS AND DISCUSSION

- 6.14 From the constitutional perspective, it is quite clear that irrespective of demands, personal preferences, opinions or public perception, it is not possible to prosecute MPs for corruption related acts or omissions so long as such conduct is relatable either to their vote in the House and /or to their speech in the House and/or to publication thereof. The bar of Article 105 is complete and absolute and unless there is a constitutional amendment, the issue cannot be considered further.
- 6.15 As regards conduct of MPs, both sitting and former, in respect of allegations of corruption not related to their vote/speech/conduct in the House, the Lokpal Bill already mandates coverage under section 17 (1) (c).
- 6.16 There appears to be no consensus among the Committee Members or, indeed among political parties to the effect that Article 105 be deleted or substantially or marginally modified to erode or deprive MPs of this immunity. Such an enterprise would lead to avoidable confusion and certain and inordinate delay involving a constitutional amendment without even minimal consensus. Thus as far as Article 105 is concerned, there being united opposition regarding protecting the privilege of MPs and preservation of the essence of Article 105, it is recommended that the exception or clarification contained in section 17 (2) of the Lokpal Bill be retained.
- 6.17 There is a perception that conduct of MPs in the House is not subject to any monitoring or sanction. In this context it is critical to underscore that Article 105 does not provide MPs immunity or protection from disciplinary proceedings or sanctions initiated and conducted by the Parliament itself. As an illustration the cash for questions scam in this year led to the expulsion of 11 Members from different political parties. Their appeal to the Supreme Court challenging their expulsion was

also rejected by the Supreme Court². There is a weighty body of opinion in our country which thinks that this is the way it should be and that for vote, speech or action within Parliament, accountability must be demanded from and owed to Parliament itself and not to external policing bodies like Lokpal.

- 6.18 Even the Jan Lokpal Bill as presented by the team headed by Shri Anna Hazare proposed that investigations into affairs of the Members of Parliament should be permissible, subject to Article 105 of the Constitution. They, however, contend that Article 105 of the Indian Constitution does not seek to immunize corrupt vote, corrupt speech and corrupt action within the House. Alternatively, they contend that if Article 105 is read to granting immunity to vote, speech or conduct involving corruption, then Article 105 must necessarily be amended.

V. REASONS AND RECOMMENDATIONS

- 6.19 **The Committee strongly feels that constitutional safeguards given to MPs under Article 105 are sacrosanct and time-tested and in view of the near unanimity in the Committee and among political parties on their retention, there is no scope for interfering with these provisions of the Constitution. Vote, conduct or speech within the House is intended to promote independent thought and action, without fetters, within Parliament. Its origin, lineage and continuance is ancient and time-tested. Even an investigation as to whether vote, speech or conduct in a particular case involves or does not involve corrupt practices, would whittle such unfettered autonomy and independence within the Houses of Parliament down to vanishing point. Such immunity for vote, speech or conduct within the Houses of Parliament does not in any manner leave culpable MPs blameless or free from sanction. They are liable to and, have, in the recent past, suffered severe parliamentary punishment including expulsion from the Houses of Parliament, for alleged taking of bribes amounting to as little as Rs. 10,000/- for asking questions on the floor of the House. It is only external policing of speech, vote or conduct within the House that Article 105 frowns upon. It leaves such speech, vote and conduct not only subject to severe intra-parliamentary scrutiny and action, but also does not seek to affect corrupt practices or any other vote, speech**

² See the judgement of five judges Constitutional bench headed by Chief Justice Y.K. Sabharwal in *Raja Rampal Vs. The Hon'ble Speaker, Lok Sabha and Ors.* dated 10th January, 2007.

or conduct outside Parliament. There is absolute clarity and continued unanimity on the necessity for this limited immunity to be retained. Hence, speculation on constitutional amendment in this regard is futile and engenders interminable delay.

- 6.20 Consequently, the existing structure, mechanism, text and context of clauses 17 (1) (c) and 17 (2) in the Lokpal Bill 2011 should be retained.**

CHAPTER 7
LOKPAL AND STATE LOKAYUKTAS:
SINGLE ENACTMENT AND UNIFORM STANDARDS

I. INTRODUCTION AND BACKGROUND

- 7.1 Keeping in mind the federal structure of our country and the need to cover all public functionaries, either at the Centre or at the States under a corruption watchdog, it has long been proposed that while there would be a Lokpal for the Centre, there must be Lokayuktas for each State. The difference in terminology is merely to demarcate the Centre – State distinction, albeit the roles performed by the Lokpal and Lokayukta in their respective jurisdictions would be similar. Over a period of time some States have enacted legislations creating the office of the Lokayukta. Their evolution at the State level has been briefly adverted to in para 3.8 above. While some of these States have institutions which developed roots in that State, other States have not succeeded in realizing their own legislative mandate. Still others do not still have Lokayuktas, either on account of absence of legislation³ or due to unfulfilled vacancy⁴. Currently about 17 States and one Union Territory have Lokayukta enactments with huge variance in their jurisdiction, powers, scope, function and mandate. The standards applied to identifying offences, investigations, prosecution and penalties differ from State to State. Therefore there has been a huge clamor for universal standards and an omnibus umbrella enactment to cover all States as also the Union. However, considering the federal structure of the Constitution and the split of powers between Centre and State, there has been a debate about the constitutional feasibility of such an omnibus enactment.

II. SUMMARY OF SUGGESTIONS/OBSERVATIONS RECEIVED THROUGH WRITTEN MEMORANDA

- 7.2 Lokayuktas needed in States.
- 7.3 This Bill should also incorporate a separate chapter on Lokayukta in each State and local ombudsman in each city / district under the Lokayuktas. Lokayuktas may be empowered on the lines of Lokpal and CVC as in the case of Central Government.

³ Nine States and six UTs do not have institution of Lokayukta

⁴ Presently, post of Lokayukta is vacant in four States which have Lokayukta enactment.

- 7.4 Set up strong Lokayuktas in the States within the frame work of the Constitution
- 7.5 Lokpal needs to be a Constitutional authority, like the ECI or CAG rather than a statutory body, so that it has higher levels of legitimacy.

- 7.6 The DoPT, in its written comments on the issue, has stated:-

".....The Bill seeks to provide Lokpal at the Centre and it may constitute Benches which shall ordinarily sit at New Delhi [Clause 19]. At State level, the concerned State Government has to consider setting of Lokayuktas."

- 7.7. The proponents of the Jan Lokpal Bill, in their written submission, have opined thus:-

".....Similar provisions for Lokayuktas in the States to deal with public servants of respective State will have to be incorporated in this Bill.

18 States already have Lokayuktas. However, they are all very different from each other in terms of powers, jurisdictions etc. They have proved ineffective in checking corruption due to critical deficiencies in most of these legislations. Other States do not have any Lokayuktas. Therefore, it is urged that through the same Act, a uniform institution of Lokayukta should be set up in each State on the same lines as Lokpal at the Centre....."

III. SUMMARY OF DEPOSITIONS GIVEN BY WITNESSES

- 7.8 The representatives of NCPRI placed their views before the Committee as under:-

"...The first comment is that we were disappointed that in the Government Lokpal Bill there was no mention that there will be a corresponding Lokayuktas at the State level. It is our belief that the Parliament is competent to legislate despite the fact that there have been debates to the contrary on a Bill which includes both the Lokpal at the Centre and the Lokayukta at the State level. We have given our reasoning....."

- 7.9 Dr. Jayaprakash Narayan, while voicing his opinion on this issue, stated:-

"...I am going to argue that the Lokayukta must be mandatorily created and the law must be under article 253."

- 7.10 The CVC, in its written submission to the Committee, observed that:-

"At present, there are multiple agencies and bureaus in the States and the focus in addressing anticorruption matter in the States needs to be more organized. The Commission receives a large number of complaints relating to matters of State Governments and the Commission has no jurisdiction over the State mechanisms of Lokayuktas in the States on the lines of Lok Pal should be established within the frame work of our Constitution."

- 7.11 Justice J.S. Verma came forward with the following opinion on the issue of going in for an omnibus federal legislation to set up Lokayuktas in the States. The opinion of

Justice Verma which covers the aspect of the constitutionality of the proposed move also, reads as follows:-

"...Article 253 of the Constitution confers the legislative competence needed to implement the UN Convention, which has been signed and ratified by India. It is relevant to highlight that Article 6 of the convention enshrines a specific obligation for member states to establish bodies that present corruption.....The directive principle of State policy in Article 51(c), as a principle fundamental in governance is available as an aid. There is, therefore, no need to look for any additional support for the legislative competence of the Parliament to legislate on the subject for the whole territory of India. In addition, it would not be out of place to mention that the failure to take effective steps with respect to the establishment of such institutions could lead to India being considered to be in breach of its obligations under international law, which must obviously be avoided at all costs...."

...Similarly, for 'combating corruption' in a more effective manner a uniform legislation enacted by the Union Parliament by invoking Article 253 can provide for the Lokpal and the Lokayuktas....."

...The Parliamentary central enactment made by invoking Article 253 would be constitutionally valid, such legislative competence in the Union Parliament being expressly provided as a part of the constitutional scheme, consistent with the nature of federalism created by the Constitution...."

7.12 Justice J.S. Verma, while placing his considered views before the Committee, stated :-

".....But we are trying to say not a single word except to provide a declaration that there could be a Constitutional body and once this Constitution Amendment Bill is passed so that it becomes a part of the Constitution. Then, there are several other implications which have got to be taken note of. This is something which cannot be ordinarily amended like an ordinary statute by some simple majority. It would be difficult. Secondly, if it becomes a basic feature and, therefore, a part of the basic structure which personally, I think, my friend agrees, ultimately it will become a part of the indestructible basic structure of the Constitution which any kind of change in the political equations or formulations, it would be beyond amending power even of Parliament."

Article 253 of the Constitution clearly provides that for the purpose of implementing an international treaty, convention, etc., the Parliament is entitled to enact for the whole or any part of the territory. We have already a precedent. The Protection of Human Rights Act, 1993 was enacted by the Parliament. We deal with not only the Constitution and the National Human Rights Commission but also the State Human Rights Commission. It is for the whole."

My preference would be for a federal legislation because that is something which will ensure uniformity. The State would be involved only in making the appointment....."

7.13 The deposition of Dr. Jayaparakash Narayan on this issue was as under:-

".....That is the reason why we believe that a Lokayukta institution is absolutely necessary under Article 253, not under Article 252 with due respect. And, the Chief

Minister must be brought under the purview of Lokpal, but not under Lokayukta ideally....."

- 7.14 The Committee takes note of the opinion of Shri Harish Salve in this regard:-

".....We cannot sacrifice federalism because a group of people do not have faith in the State Governments. If the law is to come in that form, then it cannot, in my respectful opinion, apply to the States. The States in Entry 41 List-II of the Constitution have the right to regulate their own services as any employer should. If the States have to govern themselves, it must be under their own law"

- 7.15 In its written memorandum submitted to the Committee, CHRI has opined:

".....So a single law providing for both Lokpal and Lokayuktas can be enacted by Parliament under multiple fields mentioned in List III. As the scheme of division of powers mentioned in Articles 246 and 254 of the Constitution gives preeminence to laws made by Parliament [except under certain circumstances spelt out in Article 254(2)] this law will prevail over all other existing laws relating to the working of Lokayuktas. A law made by Parliament will ensure uniformity in the systems established for combating corruption throughout the country.....The proposed Lokayukta will have the power to recommend dismissal or other penalties against corrupt officers of the State Public services only in the context of a corruption-related matter brought before it. The proposed law does not seek to empower the Lokayukta to exercise such powers routinely in the manner of State Governments. Such incidental encroachment on any field contained in list II is permissible under this rule of interpretation. As the central purpose of the proposed Lokpal/ Lokayukta legislation is not the regulation of the State Public Services but combating corruption, the courts are no likely to strike it down on the ground of lack of legislative competence."

- 7.16 On the issue whether the Bill would also be entitled to repeal the existing Lokayukta enactments, the considered view of Justice J.S. Verma was:-

".....Once the Union Parliament enacts the central legislation by invoking Article 253 for the whole territory of India, the existing State legislations relating to the Lokayuktas being repugnant to it shall be void, by virtue of Article 254(1)....."

- 7.17 The Ministry of Law (Department of Legal Affairs) expressed their views in the following terms, on the issue under examination:-

"It may be stated in this regard that while examining the draft note for the Cabinet regarding Lokpal Bill, 2011, this Department has already opined that the subject matter of the Draft Bill is relatable to Entry 1 and 2 of List III i.e. Concurrent List of the Seventh Scheduled to the Constitution, As such the Parliament as well as Legislative Assemblies have legislative competence over the subject. Further, as the proposed Bill would extend to the whole of India, the constitution of Investigation wing having powers of Police for the purpose of investigation of offences punishable under the Prevention of Corruption Act, 1988 (Clauses 12& 13 of the Draft Bill) and the establishment of Prosecution Wing (Clause 15 of the Draft Bill) may likely to affect the powers of the States, as "Police" and "Public Order" are the subjects

which find place as Entry 1 and 2 respectively in the List II i.e. State List of the Seventh Schedule to the Constitution. Therefore, an enactment by the Parliament on the subject to provide for State Lokayuktas in Lok Pal Bill 2011, may not only amount to encroachment upon the jurisdiction of the States but would also affect the federal structure of the Constitution.

Besides the aforesaid, under the proposed Bill, no sanction or approval would be required under Section 197 of the Code of Criminal Procedure, 1973 or Section 19 of the Prevention of Corruption Act, 1988 where prosecution is proposed by Lokpal (Clause 26 of the Draft Bill). This may also be against the concept of the protection presently available to the public servants. Under Article 253 of the Constitution the Parliament can enact with respect to any subject (including State subjects) for the purpose of implementing any treaty or agreement or convention with any other country or countries or any decision made at any international conference or body. But the enactment by Parliament, if any, under Article 253 would also be within the ambit of the constitution.

Regarding the Constitutionality of including State Lokayuktas in the Lokpal Bill, 2011, the Parliament may consider to enact a model law for the States.”

- 7.18 Shri Rajeev Dhawan, Sr. Advocate, Supreme Court of India while placing his views before the Committee, stated thus:-

".....Bringing Lokayuktas under the Bill may be unconstitutional. It is certainly anti-federal. Let the states decide what they want and how their chief Ministers should be toppled....."

IV. ANALYSIS AND DISCUSSION

- 7.19 There are many advantages to having the Lokayukta provisions in the same federal enactment. Uniformity is the most important, since there is no reason why a public servant in one State should be prosecutable on different standards than a public servant in an adjoining State with the federal Lokpal Act enunciating a possible third standard, all in the same country.
- 7.20 However, the main issue which arises is ensuring constitutional validity of such an omnibus federal enactment. This can be approached from two routes, both cumulative, and not in the alternative.
- 7.21 Firstly, Article 253 of the Constitution provides a strong constitutional basis for such an enactment, since the Lokpal Act is admittedly being included pursuant to the UN Convention on Corruption, now ratified by India. This view has been endorsed by some noted jurists and witnesses, whose opinion is with the Committee⁵ (**Annexure E**). There is also a precedent in an earlier parliamentary enactment viz. the Protection of Human Rights Act, 1986 which was enacted under Article 253 power to implement

⁵ See, inter alia, opinion of former Chief Justice of India/ Hon'ble Mr. Justice J.S. Verma dated 4th November, 2011.

the UN Convention for the Protection of Human Rights. This Act provided for setting up of both the National Human Rights Commission and for establishment of State Human Rights Commissions.

- 7.22 Secondly, the Lokpal Act deals with criminal/penal action against public servants including application of the IPC and the CrPC, both of which are covered under List III, entries 1 & 2. The Lokpal Bill also touches upon the issue of administration of justice specifically covered under Entry 11A of List III.
- 7.23 In view of the above, the Committee is of the view that Parliament is fully empowered under either Article 253 and/ or Entries 1, 2 and 11 A of List III to enact an all India legislation providing for both Lokpal at the Centre and Lokayukta in each State.
- 7.24 As regards the status of existing State Lokayuktas Acts, Article 254 of the Constitution provides that State laws shall be void to the extent of repugnancy with Parliamentary law. States do have the option of over-riding Parliamentary supremacy in List-III by making State amendments with Presidential assent. The Committee therefore feels that there would be no constitutional hurdle in providing a comprehensive and single legislation for both the Lokpal and the Lokayuktas..
- 7.25 The Lokpal Bill will have to include additional chapters in order to prescribe provisions applicable for Lokayuktas in the States which will adopt the Lokpal provisions, mutatis mutandis, for the States.

V. REASONS AND RECOMMENDATIONS

- 7.26 **The Committee finds merit in the suggestion for a single comprehensive federal enactment dealing with Lokpal and State Lokayuktas. The availability of uniform standards across the country is desirable; the prosecution of public servants based upon widely divergent standards in neighboring states is an obvious anomaly. The Committee has given its earnest attention to the constitutional validity of a single enactment subsuming both the Lokpal and Lokayukta and concludes that such an enactment would be not only desirable but constitutionally valid, inter alia because,**
- (a) The legislation seeks to implement the UN Convention on Corruption ratified by India.**
 - (b) Such implementing legislation is recognized by Article 253 and is treated as one in List III of the 7th Schedule.**

- (c) It gets additional legislative competence, inter-alia, individually or jointly under Entries 1, 2 and 11A of List-III.
- (d) A direct example of provision for National Human Rights Commission and also for State Human Rights Commissions in the same Act is provided in the Protection of the Human Rights Act 1986 seeking to implement the UN Convention for the Protection of Human Rights.
- (e) Such Parliamentary legislation under Article 253, if enacted, can provide for repealing of State Lokayukta Acts; subject, however, to the power of any State to make State specific amendments to the federal enactments after securing Presidential assent for such State specific amendments.

7.27 Additionally, it is recommended that the content of the provisions dealing with State Lokayuktas in the proposed central/ federal enactment must be covered under a separate chapter in the Lokpal Bill. That may be included in one or more chapters possibly after Chapter II and before Chapter III as found in the Lokpal Bill 2011. The entire Lokpal Bill 2011 would have to incorporate necessary changes and additions, mutatis mutandis, in respect of the State Lokayukta institutions. To give one out of many examples, the Selection Committee would be comprised of the State Chief Minister, the Speaker of the Lower House of the State, the Leader of Opposition in the Lower House, the Chief Justice of the High Court and a joint nominee of the State Election Commissioner, the State Auditor General and State PSC Chairman or, where one or more of such institutions is absent in the State, a joint nominee of comparable institutions having statutory status within the State.

7.28 All these State enactments shall include the Chief Minister within their purview. The Committee believes that the position of the State Chief Minister is not identical to that of the Prime Minister. The arguments for preventing instability and those relating to national security or the image of the country do not apply in case of a Chief Minister. Finally, while Article 356 is available to prevent a vacuum for the post of Chief Minister, there is no counterpart constitutional provision in respect of the federal Government.

7.29 Article 51 (c) of the Directive Principles of State Policy enjoining the federation to *“foster respect for international law and treaty obligations.....”* must also be kept in mind while dealing with implementing legislations pursuant to

international treaties, thus providing an additional validating basis for a single enactment.

- 7.30 The Committee recommends that the Lokpal Bill 2011 may be expanded to include several substantive provisions which would be applicable for Lokayuktas in each State to deal with issues of corruption of functionaries under the State Government and employees of those organizations controlled by the State Government, but that, unlike the Lokpal, the state Lokayuktas would cover all classes of employees.
- 7.31 The Committee recommends that if the above recommendation is implemented the Lokpal Bill 2011 may be renamed as “Lokpal and Lokayuktas Bill 2011”
- 7.32 The Committee believes that the recommendations, made herein, are fully consistent with and implement, in letter and spirit, the conclusions of the Minister of Finance on the floor of the Houses in respect of establishment of Lokayuktas in the States, as quoted in para 1.8 above. The Committee is conscious of the fact that the few States which have responded to the Secretariat’s letter sent to each and every State seeking to elicit their views, have opposed a uniform Central federal Lokpal and Lokayukta Bill and, understandably and expectedly, have sought to retain their powers to enact State level Lokayukta Acts. The Committee repeats and reiterates the reasons given hereinabove, in support of the desirability of one uniform enactment for both Lokpal and Lokayuktas. The Committee also reminds itself that if such a uniform Central enactment is passed, it would not preclude States from making any number of State specific amendments, subject to prior Presidential assent, as provided in the Indian Constitution. The Committee, therefore, believes that it has rightly addressed the two issues which arise in this respect viz. the need and desirability for a uniform single enactment and, secondly, if the latter is answered in the affirmative, that such a uniform enactment is Constitutionally valid and permissible.
- 7.33 Since this report, and especially this chapter, recommends the creation of a uniform enactment for both Central and State Lokayuktas, it is reiterated that a whole separate chapter (or, indeed, more than one chapter) would have to be inserted in the Lokpal Bill of 2011 providing for State specific issues. Secondly, this would have to be coupled with mutatis mutandis changes in other parts of

the Act to accommodate the fact that the same Act is addressing the requirement of both the federal institution and also the State level institution.

7.34 Furthermore, each and every chapter and set of recommendations in this report should also be made applicable, *mutatis mutandis*, by appropriate provisions in the Chapter dealing with State Lokayuktas.

7.35 Although it is not possible for this Committee to specifically list the particularised version of each and every amendment or adaptation required to the Lokpal Bill, 2011 to subsume State Lokayuktas within the same enactment, it gives below a representative non-exhaustive list of such amendments/adaptations, which the Government should suitably implement in the context of one uniform enactment for both Lokpal and Lokayuktas. These include:

- (a) Clause 1 (2) should be retained even for the State Lokayukta provisions since State level officers could well be serving in parts of India other than the State concerned as also beyond the shores of India.
- (b) The Chief Minister must be included within the State Lokayukta on the same basis as any other Minister of the Council of Ministers at the State level. Clause 2 of the 2011 Bill must be amended to include Government servants at the State level. The competent authority in each case would also accordingly change e.g. for a Minister of the Council of Minister, it would be the Chief Minister; for MLAs, it would be the presiding officer of the respective House and so on and so forth. The competent authority for the Chief Minister would be the Governor.
- (c) As regards Clause 3, the only change would be in respect of the Chairperson, which should be as per the recommendation made for the Lokpal.
- (d) As regards the Selection Committee, the issue at the Lokayukta level has already been addressed above.
- (e) References in the Lokpal context to the President of India shall naturally have to be substituted at the Lokayukta level by references to the Governor of the State.
- (f) The demarcation of the criminal justice process into five broad areas from the initiation of complaint till its adjudication, as provided in Chapter 12, should also apply at the State Lokayukta level. The

investigative agency, like the CBI, shall be the anti-corruption unit of the State but crucially, it shall be statutorily made independent by similar declarations of independence as already elaborated in the discussion in Chapter 12. All other recommendations in Chapter 12 can and should be applied *mutatis mutandis* for the Lokayukta.

- (g) Similarly, all the recommendations in Chapter 12 in respect of departmental inquiry shall apply to the Lokayukta with changes made, *mutatis mutandis*, in respect of State bodies. The State Vigilance Commission/machinery would, in such cases, discharge the functions of the CVC. However, wherever wanting, similar provisions as found in the CVC Act buttressing the independence of the CVC shall be provided.
- (h) The recommendations made in respect of elimination of sanction as also the other recommendations, especially in Chapter 12, relating to Lokpal, can and should be applied *mutatis mutandis* in respect of Lokayukta.
- (i) Although no concrete fact situation exists in respect of a genuine multi-State or inter-State corruption issue, the Committee opines that in the rare and unusual case where the same person is sought to be prosecuted by two or more State machineries of two or more Lokayuktas, there should be a provision entitling the matter to be referred by either of the States or by the accused to the Lokpal at the federal level, to ensure uniformity and to eliminate turf wars between States or jurisdictional skirmishes by the accused.
- (j) As already stated above, the coverage of the State Lokayukta, unlike the Lokpal, would extend to all classes of employees, including employees of state owned or controlled entities.

CHAPTER 8
LOWER BUREAUCRACY: DEGREES OF INCLUSION
INTRODUCTION AND BACKGROUND

- 8.1 The current provisions of the Lokpal Bill 2011 [section 17 (1) (d)] include, inter alia, only Group A officers or equivalent, (serving or has served) from amongst the Public Servants defined in section 2 (c) of the Prevention of Corruption Act 1988. The central bureaucracy is broadly classified into Groups A, B, C and D – such categories being drawn on the lines of decision making power and remuneration. While Group A includes almost all officers from the rank of Section Officer and above, Group C and D form the very lower rungs of the bureaucracy including posts of attendants, clerks, senior clerks, stenos, peons, drivers et al. On a broad estimate, as of 2010, Group A officers comprise about 80,000 in number and Group B officers comprise about 1.75 Lakhs. Group C and D on the other hand are about 28 Lakhs in number. This classification and categorization may be different from State to State and will therefore have to be addressed separately in respect of the State bureaucracy. The debate revolved around the extent of inclusion of the bureaucracy within the ambit of the Lokpal particularly in the context of the humongous numbers which the Lokpal may have to handle as well as the speed, efficiency and workability of the Lokpal institution. It is important to emphasize at this stage that the aforesaid Group A and B numbers of approximately 2.56 lakhs excludes the substantial numbers of Group A and B or equivalent officers in all public sectors or all entities owned or controlled by the Central Government and, more significantly, the entire Railways and P&T departments, for which the figures are not readily available. However, all such categories are subsumed under the Lokpal.

SUMMARY OF SUGGESTION/OBSERVATIONS RECEIVED THROUGH WRITTEN MEMORANDA

- 8.2 The major points raised in the memoranda received by the Committee, on this topic are:
- Include lower level of public and private functionaries in the Bill.
 - The word Group “A” service and equivalent needs wider definition.
 - (i) CVC to be strengthened
 - (ii) CVC to cover Public Servants other than Group ‘A’ Officers; and
 - (iii) State Vigilance Commissions to be created in each State.

- All the big cases of corruption involve various ranks simultaneously. So, dividing public servants into two categories will frustrate the investigations and help the corrupt.
- Single directive that protected JS and seniors have scuttled investigations.
- Lokpal's direct jurisdiction be limited to those as provided in the present Bill.
- Strengthen CVC making it part of Lokpal with specific jurisdiction to deal with officials below Joint Secretary rank but above a certain rank.
- Vigilance Organisations in each agencies will deal with all the Ministerial staff.

III. SUMMARY OF DEPOSITIONS GIVEN BY THE WITNESSES

8.3 The Chairman, Bar Council of India opined thus:-

".....One, confine the Lokpal to investigate into allegations of corruption against Central Ministers and higher officers in the Government, not below the rank of Joint Secretaries. Limit it at that so far as the Lokpal is concerned. In the alternative, have different benches to hear different kinds of cases....."

8.4 One of the witnesses who appeared before the Committee, stated as under:-

"..... My view is that the lower bureaucracy should not come under the ambit of the Lokpal, one for very practical reason which is that then the Lokpal itself will become a gigantic bureaucracy and a gigantic bureaucracy superintending another gigantic bureaucracy is not a recipe for efficiency. You need a separate mechanism for local bureaucracy."

8.5 Shri B. Muthuraman, while placing the views of CII before the Committee, stated :-

".....We believe that all bureaucracy should be included under the Lokpal, but we also think it may become an unworkable proposition from the point of view of numbers. So, if for the first few years, let us say 3 to 5 years, Lokpal should restrict itself only to higher bureaucracy and after it settles down and starts functioning well, then you can add lower level bureaucracy....."

8.6 The DoPT, in its written comments, has stated :-

".....The provisions made in clause 17 of the Bill appear to be adequate. If lower bureaucracy and other institutions suggested by the author are also brought within the purview of the Lokpal, it will over burden the Lokpal"

8.7 Shri Shekhar Singh (NCPRI) stated as follows :-

".....Therefore, we have argued that for 'B' and 'C' and 'D' officers complaints under the Prevention of Corruption Act must first be to the police or Anti-Corruption Bureaus which are under the elected Governments.....So, it is a system similar to the High Court system where there is going to be territorial jurisdiction and any Central Government officer wherever he or she is posted a complaint will rest with the local police there. They would be prepared in keeping with, for example, the CBI manual, a

protocol of investigation and if that protocol is violated, then, a complainant or anybody can move the Up- Lokayukta or the Up-Lokpal where the complainant is located and then they can examine it and take over the investigation. After they have accepted and taken over the investigation they are not only obliged to complete that investigation but they are also obliged to fix the responsibility and if need be take action against that Investigating Officer who did not perform his or her job and, therefore, the matter had to be taken over. So what we are thinking of is an interlocking responsibility so that pressure builds up on the State Governments to make sure that they do their job and everything does not come to this independent body.

.....we were also disappointed that there were many categories of public servants who were left out from the Government Lokpal Bill. First of all, the Judges or higher judiciary was left out and we are of the view that whereas the higher judiciary should not be part of the Lokpal, but simultaneously there should be a strengthened Judicial Accountability Bill which covers this....."

- 8.8 Shri P.S. Bawa, Transparency International India placed before the Committee, their views as:-

".....Our contention is that Grade 'A' is not defined in any law. It is a sort of a financial categorization of Grade 'A', 'B' and 'C' officers. This criterion, based on the salary, is not a correct criterion. Therefore, this defies the equality clause in the Constitution where justice is to be delivered to everybody and everybody is equal before law. We feel that the Bill should cover all public servants irrespective of their being category a, b, c, or whatever it is....."

- 8.9 One of the Members of the Committee, opined in this regard as:-

".....एक फोर्थक्लास का कर्मचारी है, फोर्थ क्लास का तो करप्शन से कोई लेना-देना ही नहीं है। Who are the people covered under fourth class? It includes the Peon and the lady जो पानी पिलाने वाली बाई है या फिर सफाई कर्मचारी हैं, ऐसे लोग फोर्थ क्लास में आते हैं। What kind of scope he is getting in his life to get involved in corruption? लेकिन उसे भी लोकायुक्त में रखने के लिए कहा जा रहा है। मान लीजिए मेरी कालोनी में सफाई कर्मचारी सफाई करने नहीं आया, चूंकि मैं अपर क्लास का हूं, इसलिए मैंने एप्लीकेशन कर दी कि यह आदमी काम करने के लिए नहीं आया, इसलिए इसे निकाला जाए। इसमें दो-तीन बातें हैं, अपनी इज्जत बनाने में और ईमानदारी से काम करने में सरकारी कर्मचारियों को सालों लग जाते हैं।....."

- 8.10 Dr. Jayaprakash Narayan, while speaking on this issue, stated thus:-

"We believe the Lok Pal should not cover everybody; it must cover only the high functionaries, both political and bureaucratic. The CVC, directly or indirectly, takes charge of others. In fact, that addresses the problem of lower bureaucracy. There is no single body that can deal with 20 million employees in this country at the State and national levels. Even at the national level alone, there are about 6 million plus

employees. If you include the public sector undertakings, maybe it is actually a million more or so. You will have tens of thousands of petitions everyday..."

- 8.11 The Central Vigilance Commissioner, while deposing before the Committee, stated thus :-

".....There is a basic difference. This is a question why disciplinary action has been taken against Government servants. In my presentation, I tried to explain why all other people are covered only under the Prevention of Corruption Act whereas only Government servants they are there. They are covered under the departmental disciplinary rules. Under the departmental disciplinary rules, under lower standards of proof also they get dismissed. So, basically the entire bureaucracy is handled under the departmental rules. It is only in selected cases that Prevention of Corruption Act is done. If you bring the entire people under the Prevention of Corruption Act, firstly, the courts will get clogged. There will be no action taken; and the standards of proof that would be required would be much higher if you follow an investigation which is there in the courts is not a desirable mechanism for this thing, because what is important for civil servants is if there is a corruption, action should be swift and fast and the outcome should be certain. That is only possible in disciplinary inquiries which finish between one or two years whereas if you put them under the PC Act, this will go on and on for years and the senior officers will escape the net...."

IV. ANALYSIS AND DISCUSSION

- 8.12 Any Lokpal would be approximately a 7 or 9 or 11 member body and it would be virtually impossible for any such body to cover all the 30 lakh employees of Central Government spread over categories 'A' to 'D'. (excluding Railways, PSUs, P&T etc, also covered under Classes A and B.
- 8.13 The object is to create a new body i.e. the Lokpal, which, unlike the pre-existing bodies, is far more efficacious and swift. That objective would obviously be defeated if humungous numbers are added to this coverage.
- 8.14 The impression that inclusion of Group 'A' plus 'B' involves exclusion of large sections of the bureaucracy must be dispelled. Though in terms of number, the aggregation of Groups 'C' and 'D' is an overwhelming percentage of total Central Government employees, Group 'A' and Group 'B' include the entire class above the supervisory level. Effectively this means that virtually all Central Government employees at the Section Officer level and above would be included. It is vital to emphasize that this demarcation has to be viewed in functional terms and status, since it gives such categories significant decision making power in contra-distinction to

mere numbers and necessarily subsumes a major chunk of medium and big ticket corruption.

- 8.15 The current, contemporary context has been one of anger and dissatisfaction mainly with corruption in the higher echelons, whether of the bureaucracy or of the political class. A majority of Committee Members expressed the opinion that while inclusion of Class C and D would unnecessarily overburden the Lokpal as also create a mechanism and avenue for exploitation of economically weaker sections, inclusion of Group B would not do much damage or obstruction to the speed, efficiency and functioning of the Lokpal.
- 8.16 The Committee has therefore considered including Group B officers as well within the ambit of the Lokpal.
- 8.17 The Committee would like to clarify that Group C and D officers or government employees are already within the purview of the Prevention of Corruption Act and therefore not outside the ambit of investigation and prosecution. In the proposed recommended regime (as is being suggested by this Committee) the existing fetters of section 19 of the Prevention of Corruption Act (prior sanction) would be removed for all classes. If this be so, there would be an equally robust mechanism for addressing complaints against Group C and D officers as well.

V. REASONS AND RECOMMENDATIONS

8.18 The Committee, therefore, recommends:

- (a) That for the Lokpal at the federal level, the coverage should be expanded to include Group A and Group B officers but not to include Group C and Group D.**
- (b) The provisions for the State Lokayuktas should contain similar counterpart reference, for purposes of coverage, of all similar categories at the State level which are the same or equivalent to Group A and Group B for the federal Lokpal. Though the Committee was tempted to provide only for enabling power for the States to include the State Lokayuktas to include the lower levels of bureaucracy like groups 'C' and 'D' at the**

State level, the Committee, on careful consideration, recommends that all the groups, including the lower bureaucracy at the State level and the groups equivalent with 'C' and 'D' at the State level should also be included within the jurisdiction of State Lokayuktas with no exclusion. Employees of state owned or controlled entities should also be covered.

- (c) The Committee is informed by the DoPT that after the Sixth Pay Commission Report, Group-D has been/will be transposed and sub-merged fully in Group-C. In other words, after the implementation of the Sixth Pay Commission Report, which is already under implementation, Group-D will disappear and there will be only Group-C as far as the Central Government employees are concerned.
- (i) Consequently, Group-C, which will shortly include the whole of Group-D will comprise a total number of approximately 30 lakhs (3 million) employees. Though the figures are not fully updated, A+B classes recommended for inclusion by this Committee would comprise just under 3 lakhs employees. With some degree of approximation, the number of Railway employees from group A to D inclusive can be pegged at about 13½ lakhs (as on March 2010). If Central Government PSUs are added, personnel across all categories (Group A, B, C and D as existing) would be approximately an additional 15 lakhs employees. Post and Telegraph across all categories would further number approximately 4½ lakhs employees. Hence the total, on the aforesaid basis (which is undoubtedly an approximation and a 2010 figure) for Group A to D (soon, as explained above, to be only Group-C) + Railways + Central PSUs + Post and Telegraph would be approximately 63 lakhs, or at 2011 estimates, let us assume 65 lakhs i.e. 6.5 million.
- (ii) On a conservative estimate of one policing officer per 200 employees (a ratio propounded by several witnesses including team Anna), approximately 35000 employees would be required in the Lokpal to police the aforesaid group of Central Government employees (including, as explained above, Railways, Central PSUs, P&T etc.). This policing is certainly not possible by the proposed

nine member Lokpal. The Lokpal would have to spawn a bureaucracy of at least 35000 personnel who would, in turn, be recruited for a parallel Lokpal bureaucracy. Such a mammoth bureaucracy, till it is created, would render the Lokpal unworkable. Even after it is created, it may lead to a huge parallel bureaucracy which would set in train its own set of consequences, including arbitrariness, harassment and unfair and illegal action by the same bureaucracy which, in the ultimate analysis would be nothing but a set of similar employees cutting across the same A, B and C categories. As some of the Members of the Committee, in a lighter vein put it, one would then have to initiate a debate on creating a super Lokpal or a Dharampal for the policing of the new bureaucracy of the Lokpal institution itself.

- (ii-a) The Committee also notes that as far as the Lokpal institution is concerned, it is proposed as a new body and there is no such preexisting Lokpal bureaucracy available. In this respect, there is a fundamental difference between the Lokpal and Lokayuktas, the latter having functioned, in one form or the other in India for the last several decades, with a readily available structure and manpower in most parts of India.
- (iii) If, from the above approximate figure of 65 lakhs, we exclude C and D categories (as explained earlier, D will soon become part of C) from Central Government, Railways, PSUs, Post and Telegraph etc., the number of A and B categories employees in these departments would aggregate approximately 7.75 lakhs. In other words, the aggregate of C and D employees in these classes aggregate approximately 57 or 58 lakhs. The Committee believes that this figure of 7.75 or 8 lakhs would be a more manageable, workable and desirable figure for the Lokpal institution, at least to start with.
- (iv) The impression that inclusion of Group 'A' and B alone involves exclusion of large sections of the bureaucracy, must be dispelled. Though in terms of number, the aggregation of Groups 'C' and 'D' is an overwhelming percentage of total Central Government

employees, Groups 'A' and B include the entire class above the supervisory level. Effectively, this means that virtually all Central Government employees at the Section Officer level and above would be included. It is vital to emphasize that this demarcation has to be viewed in functional terms, since it gives such categories significant decision making power in contra-distinction to mere numbers and necessarily subsumes a major chunk of medium and big ticket corruption.

- (v) Another misconception needs to be clarified. There is understandable and justifiable anger that inclusion of Group C and D would mean exclusion of a particular class which has tormented the common man in different ways over the years viz. Tehsildar, Patwari and similarly named or equivalent officers. Upon checking, the Secretariat has clarified that these posts are State Government posts under gazette notification notified by the State Government and hence the earlier recommendation of this Committee will enable their full inclusion.
- (vi) We further recommend that for the hybrid category of Union Territories, the same power be given as is recommended above in respect of State Lokayuktas. The Committee also believes that this is the appropriate approach since a top heavy approach should be avoided and the inclusionary ambit should be larger and higher at the state level rather than burdening the Lokpal with all classes of employees.
- (vii) As of now, prior to the coming into force of the Lokpal Act or any of the recommendations of this report, Group C and D officers are not dealt with by the CVC. Group C & D employees have to be proceeded against departmentally by the appropriate Department Head, who may either conduct a departmental enquiry or file a criminal corruption complain against the relevant employee through the CBI and/or the normal Police forces. The Committee now recommends that the entire Group C & D, (later only Group C as explained above) shall be brought specifically under the jurisdiction of the CVC. In other words, the CVC, which is a high

statutory body of repute and whose selection process includes the Leader of the Opposition, should be made to exercise powers identical to or at least largely analogous, in respect of these class C and class D employees as the Lokpal does for Group A and B employees. The ultimate Lokpal Bill/Act should thus become a model for the CVC, in so far as Group C & D employees are concerned. If that requires large scale changes in the CVC Act, the same should be carried out. This would considerably strengthen the existing regime of policing, both departmentally and in terms of anti-corruption criminal prosecutions, all Group C & D employees and would not in any manner leave them either unpoliced or subject to a lax or ineffective regime of policing.

- (viii) Furthermore, this Committee recommends that there would be broad supervisory fusion at the apex level by some appropriate changes in the CVC Act. The CVC should be made to file periodical reports, say every three months, to the Lokpal in respect of action taken for these class C and D categories. On these reports, the Lokpal shall be entitled to make comments and suggestions for improvement and strengthening the functioning of CVC, which in turn, shall file, appropriate action taken reports with the Lokpal.
- (ix) Appropriate increase in the strength of the CVC manpower, in the light of the foregoing recommendations, would also have to be considered by the Government.
- (x) The Committee also feels that this is the start of the Lokpal institution and it should not be dogmatic and inflexible on any of the issues. For a swift and efficient start, the Lokpal should be kept slim, trim, effective and swift. However, after sometime, once the Lokpal institution has stabilized and taken root, the issue of possible inclusion of Group C classes also within the Lokpal may be considered. This phase-wise flexible and calibrated approach would, in the opinion of this Committee, be more desirable instead of any blanket inclusion of all classes at this stage.

- (xi) Another consideration which the Committee has kept in mind is the fact that if all the classes of higher, middle and lower bureaucracy are included within the Lokpal at the first instance itself, in addition to all the aforesaid reasons, the CVC's role and functioning would virtually cease altogether, since the CVC would have no role in respect of any class of employee and would be reduced, at best, to a vigilance clearance authority. This would be undesirable in the very first phase of reforms, especially since the CVC is a high statutory authority in this country which has, over the last half century, acquired a certain institutional identity and stability along with conventions and practices which ought not to be uprooted in this manner.
- (d) All provisions for prior sanction / prior permission, whether under the CrPC or Prevention of Corruption Act or DSPE Act or related legislation must be repealed in respect of all categories of bureaucrats / government servants, whether covered by the Lokpal or not, and there should consequently be no requirement of sanction of any kind in respect of any class or category of officers at any level in any Lokpal and Lokayukta or, indeed, CVC proceedings (for non Lokpal covered categories). In other words, the requirement of sanction must go not only for Lokpal covered personnel but also for non-Lokpal covered personnel i.e. class 'C' and 'D' (Class D, as explained elsewhere, will eventually be submerged into Class 'C'). The sanction requirement, originating as a salutary safeguard against witch hunting has, over the years, as applied by the bureaucracy itself, degenerated into a refuge for the guilty, engendering either endless delay or obstructing all meaningful action. Moreover, the strong filtering mechanism at the stage of preliminary inquiry proposed in respect of the Lokpal, is a more than adequate safeguard, substituting effectively for the sanction requirement.
- (e) No doubt corruption at all levels is reprehensible and no doubt corruption at the lowest levels does affect the common man and inflicts pain and injury upon him but the Committee, on deep consideration and reconsideration of this issue, concluded that this new initiative is intended to send a clear and unequivocal message, first and foremost, in respect of

medium and big ticket corruption. Secondly, this Committee is not oblivious to the fact that jurisdiction to cover the smallest Government functionary at the peon and driver level (class C largely covers peons, assistants, drivers, and so on, though it does also cover some other more "powerful" posts) may well provide an excuse and a pretext to divert the focus from combating medium and big ticket corruption to merely catching the smaller fry and building up an impressive array of statistical prosecutions and convictions without really being able to root out the true malaise of medium and big ticket corruption which has largely escaped scrutiny and punishment over the last 60 years.

- (f) The Committee also believes that the recommendations in respect of scope of coverage of the lower bureaucracy, made herein, are fully consistent with the conclusions of the Minister of Finance on the floor of the Houses, as quoted in para 1.8 above of this Report. Firstly, the lower bureaucracy has been, partly, brought within the coverage as per the recommendations above and is, thus, consistent with the essence of the conclusion contained in para 1.8 above. Secondly, the Committee does not read para 1.8 above to meet an inevitable and inexorable mandate to necessarily subsume each and every group of civil servant (like Group 'C' or Group 'D', etc.). Thirdly, the in principle consensus reflected in para 1.8 would be properly, and in true letter and spirit, be implemented in regard to the recommendations in the present Chapter for scope and coverage of Lokpal presently. Lastly, it must be kept in mind that several other recommendations in this Report have suggested substantial improvements and strengthening of the provisions relating to policing of other categories of personnel like C and D, inter alia, by the CVC and/or to the extent relevant, to be dealt with as Citizens' Charter and Grievance Redressal issues.

CHAPTER 9

FALSE COMPLAINTS AND COMPLAINANTS: PUNITIVE MEASURES

I. INTRODUCTION AND BACKGROUND

- 9.1 There is a genuine fear that the institution of the Lokpal, while empowering the common citizen, would also create avenues for false and frivolous complaints by persons against those officials whose decisions are either not palatable or generate cases where complaints are actuated by animosity or external agenda and ulterior motives. It is for this reason that provisions relating to false complaints were provided in the Lokpal Bill 2011 (sections 49 and 50). The provision stipulates punishment for not less than 2 years and upto 5 years and a fine not less than Rs 25,000/- and upto Rs 2 Lakhs for false, frivolous or vexatious complainants. This was seen as overbearing and disproportionately high and it was felt that it may act as a huge deterrent and possibly a virtual de facto bar to people seeking to make complaints to the Lokpal. The debate therefore revolved around both defining the scope of the nature of complaints (false or frivolous or vexatious or malicious) which would be penalized as also the amount of fine or punishment.

II. SUMMARY OF SUGGESTIONS/ OBSERVATIONS RECEIVED THROUGH WRITTEN MEMORANDA

- 9.2 The memoranda received by the Committee carried the following suggestions/ observations:-
- Second Proviso to clause (g) of 17 (1) – that a free citizen of this nation would be subjected to 'responsibility' without any power of a Public Servant - 'liability, without 'right' - and to 'culpability' without an 'overt' act is simply preposterous.
 - Punishment in case of "mala-fide and false complaints with malicious intent" only.
 - Fine not less than Rs. 5000/-, but which may extend to Rs. 1 lakh.
 - In case of frivolous/vexations complaint against an SC/ST functionary, relevant clauses under the SCs and STs (Prevention of Atrocities Act), 1989 also need to be invoked and needs mention in the Lokpal Bill.
 - Monetary penalties to those who make frivolous complaints and such penalties to be deposited in the PM Relief Fund.

III. SUMMARY OF DEPOSITIONS GIVEN BY THE WITNESSES

9.3 Shri Shekhar Singh (NCPRI), while speaking on this issue, stated:-

".....we are very against, and this I think we have much debated, the penalties' clause that has been put into the Bill where somebody who files, what is called, a frivolous or a vexatious complaint, gets a higher level of punishment than somebody who is judged as being corrupt. Our problems are two. One is that it is very difficult to define what is 'frivolous' and 'vexatious'. And secondly, that this is sort of a punishment will deter even genuine complaint makers. We have suggested, drop 'frivolous' and 'vexatious'; say 'malicious' or where you have a malign intent and reduce the punishment to a fine....."

9.4 One of the Members of the Committee, observed as follows:-

".....When a complaint is made, it is a frivolous complaint or a false complaint, immediately it will appear in the media. कोई गलत कंप्लेंट करता है, जैसे ही लोकायुक्त के सामने वह कंप्लेंट जाएगी, चाहे वे चुने हुए लोग हों या पीछे बैठे हुए लोग हों अथवा यहां के पहले पंक्ति वाले लोग हों, आप सब जानते हैं कि हमारा सार्वजनिक जीवन तीस-तीस पैंतीस-पैंतीस साल का होता है। यहां जो लोग बैठे हैं, वे भी 40, 45 या 50 साल पुराने लोग हैं। मैं स्वयं 36 साल से लगातार चुनाव जीतता आया हूं, मेरी पब्लिक लाइफ को भी 45 साल हो गए। मान लीजिए हमने किसी कार्य के लिए बजट नहीं दिया, किसी ने पानी की टंकी के लिए बजट मांगा, हमने नहीं दिया, बस फिर क्या है, एक कंप्लेंट कर दो, पूरे मीडिया में हम छा जाएंगे, हमारी 40-45 साल की मेहनत बेकार हो जाएगी। लेकिन आप कहते हैं कि उस आदमी को कुछ सजा नहीं की जाए, सिर्फ 5000 रुपये फाइन करके छोड़ दिया जाए, यह कहां तक उचित होगा?....."

9.5 PRS Legislative Research, in its written memorandum, has opined:-

False and Frivolous Complaint :-

".....Issue: Penalty may act as deterrent

[Clause 49(1)] Any person making false and frivolous or vexatious complaints shall be penalized with two to five years of jail and fine of Rs. 25,000 to Rs. 2 lakh.

The penalty amount may act as a deterrent for people to complain against a public official. Other legislations have different penalties for similar offences. For example, in the Public Interest Disclosure Bill, 2010 (now pending in Parliament), a false complaint carries a penalty of imprisonment upto 2 years and fine of upto Rs. 30,000.⁴ The Indian Penal Code states that any person who gives false information shall be punishable with a prison term of upto six months or a fine of upto Rs. 1,000 or both.⁵ The Judicial Standards and Accountability Bill, 2010 (pending in Parliament), on the other hand, prescribes a higher penalty for frivolous or vexatious complaints. A person making frivolous or vexatious complaints can be penalized by rigorous imprisonment of up to five years and fine of up to five lakh rupees.⁶ The

Standing Committee, while examining that Bill, has recommended that the quantum of punishment should be diluted and "in any case, it should not exceed the punishment provided under the Contempt of Court Act" (which is six months imprisonment and a fine of Rs. 2,000).

IV. ANALYSIS AND DISCUSSION

9.5 A There is no doubt that the penalty for false and frivolous complaints should not be such a huge deterrent that it stops even genuine complainants from approaching the Lokpal. There has to be a harmonious balance which needs to be drawn out between prevention of false complaints and a consequent penalty and that of not prescribing a deterrent so great that it renders the institution and function of the Lokpal nugatory.

9.5 B This Committee discussed in detail similar provisions while dealing with the Judicial Standards and Accountability Bill in its Report submitted on August 30, 2011. It deliberated upon the issue as to how to strike this balance and concluded that the punishment ought not to be more than what is prescribed in the Contempt of Courts Act. This is an apposite benchmark considering that the Lokpal also effectively deals with administration of justice.

V. REASONS AND RECOMMENDATIONS

9.6 **It cannot be gainsaid that after the enormous productive effort put in by the entire nation over the last few months for the creation of a new initiative like the Lokpal Bill, it would not and cannot be assumed to be anyone's intention to create a remedy virtually impossible to activate, or worse in consequence than the disease. The Committee, therefore, starts with the basic principle that it must harmoniously balance the legitimate but competing demands of prevention of false, frivolous complaints on the one hand as also the clear necessity of ensuring that no preclusive bar arises which would act as a deterrent for genuine and *bona fide* complaints.**

9.7 **The Committee sees the existing provisions in this regard as disproportionate, to the point of being a deterrent.**

9.8 **The Committee finds a convenient analogous solution and therefore adopts the model which the same Committee has adopted in its recently submitted report**

on Judicial Standards and Accountability Bill, 2010 presented to the Rajya Sabha on August 30, 2011.

9.9 In para 18.8 of the aforesaid Report, the Committee, in the context of Judicial Standards and Accountability Bill, 2010 said : "The Committee endorses the rationale of making a provision for punishment for making frivolous or vexatious complaints. The Committee, however, expresses its reservation over the prescribed quantum of punishment both in terms of imprisonment which is up to 5 years and fine which is up to 5 lakh rupees. The severe punishment prescribed in the Bill may deter the prospective complainants from coming forward and defeat the very rationale of the Bill. In view of this, the Committee recommends that Government should substantially dilute the quantum of the punishment so as not to discourage people from taking initiatives against the misbehaviour of a judge. In any case, it should not exceed the punishment provided under the Contempt of Court Act. The Government may also consider specifically providing in the Bill a proviso to protect those complainants from punishment / penalty who for some genuine reasons fail to prove their complaints. The Committee, accordingly, recommends that the Bill should specifically provide for protection in case of complaints made 'in good faith' in line with the defence of good faith available under the Indian Penal Code."

9.10 Consequently, in respect of the Lokpal Bill, the Committee recommends that, in respect of false and frivolous complaints, :

- (a)** The punishment should include simple imprisonment not exceeding six months;
- (b)** The fine should not exceed Rs.25000; and
- (c)** The Bill should specifically provide for protection in case of complaints made in good faith in line with the defence of good faith available under the Indian Penal Code under Section 52 IPC.

CHAPTER 10

THE JUDICIARY: TO INCLUDE OR EXCLUDE

I. INTRODUCTION AND BACKGROUND

- 10.1. There has been public clamor for laying down standards for the Judiciary and creating an efficient, workable and effective mechanism for ensuring accountability of Judiciary including, in particular, effective and efficient mechanisms for criminal prosecution for corruption practiced by judicial officers and the higher judiciary. Currently the process of removal of any Judge of the Supreme Court or the High Court involves a tedious and virtually unimplementable procedure of impeachment as per the Constitution. This has been widely seen as being, by itself, an ineffective deterrent for capricious or corrupt conduct by any member of the judiciary. The debate around this issue was centered on whether the Judiciary should be made accountable to an institution like the Lokpal or whether it should, as one of the three wings of the country enjoy virtual immunity in respect of criminal prosecution for corrupt practices.

II. SUMMARY OF SUGGESTIONS/ OBSERVATIONS RECEIVED THROUGH WRITTEN MEMORANDA

- 10.2 Judges of higher judiciary not to be under Lokpal jurisdiction.
- 10.3 The jurisdiction of Lokpal should be limited to cover only the following:-
- i. All MPs, including PM & Ministers;
 - ii. All other Constitutional & top statutory office holders (excluding President, VP and those of judiciary) under GoI; and
 - iii. Officers of the rank of JS & above in the GoI and its PSUs & other organisations.
 - iv. The existing institutions and laws should continue to deal with the corruption in GoI at other levels.
- 10.4 A National Judicial Commission headed by the Vice President, and with Prime Minister, Speaker, Law Minister, Leaders of Opposition in both Houses, and Chief Justice (Chief Minister and Chief Justice of concerned High Court in case of High Court judges) should be constituted for judicial appointments and oversight; and the Judicial Standards and Accountability Bill should be enacted into law. Both together will address issues relating to higher judiciary.

- 10.5 Subordinate Judiciary is under the control of the High Court under Article 235, and that should remain so.
- 10.6 Functional independence of judiciary should be ensured; but criminal legislation, conflicts of interest regulations, income and asset disclosure laws and ethical codes should apply to the judiciary as well as other public officials.
- 10.7 Amending the Judicial Accountability and Standards Bill, that is currently before the Parliament, to ensure that the judiciary is also made effectively and appropriately accountable, without compromising its independence from the executive or the integrity of its functions.

III. SUMMARY OF DEPOSITIONS GIVEN BY THE WITNESSES

- 10.8 Justice JS. Verma, in his presentation before the Committee, very categorically expressed his views over the issue in the following words:

".....That is my view for consideration. Now, so far as Judiciary is concerned, well, as I see it, the Constitution itself, as initially framed, treats the Judiciary separately and not only the higher judiciary but even the subordinate judiciary....."

- 10.9 Shri Jayaprakash Narayan expressed his detailed views on all related aspects to the issue of inclusion of the judiciary within the ambit of Lokpal. He put forward his views as:

".....Firstly, we believe that judiciary cannot be a part of Lokpal's jurisdiction for a variety of reasons. Eminent jurist like you and many other members with deep experience and insights know too well the reasons. The Supreme Court and the High courts not only have the Constitutional authority but they are also held in high esteem in this country. Whenever there is a crisis in this country, we always depend on these High Courts. For instance, Babri Masjid demolition issue, or, the reservation issue, or, contentious issues like reservation, etc. which are fragmenting our country. We, ultimately, depend on the Courts to bring some sense and some balance. And, if that Court's authority is in any way undermined, that will do immense damage to the country....."

.....The Government's draft Bill which is now before the Parliament has envisaged that inquiry into misconduct or allegations against the members of the Lokpal will be entrusted to a Bench of the Supreme Court. If, in turn, the Lokpal institution is to inquire into the misconduct, if any, or the corruption of the judges, it will certainly not be a very healthy thing. Of course, finally, already because of a variety of pronouncements in judiciary, the Constitution, to some extent, has been diluted. The Constitution-makers never envisaged that judiciary will be completely away from

the purview of the Parliament and the Executive of the country. Unfortunately, after the judges' case judgment, the judiciary has taken over more or less and, now, if you further dilute it and make an extra-Parliamentary statutory institution control the way the judiciary functions, at least, to this extent, that will undermine the constitutional structure even further. It is not desirable at all.....

.....Now, it does not mean that judiciary must be unaccountable. Judiciary must be held to account. Right now before the Parliament there is a Bill pending, the Judicial Standards and Accountability Bill which, as we all know, now creates a permanent mechanism for inquiry into judges' conduct, not an ad hoc mechanism, and also codifies the judicial code of conduct and makes any violation of that a matter of an inquiry and, if that law is enacted and with that a National Judicial Commission comes into place amending articles 124 (2) and 124(5), in effect, it will be a constitutional amendment, then, together, they will take care of the problem of judicial accountability in the higher judiciary because both appointments and removals as we envisage, if the Parliament approves, will be with the National Judicial Commission headed by the Vice-President of India, with the Prime Minister, with the Leader of the Opposition and the Judiciary.....

- 10.10 Shri Jayaprakash Narayan also elaborated upon the issue of inclusion of subordinate judiciary within the ambit of the Lokpal. He refuted the idea and expressed his views as follows:-

".....About the lower judiciary, Mr. Chairman, article 235 is very clear; the High Court has complete authority and, time and again, in States like Maharashtra, and if I am not mistaken, Rajasthan, West Bengal, High Courts have exercised the jurisdiction very effectively, weeded out the corrupt lower judiciary members and that must be retained as it is. Therefore, there is no case for an extra-judicial body, apart from the National Judicial Commission, to go into matters of judicial accountability....."

- 10.11 The advocates of the Jan Lokpal Bill, while appearing before the Committee, expressed their views on this issue as follows:

".....The judiciary may be brought under the purview of anti-corruption system through a separate Bill, to be introduced simultaneously, provided the Judicial Conduct Commission so set up is also independent of the government as well as the judiciary and has the power of investigating and prosecuting judges for corruption. The Judicial Standards and Accountability bill of the government does not deal with criminal investigation of judges, nor does it set up an independent committee....."

- 10.12 Shri Harish Salve, Senior Advocate, in his presentation before the Committee, floated a unique idea to create a collegium which would deal with the appointment of the Members of the Lokpal along with the selection of judges in higher judiciary. He made his point as follows:

".....There is a crying need for accountability in the judiciary. They cannot be put under the Lokpal but, at the same time, there has to be some machinery. One very important area is the appointment of judges, and, I submit, Sir, this is a golden opportunity for this Committee to set up a collegium, which today may appoint a Lokpal but tomorrow can be extended to appointment of Judges. Why should we not have one collegium for appointment to these offices? You don't need separate collegium. Whether it has the Prime Minister -- as it possibly must, whether it has the Leader of Opposition -- as it possibly must; whether it has the Speaker of the House -- may be or may not be; whether it has the Chief Justice -- as it possibly must; you add these people, and, you add a few people and say how they are to be selected. If they are good people to appoint a Lokpal, tomorrow, you will have a strong case to say that they are good enough to appoint of Supreme Court judges. So, I submit, Sir, when you are drafting this bit of the law, please have in mind that you are creating somebody as important or depending on the structure of the law more important than a Supreme Court judge. Please create a collegium, which is appropriate for that appointment, and, you would have killed two birds with one stone. You would have laid the foundation and solved half the problem of the judicial accountability....."

- 10.13 Representatives of the Business Associations who appeared before the Committee also did not favour the idea to include the judiciary under the purview of Lokpal. They put forward their views over the issue as under:

- 10.14 The President, CII said:-

".....We believe that Lokpal should not cover Judiciary. We believe that we should strengthen the existing Judicial Standards and Accountability Bill, 2010 in the Parliament. I understand that there is a Bill in the Parliament and we believe that that Bill needs to be re-looked and strengthened. We also believe that the Judiciary needs to be helped to perform better through setting up more courts, more infrastructure, more application of technology and also promote arbitration. The rationale for all this is that we believe that independence of the Judiciary should be maintained. The Judiciary needs to be kept separate because if the linkage between the Judiciary and the Lokpal, cases will be going there. If it covers the Judiciary, the Lokpal will become entirely unwieldy. We don't see any need for it....."

- 10.15 The President, ASSOCHAM opined:-

".....judiciary should be kept out of this Bill because the independence of judiciary is very important and it is very important that this independence be maintained, and, today, सर, हमारा जो संविधान है, कंस्टीट्यूशन है, it provides for checks and balances. So, I think, we have to ensure that those checks and balances remain....."

- 10.16 The Vice-President, FICCI stated:-

".....Judicial Accountability Bill should be independent of the Lokpal Bill. We believe that the judiciary's independence should be undermined, but, at the same time, it is very necessary to have a Judicial Accountability Bill and we believe that it should be a parallel legislation to the Lokpal Bill and again I am going into a fundamental principal that justice delayed is justice denied. So, whenever we talk about judicial

accountability, simultaneously we must also be talking about judicial reforms to ensure that the time aspect of handling cases is addressed.....

- 10.17 Shri Jayaprakash Narayan, while making his presentation before the Committee, dwelt at length on this aspect. He stated as follows:-

".....as you know the 1973 judgment of the Supreme Court in the Kesavananda Bharati case held that the basic features of the Constitution are inviolable and the court has the ultimate power to decide what the basic features are. There is a real danger that the Supreme Court may hold that any inclusion of higher courts' judges in the jurisdiction of the Lokpal or Lokayukta is violative of the basic features of the Constitution. It may or may not be violative but once the court says so, you know the implications, Mr. Chairman. I don't think India at this point of time should have a confrontation between the Parliament and the higher judiciary. We as a country cannot afford that....."

- 10.18 Likewise, Justice J.S. Verma while appearing before the Committee, opined that the issue of inclusion of judiciary within the ambit of Lokpal needs to be examined in the light of the scheme of the Constitution. He was of the view that not only the higher judiciary but even the subordinate judiciary need not be brought under the Lokpal, the issue of accountability of these institution should be determined in accordance with the spirit of the Constitution. He put forward his expert opinion thus:-

".....Article 50 clearly provides and mandates separation of Judiciary from the Executive. Article 235... But I am speaking from my own experience as a Judge and the former CJI. Article 235 gives control over subordinate judiciary and also the High Courts; there is no one else. In the case of the higher judiciary, the Parliament comes in as the ultimate authority. And according to the law which was made in 1968 or any other law, you will have a body but the final word would be of the Parliament, not of a few individuals as such. Then, you cannot discuss the conduct of any High Court or Supreme Court Judge; those are articles 121 and 211 in the State Legislature or Parliament except on a motion for removal....."

IV ANALYSIS AND DISCUSSION

- 10.19 The opinions received by this Committee were almost unanimous in recommending that the Judiciary be kept out of the ambit of the Lokpal. However, it was equally strongly opined that the judiciary must be regulated and made accountable by a separate mechanism.
- 10.20 Previously in this year, such a mechanism was mooted by the government through the Judicial Standards and Accountability Bill 2010 which was also referred to this very Committee. This Committee has already submitted a report on that Bill and suggested

various modifications. However, it is a common ground that the said Judicial Accountability Bill does not seek to address judicial corruption at all and an independent mechanism for appointment of Judges also needs to be created. The Committee takes serious note and cognizance of these sentiments and wishes to place its recommendations as below.

V REASONS AND RECOMMENDATIONS

10.21 The Committee recommends:

- (i) The Judiciary, comprising 31 odd judges of the Apex Court, 800 odd judges of the High Courts, and 20,000 odd judges of the subordinate judiciary are a part of a separate and distinct organ of the State. Such separation of judicial power is vitally necessary for an independent judiciary in any system and has been recognized specifically in Article 50 of the Indian Constitution. It is interesting that while the British Parliamentary democratic system, which India adopted, has never followed the absolute separation of powers doctrine between the Legislature and the Executive, as, for example, found in the US system, India has specifically mandated under its Constitution itself that such separation must necessarily be maintained between the Executive and the Legislature on the one hand and the Judiciary on the other.**
- (ii) Such separation, autonomy and necessary isolation is vital for ensuring an independent judicial system. India is justifiably proud of a vigorous (indeed sometimes over vigorous) adjudicatory judicial organ. Subjecting that organ to the normal process of criminal prosecution or punishment through the normal courts of the land would not be conducive to the preservation of judicial independence in the long run.**
- (iii) If the Judiciary were included simpliciter as suggested in certain quarters, the end result would be the possible and potential direct prosecution of even an apex Court Judge before the relevant magistrate exercising the relevant jurisdiction. The same would apply to High Court**

Judges. This would lead to an extraordinarily piquant and an untenable situation and would undermine judicial independence at its very root.

- (iv) Not including the Judiciary under the present Lokpal dispensation does not in any manner mean that this organ should be left unpoliced in respect of corruption issues. This Committee has already proposed and recommended a comprehensive Judicial Standards and Accountability Bill which provides a complete in-house departmental mechanism, to deal with errant judicial behavior by way of censure, warning, suspension, recommendation or removal and so on within the judicial fold itself. The Committee deprecates the criticism of the Judicial Standards and Accountability Bill as excluding issues of corruption for the simple reason that they were never intended to be addressed by that Bill and were consciously excluded.**
- (iv) As stated in para 21 of the report of this Committee on the Judicial Standards and Accountability Bill, the Committee again recommends, in the present context of the Lokpal Bill, that the entire appointment process of the higher judiciary needs to be revamped and reformed. The appointment process cannot be allowed and should not be allowed to continue in the hands of a self-appointed common law mechanism created by judicial order operating since the early 1990s. A National Judicial Commission must be set up to create a broad-based and comprehensive model for judicial appointments, including, if necessary, by way of amendment of Articles 124 and 217 of the Indian Constitution. Without such a fundamental revamp of the appointment process at source and at the inception, all other measures remain purely ex-post facto and curative. Preventive measures to ensure high quality judicial recruitment at the entrance point is vital.**
- (v) It is the same National Judicial Commission which has to be entrusted with powers of both transfer and criminal prosecution of judges for corruption. If desired, by amending the provisions of the Constitution as they stand today, such proposed National Judicial Commission may also**

be given the power of dismissal / removal. In any event, this mechanism of the National Judicial Commission is essential since it would obviate allegations and challenges to the validity of any enactment dealing with judges on the ground of erosion or impairment of judicial independence. Such judicial independence has been held to be part of the basic structure of the Indian Constitution and is therefore unamendable even by way of an amendment of the Indian Constitution. It is for this reason that while this Committee is very categorically and strongly of the view that there should be a comprehensive mechanism for dealing with the trinity of judicial appointments, judicial transfers and criminal prosecution of judges, it is resisting the temptation of including them in the present Lokpal Bill. The Committee, however, exhorts the appropriate departments, with all the power at its command, to expeditiously bring a Constitutional Amendment Bill to address the aforesaid trinity of core issues directly impinging on the judicial system today viz. appointment of high quality and high caliber judges at the inception, non-discriminatory and effective transfers and fair and vigorous criminal prosecution of corrupt judges without impairing or affecting judicial independence.

- (vii) The Committee finds no reason to exclude from the conclusions on this subject, the burgeoning number of quasi-judicial authorities including tribunals as also other statutory and non-statutory bodies which, where not covered under category 'A' and 'B' bureaucrats, exercise quasi-judicial powers of any kind. Arbitrations and other modes of alternative dispute resolution should also be specifically covered in this proposed mechanism. They should be covered in any eventual legislation dealing with corruption in the higher judiciary. The Committee notes that a large mass of full judicial functions, especially from the High Courts has, for the last 30 to 40 years, been progressively hived off to diverse tribunals exercising diverse powers under diverse statutory enactments. The Committee also notes that apart from and in addition to such tribunals, a plethora of Government officials or other persona designata exercise quasi judicial powers in diverse situations and diverse contexts. Whatever has been said in respect of the judiciary in this chapter should, in the

considered opinion of this Committee, be made applicable, with appropriate modifications in respect of quasi-judicial bodies, tribunals and persons as well.

CHAPTER - 11

THE LOKPAL: SEARCH AND SELECTION

I. INTRODUCTION AND BACKGROUND

- 11.1. The institution of the Lokpal is being mooted and created for ensuring that the scourge of corruption is punitively attacked and that honesty, transparency and probity imbue public and private life to the highest extent and degree possible. The selection of the Lokpal, therefore, has to be at the highest levels and has to achieve the selection of the best and the brightest at the entry point. Section 4 (1) of the Lokpal Bill prescribes a Selection Committee while section 4 (3) provides that the Selection Committee may, if it considers necessary for the purpose of preparing a Panel to be considered for such appointment, constitute a Search Committee. There have been many permutations and combinations suggested by the witnesses for the Selection and/or the Search Committee.

II. SUMMARY OF SUGGESTIONS/ OBSERVATIONS RECEIVED THROUGH WRITTEN MEMORANDA

- 11.2 The major points raised in the memoranda received by the Committee, on this topic are:
- Strength of Government in Lokpal should not exceed half the total strength
 - Membership of Lokpal – 50% for women, 25% from SC/ST, 20% from minorities proposed.
 - Need for representation for women, minority community, SC/ST/OBC in Lokpal.
 - The representation of SC/ST/OBCs/DTs/NTs and religious minorities in Lokpal and Lokayuktas suggested.
 - Representation for SCs, STs, BCs including BCs of religious minorities need in Lokpal.
 - Need to avoid ex-politicians and MPs as members of Lokpal and specific exclusion to be added in Chapter-II Clause 4.
 - Need to add exclusions for individuals who have any charge sheet or investigation pending against them or who have been prosecuted for any offence/ malpractice.
 - There should be a minimum age criterion for membership of Lokpal – 45 years.
 - Selection should have at least four independent members from public life, but who are not serving any function of government/ judiciary but can be retired SC judges,

Magsasay award winners, Directors or IIT, IIM, ISI, IIS or Bharat Ratna awardees.

No need for MP.LOP in the Selection Committee

- Persons in active politics must not be appointed as Lokpal.
- Lokpal may be appointed as per norms applicable to HC judges and CVC.
- There is no justification for the provision which states that all previous Chairpersons of Lokpal will be members of the Selection Committee. Over time, this will give undue weight age to retired Lokpals and create an exclusive club of Lokpals accountable only to themselves. In no other constitutional office, is there provision to select the successor.
- Any person who has received an award, recognition/monetary purse from a foreign govt./institution/foundation, should not be appointed to Lokpal office.
- Any person who has been associated with an international body that interferes in the internal affairs of other nations, such as Amnesty International, Human Rights Watch etc. should not be appointed to Lokpal office.
- Any person/NGO that has received funds from a foreign organization/person to do advocacy in his/her home country, such as promoting GM seeds, should not be appointed to Lokpal office.
- NRIs should not be appointed to Lokpal Office.
- A person of Indian origin, who is no longer a citizen of India, should not be appointed to Lokpal office.
- Out of the Members as provided in Section 4, two nominees i.e. one prominent jurist and one person of prominence in public life may be chosen by the Members of Lokpal collectively and not by Central Government.
- Clause 3(2)(c) be inserted to provide the CVC and two Vigilance Commissioners to function as Ex-officio Members of the Lokpal.
- CVC Chairman and Members be made Ex-officio Members of Lokpal and they may be appointed or removed in the manner of Members of Lokpal.
- CVC should be made an Ex-officio Member of the Lokpal as recommended by second ARC.
- The concept of 'person of eminence in public life' is a vague and ambiguous expression which may lead to avoidable controversies.
- Those in the age group of 55-70/65 years should be considered for appointment as Chairpersons/ Members of Lokpal in view of maturity and experience required.

- Lower age limit should be fixed as 60 years
- Chairperson of Lokpal – male & female for alternate terms; Members – 50% women
- Tenure – 6 years; 1/3rd to retire every two years
- In order to provide stability to the institution of Lokpal, “no person who does not have less than two years to serve as Chairman or Member of Lokpal, shall be considered for appointment to the post of such Chairman/ Member.”
- Selection Committee should have representation from disadvantaged sections of the society – Chairperson of National Womens’ Commission, Chairperson of SC/ST Commission and Chairperson of National Commission of Minorities.
- There must be a balance between the Government, the opposition and the judiciary in the Selection Committee.
- Selection process should be aired live.
- NRIs may also be made members of the Selection Committee.
- Has recommended public participation in appointment process.
- Undue weightage to Govt. in Selection Committee; Cabinet Minister and person of eminence can be done away with ‘eminent jurist’ at (h) may better be nominated by CJI. The remaining 7 Members should be enough to propose a suitable panel and governmental influence be reduced to minimum.
- There must be a Search Committee for recommending names of Chairperson and Members of Lokpal.
- Search Committee should be mandatory for appointment of Chairperson and Members of Lokpal

III. SUMMARY OF DEPOSITIONS GIVEN BY THE WITNESSES

11.3 Shri Shekhar Singh (NCPRI) stated as follows:-

“...the selection process and selection committee of the Government Lokpal Bill. It prescribes 11 members in the selection committee. A majority of them are either from the Government or, from the ruling party, or, nominated by the Government. So, we feel that is not fair.

We are suggesting a very simple selection committee of three members the Prime Minister, the Leader of the Opposition in the Lok Sabha and a Judge of the Supreme Court nominated by the Chief Justice of India. Why a Judge and not the Chief Justices? This is being done so that there is no complication when an appeal or a writ petition goes to the Supreme Court. It could be another composition, but it must be a composition which is not biased towards either the Government or any other party, the ruling party etcetera etcetera...”

He further stated:-

".....It is our experience that these high-powered Selection Committees of Prime Ministers and Leaders of Opposition do not have the time to actually go out and search who could be a good candidate. In effect, what happens in such situations, and we have seen it in other cases, which I will not mention, but you are familiar, is that the dealing Department of the Government actually decides who is going to become the Chief Lokpal, who is going to become the Lokpal, by the names that they nominate. Therefore, we feel that the Search Committee is very critical and the Search Committee should be mandatory....."

11.4 Shri Harish Salve opined thus:-

".....I completely share the perception that unless there is perceptible inclusiveness, the institution will not enjoy the kind of public respect and public support which needs to enjoy and that is one of the major problems with our judiciary"

11.5 Shri Udit Raj, while appearing before the Committee, said :-

".....In this context, we request that the representation of the SCs/STs, Backwards and minorities should be ensured not only at the committee level but also at the level of the search and selection process. Of course, 'probable' candidates will be selected by the search and selection committee. But whatever may be the final decision, eventually, out of those probable candidates there would be members and the Chairman of the Committee"

11.6 The DoPT, in its written comments, has stated:-

"...In the light of the duties and responsibilities of the Lokpal, it is felt that a person with judicial background would be more suitable to hold the position of Chairman of Lokpal..."

IV ANALYSIS AND DISCUSSION

11.7 The central principle which should dictate the composition of the Selection Committee is that the Committee should, in logistics and deliberations, be manageable, compact and representative without being unwieldy.

11.8 The Lokpal Bill, 2011 contemplates a very large Selection Committee which may or may not appoint a Search Committee. The Jan Lokpal Bill also contemplates a large Selection Committee and an even larger Search Committee.

11.9 The Selection Committee should be kept reasonably compact to enable swift functioning. It should also be representative. Consequently, a Selection Committee comprising of all the three organs of State viz. the Prime Minister (as head of the

Executive), the Speaker of Lok Sabha (as Head of the Lower House) and the Chief Justice of India (as head of the Judiciary), as also the Leader of the Opposition in the Lower House would be a good starting point. The fifth Member of the Selection Committee should be an eminent Indian qualified by all adjectives in clause 4(1)(i) of the Lokpal Bill, 2011 but should be a single nominee, collectively and conjointly, of the following/designated constitutional bodies, viz. CAG, CEC, UPSC Chairman with such nominee having a term of a maximum of five years. This would be a compact five-member body and would have inputs and representations from all relevant sections of the society and government.

11.10 There should, however, be a proviso in Clause 4(3) to the effect that a Search Committee shall comprise at least seven Members and shall ensure representation 50 per cent to Members of SC's and/or STs and/or Other Backward Classes and/or Minorities and/or Women or any category or combination thereof. Though there is some merit in the suggestion that the Search Committee should not be mandatory since, firstly, the Selection Committee may not need to conduct any search and secondly, since this gives a higher degree of flexibility and speed to the Selection Committee, the Committee, on deep consideration, finally opines that the Search Committee should be made mandatory. The Committee does so, in particular, in view of the high desirability of providing representation in the Search Committee as stated above which, this Committee believes, cannot be effectively ensured without the mandatory requirement to have a Search Committee. It should, however, be clarified that the person/s selected by the Search Committee shall not be binding on the Selection Committee and secondly, that, where the Selection Committee rejects the recommendations of the Search Committee in respect of any particular post, the Selection Committee shall not be obliged to go back to the Search Committee for the same post but would be entitled to proceed directly by itself.

11.11 Over the years, there has been growing concern in India that the entire mass of statutory quasi judicial and other similar tribunal bodies or entities have been operated by judicial personnel i.e. retired judges, mainly of the higher judiciary viz. the High Courts and the Supreme Court.

- 11.12 There is no doubt that judicial training and experience imparts not only a certain objectivity but a certain technique of adjudication which, intrinsically and by training, is likely to lead to greater care and caution in preserving principles like fair play, natural justice, burden of proof and so on and so forth. Familiarity with case law and knowledge of sometimes intricate legal principles is naturally available in retired judicial personnel of the higher judiciary.
- 11.13 However, when new and nascent structures are being contemplated it is necessary not to fetter or circumscribe the discretion of the appointing authority. The latter is certainly entitled to appoint judges, and specific exclusion of judges is neither contemplated nor being provided. However, to consider, as the Lokpal Bill 2011 does, only former Chief Justices of India or former judges of the Supreme Court as the Chairperson of the Lokpal would be a totally uncalled for and unnecessary fetter. The Committee, therefore, recommends that clause 3(2) be suitably modified not to restrict the Selection Committee to selecting only a sitting or former Chief Justice of India or judge of the Supreme Court as Chairperson of the Lokpal.
- 11.14 A similar change is not suggested in respect of Members of the Lokpal and the existing provision in clause 3 (2) (b) read with clause 19 may continue. Although the Committee does believe that it is time to consider tribunals staffed by outstanding and eminent Indians, not necessarily only from a pool of retired members of the higher judiciary, the Committee feels **hamstrung** by the Apex Court decision in *L. Chandra Kumar v. Union of India* 1997 (3) SCC 261 which has held and has been interpreted to hold that statutory tribunals involving adjudicatory functions must not sit singly but must sit in benches of two and that at least one of the two members must be a judicial member. Hence, unless the aforesaid judgment of the Apex Court in *L. Chandra Kumar v. Union of India* is reconsidered, the Committee refrains from suggesting corresponding changes in clause 3 (2) (b) read with clause 19, though it has been tempted to do so.
- 11.15 There is merit in the suggestion that clause 3 (4) of the Lokpal 2011 be further amended to clarify that a person shall not be eligible to become Chairperson or Member of Lokpal if:
- (a) He/ she is a person convicted of any offence involving moral turpitude;

- (b) He/ she is a person less than 45 years of age, on date of assuming office as Chairperson or Member of Lokpal;
- (c) He/ she has been in the service of any Central or State Government or any entity owned or controlled by the Central or State Government and has vacated office either by way of resignation, removal or retirement within the period of 12 months prior to the date of appointment as Chairperson or Member of Lokpal.

11.16 In clause 9 (2), the existing provision should be retained but it should be added at the end of that clause, for the purpose of clarification, that no one shall be eligible for re-appointment as Chairperson or Member of the Lokpal if he has already enjoyed a term of five years.

11.17 The Committee has already recommended in para 11.10 above appropriate representation on the Search Committee of certain sections of society who have been historically marginalized. The Committee also believes that although the institution of Lokpal is a relatively small body of nine members and specific reservation cannot and ought not to be provided in the Lokpal institution itself, there should be a provision added after clause 4 (5) to the effect that the selection committee and the search committee shall make every endeavour to reflect the diversity of India by including the representation, as far as practicable, of historically marginalized sections of the society on the Lokpal Bill like SCs/ STs, OBCs, minorities and women.

V. REASONS AND RECOMMENDATIONS

11.18 To ensure flexibility, speed and efficiency on the one hand and representation to all organs of State on the other, the Committee recommends a Selection Committee comprising:-

- (a) The Prime Minister of India- as Head of the Executive.**
- (b) The Speaker Lok Sabha, as Head of the Legislature.**
- (c) The Chief Justice of India-as Head of the Judiciary.**
- (d) The leader of the Opposition of the Lower House.**
- (e) An eminent Indian, selected as elaborated in the next paragraph.**

N.B.: functionaries like the Chairman and Leader of the Opposition of the Upper House have not been included in the interests of compactness and flexibility. The Prime Minister would preside over the Selection Committee.

11.19 The 5th Member of the Selection Committee in (e) above should be a joint nominee selected jointly by the three designated Constitutional bodies viz., the Comptroller and Auditor General of India, the Chief Election Commissioner and the UPSC Chairman. This ensures a reasonably wide and representative degree of inputs from eminent Constitutional bodies, without making the exercise too cumbersome. Since the other Members of the Selection Committee are all ex-officio, this 5th nominee of the aforesaid Constitutional bodies shall be nominated for a fixed term of five years. Additionally, it should be clarified that he should be an eminent Indian and all the diverse criteria, individually, jointly or severally, applicable as specified in Clause 4 (1) (i) of the Lokpal Bill 2011 should be kept in mind by the aforesaid three designated Constitutional nominators.

11.20 There should, however, be a proviso in Clause 4(3) to the effect that a Search Committee shall comprise at least seven Members and shall ensure representation 50 per cent to Members of SC's and/or STs and/or Other Backward Classes and/or Minorities and/or Women or any category or combination thereof. Though there is some merit in the suggestion that the Search Committee should not be mandatory since, firstly, the Selection Committee may not need to conduct any search and secondly, since this gives a higher degree of flexibility and speed to the Selection Committee, the Committee, on deep consideration, finally opines that the Search Committee should be made mandatory. The Committee does so, in particular, in view of the high desirability of providing representation in the Search Committee as stated above which, this Committee believes, cannot be effectively ensured without the mandatory requirement to have a Search Committee. It should, however, be clarified that the person/s selected by the Search Committee shall not be binding on the Selection Committee and secondly, that, where the Selection Committee rejects the recommendations of the Search Committee in respect of any particular post, the Selection Committee shall not be obliged to go back to the Search Committee for the same post but would be entitled to proceed directly by itself.

- 11.20(A)** Over the years, there has been growing concern in India that the entire mass of statutory quasi judicial and other similar tribunals, bodies or entities have been operated by judicial personnel i.e. retired judges, mainly of the higher judiciary viz. the High Courts and the Supreme Court.
- 11.20 (B)** There is no doubt that judicial training and experience imparts not only a certain objectivity but a certain technique of adjudication which, intrinsically and by training, is likely to lead to greater care and caution in preserving principles like fair play, natural justice, burden of proof and so on and so forth. Familiarity with case law and knowledge of intricate legal principles, is naturally available in retired judicial personnel of the higher judiciary.
- 11.20 (C)** However, when a new and nascent structure like Lokpal is being contemplated, it is necessary not to fetter or circumscribe the discretion of the appointing authority. The latter is certainly entitled to appoint judges to the Lokpal, and specific exclusion of judges is neither contemplated nor being provided. However, to consider, as the Lokpal Bill 2011 does, only former Chief Justices of India or former judges of the Supreme Court as the Chairperson of the Lokpal would be a totally uncalled for and unnecessary fetter. The Committee, therefore, recommends that clause 3(2) be suitably modified not to restrict the Selection Committee to selecting only a sitting or former Chief Justice of India or judge of the Supreme Court as Chairperson of the Lokpal.
- 11.20 (D)** A similar change is not suggested in respect of Members of the Lokpal and the existing provision in clause 3 (2) (b) read with clause 19 may continue. Although the Committee does believe that it is time to consider tribunals staffed by outstanding and eminent Indians, not necessarily only from a pool of retired members of the higher judiciary, the Committee feels **hamstrung** by the Apex Court decision in *L. Chandra Kumar v. Union of India* 1997 (3) SCC 261 which has held and has been interpreted to hold that statutory tribunals involving adjudicatory functions must not sit singly but must sit in benches of two and that at least one of the two members must be a judicial member. Hence, unless the aforesaid judgment of the Apex Court in *L. Chandra Kumar v. Union of India* is

reconsidered, the Committee refrains from suggesting corresponding changes in clause 3 (2) (b) read with clause 19, though it has been tempted to do so.

11.20 (E) There is merit in the suggestion that clause 3 (4) of the Lokpal 2011 be further amended to clarify that a person shall not be eligible to become Chairperson or Member of Lokpal if:

- (a) He/ she is a person convicted of any offence involving moral turpitude;
- (b) He/ she is a person less than 45 years of age, on date of assuming office as Chairperson or Member of Lokpal;
- (c) He/ she has been in the service of any Central or State Government or any entity owned or controlled by the Central or State Government and has vacated office either by way of resignation, removal or retirement within the period of 12 months prior to the date of appointment as Chairperson or Member of Lokpal.

11.20 (F) In clause 9 (2), the existing provision should be retained but it should be added at the end of that clause, for the purpose of clarification, that no one shall be eligible for re-appointment as Chairperson or Member of the Lokpal if he has already enjoyed a term of five years.

11.20 (G) The Committee has already recommended appropriate representation on the Search Committee, to certain sections of society who have been historically marginalized. The Committee also believes that although the institution of Lokpal is a relatively small body of nine members and specific reservation cannot and ought not to be provided in the Lokpal institution itself, there should be a provision added after clause 4 (5) to the effect that the Selection Committee and the Search Committee shall make every endeavour to reflect, on the Lokpal institution, the diversity of India by including the representation, as far as practicable, of historically marginalized sections of the society like SCs/ STs, OBCs, minorities and women.

CHAPTER - 12

THE TRINITY OF THE LOKPAL, CBI AND CVC : IN SEARCH OF AN EQUILIBRIUM

I. INTRODUCTION AND BACKGROUND

- 12.1. The large body of opinion as available through the witnesses and the memoranda received, clearly suggested that existing institutions, including CBI and CVC should be strengthened. They also said that merely creating fresh ones without eradicating the ills which plagued existing structures, would not have the desired effect. The proposed concept of the Lokpal is, in essence, a monitoring body (with or without investigative/prosecuting powers, as the case may be) for offences under the Prevention of Corruption Act 1988. The substantive law of POCA is largely not under change: what is desirable is a powerful and efficacious body to go after corruption. Therefore it is appropriate to reassess the roles played by the existing institutions i.e. CBI and CVC which already have investigative/prosecuting powers under the 1988 Act. The major thorn which seems to have created years of dissatisfaction with the system relates to the monitoring of the CBI by the government and the fetters imposed by section 6 A (single directive) of the DSPE Act and section 19 of the POCA Act, in addition to S. 197 IPC. Their effect on independent and autonomous investigation and prosecution has been felt to be adverse and counter productive. Absent such and other weaknesses, there would perhaps be no objection to retaining these institutions and in fact strengthening them to a point where they work in tandem with the new Lokpal – creating a powerful Trinity, with mutual checks and balances to increase the quality and efficacy of both investigation and prosecution, while avoiding excessive fusion of power in one body alone. The opinions received relating to the roles of CBI and CVC, as well as the overall proposed structure of the Lokpal, are discussed below.

II. SUMMARY OF SUGGESTIONS/ OBSERVATIONS RECEIVED THROUGH WRITTEN MEMORANDA

- 12.2 The major points raised in the memoranda received by the Committee, on this topic are:

- It would not be prudent to take over the entire anti-corruption division of CBI. Instead, the Lokpal should set up its own investigation and prosecution wing, taking senior officers on deputation basis to get rid of those who fail to deliver.
- Investigation and Prosecution Wing should consist of officers who have never faced any departmental enquiry or charged of any offence.
- I&P Wing should consist of persons representing communities of Muslim, Hindu, Christians & Dalits.
- Officers of I& P should declare their assets on joining & every year, till relinquishment of office and discrepancy ought to be dealt in accordance with law.
- Economic Offences Wing of CBI cannot be separated from the Anti-Corruption Wing as the two are inter woven. Therefore, they should not be split; rather, there is need to bring the Enforcement Directorate also under the same umbrella.
- It should be made binding on CBI to register and investigate a case if recommended by the Lokpal.
- With regard to placing of CBI and other investigating agencies under Lokpal, it is suggested that once the persons from such agencies are affiliated to Lokpal, they should not be posted back to their parent organizations as a measure to safeguard their service interests/career.
- Bring CVC and Anti-Corruption Wing of CBI under Lokpal.
- The personnel for the departmental anti-corruption/vigilance wings must be selected by Lokpal on inter-departmental basis and not intra-departmental basis. They must function under Lokpal only, with duty to report details to Lokpal monthly.
- The anti-corruption division should be merged as a administrative arm of Lokpal and suitable amendments should be made to exclude these from the direct control of the govt. which has been the consistent criticism of the DPSE.
- Section 6A of DSPE Act,1946 may be repealed.
- Appoint independent prosecutors to prosecute all corruption, money laundering and benami cases.
- Strengthening of anti-corruption agencies and their infrastructure and manpower, taking into account the best international practices.

- DSPE Act be so amended that no sanction for inquiry or investigation or prosecution is needed.
- Confer more administrative and functional autonomy to the CBI.
- Since the anti-corruption agencies oversee government operations and provide oversight over the offences of corruption, there is an emerging consensus that the anti-corruption body/ bodies should report to the parliament (through parliamentary committees). However, experience also shows that to be effective, legislatures require such resources as a technically competent staff, strong committees, budgetary independence and significant bureaucratic oversight powers.
- There hardly exist any anti-corruption institutions in the world that report to the Supreme Court.
- Experiences show that it may not matter much whether an anti-corruption agency is reporting to the executive or Parliament or the SC so long as its operational independence is guaranteed.
- Amend Section 197 of CrPC and Section 19 of PCA so as to provide for ordering of prosecution by CVC/ Lokpal and not by the Government.
- CBI be split in two separate agencies; for cases relating to corruption, money laundering and Benami properties, CBI may be accountable to CVC only.
- Bring Enforcement Directorate under CVC.
- All prosecutors with respect to anti- corruption cases should be under the Lokpal.
- Regarding confiscation of properties of corrupt public servants, a law needs to be enacted at the earliest on the lines of Corrupt Public Servants (Forfeitures of Property) Bill drafted by the Law Commission.
- Benami Transactions (Prohibition) Bill, 2011 needs to be enacted/amended immediately to ensure action against corrupt public servants.

III. SUMMARY OF DEPOSITIONS GIVEN BY THE WITNESSES

- 12.3. The Committee takes note of the submission made by Justice J.S.Verma, while tendering his considered advice before the Committee :-

".....When CBI and CVC are mentioned, they could be appointed by the same law as members of the body. You could consider the same process for their appointment;.....it is over time you gain experience. If you are going to have a more effective procedure for appointment of Lokpal, then the same should apply also for the CBI Director and CVC. Why not consider they to be ex-officio members of the Lokpal just as in the case of National Human Rights Commission you have Chairman and others as ex-officio members. You could think of that system....."

12.4. Dr. Jayaparakash Narayan, during his deposition before the Committee, stated :-

".....my humble appeal is, the Central Vigilance Commission and the CVC Act must be retained with certain modifications. One, the CVC members, including the Chairperson should be made, in addition to their functions under the CVC Act, ex-officio members of the Lok Pal institution so that they have the institutional authority and there will be total seamless integration of functioning. But, in addition to being members of the Lok Pal, the CVC must function under the CVC Act, and exercise all the functions of the CVC Act. It has three advantages,

Therefore, the autonomy that we seek, the independence and the insulation of the crime investigation, particularly in respect of matters of corruption on economic offences from the political executive and partisan politics, that will be achieved by merely retaining that but strengthening and giving autonomy to the Vigilance Commission. Therefore, the autonomy that we seek, the independence and the insulation of the crime investigation, particularly in respect of matters of corruption on economic offences from the political executive and partisan politics, that will be achieved by merely retaining that but strengthening and giving autonomy to the Vigilance Commission. Therefore, destruction of the Vigilance Commission or blind merger or repeal of the CVC Act would be retrogressive steps because we have to achieve many more things, apart from merely creating an institution called Lok Pal or Lokayukta.

Mr. Chairman, Sir, we must go all the way. We must ensure a real and full autonomy but with accountability to all anti-corruption investigative agencies in all matters of corruption. Even as we ensure that there is no need for a roving enquiry, there is no under-mining of the morale of those in the Government. That should be accomplished, if (a) Section 6(a) of the Delhi Special Police Establishment Act is repealed; (b) the executive orders, if any, in the States, in respect of the ACB, similar orders but by an executive order, they apply in State also, they all must go by a specific statutory provision; (c) that sanction of prosecution, probably, there is a case for prior vetting before prosecuting. In such a case, we urge two safeguards. One is, let the CVC be the sanctioning authority because that is envisaged to be an independent authority; that is an authority with deep administrative experience and institutional strength, we can trust that authority. However, before sanctioning prosecution against high officials, the CVC can be asked to write to the Government, indicating what they are going to do. In case the Government of the day, at the State level, in the case of the Lokayukta, and at the national level, in the case of the CVC, has very compelling reasons why a prosecution should not be sanctioned, sometimes, there may be national security considerations that the authorities may not be aware of, sometimes, there may be some other compelling national interest issues, in which case, the Government will have to then record the reasons in writing and communicate to the CVC, and the CVC will take a final decision on the basis of the Government's inputs.....but there may be instances where the actions of an individual, even if they

are seemed to be corrupt in the ordinary law of the land, they are, in a specific context of the national security, necessary and, therefore, the Government believes that the balance of convenience lies not in prosecuting but in denying prosecution. But the CVC must be the final authority. With such safeguards, if the CVC is given the power to sanction prosecution at the national level, in case of the States, the Lokayukta is given the power to sanction prosecution that will suffice.

Lokpal or CVC must be empowered to appoint independent prosecutors because prosecution after all is really a quasi judicial function. It is not something to be trifled with through political interference or partisanship. Investigation, evidence gathering is really an independent thing of the politics of the day. It is entirely based on evidence. It has importance as judicial functioning.....the Lokpal should have a team of investigators, that eventually can be decided but that must be more to go into some of the cases that Lokpal will directly go into because of the sensitivity and complexity of the cases or for a preliminary examination before CBI takes over investigation and prosecution in the large measure.....”

- 12.5. The Chairman of the Bar Council of India, while placing their views before the Committee, said:-

".....The Anti-corruption Wing of the CBI should be separated and made completely autonomous. Now, accountability mechanisms can be evolved through a Committee. Like the Lokpal, the CAG, the CVC and the CBI should have its own prosecution wing. The Director of CBI and other key officials should be appointed by a Committee, a broad Committee, similar to the one which almost appoints the Lokpal....."

- 12.6. Dr. Bhanu Pratap Mehta, while deposing before the Committee, said:-

".....What to matter for institutions is who writes your confidential report, who determines the structure of promotion and so forth. By bringing it under the Lokpal, you actually change that entire culture which currently exists in the CBI. So, my own submission is that to peg the CBI to report to this. The CVC, as I said, the CVC Act could be amended to make it a kind of supervisory body for the lower bureaucracy"

- 12.7. The views of the representatives of CII were as follows:

".....We also believe, as a recommendation, that the Director of the CBI and the Director of the CVC should be made members of the Lokpal in order to promote a collaborative behaviour in terms of ensuring that investigations are done quickly and one agency helps the other agency and so on....."

- 12.8. Shri Amod K. Kanth, while placing his views before the Committee, said:-

".....Sir, according to our suggestion, the CBI will remain accountable only to Lokpal. The accountability of the CBI, so far as its anti-corruption wing is concerned, can remain only with the Lokpal. Accountability in other matters can remain with the Government also because there are different kinds of matters....."

12.9. The views of NCPRI in this regard were that:-

"..... we have said specifically, in the medium to long term, we would much prefer an independent prosecution body along the lines, for example, which is in the UK and it is keeping with a Supreme Court order to the effect. We would also much prefer in the long term, medium to long term not having both prosecution and investigation both in the same body....."

12.10. The Central Vigilance Commissioner, while elucidating upon the role played by CVC, stated thus:-

".....We cannot build a society on distrust and fear alone. सीवीसी यह काम करता है। पॉलिटिकल करप्शन के अंदर जो सिविल सर्वेंट्स उनके साथ लिप्त हैं, उनको देखने के लिए कोऑर्डिनेशन मैकेनिज्म होना चाहिए। उसमें अगर सीवीसी को आप हिस्सा बनाना चाहते हैं तो लोकपाल का एक्स ऑफिशियो कर दें। अगर नहीं भी बनाना चाहते तो हमें कोई ऐतराज नहीं है। मैं समझता हूं कि सिद्धांत रूप से सीबीआई को लोकपाल का सदस्य नहीं बनाना चाहिए।

If you want a definitive recommendation, I would suggest that we should go by the recommendations of the Second Administrative Reforms Commission which says that CVC should be made an ex-officio member of the Lokpal.

CVC is not an investigating agency. It is an integrity institution responsible for coordinating the superintendence of vigilance administration. It does not do investigation. So, this misperception that the CVC does the investigation itself is not there.....".

12.11. The Committee also takes into account the arguments put forth by the Director, CBI on this issue :-

".....The Government Lokpal Bill says, give the Lokpal a fresh or a new anti-corruption investigating agency. Our thinking is that we are an anti-corruption body. We have always been an anti-corruption body right from its inception. The primary focus of the CBI has always been anti-corruption work. That is our forte and that is our expertise. So, why should the anti-corruption work be taken out of the CBI?....

.....Sir, because it being an investigating agency, there has to be a proper command and control system. And it can only be the Director; you cannot have ten members of the Lokpal giving directions.....

.....Sir, CVC also is general superintendence. Therefore, we are saying that if you have a Lokpal, the general superintendence can transfer to the Lokpal. You can't have so many bodies for superintendence. It is a choice.....

.....I would also like to point out that it is not so simple to create a separate agency. People say to create a separate agency. It is not so simple to create a separate agency. To create an agency it is going to take you ten or fifteen years. What would happen then is that there would be nobody looking after anti-corruption. The CBI would be out of anti-corruption and you will be trying to set up a new agency which will be equally ineffective. So, your basic anti-corruption movement would be a non-

starter unless you have the CBI in its complete present structure totally involved in whatever architecture you would be proposing....”

- 12.12. The Committee notes that the opinion of Dr. Jayaprakash Narayan placed before the Committee on this matter, is quite similar:

“.....It cannot be a separate parallel body fully dealing with all cases of investigation. That simply is not possible. For 64 years we could not build a CBI which has more than 2000 investigative officers. To think that tomorrow overnight you can build an agency with some 50000 investigators, it is not realistic. We must utilize the existing strength and expand it and bring more expertise and more technology and more manpower, more resources to CBI and make it strong, effective and accountable rather than deplete existing institutions..... So, some kind of a provision in the law also will be helpful subject to the caveat in States Lokayuktas but at the national level as we submitted earlier the CVC is fully capable of handling it with the changes that we proposed. But the CBI must be strengthened and Section 6A of the Delhi Police Establishment Act must go and the relaxation given to Lokpal institution in respect of prosecution must apply to all cases.....”

- 12.13. The considered view of Shri Harish Salve was that :-

“.....Sir, I have, with great respect, strong views about subjecting the working of the CBI in its investigative area to any kind of interference. The Code of Criminal Procedure confers sole jurisdiction on the judicial system, principally the Magistracy, to oversee investigations and that is where, Sir, in my respectful submission, this power must continue to lie.....

.....As for the decision whether or not to prosecute, we must follow the system; we have two mistakes in our law. In America, as you know, it is the District Attorney’s Office or the State Attorney General’s office, or, at the federal level, it is the Attorney Level or the Solicitor General’s office, which takes a final call on whether or not to press charges. In India, some judgements have taken the view that the police cannot even consult the Public Prosecutor which, according to me, is wrong. Many times, especially, in complex corporate crimes or in Prevention of Corruption crimes, you may end up filing chargesheets which fail because you got the law wrong. Now, the CBI must have a powerful Public Prosecutorial Wing.....”

- 12.14. The Chairman of the Committee, while voicing his opinion on this issue, stated:-

“.....The CBI for all its faults has expertise in investigation. If you are going to give investigation to Lokpal without investigative wing, so you will have to have existing wing. However the CBI without its anti-corruption wing is left with nothing and their stature goes.....”

- 12.15. One of the Members of the Committee highlighted a problem area in this regard as:-

“..... The problem arises when CVC wants sanction against higher bureaucracy but the sanction is not granted normally. Even when it is granted, the time taken is far too long as a result the accused bureaucrat continues to exercise the authority.....”

12.16. The Committee, while examining the crucial role played by CBI, gave serious thought and consideration to the written submission made by CBI that:

“.....Since the Government has introduced Lokpal Bill and has proposed creating a separate investigation Wing for the Lokpal, CBI is of the view that rather than creating new investigation Wing, CBI should be utilized for investigation of cases referred by Lokpal.... However, the relationship between CBI and Lokpal should be similar to the superintendence over CBI presently exercised by the CVC in the manner as laid down under Sec. 8 (1) (b) of the CVC Act..... The CBI would like to work in close association with the Lokpal with Director CBI as Ex-officio member of Lokpal..... CBI will continue to exercise the police powers to take final decision after completion of investigation of a case and file police report in the competent court and intimate Lokpal as well in the matters referred by it. The relationship between CBI and Lokpal should be similar to the superintendence over CBI presently exercised by the CVC in the manner as laid down under Sec. 8 (1) (b) of the CVC Act.....CBI is of the view that it is capable to take care of all the matters referred for investigation by the Lokpal and there is no need for a separate Investigation Wing of Lokpal. However, the manpower and other resources will need to be augmented to cater to this additional workload.....CBI is of the view that it should not be bifurcated and should be granted full functional autonomy.....Keeping in view the Lokpal Bill, already introduced by the government in the Parliament, which inter alia envisages creation of a separate Investigation Wing for looking into corruption cases, it was proposed by CBI that as investigation of Anti-corruption cases is the primary activity of CBI and CBI has evolved itself into a premier investigation agency of the country over 70 years of its existence, there is no need for creation of a new agency in Lokpal for investigation of anti-corruption cases. The CBI is capable of taking care of all the matters referred for investigation by the Lokpal, if it is created.Looking into professional competence, credibility of CBI; it should be made an integral though independent component of any Anti-corruption apparatus to fight corruption. To ensure full functional autonomy, it has been proposed to make Director CBI, an Ex-officio member of the Lokpal. However, the Lokpal may exercise general superintendence over CBI for PC Act cases referred by it through Director CBI as its Ex-officio member in a similar manner as being done by the CVC under the CVC Act.....”

12.17. With regard to the Prosecution Wing, CBI has submitted that:

“.....A proposal for creation of 907 posts has been sent in 2008 to Department of Personnel Training to strengthen the Prosecution Wing of CBI..... Director of Prosecution of CBI is the officer borne on the cadre of Ministry of Law, Justice & Legal Affairs. He is the head of Prosecution Wing of CBI. In addition to this, three Additional Legal Advisors who are also on the strength of department of Legal Affairs, Ministry of Law, Justice & Legal Affairs, work for CBI.....LA of CBI does not have veto power. Director, CBI seeks his legal opinion in important cases. However, the same is not binding on the Director, CBI.”

12.18. The Committee also took into account the opinion of CVC in this matter, the major points of which are as under:

- CVC should remain the Premier Integrity Institution to address the corruption and it should have jurisdiction over the higher bureaucracy.
- Lokpal and CVC should work in close cooperation. Mechanism need to be developed for effective coordination.
- Amend suitably Section 6(a) of DSPE Act for according prior approvals to CBI under PC Act.
- CVC should be empowered to grant sanction for prosecution in cases of Government Servants.
- CVC's advice should be binding on the appointing authorities in respect of cases of lower officials under PC Act.
- Adequate autonomy to CVC on the lines of UPSC and C&AG.
- Amend CVC Act providing for the Government Departments to explain the reasons to the Parliament for non- acceptance of CVC advice.
- Lokpal should focus on political corruptions involving Ministers, MPs and Higher Civil Servants who have connived in the grand political corruption which is difficult to curb with existing mechanism.
- The existing structure of Vigilance administration should not be disturbed.

12.19. The CVC has further stated that:

“.....The Committee while exercising its superintendence over DSPE (CBI) holds regular review monthly meetings with Director, CBI. The following matters are reviewed during the meetings:-

- Complaints referred by Commission to CBI for investigation and reports
- Review of cases of requests made for sanction of prosecution by CBI and pending with concerned administrative authorities.
- Matters relating to proposals of vigilance clearance referred to CBI for record check etc.
- Cases registered during the month under PC Act
- Pendency of cases under investigation and trial under PC Act
- Long delayed cases of PC Act under investigations
- Administrative issues and manpower position and steps of address the same.
- Specific issues of concern, if any, in discharging its functions under DSPE Act.

12.20. Besides above, the appointments, promotions, extension of tenure or otherwise, for posts of Superintendent of Police and above in CBI are recommended to the Government in the meeting of the Committee headed by the Central Vigilance Commissioner as and when required.

12.21. A separate chapter covering the superintendence over the functioning of the CBI is also included in the Commission's Annual report.....

".....Prime-facie complaints containing serious allegations received by the Commission are forwarded to concerned CVOs of the CBI for in depth investigation and submission of reports. In addition, the CVO of the various organizations also investigate allegations contained in complaints received at their end. CBI also registers cases for investigation based on their source information. On receipt of investigation reports from the CVOs or the CBI recommending further course of action, the Commission examines the reports and thereafter tenders its first stage advice. As per information, around 60% of such investigation reports have ended in closure of the cases as the allegations were not found substantiated and also not found serious enough to proceed further for any departmental action. Further, there are cases where the allegations leveled turn out to be baseless, motivated and vexatious which may also be the reason for closure of cases after investigation. In a significant number of complaints relating to grievances, the issues get redressed. As regards reasons for the rate of around 60% closure of the allegations at first stage advice it may be mentioned that evidence gathering of corruption issues generally being a post-mortem exercise is a difficult task. Once incidents of corrupt practices are committed, the investigations basically focus on the documents and files only....."

IV. ANALYSIS AND DISCUSSION

12.22. The basic objective of a new Lokpal initiative is or at least should be to create an autonomous, independent investigative and prosecution wing for corruption in bureaucracy and the political class

12.23. The basic elements of policing corruption are:

- Receiving and screening of complaints
- Preliminary investigation of complaint
- Full/ final further investigation
- Prosecution
- Adjudication and punishment
- Departmental action

12.24. Presently, all these functions and powers (except departmental action) are centered with the CBI subject to ministerial intervention at some levels. For States where there is no CBI, the State police (frequently called Anti-corruption Bureau) does the job.

12.25. As far as departmental action is concerned, the CBI has no role and the CVC exercises full power but can only make non-binding recommendations for departmental action which is to be ultimately taken by the concerned department.

12.26. The aforesaid summary of the system shows an undesirable, inefficient and conflicted fusion of investigative and prosecutorial powers. It has also attenuated independence and autonomy in practice. If a new mechanism like the Lokpal is being created for a large part of bureaucratic and political class, the undesirable features of the existing system must be necessarily addressed.

12.27. The proposed solution

- i. Make Lokpal, for the subjects it covers, in-charge of receiving complaints and doing a detailed preliminary inquiry through its own internal inquiry wing.
- ii. Referring to the CBI (a separate statutory body) for detailed investigation must remain, as today, if the preliminary inquiry stage has been crossed as per the Lokpal.
- iii. Have the CBI be subjected only to the general superintendence of the Lokpal, similar to that to which it is subjected today under the CVC Act. During the actual detailed investigation by CBI, the merits of the investigation cannot be gone into by either the Lokpal or the administrative Ministry. The analogy here would be the same as applied to the present Court monitored criminal investigations (courts can also exercise only supervisory power but they cannot interfere in the contents or merits of the investigation).
- iv. After investigation by the CBI for the Lokpal covered persons/ offences is over, the matter would revert to a special prosecutorial wing of the Lokpal which would conduct the entire prosecution in an appropriate Court presently called the CBI Special Judge but could then be called the Lokpal Special Judge.
- v. Adjudication, punishment and appellate recourse would continue to be covered by the normal existing law except that the numbers of the Special Judges would have to be increased dramatically to achieve quick results.
- vi. For all the non-Lokpal covered persons/ offences, the existing CBI controlled investigation and prosecution system would continue with logistical infrastructural strengthening.

- vii. There can be no question of sanction for the Lokpal covered persons. In practise, the provisions of single directive and sanction have worked as a huge delaying tactic by vested interests over the years and have frustrated prosecutions.
- viii. For the Lokpal covered persons/ offences, the entire power of recommendation for departmental action would be taken away from the CVC and entrusted to the Lokpal whose recommendations shall be binding (the Lokpal Bill, 2011 already so provides). At worst, an alternative check can be provided by saying that the department is bound by the Lokpal recommendations unless, for reasons to be recorded in writing by a person of the rank of not less than Minister of State, the conclusions of the Lokpal are rejected.
- ix. For those persons not covered by the Lokpal, the CVC would retain jurisdiction (though this Committee does recommend that the CVC's recommendations should be binding unlike the present situation where very few departmental actions actually take place on the recommendations of the CVC).

12.28 The aforesaid would also obviate the current criticism of both the Lokpal Bill and the Jan Lokpal Bill which appear to fuse investigation, prosecution, superintendence and departmental recommendation into one body, though the Jan Lokpal Bill does it to a far higher and unacceptable degree than the Lokpal Bill.

12.29 Indeed, since India has been talking of an independent structure for a fairly long time, the proposed structure herein would commence a culture of Chinese wall demarcations between investigation and prosecution, the former with the CBI and the latter with the Lokpal in so far as the Lokpal covered persons are concerned. It is true that there would be teething problems for some time due to lack of coordination between investigative and prosecution wings. But this insulation of investigation and prosecution has been considered desirable for many years and we have frequently lamented the absence of this demarcation in India, as operationally present in the USA and UK. Over a short period of time, an independent Directorate of Public Prosecution (DPP) culture is hoped to emerge and considerably strengthen the quality of investigation and impart far greater objectivity to the prosecution process.

12.30 Lastly, the advantage of this model would be that:

- i. *The CBI's apprehension, not entirely baseless, that it would then become a Hamlet without a Prince of Denmark if its Anti-Corruption Wing was hived off to the Lokpal, would be taken care of.*
- ii. *It would be unnecessary to make CBI or CVC a Member of the Lokpal body itself.*
- iii. *The CBI would not be subordinate to the Lokpal nor its esprit de corps be adversely affected; it would only be subject to general superintendence of Lokpal. It must be kept in mind that the CBI is an over 60 year old body, which has developed a certain morale and esprit de corps, a particular culture and set of practices, which should be strengthened and improved, rather than merely subsumed within a new or nascent institution, which is yet to take roots. Equally, the CBI, while enhancing its autonomy and independence, cannot be left on auto pilot.*
- iv. *The CVC would retain a large part of its disciplinary and functional role for non Lokpal personnel and misconduct and would also not be subordinate to the Lokpal.*

12.31. Consequently, it is suggested that the aforesaid structure reasonably harmonizes and creates the necessary equilibrium for the independence and harmonised functioning of the so-called Trinity viz. Lokpal, CBI and CVC, with neither obliterating, superseding or weakening the other. It also advocates the strengthening of existing institutions, the creation of a new culture of professional investigation insulated from inception and a distinctly professional prosecution department.

V. REASONS AND RECOMMENDATIONS

12.32 (A) Whatever is stated hereinafter in these recommendations is obviously applicable only to Lokpal and Lokayukta covered personnel and offences/ misconduct, as already delineated in this Report earlier, inter alia, in Chapter 8 and elsewhere.

(B) For those outside (A) above, the existing law, except to the extent changed, would continue to apply.

- 12.33.** This Chapter, in the opinion of the Committee, raises an important issue of the quality of both investigation and prosecution; the correct balance and an apposite equilibrium of 3 entities (viz. Lokpal, CBI and CVC) after creation of the new entity called Lokpal; harmonious functioning and real life operational efficacy of procedural and substantive safeguards; the correct balance between initiation of complaint, its preliminary screening/ inquiry, its further investigation, prosecution, adjudication and punishment; and the correct harmonization of diverse provisions of law arising from the Delhi Special Police Establishment Act, the CVC Act, the proposed Lokpal Act, the IPC, CrPC and the Prevention of Corruption Act. It is, therefore, a somewhat delicate and technical task.
- 12.34** The stages of criminal prosecution of the Lokpal and Lokayukta covered persons and officers can be divided broadly into 5 stages, viz. (a) The stage of complaint, whether by a complainant or suo motu, (b) the preliminary screening of such a complaint, (c) the full investigation of the complaint and the report in that respect, (d) prosecution, if any, on the basis of the investigation and (e) adjudication, including punishment, if any.
- 12.35** The Committee recommends that the complaint should be allowed to be made either by any complainant or initiated suo motu by the Lokpal. Since, presently, the CBI also has full powers of suo motu initiation of investigation, a power which is frequently exercised, it is felt that the same power of suo motu proceedings should also be preserved for both the CBI and the Lokpal, subject, however, to overall supervisory jurisdiction of the Lokpal over the CBI, including simultaneous intimation and continued disclosure of progress of any inquiry or investigation by the CBI to the Lokpal, subject to what has been elaborated in the next paragraph.
- 12.36** Once the complaint, through any party or suo motu has arisen, it must be subject to a careful and comprehensive preliminary screening to rule out false, frivolous and vexatious complaints. This power of preliminary inquiry must necessarily vest in the Lokpal. However, in this respect, the recommendations of the Committee in para 12.36(I) should be read with this para. This is largely covered in clause 23 (1) of the Lokpal Bill, 2011. However, in this respect, the

Lokpal would have to be provided, at the inception, with a sufficiently large internal inquiry machinery. The Lokpal Bill, 2011 has an existing set of provisions (Clauses 13 and 14 in Chapter III) which refers to a full-fledged investigation wing. In view of the structure proposed in this Chapter, there need not be such an investigation wing but an efficacious inquiry division for holding the preliminary inquiry in respect of the complaint at the threshold. Preliminary inquiry by the Lokpal also semantically distinguishes itself from the actual investigation by the CBI after it is referred by the Lokpal to the CBI. The pattern for provision of such an inquiry wing may be similar to the existing structure as provided in Chapter III of the Lokpal Bill 2011 but with suitable changes made, *mutatis mutandis*, and possible merger of the provisions of Chapter VII with Chapter III.

12.36 (A)The Committee is concerned at the overlap of terminology used and procedures proposed, between preliminary inquiry by the Lokpal as opposed to investigation by the investigating agency, presently provided in Clause 23 of the Lokpal Bill. The Committee, therefore, recommends:

- (a) that only two terms be used to demarcate and differentiate between the preliminary inquiry to be conducted by the Lokpal, *inter-alia*, under Chapters VI and VII read with Clause 2(1)(e) as opposed to an investigation by the investigating agency which has been proposed to be the CBI in the present report. Appropriate changes should make it clear that the investigation (by the CBI as recommended in this report), shall have the same meaning as provided in Clause 2 (h) of the Cr.P.C whereas the terms “inquiry” or “preliminary investigation” should be eschewed and the only two terms used should be “preliminary inquiry” (by the Lokpal) on the one hand & “investigation” (by the CBI), on the other.
- (b) the term preliminary inquiry should be used instead of the term inquiry in clause 2(1)(e) and it should be clarified therein that it refers to preliminary inquiry done by the Lokpal in terms of

Chapters VI and VII of the Lokpal Bill, 2011 and does not mean or refer to the inquiry mentioned in Section 2(g) of the Cr.P.C.

- (c) the term “investigation” alone should be used while eschewing terms like “preliminary investigation” and a similar definitional provision may be inserted after Clause 2(1)(e) to state that the term investigation shall have the same meaning as defined in Clause 2(h) of the Cr.P.C.
- (d) Similar changes would have to be made in all other clauses in the Lokpal Bill, 2011, one example of which includes Clause-14.

12.36 (B) There are several parts of Clause 23 of the 2011 Bill, including Clauses 23(4), 23(5), 23(6), 23(9) and 23(11) which require an opportunity of being heard to be given to the public servant during the course of the preliminary inquiry i.e. the threshold proceedings before the Lokpal in the sense discussed above. After deep consideration, the Committee concludes that it is unknown to criminal law to provide for hearing to the accused at the stage of preliminary inquiry by the appropriate authority i.e. Lokpal or Lokayukta in this case. Secondly, the preliminary inquiry is the stage of verification of basic facts regarding the complaint, the process of filtering out false, frivolous, fictitious and vexatious complaints and the general process of seeing that there is sufficient material to indicate the commission of cognizable offences to justify investigation by the appropriate investigating agency. If the material available in the complaint at the stage of its verification through the preliminary inquiry is fully disclosed to the accused, a large part of the entire preliminary inquiry, later investigation, prosecution and so on, may stand frustrated or irreversibly prejudiced at the threshold. Thirdly, and most importantly, the preliminary inquiry is being provided as a threshold filter in favour of the accused and is being entrusted to an extremely high authority like the Lokpal, created after a rigorous selection procedure. Other agencies like the CBI also presently conduct preliminary inquiries but do not hear or afford natural justice to the accused during that process. Consequently the Committee recommends that all references in Clause 23 or elsewhere in the Lokpal Bill, 2011 to hearing of the accused at the preliminary inquiry stage should be deleted.

- 12.36 (BB)** Since the Committee has recommended abolition of the personal hearing process before the Lokpal during the preliminary inquiry, the Committee deems it fit and proper to provide for the additional safeguard that the decision of the Lokpal at the conclusion of the preliminary inquiry to refer the matter further for investigation to the CBI, shall be taken by a Bench of the Lokpal consisting of not less than 3 Members which shall decide the issue regarding reference to investigation, by a majority out of these three.
- 12.36 (C)** Naturally it should also be made clear that the accused is entitled to a full hearing before charges are framed. Some stylistic additions like referring to the charge sheet “if any” (since there may or may not be a chargesheet) may also be added to Clause 23(6). Consequently, Clauses like 23(7) and other similar clauses contemplating proceedings open to public hearing must also be deleted.
- 12.36 (D)** Clause 23(8) would have to be suitably modified to provide that the appropriate investigation period for the appropriate investigating agency i.e. CBI in the present case, should normally be within six months with only one extension of a further six months, for special reasons. Reference in Clause 23(8) to “inquiry” creates highly avoidable confusion and it should be specified that the meanings assigned to inquire and investigate should be as explained above.
- 12.36 (E)** The Committee also believes that there may be several exigencies during the course of both preliminary inquiry and investigation which may lead to a violation of the 30 days or six months periods respectively specified in Clause 27(2) and 23(8). The Committee believes that it cannot be the intention of the law that where acts and omissions by the accused create an inordinate delay in the preliminary inquiry and / or other factors arise which are entirely beyond the control of the Lokpal, the accused should get the benefit or that the criminal trial should terminate. For that purpose it is necessary to insert a separate and distinct provision which states that Clauses 23(2), 23(8) or other similar time limit clauses elsewhere in the Lokpal Bill, 2011, shall not automatically give any benefit or undue advantage to the accused and shall not automatically thwart or terminate the trial.

- 12.36 (F)** Clause 23(10) also needs to be modified. Presently, it states in general terms the discretion to hold or not to hold preliminary inquiry by the Lokpal for reasons to be recorded in writing. However, this may lead to allegations of pick and choose and of arbitrariness and selectivity. The Committee believes that Clause 23(10) should be amended to provide for only one definition viz., that preliminary inquiry may be dispensed with only in trap cases and must be held in all other cases. Even under the present established practice, the CBI dispenses with preliminary inquiry only in a trap case for the simple reason that the context of the trap case itself constitutes preliminary verification of the offence and no further preliminary inquiry is necessary. Indeed, for the trap cases, Section 6 A (ii) of the Delhi Special Police Establishment Act, 1946 also dispenses with the provision of preliminary inquiries. For all cases other than the trap cases, the preliminary inquiry by the Lokpal must be a non dispensable necessity.
- 12.36 (G)** Clause 23(11) also needs to be modified / deleted since, in this Report, it is proposed that it is the CBI which conducts the investigation which covers and includes the process of filing the charge sheet and closure report.
- 12.36 (H)** Similarly Clause 23 (12) (b) would have to be deleted, in view of the conclusion hereinabove regarding the absence of any need to provide natural justice to the accused at the stage of preliminary inquiry. Clause 23(14) is also unusually widely worded. It does not indicate as to whom the Lokpal withhold records from. Consequently that cannot be a general blanket power given to the Lokpal to withhold records from the accused or from the investigating agency. Indeed, that would be unfair, illegal and unconstitutional since it would permit selectivity as also suppress relevant information. The clause, therefore, needs to be amended.
- 12.36 (I)** The case of the Lokpal initiating action suo motu, requires separate comment. In a sense, the preliminary inquiry in the case of a Lokpal suo motu action becomes superfluous since the same body (i.e. Lokpal) which initiates the complaint, is supposed to do a preliminary inquiry. This may, however, not be as anomalous as it sounds since even under the present structure, the CBI, or

indeed the local police, does both activities ie suo motu action as also preliminary screening/ inquiry. The Committee was tempted to provide for another body to do preliminary inquiry in cases where the Lokpal initiates suo motu action, but in fact no such body exists and it would create great multiplicity and logistical difficulty in creating and managing so many bodies. Hence the Committee concludes that in cases of suo motu action by Lokpal, a specific provision must provide that that part of the Lokpal which initiates the suo motu proposal, should be scrupulously kept insulated from any part of the preliminary inquiry process following upon such suo motu initiation. It must be further provided that the preliminary inquiry in cases of suo motu initiation must be done by a Lokpal Bench of not less than five Members and these should be unconnected with those who do the suo motu initiation.

12.37. These recommendations also prevent the Lokpal from becoming a single institution fusing unto itself the functions of complainant, preliminary inquirer, full investigator and prosecutor. It increases objectivity and impartiality in the criminal investigative process and precludes the charge of creating an unmanageable behemoth like Lokpal, while diminishing the possibility of abuse of power by the Lokpal itself.

12.38. These recommendations also have the following advantages:

- (i) The CBI's apprehension, not entirely baseless, that it would become a Hamlet without a Prince of Denmark if its Anti-Corruption Wing was hived off to the Lokpal, would be taken care of.
- (ii) It would be unnecessary to make CBI or CVC a Member of the Lokpal body itself.
- (iii) The CBI would not be subordinate to the Lokpal nor its esprit de corps be adversely affected; it would only be subject to general superintendence of Lokpal. It must be kept in mind that the CBI is an over 60 year old body, which has developed a certain morale and esprit de corps, a particular culture and set of practices, which should be strengthened and improved, rather than merely subsumed or submerged within a new or nascent institution, which is yet to take root. Equally, the CBI, while enhancing its autonomy and independence, cannot be left on auto pilot.

- (iv) The CVC would retain a large part of its disciplinary and functional role for non Lokpal personnel and regarding misconduct while not being subordinate to the Lokpal. However, for Lokpal covered personnel and issues, including the role of the CBI, the CVC would have no role.
- (v) Mutatis mutandis statutory changes in the Lokpal Bill, the CVC and the CBI Acts and in related legislation, is accordingly recommended.

12.39. After the Lokpal has cleared the stage for further investigation, the matter should proceed to the CBI. This stage of the investigation must operate with the following specific enumerated statutory principles and provisions:

- (A) On the merits of the investigation in any case, the CBI shall not be answerable or liable to be monitored either by the Administrative Ministry or by the Lokpal. This is also fully consistent with the established jurisprudence on the subject which makes it clear that the merits of the criminal investigation cannot be gone into or dealt with even by the superior courts. However, since in practise it has been observed in the breach, it needs to be unequivocally reiterated as a statutory provision, in the proposed Lokpal Act, a first in India.
- (B) The CBI shall, however, continue to be subject to the general supervisory superintendence of the Lokpal. This shall be done by adding a provision as exists today in the CVC Act which shall now apply to the Lokpal in respect of the CBI. Consequently, the whole of the Section 8 (1) (not Section 8 (2)) of the CVC Act should be included in the Lokpal Bill to provide for the superintendence power of the Lokpal over the CBI.

12.40. Correspondingly, reference in Section 4 of the Delhi Special Police Establishment Act to the CVC would have to be altered to refer to the Lokpal.

12.41. At this stage, the powers of the CBI would further be strengthened and enhanced by clarifying explicitly in the Lokpal Bill that all types of prior sanctions/terms or authorizations, by whatever name called, shall not be applicable to Lokpal covered persons or prosecutions. Consequently, the provisions of Section 6 (A) of the Delhi Special Police Establishment Act, Section 19 of the Prevention of Corruption Act and Section 197 of the IPC or any other provision of the law,

wherever applicable, fully or partially, will stand repealed and rendered inoperative in respect of Lokpal and Lokayukta prosecutions, another first in India. Clause 27 of the Lokpal Bill, 2011 is largely consistent with this but the Committee recommends that it should further clarify that Section 6 A of the DSPE Act shall also not apply in any manner to proceedings under the proposed Act. The sanction requirement, originating as a salutary safeguard against witch hunting has, over the years, as applied by the bureaucracy itself, degenerated into a refuge for the guilty, engendering either endless delay or obstructing all meaningful action. Moreover, the strong filtering mechanism at the stage of preliminary inquiry proposed in respect of the Lokpal, is a more than adequate safeguard, substituting effectively for the sanction requirement. Elsewhere, this Report recommends that all sanction requirements should be eliminated even in respect of non Lokpal covered personnel.

12.42. The previous two paragraphs if implemented, would achieve genuine and declared statutory independence of investigation for the first time for the CBI.

12.43. The main investigation, discussed in the previous few paragraphs, to be conducted by the CBI, necessarily means the stage from which it is handed over to the CBI by the Lokpal, till the stage that the CBI files either a chargesheet or a closure report under Section 173 of the CrPC. However, one caveat needs to be added at this stage. The CBI's chargesheet or closure report must be filed after the approval by the Lokpal and, if necessary, suitable changes may have to be made in this regard to Section 173 Cr PC and other related provisions.

12.44. The aforesaid independence of the CBI is reasonable and harmonizes well with the supervisory superintendence of the Lokpal in the proposed Lokpal Bill, which is now exercised by CVC under Section 8 (1) of the CVC Act. The Committee recommends the above provision, suitably adapted to be applicable in the relationship between the Lokpal and the CBI.

12.45. The next stage of the criminal process would go back to the Lokpal with full powers of prosecution on the basis of the investigation by the CBI. The following points in this respect are noteworthy:

- **Clause 15 in Chapter IV of the Lokpal Bill, 2011 already contains adequate provisions in this regard and they can, with some modifications, be retained and applied.**
- **The Committee's recommendations create, again for the first time, a fair demarcation between independent investigation and independent prosecution by two distinct bodies, which would considerably enhance impartiality, objectivity and the quality of the entire criminal process.**
- **It creates, for the first time in India, an independent prosecution wing, under the general control and superintendence of the Lokpal, which, hopefully will eventually develop into a premium, independent autonomous Directorate of Public Prosecution with an independent prosecution service (under the Lokpal institution). The Committee also believes that this structure would not in any manner diminish or dilute the cooperative and harmonious interface between the investigation and prosecution processes since the former, though conducted by the CBI, comes under the supervisory jurisdiction of the Lokpal.**

12.46. The next stage is that of adjudication and punishment, if any, which shall, as before, be done by a special Judge. The Committee considers that it would be desirable to use the nomenclature of 'Lokpal Judge' (or Lokayukta Judge in respect of states) under the new dispensation. However, this is largely a matter of nomenclature and existing provisions in the Lokpal Bill, 2011 in Chapter IX are adequate, though they need to be applied, with modifications.

12.47. The aforesaid integrates all the stages of a criminal prosecution for an offence of corruption but still leaves open the issue of departmental proceedings in respect of the same accused.

12.48. The Committee agrees that for the Lokpal covered personnel and issues, it would be counter-productive, superfluous and unnecessary to have the CVC to play any role in departmental proceedings. Such a role would be needlessly duplicative and superfluous. For such matters, the Lokpal should be largely empowered to do all those things which the CVC presently does, but with some significant changes, elaborated below.

12.49 Clauses 28 and 29 of the Lokpal Bill are adequate in this regard but the following changes are recommended:

- (i)** The Lokpal or Lokayukta would be the authority to recommend disciplinary proceedings for all Lokpal or Lokayukta covered persons.
- (ii)** The CVC would exercise jurisdiction for all non Lokpal covered persons in respect of disciplinary proceedings.
- (iii)** The CBI would similarly continue to exercise its existing powers under the CVC's superintendence for all non Lokpal personnel and proceedings.
- (iv)** Departmental action must, as the law today stands, comply with the over arching mandate of Article 311 of the Indian Constitution. Dissatisfaction or objection to the practical operation of Article 311, fully understandable and indeed justifiable, does not permit or impel us to ignore the existence of Article 311, until altered. If there is consensus outside the Committee on amending Article 311, it must be amended as elaborated and recommended by the Committee in paragraph 12.49. However, absent such a consensus, the passage of the Lokpal Bill need not be held up on that account and hence the present report makes recommendations on the basis of the continuance of Article 311. If, however, it is amended as per paragraph 12.49, the proposed Lokpal Act can easily be modified to reflect such changes.
- (v)** It may also be remembered that the Lokpal itself does not conduct the departmental proceedings. For the law to provide for Lokpal to conduct the entire departmental proceedings itself, would be to put a humungous and unworkable burden on the institution.
- (vi)** Therefore, the power to take departmental action whether in the case of bureaucrats or in the case of Ministers as provided in Clauses 28 and 29 of the Lokpal Bill 2011, are largely appropriate.
- (vii)** The Committee is informed that suspension of a delinquent officer during his criminal prosecution is virtually automatic in practice. However, the Committee feels the need to emphasize that a specific provision be added in Chapter VII making it clear that once any bureaucrat (viz. group A or group B officer) as covered in the proposed Lokpal Bill is under investigation and the Lokpal makes a recommendation that such a person

be suspended, such suspension should mandatorily be carried out unless, for reasons to be recorded in writing by a majority out of a group of 3 persons not below the rank of Ministers of State belonging to the Ministries of Home, Personnel and the relevant administrative Ministry of the delinquent officer, opine to the contrary. Such suspension on Lokpal recommendation does not violate Article 311 in any manner. Refusal by the aforesaid Committee of three provides a check and balance qua possibly unreasonable Lokpal recommendations. The reference is to three high functionaries of three Ministries and not to the Administrative Ministry alone since it is frequently found in practise that the Administrative Ministry's responses alone may seek to preserve the status quo on account of vested interests arising from the presence of the delinquent officer in that Administrative Ministry.

- (viii) There cannot be a counterpart suspension provision in respect of MPs or Ministers or the like, but an explicit clause may be added to the existing Clause 29 that the Presiding Officer of the relevant House in the case of MPs and Prime Minister in the case of a member of the Council of Ministers shall record a note in writing indicating the action being taken in regard to the Lokpal's recommendations or the reasons for not taking such action.
- (ix) Wherever otherwise applicable, in respect of the details of the departmental inquiry, the provisions of Article 311 would, unless altered and subject to Paras D above and 12.49 below, continue to apply.

12.50 The Committee strongly pleads and recommends that the provisions of Article 311 require a close and careful relook to ensure that reasonable protection is given to bureaucrats for the independent and fair discharge of their functions but that the enormous paraphernalia of procedural rules and regulations which have become a major obstacle in the taking of genuine and legitimate departmental action against delinquent officers, be eliminated. The Committee notes with concern and with growing apprehension that serious and high level / big ticket corruption has increased exponentially since independence at all levels in the Lokpal proposed categories of personnel. In particular, bureaucratic corruption has been relatively ignored or underplayed in the context of the

excessive media and civil society focus on political corruption, coupled with the doctrine of civil service anonymity, which this country imported from our former colonial masters. Hence, the substantial modification of Article 311 or, indeed, its replacement by a much lesser statutory (not constitutional counterpart) should be taken up and implemented at the earliest. It may be added that what requires to be looked into is not the mere text of Article 311 but the context which has grown around it, through an undesirably large number of statutory and non-statutory rules, procedures and regulations coupled with huge common law jurisprudence over the last 6 decades. It is universally believed that the aforesaid has, in practice, converted Article 311, from a reasonable and salutary safeguard to a haven for those indulging in mal-administration and/ corruption with no fear of consequences and the certainty of endless delay. The fact that Article 311 had been given constitutional and not mere statutory status is also responsible for its largely unchanged character over the last six plus decades.

12.51 Though not strictly within the purview of the Lokpal Bill 2011 itself, the Committee also recommends that CVC's advice in respect of departmental action to be taken by the relevant department in case of non-Lokpal covered personnel must, by a suitable amendment to the CVC Act, be made binding to the extent that, unless for reasons to be recorded by a majority out of the same joint group as aforesaid, comprising 3 persons not below the rank of Ministers of State belonging respectively to the Ministries of Home Affairs, Personnel and the Administrative Ministry to which the delinquent officer belongs, states that CVC advice be not followed, such CVC advice shall be binding.

12.52 The Committee has deliberated long and hard on whether it can or should go to the extent of suggesting changes in the selection procedure of the CBI chief. Presently, the CBI chief is appointed by the Government on the recommendation of a Committee consisting of the CVC as Chairperson, Vigilance Commissioner, Secretary, Government of India in the Ministry of Home Affairs and Secretary of the Administrative Ministry (in this case the Ministry of Personnel) [see Section 4A of the Delhi Special Police Establishment Act, 1946]. Section 8 (2) of the 1946 Act further provides for a mandatory input in the selection of a new

Director to be made by the outgoing Director and also enjoins upon the Committee, in Section 8 (3), to make recommendations for a panel of officers on the basis of seniority, integrity and experience in the investigation of anti-corruption cases, necessarily belonging to the Indian Police Services.

12.53 Interestingly, Section 4 C of the same 1946 Act provides for the same Committee to make recommendations for all appointments as also extension or curtailment of tenure of all officers above the level of Superintendent of Police in the CBI.

12.54. It is thus clear that it is not correct to suggest that the Central Government has absolute discretion in appointing the CBI Director. After the Vineet Narain vs. Union of India judgment^{*} by the Apex Court, significant changes were brought into the Delhi Special Police Establishment Act, 1946. In 2003 (by Act 45 of 2003) providing for the aforesaid independent and autonomous regime for selection and appointment of CBI Director. The Central Vigilance Commissioner who heads the selection and recommendation process is itself a high statutory authority under a separate enactment called the Central Vigilance Commission Act of 2003 which, in turn in Section 4, obliges the Government to appoint the CVC on the basis of a recommendation of a high powered Committee comprising the Prime Minister, the Home Minister and the leader of opposition in the Lok Sabha. It is, therefore, erroneous to brush aside the existing system as merely involving absolute power/discretion to select Government favourites as CBI Director.

12.55 Furthermore, the Committee believes that it would neither be proper nor desirable for the Committee to go into and suggest fundamental statutory alterations to the procedure for selection and appointment of CBI Director, which appears, nowhere, directly or indirectly, to be a subject referred for the consideration of this Committee. Collateral recommendations of this nature by a side wind should, in the opinion of this Committee, be avoided, especially since significant statutory changes have been brought in with respect to the appointment of the CBI Director less than 8 years ago.

^{*} 1996(2) SCC 199.

CHAPTER – 13

CONSTITUTIONAL STATUS : IF, HOW AND HOW MUCH

I. INTRODUCTION AND BACKGROUND

- 13.1. On 26th August, 2011, Shri Rahul Gandhi, Member of Parliament, in the course of his speech in the Lok Sabha, strongly advocated constitutional status to the institution of Lokpal. He said:-

"An effective Lokpal law is only one element in the legal framework to combat corruption. The Lokpal institution alone cannot be a substitute for a comprehensive anti-corruption code. A set of effective laws is required. Laws that address the following critical issues are necessary to stand alongside the Lokpal initiative: Government funding of elections and political parties; transparency in public procurement; proper regulation of sectors that fuel corruption like land and mining.... We speak of a statutory Lokpal but our discussions cease at the point of its accountability to the people and the risk that it might itself become corrupt. Madam Speaker, why not elevate the debate? Let us make it further and fortify the Lokpal Bill by making it a constitutional body like the Election Commission of India. I feel the time has come for us to seriously consider this idea. Madam Speaker, laws and institutions are not enough. A representative, inclusive and accessible democracy is central to fighting corruption. Individuals have brought our country great gains. They have galvanized the people in the cause of freedom and development. However, we must not weaken the democratic process. This process is often lengthy and lumbering. But it is so in order to be inclusive and fair".¹

- 13.2 The suggestion set off an intense debate on the subject. Many argued that the giving of constitutional status to the Lokpal would immensely enhance its stature. Doubts and questions were, however, raised about its feasibility and, more importantly, the possible inherent details involved in the process of giving constitutional status. The debate was carried on at several levels and fora including, within Parliament and in the Press, in this Parliamentary Committee and in diverse sections of civil society. The Committee also received specific inputs on the subject from diverse sources. This chapter discusses pros and cons and makes final recommendations in this regard.

II. SUMMARY OF SUGGESTIONS/OBSERVATIONS RECEIVED THROUGH WRITTEN MEMORANDA

- 13.3 The major points raised in the memoranda received by the Committee are:-

¹ Statement made by Shri Rahul Gandhi in the Lok Sabha on 26th August, 2011.

- Lokpal needs to be a Constitutional authority, like the ECI or CAG rather than a statutory body, so that it has higher stature and increased legitimacy.
- As the ECI has powers to transfer officers which it deems would hinder the conduct of free & fair elections, the Lokpal should also have complete powers to transfer officers who would be prejudicial to the case and Govt. 'should' comply with the same. Hence, Lokpal should be a constitutional authority in these regards.

III. SUMMARY OF DEPOSITIONS GIVEN BY WITNESSES

13.4. Justice J.S. Verma, while placing his considered views before the Committee, stated :-

".....But we are trying to say not a single word except to provide a declaration that there could be a Constitutional body and once this Constitution Amendment Bill is passed so that it becomes a part of the Constitution. Then, there are several other implications which have got to be taken note of. This is something which cannot be ordinarily amended like an ordinary statute by some simple majority. It would be difficult. Secondly, if it becomes a basic feature and, therefore, a part of the basic structure which personally, I think, my friend agrees, ultimately it will become a part of the indestructable basic structure of the Constitution which any kind of change in the political equations or formulations, it would be beyond amending power even of Parliament.

Article 253 of the Constitution clearly provides that for the purpose of implementing an international treaty, convention, etc., the Parliament is entitled to enact for the whole or any part of the territory. We have already a precedent. The Protection of Human Rights Act, 1993 was enacted by the Parliament. We deal with not only the Constitution and the National Human Rights Commission but also the State Human Rights Commission. It is for the whole....."

13.5. The Chairman, Bar Council of India, while speaking on this topic, observed:-

"..... our view is this should be a constitutional body in line with the Election Commission. The structure, functions and jurisdictions may be left to be provided by a parliamentary legislation like the one we have presently. Our first submission would be, please make it a constitutional body....."

13.6. Shri Shanti Bhushan, while appearing before the Committee, said:-

".....My first point is about the constitutional amendment. We have no objection in this regard. In fact, we would welcome a constitutional amendment to give a constitutional status to the Lokpal, subject to two conditions. One, Mr. Seshan had suggested a Bill which would have involved ratification by fifty per cent of the State Assemblies because it was altering the legislative list. It is not required in this case. No alteration in the legislative list is required. Therefore, it must be ensured -- if that is going to be constitutional amendment Bill -- that it will be passed by the Parliament itself without the requirement of being sent to the State Legislative Assemblies. Of course, it will have to be ensured, and I have no doubt, that two-third majority of

those present and voting would be available, particularly after the Uttarakhand experiment. When Uttarakhand, where all the major parties are present, has already put their seal of approval on all these provisions, I don't see any difficulty with the political parties, here at the Centre, also endorse all these suggestions. One thing more, it should not be a mere skeleton Bill. If it has to be a constitutional amendment Bill, it should not merely provide that State Legislatures and the Lok Sabha would be competent to enact a Bill. The constitutional amendment Bill must itself make all the provisions so that as soon as the constitutional amendment Bill is adopted all the provisions – the powers of the Lokpal, the functions of the Lokpal, the authority of the Lokpal – get passed by this constitutional amendment alone. There is no problem in doing it. It can be done and it should be done....."

13.7. Justice M.N. Venkatachaliah and Justice J.S. Verma, in the memorandum submitted to the Committee, has enumerated the advantages of making the Lokpal as a constitutional body, as follows :-

1. *"The demand is for a "strong" body against corruption. The strongest body that can be created by law is a body established under the Constitution. A purely statutory body will be weaker than a Constitutional body for the following reasons.*
2. *The independence of the proposed anti-Corruption body (on matters such as its mandate, powers, appointment and removal, functions and accountability), will be more secure and tamper proof if entrenched in the Constitution than if placed in an ordinary legislation. A simple majority can amend ordinary laws. Constitutional provisions may be amended only by Constitutional amendment (2/3rd majority of those voting plus, in specified cases, approval of 50% of State legislatures).*
3. *A Constitutional body will be protected from challenges in a court of law that its mandate, powers and functions are in conflict with the Constitution or with any other statute- Constitution provisions establishing a Constitutional body may be challenged only on the ground that it is in conflict with the "basic structure" of the Constitution.*
4. *A Constitutional amendment will provide a basis for a unified and comprehensive national statutory framework for combating corruption at the national, state and local level. This would not be possible in an ordinary legislation because Parliament may generally enact ordinary legislation only on subjects within the Union and Concurrent Lists. However, when Parliament amends the Constitution it is not "making law" - it is exercising "constituent power"; exercise of constituent power is not restricted to the Union list or barred from matter in the State list.
In this particular case it may be possible for Parliament to make law on matters in the State list on the basis that it is doing so to implement India's obligations under the UN Convention Against Corruption. This may, however, be subject to challenge and will require all provisions to be based on obligations under the UN Convention, directly or indirectly.*
5. *As a matter of practical reality, experience shows that Constitutional bodies enjoy greater immunity from extraneous influences than statutory bodies. Courts are more vigilant in protecting the independence of these bodies.*

6. *Again as a practical matter, Constitutional bodies enjoy higher status than bodies established under statutes. A proposal to establish a statute against corruption betrays a lack of the highest level of commitment to the issue.*
7. *Constitutional provisions set out the most important normative concerns of society. By establishing a Constitutional body to fight corruption, this country will be establishing its civilizational commitment to uphold probity in public life."*

13.8. The written note submitted by Justice J.S.Verma states as under :-

".....a constitutional amendment would not attract the Proviso to Sub-Article (2) of Article 368 of the Constitution, and, therefore, it would not require ratification by the States.....

As would be evident on a plain reading of Article 368(2), the only requirement is for it to be passed by the majority of total membership of each House and by a majority of not less than two-thirds of members present and voting.

With the unanimous demand in the people supported by unanimity of all political parties in the Parliament to constitute a strong Lokpal/Lokayuktas, there can be no doubt of unanimous support for a constitutional body, which would obviously be the strongest visualized in the constitutional scheme. Once the constitutional amendment is made, it would become a part of the indestructible 'basic structure', immune from any future attempt to erode its status. The exercise for the accompanying consequent legislation providing the details dealing with the contentious issues can continue simultaneously, since it must follow to complete the process.

There is no occasion to doubt the sincerity of the commitment and resolve of the people and the political will in this behalf. Therefore, there can be no risk of any delay in this method.....

The directive principle of State policy in Article 51(c), as a principle fundamental in governance is available as an aid. (Article 51 states: "The State shall endeavour to...(c) foster respect for international law and treaty obligations in the dealings of organised peoples with one another...".) There is, therefore, no need to look for any additional support for the legislative competence of the Parliament to legislate on the subject for the whole territory of India."

IV ANALYSIS AND DISCUSSION

13.9. Two former Chief Justices of India gave detailed evidence and submitted drafts of the proposed constitutional amendments. The obvious advantage of giving constitutional status to the Lokpal institution would be, firstly, that its status would be immeasurably enhanced; secondly, existence or essence of the institution would not be liable to be tinkered with as a mere statutory enactment would be liable to be dealt with; thirdly, it would entrench certain basic principles and ideas and protect them from the vicissitudes of transient majorities, thereby making them more sacrosanct and; fourthly, the moral and legal effect of the Lokpal decisions would carry considerable enhanced legitimacy and moral and legal authority as a constitutional body.

13.10. The argument regarding possibility of delay was not real or, in any case, not substantial. Those desirous of having an effective Lokpal institution could hardly

complain that it was being given constitutional status. The constitutional amendment could be introduced not only in theory but in practice on the very same day as the Lokpal (Statutory Bill) is introduced in Parliament and there was no reason to suppose that the Constitutional Amendment Bill would not be passed on the same day and the same time as the statute. Indeed, it would be difficult to conceive of a situation as to any political party opposing the constitutional amendment while supporting, in principle, the creation of Lokpal through a statute.

- 13.11. Shri Shanti Bhushan's suggestion that if there has to be constitutional amendment, virtually the entire Bill must be put within the Constitution, was felt both unnecessary and impracticable. The constitutional provisions are supposed to contain immutable principles or deals with basic principles not intended to be subject to frequent change. It will be self-defeating to transpose the entire Lokpal as a constitutional amendment to the Constitution itself, and that would considerably diminish its flexibility, apart from being impractical and totally unnecessary.

V. REASONS AND RECOMMENDATIONS

13.12 The Committee, therefore, recommends:-

- (a) The institution of Lokpal must be given constitutional status by inserting into the Constitution by way of constitutional amendment certain basic principles about the Lokpal and leaving the details in the new proposed statute on which this Committee is opining.**
- (b) One practical, reasonable and legally valid model would be for the Government to consider the model and set of provisions asked for by the Committee and presented in the evidence to the Committee as a draft constitutional amendment by two former Chief Justices of India. That draft is enclosed herewith as Annexure 'F' and is self-explanatory.**
- (c) This constitutional amendment does not require ratification by not less than half of the State Legislatures since it does not seek to make any change in any of the provisions listed in the second proviso to Article 368 (2) of the Indian Constitution.**
- (d) The constitutional amendment should, as reflected in the enclosed Annexure 'F' be a set of basic principles for the Lokpal as also provide for the basic set up of the Lokayuktas. Both these provisions, proposed in**

the enclosed draft, propose Part XVA and Articles 329(C) and 329(D), as enabling, empowering and permissive provisions and authorize and empower the appropriate legislature to make proper laws, mutatis mutandis, for Lokpal at the Centre and for Lokayuktas at the State.

- (e) Such a constitutional status would not only considerably enhance the stature, legal and moral authority of the Lokpal institution but would make interference and tinkering in these basic principles not subject to the vicissitudes of ordinary or transient majorities. Over a period of time, it is likely that these principles would develop into a set of immutable principles and, possibly, even become part of basic structure of the Constitution rendering the existence of the Lokpal and its basic features un-amendable even by a constitutional amendment.
- (f) Apprehensions regarding delay are misplaced. The constitutional amendment bill would be much shorter than the statutory bill for the new proposed Lokpal and can be passed on the same day and at the same time as the latter, though by a different majority. It is inconceivable that while parties are in favour of the institution of Lokpal in principle, as a statutory body, parties would not agree with equal alacrity for the passage of a constitutional amendment bill.
- (g) The suggestion that the entire statutory bill should be transposed as a constitutional amendment into the Constitution is untenable and impracticable. That would eliminate flexibility and would require a constitutional amendment for the smallest future change. Moreover, the Constitution does not and is not intended to provide for nitty gritty operational details. It should be and is intended to be a declaration of general and basic principles which, in turn, enable and empower formal legislation, which in turn would take care of the details.
- (h) An easy or casual repeal of the entire Lokpal scheme would not be possible once it is constitutionally entrenched.
- (i) Similarly, there would be no option for the federal or State Legislatures not to have a Lokpal or a Lokayukta at all since the constitutional mandate would be to the contrary.
- (j) Contextually, the issues and some of the suggestions in this Chapter may overlap with and should, therefore, be read in conjunction with Chapter 7

of this report. Though the Committee has already opined in Chapter 4 of this Report here that the issues of grievance redressal should be dealt with in a separate legislation, the Committee hereby also strongly recommends that there should be a similar declaration either in the same Chapter of the Lokpal or in a separate Chapter proposed to be added in the Indian Constitution, giving the same constitutional status to the citizens grievances and redressal machinery.

- (k) This recommendation also reflects the genuine and deep concern of this Committee about the need, urgency, status and importance of a citizen's charter/grievance machinery and the Committee believes that the giving of the aforesaid constitutional status to this machinery would go a long way in enhancing its efficacy and in providing a healing touch to the common man.
- (l) Furthermore, the Committee believes that this recommendation herein is also fully consistent with the letter and spirit of para 1.8 above viz. the conclusions of the Minister of Finance in the Lower House recorded in para 1.8 above.

CHAPTER – 14

THE JURISDICTIONAL LIMITS OF LOKPAL: PRIVATE NGOS, CORPORATES AND MEDIA.

I. INTRODUCTION AND BACKGROUND

- 14.1. There was an intense debate in the Committee on whether to include purely private NGOs, corporations, corporate entities and media under the institution of Lokpal being proposed in this Report and, if so, to what extent and, if not, why not.
- 14.2. A large number of Members, cutting across party lines, felt that the proposed Bill on the Lokpal pending before this Committee would, at best, be a partial and incomplete measure since it did not police and regulate in respect of corruption, large segments of society, especially private NGOs, corporate entities and media. It was felt that for the last six decades, the focus had been only on policing and regulating the political classes and, to a lesser extent, the bureaucracy, in respect of issues relating to corruption. It was strongly believed that a substantial slice of society should not be excluded from such regulatory purview and that the entire gamut of ‘private’ corruption (in the sense of corruption not involving the political class or bureaucrats) with all its attendant features and facets, is also required to be dealt with by an effective legal regime.

II. SUMMARY OF SUGGESTIONS/OBSERVATIONS RECEIVED THROUGH WRITTEN MEMORANDA

- 14.3. The memoranda received by the Committee carried the following suggestions/observations:-
- Since media is the fourth pillar of democracy, it should be brought under the purview of Lokpal.
 - The aspect of paid news should also be covered under the Lokpal Bill.
 - Office bearers of NGOs and movements that do not receive any government funds cannot be treated as “public servants”.
 - Jurisdiction of Lokpal should be extended to societies/associations/trusts that are constituted for religious purposes.
 - Large corporate houses & activities of corporate lobbyists should be brought under the scanner of Lokpal.
 - PSUs should be brought under the ambit of Lokpal.

- Only Government supported NGOs to be brought under Lokpal.
- Consequent tangible & intangible losses to the nation should also be included under the Bill.
- Powerful media houses, NGOs, corporate bodies, organizations & institutions, because of their clout and their ability to manipulate public opinion in a way that suits their interests need to be dealt separately & effectively when an individual complaints against them for the corrupt practices employed by them. By including them in the ambit of a legislation like Lokpal, a common man will be provided with a level playing field to take on the might of these bodies engaged in corrupt practices, just as it would provide people the same to take on the might of the State.
- Only NGOs and firms that are funded by Govt. should be brought within the purview of Lokpal.
- All NGOs, with which any public servant is associated in their management, should be brought under the ambit of Lokpal Bill and “acts of corruption” in the definition clause should include the acts of omissions and omissions of public servants, in relation to management of any society/trust/any other institution, with which such public servant may be associated in its management.
- The fundamental right to establish an independent association should not be curbed; otherwise a lot of useful activity of the citizen for social benefit would be curtailed. Further, ‘annual income’ criterion is arbitrary and violates Article 14 of the constitution.
- Second proviso to clause (g) of S.17(1) is repugnant to good conscience and morality. A free citizen would be subjected to ‘responsibility’ without any ‘power’ of a public servant – ‘liability’ without rights and ‘culpability’ without an overt act is prepositions. The proviso should be deleted.
- On the matter of covering the private sector, proposal is that PCA may be amended appropriately to include ‘Where any private body, corporation or profit seeking entity receives from any public authority any concession or dispensation, including but not restricted to licences, subsidies, contracts, orders, quotas, allocations, clearances, grants, etc, that is in violation of the law or of any prevailing rules, it would be deemed to have indulged in corrupt practices unless it

can show that it was unreasonable to expect the corporation to know that a law or rule had been violated’.

- Corporate Corruption
 - a) Provide for adequate punitive power in Lokpal Bill and the PC Act to address corporate corruption.
 - b) Definition of corruption be enlarged as per the recommendations of Fourth Report of Second ARC.
 - c) Increase the punishment for such offences including collusive bribery on the lines of recommendations of Fourth Report of the Second ARC.
- Corruption by Private Party and Issue of recovery
 - (a) Fourth Report of the Second Administrative Reforms Commission has a unique suggestion in the form of a civil recovery law for fraud, which seeks to recover 5 times the amount of loss to the govt. exchequer caused by private parties. This suggestion models itself on the unique law in the USA, called the false claims Act/Lincoln Law. Not only does this law make the private party which has committed the fraudulent act disgorge 3 times the damage to the exchequer, but also legal costs, and the costs of investigation. In this law, public servants cannot be tried; only private parties that knowingly over-bill the govt. or deny revenue to the govt, or make false statements/certification to achieve the same end. It is not a criminal, but a civil statute, so it does not require mens rea or quid pro quo; only a ‘preponderance of evidence’, that the defendant acted ‘knowingly’ to defraud the govt. Since the objective of the law is not to prove criminal guilt, but to make civil recoveries, and deter other fraudulent actions, this reduction in the burden of proof makes sense. The law was borne amidst heightened corruption during the American civil war, and due to its success, has been made stronger today with amendments and supporting legislation. One of the key aspects of this law is the concept of quit am. This concept allows private citizens to approach a civil court and file claims on behalf of the govt. If the fraud is proven, the citizen/ whistleblowers stand to gain upto 30% of the recoveries.

- (b) The five times recovery of loss should be combined with banning of any business with any aim of the Govt. of India for a period of five years. If the company being investigated and tried in a civil court, is co-operative & admits to wrong-doing as the civil suit is initiated, it should be allowed to settle for damages not less than three times the loss to the exchequer and can escape the ban on business. Such civil recovery procedures become thereby equal to the civil service/parliamentary disciplinary procedures as an intermediary punishment whether or not a case is made for criminal offence under the PCA. Furthermore, any violations of agreements with the govt. in terms of acquisition of land/granting of subsidized govt. land/Govt. subsidies, such as Pvt. Hospitals that have obtained subsidized land and not treated poor patients for free should also be subject to recoveries/damages under our version of the False Claims Act.
- Windfall Profits Tax Act :- In the UK, when North Sea oil was privatized, there was a windfall profit to the private company because of unexpected rise in global oil prices. Though the transaction was transparent and not tainted by corruption, a law was enacted to recover windfall profits from monopoly and use of natural resources, which are the nation's asset. A similar law could be enacted to recover windfall profits on account of monopoly like mines and minerals, or scarce and irreplaceable spectrum. In such a law, the citizens could be empowered to fight qui-tam suits as in case of False Claims Act. Such a legal provision, along with mandatory competitive bidding for allocation of scarce national resources will significantly curb corruption.

14.4 The DoPT's comments in this regard is :-

“....As regards the corruption by Corporate/MNCs and paid news of both print and electronic media are concerned, it is stated that the scope of the Lokpal is to enquire into the complaints of the alleged corruption against certain public functionaries. If MNCs and Media are also to be covered under the Lokpal, in that case, the definition of the public servant would be required to be modified to include such entities. In order to tackle corruption by private parties, which include MNC and media, Ministry of Home Affairs, in consultation with the States, is already examining amendment to the IPC. However, Clause 17(3) of the Bill provide that the Lokpal may inquire into any act or conduct of any person other than those referred to in sub-section (1) of Clause 17, is such person is associated with the allegation of corruption under the Prevention of Corruption Act, 1988. The Government has also introduced Prevention of Bribery of Foreign Public Officials and Officials of Public International Organisations, Bill, 2011 in the Lok Sabha. As far as the conduct of MPs on the floor

of the House is concerned, they are already subject to Ethics Committee of the respective House, and it would be desirable if the matter is left to the respective House for appropriate action in this regard. For Media and Press, it is felt that a separate mechanism, perhaps under the Press Council of India, may be required. The NGOs receiving Government funds or donations are covered.....

.....It is felt that the organisations who are receiving grants etc. from the Government should be covered. Similarly, the NGOs which are getting donations from the public, are also getting tax relief, thereby, they are also indirectly funded by the Government, it is felt that those organisations which are set up other than for religious purposes, and are receiving public donations, should come within the ambit of the Lokpal"

14.5 The comments of CVC in this regard are :-

".....While most of our anti-corruption efforts are focused more on the demand side of corruption i.e. punishing the public servants (the receiver of bribes) there is a need to effectively address the equally culpable supply side (the bribe-givers) of corruption. United Nations Convention Against Corruption (UNCAC) and the Anti-corruption laws in most of the countries focused more on penalising active bribery i.e. payment of bribes, largely involving the private sector. The U.K. Bribery Act, 2010 as well as the Foreign Corrupt Practices Acts of the USA has strong provisions to punish companies who not only involve in corrupt practices but also companies failing to prevent corruption. Therefore, there is a need to introduce strong regulatory framework for preventing and punishing corporate corruption. Lok Pal could be best suited to address such supply side corporate corruption and suitable amendments to the Lok Pal Bill and the PC Act should be made expeditiously....."

14.6 Shri Pratap Bhanu Mehta, in his written memorandum, has stated:-

".....The State has to balance two competing considerations. On the one hand, it has to ensure that any organization that is funded by the State is subject to proper accountability. On the other hand, it must not make civil society subject to pervasive State scrutiny and control in a way that impinges on their autonomy.

In this light while 17(f) seems reasonable. 17(g) gives State a very wide latitude. It would be advisable to retain 17(f) and drop (17) g.

17 (g) is also discriminatory. It allows the State to scrutinize any organization that receives public donations. But at the same time, it exempts private companies that might "charge" for conducting the very same activity.

17 (g) also would apply to political parties. It is not clear if is desirable to treat political parties as if they are the State.

The sense in which a private citizen or an NGO can be corrupt needs to be defined. Offences in the Prevention of Corruption Act relate to taking or abetting the taking of gratification. What counts as an offence for a private citizen or NGO? Embezzlement etc. are covered by a variety of laws. For example, there is a real danger that in case of research organizations for instance, the State could simply rule that a particular position taken by a research organization constitutes an act of corruption merely on account of who funded it. This worry may also apply to institutions covered under 17 (f). So in the absence of any clear definition of corruption for in the case of private citizens, there is real danger of the Act posing a threat to valuable freedoms in civil society.

In light of the above --- and for other practical considerations --- it will be advisable to keep NGO's out of the purview of the Lokpal. They are subject to other accountability mechanisms....."

III. SUMMARY OF DEPOSITION GIVEN BY THE WITNESSES

14.7 Dr. Jayaprakash Narayan stated as under:-

".....Then, Mr. Chairman, there are issues relating to corporates and NGOs. We cannot ignore them altogether. There are, obviously, some philosophical issues and also practical issues. The philosophical issue being rights cannot exist against non-governmental organizations, individuals or corporates.

The second class of corruption is "collusive corruption." It is broadly defined as collusion between a public servant and a private entity or an individual to defraud the public exchequer or the public resources. It may be mines, it may be land or it may be some other natural resource. Therefore, this distinction must be kept in mind. In those cases, we argued that penalty must be substantially higher and more importantly, the burden of proof must be shifted. If there is a prima facie evidence, it is for the party accused to prove that there was no collusion. In fact, even in case of the Prevention of Corruption Act, the Supreme Court argued that once a property is accumulated, there is a prima facie evidence. It is for the corrupt public servant to prove that that was not corruptly acquired. Therefore, the burden of proof must be shifted. I know that there will be some concern from many jurists and others because in this country, we have taken the burden of proof issue very seriously. Therefore, if corporates come under this umbrella of collusive corruption and shifting the burden of proof, that will take care of the problem."

14.8 He further stated:

".....Then, about NGOs and civil society organizations, I believe, corruption is not limited to those in Government alone. There are plenty outside who are equally culpable and, therefore, wherever a civil society organization takes any substantial assistance of the Government – Mr. Chairman, I am emphasizing the words 'substantial assistance from the Government' – then they must be definitely brought under the Prevention of Corruption Act.

Sir, it is time that the NGOs are made accountable on issues like from where they receive their money, how do they utilize that money etc. If they want to be a part of India's governance, and, they have become a part of India's governance, then, they must share the accountability with other institutions of governance"

14.9 Shri Shekhar Singh (NCPRI) was of the following view:-

".....Let us retain what is in the Prevention of Corruption Act, which says that any NGO which gets Government funding comes under the purview. But we have gone further. We have said it at the end of our note, that we must amend the Prevention of Corruption Act and bring both the corporate sector and the NGO by doing the following. And what we have suggested is that section 12 of the Prevention of Corruption Act talks about abetment to an offence under the Prevention of Corruption Act. What we have suggested is that every time an NGO or a corporate sector gets a licence, an order, a clearance or any sort of dispensation from the Government,

which is in violation of the rules or laws, it would be assumed that corrupt practices have been indulged in and would, therefore, be considered an abetment....."

14.10 One of the Members of the Committee stated thus:-

".....इन्हीं को सपोर्ट करते हुए मैं यह कहना चाहता हूं कि भ्रष्टाचार की गंगोत्री तब से बढ़ी है, जब से प्राइवेट सैक्टर को सब जगहों पर खोला गया है। चूंकि गवर्नमेंट सैक्टर में जब तक मामला था, तब तक किसी न किसी रूप में वह कंट्रोल होता रहता था, लेकिन जब से प्राइवेट सैक्टर खुल गया है, तो आपने flood gate खोल दिया, अब आप खिड़की को बंद करके नहीं रख सकते हैं। अब धीरे-धीरे गवर्नमेंट सैक्टर खत्म होता जा रहा है। जो 90 परसेंट है, वह तो गवर्नमेंट से बाहर का है। मुझे आज तक आश्चर्य हो रहा है कि ये जो corporate houses हैं, जहां सबसे ज्यादा करप्शन है, जहां एक पैसे के बदले में हजार करोड़ रुपए से कम की बात नहीं होती है, तो आप इसमें कारपोरेट हाउसेज को जोड़ने का काम क्यों नहीं करते, मीडिया को जोड़ने का काम क्यों नहीं करते?....."

14.11 The following observation was made by another Member of the Committee:-

".....The second question is that the entire draft that you have mentioned appears to be that politicians at all levels, as also the bureaucracy, alone are responsible for corruption. Now, politicians and the bureaucracy on the one hand and excluding them is the entire civil society. This is absolutely fallacious for the very simple reason that, after all, wherefrom is the bureaucracy coming. The bureaucracy is coming from amongst the civil society. Who are contesting the elections? Wherefrom the Ministers, the Prime Minister are coming? So, why is there distinction between the civil society and the so-called non civil society, namely, the bureaucracy and the Parliamentarians or the legislators or the Ministers alone? This is a kind of trade off. If civil society is not corrupt, wherefrom the Ministers are bringing the money to get into corruption? If civil society is not involved in corruption, wherefrom the bureaucracy is bringing the money?....."

14.12 Shri Prashant Bhushan, while appearing before the Committee, stated thus:-

".....करप्शन की definition अगर आप Prevention of Corruption Act में देखें, उसमें कहा गया है कि यदि इसमें कोई सरकारी संस्था या सरकारी अधिकारी involved है तो उसी को corruption माना है। इसका यह मतलब नहीं है कि कोई निजी संस्था या कोई निजी आदमी fraud नहीं कर सकता, cheating नहीं कर सकता, तो लोग fraud भी करते हैं, cheating भी करते हैं और क्रिमिनल मिस एप्रोप्रिएशन भी करते हैं। उसको Prevention of Corruption Act में corruption नहीं माना गया है, unless की वह किसी सरकारी संस्था या सरकारी अधिकारी को घूस देते हैं या भ्रष्ट करते हैं। जहां तक सरकारी अधिकारी जिस corruption में involved है, यानी कि अगर कोई प्राइवेट

कम्पनी या कोई NGO किसी सरकारी अधिकारी या संस्था को भ्रष्ट करता है, तो वह तो लोकपाल के दायरे में ही आएगा।

.....अगर कोई प्राइवेट संस्था या एन.जी.ओ., किसी दूसरे आदमी, मान लीजिए की कोई प्राइवेट संस्था है, उसका जो ट्रेजरर है या मैनेजर है, उसने उस संस्था के पैसे का गबन कर लिया तो इसको करप्शन नहीं कहा जाता, इसको फ्रॉड या मिस-एप्रोप्रिएशन कहा जाता है। क्योंकि इसमें सरकार इनवोल्व नहीं है, इसलिए इसके लिए जो नॉर्मल सरकारी संस्था है, पुलिस या और कोई जो भी संस्था है, वह उसकी तहकीकात कर सकती है।....."

14.13 A Member of the Committee said thus :-

".....जब कोई टेंडर प्रोसेसिंग में आता है, तो उसके लिए जो सरकारी पैसा लेगा, उसको सजा मिलेगी और टेंडरिंग प्रोसेस में जो कॉर्पोरेट हाउस इनवोल्व्ड है, उसको सजा नहीं मिलेगी।....."

14.14 Shri J.B. Mohapatra, while deposing before the Committee, said:

"..... Third proviso to clause 17 says that religious trusts, associations of persons, or societies are not be regarded as public servants for this purpose. Now, proviso below clause 17(1)(g) says that religious trusts are not be proceeded against under the Lokpal Act. Now, look at clause 17(3), it says that any person other than mentioned in clause 17(1) can be proceeded against. There is a contradiction and my view is that if religious trusts are exempt from the Lokpal Bill, tomorrow, other charitable institutions like hospitals, education institutions, etc. will also come. When the CRPC, CPC or the Income Tax Act do not exonerate these kinds of religious charities from being proceeded against, why give an exemption in the Lokpal Bill?....."

14.15 Speaking on this issue, the representative of PRS Legislative Research opined as follows:-

".....I would just like to point out that clause 17 (1) (g) says that the Bill includes not only NGOs, it also includes any association of persons. This would include companies; it would include unregistered groups, etc., which have obtained donations from the public. The Bill also deems all officers, Directors, etc. or such groups as public servants. If we look back at certain other laws, the Offences and Prevention of Corruption Act, 1988, we will find that they are restricted to taking of gratification, which is bribe, by a public servant in his official capacity. To me, it is not clear, how an officer of a private trust or a society can be accused of corruption. He can be accused of embezzlement; he can be accused of various other crimes, but how does such a person, who is taking donation from the public, actually, causes loss to the exchequer, which is what we narrowly define as 'corruption'. If we look at the IPC, 'public servant' is defined in section 21. There are 11 different categories of persons which are included in the definition. If you look at them together, it, essentially, includes any person who is in the service or pay of the Government or a local authority, a corporation established by law or a Government company and receives a

fee or commission for the performance of public duties. So, in some sense, if we take the IPC as a guidance to determine who should be determined a public servant, one could conclude that any one who performs the function of the State, directly or indirectly, and is compensated by the exchequer for performing a public duty is the person that section 21 of the IPC covers as 'public servant'; it does not cover any one else. Under the RTI Act too, the definition of 'public authority' includes the NGOs which receive Government funding; it does not include other donations....."

- 14.16 The representatives of ABVP, while tendering oral evidence before the Committee, stated :-

बाकी क्लॉज 17 (एफ) में ट्रस्ट के बारे में या एन(जी)ओज के बारे में लिखा गया है। उस में पहला नंबर है सरकार द्वारा सहायता प्राप्त संस्थाएं, उस का हम समर्थन करते हैं। उसे रखा जाना चाहिए और उस के बारे में जो भी amount of grant सरकार तय करेगी, वह उसी समय तय किया जा सकता है। हम इस में दो और प्रकार के एन(जी)ओज को जोड़ना चाहते हैं - एक, जो विदेशों से धन प्राप्त करते हैं। दूसरे, जो कॉर्पोरेट और निजी कंपनियों से donations लेते हैं। भले ही छोटा donation न रखें इसलिए मैं सुझाव के तौर पर कह रहा हूं कि जो सालाना 5 करोड़ से ज्यादा donation लेते हैं। बड़े-बड़े एन(जी)ओज हैं जो सरकार के निर्णयों को प्रभावित करते हैं। यह मुद्दा बहुत महत्वपूर्ण है। इसलिए जब तक हम निर्णयों को प्रभावित करने वाले economic sources को catch नहीं करेंगे तब तक करप्सन नहीं रुक सकता है। इसलिए कॉर्पोरेट कंपनियों व निजी क्षेत्र से donation लेने वाली संस्थाओं के लिए 5 करोड़ से ऊपर लेने वाली संस्थाओं की लिमिट रखें और उन को इस में जरूर शामिल किया जाना चाहिए। बाकी लोकपाल बिल में जो अन्य छोटे-मोटे ट्रस्ट और दुनियाभर के लोगों को शामिल किया गया है, मुझे लगता है कि उस प्रावधान को हटा देना चाहिए। केवल तीन प्रकार के ही ट्रस्ट इस में रखे जाने चाहिए - जो सरकारी donation लेने वाले हैं, विदेशों से धन लेने वाले हैं और प्राइवेट कंपनियों से एक निश्चित amount से अधिक लेने वाले हैं। बाकी इस का दायरा नहीं बढ़ाना चाहिए अन्यथा फिर यह कोई काम ही नहीं कर पाएगा और इस का misuse ही होने की संभावना है।

IV ANALYSIS AND DISCUSSION

- 14.16A A large number of Members, cutting across party lines, felt that the proposed Bill on the Lokpal pending before this Committee would, be a partial and incomplete measure since it did not police and regulate in respect of corruption, large segments of society, especially private NGOs, corporate entities and media. It was felt that for the last six decades, the focus had been only on policing and regulating the political classes and, to a lesser extent, the bureaucracy, in respect of issues relating to corruption. It was strongly believed that a substantial slice of society should not be

excluded from such regulatory purview and that the entire gamut of "private corruption" in the sense of corruption not involving the political class or bureaucrats with all its attendant features and facets, is also required to be dealt with by an effective legal regime.

- 14.17 There is no doubt that corruption is neither the exclusive preserve nor the special privilege nor the unique entitlement of only the political or bureaucratic classes. Nor any one can justify exclusionary holy cows, supposedly immunized, exempted or put outside the purview of a new and vigorous anti-corruption monitoring, investigation and prosecution regime as the proposed new Lokpal Bill seeks to create. If corruption is rampant in a country like India, it permeates and pervades every nook and cranny of society and is certainly not restricted to the political or bureaucratic classes. Indeed, while no specific statistical data are available, it may not be at all inconceivable that, in quantification terms, the degree of corruption in the non-political/non-bureaucratic private sector, in the aggregate, is far higher than in the realm of political and bureaucratic classes alone. Therefore, in principle, non-application of the proposed Lokpal Bill to all such classes does not appear to be justifiable.
- 14.18 In this connection, the very recent UK Bribery Act, 2010, is both interesting and instructive. Drafted in a completely non-legalistic manner, format and language, this Act seeks to criminalize corruption everywhere and anywhere, i.e. in the public and private sectors in UK, in Governmental and non-Governmental sectors, by UK citizens abroad, by non-UK citizens acting in UK and in the entire gamut of private and individual transactions in addition to covering dealings in the private sector, intra-private sector, intra-public sector, in Government and private interface and in every other nook and cranny of society.
- 14.19 Despite the above and despite the simplicity and attractiveness of an all inclusive approach, the latter must yield to exigencies of logistics, operational efficacy and pragmatism. Since this is the nation's first experiment with a Lokpal institution, it would amount to starry-eyed idealism to recommend the blanket inclusion of every segment of society under the jurisdiction of an omnipotent and omniscient Lokpal. Such comprehensive inclusion is entirely understandable and may be logically more justifiable in principle, but, in the final opinion of the Committee, must await several years of evolution of the Lokpal institution and a corpus of experiential and practical lessons as also the wisdom of a future generation of Parliamentarians.

14.20 As far as the proposed dispensation is concerned, the only available dividing and demarcating line between the complete inclusion and partial exclusion of entities from the jurisdiction of the Lokpal would have to be some test of Government ownership and/or control and/or size of the entity concerned. In this regard, clauses 17 (1) (f) and (g) of the Lokpal Bill, 2011 are relevant. Clause 17 (1) (f) applies the Lokpal jurisdiction mainly to office-bearers of every society, A.o.P. or trust, registered or not, but wholly or partially financed or aided by the Government, subject to being above some specified annual income minima. Clause 17 (1) (g), similarly, applies the Lokpal to office-bearers of every society, A.o.P. or trust, receiving donations from the public, again subject to an annual income minima to be specified by the Central Government.

14.20 AAfter deep consideration, the Committee believes and recommends that these clauses should be merged and expanded to provide for the following coverage/jurisdiction of the Lokpal:

- a) The Lokpal jurisdiction should apply to each and every institution/entity, by whatever name called, owned or controlled by the Central Government, subject, however, to an exclusionary minima, where the ownership or control of the Central Government de minimis. Such minima would have to be specified and the power of such specification should be given to the Central Government by notification;
- b) Additionally, all entities/institutions, by whatever name called, receiving donations from the public above a certain minima, liable to be specified by the Central Government, should be included, as also all entities/institutions receiving donations from foreign sources in the terms and context of the Foreign Contribution Regulation Act (FCRA) in excess of Rs.10 lakh per year, should be covered, whether or not, controlled by the Government. This is largely as per existing clause 17 (1) (g), except for the addition of the foreign donation recipient facet;
- c) It should be clarified that this coverage shall apply, as also stated above, to every entity and institution, by whatever name called, be it corporate, society, trust, A.o.P., partnership, sole proprietorship, LLP or any other, registered or not. It should also be made clear that the approach is functional or ownership or size based and not based on nomenclature;

- d) It is thus clear that corporates, media or NGOs should and would be covered only to the above extent and not otherwise.

14.21 Despite the foregoing elaborations and ‘lament’ regarding exclusion of large slices of society from the Lokpal regime, it must not be forgotten that all persons, whether private, individual, and totally non-Governmental, are already necessarily covered as abettors, co-conspirators, inciters and givers or recipients or bribes in terms of clause 17 (3) of the Lokpal Bill, 2011. It may, however, be further clarified suitably in inclusive and not exhaustive terms in clause 17 (3) that the phrase ‘if such person is associated with the allegation of corruption,’ should include abettors, bribe-givers, bribe-takers, conspirators and all other persons, directly or indirectly, involved in the act or omission relating to corruption within which all other persons and entities in clause 17 are subsumed. The word "associated" presently used is too general and vague.

14.21A The Committee further recommends that clause 17 (3) should be explicitly clarified to the effect that the abettor, conspirator or person associated, in any manner, directly or indirectly, with the corruption allegation, shall not only be included but be fully liable to investigation, prosecution and punishment and that the proviso to clause 17 (3) shall be limited only to proposed action to be taken ‘in case of a person serving in the affairs of a State’ and not qua anyone else.

V. REASONS AND RECOMMENDATIONS

14.22 There is no doubt that corruption is neither the exclusive preserve nor the special privilege nor the unique entitlement of only the political or bureaucratic classes. Nor can anyone justify exclusionary holy cows, supposedly immunized, exempted or put outside the purview of a new and vigorous anti-corruption monitoring, investigation and prosecution regime as the proposed new Lokpal Bill seeks to create. If corruption is rampant in a country like India, it permeates and pervades every nook and cranny of society and is certainly not restricted to the political or bureaucratic classes. Indeed, while no specific statistical data are available, it may not be at all inconceivable that, in quantum terms, the degree of corruption in the non-political/non-bureaucratic private sector, in the aggregate, is far higher than in the realm of political and bureaucratic classes alone. Therefore, in principle, non-application of the proposed Lokpal Bill to all such classes does not appear to be justifiable.

- 14.23** In this connection, the very recent UK Bribery Act, 2010, is both interesting and instructive. Drafted in a completely non-legalistic manner, format and language, this Act seeks to criminalize corruption everywhere and anywhere, i.e. in the public and private sectors in UK, in Governmental and non-Governmental sectors, by UK citizens abroad, by non-UK citizens acting in UK and in the entire gamut of private and individual transactions in addition to covering dealings in the private sector, intra-private sector, intra-public sector, in Government and private interface and in every other nook and cranny of society.
- 14.24** Despite the above and despite the simplicity and attractiveness of an all inclusive approach, the latter must yield to exigencies of logistics, operational efficacy and pragmatism. Since this is the nation's first experiment with a central Lokpal institution, it would amount to starry-eyed idealism to recommend the blanket inclusion of every segment of society under the jurisdiction of an omnipotent and omniscient Lokpal. Such comprehensive inclusion is entirely understandable and may be logically more justifiable in principle, but, in the final opinion of the Committee, must await several years of evolution of the Lokpal institution and a corpus of experiential and practical lessons as also the wisdom of a future generation of Parliamentarians.
- 14.25** As far as the proposed dispensation is concerned, the only available dividing and demarcating line between the complete inclusion and partial exclusion of entities from the jurisdiction of the Lokpal would have to be some test of Government ownership and/or control and/or size of the entity concerned. In this regard, clauses 17 (1) (f) and (g) of the Lokpal Bill, 2011 are relevant. Clause 17 (1) (f) applies the Lokpal jurisdiction mainly to office-bearers of every society, A.o.P. or trust, registered or not, but wholly or partially financed or aided by the Government, subject to being above some specified annual income minima. Clause 17 (1) (g), similarly, applies the Lokpal to office-bearers of every society, A.o.P. or trust, receiving donations from the public, again subject to an annual income minima to be specified by the Central Government.
- 14.25.A** After deep consideration, the Committee believes and recommends that these clauses should be merged and expanded to provide for the following coverage/jurisdiction of the Lokpal:
- (a) The Lokpal jurisdiction should apply to each and every institution/entity, by whatever name called, owned or controlled by the Central

Government, subject, however, to an exclusionary minima, where the ownership or control of the Central Government *de minimis*. Such minima would have to be specified and the power of such specification should be given to the Central Government by notification;

- (b) Additionally, all entities/institutions, by whatever name called, receiving donations from the public above a certain minima, liable to be specified by the Central Government should be included. In addition, as also all entities/institutions receiving donations from foreign sources in the terms and context of the Foreign Contribution Regulation Act (FCRA) in excess of Rs.10 lakh per year, should be covered, whether or not, controlled by the Government. This is largely as per existing clause 17 (1) (g), except for the addition of the foreign donation recipient facet;
- (c) It should be clarified that this coverage shall apply, as also stated above, to every entity and institution, by whatever name called, be it corporate, society, trust, A.o.P., partnership, sole proprietorship, LLP or any other, registered or not. It should also be made clear that the approach is functional or ownership based or size based and not based on nomenclature;
- (d) It is thus clear that corporates, media or NGOs should and would be covered only to the above extent and not otherwise.

14.26 Despite the foregoing elaborations and ‘lament’ regarding exclusion of large slices of society from the Lokpal regime, it must not be forgotten that all persons, whether private, individual, and totally non-Governmental, are already necessarily covered as abettors, co-conspirators, inciters and givers or recipients or bribes in terms of clause 17 (3) of the Lokpal Bill, 2011. It may, however, be further clarified suitably in inclusive and not exhaustive terms in clause 17 (3) that the phrase "if such person is associated with the allegation of corruption", should include abettors, bribe-givers, bribe-takers, conspirators and all other persons, directly or indirectly, involved in the act or omission relating to corruption within which all other persons and entities in clause 17 are subsumed. The word "associated" presently used is too general and vague.

14.26.A The Committee further recommends that clause 17 (3) should be explicitly clarified to the effect that the abettor, conspirator or person associated, in any manner, directly or indirectly, with the corruption allegation, shall not

only be included but be fully liable to investigation, prosecution and punishment and that the proviso to clause 17 (3) shall be limited only to proposed action to be taken ‘in case of a person serving in the affairs of a State’ and not qua anyone else.

CHAPTER-15

SUPPORT STRUCTURES FOR LOKPAL: WHISTLE BLOWERS, PHONE TAPPERS AND LEGAL AID/ ASSISTANCE ISSUES

I. INTRODUCTION AND BACKGROUND

- 15.1 Three issues have been clubbed together in this chapter. Two of them – whistleblower protection and special phone tapping power for the Lokpal – find no mention in the Lokpal Bill, 2011. The issue of legal assistance/ aid is provided for in clause 56 of the 2011 Bill. Certain quarters, especially Team Anna have advocated insertion of whistleblower protection for complainants in respect of Lokpal jurisdiction and for empowering the Lokpal to tap phones without the need of any prior reference to or prior authorization from any other entity. Finally, some quarters have also opposed the provision of what they consider to be automatic legal aid to alleged corrupt accused under the Lokpal jurisdiction

15.2. **Phone tapping**

II SUMMARY OF SUGGESTIONS/ OBSERVATIONS RECEIVED THROUGH WRITTEN MEMORANDA

- Phone tapping / interceptions etc. shall be done only with the permission of Home Secretary to safeguard privacy of citizens.
- Presently, almost 32 investigative and intelligence agencies have powers to tap telephones. However, they need permission from Home Secretary to do that. Lokpal will be an independent agency. If it were to obtain permission from Home secretary, the information would get leaked and the entire operation would become in fructuous. Moreover, that would also compromise the functional autonomy of the Lokpal. Therefore, we propose that Lokpal Bench should have powers to allow phone tapping rather than they having to obtain permission from Home Secretary.
- For the purposes of investigation of offences related to acts of corruption, the appropriate Bench of the Lokpal shall be deemed to be designated authority under Section 5 of the Indian Telegraph Act empowered to approve interception and monitoring of messages of data or voice transmitted through telephones, internet or any other medium as covered under the Indian Telegraph Act read with

Information and Technology Act 2000 and as per rules and regulations made under the Indian Telegraph Act 1885.

- Recorded conversion, sting operation etc. should be made admissible.
- No need for special powers to intercept telephones since even Deputy SP can do that by recording his reason in station diary kept in ACB units.

III SUMMARY OF DEPOSITIONS GIVEN BY THE WITNESSES

15.2 A. While placing his views before the Committee, Shri Prashant Bhushan stated thus:

"..... Today, under the rules made under the Indian Telegraph Act, it is only the Home Secretary which has the power to grant permission to tap telephone. The power to tap telephone is an essential power of investigation, particularly investigation for corruption. Very often, the evidence for detecting that corruption is taking place comes only from tapped telephone conversations. Unless the Lokpal has independent power, it cannot depend on the Government or the Home Secretary to allow tapping of telephones. This Lokpal is being constituted as a very high-level authority. Therefore, of course, the permission to tap should be given by the bench. Therefore, the amendment that we are suggesting is, not by any officer of the Lokpal but only by a bench of the Lokpal. The bench can permit the tapping. This bench is a far safer authority than the Home Secretary apart from being independent. Therefore, we have said, "For the purpose of investigation of offences related to acts of corruption, the appropriate bench of the Lokpal shall be deemed to be the designated authority under section 5 of the Indian Telegraph Act empowered to approve interception and monitoring of messages of data or voice transmitted through telephones, etc....."

15.2.B. Shri Arvind Kejriwal stated as under:-

".....A wrong impression is being created as if a new power is being sought to be given to tap telephones, जैसे कि हम कोई नयी पावर देने की बात कर रहे हैं। लोकपाल के पास टेलीफोन को टैप करने की पावर तो होगी ही under other laws, लेकिन आज उन्हें होम सेक्रेटरी से परमिशन लेनी पड़ेगी। होम सेक्रेटरी से परमिशन लेने का मतलब यह है कि सारी चीजों का खुलासा हो गया। There is a conflict of interest; वहाँ से information सब को divulge हो जाएगी। इसलिए यह independent होना चाहिए। हम कोई नयी पावर देने की बात नहीं कर रहे हैं, बल्कि हम केवल यह suggest कर रहे हैं कि rather than permission being given by the Home Secretary, the permission should be given by the bench of the Lokpal....."

15.3 Protection of whistleblowers

II SUMMARY OF SUGGESTIONS/ OBSERVATIONS RECEIVED THROUGH WRITTEN MEMORANDA

- Anonymous complaints should be investigated indiscreetly and if found substantial, should be proceeded further.

- Whistleblowers' Bill needs to be revamped and made applicable to all institutions.
- In case of anonymous complaints, in case of verifiable & specific information about misconduct/corruption, the case shall not be rejected.
- Lokpal, being an independent body, should have a duty to provide protection to whistleblowers against physical and professional victimization.
- False Claims Act :- In the US, an innovative law has been in operation for long. In its modern form, the False Claims Act is a federal law that empowers any citizen or whistle-blower to file a suit in a federal court for any loss sustained by the government in any public procurement or contract or service delivery. The loss could be in terms of price even if the price was determined by competitive bidding (for instance, the bid price being higher than that offered to the best customer by the company or supplier), or quality, or environmental or social damage. Such a qui-tam litigation by those who are not affiliated with the government to file suits on behalf of the government can be pursued by the Attorney General, or the litigator himself. The Court is empowered in a summary civil procedure to compute the loss suffered by the exchequer or the public, and has the authority to impose a penalty of three times the loss suffered. The qui-tam litigator receives a portion (usually 15 – 25 percent) of any recovered damages. Claims under the law have typically involved healthcare, military, or other government spending programmes. The government has recovered nearly \$ 22 billion under the False Claims Act between 1987 (after significant 1986 amendments) and 2008. Hundreds of citizens and organizations are thus empowered and incentivized to fight against corruption. Such a law should be considered for enactment in India with appropriate institutional mechanisms to make the law operational.

15.4. The proponents of Jan Lokpal Bill, in their written note submitted to the Committee, has proposed the following amendment in the instant Bill:

- (1) "Whistleblower" means any person, who provides information about corruption in a public authority or is a witness or victim in that case or who faces the threat of
 - (i) professional harm, including but not limited to illegitimate transfer, denial of promotion, denial of appropriate perquisites, departmental proceedings, discrimination or
 - (ii) physical harm, or

- (iii) is actually subjected to any harm;
because of either making a complaint to the Lokpal under this Act, or for filing an application under the Right to Information Act, 2005 or by any other legal; action aimed at preventing or exposing corruption or mal-governance.
- (2) Any public official or any other person having information of any corruption in any public authority would be encouraged to send the information confidentially to the Lokpal; and it shall be the duty of the Lokpal to get an inquiry made into such information and if necessary get an investigation made under the Prevention of Corruption Act.
- (3) It shall be the duty of the Lokpal to provide full protection to whistle blowers from any physical harm or administrative harassment. Identity of such whistle blowers shall also be protected if the whistle blower so desires.
- (4) For achieving this objective it shall be competent for the Lokpal to give suitable direction to any security agencies for providing security as well as to any other authority to ensure that no harassment is caused to such whistle blower.
- (5) Orders under this section shall be passed expeditiously and in any case within a month of receipt of complaint. Immediate action will be taken in cases involving a threat of physical victimization.
- (6) The investigations in complaints by whistleblowers facing physical or professional victimization shall be fast tracked and completed within three months of receipt of the same."

III SUMMARY OF DEPOSITIONS GIVEN BY THE WITNESSES

15.4 A. Shrimati Anjali Bhardwaj opined as under:

".....Sir, I will just put forth what NCPRI has proposed on the Whistleblower Protection Bill because we feel that this is very closely linked to the whole issue of corruption and people who are blowing whistle on corruption. We have already deposed before the Standing Committee which was dealing with the whistleblower protection issue. Quite a few of the suggestions that we had put forth were already included by the Standing Committee. But there are just two things which I want to flag which have not really been included. The first one is, expanding the definition of a whistleblower. अभी जो मौजूदा provisions हैं, अभी पार्लियामेंट के सामने जो Whistleblower Protection Bill है, उसमें केवल आर्गनाइजेशन के अंदर जो Whistleblowers हैं, उनके प्रोटेक्शन की बात है। हमें यह लगता है कि जिस तरह से RTI users जो कर्प्शन को एक्सपोज करने के लिए RTI एप्लीकेशंस डाल रहे हैं, उनको धमकियां मिली हैं और कई जगहों

पर उन पर हमले भी हुए हैं तथा पिछले 2 सालों में 18 लोगों से ज्यादा लोगों की मौतें हो चुकी हैं। We feel that they should also be included under the ambit of the Whistleblower Protection Bill. It should, therefore, not just be limited to people working in organizations, it should also extend to common citizens.

Sir, I will just put forth what NCPRI has proposed on the Whistleblower Protection Bill because we feel that this is very closely linked to the whole issue of corruption and people who are blowing whistle on corruption. We have already deposed before the Standing Committee which was dealing with the whistleblower protection issue. Quite a few of the suggestions that we had put forth were already included by the Standing Committee. But there are just two things which I want to flag which have not really been included. The first one is, expanding the definition of a whistleblower. अभी जो मौजूदा provisions हैं, अभी पार्लियामेंट के सामने जो Whistleblower Protection Bill है, उसमें केवल आर्गनाइजेशन के अंदर जो Whistleblowers हैं, उनके प्रोटेक्शन की बात है। हमें यह लगता है कि जिस तरह से RTI users जो करप्शन को एक्सपोज करने के लिए RTI एप्लीकेशंस डाल रहे हैं, उनको धमकियां मिली हैं और कई जगहों पर उन पर हमले भी हुए हैं तथा पिछले 2 सालों में 18 लोगों से ज्यादा लोगों की मौतें हो चुकी हैं। We feel that they should also be included under the ambit of the Whistleblower Protection Bill. It should, therefore, not just be limited to people working in organizations, it should also extend to common citizens.

The second point is that we feel that wherever a complainant, who is trying to expose corruption, or is making a complaint on the issue of corruption, is being threatened, that issue must be dealt with by the Government on a priority basis. In fact, one of the suggestions that has come up in the Central Information Commission is that wherever an information seeker is being targeted, then, the Government will take every step possible to in fact, put out that information immediately in the public domain on its own, and that, we feel, should be something of a principle that could be adopted in the Whistleblowers' Protection Bill as well....."

15.4.B. Shri Prashant Bhushan stated as follows:-

".....Then, as regards victimization of a whistleblower or a witness, for example, if a Government Servant for mala fide reasons deliberately suspends a whistleblower, an officer who is a whistleblower who makes a complaint to the Lokpal saying that this corruption is going on in his department and that whistleblower is suspended by the person who is involved in that corruption, then, that victimization should also be considered to be an act of corruption.

Then, the next amendment is about whistleblower protection. This is also very important, actually. It is said that whistleblower protection के लिए there is some Bill in the offing. There is a proposed Bill on Whistleblower Protection. You see, what we feel is that so far as the whistleblower protection for corruption is concerned, where the complaints are being made to the Lokpal, the power to protect that person, that whistleblower must vest with the Lokpal. मतलब यह है कि अगर उस को कोई complaint

आती है, from some whistleblower, और उस complainant को, उस whistleblower को victimize किया जाता है, either by physical threats or by administrative harassment, उस को suspend कर दिया जाता है, वगैरह तब उसे प्रोटेक्ट करने की पावर लोकपाल के पास होनी चाहिए। That means, he should have the power to give him physical protection and to protect him from administrative harassment....."

15.4.C. Shri Arvind Kejriwal opined as follows :

".....मैं इस में बहुत strongly request करूंगा कि जो whistleblower का दूसरा बिल आ रहा है, if this Committee can recommend withdrawal of that Bill because उस बिल में सी०वी०सी० को अथॉरिटी बनाया है for whistleblower protection. अब सी०वी०सी० के पास किसी को प्रोटेक्ट करने की न तो रिसोर्सेस हैं, न पॉवर्स हैं। The CVC is an advisory body....."

15.4.D. Smt. Kiran Bedi was of the following opinion:-

"..... अगर यह Whistleblower को कानून में डाल दिया जाए, तो इससे बहुत करप्शन खत्म हो जाएगी, क्योंकि डिपार्टमेंट के अंदरूनी व्यक्ति को जितना मालूम होता है कि उसका डिपार्टमेंट क्या कर रहा है, इतना बाहर के आदमी को नहीं मालूम होता। An insider has much more information and authentic information and would even have evidence of the note sheets, of the orders, of the conversations which you never know. Now with this reward scheme, including the whistleblower and giving them protection under the Lokpal, would be very effective in prevention, not only in detection, in prevention. This section reads like that. 'Any public official or any other person having information of any corruption in any public authority would be encouraged to send the information confidentially to the Lokayukta and it shall be the duty of the Lokayukta to get an inquiry made into such information and if necessary get investigation made under the Prevention of Corruption Act, 1988. Lokayukta may issue necessary orders to provide protection to the whistleblowers from any physical harm or administrative harassment. Identity of such whistleblowers shall also be protected if the whistleblower so desires. For achieving this objective, it shall be competent for the Lokayukta to give suitable direction to the Government for providing security as well as to other authorities to ensure no harassment is caused to such whistleblowers. Orders under this section shall be passed expeditiously; it is a time limit of fifteen days. Investigation complaints by whistleblowers facing physical or professional victimization..' underlining the words, 'professional victimization', 'shall be fast tracked and completed within three months of the receipt.' जिस दिन लोकपाल में यह क्लॉज आ गया, अंदर के डिपार्टमेंट में करप्शन उस दिन से बंद हो जाएगी, या बड़े डर के होगी, एवीडेंस आ जाएगा, प्रोटेक्शन मिलेगी और करप्शन में प्रिवेंशन आएगी।"

Legal aid provisions

II SUMMARY OF SUGGESTIONS/ OBSERVATIONS RECEIVED THROUGH WRITTEN MEMORANDA

- The provision for giving legal assistance under clause 56 against a person against whom a complaint has been made and there being no provision for providing defence assistance to the complainant is arbitrary and will encourage corruption.
- It has been suggested that where the accused is finally found guilty of any of the charges made against him by the special court provided for in the Act, and subject to further appeals, the accused would be required to refund the total cost of the assistance so provided. In exceptional circumstances where the Lokpal so determines that the recovery of such dues might result in unwarranted hardship to the accused or his family, the amount can be adjusted against confiscation of property as specified under sections 33 and 34.

IV ANALYSIS AND DISCUSSION:-

- 15.6 The Committee has deliberated upon the so called Whistleblower Bill 2010 (known more fully as the Public Interest Disclosure and Protection to Persons Making the Disclosures Bill, 2011) and submitted a detailed report in this regard on August 10, 2011. That report is under the active consideration of the Government of India for eventual transformation into appropriate legislation. The Committee believes that the concern for providing appropriate protection, physical and otherwise, to complainants or whistleblowers, is reasonable and legitimate, since apprehensions in respect of life, liberty, standard of living, job safety and security of self and family would constitute the greatest deterrent to free and frank disclosure of wrong doing.
- 15.7 However, as explained herein below in the next section, there may be no need to enact a separate law or to make elaborate provisions in the proposed Lokpal Bill, in view of the recommendations already made in respect of the pending Bill in respect of whistleblowers.
- 15.8 The Committee notes that there is an elaborate existing procedure, now operative for many years, with periodic improvements and refinements, in respect of the power, authorization, manner and mode of phone tapping. The Committee notes the existing checks and balances which have been operative for many years since phone tapping has been a power frequently exercised by diverse authorities for the last several years, well before the Lokpal regime was contemplated in the contemporary context. Phone tapping has, thus being used, by agencies as diverse as CBI, Enforcement Directorate,

Directorate of Revenue Intelligence and host of other agencies. None of them, however, have had a power to decide to do so on their own, which is now being sought for the new proposed Lokpal. The Committee's recommendations in the next section are based on this awareness.

- 15.9 The Committee notes the language and terms of clause 56 and especially the phrase "legal assistance". The Committee's interpretation of clause 56 is different, from not only that of Team Anna, but also several interpretations given at various times in the press. The Committee's recommendations in this regard in the next section also constitute a clarification of the interpretative confusion in regard to clause 56.

V. REASONS AND RECOMMENDATIONS

- 15.10 As regards the whistleblower issue, this Committee has made a detailed recommendation on the subject on August 10, 2011 in respect of the Bill referred to it. That Bill and the Committee's recommendation are under the active decision making process of the Government of India for eventual translation into law.**

- 15.11 The Committee recommends that the Whistleblowers Bill (Bill No. 97 of 2010) referred to the Committee, with the changes already recommended by the Committee in respect of that Bill (in the Committee's report dated August 10, 2011), be implemented into law simultaneously and concurrently with the Lokpal Bill. In that case, only one provision needs to be inserted in the Lokpal Bill to the effect that safeguards and machinery provided elaborately in the proposed Whistleblowers Bill, as opined upon by the Committee, would be applicable, mutatis mutandis to the Lokpal Bill. In particular, the Committee notes that clauses 10, 11, 12 and 13 of the aforesaid Whistleblowers Bill, provide a fairly comprehensive fasciculus of provisions providing safeguards against victimization, protection of witnesses and other persons, protection of identity of complainant and power to pass interim orders. The Whistleblowers Bill also sets up a competent authority and provides for several other related provisions to make the functioning of that authority efficacious and to enhance the efficiency, potency and vigour of the safeguards intended to be provided to a whistleblower. The proposed provision in the Lokpal Bill should act as a cross referencing, breach of which should activate the related/ applicable provisions of the**

Whistleblower Bill and render them applicable to all Lokpal proceedings, as if set out in the Lokpal Bill, 2011.

- 15.12 Naturally, one of the main adaptations of the Whistleblowers Bill for Lokpal proceedings would be that the competent authority in respect of Lokpal covered persons and offences would be the Lokpal and references in the Whistleblowers Bill to CVC or other entities would be rendered inoperative for purposes of Lokpal personnel and officers.**
- 15.13 If, however, the aforesaid Whistleblower Bill, along with the recommendations of this Committee in that regard, are not enacted into law by the Government of India, co-terminously and simultaneously with the Lokpal Bill, then this Committee recommends the creation of some safeguards, in substance and essence, by the addition of a whole new chapter and certain provisions in the proposed Lokpal Bill. However, those provisions in the Lokpal Bill would be largely an adaptation of the same provisions of the Whistleblowers Bill, especially clauses 10 to 13 of the Whistleblowers Bill, while, as explained above, making the Lokpal the competent authority for such whistleblower issues.**
- 15.14 As regards phone tapping, the Committee emphasizes and underlines the basic reality that phone tapping by regulatory and policing agencies has been prevalent in India for several years and the rules and regulations in that regard have undergone periodic refinement and amendment. Currently the regime of phone tapping is governed by Indian Telegraph Act and Rules read with the judgments of the Supreme Court inter alia in People Union for Civil Liberties Vs. Union of India (1997) 1 SCC 301. The Committee believes that there is no reason, sufficiently strong, to suggest that this substantive law should be altered in respect of Lokpal proceedings.**
- 15.15 Phone tapping has been resorted to, inter alia, by agencies as diverse as CBI, Enforcement Directorate, Directorate of Revenue Intelligence and others, under the aforesaid regime of the Act., Rules and the Supreme Court mandated principles. In all such cases, the Committee is not aware of any situation where any of these agencies are entitled to suo motu, on their own, without separate authorization, and in secrecy, initiate or continue phone tapping. There is, therefore, no reason as to why the proposed Lokpal institution should also not be subjected to the same regime and mechanism. To provide for inherent and separate power in the Lokpal institution in this regard, would also create an**

excessive and undesirable concentration of powers, would frequently involve a conflict of interest between preliminary inquiry, investigation and prosecution and would disturb the equilibrium of all investigative agencies for the past several years with established practices in respect of phone tapping issues. Indeed, the Committee notes that in other parts of this Report (Chapter 12), the CBI is the principal investigating agency and, therefore, its powers of phone tapping must continue as they exist today.

- 15.16 As regards legal aid/ assistance, the Committee concludes that clause 56 as framed does not intend to and should not be read to be a mandate for provision of automatic legal aid for every accused in a Lokpal proceeding. Clause 56, by any fair reading, and in the opinion of this Committee, is only intended to provide legal assistance by way of legal representation to the accused in any case before the Lokpal eg:- a preliminary inquiry. Firstly, the Committee does not read this to mean automatic monetary or fiscal assistance or by way of lawyers' fees for the accused. Secondly, the Committee believes that this was intended to and recommended so that it should be explicitly clarified that it permits the use of, or appearance by a legal practitioner, where the accused asks for one in Lokpal proceedings eg:- a preliminary inquiry. In any event, elsewhere in this Report we have recommended deletion of the concept of hearing an accused during preliminary inquiry. If that is done away with, no issue would arise of legal practitioners appearing. In any case, they are entitled to appear in all later stages including trial. Finally, it should be clarified that clause 56 does not intend to abrogate or dilute or attenuate any other provision of law under where, by virtue of those provisions of law, the accused may be entitled to a monetary/ fiscal legal aid or assistance.

CHAPTER – 16

THE LOKPAL MISCELLANY : RESIDUAL ISSUES

I. INTRODUCTION

- 16.1. As we come to the end, a number of ostensibly unconnected issues are dealt with in this Chapter. Neither their lack of connection to each other nor the use of the words ‘miscellany or residual’ should diminish or undermine their significance. However, since memoranda and witnesses have not spoken with any degree of particularisation on many of these specific issues, this introductory section is followed straightaway by the section on reasons and recommendations.
- 16.2. These issues include the necessity of specifying that the special judge adjudicating Lokpal offences should have powers to deal with and conduct adjudication under all other statutes; the scope and coverage, if any, in respect of offences done by a former public servant as opposed to serving public servant; issues relating to form and manner of removal of Lokpal and the form and manner of initiating suo motu complaints by the Lokpal institution and so on and so forth.

II. REASONS AND RECOMMENDATIONS

- 16.3. **Although it is implicit in the Lokpal Bill, 2011, the Committee believes that to obviate all doubts and to prevent any jeopardy to ongoing trials, the proposed Lokpal should have a specific provision categorically applying Section 4 (3) of the POCA to Lokpal proceedings, to enable the special judge or Lokpal judge to try any other offence, where connected, other than those covered by the Lokpal Act.**
- 16.4. **Clause 17 (1) in most of its sub-clauses, including (b), (c), (d) and so on, specifically refers to a current/serving as also a former public servant (e.g. Minister, MP, bureaucrat, etc. both past and present).**
- 16.5. **The Committee has seen the substantive provisions of POCA and it appears to be clear that the POCA, which shall continue to be the substantive law applicable to Lokpal trials and proceedings, seeks to render culpable and punish only official acts done by public servants. Be that as it may, the Committee is of the opinion that a specific provision should be inserted in Clause 17 clarifying and specifying that reference to present and former public servants only means that they can be prosecuted whether in or not in office, but only for**

acts/omissions done while they were in office and not for allegedly fresh acts/omissions after ceasing to hold office.

- 16.6. The Committee finds that clause 8 and especially clause 8 (1) of the Lokpal Bill, 2011 has struck the right balance and does not need any fundamental changes. It is intended to strengthen the independence and autonomy of the Lokpal by not making it easy to initiate complaints against Lokpal for the Lokpal's removal. The Committee, however, recommends an addition to clause 8 (1)(iii), to allay and obviate the apprehension expressed in some quarters, that the process to remove the Lokpal cannot be initiated, under the sub-clause, if the President (which essentially means the Central Government) refuses to refer the complaint against the Lokpal. The Committee feels that this apprehension would be adequately taken care of by providing in clause 8 (1)(iii) that where the President does not refer a citizen's complaint against the Lokpal to the Apex Court, the President (i.e. the Central Government) shall be obliged to record reasons for the same and to furnish those reasons to the complainant within a maximum period of 3 months from the date of receipt of the complaint. The Committee feels that this process, including the transparency involved in recording these reasons and the attendant judicial review available to the complainant to challenge such reason/refusal, contains an adequate check and balance on this subject.
- 16.6A Additionally, the Committee recommends that Clause 8 (1) (iv) be added in the existing Lokpal Bill, 2011 to provide, specifically, that anyone can directly approach the apex court in respect of a complaint against the Lokpal (institution or individual member) and that such complaint would go through the normal initial hearing and filter as a preliminary matter before the normal bench strength as prescribed by the Supreme Court Rules but that, if the matter is admitted and put for final hearing, the same shall be heard by an apex court bench of not less than 5 members. It is but obvious that other consequential changes will have to be made in the whole of Section 8 to reflect the addition of the aforesaid Clause 8 (1) (iv).
- 16.7. Clause 21 of the Lokpal Bill, 2011 needs a relook. In its present form, it appears to empower the Lokpal Chairperson to intervene and transfer any pending case from one Bench to another, which appears to include the power of transfer even while a case is under consideration of the Lokpal bench on the merits. This uncircumscribed power would seriously impair the objectivity and autonomy of

Lokpal Benches, especially at the stage of preliminary inquiry which is a crucial filtering mechanism. It also appears to be inconsistent with normal principles of jurisprudence which seriously frown upon interference even by the Chief Justice in a pending judicial matter before another Bench. The way out would be to delete this provision and to provide for transfer only in exceptional cases where, firstly, strong credible allegations are brought to the forefront in respect of the functioning of any particular Lokpal Bench and secondly, the decision to transfer is taken by not only the entire Lokpal institution sitting together, but also including the Members of the Bench from which the matter is sought to be transferred.

16.8 As regards punishment under the Prevention of Corruption Act for a person convicted of different offences relating to corruption, it is noteworthy that the Prevention of Corruption Act prescribes, as it now stands, punishment not less than six months which may extend to five years for various offences involving public servant taking gratification in Sections 7, 8, 9, 10 and also Section 11 which deals with public servant obtaining valuable thing without consideration. Section 12 of POCA dealing with the abetment prescribes the same as six months to five years range of punishment. On the other hand, for offences of criminal misconduct by public servant, the prescribed punishment is not less than one year, extendable upto seven years in Section 13 while Section 14 prescribes punishment of not less than two years extendable to seven years. Section 15 prescribes the punishment for offences referred to in clause C or clause D of 5.13(i) which has no lower limit but a maximum of three years. Additionally, all these provisions empower the imposition of fine.

16.9 Diverse representations from diverse quarters have suggested an enhancement of punishment, with diverse prescriptions of quantum of sentence, including life imprisonment. After deep consideration, the Committee finds it prudent to strike a balanced, reasonable middle ground. A sudden, dramatic and draconian enhancement is, in the opinion of the Committee, undesirable. The Committee cannot ignore the inherent fallibility of mankind and if fallibility is inherent in every system, draconian and extreme punishment, even in a few cases of wrongful conviction, would be undesirable.

16.9A Taking a holistic view, the Committee is of the opinion that:

- (a) In the cases of Sections 7, 8, 9 and the like, the range from six months to five years should be substituted by imprisonment not less than three years which may extend to not more than seven years.
- (b) In the Sections 13 and 14 category of cases providing for a range to one year to seven years, the Committee suggests enhancement, in the case of Section 13 offences, to a minimum of four years and a maximum of ten years while for Section 14, the Committee suggests a minimum of five years and a maximum of ten years.
- (c) For Section 12 which presently prescribes six months to five years, the aforesaid of minimum three and maximum of seven years shall apply whereas for Section 15 which presently prescribes zero to three years, the range should be very minimum from two to maximum five years.
- (d) Additionally, wherever applicable, there should be a general provision, cutting across Sections, creating a power of full confiscation of assets, proceeds, receipts and benefits, by whatever name called, arising from corruption by the accused. This provision should be properly drafted in a comprehensive manner to cover diverse situations of benefit in cash or kind, which, to the maximum extent possible, should fully be liable to confiscation.

16.10. Although this issue has been discussed in other parts of this Report, for the sake of clarity, the Committee clarifies that there should be 3 specific and important time limits in the final enactment viz. firstly, the period of 30 days extendable once by a further period of 60 days for preliminary inquiry by the Lokpal; secondly, for completion of investigation by the investigating agency, within 6 months with one further extension of 3 months and thirdly, for completion of trials, within one year with one further extension of 6 months.

16.11. The Committee finds no basis for and no reason to retain the last proviso to clause 17 (1)(g) which appears to be overbroad and altogether exempts from the Lokpal Bill 2011 any entity, simply because it is constituted as a new religious entity or meant to be constituted as an entity for religious purposes. This proviso should be deleted, otherwise this exception would virtually swallow up the entire rule found in the earlier parts of clause 17.

16.12 As regards clause 51 of the Lokpal Bill 2011, the Committee recommends that the intent behind the clause be made clear by way of an Explanation to be added to the effect that the clause is not intended to provide any general exemption and that "good faith" referred to in clause 52 shall have the same meaning as provided in section 52 of the IPC.

CHAPTER - 17

AFTERWORD: REASONS AND RECOMMENDATIONS AT A GLANCE

Committee Proceedings and Timelines

1. In a nut shell, therefore, this Committee could become legally operational only w.e.f. September 23, 2011 and has completed hearing witnesses on 4th November, 2011. It had its total deliberations including Report adoption spread over 14 meetings, together aggregating 40 hours within the space of ten weeks commencing from September 23, 2011 and ending December 7, 2011. [Para 2.6.]
2. Though not specific to this Committee, it is an established practice that all 24 Parliamentary Standing Committees automatically lapse on completion of their one year tenure and are freshly constituted thereafter. This results in a legal vacuum, each year, of approximately two to three weeks and occasionally, as in the present case, directly affects the urgent and ongoing business of the Committee. The Committee would respectfully request Parliament to reconsider the system of automatic lapsing. Instead, continuity in Committees but replacement of Members on party-wise basis would save time. [Para 2.7.]

The Concept of Lokpal: Evolution and Parliamentary History

3. A proposal in this regard was first initiated in the Lok Sabha on April 3, 1963 by the Late Dr. LM Singhvi, MP². While replying to it, the then Law Minister observed that though the institution seemed full of possibilities, since it involved a matter of policy, it was for the Prime Minister to decide in that regard³. Dr. LM Singhvi then personally communicated this idea to the then Prime Minister, Pandit Jawahar Lal Nehru who in turn, with some initial hesitation, acknowledged that it was a valuable idea which could be incorporated in our institutional framework. On 3rd November, 1963, Hon'ble Prime Minister made a statement

² Lok Sabha Debates dated 3rd April, 1963, vol. XVI, P.7556-7558

³ *ibid.*, P.7590-92

in respect of the possibilities of this institution and said that the system of Ombudsman fascinated him as the Ombudsman had an overall authority to deal with the charges of corruption, even against the Prime Minister, and commanded the respect and confidence of all⁴. [Para 3.3]

4. Thereafter, to give effect to the recommendations of the First Administrative Reforms Commission, eight Bills were introduced in the Lok Sabha from time to time. However, all these Bills lapsed consequent upon the dissolution of the respective Lok Sabhas, except in the case of the 1985 Bill which was subsequently withdrawn after its introduction. A close analysis of the Bills reflects that there have been varying approaches and shifting foci in scope and jurisdiction in all these proposed legislations. The first two Bills viz. of 1968 and of 1971 sought to cover the entire universe of bureaucrats, Ministers, public sector undertakings, Government controlled societies for acts and omissions relating to corruption, abuse of position, improper motives and mal-administration. The 1971 Bill, however, sought to exclude the Prime Minister from its coverage. The 1977 Bill broadly retained the same coverage except that corruption was subsequently sought to be defined in terms of IPC and Prevention of Corruption Act. Additionally, the 1977 Bill did not cover maladministration as a separate category, as also the definition of “public man” against whom complaints could be filed did not include bureaucrats in general. Thus, while the first two Bills sought to cover grievance redressal in respect of maladministration in addition to corruption, the 1977 version did not seek to cover the former and restricted itself to abuse of office and corruption by Ministers and Members of Parliament. The 1977 Bill covered the Council of Ministers without specific exclusion of the Prime Minister.

The 1985 Bill was purely focused on corruption as defined in IPC and POCA and neither sought to subsume mal-administration or mis-conduct generally nor

⁴ His initial hesitation to this idea was probably due to the Scandinavian origin of the nomenclature of the institution. In a lighter vein, he happened to ask Dr. L.M. Singhvi “To what zoo does this animal belong” and asked Shri Singhvi to indigenize the nomenclature of the institution. Dr. L.M. Singhvi then coined the term Lokpal / Lokayukta to modify the institution of Ombudsman to the Indian context (as related by Dr. L.M. Singhvi to the Chairman of this Committee). Also referred to by Mr. Arun Jaitley M.P. during the Parliament Debate on 27th August 2011. He started the debate in the Upper House thus:- “Now, ‘Ombudsman’ was a Scandinavian concept and, coincidentally, on 3rd April, 1963, then an Independent young Member of the Lok Sabha, Dr. L.M. Singhvi, in the course of his participation in a debate for having an Ombudsman in India, attempted to find out what the Indian equivalent could be, and this word ‘Lokpal’ was added to our vocabulary, the Hindi vocabulary, by Dr. L.M. Singhvi who translated this word.”

bureaucrats within its ambit. Moreover, the 1985 Bill impliedly included the Prime Minister since it referred to the office of a Minister in its definition of “public functionary”.

The 1989 Bill restricted itself only to corruption, but corruption only as specified in the POCA and did not mention IPC. It specifically sought to include the Prime Minister, both former and incumbent.

Lastly, the last three versions of the Bill in 1996, 1998 and 2001, all largely;

- (a) focused only on corruption;
- (b) defined corruption only in terms of POCA;
- (c) defined “public functionaries” to include Prime Minister, Ministers and MPs;
- (d) did not include bureaucrats within their ambit. [Para 3.5]

5. Though the institution of Lokpal is yet to become a reality at the Central level, similar institutions of Lokayuktas have in fact been setup and are functioning for many years in several States. In some of the States, the institution of Lokayuktas was set up as early as in 1970s, the first being Maharashtra in 1972. Thereafter, State enactments were enacted in the years 1981 (M.P.), 1983 (Andhra Pradesh and Himachal Pradesh), 1984 (Karnataka), 1985 (Assam), 1986 (Gujarat), 1995 (Delhi), 1999 (Kerala), 2001 (Jharkhand), 2002 (Chhatisgarh) and 2003 (Haryana). At present, Lokayuktas are in place in 17 States and one Union Territory. However, due to the difference in structure, scope and jurisdiction, the effectiveness of the State Lokayuktas vary from State to State. It is noteworthy that some States like Gujarat, Karnataka, Bihar, Rajasthan and Andhra Pradesh have made provisions in their respective State Lokayuktas Act for suo motu investigation by the Lokpal. In the State Lokayukta Acts of some States, the Lokayukta has been given the power for prosecution and also power to ensure compliance of its recommendations. However, there is a significant difference in the nature of provisions of State Acts and in powers from State to State. Approximately nine States in India have no Lokayukta at present. Of the

States which have an enactment, four States have no actual appointee in place for periods varying from two months to eight years. [Para 3.8]

Citizens' Charter and Grievance Redressal Mechanism

6. The Committee believes that while providing for a comprehensive Grievance Redressal Mechanism is absolutely critical, it is equally imperative that this mechanism be placed in a separate framework which ensures speed, efficiency and focus in dealing with citizens' grievances as per a specified Citizens' Charter. The humongous number of administrative complaints and grievance redressal requests would critically and possibly fatally jeopardize the very existence of a Lokpal supposed to battle corruption. At the least, it would severally impair its functioning and efficiency. Qualitatively, corruption and mal-administration fall into reasonably distinct watertight and largely non-overlapping, mutually exclusive compartments. The approach to tackling such two essentially distinct issues must necessarily vary in content, manpower, logistics and structure. The fact that this Committee recommends that there must be a separate efficacious mechanism to deal with Grievance Redressal and Citizens' Charter in a comprehensive legislation other than the Lokpal Bill does not devalue or undermine the vital importance of that subject. [Para 4.15]
7. Consequently the Committee strongly recommends the creation of a separate comprehensive enactment on this subject and such a Bill, if moved through the Personnel/Law Ministry and if referred to this Standing Committee, would receive the urgent attention of this Committee. Indeed, this Committee, in its 29th Report on "Public Grievance Redressal Mechanism", presented to Parliament in October, 2008 had specifically recommended the enactment of such a mechanism. [Para 4.16]

- 8. To emphasize the importance of the subject of Citizens' Charter and to impart it the necessary weight and momentum, the Committee is of the considered opinion that any proposed legislation on the subject:**
- (i) should be urgently undertaken and be comprehensive and all inclusive;**
 - (ii) such enactment should, subject to Constitutional validity, also be applicable for all States as well in one uniform legislation;**
 - (iii) must provide for adequate facilities for proper guidance of the citizens on the procedural and other requirements while making requests.**
 - (iv) must provide for acknowledgement of citizen's communications within a fixed time frame;**
 - (v) must provide for response within stipulated time frame;**
 - (vi) must provide for prevention of spurious or lame queries from the department concerned to illegally/unjustifiably prolong/extend the time limit for response;**
 - (vii) must provide for clearly identifiable name tags for each employee of different Government departments;**
 - (viii) must provide for all pending grievances to be categorized subject-wise and notified on a continually updated website for each department;**
 - (ix) must provide for a facilitative set of procedures and formats, both for complaints and for appeals on this subject - along the lines of the Information Commissioners system set up under the RTI;**
 - (x) must, in the event that the proposed Central law does not cover states, make strong recommendations to have similar enactments for grievance redressal/citizen charter at each State level;**
 - (xi) may provide for exclusionary or limited clauses in the legislation to the effect that Citizen Charter should not include services involving constraints of supply e.g. power, water, etc. but should include subjects where there is no constraint involved e.g. birth certificates, decisions, assessment orders. These two are qualitatively different categories and reflect an important and reasonable distinction deserving recognition without which Government departments will be burdened with the legal**

obligation to perform and provide services or products in areas beyond their control and suffering from scarcity of supply. [Para 4.17]

9. The Committee strongly feels that the harmonious synchronization of the RTI Act and of the Citizens' Charter and Public Grievances Redressal Mechanism will ensure greater transparency and accountability in governance and enhance the responsiveness of the system to the citizens' needs/expectations/grievances. [Para 4.18]
10. Lastly, the Committee wishes to clarify that the conclusion of the Hon'ble Union Minister for Finance on the Floor of the House quoted in Para 1.8 above of the Report does not intend to direct or mandate or bind or oblige this Committee to provide for a Citizen's Charter within the present Lokpal Bill alone. The Committee reads the quoted portion in para 1.8 above to mean and agree in principle to provide for a Citizen's Charter/Grievance Redressal system but not necessarily and inexorably in the same Lokpal Bill. Secondly, the reference to 'appropriate mechanism' in para 1.8 above further makes it clear that there must be a mechanism dealing with the subject but does not require it to be in the same Lokpal Bill alone. Thirdly, the reference in para 1.8 above to the phrase 'under Lokpal' is not read by the Committee to mean that such a mechanism must exist only within the present Lokpal Bill. The Committee reads this to mean that there should be an appropriate institution to deal with the subject of Citizen's Charter/Grievance redressal which would be akin to the Lokpal and have its features of independence and efficacy, but not that it need not be the very same institution i.e. present Lokpal. Lastly, the Committee also takes note of the detailed debate and divergent views of those who spoke on the Floor of both Lok Sabha and Rajya Sabha on this issue and concludes that no binding consensus or resolution to the effect that the Grievances Redressal/Citizen's Charter mechanism must be provided in the same institution in the present Lokpal Bill, has emerged [Para 4.19]
11. Contextually, the issues and some of the suggestions in this Chapter may overlap with and should, therefore, be read in conjunction with Chapter 13 of this report. Though the Committee has already opined that the issue of grievance redressal should be dealt with in a separate legislation, the Committee hereby

also strongly recommends that there should be a similar declaration either in the same Chapter of the Lokpal or in a separate Chapter proposed to be added in the Indian Constitution, giving the same constitutional status to the citizens grievances and redressal machinery.[Para 4.20]

12. This recommendation to provide the proposed Citizen Charter and Grievances Redressal Machinery the same Constitutional status as the Lokpal also reflects the genuine and deep concern of this Committee about the need, urgency, status and importance of a citizen's charter/grievance machinery. The Committee believes that the giving of the aforesaid constitutional status to this machinery would go a long way in enhancing its efficacy and in providing a healing touch to the common man. Conclusions and recommendations in this regard made in para 13.12 (j) and (k) should be read in conjunction herein.[Para 4.21]
13. Furthermore, the Committee believes that this recommendation herein is also fully consistent with the letter and spirit of para 1.8 above viz. the conclusions of the Minister of Finance in the Lower House recorded in para 1.8 above. [Para 4.22]

The Prime Minister : Full Exclusion Versus Degrees of Inclusion

14. The issue of the Prime Minister's inclusion or exclusion or partial inclusion or partial exclusion has been the subject of much debate in the Committee. Indeed, this has occupied the Committee's deliberations for at least three different meetings. Broadly, the models / options which emerged are as follows:
 - (a) The Prime Minister should be altogether excluded, without exception and without qualification.
 - (b) The Prime Minister should altogether be included, without exception and without qualification (though this view appears to be that of only one or two Members).
 - (c) The Prime Minister should be fully included, with no exclusionary caveats but he should be liable to action / prosecution only after demitting office.

- (d) The Prime Minister should be included, with subject matter exclusions like national security, foreign affairs, atomic energy and space. Some variants and additions suggested included the addition of “national interest” and “public order” to this list of subject matter exclusions.
 - (e) One learned Member also suggested that the Prime Minister be included but subject to the safeguard that the green signal for his prosecution must be first obtained from either both Houses of Parliament in a joint sitting or some variation thereof. [Para 5.22]
- 15. It may be added that so far as the deferred prosecution model is concerned, the view was that if that model is adopted, there should be additional provisions limiting such deferment to one term of the Prime Minister only and not giving the Prime Minister the same benefit of deferred prosecution in case the Prime Minister is re-elected. [Para 5.23]
- 16. In a nut shell, as far as the overwhelming number of Members of the Committee are concerned, it was only three models above viz. as specified in paras (a), (c) and (d) in para 5.17 above which were seriously proposed. [Para 5.24]
- 17. Since the Committee finds that each of the views as specified in paras (a), (c) and (d) in para 5.17 above had reasonably broad and diverse support without going into the figures for or against or into the names of individual Members, the Committee believes that, in fairness, all these three options be transmitted by the Committee as options suggested by the Committee, leaving it to the good sense of Parliament to decide as to which option is to be adopted. [Para 5.25]
- 18. It would be, therefore, pointless in debating the diverse arguments in respect of each option or against each option. In fairness, each of the above options has a reasonable zone of merit as also some areas of demerit. The Committee believes that the wisdom of Parliament in this respect should be deferred to and the Committee, therefore, so opines. [Para 5.26]

Members of Parliament: Vote, Speech and Conduct within the House

19. The Committee strongly feels that constitutional safeguards given to MPs under Article 105 are sacrosanct and time-tested and in view of the near unanimity in the Committee and among political parties on their retention, there is no scope for interfering with these provisions of the Constitution. Vote, conduct or speech within the House is intended to promote independent thought and action, without fetters, within Parliament. Its origin, lineage and continuance is ancient and time-tested. Even an investigation as to whether vote, speech or conduct in a particular case involves or does not involve corrupt practices, would whittle such unfettered autonomy and independence within the Houses of Parliament down to vanishing point. Such immunity for vote, speech or conduct within the Houses of Parliament does not in any manner leave culpable MPs blameless or free from sanction. They are liable to and, have, in the recent past, suffered severe parliamentary punishment including expulsion from the Houses of Parliament, for alleged taking of bribes amounting to as little as Rs. 10,000/- for asking questions on the floor of the House. It is only external policing of speech, vote or conduct within the House that Article 105 frowns upon. It leaves such speech, vote and conduct not only subject to severe intra-parliamentary scrutiny and action, but also does not seek to affect corrupt practices or any other vote, speech or conduct outside Parliament. There is absolute clarity and continued unanimity on the necessity for this limited immunity to be retained. Hence, speculation on constitutional amendment in this regard is futile and engenders interminable delay.[Para 6.19]
20. Consequently, the existing structure, mechanism, text and context of clauses 17 (1) (c) and 17 (2) in the Lokpal Bill 2011 should be retained.[Para 6.20]

Lokpal and State Lokayuktas: Single Enactment and Uniform Standards

21. The Committee finds merit in the suggestion for a single comprehensive federal enactment dealing with Lokpal and State Lokayuktas. The availability of uniform standards across the country is desirable; the prosecution of public servants based upon widely divergent standards in neighboring states is an obvious anomaly. The Committee has given its earnest attention to the

constitutional validity of a single enactment subsuming both the Lokpal and Lokayukta and concludes that such an enactment would be not only desirable but constitutionally valid, inter alia because,

- (a) The legislation seeks to implement the UN Convention on Corruption ratified by India.**
- (b) Such implementing legislation is recognized by Article 253 and is treated as one in List III of the 7th Schedule.**
- (c) It gets additional legislative competence, inter-alia, individually or jointly under Entries 1, 2 and 11A of List-III.**
- (d) A direct example of provision for National Human Rights Commission and also for State Human Rights Commissions in the same Act is provided in the Protection of the Human Rights Act 1986 seeking to implement the UN Convention for the Protection of Human Rights.**
- (e) Such Parliamentary legislation under Article 253, if enacted, can provide for repealing of State Lokayukta Acts; subject, however, to the power of any State to make State specific amendments to the federal enactments after securing Presidential assent for such State specific amendments.[Para 7.26]**

- 22. Additionally, it is recommended that the content of the provisions dealing with State Lokayuktas in the proposed central/ federal enactment must be covered under a separate chapter in the Lokpal Bill. That may be included in one or more chapters possibly after Chapter II and before Chapter III as found in the Lokpal Bill 2011. The entire Lokpal Bill 2011 would have to incorporate necessary changes and additions, mutatis mutandis, in respect of the State Lokayukta institutions. To give one out of many examples, the Selection Committee would be comprised of the State Chief Minister, the Speaker of the Lower House of the State, the Leader of Opposition in the Lower House, the Chief Justice of the High Court and a joint nominee of the State Election Commissioner, the State Auditor General and State PSC Chairman or, where one or more of such institutions is absent in the State, a joint nominee of comparable institutions having statutory status within the State.[Para 7.27]**

23. All these State enactments shall include the Chief Minister within their purview. The Committee believes that the position of the State Chief Minister is not identical to that of the Prime Minister. The arguments for preventing instability and those relating to national security or the image of the country do not apply in case of a Chief Minister. Finally, while Article 356 is available to prevent a vacuum for the post of Chief Minister, there is no counterpart constitutional provision in respect of the federal Government.[Para 7.28]
24. Article 51 (c) of the Directive Principles of State Policy enjoining the federation to “foster respect for international law and treaty obligations.....” must also be kept in mind while dealing with implementing legislations pursuant to international treaties, thus providing an additional validating basis for a single enactment.[Para 7.29]
25. The Committee recommends that the Lokpal Bill 2011 may be expanded to include several substantive provisions which would be applicable for Lokayuktas in each State to deal with issues of corruption of functionaries under the State Government and employees of those organizations controlled by the State Government, but that, unlike the Lokpal, the state Lokayuktas would cover all classes of employees.[Para 7.30]
26. The Committee recommends that if the above recommendation is implemented the Lokpal Bill 2011 may be renamed as “Lokpal and Lokayuktas Bill 2011”[Para 7.31]
27. The Committee believes that the recommendations, made herein, are fully consistent with and implement, in letter and spirit, the conclusions of the Minister of Finance on the floor of the Houses in respect of establishment of Lokayuktas in the States, as quoted in para 1.8 above. The Committee is conscious of the fact that the few States which have responded to the Secretariat’s letter sent to each and every State seeking to elicit their views, have opposed a uniform Central federal Lokpal and Lokayukta Bill and, understandably and expectedly, have sought to retain their powers to enact State level Lokayukta Acts. The Committee repeats and reiterates the reasons given hereinabove, in support of the desirability of one uniform enactment for both Lokpal and Lokayuktas. The Committee also reminds itself that if such a

uniform Central enactment is passed, it would not preclude States from making any number of State specific amendments, subject to prior Presidential assent, as provided in the Indian Constitution. The Committee, therefore, believes that it has rightly addressed the two issues which arise in this respect viz. the need and desirability for a uniform single enactment and, secondly, if the latter is answered in the affirmative, that such a uniform enactment is Constitutionally valid and permissible.[Para 7.32]

28. Since this report, and especially this chapter, recommends the creation of a uniform enactment for both Central and State Lokayuktas, it is reiterated that a whole separate chapter (or, indeed, more than one chapter) would have to be inserted in the Lokpal Bill of 2011 providing for State specific issues. Secondly, this would have to be coupled with mutatis mutandis changes in other parts of the Act to accommodate the fact that the same Act is addressing the requirement of both the federal institution and also the State level institution.[Para 7.33]
29. Furthermore, each and every chapter and set of recommendations in this report should also be made applicable, mutatis mutandis, by appropriate provisions in the Chapter dealing with State Lokayuktas. [Para 7.34]
30. Although it is not possible for this Committee to specifically list the particularised version of each and every amendment or adaptation required to the Lokpal Bill, 2011 to subsume State Lokayuktas within the same enactment, it gives below a representative non-exhaustive list of such amendments/adaptations, which the Government should suitably implement in the context of one uniform enactment for both Lokpal and Lokayuktas. These include :
 - (a) Clause 1 (2) should be retained even for the State Lokayukta provisions since State level officers could well be serving in parts of India other than the State concerned as also beyond the shores of India.
 - (b) The Chief Minister must be included within the State Lokayukta on the same basis as any other Minister of the Council of Ministers at the State level. Clause 2 of the 2011 Bill must be amended to include Government servants at the State level. The competent authority in each case would

also accordingly change e.g. for a Minister of the Council of Minister, it would be the Chief Minister; for MLAs, it would be the presiding officer of the respective House and so on and so forth. The competent authority for the Chief Minister would be the Governor.

- (c) As regards Clause 3, the only change would be in respect of the Chairperson, which should be as per the recommendation made for the Lokpal.
- (d) As regards the Selection Committee, the issue at the Lokayukta level has already been addressed above.
- (e) References in the Lokpal context to the President of India shall naturally have to be substituted at the Lokayukta level by references to the Governor of the State.
- (f) The demarcation of the criminal justice process into five broad areas from the initiation of complaint till its adjudication, as provided in Chapter 12, should also apply at the State Lokayukta level. The investigative agency, like the CBI, shall be the anti-corruption unit of the State but crucially, it shall be statutorily made independent by similar declarations of independence as already elaborated in the discussion in Chapter 12. All other recommendations in Chapter 12 can and should be applied *mutatis mutandis* for the Lokayukta.
- (g) Similarly, all the recommendations in Chapter 12 in respect of departmental inquiry shall apply to the Lokayukta with changes made, *mutatis mutandis*, in respect of State bodies. The State Vigilance Commission/machinery would, in such cases, discharge the functions of the CVC. However, wherever wanting, similar provisions as found in the CVC Act buttressing the independence of the CVC shall be provided.
- (h) The recommendations made in respect of elimination of sanction as also the other recommendations, especially in Chapter 12, relating to Lokpal, can and should be applied *mutatis mutandis* in respect of Lokayukta.

- (i) Although no concrete fact situation exists in respect of a genuine multi-State or inter-State corruption issue, the Committee opines that in the rare and unusual case where the same person is sought to be prosecuted by two or more State machineries of two or more Lokayuktas, there should be a provision entitling the matter to be referred by either of the States or by the accused to the Lokpal at the federal level, to ensure uniformity and to eliminate turf wars between States or jurisdictional skirmishes by the accused.
- (j) As already stated above, the coverage of the State Lokayukta, unlike the Lokpal, would extend to all classes of employees, including employees of state owned or controlled entities. [Para 7.35]

Lower Bureaucracy: Degrees of Inclusion

31. The Committee, therefore, recommends

- (a) That for the Lokpal at the federal level, the coverage should be expanded to include Group A and Group B officers but not to include Group C and Group D.
- (b) The provisions for the State Lokayuktas should contain similar counterpart reference, for purposes of coverage, of all similar categories at the State level which are the same or equivalent to Group A and Group B for the federal Lokpal. Though the Committee was tempted to provide only for enabling power for the States to include the State Lokayuktas to include the lower levels of bureaucracy like groups 'C' and 'D' at the State level, the Committee, on careful consideration, recommends that all the groups, including the lower bureaucracy at the State level and the groups equivalent with 'C' and 'D' at the State level should also be included within the jurisdiction of State Lokayuktas with no exclusion. Employees of state owned or controlled entities should also be covered.
- (c) The Committee is informed by the DoPT that after the Sixth Pay Commission Report, Group-D has been/will be transposed and sub-

merged fully in Group-C. In other words, after the implementation of the Sixth Pay Commission Report, which is already under implementation, Group-D will disappear and there will be only Group-C as far as the Central Government employees are concerned.

- (i) Consequently, Group-C, which will shortly include the whole of Group-D will comprise a total number of approximately 30 lakhs (3 million) employees. Though the figures are not fully updated, A+B classes recommended for inclusion by this Committee would comprise just under 3 lakhs employees. With some degree of approximation, the number of Railway employees from group A to D inclusive can be pegged at about 13½ lakhs (as on March 2010). If Central Government PSUs are added, personnel across all categories (Group A, B, C and D as existing) would be approximately an additional 15 lakhs employees. Post and Telegraph across all categories would further number approximately 4½ lakhs employees. Hence the total, on the aforesaid basis (which is undoubtedly an approximation and a 2010 figure) for Group A to D (soon, as explained above, to be only Group-C) + Railways + Central PSUs + Post and Telegraph would be approximately 63 lakhs, or at 2011 estimates, let us assume 65 lakhs i.e. 6.5 million.
- (ii) On a conservative estimate of one policing officer per 200 employees (a ratio propounded by several witnesses including Team Anna), approximately 35000 employees would be required in the Lokpal to police the aforesaid group of Central Government employees (including, as explained above, Railways, Central PSUs, P&T etc.). This policing is certainly not possible by the proposed nine member Lokpal. The Lokpal would have to spawn a bureaucracy of at least 35000 personnel who would, in turn, be recruited for a parallel Lokpal bureaucracy. Such a mammoth bureaucracy, till it is created, would render the Lokpal unworkable. Even after it is created, it may lead to a huge parallel bureaucracy which would set in train its own set of consequences, including arbitrariness, harassment and unfair and illegal action by the same bureaucracy which, in the ultimate analysis would be nothing but a set of similar

employees cutting across the same A, B and C categories. As some of the Members of the Committee, in a lighter vein put it, one would then have to initiate a debate on creating a super Lokpal or a Dharampal for the policing of the new bureaucracy of the Lokpal institution itself.

- (ii) The Committee also notes that as far as the Lokpal institution is concerned, it is proposed as a new body and there is no such preexisting Lokpal bureaucracy available. In this respect, there is a fundamental difference between the Lokpal and Lokayuktas, the latter having functioned, in one form or the other in India for the last several decades, with a readily available structure and manpower in most parts of India.
- (iii) If, from the above approximate figure of 65 lakhs, we exclude C and D categories (as explained earlier, D will soon become part of C) from Central Government, Railways, PSUs, Post and Telegraph etc., the number of A and B categories employees in these departments would aggregate approximately 7.75 lakhs. In other words, the aggregate of C and D employees in these classes aggregate approximately 57 or 58 lakhs. The Committee believes that this figure of 7.75 or 8 lakhs would be a more manageable, workable and desirable figure for the Lokpal institution, at least to start with.
- (iv) The impression that inclusion of Group 'A' and B alone involves exclusion of large sections of the bureaucracy, must be dispelled. Though in terms of number, the aggregation of Groups 'C' and 'D' is an overwhelming percentage of total Central Government employees, Groups 'A' and B include the entire class above the supervisory level. Effectively, this means that virtually all Central Government employees at the Section Officer level and above would be included. It is vital to emphasize that this demarcation has to be viewed in functional terms, since it gives such categories significant decision making power in contra-distinction to mere numbers and necessarily subsumes a major chunk of medium and big ticket corruption.

- (v) Another misconception needs to be clarified. There is understandable and justifiable anger that inclusion of Group C and D would mean exclusion of a particular class which has tormented the common man in different ways over the years viz. Tehsildar, Patwari and similarly named or equivalent officers. Upon checking, the Secretariat has clarified that these posts are State Government posts under gazette notification notified by the State Government and hence the earlier recommendation of this Committee will enable their full inclusion.
- (vi) We further recommend that for the hybrid category of Union Territories, the same power be given as is recommended above in respect of State Lokayuktas. The Committee also believes that this is the appropriate approach since a top heavy approach should be avoided and the inclusionary ambit should be larger and higher at the state level rather than burdening the Lokpal with all classes of employees.
- (vii) As of now, prior to the coming into force of the Lokpal Act or any of the recommendations of this report, Group C and D officers are not dealt with by the CVC. Group C & D employees have to be proceeded against departmentally by the appropriate Department Head, who may either conduct a departmental enquiry or file a criminal corruption complaint against the relevant employee through the CBI and/or the normal Police forces. The Committee now recommends that the entire Group C & D, (later only Group C as explained above) shall be brought specifically under the jurisdiction of the CVC. In other words, the CVC, which is a high statutory body of repute and whose selection process includes the Leader of the Opposition, should be made to exercise powers identical to or at least largely analogous, in respect of these class C and class D employees as the Lokpal does for Group A and B employees. The ultimate Lokpal Bill/Act should thus become a model for the CVC, in so far as Group C & D employees are concerned. If that requires large scale changes in the CVC Act, the same should be carried out. This would considerably strengthen the existing regime of policing, both departmentally and in terms of

anti-corruption criminal prosecutions, all Group C & D employees and would not in any manner leave them either unpoliced or subject to a lax or ineffective regime of policing.

- (viii) Furthermore, this Committee recommends that there would be broad supervisory fusion at the apex level by some appropriate changes in the CVC Act. The CVC should be made to file periodical reports, say every three months, to the Lokpal in respect of action taken for these class C and D categories. On these reports, the Lokpal shall be entitled to make comments and suggestions for improvement and strengthening the functioning of CVC, which in turn, shall file, appropriate action taken reports with the Lokpal.**
- (ix) Appropriate increase in the strength of the CVC manpower, in the light of the foregoing recommendations, would also have to be considered by the Government.**
- (x) The Committee also feels that this is the start of the Lokpal institution and it should not be dogmatic and inflexible on any of the issues. For a swift and efficient start, the Lokpal should be kept slim, trim, effective and swift. However, after sometime, once the Lokpal institution has stabilized and taken root, the issue of possible inclusion of Group C classes also within the Lokpal may be considered. This phase-wise flexible and calibrated approach would, in the opinion of this Committee, be more desirable instead of any blanket inclusion of all classes at this stage.**
- (xi) Another consideration which the Committee has kept in mind is the fact that if all the classes of higher, middle and lower bureaucracy are included within the Lokpal at the first instance itself, in addition to all the aforesaid reasons, the CVC's role and functioning would virtually cease altogether, since the CVC would have no role in respect of any class of employee and would be reduced, at best, to a vigilance clearance authority. This would be undesirable in the very first phase of reforms, especially since the CVC is a high statutory authority in this country which has, over the last half century, acquired a certain institutional identity and stability along with**

conventions and practices which ought not to be uprooted in this manner.

- (d) All provisions for prior sanction / prior permission, whether under the CrPC or Prevention of Corruption Act or DSPE Act or related legislation must be repealed in respect of all categories of bureaucrats / government servants, whether covered by the Lokpal or not, and there should consequently be no requirement of sanction of any kind in respect of any class or category of officers at any level in any Lokpal and Lokayukta or, indeed, CVC proceedings (for non Lokpal covered categories). In other words, the requirement of sanction must go not only for Lokpal covered personnel but also for non-Lokpal covered personnel i.e. class 'C' and 'D' (Class D, as explained elsewhere, will eventually be submerged into Class 'C'). The sanction requirement, originating as a salutary safeguard against witch hunting has, over the years, as applied by the bureaucracy itself, degenerated into a refuge for the guilty, engendering either endless delay or obstructing all meaningful action. Moreover, the strong filtering mechanism at the stage of preliminary inquiry proposed in respect of the Lokpal, is a more than adequate safeguard, substituting effectively for the sanction requirement.
- (e) No doubt corruption at all levels is reprehensible and no doubt corruption at the lowest levels does affect the common man and inflicts pain and injury upon him but the Committee, on deep consideration and reconsideration of this issue, concluded that this new initiative is intended to send a clear and unequivocal message, first and foremost, in respect of medium and big ticket corruption. Secondly, this Committee is not oblivious to the fact that jurisdiction to cover the smallest Government functionary at the peon and driver level (class C largely covers peons, assistants, drivers, and so on, though it does also cover some other more "powerful" posts) may well provide an excuse and a pretext to divert the focus from combating medium and big ticket corruption to merely catching the smaller fry and building up an impressive array of statistical prosecutions and convictions without really being able to root out the true

malaise of medium and big ticket corruption which has largely escaped scrutiny and punishment over the last 60 years.

- (f) The Committee also believes that the recommendations in respect of scope of coverage of the lower bureaucracy, made herein, are fully consistent with the conclusions of the Minister of Finance on the floor of the Houses, as quoted in para 1.8 above of this Report. Firstly, the lower bureaucracy has been, partly, brought within the coverage as per the recommendations above and is, thus, consistent with the essence of the conclusion contained in para 1.8 above. Secondly, the Committee does not read para 1.8 above to meet an inevitable and inexorable mandate to necessarily subsume each and every group of civil servant (like Group 'C' or Group 'D', etc.). Thirdly, the in principle consensus reflected in para 1.8 would be properly, and in true letter and spirit, be implemented in regard to the recommendations in the present Chapter for scope and coverage of Lokpal presently. Lastly, it must be kept in mind that several other recommendations in this Report have suggested substantial improvements and strengthening of the provisions relating to policing of other categories of personnel like C and D, inter alia, by the CVC and/or to the extent relevant, to be dealt with as Citizens' Charter and Grievance Redressal issues.[Para 8.18]

False Complaints and Complainants: Punitive Measures

- 32.. It cannot be gainsaid that after the enormous productive effort put in by the entire nation over the last few months for the creation of a new initiative like the Lokpal Bill, it would not and cannot be assumed to be anyone's intention to create a remedy virtually impossible to activate, or worse in consequence than the disease. The Committee, therefore, starts with the basic principle that it must harmoniously balance the legitimate but competing demands of prevention of false, frivolous complaints on the one hand as also the clear necessity of ensuring

that no preclusive bar arises which would act as a deterrent for genuine and *bona fide* complaints.[Para 9.6]

33. The Committee sees the existing provisions in this regard as disproportionate, to the point of being a deterrent.[Para 9.7]

34. The Committee finds a convenient analogous solution and therefore adopts the model which the same Committee has adopted in its recently submitted report on Judicial Standards and Accountability Bill, 2010 presented to the Rajya Sabha on August 30, 2011.[Para 9.8]

35. In para 18.8 of the aforesaid Report, the Committee, in the context of Judicial Standards and Accountability Bill, 2010 said : "The Committee endorses the rationale of making a provision for punishment for making frivolous or vexatious complaints. The Committee, however, expresses its reservation over the prescribed quantum of punishment both in terms of imprisonment which is up to 5 years and fine which is up to 5 lakh rupees. The severe punishment prescribed in the Bill may deter the prospective complainants from coming forward and defeat the very rationale of the Bill. In view of this, the Committee recommends that Government should substantially dilute the quantum of the punishment so as not to discourage people from taking initiatives against the misbehaviour of a judge. In any case, it should not exceed the punishment provided under the Contempt of Court Act. The Government may also consider specifically providing in the Bill a proviso to protect those complainants from punishment / penalty who for some genuine reasons fail to prove their complaints. The Committee, accordingly, recommends that the Bill should specifically provide for protection in case of complaints made 'in good faith' in line with the defence of good faith available under the Indian Penal Code." [Para 9.9]

36. Consequently, in respect of the Lokpal Bill, the Committee recommends that, in respect of false and frivolous complaints, :

(a) The punishment should include simple imprisonment not exceeding six months;

(b) The fine should not exceed Rs.25000; and

- (c) **The Bill should specifically provide for protection in case of complaints made in good faith in line with the defence of good faith available under the Indian Penal Code under Section 52 IPC.[Para 9.10]**

The Judiciary: To Include or Exclude

37. The Committee recommends:

- (i) **The Judiciary, comprising 31 odd judges of the Apex Court, 800 odd judges of the High Courts, and 20,000 odd judges of the subordinate judiciary are a part of a separate and distinct organ of the State. Such separation of judicial power is vitally necessary for an independent judiciary in any system and has been recognized specifically in Article 50 of the Indian Constitution. It is interesting that while the British Parliamentary democratic system, which India adopted, has never followed the absolute separation of powers doctrine between the Legislature and the Executive, as, for example, found in the US system, India has specifically mandated under its Constitution itself that such separation must necessarily be maintained between the Executive and the Legislature on the one hand and the Judiciary on the other.**
- (ii) **Such separation, autonomy and necessary isolation is vital for ensuring an independent judicial system. India is justifiably proud of a vigorous (indeed sometimes over vigorous) adjudicatory judicial organ. Subjecting that organ to the normal process of criminal prosecution or punishment through the normal courts of the land would not be conducive to the preservation of judicial independence in the long run.**
- (iii) **If the Judiciary were included simpliciter as suggested in certain quarters, the end result would be the possible and potential direct prosecution of even an apex Court Judge before the relevant magistrate exercising the relevant jurisdiction. The same would apply to High Court**

Judges. This would lead to an extraordinarily piquant and an untenable situation and would undermine judicial independence at its very root.

- (iv) Not including the Judiciary under the present Lokpal dispensation does not in any manner mean that this organ should be left unpoliced in respect of corruption issues. This Committee has already proposed and recommended a comprehensive Judicial Standards and Accountability Bill which provides a complete in-house departmental mechanism, to deal with errant judicial behavior by way of censure, warning, suspension, recommendation or removal and so on within the judicial fold itself. The Committee deprecates the criticism of the Judicial Standards and Accountability Bill as excluding issues of corruption for the simple reason that they were never intended to be addressed by that Bill and were consciously excluded.**
- (v) As stated in para 21 of the report of this Committee on the Judicial Standards and Accountability Bill, to this report, the Committee again recommends, in the present context of the Lokpal Bill, that the entire appointment process of the higher judiciary needs to be revamped and reformed. The appointment process cannot be allowed and should not be allowed to continue in the hands of a self-appointed common law mechanism created by judicial order operating since the early 1990s. A National Judicial Commission must be set up to create a broad-based and comprehensive model for judicial appointments, including, if necessary, by way of amendment of Articles 124 and 217 of the Indian Constitution. Without such a fundamental revamp of the appointment process at source and at the inception, all other measures remain purely ex-post facto and curative. Preventive measures to ensure high quality judicial recruitment at the entrance point is vital.**
- (vi) It is the same National Judicial Commission which has to be entrusted with powers of both transfer and criminal prosecution of judges for corruption. If desired, by amending the provisions of the Constitution as they stand today, such proposed National Judicial Commission may also be given the power of dismissal / removal. In any event, this mechanism of**

the National Judicial Commission is essential since it would obviate allegations and challenges to the validity of any enactment dealing with judges on the ground of erosion or impairment of judicial independence. Such judicial independence has been held to be part of the basic structure of the Indian Constitution and is therefore unamendable even by way of an amendment of the Indian Constitution. It is for this reason that while this Committee is very categorically and strongly of the view that there should be a comprehensive mechanism for dealing with the trinity of judicial appointments, judicial transfers and criminal prosecution of judges, it is resisting the temptation of including them in the present Lokpal Bill. The Committee, however, exhorts the appropriate departments, with all the power at its command, to expeditiously bring a Constitutional Amendment Bill to address the aforesaid trinity of core issues directly impinging on the judicial system today viz. appointment of high quality and high caliber judges at the inception, non-discriminatory and effective transfers and fair and vigorous criminal prosecution of corrupt judges without impairing or affecting judicial independence.

- (vii) The Committee finds no reason to exclude from the conclusions on this subject, the burgeoning number of quasi-judicial authorities including tribunals as also other statutory and non-statutory bodies which, where not covered under category 'A' and 'B' bureaucrats, exercise quasi-judicial powers of any kind. Arbitrations and other modes of alternative dispute resolution should also be specifically covered in this proposed mechanism. They should be covered in any eventual legislation dealing with corruption in the higher judiciary. The Committee notes that a large mass of full judicial functions, especially from the High Courts has, for the last 30 to 40 years, been progressively hived off to diverse tribunals exercising diverse powers under diverse statutory enactments. The Committee also notes that apart from and in addition to such tribunals, a plethora of Government officials or other persona designata exercise quasi judicial powers in diverse situations and diverse contexts. Whatever has been said in respect of the judiciary in this chapter should, in the considered opinion of this Committee, be made applicable, with

appropriate modifications in respect of quasi-judicial bodies, tribunals and persons as well. [Para 10.21]

The Lokpal: Search and Selection

38. To ensure flexibility, speed and efficiency on the one hand and representation to all organs of State on the other, the Committee recommends a Selection Committee comprising:-

- (a) The Prime Minister of India- as Head of the Executive.**
- (b) The Speaker Lok Sabha, as Head of the Legislature.**
- (c) The Chief Justice of India-as Head of the Judiciary.**
- (d) The leader of the Opposition of the Lower House.**
- (e) An eminent Indian, selected as elaborated in the next paragraph.**

N.B.: functionaries like the Chairman and Leader of the Opposition of the Upper House have not been included in the interests of compactness and flexibility. The Prime Minister would preside over the Selection Committee. [Para 11.18]

39. The 5th Member of the Selection Committee in (e) above should be a joint nominee selected jointly by the three designated Constitutional bodies viz., the Comptroller and Auditor General of India, the Chief Election Commissioner and the UPSC Chairman. This ensures a reasonably wide and representative degree of inputs from eminent Constitutional bodies, without making the exercise too cumbersome. Since the other Members of the Selection Committee are all ex-officio, this 5th nominee of the aforesaid Constitutional bodies shall be nominated for a fixed term of five years. Additionally, it should be clarified that he should be an eminent Indian and all the diverse criteria, individually, jointly or severally, applicable as specified in Clause 4 (1) (i) of the Lokpal Bill 2011 should

be kept in mind by the aforesaid three designated Constitutional nominators.[Para 11.19]

40. There should, however, be a proviso in Clause 4(3) to the effect that a Search Committee shall comprise at least seven Members and shall ensure representation 50 per cent to Members of SC's and/or STs and/or Other Backward Classes and/or Minorities and/or Women or any category or combination thereof. Though there is some merit in the suggestion that the Search Committee should not be mandatory since, firstly, the Selection Committee may not need to conduct any search and secondly, since this gives a higher degree of flexibility and speed to the Selection Committee, the Committee, on deep consideration, finally opines that the Search Committee should be made mandatory. The Committee does so, in particular, in view of the high desirability of providing representation in the Search Committee as stated above which, this Committee believes, cannot be effectively ensured without the mandatory requirement to have a Search Committee. It should, however, be clarified that the person/s selected by the Search Committee shall not be binding on the Selection Committee and secondly, that, where the Selection Committee rejects the recommendations of the Search Committee in respect of any particular post, the Selection Committee shall not be obliged to go back to the Search Committee for the same post but would be entitled to proceed directly by itself. [Para 11.20]
41. Over the years, there has been growing concern in India that the entire mass of statutory quasi judicial and other similar tribunals, bodies or entities have been operated by judicial personnel i.e. retired judges, mainly of the higher judiciary viz. the High Courts and the Supreme Court.[Para 11.20(A)]
42. There is no doubt that judicial training and experience imparts not only a certain objectivity but a certain technique of adjudication which, intrinsically and by training, is likely to lead to greater care and caution in preserving principles like fair play, natural justice, burden of proof and so on and so forth. Familiarity with case law and knowledge of intricate legal principles, is naturally available in retired judicial personnel of the higher judiciary.[Para11.20(B)]
43. However, when a new and nascent structure like Lokpal is being contemplated, it is necessary not to fetter or circumscribe the discretion of the appointing

authority. The latter is certainly entitled to appoint judges to the Lokpal, and specific exclusion of judges is neither contemplated nor being provided. However, to consider, as the Lokpal Bill 2011 does, only former Chief Justices of India or former judges of the Supreme Court as the Chairperson of the Lokpal would be a totally uncalled for and unnecessary fetter. The Committee, therefore, recommends that clause 3(2) be suitably modified not to restrict the Selection Committee to selecting only a sitting or former Chief Justice of India or judge of the Supreme Court as Chairperson of the Lokpal.[Para 11.20(C)]

44. A similar change is not suggested in respect of Members of the Lokpal and the existing provision in clause 3 (2) (b) read with clause 19 may continue. Although the Committee does believe that it is time to consider tribunals staffed by outstanding and eminent Indians, not necessarily only from a pool of retired members of the higher judiciary, the Committee feels **hamstrung** by the Apex Court decision in L. Chandra Kumar v. Union of India 1997 (3) SCC 261 which has held and has been interpreted to hold that statutory tribunals involving adjudicatory functions must not sit singly but must sit in benches of two and that at least one of the two members must be a judicial member. Hence, unless the aforesaid judgment of the Apex Court in L. Chandra Kumar v. Union of India is reconsidered, the Committee refrains from suggesting corresponding changes in clause 3 (2) (b) read with clause 19, though it has been tempted to do so.[Para 11.20(D)]

45. There is merit in the suggestion that clause 3 (4) of the Lokpal Bill 2011 be further amended to clarify that a person shall not be eligible to become Chairperson or Member of Lokpal if:

- (a) He/ she is a person convicted of any offence involving moral turpitude;
- (b) He/ she is a person less than 45 years of age, on date of assuming office as Chairperson or Member of Lokpal;
- (c) He/ she has been in the service of any Central or State Government or any entity owned or controlled by the Central or State Government and has vacated office either by way of resignation, removal or retirement within the period of 12 months prior to the date of appointment as Chairperson or Member of Lokpal.[Para 11.20(E)]

46. In clause 9 (2), the existing provision should be retained but it should be added at the end of that clause, for the purpose of clarification, that no one shall be eligible for re-appointment as Chairperson or Member of the Lokpal if he has already enjoyed a term of five years.[Para 11.20(F)]
47. The Committee has already recommended appropriate representation on the Search Committee, to certain sections of society who have been historically marginalized. The Committee also believes that although the institution of Lokpal is a relatively small body of nine members and specific reservation cannot and ought not to be provided in the Lokpal institution itself, there should be a provision added after clause 4 (5) to the effect that the Selection Committee and the Search Committee shall make every endeavour to reflect, on the Lokpal institution, the diversity of India by including the representation, as far as practicable, of historically marginalized sections of the society like SCs/ STs, OBCs, minorities and women. [Para 11.20(G)]
48. As regards clause 51 of the Lokpal Bill, 2011, the Committee recommends that the intent behind the clause be made clear by way of an Explanation to be added to the effect that the clause is not intended to provide any general exemption and that "good faith" referred to in clause 52 shall have the same meaning as provided in section 52 of the IPC.[Para 11.20(H)]

The Trinity of the Lokpal, CBI and CVC: In Search of an Equilibrium

49. (A) Whatever is stated hereinafter in these recommendations is obviously applicable only to Lokpal and Lokayukta covered personnel and offences/ misconduct, as already delineated in this Report earlier, inter alia, in Chapter 8 and elsewhere.
- (B) For those outside (A) above, the existing law, except to the extent changed, would continue to apply. (Para 12.32]

50. This Chapter, in the opinion of the Committee, raises an important issue of the quality of both investigation and prosecution; the correct balance and an apposite equilibrium of 3 entities (viz. Lokpal, CBI and CVC) after creation of the new entity called Lokpal; harmonious functioning and real life operational efficacy of procedural and substantive safeguards; the correct balance between initiation of complaint, its preliminary screening/ inquiry, its further investigation, prosecution, adjudication and punishment; and the correct harmonization of diverse provisions of law arising from the Delhi Special Police Establishment Act, the CVC Act, the proposed Lokpal Act, the IPC, CrPC and the Prevention of Corruption Act. It is, therefore, a somewhat delicate and technical task. [Para 12.33]
51. The stages of criminal prosecution of the Lokpal and Lokayukta covered persons and officers can be divided broadly into 5 stages, viz. (a) The stage of complaint, whether by a complainant or suo motu, (b) the preliminary screening of such a complaint, (c) the full investigation of the complaint and the report in that respect, (d) prosecution, if any, on the basis of the investigation and (e) adjudication, including punishment, if any.[Para 12.34]
52. The Committee recommends that the complaint should be allowed to be made either by any complainant or initiated suo motu by the Lokpal. Since, presently, the CBI also has full powers of suo motu initiation of investigation, a power which is frequently exercised, it is felt that that the same power of suo motu proceedings should also be preserved for both the CBI and the Lokpal, subject, however, to overall supervisory jurisdiction of the Lokpal over the CBI, including simultaneous intimation and continued disclosure of progress of any inquiry or investigation by the CBI to the Lokpal, subject to what has been elaborated in the next paragraph.[Para 12.35]
53. Once the complaint, through any party or suo motu has arisen, it must be subject to a careful and comprehensive preliminary screening to rule out false, frivolous and vexatious complaints. This power of preliminary inquiry must necessarily vest in the Lokpal. However, in this respect, the recommendations of the Committee in para 12.36(I) should be read with this para. This is largely covered in clause 23 (1) of the Lokpal Bill, 2011. However, in this respect, the

Lokpal would have to be provided, at the inception, with a sufficiently large internal inquiry machinery. The Lokpal Bill, 2011 has an existing set of provisions (Clauses 13 and 14 in Chapter III) which refers to a full-fledged investigation wing. In view of the structure proposed in this Chapter, there need not be such an investigation wing but an efficacious inquiry division for holding the preliminary inquiry in respect of the complaint at the threshold. Preliminary inquiry by the Lokpal also semantically distinguishes itself from the actual investigation by the CBI after it is referred by the Lokpal to the CBI. The pattern for provision of such an inquiry wing may be similar to the existing structure as provided in Chapter III of the Lokpal Bill 2011 but with suitable changes made, mutatis mutandis, and possible merger of the provisions of Chapter VII with Chapter III.[Para 12.36]

54. The Committee is concerned at the overlap of terminology used and procedures proposed, between preliminary inquiry by the Lokpal as opposed to investigation by the investigating agency, presently provided in Clause 23 of the Lokpal Bill. The Committee, therefore, recommends:

- (a) that only two terms be used to demarcate and differentiate between the preliminary inquiry to be conducted by the Lokpal, inter-alia, under Chapters VI and VII read with Clause 2(1)(e) as opposed to an investigation by the investigating agency which has been proposed to be the CBI in the present report. Appropriate changes should make it clear that the investigation (by the CBI as recommended in this report), shall have the same meaning as provided in Clause 2 (h) of the Cr.P.C whereas the terms “inquiry” or “preliminary investigation” should be eschewed and the only two terms used should be “preliminary inquiry” (by the Lokpal) on the one hand & “investigation” (by the CBI), on the other.
- (b) the term preliminary inquiry should be used instead of the term inquiry in clause 2(1)(e) and it should be clarified therein that it refers to preliminary inquiry done by the Lokpal in terms of Chapters VI and VII of the Lokpal Bill, 2011 and does not mean or refer to the inquiry mentioned in Section 2(g) of the Cr.P.C.

(c) the term “investigation” alone should be used while eschewing terms like “preliminary investigation” and a similar definitional provision may be inserted after Clause 2(1)(e) to state that the term investigation shall have the same meaning as defined in Clause 2(h) of the Cr.P.C.

(d) Similar changes would have to be made in all other clauses in the Lokpal Bill, 2011, one example of which includes Clause-14.[Para 12.36(A)]

55. There are several parts of Clause 23 of the 2011 Bill, including Clauses 23(4), 23(5), 23(6), 23(9) and 23(11) which require an opportunity of being heard to be given to the public servant during the course of the preliminary inquiry i.e. the threshold proceedings before the Lokpal in the sense discussed above. After deep consideration, the Committee concludes that it is unknown to criminal law to provide for hearing to the accused at the stage of preliminary inquiry by the appropriate authority i.e. Lokpal or Lokayukta in this case. Secondly, the preliminary inquiry is the stage of verification of basic facts regarding the complaint, the process of filtering out false, frivolous, fictitious and vexatious complaints and the general process of seeing that there is sufficient material to indicate the commission of cognizable offences to justify investigation by the appropriate investigating agency. If the material available in the complaint at the stage of its verification through the preliminary inquiry is fully disclosed to the accused, a large part of the entire preliminary inquiry, later investigation, prosecution and so on, may stand frustrated or irreversibly prejudiced at the threshold. Thirdly, and most importantly, the preliminary inquiry is being provided as a threshold filter in favour of the accused and is being entrusted to an extremely high authority like the Lokpal, created after a rigorous selection procedure. Other agencies like the CBI also presently conduct preliminary inquiries but do not hear or afford natural justice to the accused during that process. Consequently the Committee recommends that all references in Clause 23 or elsewhere in the Lokpal Bill, 2011 to hearing of the accused at the preliminary inquiry stage should be deleted.[Para 12.36(B)]

56. Since the Committee has recommended abolition of the personal hearing process before the Lokpal during the preliminary inquiry, the Committee deems it fit

and proper to provide for the additional safeguard that the decision of the Lokpal at the conclusion of the preliminary inquiry to refer the matter further for investigation to the CBI, shall be taken by a Bench of the Lokpal consisting of not less than 3 Members which shall decide the issue regarding reference to investigation, by a majority out of these three.[Para 12.36.(BB)]

57. Naturally it should also be made clear that the accused is entitled to a full hearing before charges are framed. Some stylistic additions like referring to the charge sheet “if any” (since there may or may not be a chargesheet) may also be added to Clause 23(6). Consequently, Clauses like 23(7) and other similar clauses contemplating proceedings open to public hearing must also be deleted. [Para 12.36(C)]
58. Clause 23(8) would have to be suitably modified to provide that the appropriate investigation period for the appropriate investigating agency i.e. CBI in the present case, should normally be within six months with only one extension of a further six months, for special reasons. Reference in Clause 23(8) to “inquiry” creates highly avoidable confusion and it should be specified that the meanings assigned to inquire and investigate should be as explained above.[Para 12.36(D)]
59. The Committee also believes that there may be several exigencies during the course of both preliminary inquiry and investigation which may lead to a violation of the 30 days or six months periods respectively specified in Clause 27(2) and 23(8). The Committee believes that it cannot be the intention of the law that where acts and omissions by the accused create an inordinate delay in the preliminary inquiry and / or other factors arise which are entirely beyond the control of the Lokpal, the accused should get the benefit or that the criminal trial should terminate. For that purpose it is necessary to insert a separate and distinct provision which states that Clauses 23(2), 23(8) or other similar time limit clauses elsewhere in the Lokpal Bill, 2011, shall not automatically give any benefit or undue advantage to the accused and shall not automatically thwart or terminate the trial. [Para 12.36(E)]
60. Clause 23(10) also needs to be modified. Presently, it states in general terms the discretion to hold or not to hold preliminary inquiry by the Lokpal for reasons to be recorded in writing. However, this may lead to allegations of pick and choose

and of arbitrariness and selectivity. The Committee believes that Clause 23(10) should be amended to provide for only one definition viz., that preliminary inquiry may be dispensed with only in trap cases and must be held in all other cases. Even under the present established practice, the CBI dispenses with preliminary inquiry only in a trap case for the simple reason that the context of the trap case itself constitutes preliminary verification of the offence and no further preliminary inquiry is necessary. Indeed, for the trap cases, Section 6 A (ii) of the Delhi Special Police Establishment Act, 1946 also dispenses with the provision of preliminary inquiries. For all cases other than the trap cases, the preliminary inquiry by the Lokpal must be a non dispensable necessity.[Para 12.36(F)]

61. Clause 23(11) also needs to be modified / deleted since, in this Report, it is proposed that it is the CBI which conducts the investigation which covers and includes the process of filing the charge sheet and closure report. [Para 12.36(G)]
62. Similarly Clause 23 (12) (b) would have to be deleted, in view of the conclusion hereinabove regarding the absence of any need to provide natural justice to the accused at the stage of preliminary inquiry. Clause 23(14) is also unusually widely worded. It does not indicate as to whom the Lokpal withhold records from. Consequently that cannot be a general blanket power given to the Lokpal to withhold records from the accused or from the investigating agency. Indeed, that would be unfair, illegal and unconstitutional since it would permit selectivity as also suppress relevant information. The clause, therefore, needs to be amended.[Para 12.36(H)]
63. The case of the Lokpal initiating action suo motu, requires separate comment. In a sense, the preliminary inquiry in the case of a Lokpal suo motu action becomes superfluous since the same body (i.e. Lokpal) which initiates the complaint, is supposed to do a preliminary inquiry. This may, however, not be as anomalous as it sounds since even under the present structure, the CBI, or indeed the local police, does both activities ie suo motu action as also preliminary screening/ inquiry. The Committee was tempted to provide for another body to do preliminary inquiry in cases where the Lokpal initiates suo motu action, but in fact no such body exists and it would create great multiplicity and logistical

difficulty in creating and managing so many bodies. Hence the Committee concludes that in cases of suo motu action by Lokpal, a specific provision must provide that that part of the Lokpal which initiates the suo motu proposal, should be scrupulously kept insulated from any part of the preliminary inquiry process following upon such suo motu initiation. It must be further provided that the preliminary inquiry in cases of suo motu initiation must be done by a Lokpal Bench of not less than five Members and these should be unconnected with those who do the suo motu initiation.[Para 12.36(I)]

64. These recommendations also prevent the Lokpal from becoming a single institution fusing unto itself the functions of complainant, preliminary inquirer, full investigator and prosecutor. It increases objectivity and impartiality in the criminal investigative process and precludes the charge of creating an unmanageable behemoth like Lokpal, while diminishing the possibility of abuse of power by the Lokpal itself.[Para 12.37]
65. These recommendations also have the following advantages:
- (i) The CBI's apprehension, not entirely baseless, that it would become a Hamlet without a Prince of Denmark if its Anti-Corruption Wing was hived off to the Lokpal, would be taken care of.
 - (ii) It would be unnecessary to make CBI or CVC a Member of the Lokpal body itself.
 - (iii) The CBI would not be subordinate to the Lokpal nor its esprit de corps be adversely affected; it would only be subject to general superintendence of Lokpal. It must be kept in mind that the CBI is an over 60 year old body, which has developed a certain morale and esprit de corps, a particular culture and set of practices, which should be strengthened and improved, rather than merely subsumed or submerged within a new or nascent institution, which is yet to take root. Equally, the CBI, while enhancing its autonomy and independence, cannot be left on auto pilot.
 - (iv) The CVC would retain a large part of its disciplinary and functional role for non Lokpal personnel and regarding misconduct while not being

subordinate to the Lokpal. However, for Lokpal covered personnel and issues, including the role of the CBI, the CVC would have no role.

- (v) **Mutatis mutandis statutory changes in the Lokpal Bill, the CVC and the CBI Acts and in related legislation, is accordingly recommended.**
[Para 12.38]

66. After the Lokpal has cleared the stage for further investigation, the matter should proceed to the CBI. This stage of the investigation must operate with the following specific enumerated statutory principles and provisions:

- (A) On the merits of the investigation in any case, the CBI shall not be answerable or liable to be monitored either by the Administrative Ministry or by the Lokpal. This is also fully consistent with the established jurisprudence on the subject which makes it clear that the merits of the criminal investigation cannot be gone into or dealt with even by the superior courts. However, since in practise it has been observed in the breach, it needs to be unequivocally reiterated as a statutory provision, in the proposed Lokpal Act, a first in India.**
- (B) The CBI shall, however, continue to be subject to the general supervisory superintendence of the Lokpal. This shall be done by adding a provision as exists today in the CVC Act which shall now apply to the Lokpal in respect of the CBI. Consequently, the whole of the Section 8 (1) (not Section 8 (2)) of the CVC Act should be included in the Lokpal Bill to provide for the superintendence power of the Lokpal over the CBI.[Para 12.39]**

67. Correspondingly, reference in Section 4 of the Delhi Special Police Establishment Act to the CVC would have to be altered to refer to the Lokpal. [Para 12.40]

68. At this stage, the powers of the CBI would further be strengthened and enhanced by clarifying explicitly in the Lokpal Bill that all types of prior sanctions/terms or authorizations, by whatever name called, shall not be applicable to Lokpal covered persons or prosecutions. Consequently, the provisions of Section 6 (A) of the Delhi Special Police Establishment Act, Section 19 of the Prevention of Corruption Act and Section 197 of the IPC or any other provision of the law,

wherever applicable, fully or partially, will stand repealed and rendered inoperative in respect of Lokpal and Lokayukta prosecutions, another first in India. Clause 27 of the Lokpal Bill, 2011 is largely consistent with this but the Committee recommends that it should further clarify that Section 6 A of the DSPE Act shall also not apply in any manner to proceedings under the proposed Act. The sanction requirement, originating as a salutary safeguard against witch hunting has, over the years, as applied by the bureaucracy itself, degenerated into a refuge for the guilty, engendering either endless delay or obstructing all meaningful action. Moreover, the strong filtering mechanism at the stage of preliminary inquiry proposed in respect of the Lokpal, is a more than adequate safeguard, substituting effectively for the sanction requirement. Elsewhere, this Report recommends that all sanction requirements should be eliminated even in respect of non Lokpal covered personnel. [Para 12.41]

69. The previous two paragraphs if implemented, would achieve genuine and declared statutory independence of investigation for the first time for the CBI.[Para 12.42]
70. The main investigation, discussed in the previous few paragraphs, to be conducted by the CBI, necessarily means the stage from which it is handed over to the CBI by the Lokpal, till the stage that the CBI files either a chargesheet or a closure report under Section 173 of the CrPC. However, one caveat needs to be added at this stage. The CBI's chargesheet or closure report must be filed after the approval by the Lokpal and, if necessary, suitable changes may have to be made in this regard to Section 173 Cr PC and other related provisions.[Para 12.43]
71. The aforesaid independence of the CBI is reasonable and harmonizes well with the supervisory superintendence of the Lokpal in the proposed Lokpal Bill, which is now exercised by CVC under Section 8 (1) of the CVC Act. The Committee recommends the above provision, suitably adapted to be applicable in the relationship between the Lokpal and the CBI. [Para 12.44]
72. The next stage of the criminal process would go back to the Lokpal with full powers of prosecution on the basis of the investigation by the CBI. The following points in this respect are noteworthy:

- Clause 15 in Chapter IV of the Lokpal Bill, 2011 already contains adequate provisions in this regard and they can, with some modifications, be retained and applied.
- The Committee's recommendations create, again for the first time, a fair demarcation between independent investigation and independent prosecution by two distinct bodies, which would considerably enhance impartiality, objectivity and the quality of the entire criminal process.
- It creates, for the first time in India, an independent prosecution wing, under the general control and superintendence of the Lokpal, which, hopefully will eventually develop into a premium, independent autonomous Directorate of Public Prosecution with an independent prosecution service (under the Lokpal institution). The Committee also believes that this structure would not in any manner diminish or dilute the cooperative and harmonious interface between the investigation and prosecution processes since the former, though conducted by the CBI, comes under the supervisory jurisdiction of the Lokpal.[Para 12.45]

73. The next stage is that of adjudication and punishment, if any, which shall, as before, be done by a special Judge. The Committee considers that it would be desirable to use the nomenclature of 'Lokpal Judge' (or Lokayukta Judge in respect of States) under the new dispensation. However, this is largely a matter of nomenclature and existing provisions in the Lokpal Bill, 2011 in Chapter IX are adequate, though they need to be applied, with modifications. [Para 12.46]
74. The aforesaid integrates all the stages of a criminal prosecution for an offence of corruption but still leaves open the issue of departmental proceedings in respect of the same accused.[Para 12.47]
75. The Committee agrees that for the Lokpal covered personnel and issues, it would be counter-productive, superfluous and unnecessary to have the CVC to play any role in departmental proceedings. Such a role would be needlessly duplicative and superfluous. For such matters, the Lokpal should be largely empowered to do all those things which the CVC presently does, but with some significant changes, elaborated below.[Para 12.48]

76. Clauses 28 and 29 of the Lokpal Bill are adequate in this regard but the following changes are recommended:

- (i) The Lokpal or Lokayukta would be the authority to recommend disciplinary proceedings for all Lokpal or Lokayukta covered persons.**
- (ii) The CVC would exercise jurisdiction for all non Lokpal covered persons in respect of disciplinary proceedings.**
- (iii) The CBI would similarly continue to exercise its existing powers under the CVC's superintendence for all non Lokpal personnel and proceedings.**
- (iv) Departmental action must, as the law today stands, comply with the over arching mandate of Article 311 of the Indian Constitution. Dissatisfaction or objection to the practical operation of Article 311, fully understandable and indeed justifiable, does not permit or impel us to ignore the existence of Article 311, until altered. If there is consensus outside the Committee on amending Article 311, it must be amended as elaborated and recommended by the Committee in paragraph 12.49. However, absent such a consensus, the passage of the Lokpal Bill need not be held up on that account and hence the present report makes recommendations on the basis of the continuance of Article 311. If, however, it is amended as per paragraph 12.49, the proposed Lokpal Act can easily be modified to reflect such changes.**
- (v) It may also be remembered that the Lokpal itself does not conduct the departmental proceedings. For the law to provide for Lokpal to conduct the entire departmental proceedings itself, would be to put a humungous and unworkable burden on the institution.**
- (vi) Therefore, the power to take departmental action whether in the case of bureaucrats or in the case of Ministers as provided in Clauses 28 and 29 of the Lokpal Bill 2011, are largely appropriate.**
- (vii) The Committee is informed that suspension of a delinquent officer during his criminal prosecution is virtually automatic in practice. However, the Committee feels the need to emphasize that a specific provision be added in Chapter VII making it clear that once any bureaucrat (viz. group A or group B officer) as covered in the proposed Lokpal Bill is under investigation and the Lokpal makes a recommendation that such a person**

be suspended, such suspension should mandatorily be carried out unless, for reasons to be recorded in writing by a majority out of a group of 3 persons not below the rank of Ministers of State belonging to the Ministries of Home, Personnel and the relevant administrative Ministry of the delinquent officer, opine to the contrary. Such suspension on Lokpal recommendation does not violate Article 311 in any manner. Refusal by the aforesaid Committee of three provides a check and balance qua possibly unreasonable Lokpal recommendations. The reference is to three high functionaries of three Ministries and not to the Administrative Ministry alone since it is frequently found in practise that the Administrative Ministry's responses alone may seek to preserve the status quo on account of vested interests arising from the presence of the delinquent officer in that Administrative Ministry.

- (viii) There cannot be a counterpart suspension provision in respect of MPs or Ministers or the like, but an explicit clause may be added to the existing Clause 29 that the Presiding Officer of the relevant House in the case of MPs and Prime Minister in the case of a member of the Council of Ministers shall record a note in writing indicating the action being taken in regard to the Lokpal's recommendations or the reasons for not taking such action.
- (ix) Wherever otherwise applicable, in respect of the details of the departmental inquiry, the provisions of Article 311 would, unless altered and subject to Paras D above and 12.49 below, continue to apply.[Para 12.49]

77. The Committee strongly pleads and recommends that the provisions of Article 311 require a close and careful relook to ensure that reasonable protection is given to bureaucrats for the independent and fair discharge of their functions but that the enormous paraphernalia of procedural rules and regulations which have become a major obstacle in the taking of genuine and legitimate departmental action against delinquent officers, be eliminated. The Committee notes with concern and with growing apprehension that serious and high level / big ticket corruption has increased exponentially since Independence at all levels in the Lokpal proposed categories of personnel. In particular, bureaucratic

corruption has been relatively ignored or underplayed in the context of the excessive media and civil society focus on political corruption, coupled with the doctrine of civil service anonymity, which this country imported from our former colonial masters. Hence, the substantial modification of Article 311 or, indeed, its replacement by a much lesser statutory (not constitutional counterpart) should be taken up and implemented at the earliest. It may be added that what requires to be looked into is not the mere text of Article 311 but the context which has grown around it, through an undesirably large number of statutory and non-statutory rules, procedures and regulations coupled with huge common law jurisprudence over the last 6 decades. It is universally believed that the aforesaid has, in practice, converted Article 311, from a reasonable and salutary safeguard to a haven for those indulging in mal-administration and/ corruption with no fear of consequences and the certainty of endless delay. The fact that Article 311 had been given constitutional and not mere statutory status is also responsible for its largely unchanged character over the last six plus decades.[Para 12.50]

78. Though not strictly within the purview of the Lokpal Bill 2011 itself, the Committee also recommends that CVC's advice in respect of departmental action to be taken by the relevant department in case of non-Lokpal covered personnel must, by a suitable amendment to the CVC Act, be made binding to the extent that, unless for reasons to be recorded by a majority out of the same joint group as aforesaid, comprising 3 persons not below the rank of Ministers of State belonging respectively to the Ministries of Home Affairs, Personnel and the Administrative Ministry to which the delinquent officer belongs, states that CVC advice be not followed, such CVC advice shall be binding. [Para 12.51]
79. The Committee has deliberated long and hard on whether it can or should go to the extent of suggesting changes in the selection procedure of the CBI chief. Presently, the CBI chief is appointed by the Government on the recommendation of a Committee consisting of the CVC as Chairperson, Vigilance Commissioner, Secretary, Government of India in the Ministry of Home Affairs and Secretary of the Administrative Ministry (in this case the Ministry of Personnel) [see Section 4A of the Delhi Special Police Establishment Act, 1946]. Section 8 (2) of

the 1946 Act further provides for a mandatory input in the selection of a new Director to be made by the outgoing Director and also enjoins upon the Committee, in Section 8 (3), to make recommendations for a panel of officers on the basis of seniority, integrity and experience in the investigation of anti-corruption cases, necessarily belonging to the Indian Police Services. [Para 12.52]

80. Interestingly, Section 4 C of the same 1946 Act provides for the same Committee to make recommendations for all appointments as also extension or curtailment of tenure of all officers above the level of Superintendent of Police in the CBI. [Para 12.53]
81. It is thus clear that it is not correct to suggest that the Central Government has absolute discretion in appointing the CBI Director. After the Vineet Narain vs. Union of India judgment* by the Apex Court, significant changes were brought into the Delhi Special Police Establishment Act, 1946. In 2003 (by Act 45 of 2003) providing for the aforesaid independent and autonomous regime for selection and appointment of CBI Director. The Central Vigilance Commissioner who heads the selection and recommendation process is itself a high statutory authority under a separate enactment called the Central Vigilance Commission Act of 2003 which, in turn in Section 4, obliges the Government to appoint the CVC on the basis of a recommendation of a high powered Committee comprising the Prime Minister, the Home Minister and the leader of opposition in the Lok Sabha. It is, therefore, erroneous to brush aside the existing system as merely involving absolute power/discretion to select Government favourites as CBI Director. [Para 12.54]
82. Furthermore, the Committee believes that it would neither be proper nor desirable for the Committee to go into and suggest fundamental statutory alterations to the procedure for selection and appointment of CBI Director, which appears, nowhere, directly or indirectly, to be a subject referred for the consideration of this Committee. Collateral recommendations of this nature by a side wind should, in the opinion of this Committee, be avoided, especially since

* 1996(2) SCC 199.

significant statutory changes have been brought in with respect to the appointment of the CBI Director less than 8 years ago. [Para 12.55]

Constitutional Status: If, How and How Much

83. The Committee, therefore, recommends:-

- (a) The institution of Lokpal must be given constitutional status by inserting into the Constitution by way of constitutional amendment certain basic principles about the Lokpal and leaving the details in the new proposed statute on which this Committee is opining.**
- (b) One practical, reasonable and legally valid model would be for the Government to consider the model and set of provisions asked for by the Committee and presented in the evidence to the Committee as a draft constitutional amendment by two former Chief Justices of India. That draft is enclosed herewith as Annexure 'F' and is self-explanatory.**
- (c) This constitutional amendment does not require ratification by not less than half of the State Legislatures since it does not seek to make any change in any of the provisions listed in the second proviso to Article 368 (2) of the Indian Constitution.**
- (d) The constitutional amendment should, as reflected in the enclosed Annexure 'F' be a set of basic principles for the Lokpal as also provide for the basic set up of the Lokayuktas. Both these provisions, proposed in the enclosed draft, propose Part XVA and Articles 329(C) and 329(D), as enabling, empowering and permissive provisions and authorize and empower the appropriate legislature to make proper laws, mutatis mutandis, for Lokpal at the Centre and for Lokayuktas at the State.**
- (e) Such a constitutional status would not only considerably enhance the stature, legal and moral authority of the Lokpal institution but would make interference and tinkering in these basic principles not subject to the vicissitudes of ordinary or transient majorities. Over a period of time, it is likely that these principles would develop into a set of immutable**

principles and, possibly, even become part of basic structure of the Constitution rendering the existence of the Lokpal and its basic features un-amendable even by a constitutional amendment.

- (f) Apprehensions regarding delay are misplaced. The constitutional amendment bill would be much shorter than the statutory bill for the new proposed Lokpal and can be passed on the same day and at the same time as the latter, though by a different majority. It is inconceivable that while parties are in favour of the institution of Lokpal in principle, as a statutory body, parties would not agree with equal alacrity for the passage of a constitutional amendment bill.
- (g) The suggestion that the entire statutory bill should be transposed as a constitutional amendment into the Constitution is untenable and impracticable. That would eliminate flexibility and would require a constitutional amendment for the smallest future change. Moreover, the Constitution does not and is not intended to provide for nitty gritty operational details. It should be and is intended to be a declaration of general and basic principles which, in turn, enable and empower formal legislation, which in turn would take care of the details.
- (h) An easy or casual repeal of the entire Lokpal scheme would not be possible once it is constitutionally entrenched.
- (i) Similarly, there would be no option for the federal or State Legislatures not to have a Lokpal or a Lokayukta at all since the constitutional mandate would be to the contrary.
- (j) Contextually, the issues and some of the suggestions in this Chapter may overlap with and should, therefore, be read in conjunction with Chapter 7 of this report. Though the Committee has already opined in Chapter 4 of this Report here that the issues of grievance redressal should be dealt with in a separate legislation, the Committee hereby also strongly recommends that there should be a similar declaration either in the same Chapter of the Lokpal or in a separate Chapter proposed to be added in the Indian Constitution, giving the same constitutional status to the citizens grievances and redressal machinery.

- (k) This recommendation also reflects the genuine and deep concern of this Committee about the need, urgency, status and importance of a citizen's charter/grievance machinery and the Committee believes that the giving of the aforesaid constitutional status to this machinery would go a long way in enhancing its efficacy and in providing a healing touch to the common man.
- (l) Furthermore, the Committee believes that this recommendation herein is also fully consistent with the letter and spirit of para 1.8 above viz. the conclusions of the Minister of Finance in the Lower House recorded in para 1.8 above. [Para 13.12]

The Jurisdictional Limits of Lokpal: Private NGOs, Corporates and Media

- 84. There is no doubt that corruption is neither the exclusive preserve nor the special privilege nor the unique entitlement of only the political or bureaucratic classes. Nor can anyone justify exclusionary holy cows, supposedly immunized, exempted or put outside the purview of a new and vigorous anti-corruption monitoring, investigation and prosecution regime as the proposed new Lokpal Bill seeks to create. If corruption is rampant in a country like India, it permeates and pervades every nook and cranny of society and is certainly not restricted to the political or bureaucratic classes. Indeed, while no specific statistical data are available, it may not be at all inconceivable that, in quantum terms, the degree of corruption in the non-political/non-bureaucratic private sector, in the aggregate, is far higher than in the realm of political and bureaucratic classes alone. Therefore, in principle, non-application of the proposed Lokpal Bill to all such classes does not appear to be justifiable.[Para 14.22]
- 85. In this connection, the very recent UK Bribery Act, 2010, is both interesting and instructive. Drafted in a completely non-legalistic manner, format and language, this Act seeks to criminalize corruption everywhere and anywhere, i.e. in the public and private sectors in UK, in Governmental and non-Governmental sectors, by UK citizens abroad, by non-UK citizens acting in UK and in the

entire gamut of private and individual transactions in addition to covering dealings in the private sector, intra-private sector, intra-public sector, in Government and private interface and in every other nook and cranny of society.[Para 14.23]

86. Despite the above and despite the simplicity and attractiveness of an all inclusive approach, the latter must yield to exigencies of logistics, operational efficacy and pragmatism. Since this is the nation's first experiment with a central Lokpal institution, it would amount to starry-eyed idealism to recommend the blanket inclusion of every segment of society under the jurisdiction of an omnipotent and omniscient Lokpal. Such comprehensive inclusion is entirely understandable and may be logically more justifiable in principle, but, in the final opinion of the Committee, must await several years of evolution of the Lokpal institution and a corpus of experiential and practical lessons as also the wisdom of a future generation of Parliamentarians.[Para 14.24]
87. As far as the proposed dispensation is concerned, the only available dividing and demarcating line between the complete inclusion and partial exclusion of entities from the jurisdiction of the Lokpal would have to be some test of Government ownership and/or control and/or size of the entity concerned. In this regard, clauses 17 (1) (f) and (g) of the Lokpal Bill, 2011 are relevant. Clause 17 (1) (f) applies the Lokpal jurisdiction mainly to office-bearers of every society, A.o.P. or trust, registered or not, but wholly or partially financed or aided by the Government, subject to being above some specified annual income minima. Clause 17 (1) (g), similarly, applies the Lokpal to office-bearers of every society, A.o.P. or trust, receiving donations from the public, again subject to an annual income minima to be specified by the Central Government.[Para 14.25]
88. After deep consideration, the Committee believes and recommends that these clauses should be merged and expanded to provide for the following coverage/jurisdiction of the Lokpal:
- (a) The Lokpal jurisdiction should apply to each and every institution/entity, by whatever name called, owned or controlled by the Central Government, subject, however, to an exclusionary minima, where the ownership or control of the Central Government *de minimis*. Such minima

would have to be specified and the power of such specification should be given to the Central Government by notification;

- (b) Additionally, all entities/institutions, by whatever name called, receiving donations from the public above a certain minima, liable to be specified by the Central Government should be included. In addition, as also all entities/institutions receiving donations from foreign sources in the terms and context of the Foreign Contribution Regulation Act (FCRA) in excess of Rs.10 lakh per year, should be covered, whether or not, controlled by the Government. This is largely as per existing clause 17 (1) (g), except for the addition of the foreign donation recipient facet;
- (c) It should be clarified that this coverage shall apply, as also stated above, to every entity and institution, by whatever name called, be it corporate, society, trust, A.o.P., partnership, sole proprietorship, LLP or any other, registered or not. It should also be made clear that the approach is functional or ownership based or size based and not based on nomenclature;
- (d) It is thus clear that corporates, media or NGOs should and would be covered only to the above extent and not otherwise.[Para 14.25.A]

89. Despite the foregoing elaborations and 'lament' regarding exclusion of large slices of society from the Lokpal regime, it must not be forgotten that all persons, whether private, individual, and totally non-Governmental, are already necessarily covered as abettors, co-conspirators, inciters and givers or recipients or bribes in terms of clause 17 (3) of the Lokpal Bill, 2011. It may, however, be further clarified suitably in inclusive and not exhaustive terms in clause 17 (3) that the phrase "if such person is associated with the allegation of corruption", should include abettors, bribe-givers, bribe-takers, conspirators and all other persons, directly or indirectly, involved in the act or omission relating to corruption within which all other persons and entities in clause 17 are subsumed. The word "associated" presently used is too general and vague.[Para 14.26]

90. The Committee further recommends that clause 17 (3) should be explicitly clarified to the effect that the abettor, conspirator or person associated, in any manner, directly or indirectly, with the corruption allegation, shall not only be

included but be fully liable to investigation, prosecution and punishment and that the proviso to clause 17 (3) shall be limited only to proposed action to be taken 'in case of a person serving in the affairs of a State' and not qua anyone else.[Para 14.26.A]

Support Structure for the Lokpal: Whistle Blowers, Phone Tappers and Legal Aid/ Assistance Issues

91. As regards the whistleblower issue, this Committee has made a detailed recommendation on the subject on August 10, 2011 in respect of the Bill referred to it. That Bill and the Committee's recommendation are under the active decision making process of the Government of India for eventual translation into law.[Para 15.10]
92. The Committee recommends that the Whistleblowers Bill (Bill No. 97 of 2010) referred to the Committee, with the changes already recommended by the Committee in respect of that Bill (in the Committee's report dated August 10, 2011), be implemented into law simultaneously and concurrently with the Lokpal Bill. In that case, only one provision needs to be inserted in the Lokpal Bill to the effect that safeguards and machinery provided elaborately in the proposed Whistleblowers Bill, as opined upon by the Committee, would be applicable, mutatis mutandis to the Lokpal Bill. In particular, the Committee notes that clauses 10, 11, 12 and 13 of the aforesaid Whistleblowers Bill, provide a fairly comprehensive fasciculus of provisions providing safeguards against victimization, protection of witnesses and other persons, protection of identity of complainant and power to pass interim orders. The Whistleblowers Bill also sets up a competent authority and provides for several other related provisions to make the functioning of that authority efficacious and to enhance the efficiency, potency and vigour of the safeguards intended to be provided to a whistleblower. The proposed provision in the Lokpal Bill should act as a cross referencing, breach of which should activate the related/ applicable provisions of the Whistleblower Bill and render them applicable to all Lokpal proceedings, as if set out in the Lokpal Bill, 2011.[Para 15.11]

93. Naturally, one of the main adaptations of the Whistleblowers Bill for Lokpal proceedings would be that the competent authority in respect of Lokpal covered persons and offences would be the Lokpal and references in the Whistleblowers Bill to CVC or other entities would be rendered inoperative for purposes of Lokpal personnel and officers.[Para 15.12]
94. If, however, the aforesaid Whistleblower Bill, along with the recommendations of this Committee in that regard, are not enacted into law by the Government of India, co-terminously and simultaneously with the Lokpal Bill, then this Committee recommends the creation of some safeguards, in substance and essence, by the addition of a whole new chapter and certain provisions in the proposed Lokpal Bill. However, those provisions in the Lokpal Bill would be largely an adaptation of the same provisions of the Whistleblowers Bill, especially clauses 10 to 13 of the Whistleblowers Bill, while, as explained above, making the Lokpal the competent authority for such whistleblower issues.[Para 15.13]
95. As regards phone tapping, the Committee emphasizes and underlines the basic reality that phone tapping by regulatory and policing agencies has been prevalent in India for several years and the rules and regulations in that regard have undergone periodic refinement and amendment. Currently the regime of phone tapping is governed by Indian Telegraph Act and Rules read with the judgments of the Supreme Court inter alia in People Union for Civil Liberties Vs. Union of India (1997) 1 SCC 301. The Committee believes that there is no reason, sufficiently strong, to suggest that this substantive law should be altered in respect of Lokpal proceedings.[Para 15.14]
96. Phone tapping has been resorted to, inter alia, by agencies as diverse as CBI, Enforcement Directorate, Directorate of Revenue Intelligence and others, under the aforesaid regime of the Act., Rules and the Supreme Court mandated principles. In all such cases, the Committee is not aware of any situation where any of these agencies are entitled to suo motu, on their own, without separate authorization, and in secrecy, initiate or continue phone tapping. There is, therefore, no reason as to why the proposed Lokpal institution should also not be

subjected to the same regime and mechanism. To provide for inherent and separate power in the Lokpal institution in this regard, would also create an excessive and undesirable concentration of powers, would frequently involve a conflict of interest between preliminary inquiry, investigation and prosecution and would disturb the equilibrium of all investigative agencies for the past several years with established practices in respect of phone tapping issues. Indeed, the Committee notes that in other parts of this Report (Chapter 12), the CBI is the principal investigating agency and, therefore, its powers of phone tapping must continue as they exist today. [Para 15.15]

97. As regards legal aid/ assistance, the Committee concludes that clause 56 as framed does not intend to and should not be read to be a mandate for provision of automatic legal aid for every accused in a Lokpal proceeding. Clause 56, by any fair reading, and in the opinion of this Committee, is only intended to provide legal assistance by way of legal representation to the accused in any case before the Lokpal eg:- a preliminary inquiry. Firstly, the Committee does not read this to mean automatic monetary or fiscal assistance or by way of lawyers' fees for the accused. Secondly, the Committee believes that this was intended to and recommended so that it should be explicitly clarified that it permits the use of, or appearance by a legal practitioner, where the accused asks for one in Lokpal proceedings eg:- a preliminary inquiry. In any event, elsewhere in this Report we have recommended deletion of the concept of hearing an accused during preliminary inquiry. If that is done away with, no issue would arise of legal practitioners appearing. In any case, they are entitled to appear in all later stages including trial. Finally, it should be clarified that clause 56 does not intend to abrogate or dilute or attenuate any other provision of law under where, by virtue of those provisions of law, the accused may be entitled to a monetary/ fiscal legal aid or assistance.[Para 15.16]

The Lokpal Miscellany: Residual Issues_

- 98. Although it is implicit in the Lokpal Bill, 2011, the Committee believes that to obviate all doubts and to prevent any jeopardy to ongoing trials, the proposed Lokpal should have a specific provision categorically applying Section 4 (3) of the POCA to Lokpal proceedings, to enable the special judge or Lokpal judge to try any other offence, where connected, other than those covered by the Lokpal Act. [Para 16.3]**
- 99. Clause 17 (1) in most of its sub-clauses, including (b), (c), (d) and so on, specifically refers to a current/serving as also a former public servant (e.g. Minister, MP, bureaucrat, etc. both past and present). [Para 16.4]**
- 100. The Committee has seen the substantive provisions of POCA and it appears to be clear that the POCA, which shall continue to be the substantive law applicable to Lokpal trials and proceedings, seeks to render culpable and punish only official acts done by public servants. Be that as it may, the Committee is of the opinion that a specific provision should be inserted in Clause 17 clarifying and specifying that reference to present and former public servants only means that they can be prosecuted whether in or not in office, but only for acts/omissions done while they were in office and not for allegedly fresh acts/omissions after ceasing to hold office.[Para 16.5]**
- 101. The Committee finds that clause 8 and especially clause 8 (1) of the Lokpal Bill, 2011 has struck the right balance and does not need any fundamental changes. It is intended to strengthen the independence and autonomy of the Lokpal by not making it easy to initiate complaints against Lokpal for the Lokpal's removal. The Committee, however, recommends an addition to clause 8 (1)(iii), to allay and obviate the apprehension expressed in some quarters, that the process to remove the Lokpal cannot be initiated, under the sub-clause, if the President (which essentially means the Central Government) refuses to refer the complaint against the Lokpal. The Committee feels that this apprehension would be adequately taken care of by providing in clause 8 (1)(iii) that where the President does not refer a citizen's complaint against the Lokpal to the Apex Court, the President (i.e. the Central Government) shall be obliged to record reasons for the same and to furnish those reasons to the complainant within a maximum period of 3 months from the date of receipt of the complaint. The Committee feels that**

this process, including the transparency involved in recording these reasons and the attendant judicial review available to the complainant to challenge such reason/refusal, contains an adequate check and balance on this subject.[Para 16.6]

102. Additionally, the Committee recommends that Clause 8 (1) (iv) be added in the existing Lokpal Bill, 2011 to provide, specifically, that anyone can directly approach the apex court in respect of a complaint against the Lokpal (institution or individual member) and that such complaint would go through the normal initial hearing and filter as a preliminary matter before the normal bench strength as prescribed by the Supreme Court Rules but that, if the matter is admitted and put for final hearing, the same shall be heard by an apex court bench of not less than 5 members. It is but obvious that other consequential changes will have to be made in the whole of Section 8 to reflect the addition of the aforesaid Clause 8 (1) (iv). [Para 16.6A]
103. Clause 21 of the Lokpal Bill, 2011 needs a relook. In its present form, it appears to empower the Lokpal Chairperson to intervene and transfer any pending case from one Bench to another, which appears to include the power of transfer even while a case is under consideration of the Lokpal bench on the merits. This uncircumscribed power would seriously impair the objectivity and autonomy of Lokpal Benches, especially at the stage of preliminary inquiry which is a crucial filtering mechanism. It also appears to be inconsistent with normal principles of jurisprudence which seriously frown upon interference even by the Chief Justice in a pending judicial matter before another Bench. The way out would be to delete this provision and to provide for transfer only in exceptional cases where, firstly, strong credible allegations are brought to the forefront in respect of the functioning of any particular Lokpal Bench and secondly, the decision to transfer is taken by not only the entire Lokpal institution sitting together, but also including the Members of the Bench from which the matter is sought to be transferred.[Para 16.7]
104. As regards punishment under the Prevention of Corruption Act for a person convicted of different offences relating to corruption, it is noteworthy that the Prevention of Corruption Act prescribes, as it now stands, punishment not less than six months which may extend to five years for various offences involving

public servant taking gratification in Sections 7, 8, 9, 10 and also Section 11 which deals with public servant obtaining valuable thing without consideration. Section 12 of POCA dealing with the abetment prescribes the same as six months to five years range of punishment. On the other hand, for offences of criminal misconduct by public servant, the prescribed punishment is not less than one year, extendable upto seven years in Section 13 while Section 14 prescribes punishment of not less than two years extendable to seven years. Section 15 prescribes the punishment for offences referred to in clause C or clause D of 5.13(i) which has no lower limit but a maximum of three years. Additionally, all these provisions empower the imposition of fine. [Para 16.8]

105. Diverse representations from diverse quarters have suggested an enhancement of punishment, with diverse prescriptions of quantum of sentence, including life imprisonment. After deep consideration, the Committee finds it prudent to strike a balanced, reasonable middle ground. A sudden, dramatic and draconian enhancement is, in the opinion of the Committee, undesirable. The Committee cannot ignore the inherent fallibility of mankind and if fallibility is inherent in every system, draconian and extreme punishment, even in a few cases of wrongful conviction, would be undesirable. [Para 16.9]

106. Taking a holistic view, the Committee is of the opinion that:

- (a) In the cases of Sections 7, 8, 9 and the like, the range from six months to five years should be substituted by imprisonment not less than three years which may extend to not more than seven years.
- (b) In the Sections 13 and 14 category of cases providing for a range to one year to seven years, the Committee suggests enhancement, in the case of Section 13 offences, to a minimum of four years and a maximum of ten years while for Section 14, the Committee suggests a minimum of five years and a maximum of ten years.
- (c) For Section 12 which presently prescribes six months to five years, the aforesaid of minimum three and maximum of seven years shall apply whereas for Section 15 which presently prescribes zero to three years, the range should be very minimum from two to maximum five years.

(d) Additionally, wherever applicable, there should be a general provision, cutting across Sections, creating a power of full confiscation of assets, proceeds, receipts and benefits, by whatever name called, arising from corruption by the accused. This provision should be properly drafted in a comprehensive manner to cover diverse situations of benefit in cash or kind, which, to the maximum extent possible, should fully be liable to confiscation. [Para 16.9A]

107. Although this issue has been discussed in other parts of this Report, for the sake of clarity, the Committee clarifies that there should be 3 specific and important time limits in the final enactment viz. firstly, the period of 30 days extendable once by a further period of 60 days for preliminary inquiry by the Lokpal; secondly, for completion of investigation by the investigating agency, within 6 months with one further extension of 3 months and thirdly, for completion of trials, within one year with one further extension of 6 months.[Para 16.10]

108. The Committee finds no basis for and no reason to retain the last proviso to clause 17 (1)(g) which appears to be overbroad and altogether exempts from the Lokpal Bill 2011 any entity, simply because it is constituted as a new religious entity or meant to be constituted as an entity for religious purposes. This proviso should be deleted, otherwise this exception would virtually swallow up the entire rule found in the earlier parts of clause 17.[Para 16.11]

109. As regards clause 51 of the Lokpal Bill 2011, the Committee recommends that the intent behind the clause be made clear by way of an Explanation to be added to the effect that the clause is not intended to provide any general exemption and that "good faith" referred to in clause 52 shall have the same meaning as provided in section 52 of the IPC. [Para 16.12]

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MINUTES

OF

DISSENT

(i) MINUTES OF DISSENT SUBMITTED BY- SHRI BALAVANT *ALIAS* BAL APTE, SHRI KIRTI AZAD, SHRI D.B. CHANDRE GOWDA, SHRI HARIN PATHAK, SHRI ARJUN RAM MEGHWAL and SHRI MADHUSUDAN YADAV:

We are in receipt of the draft report discussed on 30/11/2011 on the Lokpal Bill. We have perused the report and there are several substantial questions on which we are unable to agree. We are therefore placing our opinion on those provisions of the report and the bill for your kind consideration. Since the Final Report has not been circulated, the contents of this note should be treated as our Final opinion.

1. On inclusion of the Prime Minister in the Lokpal:

The draft recommendation presented to the Standing Committee does not give a tentative opinion with regard to the inclusion of Prime Minister within the jurisdiction of the Lokpal. The Lokpal is a procedural law. The substantive laws, be it in the Indian Penal Code or Prevention of Corruption Act do not grant any immunity to the Prime Minister from the provisions of penal law. The Code of Criminal Procedure also does not grant any immunity to the Prime Minister from the provisions of the penal law. Thus the procedural law, such as the Lokpal Bill cannot grant to the Prime Minister or any individual immunity from punishment under the substantive penal laws. If such immunity is considered and granted the same may offend the mandate of equality contained in Article 14 of the Constitution. The Prime Minister must be held accountable before the Lokpal in relation to his conduct. We are not in agreement to the suggestion that if a Prime Minister is held guilty of corruption, the nation must continue to accept him and hold him accountable only after he ceases to be a Prime Minister. However, the discharged of the authority like the Prime Minister, in relation to sensitive function of national security and public order could be excluded from the provision of the Lokpal. This would be in consonance with the Bill presented by the NDA government. No immunity would be available in relation to commercial transactions.

2. Citizens' Charter and grievances redressal mechanism:

The draft placed before the Standing Committee has recommended that a Grievances Redressal mechanism should be provide for in order to ensure that neither red-tapism nor delay on account of collateral motives hurts the interest of the citizens. The draft has recommended that this mechanism should be placed in a separate framework and that the proposed Lokpal should not be overloaded with the work of administering this mechanism. We are of the opinion that providing such mechanism is absolutely necessary. It should be ensured that such a mechanism is provided for in the present proposed law itself. The linkage between the Lokpal and the Grievance Redressal Mechanism could also be maintained by providing for an appeal against the competent authority dealing with orders and grievances arising out of the redressal mechanism. A second appeal on limited questions could be provided for the Lokpal itself. The enforceability of Citizens' Charter and Grievance Redressal Mechanism could thus converge under the authority of the Lokpal itself. This would also be in accordance with the Finance Minister's 'Sense of the House' statement that "This House agrees in principal on the Citizen's Charter, Lower Bureaucracy be brought under Lokpal through appropriate mechanism..."

3. Members of the Parliament...vote, speech and conduct within the House:

The conduct of MPs within the House can only be investigated by the House and the authorities constituted in the House itself. Each House is the master of its own discipline and privileges. Thus, it would not be appropriate to allow an outside agency, including the Lokpal to investigate the conduct of the MPs within the House itself. To this extent, we are in agreement with the recommendations of the Standing Committee. However, we are of the considered opinion that the conduct of MPs which takes place physically and geographically outside the House and amounts to an actionable conduct can be investigated as per the Law of the land. There can be no immunity provided to the MPs not to have their conduct outside the House investigated.

4. Provision of State Lokayuktas in this Act:

It needs to be carefully examined whether dealing with Services of the State could be provided for by a central legislation. List II Entry 41 deals with the state public services. It is a subject in the State List. If Constitutionally permitted, we may in this regard have a law under Article 253 or pass an enabling provision under Article 252 in order to provide uniformity throughout the country. In either case this could be done by a Central legislation.

5. Lower Bureaucracy:

The earlier draft has suggested that Gr. C&D staff should be kept out of the ambit of the Lokpal. It has been agreed that all Public servants holding civil post in government should be covered under the Bill. This is in consonance with our view and the 'sense of the House' conveyed by the Finance Minister.

6. False and Frivolous complaints:

The Committee has rightly disagreed with the draft bill which provide for exemplary punishment of five years and/or fine of Rs.5 lakhs in the event of a false and frivolous complaint. The committee has directed that the imprisonment for false and frivolous complaints should not exceed six months. The fine should not exceed Rs.25,000/-. The authority to prosecute for a false and frivolous complaint should be with the Lokpal. We are of the opinion that we cannot deter away people from filing complaints because of fear of a very high punishment/penalty. Proportionality has to be maintained between the crime and the punishment proposed to be imposed. Thus a punishment of a period not exceeding 30 days and/or false fine of Rs.25,000/- should be enough to deal with the false and frivolous complaint.

7. Judiciary:

The Committee has rightly suggested that Higher Judiciary should be kept out of the provisions of the Lokpal. The manner in which the Lokpal has to be constituted cannot be an appropriate mechanism to deal with the judiciary. We agree with the suggestion contained with the draft that a National Judicial Commission be appointed in order to deal with the complaints of misdemeanor against Judges. We further feel that a National Judicial Commission should be the competent authority to deal with matters of both judicial appointments and complaints. There should be a National Judicial Commission, which should comprise of the following:

1. The Chief Justice of India.
2. Two senior most judges of the Supreme Court
3. Minister of Law and Justice of Union Council of Ministers.

4. Leader of Opposition, in the House of the people.
5. Two imminent citizens nominated by a collegium comprising of the Prime Minister, the Chief Justice of India and the Leader of the Opposition in the House of the people.
6. The Chief Justice of the High Court to be a member whenever appointments or complaints in relation to that High Court are to be investigated.

This would require a Constitutional Amendment. The Amendment in this regard can be introduced in Parliament in this session.

8. The Lokpal....Search & Selection:

We have considered the appointment mechanism suggested by the Committee. We are unable to agree with the appointment mechanism suggested in the draft report. In our view, the mechanism should comprise of a Selection Committee consisting of the

1. Prime Minister of India
2. A Minister in the Union Council of Ministers, nominated by the PM.
3. Leader of the Opposition, in the House of the people.
4. Leader of the Opposition, in the Council of States
5. Two judges of the Supreme Court nominated by the CJI in consultation with the Collegium of five(5) Senior Judges of the Supreme Court.
6. Central Vigilance Commissioner.

We are unable to agree to the suggestion made in the draft report that it is not mandatory to have a Search Committee. It is extremely important that a Search Committee should be appointed to undertake the spadework in selecting the very best of people to be appointed to Lokpal institution.

There should be at least five members of the Search Committee. It should be headed by an eminent person in order to ensure that the best names are recommended by the Search Committee for the consideration of the Selection Committee.

The Search Committee shall consists of persons possessing an unblemished record. These persons could be persons who have been Chief Justice of India, Comptroller and Auditor General of India, Chief Election Commissioner, Chief Vigilance Commissioner, Cabinet Secretary, Judges of the Supreme Court, Chief Justice of the High Court etc. We would further suggest that the process of short listing of the Lokpal Institution must be a transparent process inviting nominations and publishing the details about the proposed names on the internet. While constituting the Search Committee, due regard shall be given to ensure that historically and socially marginalized sections are represented.

9. `The Trinity of Lokpal, CVC and CBI: In search of an Equilibrium:

The CBI is an important limb of the anti-corruption set-up in the Government for investigating and punishing corrupt public servants. The CBI has experience of decades and has evolved as an institution. It has expertise in the matter of gathering evidence in relation to crimes and in investigating the crime as also in prosecuting the criminals. We believe that in recent years the CBI has seriously compromised itself as an institution because it is under the control of the Central Government. We are, therefore, of the opinion that for efficient

handling of the anti-corruption mechanism and maintenance of independent and autonomous character of the CBI as an institution, it is essential that the following steps are to be taken:

- (i) The appointment of the CBI Director is made by the Government of India. This appointment is made under the Delhi Special Police Establishment Act. The independence and autonomous character of the institution depends directly on the personality of the Director. The appointment of the Director of the CBI will have to be taken out of the purview of the Central Government of the day. Thus the appointment of the Director of CBI should be made by a Statutory Collegium which is created by amending the said Act under which the CBI functions. The said collegium should comprises of - the Prime Minister, Leader of the Opposition in the House of the people and *the Chairperson*, Lokpal. It shall be the responsibility of this Collegium to ensure that the best available police officials are appointed at the senior level in the CBI.
- (ii) The Department of Personnel will only be an administrative interface of the Central Government dealing with the autonomous CBI. It shall be responsible for answering questions in the Parliament.
- (iii) In order to ensure that the CBI functions professionally and independently, an additional safeguard should be provided by delinking the investigating wing of the CBI from the prosecuting wing of the CBI. The Director of Prosecution of the CBI should be an independent official and not merely an officer on deputation from the Ministry of Law as at present in the practice. The appointment of the Director of the Prosecution should be made by the same Collegium, which will appoint the Director of the CBI. The Director of the Prosecution should be an officer of the rank of a Special Director in the CBI. The Director of Prosecution shall appoint the CBI Prosecutors who shall take instructions from him. They shall be entitled to independently appraise the evidence and not follow blindly the instructions from the investigative wing of the CBI.
- (iv) The CBI shall report the progress of the cases referred to it by the Lokpal. The CBI must function independently of Central Government as an independent and autonomous agency. The Lokpal shall be entitled to conduct preliminary inquiries and if it is of the opinion that a corrupt public servant needs to be investigated further, it shall refer the matter to the CBI, who shall investigate the same in accordance with the provisions of Code of Criminal Procedures. For the purposes of conducting preliminary enquiries, the Lokpal shall be entitled to create a staff competent to discharge this job.
- (v) The Lokpal should be entitled to perform the function in relation to the CBI which were earlier being performed under Section 8(1) (a) & 8(1)(b) of "The Central Vigilance Commission Act, 2003" by the CVC.

10. Constitutional Status:

We are in agreement with the recommendations contained with the draft that a constitutional provision could be enacted by amendment providing for the institution of the Lokpal. However, the details of the Lokpal legislation should be provided for a separate law.

11. NGOs, private companies and media organizations:

We have gone through the draft, which has been prepared. The draft is confusing. We are of the opinion that the authority of the Lokpal should extend to investigating public servants/office bearers and organizations connected with the Government or funded by the Government. It is essential that the jurisdiction of the Lokpal should be extended to such organizations, which receives sizeable funding from government, and whose limit is a cap fixed by law i.e. Rs.10 lakhs per annum and are discharging functions of a public character. Any private organization, which does not receive any funding from the Government, cannot be included within the ambit of the Lokpal. For the functioning of the healthy democracy, we cannot afford to have intrusive institutions.

12. Whistle-blowers legislation:

We believe that the whistleblowers protection legislation should simultaneously be enacted as a part of the Lokpal legislation and the Lokpal should ensure the protection of the whistleblowers.

13. Phone tapping:

We are clearly of the opinion that the Standing Committee's recommendation with regard to the present status quo being maintained in the matter of tapping of telecommunications should be maintained.

14. Removal of Lokpal:

We are clearly of the opinion that the proposal that only the Government can move for the removal of Lokpal for his conduct is not appropriate. If a member of the Lokpal is biased in favour of the Government, obviously the Government will not seek his removal. Any 'person aggrieved' should be entitled to move the Supreme Court for removal of the Lokpal. The Supreme Court should have a two-phased procedure. A frivolous complaint against the Lokpal should be dismissed at the initial stage itself. Heavy penalties can also be imposed, if frivolous petitions are filed. If the Supreme Court decides to hear the complaint against a member of the Lokpal, then the detailed procedure of enquiry should be specified in the proposed bill. The power to recommend suspension of a member of the Lokpal pending enquiry should be with the Supreme Court who will forward the same to the Hon'ble President.

15. Budget of Lokpal:

A separate budget head in the Union Budget should be authorized and approved by the Parliament to clear the budget of the Lokpal as an institution. Rules can be framed, laying down detailed guidelines as to the manner in which the members of the Lokpal are entitled to spend the budget.

16. Article 311 to be followed:

Once the Lokpal holds a public servant guilty and liable for disciplinary action, the requirements of Article 311 of the Constitution will have to be complied with. The provisions of Article 311 require that it is only the appointing authority, which can remove a public servant. Needless to say that the appointing authority should give 'due regard' to the recommendations of the Lokpal. In case, it chooses to disagree with the recommendations, it will have to give reasons in writing.

17. Complaints against the Lokpal Staff:

A statutory Tribunal should be created by the Bill, which should hear the complaints against the members of the administrative staffs of the Lokpal. Since, the senior members can delegate the functions, which may be prescribed by rules, it is important that this complaint redressal mechanism should be completely independent and autonomous.

18. Quantum of Punishment:

The cancer of corruption has spread very deeply and it has entered into the vitals of the system. Therefore, the quantum of punishment prescribed for the guilty should be such that, it acts as a deterrent. There should be time limit prescribed for the Lokpal, i.e. six months after initiating an enquiry against the delinquent public servant. Similarly, the Act must provide for creation of special benches of High Court, which shall in time-bound manner endeavor to dispose off the appeals against the Lokpal.

Thanking you.

1. Sd-
(KIRTI AZAD)
Member, Lok Sabha.

2. Sd/-
(HARIN PATHAK)
Member, Lok Sabha.

3. Sd/-
(BALAVANT *alias* BAL APTE)
Member, Rajya Sabha.

4. Sd/-
(ARJUN RAM MEGHWAL)
Member, Lok Sabha.

5. Sd/-
(MADHUSUDAN YADAV)
Member, Lok Sabha.

6. Sd/-
(D.B. CHANDRE GOWDA)
Member, Lok Sabha.

(ii) MINUTES OF DISSENT SUBMITTED BY SHRI RAM JETHMALANI

I have gone through the draft report on the Lokpal Bill, hereafter called the Report. I however find that I am unable to agree with some recommendations made in the report. I, therefore, submit the following note of dissent.

BRINGING THE CBI UNDER THE LOKPAL

This is my major point of concern and dissent. One has only to recall the glorious history of the CBI and its present state of degradation. It owes its horizon to corruption offences committed during the Second World War. It was intended to bring the offenders to book. For quite sometime its record was excellent. It enjoyed the confidence of the Courts as well as the people. It is a great misfortune for the country that today it is no better if not worse than any other police organisation or investigating agency.

I must start with what a three Judge Bench of the Supreme Court of India had to say in a judgment Centre for Public Interest Litigation & Anr. Vs. Union of India and others Paragraph 28. It is reproduced here under in full:-

“28. While CBI had to explain this averment made in para 18 of the writ petition, if really it wanted to convey to the Court as to the non-availability of Part II file to comment on the above allegation, one would have expected CBI to come forward with a simple explanation that it is unable to respond to the above allegation in view of the fact that the said file was not traceable instead of averring in the affidavit that no such file is in existence. The use of the words “no such file” clearly indicates that what CBI intended to convey to the Court in the first affidavit was to tell the Court that such file never existed and it is only when the reply to the said affidavit was filed by the writ petitioners with a view to get over the earlier statement, the second affidavit was filed by Mr. Raghuvanshi interpreting the word “existence” to mean “not traceable”. In the circumstances mentioned hereinabove, we are unable to accept this explanation of CBI and are constrained to observe that the statement made in the first affidavit as to the existence of Part II file can aptly be described as *suggestio falsi* and *suppressio veri*. That apart, the explanation given in the second affidavit of CBI also discloses a sad state of affairs prevailing in the organization. In that affidavit, CBI has stated before the Court that Part II file with which the Court was concerned, was destroyed unauthorisedly with an ulterior motive by none other than an official of CBI in collusion with a senior officer of the same organisation which fact, if true, reflects very poorly on the integrity of CBI. We note herein with concern that courts including this Court have very often relied on this organization for assistance by conducting special investigations. This reliance of the courts on CBI is based on the confidence that the courts have reposed in it and the instances like the one with which we are now confronted, are likely to shake our confidence in this organisation. Therefore, we feel it is high time that this organisation puts it house in order before it is too late”

The Supreme Court had to say this even though four years earlier in another case *Costao Fernandez vs. State at the Instance of S.S.P. CBI Bombay* in (1996) 7 SCC 516 paragraph 7 and 8 held-

“7. The CBI says the injuries were self-inflicted. The CBI has taken this stand because, according to it, the appellant had an ulterior motive in killing the deceased, which was to share reward relating to recovery of smuggled gold worth Rs. 28 lakhs. The reward had, however, become due in 1984 and the present occurrence had taken place on 16-05-1991. How far-fetched is the imputed motive? The High Court itself has disbelieved this and has really criticized the CBI for suggesting the same. This is, however not all. As the further case of the CBI is that no records were placed before it to show that the appellant had prior information of smuggling, following which the smuggler was chased. Another material used against the appellant is his so-called abscondence.

8. None of the aforesaid has legs to stand, as would appear from what is being stated later. A biased investigation of the type at hand from the CBI has indeed pained us, because people of this country have still high hopes from it, which would get dashed if bias creeps in its investigation. But, then the deceased was no ordinary mortal, as he was a brother of the one time Chief Minister of Goa; and the occurrence had taken place in Goa.”

These two paragraphs show how it is instrument of serious miscarriage of Justice.

I am not exaggerating but I believe that I have tremendous experience of the criminal side of our justice system and the way CBI has become a shameless instrument of the evil political design of the ruling government. My experience convinces me that the CBI has got to be rescued from this infamy and the nation saved from the grave consequences of its misdeeds. The present system of supervision has become hopelessly inadequate and much more effective one has to be imposed upon it.

I could quote instances a galore. The first instance that comes to my mind is Bofors investigation and the role of Ottavio Quattrocchi. When investigation outside India revealed that Mr. Quattrocchi had received a large amount of money in a foreign bank because he had assured the Swedish Company that the deal will go through by a designated date and it did. An Ex-Director of the CBI for whom I have great respect immediately informed the then director of the CBI that now that Quattrocchi's name has appeared and there is reason to believe that he is a conspirator, immediate steps should be taken to arrest him. This was not done. The written request and advice of the earlier CBI Director is on record and is available. Quattrocchi was not only able to fly out of the country but his wife, whom he left behind, sold out all the Indian assets of the family and without challenge or hindrance quietly walked out of the country. thereafter a pretence of effort to extradite him from abroad was enacted but without any genuine intension of securing his extradition.

Kindly enquire how the Malaysian Court refused the request for extradition because the CBI did not carry out the simple request of the Judge to supply him with a summary of implicating evidence against Quattrocchi. Arrogantly and almost in language which in India would be contempt they told the Judge that they have filed a large number of volumes of evidence and the Judge could find the evidence for himself clearly inviting a dismissal. Crores have been spent on this pretended performance first in Malaysia and then elsewhere.

As hereinafter explained the appointment of the Director and Officers of equivalent status should be totally immunized from government's interference or influence. In the following pages you will find other instances of this unpardonable misdemeanor.

The entire reason for the Lokpal is to have an institution independent of the government for investigating corruption involving the government so as to avoid the conflicts of interest involved in a government controlled agency investigating corruption in the government. The Report proposes that the CBI be the main anti corruption agency and that it be left in the administrative control of the government, with only some vague and weak supervisory jurisdiction of the Lokpal in the same manner in which the CVC currently has that supervisory jurisdiction. This would be totally unsatisfactory and would leave the CBI under the control of the government through its power of postings, transfers, promotions and disciplinary control. Using these powers the governments of the day have been misusing the CBI for their own political purposes despite the supervisory jurisdiction of the CVC.

I have equally strong views on including the Citizens Charter And Public Grievance Redressal mechanism in the text of the Bill. Similarly the dissent of some Members of Parliament on Vote, Speech and Conduct within House has my approve. I believe that some members have put in their dissent and I endorse it.

I do wish to recall my great appreciation of the work that you have accomplished as a Chairman of this Committee. I believe the Committee has unanimously recorded their admiration.

My comments on the CBI do not retract from the presence in their force of some honest officers but they don't seem to prevail.

I hope this reaches you within time.

Sd/-
(SHRI RAM JETHMALANI)
Member, Rajya Sabha.

(iii) MINUTES OF DISSENT SUBMITTED BY SHRI RAM VILAS PASWAN:

(i) It may be recalled that the glass of juice that Anna Hazare drank to end his fast at the Ramlila maidan was offered by a little Dalit girl and a Muslim girl. This symbolic act was a clear acknowledgement that they presented groups that are among the foremost victims of a social order which is still far from equal. It is a stark reality that even 60 odd years after Independence, the SC & STs, women, minorities and OBCs continue to suffer from discrimination in almost every walk of life.

(ii) It may be recalled on several occasions the subject matter came up for discussion in the standing committee as also when Team Anna appeared before the committee. From the deliberations one got the general impression that reservation in Lokpal and search committee would be given for this groups. But in the last meeting position was change and therefore I gave my note dissent on the subject.

(iii) I strongly object to the ambivalent clause in the Report that insinuates that reservation of positions in the Lokpal and Search Committee will be optional and not mandatory. I wish to emphasise that the Search Committee and Lokpal must have reservation for SC/ST, OBCs, Minorities and Women to the extent of 50% of the total so that it represents and inclusive secular polity. Anything short of this basic requirement is unacceptable to me.

(iv) I have serious reservations regarding the recommendations of the Standing Committee on the Lokpal Bill.

(v) Most importantly, I strongly object to the ambivalent clause in the Report that insinuates that reservation of positions in the Lokpal is desirable but optional. I wish to emphasize that the Lokpal must necessarily have representation of women, SCs & STs, OBCs and minorities in the apex body to the extent of 50% of the total so that it represents our inclusive secular polity. Anything short of this basic requirement is unacceptable to me and my party.

(vi) I have grave reservations regarding the Committee's recommendation to include Group 'A' and 'B' officers (totaling about one million), corporates, private NGOs and media within the Lokpal ambit, as this mandate when combined with the inquiry, investigation and prosecution procedures spelt out in paras 49 to 81, will not only spawn a massive Lokpal bureaucracy that is another Frankenstein monster similar to that envisaged in the Jan Lokpal Bill but will destroy all existing institutions such as the CBI, the CVC, the internal vigilance apparatus in all govt. organizations, which have been painstakingly built up over the decades. Let me explain my reasons for this seemingly harsh judgement.

(vii) The Standing Committee has recommended that the preliminary enquiry will be done by the Lokpal for which it will have a "sufficiently large internal enquiry division" and it has also been mandated that no complaint except a trap case can be closed without inquiry. Is the Committee aware that the CVC which deals only with Group 'A' officers of Central Govt. and PSUs was required to give its advice on 5327 cases involving Group 'A' officers in 2010? By adding Group 'B', NGOs, media, corporates and politicians, the Lokpal will have to deal with 30,000 to 40,000 cases and possibly more, every year covering the length and breadth of the country. The mammoth task of conducting preliminary enquiries into all these cases would require thousands of enquiry officials and their paraphernalia in various parts of the country. Presently, the preliminary enquiry in most cases is done by the internal vigilance

of each organization. On top of this, the Committee also envisages a separate prosecution division under the Lokpal.

(viii) The Committee has recommended that in all cases, the investigation will be done by the CBI, which presently deals only with major cases of corruption. By entrusting all vigilance cases of Lokpal covered employees to the CBI for investigation, we are ensuring that the CBI is unable to handle even a small fraction of the workload with the existing strength. The CBI will certainly insist on a massive increase in its manpower, while at the same time, it will be frittering away much of its energies on relatively petty cases.

(ix) The Committee has proposed that after the investigation is conducted by the CBI, the case will be referred back to the Lokpal which will then give the public servant an opportunity to be heard. What this entails is that every charged employee from any part of the country will have to appear before the Lokpal Board before the chargesheet is issued. This is a patently absurd and unworkable suggestion.

(x) My greatest worry is the adverse impact that an overarching Lokpal will have on all govt. institutions. With disciplinary powers largely in the hands of the Lokpal, thereby emasculating the management of the different offices, there is bound to be organizational atrophy and paralysis.

(xi) I have highlighted the main issues on which I differ with the Committee's recommendations. May I also point out that my self and the Secretary General of my Party have sent four letters to the Committee highlighting my party's views on the Jan Lokpal Bill, the Government draft and what my party envisages should be the structure and powers of the Lokpal. For some reasons, the content of the letters have not been mentioned in the Report. For ready reference, I am enclosing another copy.

Sd/.

(RAM VILAS PASWAN)

(iv) **MINUTES OF DISSENT SUBMITTED BY SHRI SHAILENDRA KUMAR:**

Note of Dissent by Shri Shailendra Kumar

I have following dissensions over the recommendations of Lokpal Committee. These should also be included in the recommendations and report.

Citizens Charter and Public Grievance Redressal Mechanism

According to the para 1.8 of the draft report of the standing committee, at the end of the discussions held on 27th August, 2011 over the issue of Lokpal, the Minister of Finance Shri Pranab Mukherjee had given the following statement in the House:

“This House agrees in principle on the Citizens Charter, Lower Bureaucracy to be brought under Lokpal through appropriate mechanism and Establishment of Lok Ayuktas in the States. I will request you to transmit the proceedings to the Department-related Standing Committee for its perusal while formulating its recommendations for a Lokpal Bill.”

From this it is clear that it was the desire of the House to bring the issue of Citizens Charter within the ambit of Lokpal. And if it is not done then it would appear that the Standing Committee is violating the proposal of the House. Hence, it is my suggestion that the issue of Citizens Charter should also be included in Lokpal Bill by adding another chapter to the Report. I am annexing a draft of this Chapter along with this note (Annexure- ‘A’)

The mechanism suggested in the Annexure would be completely decentralized in its nature and this would facilitate public in getting their grievances addressed at the block or district level itself. There will be no direct appeal to the members of the Lokpal in this mechanism. This mechanism would also negate the apprehension that Lokpal would be overburdened by the complaints and thus it would be rendered defunct.

On the contrary if a penalty is imposed on the head of a department, he would immediately ensure that the Citizens Charter is not violated and such grievances are redressed

immediately. After some time people would not be required to file a complaint and the number of complaints would instead start decreasing.

Group 'C' Employees

During a discussion in the House on 27th August, "The Sense of the House" included bring the corruption of lower level officials under the ambit of Lokpal. Whether this Committee is not once again violating the proposal of the House by deviating from this?

In most of the corruption cases officers and employees from top to bottom rung of the bureaucracy are involved. In such a situation, how can we claim to establish an effective mechanism against corruption by creating separate investigation agencies for higher and lower bureaucracy? What would be the effect and utility of Lokpal if, 95 per cent Government employees are not included within the ambit of this institution? General Public have to deal with these Government employees in their day to day life. Police Inspector, Ration Inspector, School Inspector, Sales Tax Inspector, Tehsildar, Patwari, corrupt Junior Engineer of NAREGA etc are the officers whose act of corruption victimises each and every citizen of the country. Allowing them to continue their corrupt practices or to handover them to any weak institution would prove to be fatal for anti-corruption mechanism. Therefore, I strongly demand to bring the group 'C' employees also under the ambit of Lokpal.

It is said that by bringing 60 lakh employees within the ambit of Lokpal the volume of work of this institution would increase to such an extent that the Lokpal would not be able to handle it. Hence a separate agency would be entrusted the corruption related issues of group 'C' and 'D' employees. I wonder that if a separate agency can handle 57 lakh employees, why not the Lokpal itself.

The Prime Minister and Lokpal

I agree with the point in view of the sensitivity of the office of the Prime Minister, he shall be kept out of the ambit of the Lokpal. However, except the issues related to the national security, nuclear, defence and foreign policy, the office of the Prime Minister may be brought within the ambit of the Lokpal.

Selection of Members of Lokpal

I do not agree with the suggestion made by the Standing Committee in respect of selection committee. This selection committee consists of 5 members. Out of these 5 members, Prime Minister and the Speaker, Lok Sabha are from the Ruling Party. In additions to this the Leader of the Opposition is also a member of the selection committee. In this perspective, a question arises that when accusations of corruption against these persons would come within the ambit of Lokpal, would they ever like to select a strong & effective Lokpal?

Another member in the selection committee, would be jointly suggested by the CVC, CAG and the Chairman, Union Public Service Commission (UPSC). In my opinion, these three persons could never reach a consensus on a common name. There is every possibility that some names would be suggested to them by the Government and they would reach a consensus on of the names. Therefore, it is my suggestion that selection committee should consist of the following members:-

1. The Prime Minister
2. The Leader of Opposition in the Lok Sabha
- 3&4. One Judge of the Supreme Court and one Chief Justice of one of the High Courts.
(Their names' selection would be done by a full bench of the Supreme Court).
5. Chief Vigilance Commissioner
6. Chief Election Commissioner
7. Comptroller and Auditor General of India

Search Committee

As all members of the selection committee would be very important persons and they would also be very busy. It is, therefore, necessary that a joint search committee should be formed by including some retired and distinguished citizens. The search committee should invite public to propose some of the names and then submit the names to selection committee after shortlisting for their consideration.

Search committee should consist of ten members out of these five members should have retired as Chief Justice, Chief Election Commissioner, Comptroller and Auditor General of India and Chief Vigilance Commissioner. (person included in the search committee should be unblemished, independent of any political outfit and should not be holding any public office

after retirement). While these five names of the members for search committee would be determined by the selection committee, these five members together would choose another five members from the civil society. The five members of civil society would be the distinguished persons from Scheduled Caste, Scheduled Tribes, Other Backward Castes, Minorities and women. Thus, selection committee would consist of ten members out of these 5 members would be retired persons and 5 from the civil society. It is essential that 50 per cent members from these must come from SC, ST, OBCs, Minorities and women.

Selection committee and the search committee would take note of that fact that while selecting the Lokpal, 50% of the members must have representation from all the sections of the society like SC, ST, OBCs, Minorities & women.

Process of shortlisting the names for search committee.

Draft Report of the Standing Committee is silent about the selection process. The selection process must be completed in transparent manner with public participation, and such process must be categorically mentioned in the Bill itself. Our experience tells us that due to non-availability of categorical selection process the Government of the day have been making arbitrary appointments as head of the institutions. In this process incompetent persons close to and faithful to some political families get appointed to such institutions and thus these institutions deviate from their objectives. It is, therefore, my suggestion that following selection process may be incorporated in the Statute:

1. The search committee shall invite suitable nomination for the office of Chairman and members of Lokpal from distinguished persons or groups of various sections.
2. Only persons with integrity and with vast experience (particularly against corruption) in public service could be nominated for the office of the Chairman and members of the Lokpal.
3. While recommending the nomination, it would be essential to provide the basis of eligibility of the candidate for that office, his contribution against corruption and details of any type of accusations labeled against him under any law as also any other details that search committee may prescribe.

4. The search committee would collect maximum details about the background of these candidates and their achievements through other mediums.
5. After receiving the details of nominated candidates, it would be put on website in order to invite reactions of the public regarding their eligibility and ineligibility.
6. Keeping in view above information, the search committee would prepare a unanimous list of shortlisted probable candidates for the office of the Chairman and member of Lokpal as far as possible. This list would contain thrice the names of the number of vacancies.
7. In case three or more members of the search committee express reservations about any of the candidates his name would not be included in the shortlist.
8. Before sending the list of shortlisted candidates to the selection committee, the details of such candidates would be put on the website and again the information from general public would be invited thereon.
9. Keeping in view all the informations, the selection committee would select the chairman and members of Lokpal from amongst the candidates included in the shortlist. This selection as far as possible would be unanimous. If three or more members of the selection committee express reservations on the name of the candidate, selection of such candidates would not be considered.
10. After selecting eligible candidate for the office of chairman or members of the Lokpal the Selection committee shall seek consent of selected candidates before forwarding it to the President for final approval.

Lokpal and Central Bureau of Investigation (CBI)

At present CBI is under the control of the Government and we all know how the Ruling Party in the Centre has been misusing the CBI for furthering their interest. Hence, there is an urgent need to bring the CBI out of the control of the Government.

Now the question arises that whether CBI should be made an autonomous body or be brought under the control of Lokpal. To make the CBI an autonomous body would mean to create an institution which will have all powers of the police but would not be accountable to anyone. Such an institution could become a threat to our democracy in future. Therefore, I am of the opinion that CBI may be brought under the control of Lokpal with following provisions:

- (a) Selection of Director, CBI should be made in the same manner as the members of Lokpal.
- (b) Director, CBI shall be under the Lokpal.
- (c) The Central Government would have no role to play or intervene in formulation of its policy or otherwise. All the work related to CBI shall be done by Lokpal.

Process for removal of Members of Lokpal

Who will be vested with the power of removal of Chairman or members of Lokpal in case they have been found involved in corruption? Government wants that this power should exclusively vest in it. I am of the view that this power should be given to the public. Any person could file a complaint against the Chairman or the members of Lokpal the Chairman or the members of Lokpal in the Supreme Court. After hearing the complaint the Supreme Court should decide whether there is prima facie case or not? If there is a case, the Supreme Court shall direct removal of chairman and member of the Lokpal after getting it investigated within three months.

In case of false and baseless complaints being made against the chairman or members of Lokpal. The Supreme Court should have power to impose heavy fine or imprisonment so as to deter public from unnecessary wasting the time of the Supreme Court. The power to suspend the Chairman or members of Lokpal against whom, the complaints are under consideration should be with the Supreme Court and not with the Government.

Autonomy and Independence of the Lokpal

It is very important that Lokpal should be completely free from Government's control. It has been observed in the past that when the Government is not comfortable with an institutions, it stops funding them adequately in order to cripple their functioning and render them

ineffective . Here Lokpal would go into the depth of highest level corruption, it is obvious that it could buy the wrath of those in the Government in some of the cases.

Therefore, following provisions are necessary to make the Lokpal autonomous and independent:-

1. In order to make Lokpal financially independent a certain percentage of Government of India's expenditure may be fixed for Lokpal which could be as little as 0.1% of the total expenditure of the Government. Lokpal could ask for budget for spending on any item within the limit of the said allocation which could be placed for approval of Parliament. Lokpal, instead of forwarding its budget to any Ministry, would place it directly before the Parliament. The Parliament shall directly approve its budget.

In order to prevent misuse of funds for personal benefits or private amenities, a provision could be made that the pay scales of members of Lokpal and employees would be at par with the pay scales of similarly placed officials in the Government of India. Lokpal would seek the approval from Parliament for any modifications therein.

2. Lokpal shall be completely independent of the Government for its administrative, economic and functional activities.
3. Lokpal would not be required to get any of its expenditure approved from any Ministry.
4. The appointment of the officers of Lokpal shall be made according to the rules made by the Board of Lokpal (consisting of the Chairman, all members of the Lokpal).
5. Lokpal shall appoint a Secretary whose hierarchy would be at par with the Secretary to the Government of India.
6. Lokpal shall be free to make appointments of judicial officer, advocates, senior advocates etc. for their various functions.

7. In the official Bill the power to formulate rules regarding working of Lokpal has been retained with the Government in respect of many issues. As a consequence the Government is getting overwhelming powers to interfere in the working of the Lokpal. Misusing these powers, the Governments could pose unwarranted hindrance in the working of Lokpal. The Power to formulate rules in respect of working of Lokpal should vest exclusively with the Lokpal. The Government should have no power to formulate any rule regarding Lokpal without its concurrence.

Removal of Government Employees from Service:

After the completion of an inquiry the case would be referred to the trial court. In addition to this the officer shall be liable for departmental penalty. In the official Bill there is a provision for imposition of departmental penalty by the Minister of the concerned Department on the employees working under him. It is not possible to abide by the same owing to the close relation between the minister and the employees working under him since they work in close coordination. There is every possibility of their being hands in gloves.

Therefore it is my suggestion that the Lokpal Bench should offer the accused an opportunity to be heard in public and reach the decision for imposition of the departmental penalty. Lokpal would suggest the penalty to be imposed by the Appointing Authority of the accused officer. The Appointing Authority within a month of receipt of the report of the Lokpal shall take a decision on the action to be taken according to report within one month of the Report. In case the Appointing Authority prefers to disagree with the suggestions of the Lokpal, same would be intimated to the Lokpal after recording the reasons therefor. In case the Lokpal feels necessary he would move the Court against this.

A bench comprising of the Members of the Lokpal shall deal with the matters related to senior officers. But in order to deal with matters concerning Junior officers a bench comprising of appointed judicial officers may be constituted.

Complaints against Employees of Lokpal:

According to the provisions of the draft of the official Lokpal Bill, the Lokpal itself would conduct inquiry into the complaints related to its own employees. This shall create a paradoxical situation.

I suggest that for this an independent complaint Authority may be constituted on the lines of suggestions given by the Hon'ble Supreme Court for police reforms. For this the following chapter would be required to be added to the official Lokpal Bill.

Independent Complaint Authority:

A complaint authority shall be constituted at the national level and one or more such authorities shall be constituted at State level to hear the complaints against the officers and employees of Lokpal.

2. The procedure for selection to such authorities shall be same as for the members for the Lokpal and it shall be done by the same Committee.

3. The Chairperson of the authority shall be a retired judge of the High Court. In addition to this it shall also have two retired government officers and two other distinguished citizens.

4. The complaint authority shall conduct open hearing of the complaints against the employees of the Lokpal and shall take a decision on every complaint within two months of

its receipt. The employee of the Lokpal shall be given every opportunity to defend himself. If the accused employee is found guilty of misconduct, or of unfair inquiry or corruption, then the Complaint Authority may order his removal, dismissal or reduction in rank.

5. The final order of the complaint authority shall be appealable to Supreme Court under Article 226 of the Constitution.

6. If the Authority feels it appropriate it can order suspension of the employee of the Lokpal.

7. The Lokpal shall also bear the expenses incurred on the business of the complaint Authority.

8. The business of the Authority shall be transacted in the benches as per rules made under this Act.

Punishment in cases of Corruption:

In case a company or its employees is punished under Prevention of Corruption Act such company and all other companies associated with the promoters of such a company shall be barred from transacting business with government in the future. If any employee is punished for corruption, he shall be removed from his office.

Procedure for Time Bound Appeal:

At present it takes many years for a decision by the High Courts in corruption case, therefore, a provision for constitution of special division benches of the High Court for exclusive hearing of cases under Anti-Corruption law shall be inserted in the law. The law should provide that hearing of such appeal shall be concluded within a period of not more than six months.

The Judges of special courts (at trial level) hearing cases under Prevention of Corruption Act and the judges of the Appellate Benches constituted in the High Courts for hearing these cases shall exclusively hear the cases of Prevention of Corruption Act.

Incentives to Whistleblowers:

Encouraging persons against corruption.

The Lokpal shall put in place the appropriate incentive schemes to encourage government employees and other citizens to raise their voice, against corruption, to provide information and encourage spirit of providing evidences about corruption and the amount of such incentive award shall not be more than 10% of the amount recovered either out of the loss suffered by the Government or expected loss to the Government.

Protection to Whistleblowers:

Persons raising voice against corruption either by using Right to Information or otherwise are being targetted across the nation. They are being victimized and are also subject to attacks. There is apprehension that no sooner than some person lodges a complaint with Lokpal he would be subjected to harassment. In such a situation only the Lokpal will be better placed to provide security to the complainant since it would be well conversant with the case. But to tackle this problem, the Government is bringing a separate bill where the authority to provide security to the person raising voice against corruption will vest with the Central Vigilance Commission instead of the Lokpal. In the year 2003, the Supreme Court in the matter of Satyendra Dubey's Murder had appointed Central Vigilance Commission (CVC) as the nodal agency to provide professional and physical security to the Whistleblowers. But during past 8 years despite receiving a huge number of applications the C.V.C. has failed to provide security even to a single person. It is because that the CVC

neither has the resources nor the authority to do so. During the last few years 13 Right to Information activist have been murdered and CVC has failed to provide security to any one of them. Even the Standing Committee of the Parliament stated in their point that the CVC is not the appropriate institution for this work. I therefore, strongly opine that the responsibility of providing security to the whistleblowers should vest with Lokpal.

Annexure 'A'

Definition: 'Grievance' means a claim made by any person who did not get a satisfactory solution as provided in Citizen's Charter even after contacting the Head of a department.

Chapter:

1. After the enforcement of this law every public authority shall in a reasonable time, but within maximum of one year, formulate a citizen's charter.
2. Every Citizens' Charter shall clearly mention the committed time frame and business being transacted by the officers responsible for completion of the work within given time frame.
3. If any public authority fails to formulate a citizens' charter within an year of the enforcement of this law. The Lokpal after the deliberation with that public authority shall itself formulate the Citizens' Charter and it would be binding upon the Public Authority.
4. Every public authority shall assess the necessary resources required to implement its Citizens' Charter and the government shall provide the said resources.
5. Every public authority, in its office where it may be, shall nominate one employee as the public grievance officer. In the event of violation of the Citizens' Charter a citizen will be able to complain to such Public Grievance Officer.
6. The senior most officer in every office shall be nominated as the public grievance officer.
7. It will be the duty of the public grievance officer to receive complaints regarding violation of Citizens' Charter and to address them within not more than 30 days time.
8. In the event of a complaint, not being addressed within the stipulated time frame of 30 days by the public grievance officer, a complaint can be lodged with the Head of the Department.
9. If the head of the department also fails to address the problem within 30 days, a complaint can be made to the Judicial officer of the Lokpal.
10. Lokpal shall appoint at least one judicial officer in every district. This number may be more, depending upon the quantum of work in every district. Lokpal shall appoint Judicial officers from amongst retired judges, retired government officers or such kind of ordinary citizens.
11. If in the opinion of the judicial officer, the complaint has not been addressed in an appropriate matter, he shall penalize the responsible officer for the non redressal of the grievance after giving the related parties an opportunity for hearing. The penalty for delay in grievance redressal shall not be more than Rs.500 per day and Rs.50,000 per officer. This amount shall be deducted from the salary of the accused officer for responsible. In such cases, if aggrieved person is socially or economically backward, the amount of penalty to be recovered from the responsible officer will be double.
12. In such cases the Judicial officer of the Lokpal shall also order the concerned officer to address the complaint of the complainant in a given time frame.

13. Recurrence of similar nature of complaints received against an officer, it will be treated as corruption.
14. In the event of recurring complaints being received against an officer, the judicial officer shall recommend to the division bench of Lokpal for removal or reduction in the rank of the responsible officer for such complaints. The division bench after duly hearing the officer shall recommend such stringent action to the Government.
15. Every public authority shall review its Citizens' Charter once a year and shall bring appropriate changes. The review shall be done in the presence of the representative of the Lokpal and through public deliberations.
16. The Lokpal can order for incorporating changes in the Citizens' Charter of the public authority. But such changes have to be approved by the three member division bench of the Lokpal.
17. The concerned public authority shall implement the order of the Lokpal to make changes in the Citizens' Charter within one month of the receipt of such order.
18. The social audit of the work of every judicial officer shall be done once in every six months. In such social audit the judicial officer shall present himself before the public, and present all facts related to his work, shall answer all question asked by the public and shall incorporate the suggestions of the public in his procedure. Such public hearing shall be done in the presence of the senior officer of the Lokpal.
19. No case shall be closed until the complaint of the complainant is addressed or it is rejected by the judicial officer.

Sd/-
(SHRI SHAILENDRA KUMAR)
Member, Lok Sabha

(v) MINUTES OF DISSENT SUBMITTED BY SHRI PRASANTA KUMAR

MAJUMDAR:

As has been widely acknowledged by overwhelming sections of our society, unabated rise of corruption and incidents of scams are attributable to the policy of economic liberalization being mindlessly pursued by the successive governments since the early 1090's in the country without caring for the need of putting in place adequate regulatory measures and/or ensuring transparency.

Even the commitment for putting in place the mechanism of 'Ombudsman' (Lokpal) have witnessed wavering by Government of the day since 1967. The present Lokpal Bill, 2011, therefore, holds out yet again a substantial potential for the Parliament to make good for the lost opportunities by bringing in an effective Law; in the backdrop of the enormous dimension and magnitude of corruption witnessed by the society virtually since independence of our country, in its attempt to usher in a corruption-free system of governance. Since India is a country comprising vastly of poor population and knowing that corruption hurt them the hardest, by any attempt to combat the 'corruption' if made in a half-hearted manner we would not only be failing in our duty to protect the basic interest of the poor but would also be inviting the wrath of the affected citizens which would, in turn, weaken Indian democracy- the signs of which have off late started surfacing in various forms and substance.

Viewed in this perspective, the Draft of the 48th Report of the Standing Committee on the 'Lokpal Bill, 2011' has disappointed us as it has failed to hit at the root of corruption in our society in several critical areas where it has been seen to be prevailing mostly and, hence, I, on behalf of the Revolutionary Socialist Party, feel constrained to register dissent note on some of the Committee's recommendations as detailed hereunder:-

Chapter 4: Citizen's Charter and Grievances Redressal Mechanism:

While the recommendation in para 4.16 is appreciated, I would like to reiterate the suggestion made in my letter to the Chairman dated 4/11/2011 that the proposed mechanism on the Citizens' Charter and Grievances Redressal should be given a Constitutional Status in order to prevent its casual amendments/manipulation.

Chapter 5: Inclusion/Exclusion of Prime Minister:

While I take note that on the issue of inclusion or exclusion of the Prime Minister under the Lokpal Committee will be awaiting the outcome of its deliberations scheduled for Nov.30 & Dec. 01, 2011, I take this opportunity to reiterate our party stand that Prime Minister and PMO must be included within the ambit of the Lokpal because Prime Minister is not above the Law and nor is he immune to the Indian Penal Code or Cr. PC in the matter relating to the Prevention of Corruption Act, keeping him out of the Lokpal will not be justified. Notably, Prime Ministers in several other democracies of the world are included within the provision of Ombudsman.

Chapter 8: Inclusion of Lower Bureaucracy under the Lokpal:

The common man (aam admi) experiences 'corruption' at the lower level of bureaucracy who are entrusted with the responsibility of delivery of public services, like issuing of Ration Card, Birth Certificate, ST/SC/OBC certificates, Driving Licence,

Passports, Disbursement of Govt. subsidies and so on, on day to day basis. While the Lokpal Bill is restricted to the Group-A cadre of bureaucracy, it is recommended in the Draft Report (Para 8.18A) for inclusion of Group-B official within its ambit.

Since this will be a half-hearted attempt to combat corruption, we strongly demanded that Group-C employees of Govt/PSUs must be brought under the Lokpal in order to make the system corruption free.

Chapter 10: Corruption in Judiciary:

While we confer with the suggestion contained in para 10.21(ii) of the Draft Report that subjecting judiciary to the normal process of criminal prosecution or punishment through the normal courts of the land would not be conducive to the preservation of the judicial independence in the long run, we demand that a comprehensive provision for facilitating investigation/prosecution and punishment against corruption in the judiciary in a non-complicated manner by an appropriate provision in the proposed Judicial Commission. We demand that this requirement must be fulfilled by providing appropriate mechanism within the Judicial Standards and Accountability Bill, 2010.

We would demand that the above Chapter-wise suggestions may be incorporated in the final Report of the Standing Committee failing which this letter be treated as a Note of Dissent from my side and be annexed to the Final Report of the Committee.

Sd/-

(SHRI PRASANTA KUMAR MAJUMDAR)

Member, Lok Sabha

(vi) MINUTES OF DISSENT SUBMITTED BY SHRI PINAKI MISRA:

1. The Biju Janata Dal (BJD) is firmly of the opinion that the office of the Prime Minister must be included in the purview of the Lokpal Institution. The Constitution framers advisedly did not give the Prime Minister any immunity from prosecution, as they did to the office of the President of India. Similarly the Indian Parliament when enacting the Prevention of Corruption Act did not give the P.M. any immunity from prosecution. In fact this was again advisedly so since, unlike in the United States of America, in our system since independence the P.M. has very often held important economic portfolios such as defence, telecom etc., in which ministries there have been numerous scandals. Therefore there is no reason to grant the P.M. who in our Parliamentary System is "only first among equals", any immunity from the Lokpal's scrutiny, WHILE THE P.M. HOLDS OFFICE.

This can be subject to just exceptions of some sensitive subjects like Space, Atomic Energy, National Security etc. Also a further safeguard could be that the full strength of the Lokpal must decide on a investigation/prosecution of the P.M., with at least a 3/4th majority deciding in favour of such action.

2. The 'A' and 'B' category Govt. Servants in Central Services have already been included as per the Committee's decision. As far a category 'C' is concerned a provision should be incorporated in the Bill that in the event in future the Lokpal believes that there are any "significant decision making level staff" escaping the rigors of scrutiny, and which is significantly impacting the anti corruption drive, the said "C" category staff may also be included. That way the vast number of nearly 57 lakh "C" level employees such as peons, stenographers and typists etc., who really have no important decision making roles, will not burden the Lokpal Institution. The BJD believes the Lokpal at the Centre should be a body of prestigious and reputed persons, served by a honest and compact Secretariat and the discussion which was mooted in our Committee Meetings that a 35,000 strong Lokpal Secretariat could be created to monitor the approximately 60 lakh employees of "A" "B" & "C" category will be extremely impractical due to multifarious reasons.

Further the lower bureaucracy in category "C" in the States, who play an important role in the lives of the people on a daily basis such as SHOs and sub inspectors of police, junior engineers of various departments such as PWD, irrigation and rural development, excise and civil supplies staff, revenue field staff etc. can all be included under the purview of the Lokayukts in the States, which would make the Institution have a wide base at the bottom, becoming learner and more tightly knitted as it goes up, to tackle the big ticket corruption at the Central level, rather than making it "TOO TOP HEAVY", which may result in collapse of the mechanism before it starts its important work.

3. The independence of the C.B.I. is of paramount importance. The Supreme Court's judgment in the Vineet Narain case envisaging the independence of the C.B.I. has been followed in the breach by all Government since 1998. This is because the C.B.I. has continued to be the favoured hatchet instrument of all ruling regimes, and therefore it has become ineffective in tackling corruption, and that has led to the present clamour for a popular anti corruption crusade leading up to the demand for a vigorous Lokpal by the public.

The decision of the Committee on 30th November to free the C.B.I. Director's appointment from the control of the ruling Government was a salutary step and the decision to reverse the same by majority vote at the meeting of 1st December is MOST REGRETTABLE and appears to have been motivated by vested interests at the Centre. The B.J.D. believes that

since the C.B.I is going to be the principal investigative arm of the Lokpal, it must be released from the tight control of the Central Government as at present.

The post of Director C.B.I. and all Special Directors must be selected by a Selection Committee comprising of the Prime Minister, Leader of the Opposition in the Lok Sabha and the Chairman, Lokpal. This would be an effective way to ensure that in future the ruling party at the Centre is not able to control the C.B.I. through handpicked officers and pick and choose the anti corruption drive to suit their political convenience as has happened repeatedly in the past, leading to severe erosion in the credibility of the C.B.I. and serious weakening of the entire anti corruption drive. Further it has been seen that the C.B.I. has become the exclusive turf of the Indian Police Service, which is not desirable. It should be ensured in future that the C.B.I is staffed with officers from diverse services in order to make it a more representative body. Similarly the post of CVC and the Director of the Directorate of Prosecution (recommended elsewhere by our Committee), should also be released from Governmental controls and be selected by this above suggested independent mechanism. This would truly add to the robustness of the anti corruption movement.

4. The decision of the Committee to recommend separate Constitutional provision for the creation of an independent Citizen's charter is a good step and the B.J.D. hopes that an effective Citizen's Charter and Public Grievance Redress mechanism will be put in place by the Government at the earliest. The B.J.D. believes that the mechanism provided by the Government in the draft Citizen's Right to Grievance Redress Bill which has been put up on the website is inadequate and must be comprehensively changed and redrafted to make it more efficacious. Further since giving effect to this would entail substantial additional expenditure for poorer states like Odisha, the BJD hopes that the Central Government will support the states entirely in terms of the necessary financial outlay in that regard.

5. The B.J.D. also believe that the present Whistleblower's Protection Bill that is pending in Parliament has serious lacunae and has given rise to acute misgivings amongst large sections of Civil society. This must be withdrawn by the Government and a more comprehensive and effective Whistleblower's Protection Bill should be introduced at the earliest.

Sd/-

(SHRI PINAKI MISRA)

Member, Lok Sabha

(vii) MINUTES OF DISSENT SUBMITTED BY ADV. A. SAMPATH:

The people of India are eagerly expecting Parliament to adopt a legislation that will constitute an effective Lokpal authority to curb corruption in high places and in the public sphere. With this in view, I am submitting this note of dissent as I strongly feel the incorporation of the steps mentioned below are essential for a strong and effective Lokpal body to be set up.

1. The Prime Minister should be brought under the purview of the Lokpal.
2. The Members of Parliament should be brought under the purview of the Lokpal. For Members of Parliament, Article 105 of the Constitution provides protection with regard to freedom of speech and voting. The real issue is that, this freedom and protection does not extend to acts of corruption by Members of Parliament. This should be done through an amendment to Article 105 of the Constitution of India on the lines recommended by the National Commission to review the working of the Constitution.
3. The powers of the Lokpal should be expanded to include not only Group A and Group B officers, but also officers belonging to Group C and Group D. The provisions for the State Lokayuktas should contain similar counterpart reference for purposes of coverage of all similar categories at the state level which are the same or equivalent to Group A, Group B, Group C and Group D for the Lokpal.
4. The constitution of the Search Committee should be made mandatory to prepare the panel of names for the consideration of the Selection Committee for the appointment of chairperson and other members of the Lokpal.
5. The Lokpal should be provided with its own investigative mechanism with exclusive jurisdiction for the Prevention of Corruption Act.
6. The CBI Director should be selected by the Selection Committee constituted for selecting chairperson and other members of the Lokpal.
7. The definition of “corruption” under the PCA 1988 is inadequate. Therefore the following needs to be added: “willfully giving any undue benefit to any person or obtaining any benefit from any public servant in violation of any laws or rules.”
7. 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.

Sd/-
(ADV. A. SAMPATH)
Member, Lok Sabha

(viii) MINUTES OF DISSENT SUBMITTED BY SHRI S. SEMMALAI:

I strongly feel that the decision arrived at the Parliamentary Standing Committee on Personnel, Public Grievances, law & Justice relating to the formation of Lokayukta as necessary instrument to contain corruption through a single enactment of Lokpal Bill by the Centre is an infringement of the state's power and intrusion of state autonomy. It would strike at the roots of the federal concept enshrined in the Constitution of India.

Art. 246 of the Constitution empowers the states to make law with respect to any of the matters enumerated in list-III of the Seventh Schedule of the Indian Constitution. By exercising the powers provided under Art. 253 of the Constitution has indicated in the draft report, the Centre attempts to over-ride the independence of the State and relegate the States to a subordinate position. This is quite unacceptable. The concept of federalism, as mandated by the Constitution does not allow the Center to treat the States with over-riding powers and authority. Strong States are vital to a stable and strong Center. The Constitution does not make any difference between Centre and States and the concurrent list enjoyed by the Centre and the States should be to serve the interest of both the limbs.

Hence, I strongly advocate that the states should be given freedom to constitute Lokayukta and the State Legislature should be allowed to decide when and in what manner such a body (Lokayukta) has to be created. The Center's directions in this regard through a Lokpal Act as contemplated in the Committee's report is unwarranted and unjustifiable.

I place on record on behalf of my party AIADMK my dissenting view against the Committee's report in paragraph 16 of page No.143. I urge the Committee to reconsider its view taking into account the strong sentiments and views expressed by the Government of Tamil Nadu and other State Governments and withdraw the portion of the recommendation (Para 16 of Page No.143) contained in the Committee report.

Sd/-
(SHRI S. SEMMALAI)
Member, Lok Sabha

(ix) MINUTES OF DISSENT BY KUMARI MEENAKSHI NATARAJAN, ADV. P.T.
THOMAS AND SMT. DEEPA DASMUNSHI

We the undersigned member of the Department-related Parliamentary Standing Committee on Personnel, Public Grievances, Law & Justice propose that the 48th Report of the Committee on the Lokpal Bill, 2011 be amended as needed to reflect the following:-

1. The CVC should be placed under the Lok Pal and the state vigilance commissions should be under Lokayukta.
2. Investigations into corruption cases by the CBI shall be subject to the superintendence and control of the Lok Pal.
3. Group C officers shall be included in the jurisdiction of the Lok Pal in accordance with appropriate administrative arrangements.
4. The proposal that Article 311 of the Constitution of India be repealed or amended should be deleted from the Report.

-Sd-

(Meenakshi Natarajan)

-Sd-

(P.T. Thomas)

-Sd-

(Deepa Dasmunshi)

(x) MINUTES OF DISSENT SUBMITTED BY SHRI VIJAY BAHADUR SINGH:

The common man is being harassed and has to pay bribes at each steps whenever he contacts the Governments officials. The quantum of bribe increase with the status of officials. But the common man in majority is harassed by lower officials also and have to grease their palm at the entry level who are mostly lower officials.

Since, in Lokayukta at the state level employees of Class-I to IV have been covered there is no reason or logic of exempting similar Class-C employees in the Central Government from the jurisdiction of Lokpal.

Majority of the poor man are harassed on day to day basis by Class-C employees also in very large degrees. Therefore, it would fair, proper and also in public interest to cover Class-C employees also under jurisdiction of Lokpal.

-Sd-

(Vijay Bahadur Singh)

ANNEXURES

Annexure B

[vide para 2.2 of the Report]

Gist of debates held in Lok Sabha and Rajya Sabha on 27th August, 2011 on the statement made by the Finance Minister on the issues relating to setting up of a Lok Pal

The Minister of Finance made a Statement in both the Houses requesting Shri Anna Hazare to end his fast in view of the appeal made by the Prime Minister in his statement and the sentiments expressed by the Leader of the Opposition and the Hon'ble Speaker, Lok Sabha, on 25th August 2011. He then gave an update of the events covering the deliberations of the Joint Drafting Committee followed by enumeration of the issues on which there was disagreement in the Joint Drafting Committee. He stated that the Government had assured the representatives of Shri Anna Hazare that if a consensus in House emerges over these issues, the Standing Committee would be requested to take into account the same while recommending upon the Lokpal Bill, 2011. Accordingly, Shri Pranab Mukherjee, Honorable Finance Minister apprised Parliament of the negotiations held with Shri Anna Hazare and developments that occurred since the formation of the Joint Drafting Committee comprising of the representatives of the Government and Civil Society. Thereafter, discussions were raised in both Houses to elicit the opinion of the Members *vis-à-vis* issues arising out of the Lokpal Bill in general and over the following three points of discussion in particular. These three points were:-

- Whether the jurisdiction of the Lokpal should cover all employees of the Central Government?
- Whether it will be applicable through the institution of the Lokayukta in all States?

- Whether the Lokpal should have the power to punish all those who violate the 'grievance redressal mechanism' to be put in place?

4.2 Members, during discussions in Parliament, demonstrated serious commitment to evolve effective mechanisms to deal with the menace of the corruption. They were of the opinion that the supreme legislative body should convey a cogent message to the Government to ensure the constitution of a strong and effective institution of Lokpal to root out the widespread corruption. Members acknowledged that the three specific issues raised by Shri Anna Hazare were relevant and they deserved attention while examining the Lokpal Bill.

4.3 Majority of the Members expressed their unanimous and in-principle association with these three issues⁶. For instance, Smt. Sushma Swaraj, Leader of Opposition in Lok Sabha conveying a representative view of her party stated: *“I hereby register the consent of my party on all the three points raised by the hon. Leader of the House”*.

4.4 However, several ideas were floated by the Members about how to proceed while evolving the required legislative frameworks to address the demands of civil society *vis-à-vis* these three issues. The Members were of the opinion that the spirit of the Constitution should not be undermined while providing statutory shape to these three issues. Members, though lauded the need to include the three issues in appropriate legislations but, they cautioned that such legislative initiative must not be inconsistent with the principle enshrined in the Constitution.

⁶ However, most of the Members who participated in debates were not in agreement with many provisions of Jan Lokpal Bill like Prime Minister be brought within the ambit of Lokpal without safeguards and extension of the authority of Lokpal *vis a vis* the Members' conduct in relation to the matters of the House etc.

4.5 With regards to the issue of Public Grievance Redressal Mechanism and the Citizens Charter, Members unanimously acknowledged the necessity of establishment of such mechanisms in all Government of India's Departments/organizations if the objective of good governance was to be attained. However, instead of creating provision in the Lokpal Bill for the purpose, the Members favoured a separate law to deal with these issues. Some Members also drew the attention of the House towards the laws enacted by some State Governments in this regard and suggested that such laws may be considered while legislating upon a central legislation to deal with the issue. Shri V Narayanaswamy, Minister of State for Personal, Public Grievances and Pensions apprised the House that the Government is planning to unveil a separate Bill to provide for an effective public grievance redressal machinery along with making the Citizens Charter a statutory obligation for Government departments/ organizations.

4.6 On the establishment of the institutions of Lokayuktas in States through a single Act, Members did acknowledge the need for establishing effective institutions of Lokayuktas in all of the States. Notwithstanding so, Members were of the view that establishment of Lokayuktas in States should be in accordance with the spirit of our federal polity.

4.7 Apprising the House about the responses of State Governments over the said issue, Union Finance Minister, Shri Mukherjee shared the seriousness and concerns of the Government in this regard with the Members. Also, he candidly requested the Leader of Opposition in Rajya Sabha, Shri Arun Jaitley, who is also an eminent lawyer, to share his opinion over the issue of providing for Lokayuktas in the States in the Central Legislature. Shri Jaitley suggested two alternatives to overcome the federal dilemma over the issue. He put his views as:-

".....One possible option is that you can legislate on areas where the Central legislature has jurisdiction. Where you find that the Central Legislature has no jurisdiction, you have two options -either you leave that part to the States or under Article 252, with the consent of two States, the Central Legislature can bring an enabling law compatible with the Constitutional Scheme....."

4.8 Most of the Members were of the view that a model Bill should be framed in this regard and the States should be given the authority to constitute the Lokayuktas. Members were hopeful that this federal dimension would be earnestly examined by the Standing Committee in the light of relevant constitutional provisions.

4.9 Over the inclusion of lower bureaucracy within the ambit of the Lokpal, Members admitted the need to make all classes of bureaucracy more accountable to the people of this country. However, the question before the Parliament was what would be the appropriate legislative framework for the purpose. There were apprehensions that if all classes of the bureaucracy are brought under the Lokpal, the institution will become overburdened and it will not be able to discharge its responsibilities effectively. Likewise, the Members also pointed out that constitutional protections given to the bureaucrats under articles 311 and 320 should also be taken into account while making provisions in this regard in the Lokpal Bill.

4.10 Shri Sitaram Yechury, Member, Rajya Sabha suggested a very lucid solution in this regard. He put his point as:

".....For the lower bureaucracy, existing vigilance machinery, which is there to oversee them, can be brought under the supervision of the Lokpal. You already have existing vigilance machinery. That can be

brought under the supervision of Lokpal. If the existing machinery is not delivering then the Lokpal can be approached....."

4.11 He and other Members were of the view that while legislating upon the issue of inclusion of lower bureaucracy, the aspects of constitutionality and practical feasibility need to be considered in detail.

4.12 While giving the reply to the debate the Minister of Finance concluded that the House discussed various issues relating to setting up of a strong and effective Lokpal in these words:

"This House agrees in principle on the Citizens Charter, Lower Bureaucracy to be brought under Lokpal through appropriate mechanism and Establishment of Lokayuktas in the States. I will request you to transmit the proceedings to the Department-related Standing Committee for its perusal while formulating its recommendations for a Lokpal Bill."

ANNEXURE-D
[Vide Para 2.5 of the Report]

STATUS NOTE ON THE LOKPAL BILL, 2011

- | | |
|----------------------------------|---|
| 4 th August, 2011 | - Bill introduced in Lok Sabha. |
| 8 th August, 2011 | - Referred to the Department Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice by Hon'ble Chairman, Rajya Sabha. |
| 10 th August, 2011 | - I. Presentation by the Secretary, Department of Personnel and Training on the Bill.
II. Oral evidence of :-
(i) Anna Hazare;
(ii) Shanti Bhushan,
(iii) Prashant Bhushan;
(iv) Arvind Kejriwal; and
(v) Kiran Bedi.. |
| 23 th September, 2011 | - Oral evidence of :-
(i) Smt. Aruna Roy, National Campaign for People's Right to Information; and
(ii) Shri Jayaprakash Narayan, President, Lok Satta Party. |
| 24 th September, 2011 | - Oral evidence of:-
(i) Shri Jayaprakash Narayan, President, Lok Satta Party;
(ii) Shri Ashok Kumar Parija, Chairman, Bar Council of India;
(iii) Shri Pratap Bhanu Mehta, President, Centre for Policy Research, New Delhi;
(iv) Shri Harish N. Salve, Senior Advocate, Supreme Court of India; and
(v) Dr. Udit Raj, President, Indian Justice Party. |
| 1 st October, 2011 | - Oral evidence of:-
(i) Central Vigilance Commissioner; and
(ii) Director, CBI. |
| 13 th October, 2011 | - Oral evidence of :-
(i) Justice M.N. Venkatachalaiah, Former Chief Justice of India; and |

- 14th October, 2011
- (ii) Justice J.S. Verma, Former Chief Justice of India.
 - Oral evidence of:-
 - (i) Confederation of India Industry
 - (ii) FICCI
 - (iii) ASSOCHAM
- 21st October, 2011
- Oral evidence of:-
 - (i) National Commission for Scheduled Castes
 - (ii) Delhi Commission for Protection of Child Right's
 - (iii) Federation for Economic Freedom
 - (iv) United Nations Development Programme (UNDP)
 - (v) Transparency International India
 - (vi) PRS Legislative Research
 - (vii) Akhil Bhartiya Vidhyarthi Parishad (ABVP)
 - (viii) Shri P.S. Krishnan (IAS Retd.)
 - (ix) Indian Social Institute
 - (x) Gandhian Sewa and Satyagraha Brigade
 - (xi) Bharat Raksha Manch
 - (xii) All India Council of Human Rights, Liberties & Social Justice
 - (xiii) Consumer Online Foundation
 - (xiv) Public Interest Legal Support and Research Centre (PILSARC)
 - (xv) Shri J.B. Mohapatra, Former Joint Secretary, Judges Inquiry Committee
 - (xvi) Civil Society for Truth
 - (xvii) Confederation of All India Traders
 - (xviii) 1. Ms. Sandhya Jain, Journalist; and
2. Shri Rohit Srivastava, Journalist.
 - (xix) Shri Ranjit Singh
 - (xx) Akhil Bhartiya Sant Samiti
 - (xxi) Editors Guild of India
- 3rd November, 2011
- Oral evidence of:-
 - (i) Civil Society headed by Anna Hazare
 - (ii) NSUI
- 4th November, 2011
- Further interaction/ Question and Answer Session with Civil Society headed by Anna Hazare.
- 14th November, 2011
- In-house Discussion.
- 15th November, 2011
- In-house Discussion.
- 24th November, 2011
- In-house Discussion.

- | | |
|---------------------------------|---|
| 30 th November, 2011 | - In-house Discussion on Draft Report |
| 1 st December, 2011 | - In-house Discussion on Draft Report |
| 7 th December, 2011 | - Consideration and adoption of the Draft Report. |

ANNEXURE-E
[Vide Para 13.12(b) of the Report]

OPINION OF JUSTICE J.S. VERMA

As desired on behalf of the Standing Committee of the Parliament, I reiterate my views expressed personally before it on 13 October 2011, and answer the specific Issues addressed to me for my response.

Preface

I am of the firm view that the unanimous demand of the people as well as the avowed commitment of all political parties for a strong Lokpal can be best met by conferring constitutional status to the proposed Lokpal for the Union and the Lokayuktas for the States, akin to the Election Commission and the Union Public Service Commission/State Public Service Commissions. To avoid any delay in making the needed constitutional amendment for the purpose, the Constitution Amendment Bill must eschew any contentious issue (all of which can be addressed in the consequent legislation with all details) containing only the bare minimum required for the purpose.

I have already circulated a rough draft of the suggested Constitution Amendment Bill for consideration of the Standing Committee before our above meeting, which does not contain any contentious issue while mandating the Union to constitute the Lokpal and the States to constitute the Lokayukta. It provides for all the details to be incorporated in the contemplated accompanying legislation to complete the task.

Such a constitutional amendment would not attract the Proviso to Sub-Article (2) of Article 368 of the Constitution, and, therefore, it would not require ratification by the States. For ease of reference, Article 368(2) is extracted below:

“An amendment of this Constitution may be initiated only by the introduction of a Bill for the purpose in either House of Parliament, and when the Bill is passed in each House by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting, it shall be

presented to the President who shall give his assent to the Bill and thereupon] the Constitution shall stand amended in accordance with the terms of the Bill:

Provided that if such amendment seeks to make any change in—

- (a) article 54, article 55, article 73, article 162 or article 241, or
- (b) Chapter IV of Part V, Chapter V of Part VI, or Chapter I of Part XI, or
- (c) any of the Lists in the Seventh Schedule, or
- (d) the representation of States in Parliament, or
- (e) the provisions of this article,

the amendment shall also require to be ratified by the Legislatures of not less than one-half of the States by resolutions to that effect passed by those Legislatures before the Bill making provision for such amendment is presented to the President for assent.”

As would be evident on a plain reading of Article 368(2), the only requirement is for it to be passed by the majority of total membership of each House and by a majority of not less than two-thirds of members present and voting.

With the unanimous demand in the people supported by unanimity of all political parties in the Parliament to constitute a strong Lokpal/Lokayuktas, there can be no doubt of unanimous support for a constitutional body, which would obviously be the strongest visualized in the constitutional scheme. Once the constitutional amendment is made, it would become a part of the indestructible ‘basic structure’, immune from any future attempt to erode its status. The exercise for the accompanying consequent legislation providing the details dealing with the contentious issues can continue simultaneously, since it must follow to complete the process.

There is no occasion to doubt the sincerity of the commitment and resolve of the people and the political will in this behalf. Therefore, there can be no risk of any delay in this method.

With the above preface, my answers to the specific Issues referred for my opinion are as under:

Issues

- (i) Whether the proposed Lokpal legislation to be enacted by Parliament can include in it the structure for and content of State Lokayuktas by invocation of Articles

253/254 and/or entries 1,2 and 11A of List III of the Constitution and/or any other legal or constitutional basis?;

- (ii) Would such a national legislation be constitutionally valid (with reasons there for) and, if not, the reasons thereof?;
- (iii) Would it be constitutionally and legally feasible to follow the model of the NHRC and/or the RTI Act, 2005 and/or the Consumer Protection Act, 1986 etc. and/or any other appropriate central legislation, to provide for Lokpal and Lokayuktas in one central enactment and the basis on which the validity and constitutionality of such a legislation can be sustained?

Answer

These three issues being connected are combined for their answer.

Consequent upon the aforesaid constitutional amendment the proposed Lokpal legislation to be enacted by the Parliament by invocation of Article 253 does not require any additional legislative support. For ease of reference, Article 253 is quoted below:

“Legislation for giving effect to international agreements. - Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body.”

This confers the legislative competence needed to implement the UN Convention Against Corruption, which has been signed and ratified by India. It is relevant to highlight that Article 6 of the Convention enshrines a specific obligation for member-States to establish bodies that prevent corruption. Article 6 of the Convention is quoted in full below:

“Article 6. Preventive anti-corruption body or bodies

1. Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies, as appropriate, that prevent corruption by such means as:

- (a) Implementing the policies referred to in article 5 of this Convention and, where appropriate, overseeing and coordinating the implementation of those policies;
- (b) Increasing and disseminating knowledge about the prevention of corruption.

2. Each State Party shall grant the body or bodies referred to in paragraph 1 of this article the necessary independence, in accordance with the fundamental principles of its legal system, to enable the body or bodies to carry out its or their functions effectively and free from any undue influence. The necessary material resources and specialized staff, as well as the training that such staff may require to carry out their functions, should be provided.
3. Each State Party shall inform the Secretary-General of the United Nations of the name and address of the authority or authorities that may assist other States Parties in developing and implementing specific measures for the prevention of corruption.”

The directive principle of State policy in Article 51(c), as a principle fundamental in governance is available as an aid. (Article 51 states: “*The State shall endeavour to...(c) foster respect for international law and treaty obligations in the dealings of organised peoples with one another...*”). There is, therefore, no need to look for any additional support for the legislative competence of the Parliament to legislate on the subject for the whole territory of India. In addition, it would not be out of place to mention that the failure to take effective steps with respect to the establishment of such institutions could lead to India being considered to be in breach of its obligations under international law, which must obviously be avoided at all costs.

The Protection of Human Rights Act, 1993 providing for the constitution of the NHRC and the SHRCs was enacted by the Union Parliament for the whole territory of India to implement the Paris Principles, 1991 for the ‘better protection of human rights’, in addition to the existing constitutional guarantees and statutory rights with the machinery to enforce them. This was done by invoking Article 253 for the whole territory of India. Similarly, for ‘combating corruption’ in a more effective manner a uniform legislation enacted by the Union Parliament by invoking Article 253 can provide for the Lokpal and the Lokayuktas.

The Parliamentary central enactment made by invoking Article 253 would be constitutionally valid, such legislative competence in the Union Parliament being expressly provided as a part of the constitutional scheme, consistent with the nature of federalism created by the Constitution.

Issue No. (iv):

If the answer to the aforesaid is in the affirmative, whether by virtue of Article 254 of the Constitution of India and/or any other available power, the aforesaid proposed Lokpal Act to be enacted by Parliament would also be entitled to repeal the existing State Lokayukta enactments?

Answer

Once the Union Parliament enacts the central legislation by invoking Article 253 for the whole territory of India, the existing State legislations relating to the Lokayuktas being repugnant to it shall be void, by virtue of Article 254(1), which states as under:

“If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.”

In the light of the above provision, it would be advisable, in order to avoid needless litigation, for the central law to indicate - with reference to the above Article – that the existing State laws shall be treated as void and inoperative. It may however be added that this question would become purely academic in the event that the route of a constitutional amendment (along the broad lines I have suggested) is adopted, since the proposed amendment envisages parallel laws being enacted by Parliament and by the State legislatures.

4th November 2011

[J.S. VERMA]

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**PARLIAMENT OF INDIA
RAJYA SABHA**

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**DEPARTMENT RELATED PARLIAMENTARY STANDING
COMMITTEE ON PERSONNEL, PUBLIC GRIEVANCES,
LAW AND JUSTICE**

**FORTY EIGHTH REPORT
ON
THE LOKPAL BILL, 2011**

EVIDENCE

**(PRESENTED TO RAJYA SABHA ON 9TH DECEMBER, 2011)
(LAID ON THE TABLE OF THE LOK SABHA ON 9TH DECEMBER, 2011)**



**RAJYA SABHA SECRETARIAT
NEW DELHI
DECEMBER, 2011/AGRAHAYANA, 1933 (SAKA)**

PARLIAMENT OF INDIA
RAJYA SABHA

**DEPARTMENT RELATED PARLIAMENTARY STANDING
COMMITTEE ON PERSONNEL, PUBLIC GRIEVANCES,
LAW AND JUSTICE**

**FORTY EIGHTH REPORT
ON
THE LOKPAL BILL, 2011**

EVIDENCE

**(PRESENTED TO RAJYA SABHA ON 9TH DECEMBER, 2011)
(LAID ON THE TABLE OF THE LOK SABHA ON 9TH DECEMBER, 2011)**



**RAJYA SABHA SECRETARIAT
NEW DELHI
DECEMBER, 2011/AGRAHAYANA, 1933 (SAKA)**

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COMPOSITION OF THE COMMITTEE
(31st August, 2010 - 30th August, 2011)

32. Dr. Abhishek Manu Singhvi* — *Chairman*

.1.1.1.1.1.1.1.1 RAJYA SABHA

- 33. Shri Balavant *alias* Bal Apte
- 34. Shri Ram Jethmalani
- 35. Shri Parimal Nathwani
- 36. Shri Amar Singh
- 37. Shri Ram Vilas Paswan
- 38. Shri O.T. Lepcha
- 39. Vacant^
- 40. Vacant@
- 41. Vacant&

.1.1.1.1.1.1.1.2 LOK SABHA

- 42. Shri N.S.V. Chitthan
- 43. Smt. Deepa Dasmunsi
- 44. Smt. Jyoti Dhurve
- 45. Shri D.B. Chandre Gowda
- 46. Dr. Monazir Hassan
- 47. Shri Shailendra Kumar
- 48. Smt. Chandresh Kumari
- 49. Dr. Kirodi Lal Meena
- 50. Ms. Meenakshi Natarajan
- 51. Shri Devji M. Patel
- 52. Shri Harin Pathak
- 53. Shri Lalu Prasad
- 54. Shri S. Semmalai
- 55. Shri Vijay Bahadur Singh
- 56. Dr. Prabha Kishor Taviad
- 57. Shri Manish Tewari
- 58. Shri R. Thamaraiselvan
- 59. Adv. P.T. Thomas (Idukki)
- 60. Vacant#
- 61. Vacant\$
- 62. Vacant%

* Nominated as Chairman of the Committee w.e.f. 26th July, 2011.

^ Due to passing away of Shri M. Rajasekara Murthy w.e.f. 7th December, 2010.

@ Due to induction of Smt. Jayanthi Natarajan in the Council of Minister w.e.f. 12th July, 2011.

& Due to retirement of Shri Shantaram Naik w.e.f. 28th July, 2011.

Due to resignation of Shri Arjun Munda from Lok Sabha w.e.f. 26th February, 2011.

\$ Due to passing away of Shri Bhajan Lal w.e.f. 3rd June, 2011.

% Existing since the constitution of the Committee on 31st August, 2010.

COMPOSITION OF THE COMMITTEE
(Constituted on 31st August, 2011)

1. Dr. Abhishek Manu Singhvi — *Chairman*

RAJYA SABHA

2. Shri Shantaram Laxman Naik
3. Dr. Bhalchandra Munekar
4. Shri Balavant *alias* Bal Apte
5. Shri Ram Jethmalani
6. Shri Sukhendu Sekhar Roy
7. Shri Ram Vilas Paswan
8. Shri O.T. Lepcha
9. Shri Parimal Nathwani
10. Shri Amar Singh

LOK SABHA

32. Shri Kirti Azad
33. Shri N.S.V. Chitthan
34. Smt. Deepa Dasmunsi
35. Shri D.B. Chandre Gowda
36. Shri Shailendra Kumar
37. Smt. Chandresh Kumari
38. Shri Prasanta Kumar Majumdar
39. Shri Arjun Ram Meghwal
40. Shri Pinaki Misra
41. Kumari Meenakshi Natarajan
42. Shri Harin Pathak
43. Shri Lalu Prasad
44. Adv. A. Sampath
45. Shri S. Semmalai
46. Shri Vijay Bahadur Singh
47. Dr. Prabha Kishor Taviad
48. Shri Manish Tewari
49. Adv. P.T. Thomas (Idukki)
50. Shri Arun Subhash Chandra Yadav
51. Shri Madhusudan Yadav
52. Vacant*

SECRETARIAT

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

* Existing since the constitution of the Committee on 31st August, 2011.

**LIST OF WITNESSES WHO APPEARED BEFORE THE DEPARTMENT
RELATED PARLIAMENTARY STANDING COMMITTEE ON
PERSONNEL, PUBLIC GRIEVANCES, LAW AND JUSTICE IN
CONNECTION WITH THE LOKPAL BILL, 2011**

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSION

Department of Personnel and Training

1. Smt. Alka Sirohi, Secretary;
2. Dr. S.K. Sarkar, Additional Secretary (S&V);
3. Shri Alok Kumar, Joint Secretary (Vigilance); and
4. Shri Ashok K.K. Meena, Director (V-II).

Central Bureau of Investigation

1. Shri Balwinder Singh, Special Director; and
2. Shri A.K. Pataria, Joint Director.

Central Vigilance Commission

Shri K.P. Tripathi, Secretary

MINISTRY OF LAW AND JUSTICE

Legislative Department

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

Representatives of the Civil Society

1. Shri Anna Hazare;
2. Shri Arvind Kejriwal;
3. Ms. Kiran Bedi;
4. Shri Shanti Bhushan;
5. Shri Prashant Bhushan;
6. Shri Manish Sisodia;
7. Miss Sharmishta Sharma; and
8. Shri Suresh Pathare.

**Representatives of the NATIONAL CAMPAIGN FOR PEOPLE'S RIGHT TO
INFORMATION**

1. Smt. Aruna Roy, Member;
2. Shri Shekhar Singh, Member;
3. Shri Harsh Mander, Member;
4. Smt. Anjali Bharadwaj, Member.
5. Shri Nikhil Dey, Co-convener; and
6. Shri Venkatesh Nayak, Co-convener;

Representative of the Lok Satta Party

Shri Jayaprakash Narayan, President.

Representative of the Bar Council of India

Shri Ashok Kumar Parija, Chairman

Representative of the Centre for Policy Research, New Delhi

Shri Pratap Bhanu Mehta, President,

Representative of the Supreme Court of India

Shri Harish N. Salve, Senior Advocate

Representative of the Indian Justice Party

Dr. Udit Raj, President.

Central Vigilance Commission

1. Shri Pradeep Kumar, Central Vigilance Commissioner;
2. Shri. K.D. Tripathi, Secretary;
3. Shri Anil Sinha, Additional Secretary; and
4. Shri Anil Singhal, Chief Technical Examiner.

Central Bureau of Investigation

1. Shri Amar Pratap Singh, Director, CBI;
2. Shri Balwinder Singh, Special Director, CBI;
3. Shri V.K. Gupta, Special Director, CBI; and
4. Shri Sourabh Tripathi, DIG.

Former Chief Justices of India

1. Justice M.N.Venkatachalaiah; and
2. Justice J.S.Verma.

Representatives of the CONFEDERATION OF INDIAN INDUSTRY (CII)

1. Shri B. Muthuraman, President;
2. Shri Sunil Kant Munjal, Past President;
3. Shri Harpal Singh, Chairman, CII National Committee on School Education;
4. Shri S Sen, Principal Advisor; and
5. Shri Sunil K Misra, Director.

Representatives of the FEDERATION OF INDIAN CHAMBERS OF COMMERCE & INDUSTRY (FICCI)

1. Shri R.V. Kanoria, Senior Vice President; and
2. Shri Arun Chawla, Assistant Secretary General.

Representatives of the Associated Chambers of Commerce and Industry (AASSOCHAM)

1. Shri Dilip Modi, President;
2. Shri D.S. Rawat, Secretary General; and
3. Shri R.K. Handoo, Co-Chairman, Legal Committee.

Representative of the National Commission for Scheduled Castes

Shri P.L. Punia, Chairman

Representatives of the Delhi Commission for Protection of Child Right's

1. Shri Amod K. Kanth, Chairperson; and
2. Shri Shashank Shekhar.

Representatives of the Federation for Economic Freedom

1. Shri Bharat Gandhi, Political Reformer and Author; and
2. Shri Aruneshwar Gupta, Advocate Supreme Court.

Representatives of the United Nations Development Programme (UNDP)

1. Ms. Alexandra Solovieva, Deputy Country Director; and
2. Ms. Sumeeta Banerji, Assistant Country Director & Head.

Representatives of the Transparency International India

Shri P.S. Bawa, IPS, Chairman

Representatives of the PRS Legislative Research

1. Shri M.R. Madhavan;
2. Ms. Kaushiki Sanyal; and
3. Ms. Harsimaran Kalra.

Representatives of the Akhil Bhartiya Vidhyarthi Parishad (ABVP)

1. Shri Sunil Ambekar, National Organizing Secretary; and
2. Shri Sunil Bansal.

Representatives of the Indian Social Institute

1. Shri P.S. Krishnan (IAS Retd)
2. Dr. Christopher Lakra, Executive Director;
3. Dr. Ibrahim Qureshi;
4. Dr. Paul Diwakar; and
5. Prof. Sushma Yadav.

Representatives of the Gandhian Sewa and Satyagraha Brigade

1. Shri Shambu Dutt, Advisor; and
2. Justice Kamleshwar Nath.

Representatives of the Bharat Raksha Manch

1. Shri Om Prakash Gupta, IFS National Working President; and
2. Shri Rattan Lal Gupta.

Representatives of the All India Council of Human Rights, Liberties & Social Justice

1. Shri Anthony Raju, National President; and
2. Shri J.E. John.

Representatives of the Consumer Online Foundation

1. Shri S. Krishnan, Advisor; and
2. Pyush Misra, Governing Council Member.

Representatives of the Public Interest Legal Support and Research Centre (PILSARC)

1. Shri Rajeev Dhavan, Senior Advocate, Supreme Court of India and Director, PILSARC; and
2. Ms. Swati Chawla, Senior Researcher.

Representatives of the Civil Society for Truth

1. Dr. Sowesh Pattanaik; and
2. Shri Ritwik Agrawal.

Representatives of the Confederation of All India Traders

1. Shri Praveen Khandelwal, Secretary General;
2. Shri Satish Garg; and
3. Shri Nander Madaan.

Representatives of the Akhil Bhartiya Sant Samiti

1. Acharya Pramod Krishnam, President;
2. Yogi Rakesh Nath;
3. Mahant Naryan Giri;
4. Mahant Durga Das;
5. Swatanter Yogi;
6. Acharya Madan; and
7. Shri Umesh Yogi

Representatives of the Editors Guild of India

1. Shri T.N. Ninan, Chairman and Editorial Director, Business Standards;
2. Ms. Coomi Kapoor, Journalist; and
3. Shri Suresh Bafna, Journalist.

Representatives of the National Student's Union of India

1. Shri Roji M. John, Vice President
2. Shri Bharal Kumar;
3. Shri Shahnawas Khan; and
4. Ms. Leni Jhadav.

Individuals

1. Shri Ranjit Singh
2. Shri J.B. Mohapatra, Former Joint Secretary, Judges Inquiry Committee;
3. Ms. Sandhya Jain, Journalist; and
4. Shri Rohit Srivastava, Journalist.

The Department-related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice, met at 4.15 p.m. on 10th August, 2011, in the Main Committee Room,

Parliament House Annexe, New Delhi.

(Chairman : Dr. Abhishek Manu Singhvi)

Witnesses

Ministry of Personnel, Public Grievances and Pension

Department of Personnel and Training

- Shrimati Alka Sirohi, Secretary
- Dr. S.K. Sarkar, Additional Secretary (S&V)
- Shri Alok Kumar, Joint Secretary (Vigilance)
- Shri Ashok K.K. Meena, Director (V-II)

Central Bureau of Investigation

- Shri Balwinder Singh, Special Director
- Shri A.K. Pataria, Joint Director.

Central Vigilance Commission

Shri K.P. Tripathi, Secretary

Ministry of Law and Justice

Legislative Department

- Shri N.K. Nampoothiry, Additional Secretary
- Shri Divakar Singh, Deputy Legislative Counsel
- Shri R.K. Pattanayak, Assistant Legislative Counsel
- Shri K.V. Kumar, Assistant Legislative Counsel

CHAIRMAN: Distinguished Members of the Committee, may I welcome you all and also welcome the Secretary, Department of Personnel, Shrimati Alka Sirohi and other officers of that Department.

As we know, the hon. Chairman had referred the Lokpal Bill to us yesterday and we are required to give the report within three months. A short background note of the Bill should be there with you.

As you know, the Bill seeks to create the institution of Lokpal to enquire into allegations of corruption against certain public functionaries and other related matters. So, we have invited these officers to make their presentations. We will discuss with them till about five o'clock and, then, we have another set of presentations. In particular, I am sure they will

enlighten us as to the reasons and circumstances which necessitated the introduction of this Bill, the need for this Bill, the intent of the Government and the mechanism suggested.

Shrimati Alka Sirohi may introduce her team of officers and, then, make her statement. We can have clarifications from the Committee Members later on. But on the basis of these, let us all remember that this is a listening exercise today as this is the first meeting. Of course, as we know, these proceedings are completely confidential.

SHRIMATI ALKA SIROHI: Sir, I would apologise in the beginning for we may not have all the required documents as the meeting was called for at a very short notice. We shall give them to you by tomorrow evening. Now, with your permission, I proceed with the presentation.

(Thereafter, Shrimati Alka Sirohi made
a presentation with the help of slides.)

CHAIRMAN: Thank you. You have an admirable, quick bird's eye view so that we generally get familiar with it and I feel that this summary is useful. You have finished in time. We still have got some time in hand. So, I think, if any of the Members wants to discuss it in a general way, he can. But it is a general discussion, just to have some interaction.

श्री रामविलास पासवान: हमारा एक बेसिक प्रश्न यह है कि civil society को संविधान की किस धारा या किस एक्ट के मुताबिक पहली बार सरकारी body में रखा गया?

श्री रामविलास पासवान (क्रमागत) : आप यह जवाब दे सकते हैं कि गवर्नमेंट के स्तर का है।

अध्यक्ष : यह उन के अधिकार क्षेत्र से बाहर है और वैसे भी वह जवाब देना नहीं चाहेंगे, लेकिन आप के sentiment को समझ रहे हैं।

श्री रामविलास पासवान : हमारे दो sentiments हैं। एक तो उन को किस अधिकार के तहत रखा गया और दूसरे फिर अन्ना हजारे को किस ने अधिकार दे दिया कि आप 5 आदमियों को appoint कीजिए। तीसरी चीज यह कि कोर्ट के सामने कोई मामला है, उस को भी आप ने कहा है कि लोकपाल चाहे तो उस को देख सकता है। यह agreed है। इस में यह नहीं है कि यह पॉइंट आप ने confrontation के लिए बिल में रखा है। तो कितनी एजेंसीज जांच करेंगी? मामला कोर्ट में है, फिर लोकपाल के पास आएगा और लोकपाल इस मुद्दे को देखेगा। तीसरे, all the government servants from Class 1 to Class 4, सारे-के-सारे इस में रहेंगे, तो अधिकार किस का रहेगा? अभी तो राष्ट्रपति appoint करते हैं। In the name of President सारी चीज होती है। तो क्या उस समय in the name of Lokpal होगा।

अध्यक्ष : आप ने सही फरमाया कि ये काफी विचार-विमर्श के मुद्दे हैं। जैसे आप ने दो मुद्दे बताए, सब का तो ये उत्तर अभी नहीं दे सकेंगी। आप ने कहा एक तो क्लास-1, क्लास-4, क्लास-3, employees का मुद्दा है, हमारे ड्राफ्ट में यह नहीं है। यह मांग जन लोकपाल वाले ड्राफ्ट में है। हमारे ड्राफ्ट में सिर्फ क्लास "ए" है। नंबर 2 आप ने फरमाया कि समिति 5

लोगों की है। यह इस ड्राफ्ट में नहीं है। यह तो एक अभियान चला रहे हैं। उन का प्रस्ताव है।

श्री रामविलास पासवान : हम बातचीत करने के लिए जो Joint Drafting Committee बनायी गयी उस की बात कर रहे हैं। Joint Drafting Committee में उन को क्यों रखा गया? आप उन से अलग से suggestion ले सकते थे, चिट्ठी दे सकते थे।

अध्यक्ष : यह बात अब पुरानी हो गयी, लेकिन इन्होंने भी शुरुआत में 'experimental basis' शब्द इस्तेमाल किया।

श्री शैलेंद्र कुमार : अध्यक्ष महोदय, एक बात मैं कहना चाहूंगा। महोदय, एक बड़ा गंभीर मुद्दा यह है कि सिविल सोसायटी को आप ने power delegate कर दी कि 5 सदस्य बनाइए। दूसरी बात जिस व्यक्ति ने संविधान के तहत लोक सभा में परसों जब यह बिल Committee on Personnel, Public Grievances, Law and Justice में आया है, उस को गंभीरता से न लेते हुए उस ने खुले में बिल की पब्लिक के बीच में प्रतियां जलायीं और लोकपाल नहीं "जोकपाल" कहा, ऐसे लोगों को तो यहां evidence के लिए बुलाना ही नहीं चाहिए। हम इस का विरोध करते हैं।

श्री विजय बहादुर सिंह : मैं शैलेंद्र कुमार जी का समर्थन करता हूं।

श्री शैलेंद्र कुमार : यह गंभीर मामला है। आप ने इस कमेटी, संविधान और लोक सभा को बिल्कुल ताक पर रखकर उन को importance दे दी और उन्हें बुलाकर इस action को हम justify कर रहे हैं लगभग यह संकेत दिया। जो व्यक्ति यहां आने से पहले टी0वी0 पर यह बोल रहा हो कि हम तो औपचारिकता के लिए जा रहे हैं। इस का क्या मतलब है? क्या उन्होंने मज़ाक बना लिया है?

श्री विजय बहादुर सिंह : यहां से जाने के बाद बाहर भी वह वही बात कहेंगे।

अध्यक्ष : मैं आप की sentiments को समझ रहा हूं। पहले तो जो भी यहां आता है, हम सभी को सचेत कर देते हैं कि जो कुछ भी हम यहां बातचीत कर रहे हैं, वह हर प्रकार से गोपनीय है और आप जानते हैं कि इस पर क्या action लिया जा सकता है। हम किसी का मुंह बंद नहीं कर सकते, लेकिन इस पर action लिया जा सकता है। दूसरा, मैं समझता हूं कि इस विषय पर हम सब के अलग-अलग मत हैं। इस वक्त जब वे आएंगे तो हम ख्याल रखें कि यह नहीं कि हम किसी प्रकार से उन को condone कर रहे हैं जिन्होंने गलत काम किया है। लेकिन वह इस वक्त आकर अपना मत रखें और अगर वह आने से पहले यह समझते हैं कि यह सिर्फ औपचारिकता है तो ऐसा कम-से-कम समिति नहीं समझती। समिति देखेगी और अंतिम अधिकार क्षेत्र समिति का है कि हम उसे कितना मानते हैं, कितना नहीं मानते। इसलिए मेरा यह सुझाव था कि हम इसे इस दृष्टिकोण से लें। आज तो शुरुआत है। इन का मत किसी के ऊपर बाध्य नहीं है।

श्री लालू प्रसाद : आप जब मना कर रहे हैं, मूल बात यह है कि हम लोगों की all-party meeting हुई थी और बाद में आप ने पांच मंत्रियों और सरकार ने मिलकर देश को इन्हें उपलब्ध कराया।

अध्यक्ष : यह 'experimental basis' पर, यह भविष्य के लिए precedent नहीं है।

Shri Lalu Prasad: There is no end to civil society.

श्री लालू प्रसाद (क्रमागत): यह मैंने अन्ना हजारे जी से भी पूछा था कि आप लोगों का चुनाव कब हुआ है? ओन द बीहाफ ऑफ द 120 करोड़ आबादी से आप पांच लोग कब चुने गए हैं? हम लोग तो चुने गए हैं। वहां जिस तरह से गालियां दी गईं, “खादी कपड़ा मन है मैला” ऐसा करके कच्वाली गवाई गई, सब ने देखा। सुपरमेसी ऑफ पार्लियामेंट और बाबा साहब के बनाए हुए संविधान को बदलने के लिए आपके, कांग्रेस के पांच मंत्री और पांच आदमी मिलकर ये संविधान बना रहे हैं? तो क्या हम लोग नहीं बनाएंगे? आपकी बात टूट गई। ऑल पार्टी मीटिंग में, महोदय, यह तय हुआ था कि सरकार अपना इफेक्टिव लोकपाल बिल लाए। मैंने उनसे भी कहा था कि आपसे तो सरकार की बात टूट गई, तो लोकपाल बिल जो सरकार लाएगी उस पर ही तो हम लोग पार्लियामेंट में कंसीडर करेंगे। आप सब लोगों ने उसमें यह क्लब कर दिया है, उनके सवाल को क्लब कर दिया। हमने यह देखा है राइट एंड लेफ्ट, एक तरफ उनका है, एक तरफ आपका, मायने कैरी कर रहे हैं।

अध्यक्ष: यह जो आज पांच व्यक्ति आ रहे हैं, ये सिर्फ जनसाधारण नागरिक के रूप में आ रहे हैं, जैसे हमारी समिति में इनपुट देने के लिए कोई भी आ सकता है। हम किसी प्रकार से बाध्य नहीं हैं। हम लोग लोकपाल बिल पर सुन रहे हैं, जो हमारा वर्किंग ड्राफ्ट है, जो बिल हमको माननीय अध्यक्ष महोदय द्वारा रेफर हुआ है, उस पर सुन रहे हैं। आप आश्वस्त रहें। हां, यह जरूर है कि हमने इनको बुलाया है, क्योंकि इन्होंने अभियान चलाया है। इसके बाद हम और लोगों को भी बुलाएंगे। हमें इनको कोई ऐसा बहाना नहीं देना चाहिए कि हम तवज्जोह नहीं दे रहे हैं।

श्री लालू प्रसाद: हम समझ रहे हैं। इसमें हम लोग आपको लिस्ट देंगे।

अध्यक्ष: निश्चित रूप से।

श्री लालू प्रसाद: हम लोग लिस्ट देंगे, तो बुलाते-बुलाते हमें फिर नया अवतार लेना पड़ेगा। बात समझिए, इनीशियल ओब्जेक्शन हमारा यह है कि हम लोगों ने पूछा तो वे उस समय निरुत्तर हो गए थे। सुपरमेसी ऑफ पार्लियामेंट रहे।

अध्यक्ष: प्लीज।

श्री लालू प्रसाद: कमेटी में सारी चीजों पर डिटेल में बाद में बात करेंगे,

श्री विजय बहादुर सिंह: चेयरमैन साहब का यह कहना है कि केवल आर्डिनरी सिटीजन के रूप में यहां आ रहे हैं।

श्री लालू प्रसाद: आप सुनिए। कल जम्मू-कश्मीर से लोग आए, कहें कि हम सिविल सोसायटी हैं, कभी कोई बाबा आ गए, कभी कोई आ गए, कह दिया, कर दिया जो उन लोगों के मन में है। कानून, लॉ मैकिंग बॉडी तो पार्लियामेंट है, न? उसमें आप देख रहे हैं कि पार्लियामेंट, सीबीआई वगैरह हैं। कहां से सीबीआई आ गई इसमें? सीबीआई के गठन के बारे में आप पढ़ लीजिए कि किस काम के लिए सीबीआई का गठन हुआ है? उसको भी लाकर यहां जमा कर रहे हैं, जुडिशियरि के भी ऊपर कर रहे हैं। जो गठन करने जा रहे हैं, आपके बिल में भी है, इसको देख लीजिए। आप सत्ता पक्ष में हैं, बीजेपी विपक्ष में हैं, इन दो पार्टियों से ही आदमी रहेंगे, लीडर ऑफ अपोजीशन और लीडर, लेकिन बाकी जो अदर नेशनल पार्टियां हैं और अदर रीजनल पार्टियां हैं इनका कोई वजूद, इनकी कोई भागीदारी इसमें नहीं है। जब बिल के खंड-खंड पर विचार होगा, तो हम लोग इस पर डिटेल् में बात करेंगे।

अध्यक्ष: निश्चित रूप से करेंगे और दो-तीन चीजें, जैसा आपने कहा है, वह इसमें नहीं आई हैं।(व्यवधान)

श्री लालू प्रसाद: आपके लिए उतना हल्ला नहीं हुआ, जितना अब हो रहा है। यही तो बीमारी है।

अध्यक्ष: दरवाजे बंद करवा देते हैं।

श्री हरिन पाठक: सर, इनको जाने दें, इसके बाद उनको बुला लेते हैं।

अध्यक्ष: हां, इसके बाद ही बुलाते हैं।

श्री हरिन पाठक: मैं आपकी बातों से सहमत हूँ, मगर ये एग्जीक्यूटिव्स हैं।

श्री रामविलास पासवान: हम यह नहीं कह रहे हैं कि वे लोग हमारे हैं, गेट पर हल्ला कर रहे हैं। पहले हम इन लोगों को सुन लें, उनका पांच बजे का समय है। उनको पांच बजे सुनेंगे इत्मीनान से। ..(व्यवधान)..

CHAIRMAN: If anybody wants to say anything, we have 2-3 minutes. Manishji has something to say. ये लोग आ गए। अच्छा, आने दीजिए। तो फिर हम यह चैप्टर यहां समाप्त करते हैं।

श्री हरेन पाठक: इनको क्लॉज बाइ क्लॉज के लिए बुलाएंगे।

अध्यक्ष: हां, ठीक है। तो We thank you for giving us an overview. It's a starting point and you will be requested to come again when we do more intensive discussions. But, thank you for coming at short notice and for circulating the material. Thank you.

(The witnesses then withdrew)

Witnesses

1. Shri Anna Hazare
2. Shri Arvind Kejriwal
3. Ms. Kiran Bedi
4. Shanti Bhushan
5. Shri Prashant Bhushan
6. Shri Manish Sisodia and
7. Miss Sharmishta Sharma

CHAIRMAN: Before we start the proceedings, photo journalists who are standing outside the Committees' room, are in large number, and they want to take a group photograph. Shall we allow them?

SOME HON. MEMBERS: Okay.

CHAIRMAN (CONTD.): If they are not coming, let us start now. दरवाजे बंद करा दीजिए।

ADV. P.T. THOMAS (IDUKKI): Whenever we are in the meeting, we are not allowing.

CHAIRMAN: Now, they cannot come. So, we can't waste time. उनको मना कर दीजिए, let us leave it. There is some jurisdictional objection between Lok Sabha and Rajya Sabha signatures. So, I think they are not able to allow them. Why don't you close the doors? They have to have some permission from the Lok Sabha Secretariat or something like that. Some have, but some others don't have. तो दरवाजे बंद करा दीजिए। अब हम शुरू कर रहे हैं, they should not come in now. उनसे कह दीजिए कि मीटिंग के समाप्त होने पर फोटो लेना चाहें तो ले सकते हैं, अभी नहीं। अब हम शुरू करते हैं।

मित्रो ! अभी हमारी एक चर्चा खत्म हुई है। अब मैं श्री अन्ना हजारे, सुश्री किरण बेदी, श्री शान्ति भूषण, श्री अरविन्द केजरीवाल, श्री प्रशान्त भूषण जी और आपके साथ जो दो व्यक्ति और आए हैं, उनका स्वागत करना चाहता हूं। हमें हर्ष है कि आप लोग अल्प समय के नोटिस में यहां आ पाए। आप जानते हैं कि यह समिति लोकपाल बिल को देख रही है और हम चाहेंगे कि आप अपना मत यहां रखें। हमारा इरादा था कि हम सिर्फ हजारे साहब को सुनें, क्योंकि हमारे पास एक ही घंटे का समय है, लेकिन हमें बताया गया कि आप लोग भी साथ आएंगे, तो एक घंटे में आप जैसे बोलना चाहें, बोल सकते हैं। जैसा कि आप सबको पता है कि यहां की प्रोसीडिंग्स गोपनीय होती है और यह समिति आपसे मत लेती है, तो मैं आपसे अनुरोध करूंगा कि इसको हर प्रकार से गोपनीय रखा जाए। इस वक्त हमारा रोल ज्यादातर सुनने का है और अंत में पंद्रह-बीस मिनट में अगर कुछ प्रश्न होंगे, तो प्रश्नोत्तर भी किया जाएगा। तो अब जैसे आप प्रोसीड करना चाहें, आप शुरू करें।

SHRI SHANTI BHUSHAN: Mr. Chairman, as you know, the controversy about the Lokpal Bill has arisen on account of the huge corruption which has been going on in the country by which all manners of people are very disturbed. It has created a lot of anger in the country because from the small man to the big man, whichever profession he carries on, whichever

age-group he belongs to, whether he is a student or whether he is a young man, or otherwise, a student or a non-student, everyone has been suffering from massive corruption. It was in this context that a demand arose in the country that a very strong Lokpal Bill must be brought to fight this terror of corruption. As, Mr. Chairman, you are also aware, during these years, even the United Nations was very disturbed about the level of corruption going on in many countries; that was why the United Nations came forward with an Anti-corruption Convention, A Corruption against Corruption, and this was signed by its large number of countries, including India, in 2003. But in order to become effective, it had to be ratified by different countries, and then only it became binding on a particular country. I am sorry to say that India, unfortunately, was one of the last countries; one of the last countries to ratify this Convention. Even Pakistan had ratified this Convention many years back.

SHRI SHANTI BHUSHAN (CONTD.): But it is only this year that India thought it fit to ratify this Convention. But, anyhow, the Convention has been ratified. As you know, Mr. Chairman, once a UN Convention has been ratified by this country, this country is duty-bound under International Conventions to bring a law strictly in accordance with the UN Convention. Now what was the essential feature of the UN Convention? The UN Convention wanted an independent ombudsman which is called “Lokpal” in this country to fight corruption at all levels, a single body to fight corruption at all levels. That is why the Jan Lokpal Bill under the moral leadership of Anna Hazare had been drafted. After long consultations it was amended in various respects and the country regards that Jan Lokpal Bill as an effective instrument to fight corruption. But, unfortunately, the Government decided to bring this Bill which has been referred to this Standing Committee of the two Houses. I am very sorry to say that we have come here to register our protest against this Bill. This Bill, instead of fighting corruption which is the need of the whole country, which is the crying voice of the country solidly, will promote corruption. Unfortunately, this Bill has to be rechristened by us as a Bill to promote corruption. We have carefully seen its provisions. This Bill, unfortunately, victimises those who make complaints of corruption and gives all kinds of facilities to those who are accused of corruption. It is our considered view that this Bill, if it is to be considered by the Parliament, would promote corruption and give protection to corrupt people rather than becoming an instrument of fighting corruption; and, therefore, we have come to register our demand that this Standing Committee should recommend to the Government to withdraw the Bill immediately and bring a proper Bill which will be a proper instrument to fight corruption. It is to register this demand that we have come to this Committee and we hope that under the able leadership of you, Mr. Chairman, this august Committee will see to it that this promotion of corruption Bill is immediately withdrawn by the Government and will make a strong recommendation to withdraw this Bill and bring a Bill which will be able to put a check on corruption. Thank you, Mr. Chairman.

CHAIRMAN: That is a general view *per se*. But would any of the other members like to say any specific four or five major features which they want, assuming that the Bill in some form is to be passed in this manner? What are the amendments or major changes which you would like to make, Mr. Prashant Bhushan?

SHRI PRASHANT BHUSHAN: Mr. Chairman, I understand that this is a preliminary discussion. I will just give the broad overview of our understanding of this Bill and why we feel that this Bill, instead of putting any brake on corruption, is going to promote corruption.

The first objectionable feature of this Bill is that the selection of the Lokpal is by a Selection Committee in which five out of the nine Members will be either the Government or selected by the Government. So, effectively the Government will have a decisive voice in the

selection of the Members of the Lokpal. In our Jan Lokpal Bill we had an eight-Member Selection Committee. Out of that, only the Prime Minister was from the Government and the Leader of the Opposition was also from the Parliament or from among the politicians. But six out of the eight Members in the Selection Committee were independent Constitutional authorities. In this Government Bill, five out of the nine Members in the Selection Committee are either the Government or nominated by the Government. The jurists are nominated by the Government. One eminent public Member is nominated by the Government. Then there are the Prime Minister, one more Minister and the Speaker who normally belongs to the ruling party.

SHRI PRASHANT BHUSHAN (CONTD): Now the removal of the Lokayukta is also left largely to the Government because essentially it is the Government who can make a complaint to the Supreme Court for removal of a member of the Lokayukta. In our Jan Lokpal Bill, any member of the public can make that complaint. Moreover, as soon as a complaint is made, in this Government's Bill, the Government gets the power to suspend the member of the Lokpal. While the complaint is pending with the Supreme Court, the Government has the power to suspend the member. That means the members of the Lokpal will lack independence and will not be able to proceed independently because they are aware that they can be suspended; the Government can make a complaint against them and suspend them any time.

Then comes the issue of jurisdiction. In the Jan Lokpal Bill, the Lokpal has jurisdiction over all Central public servants; however, in the Government's Bill, the jurisdiction firstly has been limited to only Class-I Government servants and above. That restricts the jurisdiction to those Government servants. Firstly, the common man's experience with corruption is not normally with such senior Government servants; it is usually with lower Government servants. So far as the common man's problems of corruption are concerned, he cannot go to the Lokpal. Secondly, when you register an FIR for corruption, at that stage, you do not know who are the persons involved in that act of corruption. Even for example, the NAREGA scam. You do not know whether senior people are involved or junior people are involved or all of them are involved. If you bifurcate the jurisdiction of the same offence of corruption under the Prevention of Corruption Act on the basis of senior and junior public servants, then there will always be confusion about where you register the FIR; whether you register it with the Lokpal or you register it with the normal police agencies. Even if you register it, say, with the normal police agency, and during investigation if it is found that people right up to the top level are involved, will the investigation be transferred at that stage? If it is transferred, it will mean duplication. It may also mean that the initial investigation has already been ruined in the sense that if it is done by an agency directly under the Government, by the police under the Government, that investigation could have been ruined by the time it reached the Lokpal. Then, of course, I would not go into the issue of exclusion of Prime Minister, Judiciary and Members of Parliament so far as their corruption within Parliament is concerned. I only wish to say, to my mind, this makes the Bill unconstitutional because in Mrs. Gandhi's case in 1975, the 39th Constitution Amendment was struck down, unanimously, by a Constitution Bench of the Supreme Court on the ground that the 39th Amendment had sought to exclude the Prime Minister's election from judicial review. It said, "Prime Minister's election cannot be challenged". The same argument was made that if the Prime Minister's election was challenged, it would create instability in the country. The same argument has been made for excluding the Prime Minister from the jurisdiction of the Lokpal. To my mind, for the same reasons, this will render this provision unconstitutional.

Then, in our Lokpal Bill, we have given the power to protect whistleblowers to the Lokpal, which is logical. If a complaint is made to the Lokpal by a whistleblower, and if thereafter, he is threatened either with administrative harassment or with physical harm, then obviously the Lokpal should have the power to protect that whistleblower or to give orders for his protection.

SHRI PRASHANT BHUSHAN (contd.): But no such provision has been made in the Government's Bill. Then, we had provided for grievance redressal. No such provision has been made with the result that so far as corruption faced by the common man is concerned, that corruption cannot be addressed by the Lok Pal at all. But the two most sinister provisions in this Bill, and why we call this a Protection of Corruption Bill rather than a Bill to address the problem of corruptions, are these. One is that while it excludes all lower public servants or Government servants from the jurisdiction of Lok Pal, it includes all NGOs, even the NGOs which are not funded by the Government. The NGOs, which are funded by the public, which receive any donations from the public, have been included within the ambit of the Lok Pal. So, an organization like the Campaign Against Corruption, People's Union for Civil Liberties, People's Union for Democratic Rights, all these organizations, which are fighting against corruption in the Government, fighting against violation of human rights, etc., have been brought within the investigative ambit of the Lok Pal. This would mean that a Government-appointed body can be used to harass those NGOs which are fighting against Government on various fronts like corruption, human rights violations, etc. Even more sinister provision has been brought in, which says that as soon as a citizen makes a complaint against a corrupt public servant, that corrupt public servant can, immediately, make a counter-complaint against that complainant saying that that complaint is false or frivolous or vexatious. And, while the case against a public servant or a complaint against a public servant will have to go through a series of hurdles at every stage of which that public servant has to be heard by the members of the Lok Pal, the complaint or the counter-complaint against the complainant will, immediately, go to the Special Court for trial which means immediately after a complainant makes a complaint of corruption against a corrupt public servant, he is, immediately, subjected to harassment because a counter-complaint will, immediately, come against him that he has made a false complaint. He will start running to the Special Court defending himself against the counter-complaint. And, so far as this corrupt public servant is concerned, he has been given every protection under this Bill. The first protection is that a preliminary inquiry has been made compulsory. Even before registration of an FIR, you have to undergo a preliminary inquiry. This is a procedure unheard of in the Code of Criminal Procedure. It is a procedure which has been devised by the CBI, which is completely outside the Cr. P.C. It does not exist in the normal law; but it has been placed there. Apart from that, it says, "Before you register an FIR against a public servant, meaning before you can even begin investigation against that public servant, you have to hear him. It means that he is being forewarned. Therefore, there will be no possibility of a trap, no possibility of tapping his phones, etc. He will destroy all evidences even before the investigation can begin against him. Then, it further says, "Even after the investigation has been completed, but before the charge sheet is filed, again, that corrupt public servant has to be heard by a Bench of the Lok Pal. So, astounding provisions have been made to protect corrupt public servant, while every provision has been made to harass the complainant and subject him to every kind of harassment, subject the NGOs to every kind of harassment. Then, in our Jan Lok Pal Bill, we had made two very salutary provisions to prevent corruption. One is that whenever the Government grants a contract or any form of largesse to any person, it must be done transparently after advertisement and auction, unless the public authority records, in writing, the reasons why this cannot be done.

SHRI PRASHANT BHUSHAN (contd.): And, in that case, the Lokpal Bill would have the authority to examine whether those reasons were justified or not. That has not been put here and that would have had a salutary effect on checking corruption. Today, people are talking about knowing the discretionary powers of the Government, etc. That was a provision designed for that. That had been suggested and a letter had been written by Justice Jeevan Reddy to the Prime Minister also. Then, there was one other important provision. And, mind you, all the provisions that we have placed in the Jana Lokpal Bill are completely in line with what the UN Convention Against Corruption requires. The UN Convention Against Corruption mentions this about discretionary powers in giving largesse, etc.

Then, there is a provision about avoiding conflicts of interest where we had said that any public servant who has been dealing in his official capacity with any company or any organization, would be disentitled from taking up a job or a consultancy, etc. with that organization. This is something which has created enormous conflicts of interest. We have seen it in so many cases where persons who have been dealing with the World Bank, IMF, etc., immediately after retirement, take up jobs with the World Bank, IMF, etc. with the result that while they are in office, they follow whatever policies are suggested by the World Bank or IMF, irrespective of whether those policies are in public interest or not. So, these are lacking in this Government Bill.

Therefore, all in all, the Lokpal in this Government's Bill, which would be appointed by the Government and which is basically a *sarkari* Lokpal, is not only very weak, but it also places the Lokpal at the sufferance of the Government, in the sense that the Government can suspend that Lokpal at will by just making a complaint to the Supreme Court. It restricts the jurisdiction of this Lokpal very severely, causing a great deal of confusion and making this Lokpal useless so far as the common man is concerned and then, makes provisions to harass the complainant, harass NGOs who are fighting against the Government, etc. Therefore, we feel that this Bill, if it becomes law, is going to end up promoting corruption, because even those persons who today make complaint to the CBI or to the normal police against corruption will hesitate from making complaint to the Lokpal because of this provision. This Government Bill provides for a minimum of two years' imprisonment for a false complaint and only six months' imprisonment if you are found guilty of corruption. It is really astounding that if you are found guilty of making a false complaint, you have two years' minimum imprisonment but if you are found guilty of corruption, then it is only six months. Therefore, this Bill, to our mind, will only promote corruption and it will certainly not have any effect on putting a break on corruption.

CHAIRMAN: Thank you, Mr. Prashant Bhushan. This is not the time to discuss any details but, incidentally, I just wanted to flag one thing. This Committee has finalized its report on a very comprehensive Bill, which is the Whistleblowers' Bill. The idea is to have a separate bill, which is why you don't find whistle-blowing provisions in this Bill. That has been adopted. It was to be placed in the Rajya Sabha, but because of the disruptions in the House, it could not be done. Anyway, you will have a structure which would, in fact, be wider than the structure you could have in the Lokpal Bill, because this is a general whistleblowers' framework that has been created.

Secondly, I just wanted to draw your attention to something which may be of use after what you said about bifurcation, etc.

CHAIRMAN (CONTD.): There is clause 17(3) which says, "The Lokpal may inquire into any act or conduct of any person other than those referred to under sub-section (1)—(1) is the list of all people who can be inquired into, the jurisdictional charter--if such person is associated with the allegation of corruption under POCA." In other words, the list is of MPs,

Ministers, etc. Beyond that, for the people who are not in the list, that is, not Class-A employees but who are associated with the main charge; of course, not in the way you are saying. That aspect is wider than might be there.

श्री अरविंद केजरीवाल : एक तो मैं केवल यह कहना चाहता हूँ कि परसों जब हमारे पास फोन आया था, it was a very short notice. I hope, this would be just treated as a preliminary discussion; we did not have any time to give any written submissions.

CHAIRMAN: Yes, yes.

SHRI ARVIND KEJRIWAL: Shantiji and Prashantji have already said, this is a Bill which is completely wrong. So, we would urge that this Bill is sent back rather than wasting the precious time of Parliament and Parliamentary Committee. This Bill is very limited in its scope. We downloaded something called the Rules of Procedure and Conduct of Business in Rajya Sabha from your website. Rule 96(1) says, "An amendment shall be within the scope of the Bill and relevant to the subject-matter of the clause to which it relates." I would just go through the scope of the Bill which is the first line. It says, "A Bill to provide for the establishment for the institution of Lokpal." It does not provide for the institution of Lokayukta. This is our one of the major concerns. A common man in this country has to deal with ration shop, उसको राशन नहीं मिलता है, नरेगा में उसकी मजदूरी की चोरी हो जाती है, उसके पंचायतों के कामों की चोरी हो जाती है। लोकायुक्त इस बिल के दायरे में नहीं लाए जा रहे। सारे देश में अभी 18 राज्य ऐसे हैं, जहाँ पर लोकायुक्त हैं और सारे राज्य अलग-अलग model follow कर रहे हैं, यह कहीं पर अच्छा है, कहीं पर बुरा है, लेकिन कहीं भी ideal किस्म का लोकायुक्त नहीं है। हम जिस किस्म के ideal लोकपाल की बात कर रहे हैं, जैसे Right to Information Act के तहत हम लोगों ने Central Information Commission और State Information Commission एक ही कानून के दायरे में बना दिया था, जिस तरह से 1988 में राजीव गाँधी जी ने Prevention of Corruption Act सारे देश के लिए एक साथ बना दिया था, न कि उसे राज्य और केन्द्र के लिए अलग-अलग छोड़ा था, उसी तरह से हमारी आपसे गुजारिश है कि इसमें भी लोकायुक्त भी इसी के दायरे में आना चाहिए था। हमने कई ऑनरेबल एमपीज़ से बाहर बात की, तो उन्होंने बताया कि इस बिल का स्कोप, चूँकि यह केवल लोकपाल की बात करता है, इसमें लोकायुक्त का जिक्र नहीं है, तो यह इसके दायरे के बाहर है और इसीलिए यह राज्य सभा और उसकी स्टैंडिंग कमेटी के भी jurisdiction के बाहर होगा to introduce this. इसलिए अगर आप हम लोगों की बात से सहमत हैं कि लोकायुक्त भी इसके दायरे में आएँ, तो शायद आपको यह बिल वापस भेज कर सरकार को कहना पड़ेगा कि सरकार एक fresh Bill introduce करे, जिसमें लोकायुक्त भी इसके दायरे में लाए जाएँ।

मैं एक गलतफहमी दूर कर दूँ कि कई जगह यह बात कही जा रही है कि यह State subject है, इसमें लॉ एंड ऑर्डर नहीं लाया जा सकता। मेरे ख्याल से शांति जी बताएँगे कि यह Concurrent List में आता है।

SHRI SHANTI BHUSHAN: From the legislation it is clear that the laws substantive as well as procedural things are under the Concurrent List. That is why POCA is applicable not only to the Central Government employees but also applicable to State Government employees,

etc., was passed by the Parliament. The Cr.P.C. which provides for investigation of all crimes including corruption was also passed by Parliament because these are clearly subjects in the Concurrent List. I am sure, the Chairman would see that any amendment—this is really amending the Cr.P.C. Instead of the police investigating these offences, not all offences; but for offences under the POCA, a different authority is being provided for investigation of those offences, which will be called Lokpal. Therefore, clearly, I do not think any lawyer who has read the Constitution will have any doubt that Parliament is fully competent. It is being said that it will have to consult the States. What was the reason for the Constitution makers to create the Rajya Sabha, which is the Council of States.....

SHRI SHANTI BHUSHAN (CONTD.): ...where all States Assemblies send their representatives to the other House of the Parliament? The reason was that in respect of the Concurrent Subjects where overriding powers of legislation was being given by the Constitution to the two Houses of Parliament together, the voice of the States should not be totally lost, the voice of the States should be available to the two Houses of Parliament through the Rajya Sabha. The mechanism of Rajya Sabha was for this very reason. Every State is represented in the Rajya Sabha. So, whatever views the Rajya Sabha might have on a matter in respect of the Concurrent List to be enacted by the Parliament, it is open to the States to communicate those views through its selected representatives in the Rajya Sabha. That is the rationale. Therefore, just as the Prevention of Corruption Act was enacted by the Parliament, just as the Code of Criminal Procedure was enacted by the Parliament, this Lok Pal and Lokayukta Act, the entire Act must have the same uniform pattern everywhere. It should not be left to the States, namely, to deal with corruption in such manner that they like. Of course, our complaint is that even this Bill is only going to promote corruption rather than putting curb, and discourage any attempt to put a curb on the corruption. That is why I am telling you with all respect that the people of the country are very angry about this Bill. Please take notice of this anger well in time.

SHRI ARVIND KEJRIWAL: Sir, just to continue my submission, I would like to say, firstly, the Lokayukta is outside the scope of this Bill. We also feel कि शायद लोकायुक्त इस कमेटी और पार्लियामेंट के इस बिल के अन्दर आ सकते हैं या नहीं आ सकते, उसके बारे में हम sure नहीं हैं।

सर, पब्लिक ग्रिवेंसिज एक ऐसा मुद्दा है, जो आम आदमी से जुड़ा हुआ है, जैसे एक आम आदमी का राशन कार्ड नहीं बनता, उसकी विधवा पेंशन नहीं आती, उसकी वृद्धावस्था पेंशन नहीं आती, इनका जिक्र हमने अपने जन लोकपाल बिल में किया है कि इसके लिए एक सिटिजंस चार्ट बनाया जाना चाहिए। अगर उस चार्टर का वायोलेशन हो, तो उस अफसर की तनख्वाह कटे।

सर, जो ज्वाइंट कमेटी बनी थी, उसमें से जो सरकारी बिल निकल कर आया था, उसमें तो सिटिजंस चार्टर का जिक्र था, लेकिन उसमें पैनल्टी का जिक्र नहीं था। परन्तु अब जो बिल पार्लियामेंट में पेश किया गया है, उसमें से तो सिटिजंस चार्टर को ही हटा दिया गया है। हमें लगता है कि एक वह आम आदमी की समस्याओं से संबंधित था और इस बिल में आना चाहिए था। लेकिन शायद वह भी इसके स्कोप के दायरे के बाहर है। कमेटी टेक्निकली उसे इंट्रोड्यूस कर सकती है या नहीं कर सकती, इस पर भी हमें शंका है।

मैं एक-दो इग्जाम्पल्स देकर इसे थोड़ा का इलैबोरेट करना चाहूंगा कि अगर लोकायुक्त नहीं आता है, तो उससे इस बिल का स्कोप कितना नैरो रह जाता है। पहली बात यह है कि इसमें एक आम आदमी से जुड़ी करप्शन शामिल ही नहीं है, जैसे पंचायतों की करप्शन इसके दायरे से बाहर है, राशन की करप्शन इसके दायरे से बाहर है, नरेगा की करप्शन इसके दायरे से बाहर है, अस्पतालों की करप्शन, स्कूल की करप्शन, सड़कों की करप्शन, बिजली की करप्शन, पानी की करप्शन, इन सबकी करप्शन इसके दायरे से बाहर है।

दूसरी तरफ आप जितने बड़े-बड़े घोटाले देखते हैं, मोस्टली वे स्टेट गवर्नमेंट्स में ही होते हैं, उनमें से आदर्श घोटाला इसके दायरे से बाहर है, कॉमनवेल्थ इसके दायरे से बाहर है, झारखंड मुक्ति मोर्चा इसके दायरे से बाहर, फोंडर स्कैम इसके दायरे से बाहर है, साथ ही और भी बहुत से ऐसे स्कैम्स जो दिखाई देते हैं, वे सब इसके दायरे से बाहर आते हैं। इसके दायरे के अन्दर बहुत ही लिमिटेड स्कोप रह जाता है।

तीसरा, अभी प्रशांत जी ने रजिस्टर्ड या अनरजिस्टर्ड एनजीओज़ की बात कही, मान लीजिए एक गांव के अन्दर पांच लड़के Right to Information की एप्लीकेशन डाल कर सरपंच का कुछ भ्रष्टाचार निकालते हैं, तो वह भ्रष्टाचार इस कानून के दायरे से बाहर है, लेकिन वे पांच लड़के इस कानून के दायरे के अन्दर आते हैं। उन पांच लड़कों के खिलाफ लोकपाल एक्शन ले सकता है। यह तो बड़ी विसंगति है। इसलिए my preliminary objection is कि यह कानून करप्शन को रोकने के लिए है कि करप्शन के खिलाफ आवाज़ उठाने वालों को रोकने के लिए है?

श्रीमती किरण बेदी: मैं दो बातें कहना चाहती हूं। चूंकि अभी लोकायुक्त की बात हो रही थी, मैं यह बताना चाहूंगी कि इस देश में लोकायुक्तों में कितना डिफरेंस है। कोई लोकायुक्त बहुत पुराना है और कोई बहुत नया है। हर लोकायुक्त के अपने-अपने प्रोसीजर्स और अपने-अपने सिस्टम्स बने हुए हैं। राजस्थान का लोकायुक्त 1973 में बना, त्रिपुरा का लोकायुक्त 2008 में बना। हर स्टेट अपनी-अपनी तरह से घुमा कर, अपना-अपना लोकायुक्त लाई है।

सुश्री किरण बेदी (क्रमागत): उनमें कई लोकायुक्त young हैं और कई पुराने हैं, लेकिन हैरानी की बात है कि कई स्टेट्स में अभी तक लोकायुक्त है ही नहीं। अभी तक मेरे पास जो इन्फॉर्मेशन है, it is subject to correction, गोआ, छत्तीसगढ़, जम्मू-कश्मीर, उड़ीसा, मिजोरम, नागालैंड और सिक्किम में ये नहीं हैं, जहाँ तक मेरी समझ है। अगर वहाँ ये आ चुके हैं, क्षमा कीजिएगा, लेकिन कई स्टेट्स में लोकायुक्त अभी है ही नहीं। अब क्या उन स्टेट्स के लोग agitation करेंगे तब वहाँ लोकायुक्त आएगा और उस पर भी वह सही लोकायुक्त आए, उसके लिए भी क्या वे agitation करेंगे? वह कैसे आएगा?

Hon'ble MPs, दूसरी बात और बड़ी गम्भीर है। मैं यह कहना चाह रही हूँ कि नौ लोकायुक्तों में कहीं भी Chief Minister covered है ही नहीं। जैसे, महाराष्ट्र, उत्तर प्रदेश,

राजस्थान, असम, बिहार और गुजरात में Chief Ministers covered नहीं हैं। Again I stand subject to correction, अगर इसमें कोई amendment आ गई हो, लेकिन मुझे जो latest information internet से मिली, वह यह है। एक बात तो इनके appointments में है। जैसे, दिल्ली के लोकायुक्त में political class covered है, लेकिन सरकारी classes covered नहीं हैं। जब यह पूछा गया कि सरकारी classes covered नहीं हैं, तो बोलते हैं कि Anti Corruption Department है, लेकिन जब आप Anti Corruption Department में जाएँ, तो वह इतना छोटा Department है, इतना ill-equipped Department है और इतना controlled Department है कि किसी बड़े सरकारी ऑफिसर को भ्रष्टाचार के मामले में पकड़ने की उसके पास हिम्मत ही नहीं है। तो इस तरह, दिल्ली में वह भी निकल गया।

इसमें दूसरी चीज़ duality की है। लोकपाल क्यों लाए गए? हमें आज लोकपाल लाने की जरूरत क्यों पड़ी? क्योंकि, Central Bureau of Investigation आज़ाद नहीं है। हर party in power ने आकर कहा कि दूसरी पार्टी ने उसको abuse किया है। जो भी पार्टी power में आई-- उसका नाम लेने की मुझे जरूरत नहीं है, Hon'ble Members of the Parliament—जो भी पार्टी power में है, वह पिछली पार्टी को दोष देती है और opposition वाले in current में देते हैं। तो जब Central Bureau of Investigation आज़ाद नहीं थी, तो क्या लोकपाल आज़ाद हो रहा है? इसका मतलब यह हुआ कि दो independent agencies, नहीं तो फिर आप CBI को ही आज़ाद कर देते, उसे आज़ाद कर देते। आप कहते हैं कि वह CVC में है, तो CVC उसके ऊपर कंट्रोल करती है? CBI का बजट Department of Personnel के पास है। जब हम CBI के officers से बात करते हैं, तो जहाँ financial controls और appointment and regulations की बात है, उन्हें उनका डिपार्टमेंट कंट्रोल करता है, जो सरकारी है। इस तरह, CVC के पास अगर कोई controlling power है, तो वह भी अधूरी है। मैंने यह latest information CVC के लोगों से भी collect की है कि वह divided information है और CVC उसके ऊपर काबू नहीं पा सकती। इसलिए, आप या तो दोनों को आज़ाद कर दीजिए या CBI को आज़ाद कीजिए। आप CBI को सिर्फ CVC के कंट्रोल में लाकर लोकपाल में ले आते तो लोकपाल के पास ऐसा होता जैसे, it is like hitting the ground running. You would have 3000 officers; investigating officers 1000, 2000 supporting. You would have had these 3000 people straightaway under Lokpal and started to function from day one. What has been happening today is that you are creating two agencies, one already a dependent agency which is being complained against and which is being Supreme Court driven today, which is keeping civil society driven today, which is by media. Right or wrong, I am not being judgmental. But the fact is, this is the kind of pressure which has worked. Otherwise, we could have handled investigations like 2G from 2008 or 2009. So, these things have come now. Hon. Members of Parliament, I would plead that आप control में duality क्यों बना रहे हैं? आप एक को काबू में रखते हुए एक दूसरी एजेंसी बना रहे हैं। अभी जैसे प्रशांत भूषण जी ने कहा कि वह भी गवर्नमेंट के कंट्रोल में है, उसकी majority appoint भी है और उसकी removal भी है। यह तो duality की बात हुई।

दूसरी चीज मुझे बड़ी खतरनाक लग रही है। वह है- Section 18. Section 18 कहता है कि जो भी मैटर Central Bureau of Investigation के अधीन है, वह लोकपाल के पास नहीं आएगा। मुझे यह बात समझ नहीं आई। लोगों को समझाना पड़ता है। यह clause कहाँ से आया? How can you bifurcate what is with CBI? Something new comes up before Lokpal and Lokpal says, 'Sorry, this is past. This is under trial. This is under inquiry. Therefore, it cannot come under Lokpal'. We don't understand the reason. We need to understand why are you barring what is available under investigation or under inquiry or under trial with the CBI not to be included under the Lokpal or to be even considered under the Lokpal. So, this is my second matter for consideration.

MS. KIRAN BEDI: It is retrospectively. In a nutshell, it says that matter pending before any court or committee or authority for enquiry before Lok Pal...जो लोकपाल को सीबीआई में चल रहे किसी भी मामले को देखने से bar कर रहा है। This is the law. This is what your new Clause says. Well, you may have a purpose, Sir.

अध्यक्ष: इसका purpose यह है कि चूंकि यह नया एक्ट है इसलिए अगर कोई केस कोर्ट में पेंडिंग है या सीबीआई में पेंडिंग है, तो इसको लोकपाल को देखने से bar किया गया है। किसी भी कानून को retrospectively apply न करें, नहीं तो वह असंवैधानिक हो जाता है।

MS. KIRAN BEDI: It is prospective, Mr. Chairman.

श्री विजय बहादुर सिंह: इसका यह कहना है कि मान लीजिए इस लोकपाल बिल के पहले कहीं कोई corruption का केस पेंडिंग है।

श्री शांति भूषण: अगर कोई investigation सीबीआई के पास भी पेंडिंग है, तो भी वह लोकपाल में नहीं आएगा। Therefore, merely because the investigation is pending before some other authority the Lok Pal's jurisdiction will be excluded!

CHAIRMAN: I think, it is a matter of proceeding.

SHRI SHANTI BHUSHAN: It says that any court or committee or before any other authority...

CHAIRMAN: Anyway, that is your point of view. We have taken note of it.

SHRI SHANTI BHUSHAN: It says, 'any matter' or 'proceeding.' So, investigation is certainly a matter which is pending before an investigating officer before this Act. And, therefore, he will say, 'I am enquiring into it. So, you have no jurisdiction.'

MS. KIRAN BEDI: That means, you need eminent lawyers to interpret these words. It would further mean that we will have stay orders right from day one!

अध्यक्ष: इसमें एक और चीज है, I don't want to get into it this time. जो आप पढ़ रही हैं, इसी प्रावधान में एक explanation है, वह भी बड़ा महत्वपूर्ण है। "For the removal of doubts, it is hereby declared that continuance of such matter or proceeding before any court or committee or either House of Parliament or before any other authority, except for such matters as are protected under clause (2) of article 105 of the Constitution or are pending before a court, shall not affect the power of the Lokpal to enquire into such matter under this Act." In other words, Lokpal can enquire, except the Lokpal cannot enquire into a prior

pending matter before a court or it cannot enquire into article 105(2) which deals with Privileges of Members of Parliament. जो एक अलग मुद्दा है। Actually यह explanation आपके मुद्दे को समर्थन दे रहा है, कवर कर रहा है और उस बात को बड़े स्पष्ट रूप से कह रहा है। But, anyway, we will see it afterwards.

MS. KIRAN BEDI: I think, we need to make it simpler, because this could go into huge amount of litigation. But, as layman's understanding or common understanding, first of all, why are we creating a duality. It is not an independent agency. We are creating two agencies. We are creating two police stations in one village. That is what Shri Bhushan has said.

Sir, my last point is, इस देश में घरेलू हिंसा एक नेशनल issue बन चुका था। Crime against women was a major issue. Domestic violence was a big issue. And, it led to the UN's Conventions. There were demonstrations by women of which even I used to be a part of movement and, finally, we got the Domestic Violence Act, 2005. It was according to the definitions of the UN Convention. And, on the basis of which, you have created a national Act. Here is a crime which could have been left to the States. But, the Government of India came out with the Domestic Violence Act. Now, it led to whole amount of infrastructure. You created protection officers, you created family courts, you have created women police officers, training male police officers in domestic violence, you created mediations, you created the whole infrastructure which did not exist. That is what I am trying to say. Similarly, Sir, this is another major crime which is left unattended to. Corruption is as serious as murder or theft. When we have murder or theft, we know where to go -- police station. But, when we have a problem of corruption where somebody is asking for bribe, it is like pick-pocketing. Where do I go? It is because the police themselves are involved in corruption. So, there is nobody. Today, for a common man, just as you created infrastructure to address domestic violence which was a national issue, corruption is equally more important. Sir, India Corruption Report of 2010 prepared by the Centre for Media Studies,

MS. KIRAN BEDI (CONTD.):... It says that 95 per cent of the rural people had to pay a bribe to get water connection, to get education, to get schooling and to get a hospital bed. Many of them could not pay and they lost out. It is a part of record. It can be downloaded. What I am urging is that this is as serious a crime as any other crime. This is a white collar crime. Whether it is petty or whether it is big, your *sarkari lokpal* is totally ignoring the common man's crime. Pick-pocketing is punishable under section 379 of the IPC. But for this white collar crime there is no Section 379. You go and you will have to look around where an anti-corruption wing is. इसको ढूँढना पड़ता है, यह कहीं नजर नहीं आता है। 8-6 लोग होते हैं, वे कहते हैं कि गाड़ी ले आओ, फिर ले जाऊंगा। मेरे पास फोन ला दो, मोबाइल ला दो, फिर ले जाऊंगा। So, the point is, here is a national crime that is a pick-pocketing of another kind. And, this country, ever since independence, has not recognized the seriousness of this crime. That is why Anna's Movement is asking now for a common man's answer. And, the common man is looking for a Lokpal at the district level. Unless you have a Lokpal at the district level which means including all the groups of services – A, B, C and D – and also including the State Government services, you will not have '101' for corruption. '100' is for crime. When will the Government of India say that you have '101' for corruption? कोई आपसे bribe मांगता है, तो call '101', and you will have a Lokpal responding to your call. This is why Anna's Movement goes on, speaking for a common man. You may politically decide the Prime Minister and the Judiciary or otherwise, but when we come in, when we are

here, we will be speaking up more for the common man, which Anna, naturally, relates with. Thank you, Sir.

श्री अन्ना हजारे: महोदय, मुझे जो कहना था, उसको हमारे सभी साथियों ने रखा है। मुझे सिर्फ कुछ बातें कहनी हैं कि आज़ादी के 62 साल बीत गए और आज देश की क्या हालत है? इसके कई कारण हैं, लेकिन भ्रष्टाचार इसका एक प्रमुख कारण है। भ्रष्टाचार के कारण हमारे देश का विकास रुक गया है। इतना ही नहीं, हमारे देश के जो गरीब लोग हैं, उनके लिए जीना मुश्किल हो रहा है। वह कहीं पर जाए, पैसे दिए बिना उसका काम नहीं होता है। वह गरीब आदमी कैसे जी सकता है?

दूसरी बात यह है कि आज जो महंगाई बढ़ रही है, उसके लिए भी भ्रष्टाचार ही कारण है। भ्रष्टाचार के कारण ही देश की महंगाई बढ़ती गई। हमारे देश का विकास इसलिए रुका है, क्योंकि सरकारी योजनाओं पर जो पैसे खर्च हो रहे हैं, उनके एक रुपए में से दस पैसे भी गांव में नहीं पहुंच रहे हैं। अगर इस तरह से होगा, तो इस देश का विकास कैसे होगा? मेरा कहना यह है कि गवर्नमेंट एजेंसीज के सभी ऑफिसर्स और कर्मचारी, यानी जड़ से लेकर ऊपर तक लोकपाल के दायरे में आने चाहिए। उन्हें सिर्फ इसके दायरे में आना ही नहीं चाहिए, बल्कि उसमें ऐसा प्रावधान भी होना चाहिए, जिससे लोकपाल उनकी जांच करके उनको सख्त दंड भी दे सके। भ्रष्टाचारियों को जब तक सख्त सज़ा नहीं मिलेगी, तब तक उनको डर नहीं लगेगा। सरकार का जो बिल है, उसमें सख्त सज़ा की कहीं कोई बात ही नहीं है। जब भ्रष्टाचारियों को 5-7-10 साल कारावास की सज़ा होगी, तब जाकर भ्रष्टाचार पर रोक लगेगा। यह बात तो इसमें है नहीं। हमारा कहना यह है कि जड़ से लेकर ऊपर तक सभी अधिकारी एवं कर्मचारी लोकपाल के दायरे में आने चाहिए और साथ ही जांच करने और दंड देने का अधिकार भी लोकपाल को होना चाहिए। इतना ही नहीं, जिसने जितने पैसे का corruption किया, उसे वसूलने का अधिकार भी लोकपाल को होना चाहिए। आज हम देखते हैं कि इतने बड़े-बड़े corruptions होते हैं और लोग दो महीने के लिए जेल जाते हैं और छूट कर आ जाते हैं। उसके बाद कौन पूछता है? वे पांच पीढ़ियों की संपत्ति इकट्ठी करके रख लेते हैं। इसलिए इसमें punishment के साथ-साथ पैसे वसूल करने का प्रावधान भी होना चाहिए।

अभी यह बात बतायी गयी कि लोकपाल के साथ-साथ लोकायुक्त बहुत जरूरी है। Joint Committee में दो महीने तक हमारी बात होती रही।

श्री अन्ना हजारे (क्रमागत) : उस जॉइंट कमेटी में सरकार के लोग थे और हमारे लोग थे। सरकार के लोगों ने कहा कि इस पर बाद में बात करेंगे। ये प्रमुख मुद्दे हैं, इन पर बाद में बात करेंगे। हमारे छोटे-छोटे मुद्दे स्वीकार कर लिए। हम ने उन को 71 पॉइंट्स दिए थे। उन्होंने छोटे-छोटे मुद्दे स्वीकार कर लिए और जो बड़े-बड़े मुद्दे थे, जैसे लोक आयुक्त की बात थी, गवर्नमेंट ऑफिसर्स इस में आने चाहिए। ऐसे 11-12 मुद्दे बाजू में रख दिए कि बाद में बात करेंगे और आखिर में पलट गए कि हम नहीं बात करेंगे। हम इस पर बात नहीं करेंगे।

आप का ड्राफ्ट, हमारा ड्राफ्ट और आप के मुद्दे हम Cabinet के सामने रखेंगे। जब कैबिनेट के सामने रखा तो सिर्फ सरकार ने सिर्फ अपना ड्राफ्ट रखा। हमारा ड्राफ्ट भी नहीं रखा और जो हमारे पॉइंट्स बाहर निकाल दिए थे, उस पर भी विचार नहीं किया। तो क्या होगा इस देश का यह प्रश्न है? देखिए, इस में सरकार ने क्या किया? 28 राज्यों के मुख्य मंत्रियों को पत्र लिखा और उन से पूछा कि लोक आयुक्त वगैरह पर आप की क्या राय है? सरकार ने 28 राज्यों के मुख्य मंत्रियों को लिखा। उस में से करीब 20 कांग्रेसी मुख्य मंत्री कह रहे हैं कि हाई कमांड जो करेगा, वह हमें मान्य है। तो सरकार मुख्य मंत्री की तरफ उंगली दिखा रही है और मुख्य मंत्री कह रहे हैं कि हाई कमांड जो करेगी वह हमें मान्य है। तो यह बात बराबर नहीं है। अगर मुख्य मंत्री कह रहा है तो आप को करने के लिए क्या हर्ज है? जब मुख्य मंत्री कह रहे हैं कि जो हाई कमांड करेगी तो आप को करने में क्या हर्ज है? चूंकि आप के मुताबिक मेरा समय खत्म हो रहा है, मेरे कहने का मतलब एक ही है कि जब तक corruption खत्म नहीं होगा तब तक यह देश आगे नहीं बढ़ेगा। इसलिए हम सब को इस देश के बारे में सोचना है।

अध्यक्ष : बहुत-बहुत धन्यवाद हजारे साहब। We are short of time. We have 5-10 minutes only. If any Member of the Committee wants to put any questions, he may do so.

डा० किरोड़ी लाल मीणा : सर, मैं सिविल सोसायटी से यह पूछना चाहता हूं कि मेंबर्स का nomination आप की राय में कौन करेगा? दूसरा अगर किसी लोकपाल का रिश्तेदार या परिचित corrupt हो गया, क्योंकि यह तो मानव स्वभाव है, वह उस को कैसे सजा देगा? और अगर लोकपाल dictator हो गया तो क्या होगा ?

श्री प्रशांत भूषण : देखिए, हम लोगों ने जन लोकपाल बिल में जो Selection committee बनायी है, उस में 8 लोग हैं - प्रधान मंत्री, लोक सभा में Leader of the Opposition, Comptroller and Auditor General, Chief Election Commissioner, सुप्रीम कोर्ट के दो जज और दो चीफ जस्टिस हाई कोर्ट के। इन चारों जजेज का सलैक्शन सुप्रीम कोर्ट के सारे जज मिलकर करेंगे। इन 8 लोगों में से Selection committee में सिर्फ सरकार का एक आदमी है और बाकी सब independent लोग हैं। एक the Leader of the Opposition है और 6 independent लोग हैं। Independent Constitutional Authorities हैं। अब आप पूछ रहे हैं कि वह भ्रष्ट हो गया तब क्या होगा यानी कि अगर लोकपाल भ्रष्ट हो गया, लोकपाल ने अगर कोई बेईमानी की तब क्या होगा? उस का रिश्तेदार अगर बेईमान हो गया तब क्या होगा? अब मान लीजिए वह अपने रिश्तेदार को protect करता है, तो देखिए लोकपाल के नीचे एक एजेंसी होगी, सी०बी०आई० लोकपाल के नीचे आ जाएगी और वह उस की तहकीकात करेगी। अगर लोकपाल उसे protect करने के लिए कुछ भी करता है, हम लोगों ने अपने बिल में प्रावधान रखा है कि लोकपाल जैसे ही investigation खत्म करेगा, उस investigation के सारे दस्तावेज website पर डाल दिए जाएंगे जिससे कि जनता यह देख सके कि investigation कैसे

की गयी, क्या तहकीकात की गयी, नहीं की गयी, पूरा देश उस investigation के बारे में देख सके, जान सके। हम ने दूसरा प्रावधान यह किया है कि अगर लोकपाल अपने रिश्तेदार को बचाने के लिए कुछ करता है तो उस के खिलाफ complaint सुप्रीम कोर्ट में कोई भी नागरिक डाल सकता है और सुप्रीम कोर्ट की एक बेंच उस पर तहकीकात करेगी। फिर अगर उस को यह पता लगता है कि उस ने अपने रिश्तेदार को बचाने के लिए कुछ किया है तो उस लोकपाल को बरखास्त करने का आदेश सुप्रीम कोर्ट दे सकती है।

डा० किरोड़ी लाल मीणा: आप सुप्रीम कोर्ट को तो लोकपाल के दायरे में ला रहे हैं। How would you conduct an enquiry of the Lokpal? लोकपाल के खिलाफ वह कैसे एक्शन लेगा?

श्री प्रशांत भूषण: देखिए, सुप्रीम कोर्ट को हम लोकपाल के सिर्फ इतने दायरे में ला रहे हैं कि भ्रष्टाचार का जो चार्ज हो किसी जज के खिलाफ, तो उसकी तहकीकात लोकपाल कर सके। आज क्या है? आज सीबीआई तहकीकात कर सकती है, पुलिस भी तहकीकात कर सकती है, जो लोकल पुलिस है। सुप्रीम कोर्ट ने सिर्फ वीरास्वामी के केस में एक जजमेंट दे दिया कि चीफ जस्टिस की मंजूरी लेनी पड़ेगी, क्योंकि यह पुलिस और सीबीआई सरकार के तहत है। अब जब हम एक बिल्कुल स्वतंत्र संस्था बना रहे हैं, सरकार से स्वतंत्र, लोकपाल और वह जज की तहकीकात कर ले। हमने जज के प्रोटेक्शन के लिए यह भी प्रावधान डाल दिया कि 7 मैम्बर की बेंच, लोकपाल के 11 मैम्बर में से 7 मैम्बर की बेंच यह देखेगी कि जज के खिलाफ प्राइमफेसी एवीडेंस है या नहीं, तहकीकात होनी चाहिए या नहीं, चार्जशीट फाइल होनी चाहिए या नहीं। यह एक सेफगार्ड हमने मंत्रियों के लिए और जजों के लिए जन-लोकपाल बिल में अलग से कर दिया था। अब किसी को क्या एतराज हो सकता है कि अगर किसी जज की तहकीकात सीबीआई या पुलिस के बजाय लोकपाल कर ले? इसमें किसी को कोई दिक्कत नहीं होनी चाहिए।

श्री रामविलास पासवान: अध्यक्ष जी, हमें सिर्फ दो-तीन बातों के संबंध में इनसे जानकारी लेनी है। एक तो आपने कहा कि जो भी जांच होगी, जो फोर्थ क्लास कर्मचारी से लेकर के क्लास वन तक अधिकारी हैं, उनकी जांच लोकपाल के अंदर आएगी, जैसा अभी आपने नरेगा का भी एग्जाम्पल दिया। तो आपके पास ऐसी कौन सी संस्था है? क्या आप लोकपाल के साथ-साथ नई संस्था को लाना चाहते हैं या वही जो कर्मचारी हैं, वही जो अधिकारी हैं, उन्हीं को विजिलेन्स ऑफीसर के रूप में डेप्युट करेंगे और कहेंगे कि जाकर जांच करो? तो जो जांचकर्ता होगा, वह जांचकर्ता कौन होगा? क्या लोकपाल जांचकर्ता की अपनी टीम स्वयं बनाएगा? इसके लिए क्या जो अभी गवर्नमेंट सर्वेण्ट नहीं हैं, ऐसे लोगों को लेगा या उन्हीं गवर्नमेंट सर्वेण्ट से लेगा? अगर उन्हीं गवर्नमेंट सर्वेण्ट से लेगा, तो फिर यह तो ओल्ड वाइन इन न्यू बोटल जैसा हो गया।

दूसरी बात, आप भी प्रेज करेंगे, दूसरे भी प्रेज करेंगे, जैसा मेट्रो रेल का काम चल रहा है, उसमें किसी को शिकायत नहीं है। उसको भी वही अधिकारी डील कर रहे हैं, वहां की

सारी चीजों को वही डील कर रहे हैं, लेकिन वहां कोई शिकायत नहीं है। कहीं-कहीं, जैसा आपने कहा, दूसरी जगहों पर भ्रष्टाचार नीचे से ऊपर तक व्याप्त है। उसमें कोई दो मत नहीं कि नीचे से ऊपर तक व्याप्त है, लेकिन सबसे बड़ी बात, स्टेज बाइ स्टेज पर हम देखते हैं, मानते हैं कि नीचे का स्टेज तो नीचे का स्टेज है, उसके ऊपर का मानते हैं कि ऊपर का है, जितना आप उसमें बनाते जाएंगे, आदमी ह्युमन नेचर है, पानी हमेशा ऊपर से नीचे की ओर चलता है। सब लोग अन्ना हजारे जी तो हो नहीं सकते हैं, सब लोग किरण बेदी जी तो हो नहीं सकते हैं, ऐसी परिस्थिति में जिसको आप नियुक्त करेंगे, क्या वह उसी गवर्नमेंट सर्वेण्ट्स में से आएगा? आप देख लीजिए, जजों से लेकर कौन से ऐसे इंस्टीट्यूशन्स हैं, जिनके खिलाफ आरोप नहीं लग रहे हैं? यदि सबके खिलाफ आरोप लग रहे हैं, तो इसकी क्या गारंटी है कि जिस संस्था का आप कहते हैं कि इनको बनाओ, उस संस्था में करप्शन नहीं आएगा? इसका मतलब हुआ कि आप करप्शन का एक लेयर और बढ़ाना चाहते हैं। इस संबंध में हम आपसे जरूर स्पष्टीकरण चाहेंगे।

मेरा अगला सवाल यह है, जैसे अभी मान लेते हैं कि जज का है, तो नीचे कोई वादी है, कोई प्रतिवादी है, एक-दूसरे के खिलाफ है, पुलिस है, सीबीआई है, सीबीआई की जांच हो गई है, उसके खिलाफ भी कोर्ट में सुनवाई चल रही है। इस तरह से आज सारी चीज चल रही है, लेकिन मान लो कि लोकपाल ने एक जजमेंट दे दिया, तो इसका मतलब हुआ कि उसके ऊपर कोई नहीं है।

श्री रामविलास पासवान (क्रमागत) : मतलब यह कि लोकपाल ने जब जजमेंट दे दिया, तो वह न तो सुप्रीम कोर्ट में जा सकता है, न कहीं और जा सकता है। अभी आपने बतलाया कि नहीं, हम जजों के jurisdiction को पूरा नहीं लेना चाहते हैं, हम उतना ही लेना चाहते हैं जितना करप्शन का मामला हो। मान लीजिए कि जितना करप्शन का मामला है, उसी को आप लेना चाहते हैं, लेकिन जैसा मैंने कहा कि यह human nature है, उसको लगेगा कि शांति भ्रूषण जी अपने Jurist रहे हैं, विधि मंत्री भी रहे हैं, जब हम लोग 1977 में सरकार में आए थे, तो वे विधि मंत्री थे, मान लीजिए कि जब उसको grievance होगी, तो उन grievances को लेकर वह कहाँ जाएगा, किसके पास जाएगा? एक बात और है कि अभी कोई भी appointment होती है, कोई भी बर्खास्तगी होती है, तो वह प्रेजीडेंट के नाम से होती है। आपने कहा कि क्लास फोर से लेकर क्लास वन तक के कर्मचारी इसके अंतर्गत आएंगे। अब क्लास फोर से लेकर क्लास वन तक 40 लाख कर्मचारी हैं, अब इन 40 लाख कर्मचारियों को लोकपाल कैसे देख सकेगा? Is it possible? Is it practical? क्या यह व्यावहारिक है? अभी प्रेजीडेंट के नाम से appointment होता है, प्रेजीडेंट के नाम से dismissal होती है, उस समय क्या लोकपाल के नाम से appointment होगी, क्या लोकपाल के नाम से dismissal होगी? ये जो तीन-चार सवाल हैं, आप इनका जवाब दे दीजिए। बाकी करप्शन के खिलाफ लड़ाई में हम लोग आपके साथ हैं। हम लोगों ने उदाहरण भी देखा है कि जय प्रकाश नारायण जी और

पूर्व प्रधान मंत्री श्री मोरारजी देसाई जैसे लोग करप्शन के खिलाफ आए, वे करप्शन के खिलाफ आमरण अनशन पर बैठ गए थे। यह तो होना चाहिए, करप्शन को root-out करना चाहिए, इसमें दो मत नहीं हैं, लेकिन यह जो व्यावहारिक कठिनाई है कि जब हम बिल बनाएंगे, तो सरकार को तो कानून के मुताबिक ही चलना पड़ेगा, सरकार कानून के बाहर नहीं जाएगी, इसका भी आपको ध्यान रखना चाहिए।

श्री शांति भूषण : अध्यक्ष जी, बहुत संक्षेप में मैं कहना चाहता हूँ कि लोकपाल के हर आदेश का jurisdiction आर्टिकल 226 के तहत हाई कोर्ट के अधीन होगा और लोकपाल के किसी भी आदेश के खिलाफ writ हाई कोर्ट में जा सकती है। दूसरा, आपने कहा कि 40 लाख कर्मचारी हैं, कर्मचारी चाहे 40 लाख हों या 40 करोड़ हों, भ्रष्टाचार पर रोक तब लगेगी, जब कुछ केसेज़ में जल्दी जांच होकर, जल्दी trial होकर वे लोग जेल में जाएंगे। तब बाकी लोग सोचेंगे कि हम भ्रष्टाचार करें या न करें। आज पहला मौका है कि केन्द्र के एक मंत्री जेल में हैं, एक पूर्व मुख्य मंत्री की बेटी जेल में है, एम.पी. जेल में है, सेंट्रल गवर्नमेंट के कई बड़े अफसर जेल में हैं, कई पूंजीपति जेल में हैं। आज वे लोग सोच रहे हैं कि अगर हमें तिहाड़ ही जाना पड़े, तो इतना रुपया कमाने से क्या फायदा? हम लोगों ने अपने बिल में प्रावधान रखा है कि जल्दी ही इंकवायरी खत्म हो, जल्दी ही trial खत्म हो।

श्री रामविलास पासवान : शांति भूषण जी, मेरा सिर्फ यह कहना है कि आप कौन सी एजेंसी के माध्यम से जांच कराएंगे?

श्री अरविंद केजरीवाल : हम यह चाहते हैं कि केन्द्र सरकार के लिए लोकपाल और राज्य सरकारों के लिए लोकायुक्त आए, यानी हर राज्य के अंदर एक-एक लोकायुक्त आए, जो पंचायत, नरेगा, लोकल बॉडीज़ वगैरह को देखेगा। लोकपाल के अंतर्गत केवल केन्द्र सरकार के कर्मचारी आएंगे। आपकी बात बिल्कुल ठीक है कि 40 लाख कर्मचारी हैं। तो 40 लाख कर्मचारियों के लिए हमें कितनी जरूरत पड़ेगी? एक इंटरनेशनल नॉर्म है कि 200 कर्मचारियों के लिए एक anti-corruption staff होना चाहिए। इसके हिसाब से हमें करीब 20,000 सरकारी कर्मचारियों की जरूरत है। अगर हम सरकारी विभागों को देखें, तो यह कोई बहुत बड़ी फिगर नहीं है, यह मिडिल साइज़ का गवर्नमेंट डिपार्टमेंट बनता है। दूसरी चीज यह कही जा रही है कि 20,000 सरकारी कर्मचारी कहां से आएंगे? अगर हम यह सोचें कि कोई ईमानदार लोग अलग से पैदा होंगे, तो ऐसी बात नहीं है। अगर हम CVC का उदाहरण लें, तो CVC में 232 कर्मचारी हैं और उनमें आधे से ज्यादा भ्रष्टाचार में लिस हैं।

श्री अरविंद केजरीवाल (क्रमागत) : मेट्रो का example लें, तो मेट्रो में 7000 कर्मचारी हैं, लेकिन वह बहुत अच्छा काम कर रहा है। तो दोनों में व्यवस्था की बात है। अगर हम अच्छी व्यवस्था दें... ज्वाइंट कमेटी में हमने काफी आग्रह किया कि आइए, बैठकर व्यवस्था की बात करते हैं। मैं पहले इंकम टैक्स डिपार्टमेंट में काम करता था। वहां के मेरे कई batch mates हैं, जो यहां भ्रष्टाचार करते होंगे, लेकिन जब यहां नौकरी छोड़कर अमरीका चले गए तो

वही लोग वहां भ्रष्टाचार नहीं करते थे। तो इंसान जो है, वह व्यवस्था के अनुरूप अपने आपको ढाल लेता है और अस्सी से नब्बे परसेंट लोग ऐसा करते हैं। तो हमारा कहना यह था कि हम अच्छी व्यवस्था की बात करें, बजाय इस बात के कि कहां से ईमानदार लोग आएंगे। दूसरे, आपने कहा कि 40 लाख लोगों के ऊपर यह कैसे होगा? क्या यह पॉसिबल है? तो आज इंकम टैक्स डिपार्टमेंट तीन करोड़ income tax payers के लिए इंकम टैक्स का काम करता है और कहीं ज्यादा काम करता है। इंकम टैक्स के रिफंड भी देता है, उनके इनकम टैक्स के रिटर्न भी लेता है, बड़े-बड़े taxpayers के ऊपर रेड भी डालता है – तो यह सब एक ही डिपार्टमेंट करता है। हमने यह नहीं कहा कि judiciary के लिए अलग इंकम टैक्स डिपार्टमेंट होगा, legislatures के लिए अलग डिपार्टमेंट होगा, bureaucrats, Joint Secretary and above के लिए अलग होगा, Class One Officers के अलग इनकम टैक्स डिपार्टमेंट होगा। एक ही इनकम टैक्स डिपार्टमेंट है, उसी के अंदर हमने अलग-अलग विभाग बनाए हैं, क्योंकि काम एक ही है। उसी तरह से भ्रष्टाचार निरोधक के लिए काम एक ही है, जिसके लिए एक ही संस्था की जरूरत है, जिसका ढांचा बनाया जा सकता है। इसकी काफी डीटेल्ड कैलकुलेशन्स हमने की हैं।

ADV. P. T. THOMAS (IDUKKI): Sir, with due respect, I would like to know one thing. You talk about the civil society movement. My opinion is that you do not agree with the elected bodies or elected representatives of the democratic system. You completely disagree with their opinion. Then, why you are laying so much emphasis on NGOs. Do you consider all NGOs to be sacred cows? What is wrong in bringing NGOs within the ambit of this Bill?

SHRI ARVIND KEJRIWAL: Sir, we have the greatest respect for our democracy. We have the greatest respect for our Parliament. We have the greatest respect for our elected representatives. We have never said things that the hon. Member mentioned. These are words which are being put into my mouth by the media. They have been thrust upon us. Nowhere on the media have we said any such thing. I would like to re-emphasize here that we have never said any such thing.

SHRI PRASHANT BHUSHAN: The only thing that I wanted to add to what he has said is that we feel that Members of Parliament are representatives of their constituencies and, therefore, they should reflect the views of their constituencies even in Parliament. That is the only thing that we have been saying. It is the duty of a Member of Parliament to reflect the views of his constituency, of his people. Talking of NGOs, there may be corruption even in the NGOs. We have no objection to NGOs substantially funded by the Government to be looked at by the Lokpal. Now, suppose, I am the trustee or manager of an NGO and I receive some donation from a friend, and I misappropriate that money which has been given for some social purpose, that person can file a civil suit against me, or even a criminal case for cheating, fraud, etc. He can file a complaint. But that cannot be compared with corruption of a public servant or a public authority who is handling public funds and who is discharging public duties. Government-funded NGOs, which are substantially funded, can perhaps be put in a separate category. Even when the issue arose whether NGOs should be put under the Right to Information Act, the Right to Information Act advisedly said that only those NGOs or organizations which are substantially funded by Government will be covered by that.

श्री परिमल नथवानी : सर, जैसा किरन बेदी जी ने बताया कि यह डिस्ट्रिक्ट लैवल तक जाना चाहिए। मैं इसको ऐप्रीशिएट करता हूं, लेकिन डिस्ट्रिक्ट लैवल पर कौन सी एजेंसी इसको देखेगी? वही लोकायुक्त देखेगा। Whom are you depending upon? Whom is Lok Ayukta reporting?

श्री अरविंद केजरीवाल : सर, जो स्ट्रक्चर हम लोगों ने सजेस्ट किया था, वह यह था कि लोकपाल का एक-एक ऑफिस हर डिस्ट्रिक्ट लैवल पर बन सकता है और लोकायुक्त का एक-एक ऑफिस हर ब्लॉक लैवल पर बन सकता है। उसकी डिटेल्ड कैलकुलेशंस भी हम लोगों ने दी थीं।

SHRI PARIMAL NATHWANI: That means Lok Ayukta is not going to report to Lok Pal.

SHRI ARVIND KEJRIWAL: These are parallel bodies just like Central Information Commission and State Information Commission.

SHRI MANISH TEWARI: Sir, I think the discussion on this Lokpal Bill has been going on in the public domain for quite a while. Mr. Anna Hazare and his associates have been advocating the creation of Lokpal structure which goes down to the district level. One thing which I have been raising with them repeatedly and I would appreciate if they could shed some light on it. Ms. Kiran Bedi was pointing out that apparently 17 States in India already have Lok Ayuktas in existence. Certain Lok Ayuktas may be little old and some may have been created recently, and obviously depending upon the conditions in a particular State and the wisdom of Legislatures, they may have enacted their own model of what a Lok Ayukta should be. In various instances, we have seen that Lok Ayuktas have delivered and created, as they are, by the statutes or by the Legislative Assemblies of those respective States. Therefore, while I entirely concede your point that Government may have the legislative competence in order to create structure right down to the block level, considering that there are already Lok Ayuktas in existence and they have delivered, why do you want the wheel to be reinvented? If at all, there are certain deficiencies in certain Lok Ayuktas in so far as their statutory enactment is concerned, don't you think that it would be a better idea to study all the Lok Ayukta Acts, see what are the best practices and then advocate to those States and leave it to the wisdom of their Legislatures to see whether they would like to carry out those amendments or not?

SHRI ARVIND KEJRIWAL: Sir, this is exactly what we have done. We have done exactly what you have said. We have studied all the 18 Lok Ayuktas. We have borrowed the best practices from there. Most of it is designed around the Karnataka Lok Ayukta. It is one of the better ones; the Lok Pal Bill that we suggested is around that, removing the deficiencies which were there. Now, we have to take a call as a country. Should we allow the people of each of the States to agitate in their own States and ask for a Lok Ayukta separately for each of the States? If we see the history of Right to Information Act, there were 9 States in which RTI Act was already there when the UPA Government decided to give a uniform RTI Act all across the country in 2005. We would urge the present Government also to follow that and give a uniform pattern of law of anti-corruption also.

श्री विजय बहादुर सिंह : पहले तो मैं आप लोगों का स्वागत करता हूं कि आप यहां आए और आपने अपने विचार समिति के समक्ष रखे। मेरे दो सवाल हैं। जनरल सवाल तो यह है कि जिस दिन से आपका मूवमेंट आया, आपके मूवमेंट से एक मैसेज देश में आया कि आप

लोगों ने पूरे पार्लियामेंटरी सिस्टम का एक दम से तिरस्कार कर दिया है। जो इम्प्रेसन क्रिएट हुआ, वह यह हुआ कि आप ही एक सुप्रीम थिंक टैंक हैं and whatever you say is a gospel truth. मुझे इस बात से दुख हुआ क्योंकि मैं भी डेमोक्रेसी में विश्वास रखता हूँ। जैसे अभी दो दिन से मैं टीवी में देख रहा हूँ कि जो भी बिल बना, उसे रद्दी है, गलत है कहकर आप उसको जला रहे हैं। इसका मतलब, इस संबंध में आपने पहले ही अपना निर्णय दे दिया। अगर किचन में कोई खाना खराब है तो खाने को इम्प्रूव करने की बात करिए कि यह सुधार करिए, इस तरह का कुक लाइए। ऐसा नहीं होना चाहिए कि किचन को आप डायनामाइट कर दीजिए। इस प्रकार का एक इम्प्रेसन क्रिएट हुआ है। हो सकता है कि मैं इसमें गलत हूँ। जैसे अभी टीवी में आ रहा था कि हमें कमेटी ने बुलाया है, लेकिन यह तो फॉर्मैलिटी है।

श्री विजय बहादुर सिंह (क्रमागत) : इसके मायने आपने पहले से ही एक अपना पार्टिकुलर व्यु बना लिया है और यह लग रहा है कि करप्शन हटाने के मेन ठेकेदार आप हैं। हम लोग कहते हैं करप्शन हो, हम लोगों का ऐसा मतलब नहीं है। अगर करप्शन नेशनल कैंसर है, तो हम लोग भी उतने ही अफेक्टिड हैं, जितने कि, मान्यवर, आप लोग हैं। इसीलिए मैं चाहता हूँ कि आने वाले days में आप भी अपना introspection करिए, हृदय साफ करिए, हम भी करें और मिल-जुलकर के काम करने से ही बात बनती है।

CHAIRMAN: We understand your sentiments.

श्री विजय बहादुर सिंह: मैं एक उदाहरण दे रहा हूँ क्योंकि मैं शांति भूषण जी को करीब 1965 से जानता हूँ। हम भी इलाहाबाद हाई कोर्ट में हैं और आपके तो कहने ही क्या। अब जैसे आपने कम्पोजिशन की बात कही। आज हमारी Judiciary का भी बहुत अच्छा रिकार्ड नहीं आया है। चाहे चीफ जस्टिस ऑफ इंडिया हो, आपके ही वक्तव्य आए हैं कि 15 में 10 हैं या 9 हैं, ऐसी बातें आई हैं। अब आपने जो कम्पोजिशन दिया, मैं अभी जल्दी में देख रहा था, क्योंकि अभी हम आपके बिल को नहीं देख पाए हैं। आपने उसमें 4 जज कर दिए। हम आपसे कॉपी मांगेंगे। आपने जो कम्पोजिशन आठ सदस्यों का दिया है, उसमें दो सुप्रीम कोर्ट के जज और दो हाई कोर्ट के जज हैं। अगर Judiciary as a class हो, तो inbuilt system जो जजों की अप्वाइंटमेंट का आया है, शांति भूषण जी, आप हम से ज्यादा जानते हैं कि क्या हाल हो रहा है ? कैसे सिस्टम से और कैसे अपने जजों को अप्वाइंट कर रहे हैं। अब आप कम्पोजिशन को देखिए, मैं कहता हूँ कि 4 ही क्यों, क्या जुडिशियरी ही करप्शन को eradication करने वाले सबसे बड़े Jesus Christ हैं। जो हम लोगों के बीच में composition आया - Prime Minister is Chairperson, Speaker of the House ठीक है, लेकिन स्पीकर अभी भी इंडिपेंडेंट बॉडी है, Leaders of the Opposition, Union Cabinet – one Minister, sitting Judge of the Supreme Court, sitting Chief Justice of the High Court (दो आए), eminent jurist or one person from people. ये जो कम्पोजिशन है, इसमें आप बता दें कि किसी क्लास की मॉनोपाली है। मुझे इसमें किसी क्लास की मॉनोपाली दिखाई नहीं पड़ रही है। लेकिन अन्ना

हजारे जी, जो आपके कम्पोजिशन में है, मैं अपनी प्रतिक्रिया बता रहा हूँ, मुझ से भी गलती हो सकती है, जैसे आप सबसे। आप अपने कम्पोजिशन में पूरा शासन जुडिशियरी को दे रहे हैं। अभी मैं परसों अखबार में पढ़ रहा था कि सुप्रीम कोर्ट के सिटिंग जज ने कहा कि मेरा मत यह है कि प्राइम मिनिस्टर उसके अंदर आ जाएं। आप मुकदमे से पहले ही फैसला कर रहे हैं, आप super-jurist body बन रहे हैं, तो फिर आप ही पार्लियामेंट चलाइए। आप बताइए कि उसमें कौन-सा प्वाइंट लॉ का था, यह इश्यु तो था नहीं। लेकिन सुप्रीम कोर्ट के सिटिंग जज साहब ने यह कहा और सबने देखा और सुना और पढ़ा। यह अखबारों में आया, टी.वी. पर आया। अगर यह उनका व्यक्तिगत व्यु है, तो वह व्यक्तिगत व्यु को उस प्लेटफार्म से क्यों कर रहे हैं ? आप इस्तीफा देकर आ जाइए, व्यक्तिगत व्यु समझ में आ जाएगा।

अध्यक्ष : इत्फाक से हम अभी एक और बिल अडॉप्ट करने के प्रोसेस में हैं। इसके लिए हमने उसमें प्रावधान रखा है कि ऐसी टिप्पणियां कर सकते हैं या नहीं - Judicial Accountability Bill. But, we must conclude now.

श्री विजय बहादुर सिंह : मैं बहुत-बहुत धन्यवाद देता हूँ। बहुत अच्छी बात कही कि अगर कोई गड़बड़ी हो जाए, तो कोई एफ.आई.आर. लिखा देता है, कोई सौ रुपया मांगता है, तो कहां जाए ? हम यह चाहेंगे कि जो आपने यहां प्रतिक्रियाएं दी हैं, इनको लिखवाकर के, टाइप करवाकर के सरकुलेट कराइए। हम लोग भी आपके साथ हैं।

CHAIRMAN: I appreciate your sentiments. I am sorry for shortage of time. Shri Anna Hazare will have the last word. I only want to say that I can't speak for others, but for this Committee, I can say that whatever we will do, certainly, we don't take our job as a mere formality. You can be rest assured about it. Now, Shanti Bhushanji, if you want to say something in one minute, you can speak. Then, I will ask Hazarji to speak. Then, we will have to wind up.

श्री लालू प्रसाद : आदरणीय शांति भूषण जी, हम लोग आपका आदर करते हैं। हम लोग साथ में थे। आप इस कमेटी में आए हैं, यह एक तरह से मिनी पार्लियामेंट है, इसको स्टैंडिंग कमेटी में कन्वर्ट कर दिया गया है। इसमें सभी पार्टियों के सदस्य हैं, आप इस बात को जानते हैं।

श्री लालू प्रसाद (क्रमागत) : हमने अखबार में पढ़ा है कि आप स्टैंडिंग कमेटी में हैं और उसमें अन्ना हजारे जी आ रहे हैं। हमें यह बात मीडिया से मालूम हुई, क्योंकि हमने घर पर सूचना नहीं पढ़ी थी। आप से बात हुई थी कि इस मीटिंग में किरण बेदी जी भी आ रही हैं, केजरीवाल भी आ रहे हैं। जब आप मुझसे मिले थे, तब मैंने आपको सुझाव दिया था कि पार्लियामेंट में दो बिल तो नहीं आएंगे, बल्कि एक ही बिल आएगा। मैंने आपको यह भी कहा था कि जो भी बिल आएगा, वह सरकार का ही बिल आएगा, इसलिए आप लोग सरकार से बात करिए कि वह एक समेकित बिल लाए, ताकि हम उस पर विचार करें। अभी आपने कहा है कि इस बिल को लौटा दीजिए। इस बात को तो चेयरमैन साहब ही देखेंगे कि यह बिल लौटेगा या नहीं लौटेगा, तो यह अलग बात है। यह बिल यहां से कितने दिनों में वापस

जाएगा, इसका भी कोई पता नहीं है। हम आप से यह जानना चाहते हैं कि यह जो लोकपाल बिल है और जिसको केजरीवाल जी *जोकपाल* बिल बोलते हैं, अन्ना हजारे जी, आप तो भद्र पुरुष हैं और गांधीवादी हैं। आपकी तरफ से एक पेपर निकला है कि फौज मेरे साथ है, पुलिस मेरे साथ है और ट्रेफिक पुलिस भी साथ है तथा लोग हमें पैसे भी दे रहे हैं। इससे क्या हम यह मेसेज नहीं दे रहे हैं कि दुनिया में जो बातें हो रही हैं, इनसे हम फौज का आह्वान कर रहे हैं, इसलिए इसको देखना चाहिए। मैं यह जानना चाहता हूँ कि यह जो लोकपाल बिल है, सब लोगों का कमिटमेंट भी है, तो इससे क्या देश से करप्शन मिट जाएगा? हमने आपको सुझाव दिया था कि आप इन चीजों को छोड़िए। जहाँ पर लोग कैंडल जलाते हैं या गाली देते हैं, “खादी कपड़ा, दिल है मैला” यह कच्ची गाई जाती हो, हम यह नहीं कहते कि आपने गाली दी, इसमें सब तरह के लोग जुटे हैं, हर तरह के लोग क्लब हुए हैं, लोगों का अलग-अलग पॉलिटिकल इन्टरेस्ट है और अपने-अपने नजरिए से देखते हैं। जब हम लोग जनता पार्टी में थे, तो उस समय इसको फंडामेंटल राइट्स से निकालने की भी बात हुई थी। चाहे काला धन है या उजला धन है या पीला धन है, दिल्ली से लेकर लखनऊ और पटना तक सारा धन इस देश का है। अभी नोएडा में किसानों के साथ जो टेंशन हुई है, जिसमें पांच किसान भी मारे गए हैं। हमने आपको इसके बारे में यह सजेस्ट किया था कि चाहे जिसकी भी सम्पत्ति हो, चाहे हमारी हो या आपकी हो, कैंडल जलाने वालों की हो या बिजनेसमैन की हो, ट्रेडर्स की हो या सट्टेबाजों की हो या समाज के चाहे जिन प्रबुद्ध लोगों की भी हो, हम सभी लोग इन चीजों को छोड़कर, लोकायुक्त या लोकपाल कानून बनाएं, जिसके जरिए सबकी सम्पत्ति को take over करें। हम सबका सर्वे कराएंगे, हम उनको कंगाल नहीं बनाएंगे, हम उनको देंगे, लेकिन जिन्होंने बीस-बीस मकान बनाकर रखे हैं या जिनके पास जमीन की काफी होल्डिंग है, चाहे जिस रूप से लोगों ने धन बनाया है, चाहे वह स्विस् बैंक में रखा काला धन है, हमने देखा है कि कुछ लोग पर्चे छपवाकर, इन्टरनेट पर एक दूसरे को ब्लेम भी कर रहे हैं।

श्री लालू प्रसाद (क्रमागत) : मैं सभी पार्टियों के लोगों से कहता हूँ कि क्यों नहीं सरकार सारी सम्पत्ति को take over कर ले और उसका re-distribution किया जाए। फिर आगे किसी की धन बनाने की, चोरी करने की, बेईमानी करने की हिम्मत नहीं होगी। यह सरकार को, हमको, आपको करना पड़ेगा, नहीं तो आप expose हो जाइएगा। जितना minimum है, आप रखिए, जितनी जरूरत है। सादा जीवन उच्च विचार। उतने तक ही आप रखिए। क्या आप इसे लेकर ऊपर जाइएगा? इसका re-distribution कीजिए। जिन गरीबों की हम बात करते हैं, वह गरीब टुकुर-टुकुर ताक रहा है। सबको सम्पत्ति और जीने का अधिकार है। हमारे जो भाई backbenchers हैं, जिनके लिए social justice हमारी बुनियाद है, जिनके लिए हम लोग लड़ते हैं, तो देश की सम्पत्ति का, सारे धन का पुनर्वितरण किया जाए। एक हाथ को एक ही काम। तुम कहाँ से पैसा लाए? मैडम Gazetted Officer रही हैं, वे जानती होंगी कि जिस दिन कोई व्यक्ति Gazetted Officer बनता है, वह अपनी सम्पत्ति का ब्यौरा देता है। उसके बाद लम्बे

समय तक बेटे-बेटी को कहाँ पढ़ाया, शादी की, क्या-क्या किया। हम फाइव स्टार होटल में भी जाते हैं, कभी-कभी हमें बड़े लोगों की शादी में जाने का मौका मिल जाता है, तो हम लोग देखते हैं कि एक रात का कितना खर्च उठता है। जैसे हमारी बेटी की शादी हुई, हमारी बेटी गई और दूसरे दिन हमें इंकम टैक्स का नोटिस भिजवा दिया। यह स्थिति है। हम आपसे जानना चाहते हैं कि क्या इसमें आप लोगों को कोई कठिनाई है कि सारे देश की सम्पत्ति को take over किया जाए और इसका पुनर्वितरण किया जाए। अगर इसमें कोई कठिनाई है, तो बताया जाए। मैं बताता हूँ कि हम सब लोग, यहाँ से लेकर पार्लियामेंट तक धूम मचाएँगे, सबको expose कर देंगे कि अब यह कानून बन रहा है, जो इसमें साथ नहीं देगा, वह दोषी है।

SHRI RAM JETHMALANI: I just want to wind up these proceedings on a better note. Sir, I am speaking for myself, not for everybody else. I recognize the eminence of the witnesses who have appeared before us today, and, I think, we owe a duty to the nation that whatever they have told us today will be seriously considered by this Committee. I have no doubt that this Committee always does consider these things seriously. But we must be able to rise about our party affiliations and deal with these problems on their merits. They are matters of the highest national importance and we cannot possibly subordinate these great issues to our loyalties to our parties. These loyalties must be subordinated.

Sir, speaking of the Judges about which my friend, Vijay, has spoken just now, there is a Freudian slip in this draft. If you see section 3, which talks of judicial members and non-judicial members, for non-judicial members, the qualifications are that if he is a person of impeccable integrity, outstanding ability and standing having special knowledge or expertise of not less than 25 years in the matters relating to anti-corruption policy. Curiously, these qualifications are not required of our Judges at all.

SHRI RAM JETHMALANI (CONTD.): That is one good reason for subordinating them to the Lokayukta or the Lokpal.

CHAIRMAN: Thank you. The great thing about the meetings of the Committee is that they are confidential; they are supposed to rise above party politics, and they do invariably rise above party politics. And, as I said, we certainly don't treat our job as a formality.

श्री शान्ति भूषण: मुझे सिर्फ एक ही बात कहनी है। संविधान के लिए हम लोगों के दिल में सच्ची इज्जत है। संविधान बनाने वाले, देश के उन जन सेवकों ने हमें एक बहुत ही सुन्दर संविधान दिया है। संसद के लिए हमारे दिल में बहुत इज्जत है। संसद एक ऐसा स्थान है, जो सारे संसार में अपना महत्व दिखा सकता है। हमने जब भी अपनी कोई बात कही है, हमने कभी नहीं कहा कि हर चीज़ के बारे में हमारी सोच ही ठीक है। हमारा मानना यह है कि संविधान ने हमको रिपब्लिक दिया, जिसमें जनता को सबसे ऊपर बैठाया, जनता को देश का मालिक बनाया और जनता की आवाज को बल दिया।

हमारा सिर्फ यह कहना है कि जो संसद में आते हैं, वे स्वयं अपने को रिप्रेज़ेंट नहीं करते, वे अपनी काँस्टीट्यूएन्सीज़ को रिप्रेज़ेंट करते हैं। सारे देश की जनता 545 काँस्टीट्यूएन्सीज़ में बंटी हुई है। एक सांसद एक काँस्टीट्यूएन्सी को रिप्रेज़ेंट करता है। हमारा

यह कहना है कि जो सांसद हैं, वे अपनी बात न कहें, अपनी कॉस्टीट्यूएन्सी के लोगों की बात जानें, उनसे डिस्कस करें और उनसे यह पूछें कि वे क्या चाहते हैं, फिर उसी बात को संसद के सामने रखें। अगर सभी सांसद यह करेंगे, तो संसद में सारे देश की जनता की आवाज होगी।

हम बहुत मामूली लोग हैं, लेकिन हमें ऐसा लगता है कि देश की आवाज गूंज रही है। इस तरह का कानून, जो हम लोगों ने अपनी लिमिटेड नॉलेज से ड्राफ्ट किया है, सारे देश की जनता उसी कानून को चाहती है, तो सांसद क्यों नहीं अपने संसदीय क्षेत्र में जाकर दूसरे लोगों की राय जानते? हमने जहां-जहां कॉस्टीट्यूएन्सीज में रैंफरेंडम करवाया, वहां से यही आवाज आई कि 90 फीसदी लोग इसी तरह का बिल चाहते हैं। सबने यही बात कही। मुझे उम्मीद है कि देश के सांसद भी उस आवाज को पहचानेंगे और उस आवाज को खत्म करने की भूल नहीं करेंगे। अगर वे यह भूल करेंगे तो बाद में उनको स्वयं पछताना होगा।

CHAIRMAN: We are having a very, very interesting discussion. I am having many requests for questions. We have to guillotine it now. But I don't want to seem to be guillotining anything. Mr. Patel will take half a minute.

श्री देवजी एम. पटेल: भूषण साहब ने बहुत अच्छी बात रखी। शायद मैं यहां पर सबसे कम उम्र का सांसद हूं। आपने अभी इस बिल के बारे में बताया, साथ ही अन्य सभी ने अपना-अपना मत रखा। भ्रष्टाचार के खिलाफ सब लड़ना चाहते हैं। अभी आपने सांसदों की बात भी कही, मैं जिस क्षेत्र से आता हूं, आपके सामने अपने उस क्षेत्र की बात रखता हूं। अपने क्षेत्र में मैंने यह बात रखी कि अन्ना जी ने यह जो आन्दोलन किया है अथवा जो आमरण अनशन किया है या 16 तारीख की बात रखी है, इससे वहां क्या मैसेज जा रहा है। मुझे मालूम हुआ कि इससे वहां एक ही मैसेज जा रहा है कि अगर आपको कुछ भी करना हो, आप आमरण अनशन करो, तो आपका वह काम हो जाएगा। क्या यह जायज़ है?

अन्ना जी, मैं आप पर सवाल नहीं उठा रहा हूं, मैं किसी पर भी सवाल नहीं उठा रहा हूं, लेकिन मैं एक ही बात कहना चाहता हूं। आपने अभी बताया कि आपको संसद और सांसदों पर विश्वास है, तो कम से कम आप पहले इस कमेटी में अपना यह बिल रखते, तो शायद हम इस पर ज्यादा डिस्कशन कर सकते थे। मैं माफी चाहता हूं, कम उम्र है और शायद कुछ ज्यादा बोल गया, लेकिन सांसद हमेशा ईमानदारी से ही अपना कर्तव्य निभाते हैं। कोई एक-आध गलत उदाहरण हो सकता है, लेकिन उसकी वजह से आप सब पर यह लांछन लगाएं, यह उचित नहीं है। अभी judiciary की बात हुई, उसके बारे में शायद मुझसे ज्यादा जानकारी आपको ही है, जजों की बात हुई, अधिकारियों की बात हुई, उनके बारे में भी आपको ज्यादा जानकारी है, लेकिन आप सांसदों पर ही यह इल्जाम लगाएं, यह बात ठीक नहीं है। धन्यवाद।

श्री शैलेंद्र कुमार: चेअरमैन साहब की अनुमति से मैं अन्ना साहब, शांति भूषण जी और बाकी के तमाम लोग, जो बहुत एक्पर्ट हैं, एक ही बात कहना चाहता हूँ। जो मुद्दा लेकर आप अनशन कर रहे हैं या देश में घूम रहे हैं, देश में अपील कर रहे हैं, उसके साथ सबकी भावनाएं जुड़ी हैं। आप भी वही चाहते हैं और हम भी वही चाहते हैं।

श्री शैलेंद्र कुमार (क्रमागत): यहाँ किसी एक दल के लोग नहीं हैं, विभिन्न दलों के लोग हैं। मेरा आपसे एक व्यक्तिगत अनुरोध है। हम चाहते हैं कि चाहे आप टेलीविजन में जाएँ या प्रिंट मीडिया, इलेक्ट्रॉनिक मीडिया या पब्लिक के बीच में जाएँ, लेकिन अपनी तरफ से कोई ऐसी भड़काने वाली बात न करें। अभी हम बहुत से problems से गुजर रहे हैं। आंतरिक सुरक्षा, बाहरी खतरे आदि सब को देखते हुए हम चाहते हैं कि जो आपकी भावना है और हमारी भावना है, तो मिलजुल कर हम कोई ऐसा ड्राफ्ट cooperate करें, जिससे कोई रास्ता निकले। हम आपके साथ हैं, हम आपके विरोधी नहीं हैं। संविधान की प्रति जलाने और इसे लोकपाल नहीं जोकपाल बोलने से इसकी जो गम्भीरता है, वह खत्म हो रही है। इसलिए, हम यह चाहते हैं कि इसकी गम्भीरता को बनाए रखने के लिए समन्वय होना चाहिए। बस, मैं आपसे यही अपील करता हूँ। धन्यवाद।

सुश्री किरण बेदी: सर, आप की ओर से अभी तक जो प्रश्न निकले हैं, उनसे मेरी समझ में यह आया है कि शायद आपको हमारे बिल के provisions actual तरीके से मालूम नहीं हैं। इसलिए, क्या हमको आप...

श्री हरिन पाठक: तभी मैंने कहा कि आप उसकी एक कॉपी हमको दीजिए। उसका एक सेट बनाकर इस कमेटी को भेज दीजिए।

सुश्री किरण बेदी: सर, हम आपको सिर्फ बिल की कॉपी ही नहीं देंगे, बल्कि मेरे view में जब आप हमें एक मौका और देंगे, तब हम आपको एक presentation भी देंगे, जो सिर्फ आधे घंटे का होगा। इसके बाद आपको दोनों का अन्तर पता चल जाएगा। आप इसके लिए हमें कोई भी डेट दे दीजिए।

SHRI HARIN PATHAK: Please circulate the copy of the Bill.

CHAIRMAN: Kiranji, Annaji, let there be no doubt that we will be having another meeting. Let us absorb some of these diverse thoughts. आज यह तो सिर्फ एक starting है। अभी यह कमेटी इसको देखेगी, समझेगी और आपको फिर जरूर बुलाया जाएगा। इसीलिए तो हमने आपको within 48 hours बुलाया है।

MS. KIRAN BEDI: How soon can you give us an opportunity to present difference between the two?

CHAIRMAN: You see, as far as Jan Lokpal is concerned, you please send it to the Committee. That will be circulated. We will have to work out other things.

MS. KIRAN BEDI: That's fine.

SHRI VIJAY BAHADUR SINGH: Apart from the Bill, जो आपने reaction अभी बताए हैं..

श्री हरिन पाठक: वह आप हमें भिजवा दीजिए, बस मेरी इतनी प्रार्थना है।

सुश्री किरण बेदी: ठीक है, आपको बिल की कॉपी मिल जाएगी।

श्री हरिन पाठक: हम उसे भिजवाने की प्रार्थना इसलिए कर रहे हैं ताकि हम उसका अध्ययन कर लें। हम आपके साथ हैं।

श्री अन्ना हजारे: मैं इस बात को फिर से दोहराना चाहता हूँ कि पार्लियामेंट पर हमारा विश्वास है, इसीलिए तो हमने सरकार को कहा कि इसके दोनों ड्राफ्ट्स से एक अच्छा ड्राफ्ट बनाओ और पार्लियामेंट के सामने रखो। पार्लियामेंट जो कहेगी वह हमें मान्य होगा। हमने लोकशाही को स्वीकार किया है। जब हमने लोकशाही को स्वीकार किया है तो पार्लियामेंट से इंकार क्यों करना? हमने तो यह कई बार कहा है।

दूसरा, एक साहब ने पूछा कि क्या अनशन करने से प्रश्न सुलझते हैं? लालू प्रसाद जी ने कहा कि क्या लोकपाल बनने से कुछ होगा? मैं यह बताना चाहता हूँ कि वह समाज और देश के लिए है, सिर्फ अन्ना हजारे या पाँच लोगों के लिए नहीं। आज भी लोकपाल के बारे में हम लोग जो कोशिश कर रहे हैं, लोकपाल कानून के आते ही हम लोग बाजू में हो जाएँगे। हमारा कहना है कि हम लोगों को या लोकपाल को कोई ज्यादा अधिकार नहीं है। जैसे, Election Commission जो है, इसे स्वायत्तता दी गई है। उसी तरह हाई कोर्ट के जज या RTI Commission को भी स्वायत्तता दी गई है। जैसे उन्हें स्वायत्तता देने के बाद सरकार के लोगों का उसमें interference नहीं होता, वैसे ही हमारा यह कहना है कि एक लोकपाल संस्था बनाकर उसको स्वायत्तता दे दो, बस। हम लोग तो उसमें रहेंगे नहीं। यह काम तो हम देश और समाज के लिए कर रहे हैं।

दूसरा यह है कि क्या अनशन करने से प्रश्न सुलझते हैं, तो मैं आपको बता दूँ कि मैंने अपनी लाइफ में सात कानून बनवाए। मैं RTI कानून के लिए दस साल लड़ा। अगर दस साल तक लड़ते-लड़ते भी सरकार इसे नहीं करती है तो क्या करना चाहिए?

श्री रामविलास पासवान: अन्ना जी, एक मिनट। आप बहुत ही गाँधीवादी हैं, एक बुजुर्ग नेता हैं। आपकी टीम में आपके साथ जो लोग हैं, बहुत अच्छे हैं। लेकिन, कोई आदमी या सिरफिरा आदमी अनशन पर बैठ जाए और कहे कि रिजर्वेशन को खत्म कर दो नहीं तो हम अनशन करके मर जाएँगे या माइनॉरिटी के अधिकारों को खत्म कर दो। बाबा साहेब अम्बेडकर ने जो संविधान बनाया है, उस संविधान का एक महत्व है। आज इस देश में अलग-अलग mentality के लोग हैं। इसीलिए हम कहते हैं कि अगर parliamentary democracy से अलग हट कर कोई काम होगा..।

श्री रामविलास पासवान (क्रमागत): तो कुछ लोग इस तरह के कदम उठा सकते हैं कि आरक्षण को खत्म करो, नहीं तो देश बंट जाएगा और हम मर जाएंगे, तब क्या होगा?

श्री अन्ना हजारे: हमने पहले बाबा साहब भीम राव अम्बेडकर जी के मार्ग को अपनाया, स्वीकार किया। हमने 10 साल अलग-अलग विषयों पर काम किया। ग्राम सभा कितना महत्वपूर्ण प्रश्न है, जैसे लोक सभा, विधान सभा है, वैसे ही ग्राम सभा है, इसके लिए हमने 6-6 साल कोशिश कीया। गवर्नमेंट नहीं करती, तो अनशन करना पड़ता।

अध्यक्ष: अन्ना जी, यह बहुत खुशी की बात है कि आपकी इसमें इतनी आस्था है। आप लोग आए, इसके लिए बहुत-बहुत धन्यवाद। यह प्रक्रिया आगे भी चलेगी और फिर मिलेंगे।

(The witnesses withdrew and the Committee adjourned at forty-one minutes past six of the clock)

The Department-related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice met at 4.00 p.m. on 23rd September, 2011 in Committee Room A', Parliament House Annexe, New Delhi.

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CHAIRMAN: DR. ABHISHEK MANU SINGHVI

CHAIRMAN: Good afternoon. May I just take two minutes at the outset to extend a very warm welcome to all of you, and, in particular, I want to greet the new Members of this Committee, Dr. Bhalchandra Munekar, Shri Sukhendu Sekhar Roy, Shri Kirti Azad, Shri Prasanta Kumar Majumdar, Shri Arjun Ram Meghwal, Shri Pinaki Misra, Advocate A. Sampath, Shri Arun Yadav and Shri Madhusudan Yadav.

I look forward to your deliberations enriching the deliberations of this Committee. As you know, apart from the Whistleblowers' Bill and the Judicial Accountability Bill, which we have completed in the recent past, the Lokpal Bill has been referred on the 9th of August. We already had a fairly long and intense meeting on the 10th with the members of the team Anna.

Personally, I found it a little regrettable that we have had to waste almost five to six weeks. You know it is the Parliamentary system. Those of you, who were there last time, will recollect that we had fixed our first meeting on the deliberations of the Lokpal Bill itself on the 1st of September but it was declared as a holiday on account of *Ganesh Chaturthi*. Next date which was fixed was 8th September but there was no notification. Next was the 15th September, which was the third tentative date, but there was no notification, and, we have finally reached 23rd. Pursuant to our advertisement, we have received about 6,000-odd representations. Naturally, a large number of them are repetitive but a sample has been circulated. I don't think that you need to be burdened with all the representations. You know the broad contours, and, you also have several drafts of the alternative versions been sent to you.

We have fairly a good house today and tomorrow. Today, as you know, we start the meeting with Shrimati Aruna Roy and her organization; afterwards, we will hear Shri Jaya Prakash Narayan, and, then, finally, the CVC, Shri Pradeep Kumar. Tomorrow also, we several diverse and relevant persons with significant contributions are appearing before the Committee.

So, apart from adding that our role at this initial stage is broadly to listen, and, of course, to ask questions towards the end of their submissions, and, you already have their written notes sent to you, we should be able to keep to the time today with three persons, and, I think, we have plenty of time. Tomorrow again we shall proceed in the same way.

Our internal spirit is to get this over as soon as we can but, of course, subject to all other exigencies. If we go by our initial remit of three months, we had to waste about a month and a half in the technicalities. So, we have on the initial remit about two months. Let us keep that in mind. Hon. Members are free to seek clarifications after the presentation. I think, we can seek clarifications after the presentation. It will be much easier and quicker that way. As you all know, the proceedings here are completely confidential, and, I would request you to keep that in mind in particular for this particular Bill because there are several kinds of things floating around. So, that is why we have allowed them only one minute for the photo opportunity, and, then, we are done with that. Thank you. Let us start.

श्री शैलेन्द्र कुमार: चेअरमैन सर, मैं एक बात पूछना चाहूंगा। आपने कहा कि आपके पास इतने सुझाव आए हैं, लेकिन आप ये जो विट्नेसिज को बुलाते हैं, इसका मानक क्या है? किस आधार पर लोगों को बुला कर यहां विचार-विमर्श किया जाता है? क्या आप उसमें कोई प्राथमिकता तय करते हैं?

अध्यक्ष: देखिए, ऐसा है, हमेशा से हर समिति में जिन लोगों को बुलाया जाता है, उसका आधार होता है कि हमारे पास एक सैम्पल हो। किसी भी समिति में सभी लोगों को बुलाना संभव नहीं होता है। सैम्पल बुलाने के समय कुछ कसौटियां ध्यान रखी जाती हैं। अगर कानूनी बिल है, तो कुछ व्यक्ति, जो कानून विद होते हैं, कुछ गैर सरकार संस्थाएं, कुछ सरकारी संस्थाएं, उन सबको बुलाया जाता है। इसमें मुद्दा भ्रष्टाचार का है, तो जो सरकारी डिपार्टमेंट इससे संबंधित हैं, विशेष रूप से सीवीसी, सीवीआई हैं, इस प्रकार के डिपार्टमेंट्स से सैम्पल मंगवाया जाता है। अभी जिन्हें बुलाया गया है, यह कोई सम्पूर्ण लिस्ट नहीं है। अभी इसकी और इंस्टॉलमेंट्स होंगी। मैं समझता हूं कि अगर हर वर्ग के एक या दो महत्वपूर्ण रिप्रेजेंटेटिव्स हों तो हमारा काम हो जाता है।

श्री शैलेन्द्र कुमार: सर, उदाहरण के तौर पर मैं आपको बताना चाहूंगा, डॉ. सुभाष कश्यप जी ने भी आपके पास रिक्वेस्ट भेजी है, जो लोकसभा के महासचिव थे और बड़े विद्वान आदमी हैं। इसलिए कम से कम ऐसे लोगों को बुलाया जाए, जो संविधान का, संवैधानिक तरीके का बहुत ज्ञान रखते हैं और जो बहुमूल्य सुझाव दे सकते हैं। लेकिन उन लोगों को यह लगता है कि ऐसे लोगों को बुला लिया जाता है, जो कोई संवैधानिक विचार ही नहीं रखते हैं। मैं चाहूंगा कि इसके लिए आप कुछ प्राथमिकता तय करें।

अध्यक्ष: देखिए, कल भी कई संवैधानिक विशेषज्ञ आ रहे हैं।

श्री शैलेन्द्र कुमार: नहीं, मैं यह कहना चाहता हूं कि जैसे आपने इसमें इंडियन जस्टिस पार्टी को भी रख लिया है, जो एक राजनैतिक दल है। अगर तुलना की जाए तो इस कमेटी में लोकपाल विधेयक पर हम जो चर्चा करने जा रहे हैं, इसकी गरिमा को बरकरार रखने के लिए सबसे पहले हमें उन लोगों को प्राथमिकता देनी चाहिए जो संवैधानिक एक्सपर्ट हैं, जिन्होंने लोकसभा को देखा है। यही मेरा सुझाव है।

अध्यक्ष: हम उनको बुला लेंगे। हमने इसमें कोई लाइन ड्रॉ नहीं किया है। इसमें पहले और बाद की बात नहीं है, अभी यह प्रक्रिया चलेगी।

श्री विजय बहादुर सिंह: अध्यक्ष जी, माननीय शैलेन्द्र जी जो कह रहे हैं, वह सही है, क्योंकि सुभाष कश्यप जी को पार्लियामेंट का 30-40 साल का अनुभव है, इसलिए अगर उनको बुलाया जाता है, तो इससे कमेटी को कुछ लाभ होगा।

अध्यक्ष: ठीक है, हम उनको बुला लेंगे तथा और लोगों को भी बुलाएंगे।

श्री रामविलास पासवान: अध्यक्ष जी, मेरा सुझाव यह है कि हम लोग अभी इसके बारे में कोई समय सीमा तय नहीं करें, क्योंकि समय सीमा तय कर देने से यह खतरनाक हो जाएगा। इसलिए जितने भी माननीय सदस्य हैं, वे जिन-जिन लोगों को भी बुलाना चाहें, वे इसके संबंध में सुझाव दें और इस पर गंभीरतापूर्वक विचार करें।

मेरा दूसरा सुझाव यह है कि इसमें किसी को तो आधार मान कर चलना होगा। अभी हमारा आधार क्या है? अभी हमारा आधार लोकपाल बिल है या जन लोकपाल बिल है? जो हमारा आधार होगा, उसी के दायरे में ही कहीं भी कोई amendment या कुछ आएगा। यह मान लेते हैं कि सब लोग आएंगे और अपनी-अपनी बात कह कर चले जाएंगे, लेकिन हमारा आधार तो लोकपाल बिल ही है न?

अध्यक्ष: निश्चित रूप से वही होगा, क्योंकि वही बिल introduce हुआ है। जो बिल introduce हुआ है, वही बिल इसका आधार है।

श्री लालू प्रसाद: अध्यक्ष जी, इस देश के अंदर बहुत सारे विद्वान हैं, जो कई ideologies से ग्रसित हैं, बहुत सारे controversial लोग भी होते हैं। यह बात ठीक है कि हम लोग देश में बहुत महत्वपूर्ण निर्णय लेने वाले हैं और इसमें आपका बड़ा बड़प्पन है कि आप सबको सुनना चाहते हैं और सुनना भी चाहिए, क्योंकि निर्णय सबको confidence में लेकर और सबकी भागीदारी से होनी चाहिए। बहुत सारे ऐसे लोग हैं, जो पार्टियों से ग्रसित होकर controversial हैं, एकांकी हैं, एक पक्षीय भी रहते हैं और यहां बोल कर फिर मीडिया में जाकर चार-पांच दिन डिबेट में भाग लेते हैं, इसलिए मेरा सुझाव यह है कि आप इस पर परहेज भी कीजिए।

अध्यक्ष: मेरा सुझाव यह है कि सभी सदस्य अपने-अपने सुझाव लिखित रूप से दे दें। अगर कोई विशेष नाम हैं, जैसा शैलेन्द्र कुमार जी ने कहा, वैसे ही आप लोग अपने-अपने सुझाव दे दीजिए। सबको तो बुलाया नहीं जा सकता है, लेकिन एक symbolic तरीके से सभी वर्गों को represent करने वालों को बुला लिया जाएगा। आप सब लोग अपने-अपने सुझाव सचिवालय को दे दें। अब शुरू करते हैं।

Witnesses

National Campaign for People's Right to Information

Shrimati Aruna Roy, Member

Shri Nikhil Dey, Co-Convener

Shri Shekhar Singh, Member

Shri Venkatesh Nayak, Co-Convener

Shri Harsh Mander, Member

Shrimati Anjali Bharadwaj, Member

CHAIRMAN: Friends, as I said, we will start with the members of the NCPRI. I think Ms. Aruna Roy will open the proceedings and then she will ask her colleagues to speak. After that we will raise queries. How much time do you think your entire group will take?

SHRIMATI ARUNA ROY: Half an hour.

CHAIRMAN: You can take forty-five minutes. There is no problem.

श्रीमती अरुणा रॉय: अध्यक्ष और इस कमेटी के सारे सदस्यों को हमारा नमस्कार, हम बहुत खुश हैं कि हमें आपके सामने बयान देने का मौका मिला है, क्योंकि हमें याद है कि जब हम सूचना के अधिकार के दौरे के माध्यम से आपके पास पहुंचे थे, तब यहां पर इस कमेटी ने 153 संशोधन करके सूचना के अधिकार कानून को बहुत सशक्त बनाया था। हमारा पूरा विश्वास है कि यह समिति बहुत महत्वपूर्ण है और इसके विचार से कानून सशक्त और अच्छे बनेंगे। इस उम्मीद के साथ हम यहां आए हैं। इस कमेटी में हम कई लोग हैं, सूचना के अधिकार कानून के पूरे आंदोलन के दौरान हम सब लोग बराबरी के स्तर से लड़-झगड़ कर अपने बीच में सब समाधान करके आपके सामने कई बार आए हैं, सरकार के सामने आए हैं और इस कमेटी के सामने कई सारी चीजों को रखा है। I am only one amongst equals. I will just initiate the discussion. चूंकि हमने बहुत सारे समान कानूनों की बात की है, इसलिए कई आवाजों में भी हमारी बात आप सुनेंगे, क्योंकि हमें लगता है कि एक-एक चीज में एक-एक चीज पर कोई-कोई विशेषज्ञ हैं। मेरे सामने कई सारे मित्र भी बैठे हैं, जो सूचना के अधिकार के पूरे आंदोलन के दौरान हमें बहुत मदद की है। हमें पूरा विश्वास है कि आप इस बात को अच्छी तरह समझते हैं।

हम स्वागत करते हैं कि संसदीय स्थाई समिति ने हमें इस पूरे दौरान यह विश्वास दिलवाया कि सब किस्म की अलग-अलग आवाजों को सुना जाएगा। We also take this opportunity to say that different points of view being expressed and being given equal weightage is very important for this law and for democracy. We feel that no single voice, whether it is ours or of anybody else's, should really dominate. The distress that we have expressed so far and we have been feeling so far is that one point of view has been more dominant than others. हमारा यही कहना है कि सारे विचारों का, बराबरी की सुनवाई होनी चाहिए। यह NCPRI, जिसको कि हम सूचना के अधिकार का जन अभियान कहते हैं, इन्होंने, हम लोगों ने इसके लिए पहले ही बिल का एक रूपरेखा बनाया था। We drafted a Bill. We wrote to both the Chair and the co-Chair of the Joint Drafting Committee that was set up asking for time to present our view before it. We got letters from both Shri Pranab Mukherjee and Mr. Shanti Bhushan saying that there would be some opportunity for deposing before the Joint Committee. But we did not get any opportunity because no real consultations were held by the Joint Drafting Committee. Then it was disbanded. आज हम आपके सामने जो रख रहे हैं, they are only specific comments on the Government's Lokpal Bill because we felt that the notice that we saw in papers required us to give comments on it before the Standing Committee. If the Standing Committee still wants to have a look at the draft Bill, we can send additional papers to you as part of our submission subsequent to this presentation. आज जो

comments and suggestions आपके सामने पेश किए जाएंगे, वे चर्चा के निचोड़ नहीं हैं। कई महीनों से, actually पिछले साल अक्टूबर के महीने से कई बातें चर्चित हैं और कई लोग इसमें शामिल हुए हैं तथा इस पर कई मीटिंग्स हुई हैं। इसमें अलग-अलग विचारधारा को सुना गया है और अलग-अलग विशेषज्ञों की बातों को भी हमने सुना है तथा अपने इन बातों के अंदर उन सब को जोड़ा है। इस संबंध में आपके जितने भी विचार-विमर्श हुए हैं, उनको भी हमने सुना है और उन सब को भी इसमें शामिल करने की हमारी पूरी कोशिश है। हम यही सोचते हैं कि this will be an ongoing process. And I think that in response to the queries of the Committee's Members and the continued debate on these issues, we will be allowed to submit additional papers to you in writing. We may not be able to physically come, as you may not have the time, but I hope we will have the opportunity and the permission to send you additional papers if more clarification is required.

I am going to introduce the people who have come with me. After this I will conclude. First Mr. Shekhar Singh will speak for about 15 minutes. He was the ex-convenor of the NCPRI and actually anchored the entire drafting of the RTI Act from 1996 to 2005. So Mr. Shekhar will be our main spokesman. Mr. Harsh Mander is, as you know, a member of the National Advisory Council. He is also a very eminent activist and many of you already know him. He will speak for about three-five minutes. Mr. Venkatesh Nayak will make a PowerPoint presentation. He will speak on judicial accountability. Mr. Harsh Mander will speak on frivolous and vexatious complaints. Mr. Shekhar will speak on the entire format including the Lokpal, the CVC, the Lokayukta, and the Up-Lokayukta.

SHRIMATI ARUNA ROY (CONTD.): Then Anjali Bharadwaj sitting to my far left will present her position for 3-5 minutes on whistleblowers and grievance redress. Finally, Nikhil Dey who will speak on grievance redress and conclude will also speak for five minutes, he is one of the co-conveners of NCPRI along with Venkatesh Nayak, at the moment. They are both co-conveners of the NCPRI; and there are four office bearers. So, this is roughly format that we have in mind. With your grace and permission if we err by one or two minutes this way or that way, I hope you will bear with us. However, we will try and keep to the time. Thank you.

SHRI SHEKHAR SINGH: Thank you very much. Much of the documentation that we are hoping to refer to today ज्यादातर सारे कागजात पहले भिजवा दिए गए हैं। Well, I do hope all Members have this package of about 70 or 80 pages where most of the documentation is there. We crave your indulgence to present some supplementary documents today because these documents were sent about nearly a month back and much has happened in that one month. A lot of discussion has taken place and our own views have also evolved. Therefore, we will leave behind some supplementary documents which hopefully will update our position, but broadly it remains the same.

As Aruna has already mentioned, our focus is on the Government Lokpal Bill which is before you and what we have really done which is our main document submitted to the honourable Committee is to give our comments on various parts of the Lokpal Bill. The first comment is that we were disappointed that in the Government Lokpal Bill there was no mention that there will be a corresponding Lokayuktas at the State level. It is our belief that the Parliament is competent to legislate despite the fact that there have been debates to the contrary on a Bill which includes both the Lokpal at the Centre and the Lokayukta at the State level. We have given our reasoning. We feel that there are also alternative

Constitutional methods available for this and, of course, we would be happy to answer any queries on this.

Secondly, we were also disappointed that there were many categories of public servants who were left out from the Government Lokpal Bill. First of all, the Judges or higher judiciary was left out and we are of the view that whereas the higher judiciary should not be part of the Lokpal, but simultaneously there should be a strengthened Judicial Accountability Bill which covers this. We are aware of the fact that there was a Bill before this Committee and that comments have been given. But it is our request that in the light of the debate that has taken place both in Parliament and in the country, this Committee or some appropriate mechanism is taken up so that further comments to that can be also entertained. We have our own recommendations which my colleague will expand upon a little later.

We also feel that the group 'A' officers or group 'A' public servants have been covered under the Lokpal Bill but nothing has been said of the group 'B', 'C' and 'D' employees. Therefore, we have evolved in our own way a particular method by which other categories of public servants can also be brought under some sort of corruption prevention and control mechanism. We must here say that we are guided by various general principles. We have listed those in the document; I will not go through all of them. But I would like to highlight one because it is critical to our recommendations. We believe that it is not correct to take away totally the responsibility of prevention and control of corruption from elected Governments at the Centre and the States. To totally take this away and set up so-called independent bodies wherein a Chief Minister can legitimately say, "Look, I have no role in prevention and control of corruption." Therefore, we are trying, as far as possible, to reconcile two sorts of interests on the one hand, the conflict of interests sometimes that take place if senior people in the Government are accused of corruption, but on the other hand, the necessity that elected Governments must have and continue to have a responsibility in the prevention and control of corruption. Therefore, we have argued that for 'B' and 'C' and 'D' officers complaints under the Prevention of Corruption Act must first be to the police or Anti-Corruption Bureaus which are under the elected Governments. But we are suggesting that, for example, for Central Government officers, if a protocol which is laid down of the process of investigation is not followed or violated by the police, then, a complaint lies with -- we are suggesting -- Up-Lokpal at the Centre and Up-Lokayuktas at the States level. So, it is a system similar to the High Court system where there is going to be territorial jurisdiction and any Central Government officer wherever he or she is posted a complaint will rest with the local police there. They would be prepared in keeping with, for example, the CBI manual, a protocol of investigation and if that protocol is violated, then, a complainant or anybody can move the Up-Lokayukta or the Up-Lokpal where the complainant is located and then they can examine it and take over the investigation. After they have accepted and taken over the investigation they are not only obliged to complete that investigation but they are also obliged to fix the responsibility and if need be take action against that Investigating Officer who did not perform his or her job and, therefore, the matter had to be taken over. So what we are thinking of is an interlocking responsibility so that pressure builds up on the State Governments to make sure that they do their job and everything does not come to this independent body.

We are also little concerned that grievance redress has not been adequately addressed. In fact, it has not been addressed at all in the Government Lokpal Bill. We are not in favour of the grievance redress or citizen's charter being under the Lokpal. But we have suggested that there ought to be a parallel institution like grievance redress commissions both at the Centre and State levels. My colleagues will give you more details on that. So that is part of the general comments. Now specifically I am not going to highlight all of them but, you already

have documents in front of you, I will just highlight more important differences we have with the Government Lokpal Bill. The Government Lokpal Bill does not include the Prime Minister. We feel that the Prime Minister should be under the purview of the Lokpal Bill. However, we recognize that this is not done without sufficient safeguards and caveats. There is a possibility that the Government at the Centre might get disrupted by frequent frivolous complaints. So, we have suggested three or four type of safeguards. Number one, we have said that only a full Bench of the Lokpal could recommend investigation against the Prime Minister. Number two that Bench will have to refer the matter to a full Bench of the Supreme Court. This is like a mandatory appeal to the Supreme Court which will also examine if there is sufficient evidence. Number three, the Prime Minister cannot be investigated under vicarious responsibility what somebody else has done, but only what the Prime Minister allegedly himself or herself has done. Number four, that there are certain security and other issues which would be exempt from this. So, we feel that with these safeguards the Prime Minister should be brought under the Lokpal.

The next difference is we find that the Government Lokpal Bill is too biased towards the judiciary. For example, it says that the Chairman of the Lokpal must always be a retired judge of the Supreme Court or a Chief Justice of India. We are not clear why this is so. Why can't people who are not Judge of the Supreme Court chair the Lokpal because the Lokpal is a body which requires that sort of multifarious representation? We must note that the members are not all judges? So, there is no reason why they should not be. Similarly there is a provision in the Government Lokpal that if there is any Bench where a former Judge and another Lokpal is a Member, the former judge must always preside, and we don't think that this is fair. We feel that it should not be like a parallel court. It should be a body where both judicial members who have an important role to play and non judicial members are treated as equals in this thing.

We have a problem with the selection process and selection committee of the Government Lokpal Bill. It prescribes 11 members in the selection committee. A majority of them are either from the Government, or, from the ruling party, or, nominated by the Government. So, we feel that is not fair. We are suggesting a very simple selection committee of three members....

SHRI SHEKHAR SINGH (CONTD.):the Prime Minister, the Leader of the Opposition in the Lok Sabha and a Judge of the Supreme Court nominated by the Chief Justice of India. Why a Judge and not the Chief Justices? This is being done so that there is no complication when an appeal or a writ petition goes to the Supreme Court. It could be another composition, but it must be a composition which is not biased towards either the Government or any other party, the ruling party etcetera, etcetera. But we have a further problem. The Government Lokpal Bill says that the Selection Committee can, if it likes, set up a Search Committee. We are suggesting that the Search Committee should be mandatory. It is our experience that these high-powered Selection Committees of Prime Ministers and Leaders of Opposition do not have the time to actually go out and search who could be a good candidate. In effect, what happens in such situations, and we have seen it in other cases, which I will not mention, but you are familiar, is that the dealing Department of the Government actually decides who is going to become the Chief Lokpal, who is going to become the Lokpal, by the names that they nominate. Therefore, we feel that the Search Committee is very critical and the Search Committee should be mandatory. And we have suggested a certain composition. We have also suggested a process whereby the Search Committee does a shortlist which is put out into the public domain and the public is allowed to send in comments which the Search Committee must take into consideration and finally makes its decision and sets up a shortlist which it sends to the Selection Committee. So, this is one important thing.

We have a major problem with the way in which the “public servants” have been defined in the Government Lokpal Bill, specially relating to non-Governmental organisations. Now, I want to make it clear that we are not against the non-Governmental organisations being covered under anti-corruption laws. In fact, we will go on to give you suggestions of how they should be covered more effectively. But we think that it is wrong, in fact impractical, to define the way they have done. What the Government Lokpal Bill says is that if any organization, whether it gets money from the Government or not, whether it is registered or not, collects money from the public, the office bearers become public servants. Now, this is impractical because under the Prevention of Corruption Act, if the public servant’s assets are disproportionate to known sources of income, the person can be put behind bars. Suppose, somebody is President of a Badminton Club which has collected money for shuttlecocks. Are you going to find out if their assets are disproportionate to known sources of income? This is not going to work. So, we have suggested that this should be done away with. Let us retain what is in the Prevention of Corruption Act, which says that any NGO which gets Government funding comes under the purview. But we have gone further. We have said it at the end of our note, that we must amend the Prevention of Corruption Act and bring both the corporate sector and the NGO by doing the following. And what we have suggested is that section 12 of the Prevention of Corruption Act talks about abetment to an offence under the Prevention of Corruption Act. What we have suggested is that every time an NGO or a corporate sector gets a licence, an order, a clearance or any sort of dispensation from the Government, which is in violation of the rules or laws, it would be assumed that corrupt practices have been indulged in and would, therefore, be considered an abetment. Also, if they utilise these things wrongly in violation of laws and rules, this would also be so considered.

You will be aware of some of the current problems that are occurring, e.g., with the so-called ‘2G Scam’ etcetera, etcetera, where it becomes very difficult to actually prove that money has changed hands. But if we have a law which says, “Look, you have got something that is illegal, the onus is on you to prove that you have got it through legal means. And if you can’t, sorry, it is assumed that you have.” So, we have suggested this not just for the corporate sector, but we have suggested this for NGOs also, so that they also come into it.

We have also done various other recommendations. We feel that the Government Lokpal Bill is too biased, is in favour of the Government. For example, it says that all complaints against the Lokpal must come to the Government. They are not all practical things, whether they come to the President, which really means the Government. We have said, “No. Let the complaints be dealt with by the Supreme Court. Let it not be involved by the Government. Otherwise, their independence will, at least, seem to get compromised even if it doesn’t actually get compromised.

We have a view on statements of MPs in Parliament. I am mentioning this because it is a part of your list also, which you sent out. We feel that for the moment we shouldn’t try and amend the Constitution. Let the matter stay as it is though we are not in agreement with what we understand to be the implications of the Supreme Court Order on this matter. We feel that that has gone beyond what the Constitution envisages. So, we would like a position which is strictly in keeping with the Constitutional position. But we would like the Parliament to consider whether it itself wants to review this position especially in the light of some of the past occurrences and, maybe, relax it in a way in which public feel that there is a greater answerability of the MPs even when they are in Parliament.

We are also not in favour of the system that is there in the Government Lokpal Bill, of transferring of cases. We feel that the Chairman of the Lokpal has been given irrational

powers. The Government Lokpal Bill says that the Chairman of the Lokpal can, without assigning any reasons, transfer a case out of any bench and put it in any other bench. If a bench of two people doesn't agree, the Chairman then becomes the arbiter. In effect, the Chairman becomes so powerful that if it wants to favour any particular person, it can send to a particular bench shifted around without any reasons. We said this should not be there. There should be very detailed reasons of why any shifting takes place. We also feel that it is important to give a timeframe for conducting trials, but let us not give any irrational timeframe where you say that it has to be finished in two years. What happens if it is not finished in two years? Should the matter be dropped then? So, we are giving various checks and balances where the incident happened.

And, finally, we are very against, and this I think we have much debated, the penalties' clause that has been put into the Bill where somebody who files, what is called, a frivolous or a vexatious complaint, gets a higher level of punishment than somebody who is judged as being corrupt. Our problems are two. One is that it is very difficult to define what is 'frivolous' and 'vexatious'. And secondly, that this is sort of a punishment will deter even genuine complaint makers. We have suggested, drop 'frivolous' and 'vexatious'; say 'malicious' or where you have a malicious intent and reduce the punishment to a fine.

I will stop here. There are many other points which my colleagues will take up. Thank you.

SHRIMATI ARUNA ROY: I will invite Harsh Mander. He will talk about the necessity for the basket of measures, which we suggest, and about the independent process of selection. I will just say, as a conclusion to Shekhar, that our points of view on other presentations of the law in the public domain have been ample and they have been placed in front of you quite systematically. So, I invite Harsh to speak.

SHRI HARSH MANDER: Respected Chairperson and Members, I just want to emphasise a slightly larger view because you will be getting a lot of specific details. We believe very strongly that there is a national consensus which we agree with, that we need strong, independent accountable mechanisms for controlling corruption, for penalizing corruption, for investigating corruption, for prosecuting wrong doers, and so on. However, we feel that it would not make good sense for all these responsibilities to be placed in a single Central Agency. It is their administrative problems about, you know, workload and so on. But I think there is also the whole quality of a democracy where no sets of powers should be concentrated in any one agency. And here, you know, there is a separation of powers that the Constitution envisages, which should not be tampered with. How do we reconcile the need for an independent oversight mechanism or mechanisms for investigating corruption and for penalizing wrong doers and the fear of overcentralising these powers? It, we believe, can be done by not one Lokpal Bill, but by having a series of, at least, four or five Bills. I will just say that in order to explain 'two people', it would be a great idea to bring these together, to announce them together. So, you have the Lokpal looking at the senior Executive, and the Lokayuktas in the Lokpal Bill will deal, primarily, with the senior Civil Servants and the Senior Executive.

SHRI HARSH MANDER (CONTD): You have the Judicial Accountability Bill which needs further strengthening. You have the lower bureaucracy looked at by the CVC. You have the Grievances Redressal Bill. The idea of grievances also being looked upon by the same centralized agency is just simply not going to work. You all have your own constituencies. In a village, my problem is that the Anganwadi Worker is not coming on time or she is not feeding the children or the school has been closed for too longer period. I need to have something that is far more accessible. My colleagues will be speaking about it and the

Whistleblower Protection Bill. On all of these issues, we are going to talk about now. The only point that I want to make is that we are going to talk about different components of this whole package. But these are not envisaged as coming under one agency or under one law. But actually it is a basket of measures. That is the most important thing that the NCPRI wants to place before you. The second important thing is, the process of selection has to be independent. There has to be a sense that the Government is not overly powerful in the selection of who is going to be there. There will be no credibility in these institutions unless there seem to be independence in the process of selection. These are two most important points that we are trying to make. So far as specific details are concerned, my colleagues will talk about that.

SHRIMATI ARUNA ROY: Now Mr. Nayak will present our point of view on judicial accountability.

SHRI VENKATESH NAYAK: This Committee has already submitted its report with recommendations for strengthening the Judicial Standards and Accountability Bill. The reason why we are making this brief presentation before you is, we would like to request you to reopen the discussion on this Bill and we have a certain basis for saying that. On the 27th of August, while opening the debate in both the Houses of Parliament on the issue of Lokpal, the hon. Finance Minister referred to the conversation with civil society members of the Joint Drafting Committee and what we heard was that the Government told them that they were willing to strengthen the Judicial Standards and Accountability Bill and also the Whistleblower Protection Bill. So far as the Whistleblower Protection Bill is concerned, by then, this very Committee had already made its recommendations. Nevertheless, the Government had expressed its position that it was willing to take a second look at it. This is exactly what we are requesting this Committee, as the Bill has not yet been passed by the Parliament and it is still under consideration. Given the fact that there has been an extended debate and a very deep and widespread interest in making members of the higher judiciary accountable, not only for acts of corruption but also for other kinds of misbehaviour, we are requesting that this issue be reopened for discussion. At the moment, I will only place three points before you. The first one is in the context of the mechanism that is proposed in the Judicial Accountability Bill. It is a three-tier mechanism. We are making a request because we did not find mention of the presentation that was made by members of the civil society, who had deposed before the Committee at that point of time, that instead of a three-tier mechanism which functions in a disparate manner....

SHRI BALAVANT ALIAS BAL APTE: Sir, let him address the Bill which we are considering. Earlier Bills, earlier reports, etc. how they are relevant, I do not know.

CHAIRMAN: You just give your points.

SHRI VENKATESH NAYAK: Sir, we would be grateful if you allow us to present these three points very briefly.

श्री लालू प्रसाद : डिस्कशन का mandate बिल्कुल क्लियर है कि अन्ना जी, रामदेव बाबा और जो भी लोग आएंगे, सबको सुना जाएगा। इसीलिए आप लोगों को बुलाया गया है। अब आप अपनी बात सुनाइए।

श्री वेंकटेश नायक : आपका बहुत-बहुत धन्यवाद। मैं संक्षेप में तीन बातों को आपके सामने प्रस्तुत कर रहा हूँ। सबसे पहली बात यह है कि Judicial Accountability के लिए ढांचा किस तरह का होना चाहिए। फिलहाल बिल में एक तीन स्तरीय ढांचे की बात की गई है। हम यह

सजेस्ट कर रहे हैं कि जो ढांचा बनना चाहिए, वह एक integrated structure बनना चाहिए और वह एक परमानेंट नेचर का होना चाहिए ताकि उसके सदस्य केवल Judicial Accountability के लिए काम करें, एक सीमित समय के भीतर काम करें। इसके बारे में हम written submission आप लोगों को पहले ही दे चुके हैं। इसके साथ हम यह भी कह रहे हैं कि इस Judicial Oversight Committee के जो सदस्य बनेंगे, वे न केवल judicial background के हों, बल्कि non-judicial background के भी हों। We have looked into the report and recommendations made by the previous Committee. It is necessary to open that issue again for debate because there are several other shades of opinion that are being expressed within the society, among citizenry and people who are knowledgeable experts on the subject. So there is a need to take a second look at it. The second point we are suggesting is, at the moment, the Bill seeks to keep the entire proceedings in regard to a complaint non-transparent. What we are requesting is that at the stage of scrutiny of the complaint that is received or a reference that is received about a judge, perhaps, confidentiality should be maintained, but once it is found that there is a *prime facie* case for launching a full-scale inquiry तो ऐसे समय पर सारी proceedings जिस प्रकार से आज की तारीख में Judges Enquiry Act के तहत पब्लिक के लिए ओपन हैं, वे public proceedings हैं, इस बिल में भी उसी प्रकार के प्रावधान होने चाहिए। Initial stages में जो scrutiny होती है, तो Naturally there must be reason for protection of reputation of the accused person.

The last point that I would like to present before you, Sir, is a reference back to the Judicial Inquiry Bill of 2006 जिसमें standards कौन बनाएगा, इसके बारे में बातचीत की गई थी। हमारी सबमिशन यह है कि ऐसी संस्था यानी पार्लियामेंट, जिसके पास एक जज को निकालने के लिए रिकमंडेशंस करने की पावर्स हैं, ऐसी स्थिति में ऐसी संस्था के पास आपके जजों का behaviour क्या होना चाहिए, यह भी तय करने का अधिकार नहीं होना चाहिए, क्योंकि This is against the concept of checks and balances. An institution which has the power to remove, should also not have the power to recommend standards of conduct. Instead what we are saying is the position that was given in the Judges Inquiry Bill, was let the statute recognise the existing statement on standards of judicial life and eventually the refinement or any change could be made by the Judicial Oversight Committee that this statute itself establishes. Since we are saying that such a Judicial Oversight Committee will have non-judicial members as well, it will not be a situation where only the judges will decide what the standards of behaviour should be. Having said this, I would like to thank you for giving me this opportunity to present an issue even though some of the Members have felt that it is not part of the mandate of this Committee.

श्री विजय बहादुर सिंह : आपका यह कहना है कि पार्लियामेंट को पावर हो?

SHRI VENKATESH NAYAK: What I am saying is if the Parliament has the power to make a reference for the removal of a judge, the same body should not also have the power to determine the standards of conduct because then that could lead to concentration of too much power in the hands of one organization. But the statute should otherwise recognise the existing statement of values of judicial life which the Bill right now recognises and any refinement later on should be made by the Judicial Oversight Committee. The Composition of the Committee ensures that there are non-judicial members also on it.

SHRIMATI ANJALI BHARDWAJ: Sir, I will just put forth what NCPRI has proposed on the Whistleblower Protection Bill because we feel that this is very closely linked to the whole issue of corruption and people who are blowing whistle on corruption. We have already deposited before the Standing Committee which was dealing with the whistleblower protection issue. Quite a few of the suggestions that we had put forth were already included by the Standing Committee. But there are just two things which I want to flag which have not really been included. The first one is, expanding the definition of a whistleblower. अभी जो मौजूदा provisions हैं, अभी पार्लियामेंट के सामने जो Whistleblower Protection Bill है, उसमें केवल आर्गनाइजेशन के अंदर जो Whistleblowers हैं, उनके प्रोटेक्शन की बात है। हमें यह लगता है कि जिस तरह से RTI users जो करप्शन को एक्सपोज़ करने के लिए RTI एप्लीकेशंस डाल रहे हैं, उनको धमकियां मिली हैं और कई जगहों पर उन पर हमले भी हुए हैं तथा पिछले 2 सालों में 18 लोगों से ज्यादा लोगों की मौतें हो चुकी हैं। We feel that they should also be included under the ambit of the Whistleblower Protection Bill. It should, therefore, not just be limited to people working in organizations, it should also extend to common citizens.

SHRIMATI ANJALI BHARDWAJ (contd.): The second point is that we feel that wherever a complainant, who is trying to expose corruption, or is making a complaint on the issue of corruption, is being threatened, that issue must be dealt with by the Government on a priority basis. In fact, one of the suggestions that has come up in the Central Information Commission is that wherever an information seeker is being targeted, then, the Government will take every step possible to in fact, put out that information immediately in the public domain on its own, and that, we feel, should be something of a principle that could be adopted in the Whistleblowers' Protection Bill as well. The other issue which I have been asked to talk about on behalf of the NCPRI is the whole matter of grievance redress. This presentation here which we have put up, basically, breaks up the whole issue into corruption and grievances. And the idea is that we feel that grievances for a common person are as important, if not more important, than issues of corruption in many cases. लोग जितने corruption से पीड़ित हैं, उतने ही कम्प्लेंट्स से पीड़ित हैं, क्योंकि उनका निवारण नहीं होता है। What the NCPRI has proposed in the basket of measures that Harsh talked about is that there should be a separate legislation which deals with grievance redressal, and that legislation should focus on setting up an appropriate decentralized structure for dealing with issues of grievances. We feel that grievances और corruption के केसेज़ एक साथ में एक बॉडी न देखे। हमारे देश में 1.2 बिलियन लोग हैं और सभी के कुछ न कुछ grievances हैं। अगर एक साल में किसी बॉडी के पास एक बिलियन से ज्यादा grievances आ जायेंगे, it will collapse under its own weight, and it will not be effective. Therefore, we feel that a separate body needs to be set up to look into the issue of grievance redress. It needs to be a decentralized body because people often have very immediate nature of grievances. They are not getting the water supply or their ration supply, and, therefore, they need a quick and immediate redressal of their grievances. The other point which we have proposed in the grievance redress part is that it should not be limited to just Citizens' Charter. अभी तक Citizens' Charter लिमिटेड रूप में हमारे सामने आते रहे हैं, and we feel that something which is, in fact, much wider is Section 4 of the RTI Act. That is a very good basis for a statement of obligations which needs to be prepared for each public authority. And the statement of obligation must be a very comprehensive one which includes, as I said, not just

Citizens' Charter but also includes other things which would ensure that लोगों को तकलीफ न हो, क्योंकि वह उनकी एक प्राइमरी प्रॉब्लम है। What should constitute a grievance, according to the NCPRI draft, is a violation of statement of obligations. कहीं पर भी, यदि स्टेटमेंट पब्लिक अथॉरिटी रखती है और उसका violation होता है, that should constitute a grievance, and also, violation of any rights that are assured to people under any law or rules. Also, we felt that it should be expanded to include anything which is violated or which a person may feel that should be reasonably expected from a public authority. We feel that it should be a wide definition. And, my colleague, Mr. Nikhil Dey, will talk about decentralization structure that has been proposed by the NCPRI.

SHRIMATI ARUNA ROY: Mr. Nikil Dey is the last of speakers from our side, and after he finishes, I would request you to give me five minutes to sum up in the end.

SHRI NIKHIL DEY: मैं माननीय सदस्यों का शुक्रिया अदा करता हूँ। I will concentrate a little bit on grievances because it is really just as important as corruption. इस देश में लोगों का गुस्सा इसलिए है कि जब वे सरकारी दफ्तर में जाते हैं, तो जो उनका काम है, वह होता नहीं है। उस काम को करने के लिए भी यदि हम उस बॉडी में डाल दें, If we put it in the same body that is going to deal with high corruption, then, we will neither be able to deal with corruption, nor be able to deal with grievances. So, we strongly feel that there is a need for a separate legislation और हम लोगों के वर्षों के काम जमीनी स्तर पर हुए हैं, गांव में हुए हैं, नरेगा में मजदूर को काम नहीं मिलता है और यदि काम मिलता है, तो उसकी मजदूरी की पेमेंट में देरी क्यों होती है ? Why does Panchayat not open in time? Why does the hospital not open in time? So, it is not just a Citizens' Charter. The Citizens' Charter is one of the few issues. But there are hundreds of issues which causes anger to people day in and day out और कोई सुनवाई की जगह नहीं है। There is no place to have a hearing. There are, basically, three issues that we have put into the draft of the Grievance Redressal Bill. No.1 is that you have a place to register your grievance. उसका रजिस्ट्रेशन कहीं नहीं होता है। वह कहीं जाता है, तो दफ्तर बंद होता है अथवा कोई कम्प्लेंट्स नहीं लेता है, there is no place to get it registered. So, the first place is your first port of call, your ration shop, where you are supposed to get your rations. But if you don't get your ration supply, where do you go? In every block in the country, we are saying that there should be a Citizen Support Centre which should have a connection with telephone lines and help lines, with computerization and where someone can go, खुद जाएं और खुद लिखा सकें या डाक से भेजें, and at the block level for registering a grievance, as a fall back, also with the Department. If the grievance does not get sorted out in one month by that Department, there should be an automatic escalation of that, helped by that Block Support Centre to the District level. यदि एक महीने में एक्शन टेकन रिपोर्ट उस विभाग से नहीं आती है, यदि उस व्यक्ति का grievance नहीं पहुंचता है, तो सीधे जिला लेवल पर वह एप्लीकेशन जाए And the district should have two powers and this is where सूचना के अधिकार के कानून से ही इस मॉडल को लिया है, that they should have the power to penalize or compensate. You do not need a rock to kill an insect. यदि किसी को इतना ही कम्पनसेसन मिल जाए कि हां, यदि मुझे अस्पताल से दवाई

नहीं मिली, तो मुझे थोड़ा-सा कम्पनसेसन मिल जाएगा, इससे उसको भी थोड़ा भय हो जाएगा और दूसरों के ऊपर भी कहीं न कहीं कंट्रोल होगा। The District Grievance Redress Commissioner should have the powers to penalize and compensate and sort it out within one month, and should have powers to also penalize the Block Level Grievance Redressal Officer क्योंकि हर विभाग चाहेगा कि either the BDO or the CDPO, these are the people who are supposed to sort it out. If they don't sort it out in one month,...

SHRI NIKHIL DEY (contd.): I If they don't sort it out in one month, the District Commissioner should be able to penalize them also. That would make the whole system work at the bottom level, and it will reduce a lot of the frustration and anger and give people some kind of relief.

Now there are two-three issues that would come up in relation to this. People would ask: Can the Centre legislate? I would like to point out that in the Concurrent List, Item No. 8 is 'Actionable Wrongs'. अब grievance redressal तो actionable wrong ही है। That is exactly what it is by definition, कि मेरे साथ कोई अन्याय हुआ है और उस पर कोई एक्शन होना चाहिए, and we are further wanting to say that if you look at the RTI Act, there were nine States where RTI Acts were already in place. Similarly, there are many States which are now passing Public Delivery Service Guarantee laws, but if you have a very good Grievance Redress Bill, it can help beyond the delivery of service towards redressal of grievances. So, it does not prevent those Bills from either remaining in place or getting assimilated into this.

The second thing that I would like to point out about the Centre being able to legislate is the flagship programmes. If you look at flagship programmes of the Centre such as the NREGA, Right to Food, Indira Awas Yojana, these are about many of the things that concern people, and the money comes from the Centre. वहां NREGA में ombudsman बन रहे हैं, कई और चीजें भी लगाई जा रही हैं, लेकिन वे ढंग के नहीं बनाए जा रहे हैं। यदि पूरे देश के लिए एक कानून व्यवस्था होगी, where State appoints. We are suggesting that the District Grievance Redress Commissioners should be appointed by State Public Service Commissions. We are suggesting that the State Public Grievance Commission should be appointed, like the RTI by the State Chief Minister, the Leader of the Opposition and a Judge of the High Court. So, if you have a State-appointed apparatus looking after both State and Central grievances at the grassroots level, you would not be stepping on the State like in the RTI where you have State institutions but you have a single law setting up the whole architecture for the entire country. इस दौरान कम से कम हम पूरे देश में एक साथ यह कह सकेंगे कि जो गरीब से गरीब व्यक्ति है, उसकी हर समस्या का एक समाधान है। मैं आखिरी चीज यह कहना चाहूंगा कि यह चार्ट ढंग से बन नहीं पाया है। यदि हम नीचे देखें, we are basically saying that for corruption, you must have three bodies: one that would look at corruption at higher levels; second that would look at corruption of lower bodies, which are separate, क्योंकि वह transactional corruption रोजाना का, everyday bribe, is quite different from the collaborative corruption of high level corruption. So, there must be two separate bodies. There should be a third separate body looking into corruption in Judiciary; public grievances by a District Level Grievance Redress Commission and, finally, at the bottom, the whistleblower protection; जो भी कम्प्लेनेन्ट है, आज उसके ऊपर कहीं न कहीं खतरा है। चाहे वह grievance की कम्प्लेंट करे या चाहे Human Rights Commission में जाए या

Women's Commission में जाए या कहीं भी जाए, to protect him, you need one law that can provide protection -- not one body providing protection but one law -- and all the bodies being able to use that law. So, we feel that this combined mechanism can really pass the message to the country.

श्री रामविलास पासवान : आप जो कुछ कह रहे हैं, इससे मुझे कंप्यूजन हो रहा है कि ये कर्मचारी grievance cell को देखेंगे, कमिश्नर्स होंगे, तो क्या वही कलेक्टर होंगे, वही SP होंगे या लोकपाल अलग से नियुक्त करेगा, इसके बारे में हम जानना चाहते हैं?

SHRI NIKHIL DEY: Grievances के लिए जो District Grievance Commission appoint होंगे, वे अलग से State Public Service Commission के appointees एक तरीके से कलेक्टर के बराबर के लोग होंगे, जिनके पास quasi-judicial powers होंगे, जो आज स्टेट लेवल पर इन्फॉर्मेशन कमिश्नर के पास हैं, वे powers district में एक कमिश्नर के पास आएंगी और उनके पास एक टेक्नीकल स्टॉफ होगा, वे किसी भी विभाग से इंडिपेंडेंट होंगे।

श्री रामविलास पासवान : जितने भी बिल्स हैं, इनके लिए बीस हजार से पचास हजार तक नीचे से लेकर ऊपर तक जितने भी नए कर्मचारियों की आवश्यकता होगी, तो हम यह जानना चाहते हैं कि वे कर्मचारी क्या उन्हीं में से होंगे या उनके लिए अलग appointment प्रोसिजर होगा? जैसे गांवों में मुखिया है, भूतपूर्व मुखिया है, सरपंच है, भूतपूर्व सरपंच है, दोनों एक दूसरे के प्रतिद्वन्दी हैं, उनको इंदिरा आवास आदि कमेटी में रखा जाता है, लेकिन उसके बावजूद भी वहां पर करप्शन हो जाता है। जो भी नई कमेटी बनेगी या जो नए लोग appoint होंगे, वे करप्ट नहीं होंगे, इसकी क्या गारंटी है?

श्री निखिल डे : इसमें दो चीजें हैं, जिनमें थोड़ा सा फर्क है। यदि हम लोकपाल वाला स्ट्रक्चर देखें और इसको देखें तो इसमें बहुत फर्क है। हमने यह कहा है कि जो आज एग्जिस्टिंग एक इतनी बड़ी व्यवस्था है, उससे काम करवाना है। यह नहीं कि उसकी जगह किसी और को लाना है। यदि आप RTI को देखें, तो वहां पर एक कमिश्नर लगा है, कोई नया ब्यूरोक्रेट नहीं लगा है। स्टेट लेवल पर एक कमिश्नर लगे और उन्होंने एग्जिस्टिंग ब्यूरोक्रेसी के ऊपर दबाव डाला कि आप नहीं करोगे, तो आपके ऊपर पेनल्टी लगेगी। यहां पर हम डिस्ट्रिक्ट में केवल एक नया कमिश्नर लगा रहे हैं और जो दूसरे पुराने लोग हैं, उनके ऊपर पेनल्टी लगाने की पावर उनके पास होगी, तो वह पुराने वाला यदि टाइम पर अपना काम नहीं करेगा, तो उसके ऊपर पेनल्टी लगेगी, वैसे ही नीचे के कर्मचारियों के लिए जो उप-लोकायुक्त है, हमने कहा कि आज आप पुलिस के पास ही जाइए, यदि आपका काम नहीं हो, तो अपील वाली बॉडी है, कम्प्लेंट वाली बॉडी है, वह एग्जिस्टिंग वाली पुलिस के ऊपर पेनल्टी लगा सकेंगे, ताकि वे लोग अपना काम करें, इसलिए नए लोगों को बहुत कम लगाने की बात है।

SHRIMATI ARUNA ROY: Sir, I would wind up and then Mr. Harsh would speak. I would just conclude in five minutes. हम अपनी बात रखते हैं। आपके सामने कई मिश्रित बातें आई हैं but I want to put it together.

First of all, हम यह सोचते हैं कि जो चर्चित विषय है कि एक लोकपाल बनना चाहिए, जिसके नीचे सारी चीजें आ जाएं, तो आप सुनते आ रहे हैं कि हम उससे मतभेद रखते हैं। हम सोचते हैं कि बहुत ज्यादा शक्तिशाली एक नया ब्यूरोक्रेसी नहीं होना चाहिए, इसलिए हम कह रहे हैं कि every one should be under the law. The rule of law is for everybody. No one can be above the law. लेकिन इसकी व्यवस्था करने के लिए you need to have structures that are manageable, that would deliver, that are administratively feasible and that are accountable to each other and accountable to others, because you would be creating a huge edifice; हम तो इसके बारे में बहुत बात कर चुके हैं। That is why, this whole Government redressal mechanism actually looks at existing structures like the MGNREGA, the Right to Food which is going to bring in a whole lot of rights-based demands and grievances. ये सारे पैसे वहां जाएंगे, एक independent mechanism हो जाए, हमारी यह बात हुई है, to answer partly what has been said. हम यह भी कह रहे हैं कि since no one can be above the law and there must be rule of law, जो आपका सरकारी बिल है, वह काफी सारे ढांचे को नहीं देखता है, इसीलिए हम लोगों ने judicial accountability की बात भी की और whistleblowers की बात भी लाए, क्योंकि हमें लगता है कि हर एक के ऊपर वही मौजूदा कानून रहना चाहिए, जिसकी आज-कल चर्चा भी है। हम यह भी कह रहे हैं कि it should be inclusive. And, therefore, all points of view must be taken on board. Four of them have already been mentioned. There has been the Jan Lokpal Bill, the Government Bill, the NCPRI Bill, Jaya Prakash Narayan's Bill and the Bahujan Lokpal. These five have already been stated in the public domain, but there may be many other points of view. There should be varied opinions. India is a large country. All of us have opinions and opinions must be taken on board. And, therefore, we are very grateful that such a thing as the Standing Committee exists. We have been defending this institution even in the public domain because we think it is a democratic institution, an equal institution, which provides equal opportunities for all of us to depose. So, I want to say a big 'thanks'. I would just invite Mr. Harsh at the end because he wanted to answer Paswan saab's question. I would ask him to say a few words first and then conclude.

Sir, we come from the National Campaign for People's Right to Information and we have full confidence that the Standing Committee would listen to it and actually address the issue of corruption. Thank you.

अध्यक्ष : आप पासवान जी का उत्तर दे दीजिए।

श्री हर्ष मंदेर : पासवान जी, हम यह मानते हैं कि गांव स्तर पर नए अधिकार बने हैं और बनते जा रहे हैं जैसे, *मनरेगा* के तहत काम का अधिकार है, शिक्षा का अधिकार है तथा और बहुत से अधिकार हैं। इन अधिकारों को लागू होने के लिए एक व्यवस्था होनी चाहिए, जो मेरी पहुंच के अंदर है। इसलिए जिला स्तर पर यह व्यवस्था होगी। वह किस तरह से होगी, उसकी स्वतंत्र तौर पर नियुक्ति होगी। आप जो कल्पना कर रहे हैं, जैसे कलेक्टर है, जिला जज है। एक और व्यवस्था होनी चाहिए जो इन सबसे अलग है, स्वतंत्र है, जहां पर मैं अपनी पीड़ा को लेकर जा सकता हूं। यह यह कल्पना कर रहे हैं।

श्री रामविलास पासवान : वह कैसे जाएगा? आपका मिशनरी तो वही है, वही BDO है, वही SDO है, वही कलेक्टर है। आप अलग से बैठाकर उसको कैसे ले जाएंगे?

अध्यक्ष : यह तो उनका प्रॉपोजल नहीं है, बाहर से आदमी लाया जाएगा। हम में से होंगे।

श्री लालू प्रसाद : आपका कन्सेप्ट बिल्कुल क्लीयर है। यह राष्ट्रपिता महात्मा गांधी और जय प्रकाश नारायण जी के विचारों से मिलता-जुलता है। शक्ति का विकेन्द्रीकरण और डॉ. लोहिया जी की सोच कि जब तक तंत्र पर लोक हावी नहीं होगा, जब तक दो नम्बर की कुर्सी पर बैठे हुए लोगों के मन व मिजाज को ठीक नहीं किया जाएगा, तो सरकार जितनी भी प्रयत्नशील हो, उसकी नीतियों को बिल्कुल रौंदा जाएगा।

श्री लालू प्रसाद (क्रमागत) : इसी क्रम में स्वर्गीय राजीव गाँधी जी और सब लोगों ने पंचायतों के गठन, लोकल बॉडीज़ के गठन के लिए काफी दबाव दिया और यह चिन्ता भी जताई कि 16 आना भेजते हैं और 4 आना पहुँचता है। उसमें कोई परिवर्तन नहीं हुआ है। अभी राष्ट्रपिता महात्मा गाँधी होते, जेपी होते, तो गाँवों के पंचायतों की जो दुर्दशा है और इलेक्शन के जो तौर-तरीके हैं, उन्हें देख कर दंग हो जाते। पता नहीं दिल्ली में बैठे हुए हमारे विद्वान जन theoretical बहस करते रहते हैं और हम लोग टीवी पर बहुत सारी बातों को इधर-उधर सुनते रहते हैं और दंग रहते हैं। आपकी सोच ठीक है, बहुत अच्छी बात है कि कई बॉडीज़ का गठन होना चाहिए। गरीबों की जो सबसे पीड़ादायक समस्या है, जिनके लिए अभी परिभाषा दी गई है – below poverty line, जिस पर सबकी आपत्ति है, यह सब देखा गया होगा। ग्राम स्वराज का मतलब – सही आजादी का सबूत, गाँव हमारा हो मजबूत। हम लोग जेपी आन्दोलन में रहे और हमने सब कुछ देखा। इसमें grievance सुनने वाली जो बॉडी होगी, जिसके बारे में कहा जा रहा है, यह बहुत अच्छी बात है। लोगों के दुख-दर्द को सुनने के लिए, उनकी complaints को सुनने के लिए ऐसा होना चाहिए। कोई जोर-जबर्दस्ती नहीं है कि यही होना चाहिए, लेकिन होना चाहिए। जब हम लोग इसे व्यावहारिक रूप में देखेंगे, तो जो भी existing पंचायत हैं, वहाँ आज तक कोई आदमी गाँव की ग्राम सभा की मीटिंग नहीं करता कि हमारे पास सरकार से दो पैसा आया है, यह उपलब्ध है, बैठक हो और हम कौन काम करें, इसकी priority निर्धारित कर दो। मुखिया, जो इसका मैम्बर है, वह मुख्य मंत्री और मंत्री के अनुसार रहे, इस पर हमने भी बहुत दिमाग खर्च किया, जब हम मुख्य मंत्री थे। यह बात नहीं हो रही है। मुखिया बनने के लिए लोग करोड़ों रुपए खर्च कर रहे हैं, चूँकि इनको चेक काटने का अधिकार मिला हुआ है। सब जगह मार-काट मची हुई है। क्या मुखिया का चेक काटने का काम है? जगह-जगह आप देखेंगे कि क्या हालात हैं। मैं व्यावहारिक रूप से यह feel करता हूँ, मैं आपको contradict नहीं करता हूँ। चूँकि आपके नाम का reference लेकर पार्लियामेंट में हमने कहा कि उनकी बात सुनी जानी चाहिए, हमें इस पर ध्यान देना चाहिए। साल्वे जी, जो एडवोकेट हैं और शेखर जी की बातें भी हम लोग सुनते रहते हैं।

इनके दाँये-बाँये जो विद्वान बैठते हैं, वे इनको दबाए रहते हैं और ये अपना सिर झुकाए रहते हैं।

मैडम, यह बहुत व्यावहारिक बात होगी, यह केवल हम नहीं कहते हैं कि false claims बहुत आएँगी। हर मजबूत आदमी 10 आदमी को भिजवाएगा कि हमारा यह काम नहीं हुआ, वह पैसा माँग रहा है। अभी हम नाम नहीं लेना चाहते हैं, हम जिस राज्य से आते हैं, हमने तो पहले ही Citizen's Charter बना दिया, grievance का एक्ट पास कर दिया। अब बीडीओ के यहाँ तीन महीने दरखास्त रहेगी, अगर वहाँ सुनवाई नहीं हुई, तो एसडीओ के यहाँ चले जाइए, तीन महीने वहाँ रहेगी और अगर वहाँ भी सुनवाई नहीं हुई, तो कलक्टर साहब तीन महीने तक disposal करेंगे। A collector is dealing with the law and order and development. कलक्टर के ऊपर बहुत सारे कामों का बोझ है। लोग इन चीजों को देखते हैं। अगर हमें Caste Certificate लेना है, हम दिल्ली में selected हो गए हैं, हमें तुरंत एक महीने या 10 दिन में Caste Certificate लेना है, तो इसमें दिक्कत आएगी। पहले तो जिस ढंग से लोग लेते, नहीं लेते, और जो कर्मी इसमें लगे हुए हैं, उनकी efficiency ताजा रहती है, तो दो मिनट में वे मुहर वगैरह लगवा कर दे देते थे। हमारा selection हो गया, हमें दिल्ली में वह कागज ऑफिस में दाखिल करना है और हमें वहाँ 6 महीने तक चक्कर काटना पड़ेगा, तब तक हमारी नौकरी तो गई। बहुत सारी false बातें भी आएँगी। इन व्यावहारिक चीजों को कैसे लिया जाए। देखिए, हम लोग यहाँ बैठे हुए हैं और सारे देश के लोग चिन्तित हैं कि बहुत बेहतर लोकपाल बनना चाहिए। लोकपाल बनना चाहिए, लेकिन यह केवल सरकार का बिल नहीं है, जिस पर हम लोग विचार कर रहे हैं, सब लोगों को अपने दिमाग में यह clear हो जाना चाहिए। There is not only the Government Bill, but composition of the Jan Lokpal Bill also. अभी तक हम लोग यहाँ तक पहुँचे हैं। चूँकि जिम्मेदारी के साथ पार्लियामेंट में यह discuss हुआ, सब जगह discuss हुआ और अन्ना जी के साथी और जो लोग थे, उसमें प्रणब बाबू की बात recorded है कि हमने इसमें अन्ना जी के 36 प्वायंट्स को incorporate किया। मैडम, इसमें बात यह है कि यह अन्ना जी और सरकार, दोनों का बिल है, जहाँ तक लोकपाल बिल का सम्बन्ध है। हम सबको और आपको याद होगा, हम लोग आप लोगों की बातों को पढ़ते रहते हैं, सुनते रहते हैं, उसमें तीन बातों के ऊपर बात अटकी हुई है। पार्लियामेंट के अन्दर जो discussion हुआ, उसमें अलग-अलग पॉलिटिकल पार्टियों के लोगों का भाषण हुआ, जो उसमें participants थे और स्पीकर साहब को कहा गया कि आप प्रोसीडिंग्स को, sense of the House को इस कमेटी को भेज दीजिए। There is difference in sense of the House. एक प्वायंट पर आम राय है कि लोकपाल रहे, लेकिन हम लोगों के विचारों में, दलों के विचारों में भिन्न-भिन्न तरह की बहुत सारी चीजें हैं। हम लोग सच्ची बात कह देते हैं, तो लोगों को लगता है कि यह विरोध कर रहा है। हम लोग इन बातों का विरोध वगैरह नहीं करते हैं। तीन बातों के ऊपर बात अटकी। हमारे साथी, इलेक्ट्रॉनिक मीडिया के लोगों ने बड़ी कसरत और मेहनत की कि जीत हो गई, जीत हो गई। बात तो यह है कि यह आपस की

बात है, देश की बात है, hierarchy में जो जहाँ हैं, उनकी बात हो। अन्ना जी को यह खबर पहुँचाई गई कि आपको रात में 4 बजे पुलिस उठा ले जाएगी। वे तैयार हो गए और कुछ लोगों ने approach भी किया। हमारे महाराष्ट्र के साथी, हम सब चिंतित थे कि वे अनशन पर हैं, बुजुर्ग आदमी हैं, उनको बचाना चाहिए, चाहे जो भी हो। प्रधान मंत्री ने उन्हें हाउस में ही salute किया, हर पार्टी के लोगों ने किया। मेरी समझ में तीन बातों के ऊपर बात अटकी है – न्यायपालिका, प्रधान मंत्री और सभी राज्यों में लोकायुक्त। यह लाओ, नहीं तो अमुक तारीख को जाओ, मतलब कि सरकार जाओ। उन्होंने ये तीन बातें कहीं। उस दिन ज्युडिशियरी वाली बात नहीं थी। उस दिन वह बात खत्म हो गई। जो भी हो, जो बनाना हो, बनाइए। उसमें कहा गया कि जीत गए, जीत गए। जीतिएगा या हारिएगा, या देश जीतेगा या देश हारेगा, इस पर तो अभी विचार हो रहा है। आप लोगों की बात सुनने के बाद हम लोगों ने कहा कि यह व्यापक हो, इसे discuss किया जाए। हममें से कोई आदमी इसके खिलाफ नहीं है। Decentralization of powers हो, यह अच्छी सोच है। इन चीजों के बारे में हमारी जो बुद्धि और तजुर्बा है, उसके अनुसार हम अपनी तरफ से और अपने दल की तरफ से इस प्वायंट पर आपका संज्ञान लाते हैं। हम आपसे और आपके साथियों से यह जानना चाहेंगे कि लोकायुक्त कौन होगा?

श्री लालू प्रसाद (क्रमागत): ज्युडिशियरी से ऊपर और पार्लियामेंट से भी ऊपर हम सब लोगों के माथे पर किस महान विभूति को बैठाया जाएगा। इसके बाद रामविलास जी का दलित लोगों की रिजर्वेशन के लिए जो प्रारूप है, वह अलग है। हम किसे सबसे ऊपर बैठाएं? हम लोगों के बीच में कौन होंगे जो दूध के धुले हुए रहेंगे? सर्च कमेटी के समक्ष पात्रता के बारे में भी हम लोग आपका मार्गदर्शन चाहेंगे कि उन लोगों की क्वालिफिकेशन क्या होगी? ऐसे कौन महानुभव होंगे, जिनका हम सिलेक्शन करेंगे और जिन्हें सब लोग अपने ऊपर बैठाएंगे ताकि भ्रष्टाचार दो मिनट में खत्म हो जाए।

अध्यक्ष: लालू जी, मैं आपसे विनती करूंगा, चूंकि प्रश्न बहुत हैं, इसलिए आप अपनी बात थोड़ा संक्षेप में रखिए।

श्री लालू प्रसाद: ठीक है, मैं अपनी बात को यहीं रोक देता हूं। यहीं पर ही अभी-अभी सब की सब बातें नहीं हो सकती हैं, कुछ न कुछ कन्फ्यूजन तो रह ही जाता है।

मैडम, आपसे और आपकी टीम से मेरी दरखास्त है कि आप पहले उनकी क्वालिफिकेशन तय करें कि ऐसा कौन सर्वोच्च आदमी आएगा, जिसके आगे हम सब चीजों को अर्पित कर देंगे। यह कोई मामूली काम नहीं है। जैसे अभी आपने पी.सी. ऐक्ट की बात की, करप्शन की बात की, ये सब पैरलल ही हैं। सरकार के बनाए हुए जो सिस्टम हैं या कानूनी रूप से जो बॉडी इन सब चीजों का देखती है, वह बदल जाए, जैसे सीबीआई इत्यादि हैं, यह बहुत ही कठिन कार्य है। इसलिए हम लोगों को सोचना होगा कि लोकपाल कौन हो और उसकी क्वालिफिकेशन क्या हो? इसके बारे में हमने एक सजेशन दिया था, अन्ना जी से

भी हमने पूछा था कि क्या इससे करप्शन मिट जाएगा, तो वह बोले कि हां, लगभग 60% मिट जाएगा, लोग डर जाएंगे। उस समय हमने एक सजेशन दिया था, आज भी हम उस पर कायम हैं, हालांकि देश इस बात को नहीं सुनता, मीडिया भी नहीं सुनता। आज तक जिन लोगों ने भी चोरी की है, वे चाहे जहां भी हैं, वे चारों तरफ पैर फैलाए हुए हैं, दस-दस अपार्टमेंट लिए हुए हैं, फॉर्म हाउसिंग लिए हुए हैं, इसके लिए हमने एक सुझाव दिया था कि एक ऐसा ऐक्ट बनना चाहिए कि सारे लोगों की सम्पत्ति को नीलाम कर दिया जाए। जो मोमबत्ती जला रहे हैं उनकी या जो लोग हम पॉलिटिशियन्स को गाली देते हैं कि ये लोग चोर हैं, उनकी। काफी मामलों में तो हम बहुत हर्ट हुए कि अगर भारत की जगह कोई दूसरा देश होता तो वहां गद्दाफी वाली हालत हो जाती, लोगों ने इस तरह की भाषा का इस्तेमाल किया। हम लोगों को गाली दी गई कि हम लोग गाय, भैंस, भेड़, बकरी चराकर यहां बैठे हैं। इसलिए मेरा निवेदन है कि बेहतर लोकपाल बिल बने और देश की सारी सम्पत्ति को नीलाम कर दिया जाए, सारी सम्पत्ति को टेक ओवर करके सरकारी सम्पत्ति घोषित कर दिया जाए, राइट टू प्रॉपर्टी को खत्म कर दिया जाए और फिर उसके बाद प्रॉपर्टी का रीडिस्ट्रीब्यूशन हो। इससे सब तरह का धन, लाल, पीला, हरा, काला जितना धन है, सब खत्म हो जाएगा।

हम जानते हैं कि यह सब संभव नहीं है। जो लोग पहले इस बात को उठाते थे, वे तो हमेशा के लिए चुप ही हो गए हैं, इसलिए हमें आपका मार्गदर्शन चाहिए। इस देश में आपका एक इम्पॉर्टेंट रोल है, आपकी आइडेंटिटी है, आपको सारा देश जानता है। हम सब लोग मिल करके कैसे एक इफेक्टिव लोकपाल बनाएं, एक सिस्टम बनाएं, ताकि इस देश से ये सब बातें समाप्त हों। हम चेअरमैन साहब से यह चाहेंगे कि this should not be the first and the last meeting with Madam. इन्हें आगे भी फिर बुलाइए। मैं अपनी बात समाप्त करता हूं।

अध्यक्ष: यह प्रक्रिया तो आगे भी चलती रहेगी। बहुत सारे प्रश्न हैं, मैं विनम्रता के साथ आपसे सिर्फ इतना अनुरोध कर रहा हूं कि केवल प्रश्न रखें, टिप्पणी न करें।

SHRI SHANTARAM NAIK: Madam, I would like to put a question about vexatious complaints. Before that, I would like to say that we have almost spent 20-25 minutes on three other aspects which are not part of the Bill, namely, whistleblower, judicial accountability and the forthcoming legislation on public grievances. Although I am fully in support that legislation, we have wasted time on that only. So, we have got now less time on the actual Lok Pal Bill. My question is, see, malice is very, very difficult to prove. All the courts of law have come to the conclusion that this is a state of mind which nobody can ascertain. If frivolous and vexatious aspects are removed and it is restricted only to know the malice of the person complaining, I don't think anybody can be punished for making a complaint of that sort, and all will be scot-free.

SHRI HARIN PATHAK: Sir, I am on the same point.

CHAIRMAN: Mr. Pathak has the same question, so he joins that question.

SHRI HARIN PATHAK: I totally agree with what Shantaji has said. When a complaint is made, it is a frivolous complaint or a false complaint, immediately it will appear in the media.

कोई गलत कंप्लेंट करता है, जैसे ही लोकायुक्त के सामने वह कंप्लेंट जाएगी, चाहे वे चुने हुए लोग हों या पीछे बैठे हुए लोग हों अथवा यहां के पहले पंक्ति वाले लोग हों, आप सब जानते हैं कि हमारा सार्वजनिक जीवन तीस-तीस पैंतीस-पैंतीस साल का होता है। यहां जो लोग बैठे हैं, वे भी 40, 45 या 50 साल पुराने लोग हैं। मैं स्वयं 36 साल से लगातार चुनाव जीतता आया हूं, मेरी पब्लिक लाइफ को भी 45 साल हो गए। मान लीजिए हमने किसी कार्य के लिए बजट नहीं दिया, किसी ने पानी की टंकी के लिए बजट मांगा, हमने नहीं दिया, बस फिर क्या है, एक कंप्लेंट कर दो, पूरे मीडिया में हम छा जाएंगे, हमारी 40-45 साल की मेहनत बेकार हो जाएगी। लेकिन आप कहते हैं कि उस आदमी को कुछ सजा नहीं की जाए, सिर्फ 5000 रुपये फाइन करके छोड़ दिया जाए, यह कहाँ तक उचित होगा?

एक फोर्थक्लास का कर्मचारी है, फोर्थ क्लास का तो करप्शन से कोई लेना-देना ही नहीं है। Who are the people covered under fourth class? It includes the Peon and the lady जो पानी पिलाने वाली बाई है या फिर सफाई कर्मचारी हैं, ऐसे लोग फोर्थ क्लास में आते हैं। What kind of scope he is getting in his life to get involved in corruption? लेकिन उसे भी लोकायुक्त में रखने के लिए कहा जा रहा है। मान लीजिए मेरी कालोनी में सफाई कर्मचारी सफाई करने नहीं आया, चूंकि मैं अपर क्लास का हूं, इसलिए मैंने एप्लीकेशन कर दी कि यह आदमी काम करने के लिए नहीं आया, इसलिए इसे निकाला जाए। इसमें दो-तीन बातें हैं, अपनी इज्जत बनाने में और ईमानदारी से काम करने में सरकारी कर्मचारियों को सालों लग जाते हैं।

श्री हरिन पाठक (क्रमागत): अरुणा जी, पिछली बार लोक सभा में दस सांसदों को प्रश्न पूछने के लिए सिर्फ 10 हजार रुपए लिए जाने पर उन्हें पूरी जिंदगी भर के लिए संसद से निकाल दिया गया। For Rs.10,000 their whole career was destroyed. I agree with him. मगर वह सही होना चाहिए। अगर malicious complaint है, शांताराम नायक जी ने ठीक कहा कि how could you prove that it is malicious intent? वह नहीं प्रूव होगा। जैसे ही complaint is made to the Lokayukat, a false complaint और तुरंत ही चाहे वह सांसद हो या एम.एल.ए. हो या सरकारी कर्मचारी हो, उसकी पूरी जिंदगी भर की कमाई नष्ट हो जाएगी। आपका इस बारे में क्या विचार है?

अगर तंत्र को चलाना है, तो ईमानदार और सही लोग राजनीति में आए, सही और अच्छे कर्मचारी ईमानदारी से काम करे, तो यह जो so called complaint करने वाले लोग हैं, अगर complaint सही है, तो मैं तो व्यक्तिगत रूप से मानता हूँ कि मुझे फांसी देनी चाहिए, If I have taken money from anybody, I should be hanged, अगर complaint गलत है, तो उसको भी पांच हजार रुपए में जाने नहीं देना चाहिए। उसको फांसी तो नहीं देनी चाहिए, लेकिन इसमें आपने लिखा है कि इसके लिए उसे कम से कम पांच हजार रुपए या अधिकतम एक

लाख रुपए देना होगा। एक आदमी की पूरी जिंदगी भर की इज्जत खाक में मिल गई और आप कहते हैं कि उसको पांच हजार रुपए ही देना होगा। इस पर आपके क्या विचार हैं?

SHRI PARIMAL NATHANI: I associate myself with the views expressed by the hon. Member.

SHRI BALAVANT ALIAS BAL APTE: Sir, questions are asked and they send the replies in writing to the Committee. Otherwise, 30 people asking questions and their answering, it is an impracticable thing.

CHAIRMAN: I want to make two things clear. I do not want to shut off. Those who are interested they can ask. I would only request two things, those who are repeating the questions can join their sentiments rather than repeating them. Secondly, the panel here, we would, of course, request them, firstly, for bullet points of summary of your presentation not the details. In addition, we should have their answers in writing, we will ask you to comment briefly in answering here also. First you ask the first four questions and another four questions will be taken up after that.

DR. BHALCHANDRA MUNGEKAR: Sir, with you permission I put on record my deep sense of appreciation of the work which Arunaji has been doing for the last so many years for people's empowerment in different walks of life. My first question is, if the serving Prime Minister is brought under the Lokpal Bill with whatever procedure that you are suggesting and with the safeguards such as the full Bench of the Lokpal, further referring to the full Bench of the Supreme Court and once in terms of law, in terms of rule of law, there is no justification for keeping Prime Minister for keeping Prime Minister away from the Lokpal, but once Prime Minister is under scrutiny, either of the Lokpal or the full Bench of the Supreme Court, what will be status of the Prime Minister during that interim period? Will the Prime Minister continue to be in the office when he is subjected to scrutiny and what kind of moral status he will have to continue in the office when he is under the scrutiny of the Lokpal or the Supreme Court? The second question is, you are suggesting and we are also suggesting that the Judicial Accountability and Standards Bill should be very strong. If this Bill is made comprehensive, competent, transparent and more effective, what justification further you seek to bring the higher judiciary under the Lokpal? Thank you very much.

SOME HON. MEMBERS: We are also joining ourselves with the views expressed.

श्री अर्जुन राम मेघवाल: चेयरमैन साहब, मैं एक ही प्रश्न पूछना चाहता हूँ। अभी इन्होंने standards of Judges में बताया था कि removal of Judges का पॉवर पार्लियामेंट को है, लेकिन standard तय करने का अधिकार पार्लियामेंट को नहीं होना चाहिए। ऐसा इन्होंने कहा, लेकिन इनके बिल में एक concept है कि जो लोकपाल होगा, उसको investigation का भी पॉवर होगा और prosecution का भी पॉवर होगा। क्या ये दोनों पॉवर लोकपाल के पास होना चाहिए, क्योंकि यह jurisprudence का सिद्धांत है कि किसी भी एक आदमी के पास ये दोनों पॉवर्स नहीं होने चाहिए?

दूसरा प्रश्न यह है कि अन्ना के टीम के बिल के बारे में कहा गया कि यह concept paper है, draft नहीं है। क्या ये draft है या अब इन्होंने draft बना लिया है?

SHRI SHEKHAR SINGH: Very quickly starting with his question about the concept paper and the Bill, as has been mentioned, we had a draft Bill, which, we had said we will present

to the Joint Committee. When we were told later on that we were not invited there, we should come here as we have appeared before this Committee and other Committees, the usual procedure here is that you do not come with your own Bill but you come with comments. However, we have said right in the beginning that if this Committee feels that they want our Bill we will be happy to present. The second question you have raised is that investigation and prosecution be combined, the Government Lokpal Bill also says that, we have endorsed that. But we have said specifically in the medium to long term we would much prefer an independent prosecution body along the lines, for example, which is in the UK and it is keeping with a Supreme Court order to the effect. We would also much prefer in the long term, medium to long term not having both prosecution and investigation both in the same body. So, we start saying that, now it will take another ten years for to come into being. As far as judiciary under Lokpal goes, we have not suggested that. We, in fact, say that judiciary should not be under Lokpal for many reasons and one of them is circularity because in our system if there is a complaint against Lokpal, it will go to the judiciary, if a complaint against judiciary comes, it will to Lokpal. It will become an impossible situation. We have not said that. The Jan Lokpal Bill says that but not our Bill. As far as serving Prime Minister will he continue to serve, you see, there are parliamentary processes for that. There are any number of Prime Ministers and heads of Governments who have had complaints against them. That is not for us to decide, it is for the parliamentary party to decide or for the Parliament to decide.

ADV. P.T. THOMAS (IDUKKI): It is an important question which your team must answer. What is your concrete reply about it?

SHRI SHEKHAR SINGH: I would say as long as allegations are made in this country under the law, you are innocent till prove guilty. So, if an allegation is made against the Prime Minister, it can only be a political issue whether the Prime Minister should continue or not. Once the Prime Minister has been indicted or an FIR is in place or Prime Minister is going to be arrested, etc., etc. it becomes a different matter. Let me also add for everybody, this is nothing new in our Bill. Even as the law stands today, anybody can file a complaint against the Prime Minister. There is nothing that prevents an individual from filing a complaint against the Prime Minister and all these questions will come into play even at that point. So, we are not adding anything new to that picture.

SHRI HARSH MANDER: Just to elaborate, under the Prevention of Corruption Act today you can file a complaint, I can file a complaint against the Prime Minister. It has to be investigated under the process of law.

SHRI VIJAY BAHADUR SINGH: Sanction is a condition. Why can't we wait? Supposing the Prime Minister has committed fault today, let his tenure finish and then open all those things. Otherwise, anybody can demoralize. Sorry to say that checks and balances which you are talking about are not practical. यह कहना अव्यावहारिक है कि उसको ऐसा कर लेंगे। The reason is lost. जो checks and balances हैं, वे बहुत अहम हैं। कहने का मतलब यह है कि ऐसा करने से country destabilize हो सकती है। The process which will be above the parliamentary democracy might take place on this.

CHAIRMAN: Your view is that the Prime Minister should be there but you don't have any clear answer about what will happen?

SMT ARUNA ROY: We have caveats that charge sheets can be framed on the Prime Minister only if the full Lokpal Bench and the full judicial bench and the Supreme Court decides that there is a *prima facie* case. हमें लगता है कि लोकपाल के उस में जो 11 हैं, अगर

उन की कोई collusion है, तो वह balance होनी चाहिए। उस में हम ने यह कहा था कि direct responsibility होनी चाहिए, vicarious नहीं हो सकता है कि कैबिनेट के किसी मेंबर ने कर लिया या किसी ने कर लिया तो उन की जिम्मेदारी है। मगर interim period में उन की scrutiny के टाइम उन का क्या होगा, वह सवाल आज नया आया है?

श्री विजय बहादुर सिंह : Vicarious और direct responsibility, कौन decide करेगा?

CHAIRMAN: You can respond at leisure. The short issue is that since sanction is not required under the Lokpal at the stage when a complaint is filed आप जो बात कर रहे हैं, indictment by the full bench, वह बाद में आती है। Between the filing of the complaints and its evaluation and scrutiny what should be and what would be the status, moral, legal or otherwise, and for that purpose is it not better to have the complain than to keep it in abeyance till he demits office or some such thing. You can respond at your own leisure.

SHRIMATI ARUNA ROY: We will look at it. I think, Shekhar has partly answered it saying that legally he is not culpable at all till the charge sheet is framed but there are other issues which we will look at.

SHRI VIJAY BAHADUR SINGH: Chairman is saying that you give a thought to it.

SHRIMATI ARUNA ROY: We will think about it and respond in writing.

SHRI SHEKHAR SINGH: Somebody had asked about class D employees. In our Lokayukta, Class D employees do not come in. So, if you see, it is A, B and C only. But let me also say with my own experience that class D employees also have involved. You have to pay Rs. 10 to a peon to get access into an office. But, that is a separate issue. We are saying let that be dealt within the normal route because it is very unlikely that Rs. 10 chap will have influence to subvert the legal system. Let it happen and we have put them into this thing. Now, we come to vexatious...

श्री रामविलास पासवान : इन का कहना है कि दो तरीके हैं। एक स्टेट गवर्नमेंट का कर्मचारी है, एक सेंट्रल गवर्नमेंट का कर्मचारी है, एक क्लास 1 कर्मचारी है और दूसरे क्लास 3 और 4 के कर्मचारी हैं। अब जो लोक आयुक्त और लोकपाल की बात करते हैं, लोकपाल के लिए मान लेते हैं कि जो present बिल है, उस के मुताबिक लोकपाल क्लास 1 और उस के ऊपर के अधिकारी देखेगा। आप की नजर से लोक आयुक्त किसे देखेगा और लोकपाल को किसे देखना चाहिए?

श्री शेखर सिंह : देखिए हमारे सिस्टम में है कि Lokpal will look after the Central Government offices which are 'A' Group. Lokayukta will look after State Government offices which are 'A' class. स्टेट गवर्नमेंट में भी "ए" क्लास होते हैं। Then for 'B' and 'C' we have suggested उप लोकपाल and उप-लोक आयुक्त. We have also said, let me repeat, इन की complaint पहले पुलिस के पास जाएगी। अगर पुलिस में ठीक तरह से investigation न हो, तब यह complaint में आएगा। वह तो उप-लोक आयुक्त/उप लोकपाल के पास आएगा। Lokayukt and Lokpal look at classes of Central Government and State Government. यह स्पष्टीकरण है। अच्छा, आप ने vexatious के बारे में कहा था। उस में मैं दो चीजें कहना

चाहता हूँ। I understand very well that people who are in public life, like all of you are, have to, of course, worry about their reputation. मैं आप से एक चीज कहना चाहता हूँ कि हम लोगों के साथ भी यही होता है। आप ने पढ़ा होगा कि अरुणा जी के बारे में कहा गया, हम सब के बारे में कहा गया in the last two-three months. हमारी तो कोई position भी नहीं है कि हम कुछ कर भी सकें। इस का जवाब क्या है? अगर हम कहें कि, कोई भी अगर कुछ कह दे and he cannot finally prove his allegation, तो उस को जेल में डाल दो। कई ऐसे allegations होते हैं, जोकि ठीक हों लेकिन प्रूव नहीं हो सकते। तो उस से क्या होगा कि ज्यादातर सारी complaints खत्म हो जाएंगी। What we have to do to my mind, and this is not a part of this debate, so I have not brought it up because it would have been wrong to strengthen the Law of Torts. We have such a weak Law of Torts today कि अगर आप को कोई malign करता है तो आप कुछ नहीं कर सकते।

SHRI HARIN PATHAK: He should be given protection. He should be protected. जब तक ठीक तरह का कानून नहीं बनता तब तक fictitious complaints पर उस को बेइज्जत किया जाए, वह ठीक नहीं कहा जा सकता।

श्री विजय बहादुर सिंह : आप ठीक कह रहे हैं। अभी भी India में law है कि किसी ने complaint murder की और वह छूट गया तो malicious prosecution में suit file हो सकता है।

SHRI SHEKHAR SINGH: These are bits of problems. मैं यह कह रहा हूँ कि यह प्रॉब्लम solve करनी पड़ेगी। यह आप की बात ठीक है कि we cannot leave it as it is. हमारे को ज्यादा नुकसान होता है, आप की तो कुछ पोजीशन है। हमारी तो कोई पोजीशन नहीं है।

श्री हरिन पाठक : पोजीशन वाले को ज्यादा तकलीफ होती है। अन्ना जी ने धरना हमारे घर के सामने किया तो बच्चे घर में रोने लगे कि यह घर में क्या हो रहा है।

SHRI SHEKHAR SINGH: These are the immediate questions. We will give a written response to that.

SHRI RAM JETHMALANI: Mr. Chairman, Sir and our very distinguished guests here, I am one of those who does not believe that the creation of a Lokpal is the solution of the problem of corruption. I was wondering after Annaji's fast, the crowds that collected in various parts of the country, what were they about? Did they really believe that a Lokpal is going to solve the problem? I realized that instinctively these crowds collected because they are the victims of corruption and they are the victims of specific practitioners of corruptions. All of them collected and expressed their feelings but we have been put under the illusion that the Lokpal will solve the problem. I think we should rest content with this that the fight against corruption has to be fought on a different dimension on a different plane and by different methods altogether. Our task is a humble task. It is to produce the best draft of the Lokpal Bill and with this feeling of humility and not having this flight of imagination that we are here eliminating or eradicating corruption, I have not a question, but, I am certainly asking for your help. Kindly take the Lokpal Bill as recommended by Anna's group. Take it as one basic document. I want you to help me, if you can, to find out which parts of that draft are unworkable, those which are unnecessary, those which are positively counterproductive,

in the sense that instead of controlling corruption, they will probably facilitate it or even encourage corruption. If you help me to have your comments under these three classifications, I think, we will be able to produce a better draft and that is the very humble task that I think I am called to discharge in this committee. Beyond this, we have to fight elsewhere. We have to produce a Mahatma Gandhi or somebody. You cannot legislate good character. It is impossible and the more Lokpal Bills you have, the more confusion will create. So, kindly give me a simple solution by giving me a simple Lokpal Bill in which at least these kinds of unworkable, unnecessary and positively counter productive elements are thoroughly eliminated. I want your help. I am prepared to meet you, discuss with you but, please give me your suggestions on this topic. Thank you.

SHRI PINAKI MISRA: Thank you, Mr. Chairman. I also thank the Members of the NCPRI who have taken time to come and brief us. I have a couple of question. The fundamental question is about the approach. Is it your case, and, I suspect it is, that one Lokpal Bill by itself is not enough or actually is nothing. Mr. Jethmalani has also pointed out that fact. Is that your case, and, therefore, there must be five simultaneous pieces of legislation. And, I think, that is why, some of the MPs have raised this query of why other issues are being discussed. Because it is your case that there should be actually five simultaneous pieces of legislation which should come in to effectively counter corruption, and, therefore, unlike the Jan Lokpal Bill, which itself is believed to be a one magic bullet, you don't believe that there is one magic bullet but you believe that there are five simultaneous, contemporaneous pieces of legislations must come in. The learned Chairman has asked you for a draft, in which case, then, you must have five drafts. I assume it cannot be one draft; there must be five drafts that you will have to give us. You have also talked about a stronger Central Vigilance Commission, the *Kendriya Satarkta Lokpal*, which means that you want to give a go-bye to the present CVC Act. Should that be repealed and this should come in. Is that your case, or, you want that it should be renamed with amendments. That is one question that I want to ask.

The second one is perhaps on behalf of many other Members. We would be in agreement that it is really the public grievances redressal Lokpal, which is the most interesting and the most germane Lokpal that are you talking about because the common man, at the cutting edge level, is harassed and pained on a daily basis because of an act of omission or commission that takes place on a daily basis in his life. So, according to me, that is really the most important and most interesting aspect but, there, you have talked about a District Commissioner. I am sorry, I did not get the person who said it but somebody quite categorically said that he would be at par with the District Judge and the District Collector. You are talking about the third entity at the District level. Firstly, which service is this gentleman going to be drawn from; secondly, who is going to pay him the salary; and, thirdly, what is the pyramid that he going to work under. Let us assume the District to be the nodal body. For example, my State Orissa has 30 Districts and 320 blocks, which comes to 10-11 blocks per District. So, under the District Commissioner, are you proposing to have officers at the block level. Thereafter, every block, I think, has 35-40 *Panchayats* in my State. So, are you talking about the people at the *Panchayat* level because from what I have seen is that not even the *Panchayats*, there are ten to fifteen revenue villages in each *Panchayat*, and, the persons in the last revenue village is the sufferer. So, what kind of pyramid are you suggesting?

Mr. Paswan talked about 25 to 30 thousand workforce. Obviously, this workforce is not going to come from 'Mars'. This workforce has to be from within us. Where is the guarantee that these 25 to 30 thousand people are going to be honest people? Where is this premise coming from? This is what I want to know. According to me, this really is going to be the most-effective panacea; the public grievance redressal Lokpal, as the Prevention of

Corruption Act very effectively deals with corruption at higher levels, which emerges from time to time. So, therefore, I am in agreement with Mr. Ram Jethmalani that the national level recast Lokpal, or, as Lalu ji said, superb-God sitting on our heads, perhaps is not what we need. What we do need is public grievance Lokpal, and, therefore, if we can fine-tune this into a wonderful body that would really be a very, very interesting thing, and, of course, the Whistleblowers Protection Bill is an exceptional thing. I also believe that you are not happy with the present Judicial Accountability Bill, and, therefore, you want amendments in that, and, that is why, that was discussed. These are some of my queries. Thank you.

ADVOCATE A. SAMPATH: Thank you, Mr. Chairman. I would like to congratulate Madam Aruna Roy and her colleagues for doing such a wonderful job. We are on a mission. I agree with my learned seniors, we are not super-Gods. We are on a humble mission. I want some suggestions and clarifications from the NCPRI, especially, Madam Aruna Roy. You can send written replies to the Chairman afterwards. First of all, we are discussing about the public servants and those who are connected with the Government. But, at the same time, even though our Constitution does not specifically speaks about the Right to Freedom of Press, I think, our Press and media enjoys more freedom than the freedom which is available to their counterparts in some other countries, where the Freedom of the Press is mentioned in their Constitution itself. Anyway, in our case, they are enjoying this right by way of fundamental right under article 19(1)(a). So, what is your opinion regarding the media, whether they should also be put under the Lokpal. Here, by media, I mean all kinds of media, whether audio, visual or print. This is one point.

Secondly, in many Government departments, the distinction between the sovereign and non-sovereign functions of the Government has disappeared, and, outsourcing is happening. I am not going into the details but outsourcing has become the order of the day in many departments. It is a fashionable thing to say that we are outsourcing such and such activity. Many agencies, corporations and firms are now engaging themselves in this work of the Government, both at the Centre and in the States. What was being done previously by the Government officials is now being done by these agencies. I want your opinion as to whether they should also be put under the Lokpal or not because they are doing something, which the Government was doing previously. Now, it is just like hand-in-glove situation.

Mr. Chairman, Sir, the third point is that the public-utility services in many parts of our country are now being performed by private corporations or private agencies. Previously, it was considered to be a sovereign function of the Government. My question is whether they should also be put under the Lokpal.

The last but not the least point is that there are certain offices, which have the Constitutional powers also. Here, I mean to say the Public Service Commissions etc. But, there may be instances of complaints regarding the Members of the Public Service Commissions and some of the persons holding the Constitutional posts. We are discussing the inclusion of the office of the Prime Minister etc. etc. but, at the same time, what should be our view in the case of those who are holding the Constitutional posts.

CHAIRMAN: The hon. Member has raised four issues and these are very important and interesting issues which, in fact, deserve a larger debate. Just kindly make a note of these four points, namely, media, outsourcing in Government departments, public-utility services like electricity and telecom, which are now private but which are the sovereign functions, and, the constitutional offices like Election Commission and the office of the CAG. So, these are important issues which require separate consideration.

SHRIMATI MEENAKSHI NATRAJAN: Thank you, Sir. I straightway come to the questions. You suggested three-four other pieces of legislation along with the Lokpal. I completely agree with you that all the other things cannot come under one umbrella. But, I was a little surprised that you did not make any suggestion on amending the existing Prevention of Corruption Act. What is your view on that? Seeing the kind of corruption which now exists, I think, the present Prevention of Corruption Act is not armed enough to prevent corruption. This is one issue.

SHRIMATI MEENAKSHI NATRAJAN (CONTD.): Two, you have given your comments on transfer of cases. According to you, in certain situations, cases need to be transferred, though there is a need to give those reasons in public. Then the text suggests that this should be discouraged. But there are certain instances where if a case is not transferred, the complainant would have to face certain consequences. There have been several instances of violation of human rights in a particular State. I would not like to name it. And if it goes on in that particular State, it would not be a good environment for the complainants. So I would request you to reconsider this because even if the reasons are given in public that might actually be detrimental to the person.

Three, the opportunity to be heard at the preliminary inquiry stage. You have mentioned here that at the preliminary stage that opportunity need not be given. I would like to seek more clarification on that point because I feel natural justice demands that the other person should be given the opportunity to be heard.

Lastly, I agree with the views of Mr. Sampath on including media and corporate sector in this when we see the phenomenon of 'paid news' and corporate houses operating media and with the outsource being done. I know that they don't come under the definition of public servants, but they should definitely be covered under that. We would definitely like to know your view on that.

श्री राम विलास पासवान : इन्हीं को सपोर्ट करते हुए मैं यह कहना चाहता हूँ कि भ्रष्टाचार की गंगोत्री तब से बढ़ी है, जब से प्राइवेट सैक्टर को सब जगहों पर खोला गया है। चूँकि गवर्नमेंट सैक्टर में जब तक मामला था, तब तक किसी न किसी रूप में वह कंट्रोल होता रहता था, लेकिन जब से प्राइवेट सैक्टर खुल गया है, तो आपने flood gate खोल दिया, अब आप खिड़की को बंद करके नहीं रख सकते हैं। अब धीरे-धीरे गवर्नमेंट सैक्टर खत्म होता जा रहा है। जो 90 परसेंट है, वह तो गवर्नमेंट से बाहर का है। मुझे आज तक आश्चर्य हो रहा है कि ये जो corporate houses हैं, जहां सबसे ज्यादा करप्शन है, जहां एक पैसे के बदले में हजार करोड़ रुपए से कम की बात नहीं होती है, तो आप इसमें कारपोरेट हाउसेज को जोड़ने का काम क्यों नहीं करते, मीडिया को जोड़ने का काम क्यों नहीं करते? फिर NGO में सब अरुणा राय जी जैसे नहीं हैं, there are black sheep everywhere. तो यह बहुत confusion create कर रहा है कि कोई भी कारपोरेट हाउसेज को इसमें लाने की बात नहीं कर रहा है, मीडिया को लाने की बात नहीं कर रहा है, एन.जी.ओ. को लाने की बात नहीं कर रहा है। फिर हम लोगों की एक बड़ी प्रॉब्लम है कि SC, ST, Minorities, Women को कैसे इसमें involve किया जाए? हर पोलिटिकल पार्टी के लोगों का एक सोशल नजरिया है। तो आप इन चीजों को एक्सप्लेन करिए। बाकी चीजें तो रूटीन हैं, लेकिन ये जो बेसिक चार चीजें हैं - कारपोरेट

हाउसेज, मीडिया, एन.जी.ओज़, SC, ST, Minorities, Women इनके बारे में आपकी क्या राय है, यह बताइए।

श्री विजय बहादुर सिंह : आपने प्राइम-मिनिस्टर के inclusion की बात कही और आपने कहा कि full-bench का safeguard है। दूसरा आपने यह कहा कि जो vicarious matters होंगे, वह प्राइम-मिनिस्टर से ही आएंगे। प्राइम-मिनिस्टर की पूरी liability तो vicarious ही है। अगर मंत्रिमंडल में 20 मंत्री हैं, तो प्राइम-मिनिस्टर कोई विभाग डायरेक्टली नहीं देख रहे हैं। आप इसको व्यावहारिक तौर पर कैसे लाएंगे? अगर संचार मंत्रालय में कुछ गड़बड़ हुई, अगर पेट्रोल वाले मिनिस्टर से कुछ गड़बड़ हुई, तो आप यह जो vicarious की सील है, इसको कैसे implement करेंगे? दूसरा जब आप खुद कह रहे हैं कि Anti-corruption Act और Prevention of Corruption Act में वह covered है, तो क्या आप यह महसूस नहीं करते कि यह sufficient safeguard है? इसको जरा सोच लीजिए क्योंकि इससे कहीं ऐसा status न हो जाए जो पार्लियामेंट और प्राइम-मिनिस्टर के above हो। इसलिए इसको भी जरा गौर से देख लें।

श्री अरुण सुभाषचंद यादव : अध्यक्ष जी, मैं यह पूछना चाहूंगा कि भ्रष्टाचार का सबसे अधिक effect गांव के अंतिम आदमी पर होता है, जो गांव में रहता है। वह अपनी कंप्लेंट कहां रजिस्टर कराए? उसके बाद जैसा मिश्रा जी ने कहा कि ब्लॉक लेवल, डिस्ट्रिक्ट लेवल और स्टेट लेवल पर कमिश्नर की appointments होंगी। तो जो गांव का अंतिम व्यक्ति है, जिसको समय पर राशन नहीं मिलता, राशन-कार्ड नहीं मिलता, पानी नहीं मिलता, समय पर उसके बिजली के बिल का भुगतान नहीं होता, उस व्यक्ति की कंप्लेंट को रजिस्टर करने का आप क्या सिस्टम बनाएंगे? गांव में, ब्लॉक में, डिस्ट्रिक्ट में, स्टेट में, आपका क्या सिस्टम होगा? मीनाक्षी जी ने अच्छा सवाल पूछा है, मैं भी जानना चाहता हूं कि NGOs को इसके दायरे में लाने के बारे में आपकी क्या राय है, कॉरपोरेट सैक्टर को इसमें लाने के बारे में आपकी क्या राय है?

श्री शैलेन्द्र कुमार : सारी बातें जो सामने आई हैं, वे धीरे-धीरे सिमटकर एक ही बिंदु पर आ रही हैं कि करप्शन कैसे खत्म हो। मैं पहले भी यह बोलना चाहता था कि लोग कहते हैं कि करप्शन ऊपर से खत्म होना चाहिए, कुछ लोग कहते हैं कि करप्शन नीचे से खत्म होना चाहिए। ऊपर के लिए तो व्यवस्था है, प्रतिदिन आप देख रहे हैं कि हैं कि टी.वी. पर केवल भ्रष्टाचार पर ही बहस हो रही है और तमाम चैनल्स चल रहे हैं। संवैधानिक ढांचे में लोक सभा ने भी काफी पनिशमेंट दी, जिस पर विस्तार से बात हुई, मैं उसमें नहीं जाना चाहूंगा। आज जरूरत इस बात की है कि हम जितने लोग यहां बैठे हुए हैं, अगर कहीं पर हमारा काम रुकता है, तो हम पैसे देकर अपना काम करा सकते हैं, लेकिन जो नीचे का आदमी है, जो पैसे देकर अपना काम नहीं करा सकता, आज हमें उसकी चिंता करनी चाहिए। पासवान जी ने भी उस पर अपनी बात रखी है। इसके लिए क्या व्यवस्था होगी कि उसको तात्कालिक फायदा मिल जाए? जिस प्रकार से कल BPL को रेखांकित किया गया है, मेरे ख्याल में इससे

बड़ी शर्मनाक बात कुछ नहीं हो सकती। दूसरी ओर जुडिशियरी की बात हुई है, NGOs की बात हुई है, कारपोरेट सैक्टर की बात हुई है, मीडिया की बात हुई है, इसके बारे में आप अपनी राय बताएं। मेरा दूसरा सवाल यह है कि आज जो सवाल भ्रष्टाचार को लेकर यहां पर है, हमारे पास कौन सा ऐसा बैरोमीटर होगा, कौन सा ऐसा मानक होगा कि हम बेइमान को बेइमान साबित कर देंगे और ईमानदार को सर्टिफिकेट कैसे देंगे, इसका जवाब आप दीजिए।

SHRI BALAVANT alias BAL APTE: Sir, the original idea of Ombudsman has developed into this Lokpal. I shudder to think how this is going to happen given the volume that it has acquired. During the British regime, we developed a thorough revenue structure because that was their priority. Therefore, we have a structure until the last village of revenue officers of different grades. If the Lokpal has to deliver on every aspect and to the last villager, then a structure parallel to the revenue structure will have to be built. So you will have personnel equal to the personnel employed by all the revenue departments of all the States plus the insistence is on Lokayukta for the State Governments.

SHRI BALAVANT alias BAL APTE (contd.): So, another structure, same in number, for every State, I don't understand how such a structure can be built. If they are going to look into the integrity of others, then, they should be above integrity. I fail to understand what is the guarantee, what is the process by which their integrity will be tested. The entire Lokpal structure which is envisaged by this Bill and by others suggestion it does not take this into consideration. How is this structure going to be built? Sustaining it may be possible. Our budget is so big, few crores here and there does not matter. But about personnel, their hierarchy and control of them and they will also be members of a large group, then, there will be matters of discipline, then, there will matters of corruption. So, while correcting the Government, are we seeking to create a parallel Government and that makes it impractical, thoroughly impractical. Those who are suggesting this method, I think, this group is one of them. Therefore, I can legitimately ask this question: Have you worked out these, at least, on paper to find whether implementation of this idea is practicable.

Now, this is not only a parallel structure to the administration, but this will be equally parallel structure for the judiciary.

CHAIRMAN: They have got the question of parallel structure.

श्रीमती अरुणा राय: सर, हम संक्षेप में सवालों के जवाब देने की कोशिश करेंगे और बाकी हम लिखित में सभी प्वाइंट्स को एड्रेस करते हुए उत्तर भेजेंगे। हम संक्षिप्त में आपके समक्ष जिस दिशा में सोच रहे हैं, उसके बारे में आपको बताना चाहते हैं।

SHRI NIKHIL DEY : I will just begin with what Mr. Ram Jethmalani has said which is a very important thing. What are the points in the Jan Lokpal Bill which are unworkable, counter-productive, unnecessary and impractical. The reason we came up with this alternative of five because we think Jan Lokpal Bill has actually addressed itself to lots of people's concerns. They are saying that there are problems across the country. There are problems in the administration. Anger is legitimate. The solutions we felt in one body is to have from the Prime Minister to Peon, to have the judiciary and the Legislature and to have corruption and grievances makes it unworkable, in some cases counter-productive, in some cases it is unnecessary which is why we thought that the Jan Lokpal Bill actually has five Bills which have been brought together. We sought to move into parts of five components which originally belonged to five different areas. I think by doing that we feel you can appropriately

and practically address different issues and not to deal with one body in a completely different fashion. We have the same concern. We have different sets of solutions. We will give you in writing just exactly what you want. Why we think which parts of it are impractical and which parts are practical. Look at the question of grievance. Of course, there are two or three issues. It is very important, I think, to understand आज की तारीख में MGNREGA में 40 हजार करोड़, उसमें ombudsman एक-एक जिले में एक-एक लग रहा है। राइट टू फूड कानून आने वाला है, एक लाख बीस हजार करोड़ में ombudsman हर जिले में लगेंगे। राइट टू एजुकेशन वाले बैठ कर कह रहे हैं कि हमें हर जिले में एक व्यक्ति चाहिए जो सुधार करेगा, हैल्थ वाले कह रहे हैं कि हम वहां पर उनको लगायेंगे। हम कह रहे हैं कि एक्स्ट्रा लोग मत लगाओ। उन सब को एक व्यवस्था में बैठाओ, एक ढांचा बनाओ और लोगों को कम करो।

We are actually reducing the bureaucracy and rationalising it.

और कहो कि वही व्यक्ति जो ग्रीवेंस पैदा कर रहा है, वही व्यक्ति जो सुनवाई नहीं कर रहा है, उसी को यदि कहो कि साल्युशन करो, बीडीओ से एसडीएम, एसडीएम से कलेक्टर, कलेक्टर से उसी सिस्टम के अंदर, तो वहां समस्या आएगी, क्योंकि या तो उन लोगों के ऊपर ज्यादा काम है या वे काम कर नहीं सकते हैं, तो

That is why we have said that there should be a different dancha

हम ज्यादा स्टाफ को लगाने के हक में बिल्कुल नहीं हैं। हमारा सुझाव है कि आप जिला लेवल पर एक सुपरवाइजरी कमिश्नर लगाइए। जैसे हमने आर.टी.आई. एक्ट में एक भी नया ब्यूरोक्रेट नहीं लगाया। आर.टी.आई. में स्टेट लेवल पर कमिश्नर्स लगे थे, लेकिन हर दफ्तर में जो आदमी अपना काम कर रहा है, वही पी.आई.ओ. बना।

श्री अरुण यादव: मैं आपसे जानना चाहता हूं कि गांव का आदमी शिकायत लेकर कहां जाएगा? इसकी क्या गारंटी है कि जो निराकरण करने वाला है, वह पूरी तरह से ईमानदार होगा?

श्री निखिल डे : आपकी यह बात सही है। पहले तो हम यह कहना चाहते हैं कि ये पांच आ जायेंगे, तो यहां पर स्वर्ग आ जाएगा, ऐसा हम बिल्कुल नहीं कह रहे हैं। हम यह कह रहे हैं कि जो लोग आयेंगे, उनमें वे कमियां नहीं होंगी, जो पहले वाले लोगों में हैं। जैसा कि लालू जी ने कहा था कि विकेन्द्रीकरण होना चाहिए। हम सोशल ऑडिट्स में ठीक से चलें, बहुत सारी जगह तो फर्जी चल रहे हैं, लेकिन जहां पर ठीक से चले हैं, वहां पर हमने देखा है कि जनता के पास की जो चीजें हैं, वहां जनता को आप जितनी ज्यादा ताकत दे सकते हैं, उससे वहां पर समस्या का कुछ हल निकल सकता है।

We are saying a support structure.

एक बिल्कुल ही अलग जो ब्लॉक लेवल पर है। अभी राजीव गांधी सेवा केन्द्र बने हैं। इनके 25-25 लाख के ढांचे बन गए हैं, उनके अंदर यदि हम सर्पोटिंग लोग दें, तो जो लोग वहां

जाएं, उनको डेटिंग रिसीप्ट मिल जाए, उस दफ्तर से नहीं जो आपको प्रॉब्लम दे रहा है। लेकिन आपको अलग दफ्तर से डेटिंग रिसीप्ट मिले, आपको बहुत बड़ा कदम मिल गया है आगे कहने के लिए कि मैंने समस्या दर्ज कराई, लेकिन मेरी कोई सुनवाई नहीं हुई। आज तो किसी के हाथ में रिसीप्ट ही नहीं है। नरेगा में इस तरह के केन्द्र बन गए हैं। वे कम्प्यूटराइज्ड हैं, आप उनको काम में लीजिए।

श्री रामविलास पासवान: मैं आपसे यह जानना चाहता हूँ कि उनकी सी.आर. रिपोर्ट कौन लिखेगा, एसडीओ लिखेगा या कलेक्टर लिखेगा या लोकायुक्त लिखेगा? उनकी सी.आर. में करेक्टर रोल कौन लिखेगा?

श्री निखिल डे : सर, इसमें सी.आर. तो आज कलेक्टर लिख रहा है।

श्रीमती अंजलि भारद्वाज : सर, इसमें हमने श्री टियर स्ट्रक्चर प्रपोज किया है। यह श्री टियर इसीलिए प्रपोज किया है कि वह कम्पलीटली डि-सेंट्रलाइज हो और ब्लॉक लेवल पर किसी की शिकायत हर पब्लिक अथॉरिटी में, हर दफ्तर में, एक ग्रीवेंस रिड्रेसल ऑफिसर रहेगा, जिसकी जिम्मेदारी शिकायत लेने की होगी और उसको हल करने की होगी। हम यह नहीं कह रहे हैं कि वह नहीं होना चाहिए। हम यह कह रहे हैं कि कई बार वे लोगों की शिकायत को लेते नहीं हैं। इसके लिए हमने सुझाव दिया है कि ब्लॉक लेवल पर एक पब्लिक सपोर्ट सेंटर दे दिया जाए।

श्रीमती अंजली भारद्वाज (क्रमागत) : यदि Grievance Redress Officers लोगों की शिकायत नहीं ले रहे हैं, तो वह ले लें । इनकी मदद करे और फेसिलिटेट करे और उस ग्रीवेंस को सही Grievance Redress Officers तक पहुंचाए। यदि Grievance Redress Officers वह काम नहीं करते हैं, तब डिस्ट्रिक्ट लेवल पर जो कमिश्नर हैं, उन तक तब बात जाएगी और वे पीनलाइज और कम्पनसेट कर सकते हैं। यह डिस्ट्रिक्ट लेवल पर भी नहीं होता है तब स्टेट या सेन्ट्रल लेवल पर कमिश्नर...(व्यवधान)...

श्री बलवंत उर्फ बाल आपटे : लेकिन ऐसी व्यवस्था जिन राज्यों ने की है कि grievance redressal is one thing and corruption is another thing. Grievance may be because of corruption. But grievance redressal is different.

SHRIMATI ANJALI BHARADWAJ: I agree.

SHRI BALAVANT alias BAL APTE: And for grievance redressal there are machineries in several States.

CHAIRMAN: That they are putting it separately. ...(Interruptions)... They have put it separately.

SHRI NIKHIL DEY: It will be very short. Basically, there are three issues. ग्रीवेंस एड्रेस में हम एक बात कह रहे हैं कि हम जिला स्तर पर एक इंडिपेंडेंट मैकेनिजम टाइम बाउंड रखेंगे, जितना होगा, होगा। दूसरी बात यह कह रहे हैं कि ट्रांसेपिरेंसी नीचे लाएंगे, तो उससे कम से

कम उन लोगों के ऊपर एक अंकुश लगेगा और हम तीसरी बात जनता को मोबिलाइज करने की कह रहे हैं। हमारा यह कहना है कि जन-लोकपाल में जन नहीं है। हम जनता को मोबिलाइज करने का जितना मौका देंगे, तो उसको दूर तक नहीं जाना पड़ेगा, तो उससे शायद समस्या का हल निकलेगा। मैं इससे अलग एक दूसरी चीज यह भी कहना चाहता हूँ कि प्राइवेट सेक्टर तथा NGOs का हमने एक formulation भी बनाया है, हम कह रहे हैं कि any NGO or private sector body or corporate that takes on (i) a task that is of a public nature. In other words, if there is any private body, either a public utility task it is taking on or it is, through a contract on private-public partnership, performing a task that the Government should be performing, then any breach of that contract that results in financial gain to anyone should also be brought under an amendment in the Prevention of Corruption Act. We put that formulation.

श्री रामविलास पासवान : देखिए, corruption is corruption. Whether it is in Government services or in private bodies, corruption is corruption. Why are you making 'ifs' and 'buts'? When you are putting Prime Minister under the Lokpal Bill, जो NGOs अच्छे होंगे, दूध के धुले होंगे, वे निकल जाएंगे और जो करप्ट होंगे, वे फंसेंगे। सिम्पल भाषा में हम तो यह कहना चाहते हैं कि आप यदि सबको रखना चाहते हैं, तो सबको रख दीजिए। लोगों के मन में इस बात का शक होता है कि ये लोग सबकी तो बात करते हैं, लेकिन NGOs की बात नहीं करते हैं और कॉरपोरेट हाउस की बात नहीं करते हैं। हमारा यह कहना है कि कॉरपोरेट हाउस भी रहे, मीडिया भी रहे, NGOs भी रहे और सब सेक्टर्स के लोग रहें, तो फिर इसमें क्या दिक्कत है? आप इसमें सबको लाएं।

CHAIRMAN: Let us now close this discussion.

श्री शेखर सिंह : यहां NGOs के बारे में बहुत बातें हुई हैं, हमारा इस बारे में सिर्फ एक प्वाइंट है और हम यह चाहते हैं कि सारे NGOs प्रिवेंशन ऑफ करप्शन एक्ट के नीचे आएँ और हमने यह formulation भी दिया है। वे इसके अंदर आएंगे, क्योंकि प्रिवेंशन ऑफ की सारी कम्प्लेंट इनके पास आएंगी। जब तक आप पीसी के नीचे नहीं लाएंगे, तब तक आप इसके अंदर नहीं ला सकते हैं क्योंकि offence तो वहीं बनेगा। हमारा सिर्फ यह कहना है कि अभी जो आपका लोकपाल का एक formulation है और उसमें जो लिखा है, उसमें थोड़ा फर्क है। आप जरा इसको गौर से देखिएगा, इसमें लिखा है कि अगर कोई भी एसोसिएशन, जो लोगों से पैसा इकट्ठा करेगी, तो उसके आफिस बियरेर पब्लिक सर्वेंट बन जाएं। हमने कहा कि यह बात गलत है। हम यह नहीं कह रहे हैं कि इसमें कोई भी NGOs नहीं आएँ और हमने जो formulation दिया है, आप उसको पढ़िए। मैं भी यहां पर उसको पढ़ सकता हूँ, हमने लिखा है कि "Where any entity, including but not restricted to a private body, corporation or profit-seeking entity or any NGO..."

-- हमने नहीं कहा 'registered', 'unregistered', --

"...that receives from any public authority any grants, concessions, dispensations, executes an agreement to carry out a public service including but not restricted to various, various things

– licences, receipts etcetera, and is in violation of the law or any prevailing rules or attains of causes of a legitimate monetary benefit etcetera, it will be deemed to have abetted an offence under the Prevention of Corruption Act, Section 12.” यह बड़ा क्लियर लिखा है। हम चाहते हैं कि सारे NGOs आएँ। ..(व्यवधान) वह प्राइवेट सेक्टर्स से शुरू होता है।

SHRI RAM VILAS PASWAN: Receiving money from the Government or receiving money from any side?

ADVOCATE A. SAMPATH: Madam what about the private donations?

CHAIRMAN: One second, Mr. Paswan. ...(Interruptions)... One minute. You can answer in detail. But the questions is (i) are you including NGOs with Government funding, (ii) NGOs without Government funding, (iii) corporates with Government funding, (iv) corporates without Government funding also and (v) media generally? These five categories, to what extent, you are including or not including, please specify in your note.

ADVOCATE A. SAMPATH: Mr. Chairman, Sir, there are certain NGOs which do not receive any Government funding here, but which are funded from abroad. Every year, the amount is increasing. We all know that they are getting official funding from outside as well as private funding from outside.

SHRI NIKHIL DEY: Mr. Chairman, even one line may put some of them at rest. Under the provisions if you get, under 80G, any benefits, licence, if you get, under 12A, any benefits, which are all NGOs who take money, whether they take from Government or from private sources or under FCRA, then you will be covered under this because that is part of a benefit that you are getting.

SHRI VIJAY BAHADUR SINGH: If they don't take under 80G, if they don't take under section 12A, if they are not registered under FCRA, then what will happen?

SHRI NIKHIL DEY: Then no body will give them donations.

SHRIMATI ANJALI BHARADWAJ: May I just say one thing? No NGOs who do not receive any funds by the way. But I am saying(Interruptions)... No, no, no. I know a lot. No foreign funding can come to any NGOs unless they are registered under the FCRA. Not a pie can come. आजकल यह व्यवस्था बन रही है कि विदेशी पैसा किसी के पास भी आ सकता है, आप उसको इनक्लूड कर लीजिए, तो डायरेक्टली उसके तहत आ जाएंगे। ..(व्यवधान) हम इसके बारे में सोचेंगे।

SHRI VIJAY BAHADUR SINGH: Why not all?

SHRIMATI ARUNA ROY: We will think about it.

CHAIRMAN: We are clear on the question. Give them time to respond.

SHRIMATI ARUNA ROY: We will think about this. We will definitely think about it. We are not saying 'we will not'. The only thing is we are clarifying what you have already said.

CHAIRMAN: Okay. Arunaji, you have understood the question. You respond in writing. We have to end on this front now. But I have lastly again two requests from Mr. Kirti Azad and Mr. Prasanta Kumar Majumdar. I request them to put specific questions one by one and then, in short, you can reply later on. There are last two questions on this front.

SHRI KIRTI AZAD: Sir, I am not going to create any hassles. I simply want to say that even those NGOs which are not funded. We have had the instance of Ghulam Nabi Fai who was running an NGO, called Kashmiri American Center, and was funded by the ISI registered in the United States of America.

SHRI KIRTI AZAD (CONTD): A lot of these NGOs, I don't say everyone, but many of them could be a threat to the national security, as I said about this gentleman. You know what was going on in the USA. I would want to know about NGOs who are not funded here and are based outside, but doing their activities which are obviously against the interest of the country. I think this should be included in that. We have talked about those who take bribe and that is corruption. But we have not talked about those who give it. ताली एक हाथ से तो नहीं बजती, यह दोनों हाथों से बजती है। लेने वाला तो corrupt है, लेकिन जो दे रहा है, उसके बारे में हम किस तरह से प्रावधान करने वाले हैं।

वैसे सब लोगों ने प्रश्न पूछे हैं, मैंने कहा कि मैं अंत में पूछूँगा, आप लोगों ने अधिकतर बातें कह दी हैं, मूल विषय इसके अन्दर आ गए हैं। जहाँ तक मेरी जानकारी है, यहाँ पर कानूनविद लोग बैठे हैं, मेरे ख्याल से ग्रुप ए, बी, सी, डी ऑफिसर्स नहीं होते, वे क्लास 1, 2, 3, 4 होते हैं। अगर उनका distinction है, तो वह financial categorization के कारण है। जब कभी ग्रुप ए, बी या सी कहा जाता है, तो मुझे समझ में नहीं आता है। हो सकता है कि मेरी जानकारी में न हो या मेरा उतना दिमाग न हो या मैं उतना पढ़ा-लिखा न होऊँ। विनीत नारायण जी के केस में सुप्रीम कोर्ट का एक decision आया था, which gave a definition of public servants in a far more comprehensive manner. Can this definition be used, rather than using lower bureaucracy, higher bureaucracy, Group A, Group B, Group C and Group D which I think is no definition? Can we use that as a definition?

CHAIRMAN: Kirtiji, I believe, subject to checking, that now the nomenclature has changed; the new nomenclature is Groups A, B, C and D. But that hardly matters. We are checking it. I think it is no more operative. We understand what you mean.

SHRI KIRTI AZAD: I do not know about it, I simply asked this. There is a reason why I am asking that. Second was the inclusion of the Prime Minister within the ambit of the Lokpal. There are a lot of serious issues which could be national security, public order, foreign policy, even there are Ministers, for instance, the Ministers of Defence or Foreign Affairs. What do we do about them? You have your nuclear installations. You have your scientists. You have important issues. What do we do about them? Do we have them in the ambit of the Lokpal? Wouldn't we be compromising on the security and integrity of the country? You were talking about 'malicious', 'frivolous' and 'vexatious' definition that was there. Can we use the word '*mala fide*'? It has been used, as far as corrupt officers are concerned, in Common Cause vs. Union of India (AIR 1996 Supreme Court 3539). The Supreme Court of India observed, "It is high time that the public servant should be held personally responsible for their *mala fide* acts?" This word was used there. When we use the words malicious or frivolous or vexatious, can we use this word? These are my simple questions. I am sure you will give simple answers.

SHRI PRASANTA KUMAR MAJUMDAR: I am not against your submission. I also agree to some extent with your submission. Neo-liberalisation policy is the root of corruption, particularly the upper section. But you are silent on this matter. Why?

You have objected to the inclusion of NGOs funded by public money in the Lokpal Bill. I also understand that the Anna Hazare team also has huge objection so far as this provision is concerned. Do you think that the NGOs are the most pious institution in the country, who should not be touched? Why? Thirdly, you are silent about election reforms. Why? Then, black money is also the root of corruption. You are silent on this matter also.

ADV. P.T. THOMAS: I would like to have a detailed reply from Shrimati Aruna Roy and her team. What about the composition of the Lokpal? Is there any provision for women, SC and ST in the composition? Are you considering composition of the Lokpal?

CHAIRMAN: May I now take this opportunity of thanking Aruna Royji and each of her colleagues individually and collectively? I am requesting you, as you part, to remember to send us three things: one, a draft Bill, if you want to. Better still I would suggest, your comments in square brackets on the Government Draft Bill introduced in Parliament. It does not matter what Bill you take as a base, but we have to take some base. So it will make life easier for us if you give us your comments in square brackets and further footnoted comments taking that as a base. You can add whole section, whole part. That is one. I think that is preferable to giving your own Bill. Two, a summary of the points which you have made in answer to all the questions raised today; clear summary in short points which can be circulated to everybody here. Three, you have already given us a very detailed bundle of your views which is here. You can give a summary of that also separately. I remind you as you leave that everything is confidential. It should not be that we get it later and the media gets it first.

SHRI PRASANTA KUMAR MAJUMDAR: Sir, I want to make a request. I will speak in my own language, Bengali. Please arrange for translation.

CHAIRMAN: Maybe, tomorrow it will not be possible, but in future we will make a note of it and we will do that.

श्री रामविलास पासवान : सर, मेरा यह suggestion है कि मैम्बर्स के द्वारा जितने भी points raise किए गए हैं, इनको वे सारे भेज दिए जाएँ या इन्होंने नोट किया होगा, मैं समझता हूँ कि सारे points का reply आना चाहिए।

अध्यक्ष : इन्होंने सभी मैम्बर्स के points नोट किए हैं और वे सभी का reply देंगे। Thank you very much.

श्रीमती अरुणा राय : हमारी तरफ से भी आप सबको शुक्रिया।

श्री लालू प्रसाद : अरुणा जी, मैं यह कहना चाहता हूँ कि आपकी सोच, आपके सुझाव बहुत ही valuable हैं। आपका बहुत cooperation है, आपके suggestions अच्छे हैं। आपका बहुत-बहुत धन्यवाद।

अध्यक्ष : आपका बहुत-बहुत धन्यवाद।

श्रीमती अरुणा राय : आप सबका बहुत-बहुत शुक्रिया। हम यह कोशिश करेंगे कि सारे प्रश्नों का जवाब अच्छी तरह से दें।

अध्यक्ष : आप अपना जवाब जितनी जल्दी हो सके, दे दें।

श्रीमती अरुणा राय : जी हाँ।

(तत्पश्चात् साक्षी गण कक्ष से बाहर गए।)

WITNESS

Lok Satta Party, Hyderabad

Shri Jaya Prakash Narayan

CHAIRMAN: I welcome you. We would request you to make your presentation first and then there will be questions. We are running a little behind time today. We will try to do how much we can today.

SHRI SATYA PRAKASH NARAYAN: I present not really my views, but the views of a Round Table Meeting held in Delhi on the 24th April where some of the eminent Indians were present. They include the former Chief Justice, Justice Venkatachalaiah, Justice J.S. Verma, Justice Santosh Hegde, members of the Anna Hazare's team, former Chief Election Commissioners, Shri Gopalaswamy and Shri T.S. Krishnamurthy, the former Chief Vigilance Commissioner, distinguished Sorabjee and many others. We discussed threadbare eighteen issues in detail relating to Lokpal institutions, and a broad consensus was arrived at. I am, particularly, presenting those views. I have already circulated the papers to the Parliamentary Committee. So, I won't go into too many details. I would, actually, respond to questions to be put by hon. Members of the Committee. I would only outline some of the key challenges.

First of all, thank you for this opportunity for presenting our views. We believe that Indian democracy has weathered many storms, and the fact that our Constitution and the institutions of State, over the past 60 years, have done some remarkable things: (a) integration of Princely States which can remarkably compete with any country of the world; (b) preserving unity and freedom over the past 60 years; (c) building an extremely strong federal institutional framework in this country; (d) promoting egalitarianism, at the same time, reservation and a variety of affirmative action policies, and while doing all these things, ensuring economic growth. This is, by any standard, a remarkable accomplishment in this country. Often times, in our quest to improve things, we forget what has been accomplished in India. Despite political diversity, there is a lot that this country has done, and we can feel proud of that. From time to time, there are bound to be problems. But we believe that Parliament of this country and the political processes are more than capable of handling these problems. For instance, the debate on the 27th August in Parliament was a remarkable tribute to our Parliamentary institution. I, for one, was justly very proud on that day watching the debate on the television about the quality, the absence of bitterness and rancour and the decorous approach to very complex and sometimes contentious issues. Mr. Chairman, my appeal to this august Committee is that Parliament must seize the initiative. Now, there are two approaches. I will be very candid; I may be very nice and polite about it and I may be very outspoken and very candid about it. One approach is because there is some amount of divergence or discord between certain sections of the society and the institutions of Parliament, this Committee and Parliament can take recourse to one option, that is doing the minimum required to get away with that. The other is Parliament actually seizing the initiative and doing what is best for the country, to ensure that the dignity of Parliament is protected and preserved. The Constitution and its promulgation itself is a remarkable tribute to Parliament not doing the minimal things but doing what is ideal for the country. Linguistic Reorganisation of States or Federalism, reservation issue, economic liberalization, the Right to Information Act, the Employment Guarantee Act, the Right to Education Act, all these show that Parliament of this country has, from time to time, seized the initiative and did the right

things in order to ensure that the confidence of the public in the Parliamentary process is always maintained at a high level. Given that situation, our approach is (a) the Lokpal Institution must have tremendous clarity about what it is going to do. There is a certain demand from certain sections that Lokpal must do everything in respect of everybody. Our earnest belief is that if you try to do everything everywhere, you end up doing nothing anywhere. There must be a more focused approach as to who are the functionaries who will come under the jurisdiction of Lokpal. If I may be permitted, I will give an example of what happened in another large democracy in the recent months. There is a couple called Arun Sharma and Kiran Sharma. Both are doctors practising in the State of Texas in the United States. For thirty years, they defrauded the health care and the infrastructure there. They defrauded health institutions and insurance companies by a variety of malpractices. I do not want to go into detail. There was no big *maarpeet*; there was no Parliamentary paralysis; there was no *anshan*. The Federal Court, just three months ago, convicted them to 15 years' jail term and, more importantly, confiscated all the 43 million dollars, the ill-gotten money that they made over the past 30 years. Lokpal institution or other institutional steps must be aimed at facilitating that kind of an action in a selective manner in case of top functionaries of the Indian States, bureaucrats and those in political offices who might be held guilty in very shocking cases of corruption. Instead, if you have a roaming inquiry going into everybody from Delhi to *galli*, that will, actually, be counter-productive. As an esteemed friend of mine said, "It will only dilute the authority. It will deflect attention from the key issues. It will delay justice. It will deny accountability." So, it is not a very wise thing at all to have a Lokpal with all embracing omnipotent jurisdiction. That will be counter-productive, apart from running counter to democratic principles, because they cannot afford concentration of excessive power in any one institution. The second broad approach that we have is to respect constitutional institutions and the political process because that is what gives us the confidence that the liberty of this country will be protected; that is what gives us the confidence that justice will be done in this country. Therefore, the Constitution and its institutions must be sacrosanct. The third is change in continuity must go together. There is a continuity of institutions in this country. It is not that we are destroying everything that is present so far, and suddenly, we create something new. Therefore, whatever we do now, we have to, obviously, have a robust, effective and a sensible Lokpal and Lokayukta institutional mechanism. It must be seamlessly merged and fused with the existing institution so that there is no divergence, there is no disruption, and we drop on the best strengths and its good foundation. The fourth is the recognition that there is no single silver bullet, that there is no one answer to the problems of India, to the challenges of corruption. There have to be too many answers of which certainly given the current situation, the Lokpal, the Lokayukta institution, an important anti-corruption commission mechanism, across the country, is a part of the answer, but not the sole answer. If you then look at the Administrative Reforms Commission, where we have given a very detailed report on ethics in governance, there, we have made a recommendation on Lokpal and Lokayukta institutions in the country. Therefore, much of my presentation is also going to be informed by what we have already stated in the public domain. Let me come to the issue of jurisdiction. Firstly, we believe that judiciary cannot be a part of Lokpal's jurisdiction for a variety of reasons. Eminent jurist like you and many other members with deep experience and insights know too well the reasons. The Supreme Court and the High courts not only have the Constitutional authority but they are also held in high esteem in this country. Whenever there is a crisis in this country, we always depend on these High Courts. For instance, Babri Masjid demolition issue, or, the reservation issue, or, contentious issues like reservation, etc. which are fragmenting our country. We, ultimately, depend on the Courts to bring some sense and some balance. And, if that Court's authority is in any way undermined, that will do immense damage to the country.

SHRI JAYA PRAKASH NARAYAN (contd.): The second is, as you know the 1973 judgment of the Supreme Court in the *Kesavananda Bharati case* held that the basic features of the Constitution are inviolable and the court has the ultimate power to decide what the basic features are. There is a real danger that the Supreme Court may hold that any inclusion of higher courts' judges in the jurisdiction of the Lokpal or Lokayukta is violative of the basic features of the Constitution. It may or may not be violative but once the court says so, you know the implications, Mr. Chairman. I don't think India at this point of time should have a confrontation between the Parliament and the higher judiciary. We as a country cannot afford that.

The third one is, the Government's draft Bill which is now before the Parliament has envisaged that inquiry into misconduct or allegations against the members of the Lokpal will be entrusted to a Bench of the Supreme Court. If, in turn, the Lokpal institution is to inquire into the misconduct, if any, or the corruption of the judges, it will certainly not be a very healthy thing.

Of course, finally, already because of a variety of pronouncements in judiciary, the Constitution, to some extent, has been diluted. The Constitution-makers never envisaged that judiciary will be completely away from the purview of the Parliament and the Executive of the country. Unfortunately, after the judges' case judgment, the judiciary has taken over more or less and, now, if you further dilute it and make an extra-Parliamentary statutory institution control the way the judiciary functions, at least, to this extent, that will undermine the constitutional structure even further. It is not desirable at all.

Now, it does not mean that judiciary must be unaccountable. Judiciary must be held to account. Every great jurist in this country including many former eminent Chief Justices and Judges held that the judiciary must be held to account by an institutional mechanism. Over the past one year and more, Mr. Chairman, we have requested three eminent judges of the Supreme Court including two former Chief Justices -- these are arguably amongst the tallest judges of this country; Justice V.R. Krishna Iyer who is now 96 years of age and living in Kochi, Justice Venkatachalaiah, a former Chief Justice of India and National Human Rights Commission Chairman and Justice J. S Verma, former Chief Justice of India and National Human Rights Commission Chairman. We requested the three of them because of their stature, their credibility and their deep commitment to both judicial accountability and judicial independence. We requested them to come together to come up with a model for judicial accountability. They have worked very hard for several months, Mr. Chairman, and they have come up with a model for National Judicial Commission. Right now before the Parliament there is a Bill pending, the Judicial Standards and Accountability Bill which, as we all know, now creates a permanent mechanism for inquiry into judges' conduct, not an ad hoc mechanism, and also codifies the judicial code of conduct and makes any violation of that a matter of an inquiry and, if that law is enacted and with that a National Judicial Commission comes into place amending articles 124 (2) and 124(5), in effect, it will be a constitutional amendment, then, together, they will take care of the problem of judicial accountability in the higher judiciary because both appointments and removals as we envisage, if the Parliament approves, will be with the National Judicial Commission headed by the Vice-President of India, with the Prime Minister, with the Leader of the Opposition and the Judiciary, all being members of that.

About the lower judiciary, Mr. Chairman, article 235 is very clear; the High Court has complete authority and, time and again, in States like Maharashtra, and if I am not mistaken, Rajasthan, West Bengal, High Courts have exercised the jurisdiction very effectively, weeded out the corrupt lower judiciary members and that must be retained as it is. Therefore, there is

no case for an extra-judicial body, apart from the National Judicial Commission, to go into matters of judicial accountability.

As far as the Prime Minister is concerned, Mr. Chairman, I must candidly say that I myself wrote that particular sub-chapter in the Administrative Reforms Commission on whether or not the Prime Minister should be included. Our considered view then was that the Prime Minister in our Westminster model is no longer merely first among equals; the Prime Minister of the country is the leader of the nation. A very large complex federal polity like India cannot afford to have the Prime Minister go before a non-Parliamentary body and present himself or defend himself.

It does not mean that the Prime Minister should not be accountable. The Prime Minister should be accountable to the Lok Sabha. That is what the Constitution envisages. Certainly, if the Lok Sabha feels that there is something seriously wrong, even the parties in power will not allow the Prime Minister to continue because it is politically not feasible and, constitutionally, the Lok Sabha must be supreme in dealing with the accountability of the Government. That was our view then and that broadly is our view even today because not only does it undermine the authority of the Union Cabinet and the Executive branch of the Government, it also will lead to a potential situation where there will be roving inquiries without any substance and even if subsequently it is proved that the Prime Minister's conduct is totally honourable, the damage will be done to the country because if the country is destabilized, if a Government is weakened, the damage is irreversible.

However, in today's climate, two things happened. First, the Government's initial draft Bill itself conceded that the Prime Minister should be under the jurisdiction of the Lokpal. Second, the public mood is now enflamed and there seems to be an overwhelming view that the Prime Minister should be brought under the jurisdiction of the Lokpal. If such a view prevails, we urge this Committee, Mr. Chairman, to ensure that there are very, very strong safeguards and, in those safeguards, we do not believe that judiciary should be the safeguard in protecting the Prime Minister's institution. We believe it must be a Parliamentary body and, therefore, what we propose is that in case the Prime Minister is sought to be brought within the purview of the Lokpal's jurisdiction, then, after Lokpal, on the basis of the *prima facie* evidence or the material before it, at least, two-thirds majority asks a Parliamentary Committee to sanction permission to inquire. Our humble suggestion is that committee should be a three-member committee -- we could actually have a variant of that -- headed by the Vice-President of India with the Speaker of the Lok Sabha as a Member and the third member being the Leader of the Opposition. Nobody can accuse this body of partisanship because, after all, these are the two high Chairs of the two Houses of the Parliament. The Leader of the Opposition cannot be accused of being partisan in favour of the Government. If anything, the Leader of the Opposition would probably be harshly critical. Perhaps, we can trust these three members to protect the dignity of the Parliament and the nation's institutions and the privileges of the Executive branch. So, if, indeed, it is found necessary to include the Prime Minister under the jurisdiction of the Lokpal, a safeguard of that kind would probably be practical and would probably protect the interests of the country.

SHRI JAYA PRAKASH NARAYAN (contd.): As far as Members of Parliament are concerned, article 105(2), the present Bill makes a specific provision of that; I think, it is section 17 (2), if I am not mistaken. Sir, protection of privileges of Members of Parliament for their conduct in the House, what they say, what they believe, and what documents they furnish, that is absolutely inviolable. That is sacrosanct, including their vote. But, the Supreme Court, in our humble view has erred in its judgment in the P.V. Narasimha Rao Vs. the JMM case in holding that when there is a link between money that has been paid to an

MP and a vote given in Parliament, then the bribe giver can be prosecuted and not the bribe taker. It is, by any standards, an unacceptable judgment, an erroneous reading of the Constitution. That judgment must be undone. One day, that will happen, Sir; until that is undone, for the lower courts of this country, the judgment of the Supreme Court is final and binding, and therefore there cannot be any prosecution of a Members of Parliament Members of Parliament on grounds of corruption for an act committed in the House. Our view is that these two things must be delinked—the act committed in the House and the corruption, i.e., receiving illegal gratification in order to do a certain thing or not to do in Parliament, in the interest of the Parliament and its dignity. That has to happen only through the Supreme Court pronouncement because Supreme Court has already held; or, it can happen by a law.

Our appeal is, the Parliament must take this opportunity to explicitly state that these two are different. This law or some other law is a matter where Parliament can decide. Meanwhile, there is no case for section 17(2) because already the privilege required is provided for in the Constitution and, now by saying this in section 17(2), the Parliament would be simply saying that the Supreme Court judgment is final and binding and we agree with that, and, therefore, an MP if indeed is found to have received illegal gratification for doing a certain thing or not doing a certain thing in Parliament, he would get immunity for that act; that would undermine the dignity of Parliament, Chairman, Sir. It is not in the interest of Parliament. The dignity demands that we delink these two issues—immunity for actions in Parliament must be absolute; but, there cannot be immunity for illegitimate acts outside Parliament where they have taken a consideration in order to give a vote in a certain manner or speak in a certain manner or raise a question in a certain manner. That would be completely undermining Parliamentary democracy. Already, there is a tremendous amount of mistrust in the country, sadly. Parliament and institutions of Constitution are increasingly under attack and now if the Parliament takes this stand, it will actually undermine Parliamentary democracy and the Constitution. Therefore, very humbly, we submit that this must be delinked and section 17(2) must be deleted. It will not do any violence to this draft Bill.

Sir, about jurisdiction, we believe that the Chief Ministers of State Governments must be brought under the Lokpal jurisdiction. I am going to argue that the Lokayukta must be mandatorily created and the law must be under article 253. The Chief Ministers must come under Lokpal because we cannot say that the Chief Minister enjoys the same position as the Prime Minister because in the States while there may be some difficulties in running a Government, the Chief Minister is under attack. It will not lead to serious destabilization of the country. In the States, in the ultimate situation, there is a provision for article 356 which is not available at the national level. Therefore, you cannot allow destabilization of the national Government as opposed to a State Government in case there is really a case warranted. But, instead of Lokayukta in the State, it probably makes sense bringing the Chief Minister under Lokpal because there will be a little more measured appreciation of the nature of the case. Therefore, hopefully, the Lokpal will not start an inquiry in a casual manner in respect of the Chief Minister. For that reason, we believe that the Chief Minister should be brought under the Lokpal.

Now, about Lokayukta and the Chief Minister, Sir, in Parliamentary debate, very eminent hon. Members, leaders and jurists among them, suggested that article 252 should be invoked whereby if two or more States request the Parliament to enact a law in respect of a State-subject. For that, Parliament is empowered to make a law but it is applicable only to those States which asked for it or the other States that may adopt that by a resolution. We believe, article 253 applies in this case. The U.N. Convention Against Corruption has not

only been signed by the country, but the Indian Government has ratified it on 1.5.2011. Article 253 says, "Notwithstanding anything in the foregoing

provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body." Sir, there are several precedents. One specific which is relevant to this purpose is in 2002, the Parliament enacted the Money Laundering (Prevention) Act. That was enacted explicitly in furtherance of the U.N. resolution. The political declaration and global programme of action in the 17th Special Session of the U.N. General Assembly, on 23.2.1990, in the preamble to the Bill, it was explicitly mentioned. This law actually has tremendous relevance to anti-corruption matters because money-laundering and corruption are closely linked.

Right now, before Parliament, there is another Bill pending, a Bill to repeal the Benami Transactions Prohibitions Act of 1998, because that Act was found to be deficient and inadequate. A Bill is before Parliament right now; in that Bill, explicitly a provision is made by which the appellate authority for the benami transactions Act will be the same authority as in money laundering Act. In many ways, there is a synergy. Actually, in that Act, not only has Parliament exercised rightly the power to make law, but also even the authorities created in respect of employees of State Governments are created by the Central Government under the law. Those bodies of the Central Government have direct authority over the State functionaries. In fact, corruption is mentioned in part-B, para-5 of that money laundering Act. Given that, today, under the Lokpal Bill, it is not anybody's case that the Central Government or an authority at the national level will actually appoint Lokayukta or other local ombudsmen. It is a bit like RTI Act where the information commissions at the State-level are appointed by the State authorities but under the Parliament's Act. The Lokayukta Act will be identical. The law will be made by Parliament under article 253. In addition, if you take item 1 of the Concurrent List, it is on the criminal laws of the land. Therefore, procedural laws will automatically come under Parliament's jurisdiction. The CrPC is under Parliament's jurisdiction. The Lokpal, Lokayukta legislation is merely a legislation providing for a procedure dealing with matters relating to prevention of corruption. It is entirely within Parliament's province by any yardstick. Therefore, Parliament, in our humble judgment, should exercise the jurisdiction effectively. That is what the nation expects and that is what Parliament should do in interest of the country and in order to uphold its own dignity. But, it should not create an institution at the national level to control the State-level machinery. It must be very much similar to the RTI Act where the State machinery is the State's property; but, it is under the Parliament's law. That is the distinction we have to bring unlike the Money Laundering Act where Parliament not only made the law but also created a Central instrument to actually supervise the implementation of the Act at the State-level.

Given that, this will arguably be the most important intervention of this Committee to ensure that a law is available for the whole country. In our presentation, we have also suggested some of the mechanisms; for instance, there must be a mechanism to have local ombudsman but under the Lokayukta; Lokayukta can be empowered merely under the law; a separate chapter can be there for Lokayuktas. The Bill itself could be the Lokpal and Lokayuktas Bill of 2011. The membership could be a smaller one over there, which provides for one chairman and eight members of the Lokpal; at the State-level, probably, a chairperson and two-four members.

SHRI JAYA PRAKASH NARAYAN (CONTD): But the Committee could come to a decision. One of them could exercise functions as Vigilance Commissioner because there is

no separate Vigilance Commission, a statutory institution in the States, unlike at the national level. The Selection Committee could be a variant of what is proposed at the national level. It could be the Chief Minister, the Speaker, the Leader of the Opposition and the Chief Justice of the High Court. A four-member committee, probably, would do because not in all States do we have an Upper House, the Second Chamber in the State Legislatures. This law could make it mandatory to have Anti Corruption Bureau in States where there is no such ACB. The ACB can be then directly brought under the Lokayukta because there is no Vigilance Commission with a statutory status in States. All the functions of the Vigilance Commission could also be entrusted to the Lokayukta institution along with the Anti-Corruption Bureau's functions. So, some such details could be done, Sir.

Sir, the next substantive point I would like to make is about the Central Vigilance Commission. Mr. Chairman, Sir, we should not, under any circumstances, destroy the existing institutions. The CVC is a long-standing institution created in the wake of the Santhanam Committee's Report by Lal Bahadur Shastri Government. It is, in fact, one of the few committees or commissions appointed very promptly after a commission or a committee report had come about. Often times, in the past 30-40 years, many expert committees' recommendations have been kept pending, but this is one thing where the Government at that time acted very promptly. But, as we all know, it was done not by a statute but by an executive authority. But, eventually, because of the Supreme Court's intervention and because of the Parliament's will, we have now the 2003, CVC Act. The CVC has emerged as an institution with tremendous institutional strength and expertise. It is now a multi-member body, quite rightly. Typically, there is a civil servant heading it. There is another civil servant, often times in the police, as a member. There is one person from the financial institutions and the banks, as the third member, because a large amount of corruption allegations are really in respect of banks and financial institutions. That structure has stood the test of time. Mr. Chairman, Sir, therefore, my humble appeal is, the Central Vigilance Commission and the CVC Act must be retained with certain modifications. One, the CVC members, including the Chairperson should be made, in addition to their functions under the CVC Act, ex-officio members of the Lok Pal institution so that they have the institutional authority and there will be total seamless integration of functioning. But, in addition to being members of the Lok Pal, the CVC must function under the CVC Act, and exercise all the functions of the CVC Act. It has three advantages, Sir. One, we are utilising the existing strength of the institutions, the institutional capability and the professionalism. Two, we are ensuring that all the functionaries are not covered by the Lok Pal. We believe the Lok Pal should not cover everybody; it must cover only the high functionaries, both political and bureaucratic. The CVC, directly or indirectly, takes charge of others. In fact, that addresses the problem of lower bureaucracy. There is no single body that can deal with 20 million employees in this country at the State and national levels. Even at the national level alone, there are about 6 million plus employees. If you include the public sector undertakings, maybe it is actually a million more or so. You will have tens of thousands of petitions everyday. I was the District Magistrate, Sir, about 25 years ago. Every day, I used to receive 1000 petitions. I am not exaggerating. Every day, I used to spend most of my office time only in receiving visitors. I used to do my official work either in the mornings or in the evenings. Now, any Lok Pal or Lokayukta, if it has to be effective, it will receive hundreds of thousands of petitions, practically, every day. There is no institution on earth that can ever handle such a workload. It will completely destroy the institution. It will appear very nice on paper, but it will actually destroy the very purpose of it. I have examined, Mr. Chairman, some of the internationally known Anti-Corruption Commissions. At least, seven-eight countries', I have the comparative statement with me. In no country have they dealt with more than 1000 or 1500 petitions in a year. That is the maximum of the institution of this

kind is capable of handling. Therefore, its purpose should be to deal with hundred most important cases of corruption in its jurisdiction, and make sure that the country has the confidence that corruption can be addressed effectively. Its purpose should not be to deal with every body from a *chaprasi* to the Prime Minister. You are actually undermining that institution, under-mining the country and it becomes counter-productive. Therefore, there should be the Vigilance Commission and its agencies, the vigilance agencies in each department, and the departmental action in the departments themselves under the broad supervision of the Vigilance Commission. Sir, the most important, the third one is the CBI and the Enforcement Directorate. The CVC Act envisages that they will broadly function under the superintendence of the Vigilance Commission, not under the control because the investigative agencies must function on their own, but they are under the broad superintendence, therefore, the law provided for appointment of even the Chiefs and the senior officers of these agencies by a body comprising the Chief Vigilance Commissioner in the chair, and that will be retained. Therefore, the autonomy that we seek, the independence and the insulation of the crime investigation, particularly in respect of matters of corruption on economic offences from the political executive and partisan politics, that will be achieved by merely retaining that but strengthening and giving autonomy to the Vigilance Commission. Therefore, destruction of the Vigilance Commission or blind merger or repeal of the CVC Act would be retrogressive steps because we have to achieve many more things, apart from merely creating an institution called Lok Pal or Lokayukta.

Mr. Chairman, Sir, now I take up the CBI and the Anti-Corruption Bureau and also the Enforcement Directorate. The present Bill has actually made some very good provisions. Section 6(A) of the Delhi Special Police Establishment Act by which any enquiry into the conduct of a senior officer above or equal to the rank of a Joint Secretary, Government of India has to be the prior permission of the Government is done away with, in so far as the Lok Pal is going to enquire. Similarly, Section 19(A) of the Prevention of Corruption Act, Section 197 of the CrPC whereby, the prosecution, if any, to be ordered even against a *chaprasi* should receive the prior approval of the Government, the President or the Governor, the government as do in this case, but again in respect of the cases handled by the Lok Pal institution, those provisions do not apply. Mr. Chairman, Sir, we must go all the way. We must ensure a real and full autonomy but with accountability to all anti-corruption investigative agencies in all matters of corruption. Even as we ensure that there is no need for a roving enquiry, there is no under-mining of the morale of those in the Government. That should be accomplished, if (a) Section 6(a) of the Delhi Special Police Establishment Act is repealed; (b) the executive orders, if any, in the States, in respect of the ACB, similar orders but by an executive order, they apply in State also, they all must go by a specific statutory provision; (c) that sanction of prosecution, probably, there is a case for prior vetting before prosecuting. In such a case, we urge two safeguards. One is, let the CVC be the sanctioning authority because that is envisaged to be an independent authority; that is an authority with deep administrative experience and institutional strength, we can trust that authority. However, before sanctioning prosecution against high officials, the CVC can be asked to write to the Government, indicating what they are going to do. In case the Government of the day, at the State level, in the case of the Lokayukta, and at the national level, in the case of the CVC, has very compelling reasons why a prosecution should not be sanctioned, sometimes, there may be national security considerations that the authorities may not be aware of, sometimes, there may be some other compelling national interest issues, in which case, the Government will have to then record the reasons in writing and communicate to the CVC, and the CVC will take a final decision on the basis of the Government's inputs. We feel that the Government should have an opportunity to be heard. We are sure that it will not be necessary in most of the cases, but there may be instances where the actions of an

individual, even if they are seemed to be corrupt in the ordinary law of the land, they are, in a specific context of the national security, necessary and, therefore, the Government believes that the balance of convenience lies not in prosecuting but in denying prosecution. But the CVC must be the final authority. With such safeguards, if the CVC is given the power to sanction prosecution at the national level, in case of the States, the Lokayukta is given the power to sanction prosecution that will suffice.

In addition, Mr. Chairman, Sir, in our submission, we have also outlined the current strength of the CBI. The CBI, Sir, has only 6000 staff.

SHRI JAYA PRAKASH NARAYAN (CONTD): Of them only 2000 are actually investigators and 4000 are support staff. If we take the pending cases, 4000 are Central case of CBI and 12000 are others. The number I am obviously rounding off. I have taken actually historical thing and which I have submitted to you in graph indicating how they have been over the years. So, about 16000 cases are pending. If you take the prosecution, the actual conviction annually, that is of the order of about 700. These are all cases of States and Centre put together, which comes to 7 for one crore population. That is the lowest in the world. For a country where we are deeply exercised about corruption and this includes to *chaprasi* to everybody, two crore employees in this country, obviously there is a case to make prosecution easy, to make investigation easy and effective, to have independent prosecutors appointed by the Lokpal as envisaged in this Bill and which is a very good provision, not only for these cases of Lokpal but for all ant-corruption cases. Lokpal or CVC must be empowered to appoint independent prosecutors because prosecution after all is really a quasi judicial function. It is not something to be trifled with through political interference or partisanship. Investigation, evidence gathering is really an independent thing of the politics of the day. It is entirely based on evidence. It has importance as judicial functioning. Two, these bodies must also be strengthened. If you take FBI its strength is something like 70000. Now, India has four times the population of the United States. If we take any other country, our CBI and ACB are hopelessly understaffed. But the CBI in particular has the professional competence. That is our judgment. You cannot in any case create another large organization. Therefore, the idea that there can be a large full-fledged investigative agency under Lokpal is not a good idea. Yes, the Lokpal should have a team of investigators, that eventually can be decided but that must be more to go into some of the cases that Lokpal will directly go into because of the sensitivity and complexity of the cases or for a preliminary examination before CBI takes over investigation and prosecution in the large measure. It cannot be a separate parallel body fully dealing with all cases of investigation. That simply is not possible. For 64 years we could not build a CBI which has more than 2000 investigative officers. To think that tomorrow overnight you can build an agency with some 50000 investigators, it is not realistic. We must utilize the existing strength and expand it and bring more expertise and more technology and more manpower, more resources to CBI and make it strong, effective and accountable rather than deplete existing institutions. That will be an extremely sad thing. But instead because there is no CVC equivalent, there is no law of that kind, if it is possible to bring the ACB under the Lokayukta, very much like the Karnataka model. Even there the law probably should provide for, and the Lokayukta must have the wisdom to obey the law in letter and spirit, merely giving broad supervision and guidance and superintendence and protection, not interfering in the day to day investigation. That is not envisaged. That should be restricted. So, some kind of a provision in the law also will be helpful subject to the caveat in States Lokayuktas but at the national level as we submitted earlier the CVC is fully capable of handling it with the changes that we proposed. But the CBI must be strengthened and Section 6A of the Delhi Police Establishment Act must go and the relaxation given to Lokpal institution in respect of prosecution must apply to all cases. But in this case it will be

CVC at the national level, Lokayukta at the State level. Sir, I am not going into all the issues but I am going into the substantive ones here. One issue that has not engaged our attention in this whole debate in Parliament or outside is the existing provision of Prevention of Corruption Act, the provisions for penalties are inadequate. First of all, the jail term for itself is from six months to five year or some such thing. Second, there is no strong law even today for confiscation of property of public servants. Even today we are going by the 1944 Ordinance of British era, which as you know, Mr. Chairman, is continuing to be operative because of the constitutional provision. All the laws existing at that point of time including ordinances in 1947 Transfer Power and subsequently by the Constitution, we continue to operate those laws. It is a very inadequate law. The process is very cumbersome. It is also very limited on to the money that can be directly ascribed to corruption. But the properties of the public servants per se are left largely untouched. Therefore, not only the prosecution is inadequate in India, not only the number of cases which we are prosecuting or investigating are laughably small, but even after prosecution and in rare cases after conviction and conviction upheld in the higher court, the actual quantum of punishment is so marginal that it is inconsequential. The only substantive punishment, apart from the long jail term, is that once you have long jail term probably ten or fifteen years, not less than that in proven cases of conviction, a confiscation of all the properties is necessary. That is why, Mr. Chairman, I raised the issue of Arun Sharma and Kiran Sharma in the United States, the Indian couple, where 43 million dollar of their property, all the assets they got in 30 plus years, as medical practitioners were confiscated by the States by one stroke, by one judgment of the court in addition to giving 15 years sentence. You do it in really bad cases, shocking cases in 50 or 100 cases in the country, and then the tide will be reversed. That is the only step. Otherwise, it will be a punishment to the people who are prosecuting and investigating not to the truly corrupt. We must change the scales. Mr. Chairman, you know only too well what *Ballston* said. He said the purpose of the Government is to make it easy for people to do good and difficult to do evil. In this country, you make it very difficult to do good and very easy to do evil. Both must be addressed. Lokpal and other issues are really about punishing but tomorrow I hope we will be discussing some details in the course of interaction. There must actually be several things to encourage honesty and not merely punishing dishonesty. But an important step in this regard is ensuring the successors, the heirs of those persons who are corrupt and found to be guilty by law court. And we can trust the law courts, and due process in the country where Constitutional liberties are sacrosanct. Even after that the fellow does not lose his property, even after the fellow is certain that his children and grandchildren will inherit the property then there is no fear, Sir, in this country. Therefore, that fear must be real and substantive. Therefore, the Law Commission on the basis of a Supreme Court judgment actually has drafted a Bill, as you are aware, and the Supreme Court judgment is in relation to 1996 law SAFEMA, Smugglers and Foreign Exchange Manipulator (Prevention) Act. Mr. Chairman, that is one of the most effective laws.

SHRI JAYA PRAKASH NARAYAN (CONTD.): That law was upheld by the Supreme Court when it was challenged. The constitutionality was challenged and the Supreme Court specifically said, while making the judgment, that such a law is required not only in respect of smugglers and foreign exchange manipulators but also corrupt public servants, and their properties must be confiscated in a similar manner. Therefore, the Law Commission in its draft has actually included identical provisions, including the definition of corruption, including the definition of who are the public servants whose properties will be attached and confiscated. Identical provisions are made by the Law Commission in its draft because Supreme Court already upheld the constitutionality of that law after careful consideration and therefore, *mutatis mutandi*, such minimal changes are required. We believe there is a case to enact such a legislation, not as part of Lokpal legislation because that will be too much, but,

as a basket of legislations. If you bring in that law and make it operational and effective, that will serve the purpose a great deal. Without that, I am afraid all our talk, all our work and even a good legislation is not going to make a significant dent in changing the contours of corruption because the fear and the risk will not be substantially enhanced, because people no longer have any fear of the law as such unless there is actual confiscation and long jail terms. Therefore, we appeal to you to make that recommendation so that the Parliament and the Government can take that into consideration and then bring that law Commission's draft Bill which actually has been on the anvil for twelve to thirteen years and Administrative Reforms Commission, of which I was a Member, did make that recommendation among other things. Then, Sir, one other issue that has not engaged the attention of the public in the recent issue is, the employees of the Government, the public servants have enormous sense of security in India. They have more security than any others in the world. We all know that article 311 by which it is almost impossible or believed to be impossible to dismiss or remove even a known corrupt employee. Now, if the Lokpal, Lokayukta institutions or their subordinate agencies after due enquiry, after giving an opportunity to the person against whom they are acting, if they come to the conclusion that that person is not fit to continue in public office, I am talking of employees and officials, I am not talking about elected functionaries, I am talking of officials under article 311, either they have acted in an act of commission, directly participated or abetted corruption or even if they are not corrupt themselves, by their criminal negligence, by acts of omission fail to prevent corruption and therefore unfit for office. That finding, Sir, should be enough to remove them from office. If after that, again you start a departmental enquiry it will take the next five to ten years. Therefore, there is absolutely no fear and the Constitution provides for that. All that article 311 (2) says is, before removing an official or an employee there must be due enquiry and an opportunity should be given. Also, Sir, article 311 (2)(b) also states that in special cases if it is not practicable to conduct an enquiry, even an enquiry can be dispensed with. I am not saying that in every case you can be dispensed with enquiry. The Constitutional makers actually took so much care to ensure, that today we have used article 311 not to really protect the public but to protect the most corrupt public servants. Therefore, when you create Lokpal, Lokayukta set of institutions, if after due enquiry – I am choosing my words very carefully, Mr. Chairman – if they come to the determination that by their acts of commission or omission, those functionaries have forfeited the right to public office and public interest demands that they should be removed, then, without further ado nearly on the basis of the enquiry report on findings of the Lokpal and Lokayukta's competent authority, in this case the Constitution, says that it must be mandatory that the competent authority will dismiss or remove those employees as per the recommendations of the Lokpal and Lokayukta. That in itself, along with confiscation of property will then send the right signal. We are focusing too much on the elected branch of Government. Yes, elected Government should be accountable. Yes, the political processes must be foolproof. But, Sir we all know that there are many complex causes of crisis of this country. We cannot do one sudden silver bullet which will address everything. The real challenge is, how do you enforce accountability of bureaucracy in this country? How do you make sure the officials and the employees of Government, the public servants remain public servants? I am not saying this out of animosity. I was a very proud public servant. I served the Government in this country for 16 years in the administrative service. I have been in the civil society for 15 years.

SHRI VIJAY BAHADUR SINGH: Did you resign?

SHRI JAYA PRAKASH NARAYAN: I resigned to fight for reform in this country. In 1996 I resigned. Since then, I had the privilege to work with a number of reforms, the Parliament and to get them in place. Now, we have founded a political party but it is a political party

with a difference. I am sadly the lone Member elected by the people. The people invested only confidence in me but not in my other colleagues. I am glad to say that my political opponents are reported to have spent about Rs. 50 crores to get that election. I spent four and half lakh rupees but the people did elect me with a significant margin. But I was the lone person elected. But it is still a romantic verdict. It is still not a verdict to change India. One day, hopefully things will change. I hope with your efforts this country will be better. Sir, I will now come to the concluding part. I will not bore you with any details. I have covered the lower bureaucracy. The lower bureaucracy must be by a series of institutions, not by Lokpal, Lokayukta directly because that will only dilute authority, delay justice, deny accountability and deflect the purpose. We are absolutely clear. No authority can really handle such a large workload. It is impossible and if you don't have a district magistrate you can take care of his employees and if you think Lokpal can take care of those employees, then this country is doomed anyway. It has to be the functionaries of those departments, those agencies. Our duty is to make sure that the heads of agencies are the right persons. You can go to the clerk or Deputy *Tehsildar* and SHO and Inspector of Police, but that is not the way to run a Government or a country. Sir, some States have attempted Citizen's Charter. Loksatta movement has been privileged to have the first Citizen's Charter in India in 2001 with penalties. Sir, Rs. 50 is for everyday's delay in respect of municipalities in Andhra Pradesh but that is by an executive order, but, not by law. It worked for sometime but because there is no legal backing, it went into disuse. So, having some kind of service guarantee act in notified services, obviously will work only in those services in which there are no constraints of supply. You cannot say that this supply is to everything. Only where I want a birth certificate, I want an assessment of my property, I want a house building permission, I want a water connection, I want something else where there cannot be a constraint in supply, but, it cannot give a guarantee that I can give you 60 gallons of water everyday. That is impossible. It cannot give a guarantee that they will give power twenty four hours a day because India does not have that kind of wherewithal. So, you have to be careful about that. That should not be part of the law. Certainly this Committee should recommend, in our judgment, a Bill because the Parliament also had the sense that there should be a service guarantee law for the Centre and the State together in Parliament's enactment, and in notified areas and charters to come out from the Government from time to time. That is the right approach. Then, as far as grievances are concerned, Mr. Chairman, as I mentioned before, there will be hundreds and thousands of grievances everyday. They must not come under Lokpal and Lokayukta. They must come under a separate grievance redressal authority. In Delhi administration, they created actually a Grievance Redressal Authority. Ms. Shailaja Chandra, if I recall, was the first Chair of the Grievance Redressal Authority in Delhi Administration. It is necessary because the corporates have to be honest, if they are not to succumb to the pressures to pay a bribe for even routine things like registration under Sales Tax Act or under various provisions of law at the international level. Today, Sir, without paying a bribe even Tatas cannot get away, except that somebody else is paying somewhere down the line. Now, if there is a Grievance Redressal Authority to quickly address the problems and give a direction and ensure compliance, then, encouraging the positive behaviour or non-corrupt behaviour will become much more easy. Otherwise, many people attempted to pay a bribe. I dare say, Sir, I am now stepping the line but I am saying this in good faith. There are many of us in our personal lives who are compelled, directly or indirectly, to grease the palm of somebody or the other. A former Cabinet Secretary actually told me a story in Delhi city of a former Foreign Secretary who was compelled to pay a bribe in order to get electricity supply to his house. That is the kind of situation we are in. There is no point complaining against the bribe giver saying that they are all morally bad people or cowardly people. They are victims of extortionary corruption. It is not collusion. If you want to prevent that extortion from

corporates or from individual citizens then we have to create a mechanism by which people get what is their due without having to grease anybody's palms. Therefore, grievance redressal must not come under this body. It must be a separate institution arrangement, with a separate legal framework, but, with flexibility because if you try to do too much it will fail. It has to be very carefully calibrated.

SHRI JAYA PRAKASH NARAYAN (CONTD.): Frivolous Complaints must be discouraged. Perhaps the people who have drafted the Bill have gone too far and the punishment proposed is greater than the punishment for corruption. That does not work well.

I am a believer that it should be discouraged but frivolous means a complaint made maliciously or recklessly. Merely because a complaint could not be proved, it does not become frivolous. It must be reckless or malicious. As long as there is prima-facie material that there is a ground for complaint, I am sure the law would take its own course. Thank you.

CHAIRMAN: Thank you very much. Please have a cup of tea. The meeting is adjourned. Now, we shall meet tomorrow morning.

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**(The witnesses then withdrew and
the Committee adjourned at 7.42 p.m.)**

The Department-related Parliamentary Standing Committee on Personnel, Public Grievances, Pensions and Law and Justice met at 10.00 a.m. on 24th September, 2011, in the Main Committee Room Parliament House Annexe, New Delhi.

(CHAIRMAN: DR. ABHISHEK MANU SINGHVI)

Witness:

Dr. Jayaprakash Narayan.

CHAIRMAN: Hon. Members, we simply continue with yesterday's meeting. Dr. Jayaprakash Narayan, do you want to say anything more? You have 5 to 10 minutes before you. Then, we can ask questions. Hon. Members, Dr. Jayaprakash Narayan will complete his deposition first. Then, we can seek clarifications.

DR. JAYAPRAKASH NARAYAN: Thank you Mr. Chairman.

I would like to say by adding...

श्री रामविलास पासवान: चेयरमैन साहब, मैं एक मिनट के लिए interrupt करना चाहता हूँ। नारायण साहब, मुझे लगता है कि आपने एक बहुत ही बढ़िया चीज़ दी है। आपने शुरू में ही introduction, Selection of Panels, Lokpal's Jurisdiction, Prime Minister, Conduct of MPs etc., 13-प्वायंट्स दिए हैं। हम समझते हैं कि इनमें से जिन चीज़ों के बारे में आपने अभी नहीं कहा है, उनके बारे में आप short में एक-दो लाइन्स में बतला दें। चूंकि बाद में जब हम लोग आपसे पूछेंगे, तो point wise ही पूछेंगे कि इस-इसमें आपके क्या सजेसंस हैं।

CHAIRMAN: I think ये largely यही कर रहे हैं। ये point wise ही बोल रहे हैं और इन्हीं मुद्दों पर बोल रहे हैं। इस तरह से, इन्होंने आधे से ज्यादा तो कवर कर लिया है और बाकी भी उसी आधार पर करेंगे, उसके बाद हम pointed questions पूछेंगे। अब आप शुरू करें।

WITNESS: Sir, we covered a substantial ground yesterday. What I have tried to do is that, without going into the same order --because there are some points of great substance and some of secondary importance -- I have picked out the most important issues that, probably, engage the attention of this august Committee. But, certainly, I would, very briefly mention the rest of the things and, of course, I will be very happy to respond to any queries, later on. Sir, issue has come up in Parliamentary debate about the Citizens' Charter. There is a case for Citizens' Charter and laws governing that. But, as I mentioned briefly yesterday, it must be applicable only to the notified agencies where there are no supply constraints. This is a very important consideration because an omnibus legislation saying that there will be a Citizens' Charter for every service is, simply, not practicable. For instance, I want a ration card without entitlement. No law can force the ration card to be issued to me. If I want a house site without entitlement, no law can force the State to give me a house site. But in non-welfare matters where there are no supply constraints, like, I want a birth certificate or a death certificate, or a municipal water connection, but does not guarantee 'x' amount of water because that is a matter of Government's ability, resources of the country and so on and so forth, in those notified areas, there should be clearly defined timelines and penalties. Penalties should be, absolutely, critical – compensation to the applicant and penalty to the erring public servant.

As I briefly explained to the Committee yesterday, in 2001, at the behest of Lok Satta in Andhra Pradesh, we did have such a Citizens' Charter in the Municipalities of the State in respect of five public services. It worked very well. But, because there was no statutory backing, over time, it came into disuse. But if we have to have a Service Guarantee Act, an omnibus Act, the details should be provided by notifications of the State and National Governments from time to time in select services and an authority should be brought in under the overall charge of this Charter. For instance, the Vigilance Commissioner at the National level and the Lokayukta at the State level. That would be a satisfactory arrangement in our judgement.

About frivolous complaints, Sir, I mentioned briefly yesterday. We, certainly, have to curb frivolous complaints, because that will completely undo the law if they are allowed to come forward. Even in the Administrative Reforms Commission, we recommended in case of RTI Act that frivolous and vexatious requests must be rejected. In my judgement, the present law is adequate in terms of the wordings but there are concerns outside, quite unnecessarily, because they do not always understand the legal niceties. There is a fear that if a complaint fails, then, it would be treated as a false complaint. That cannot be the case of any court of law. But malicious and reckless complaints, without any prima facie evidence, definitely, require punishment. It should be specifically mentioned. The quantum of punishment has to be more balanced. Obviously, you can't have more punishment in case of frivolous complaints than that of corruption itself. As far as grievances are concerned, there is a case to have a separate authority but again a flexible mechanism, without creating a large bureaucracy, like the Delhi Administration had in case of the Public Grievance Redressal Authority. But I think, that was only by an executive order, if I am not mistaken, and not by a statute. We can study that experience and, then, we can enlarge that.

Then, Mr. Chairman, there are issues relating to corporates and NGOs. We cannot ignore them altogether. There are, obviously, some philosophical issues and also practical issues. The philosophical issue being rights cannot exist against non-governmental organizations, individuals or corporates.

Mr. Chairman, you as a great legal luminary know too well the Constitutional rights, protection as well as the notion of accountability. They are only in respect of Government, the States and the State agencies. Therefore, we have to be careful. But I believe that abetment of corruption is something indulged in by the corporates very substantially and habitually. That cannot escape from the clutches of law. To that extent, it is already covered in the current dispensation. But that is not sufficient. First, in the Administrative Reforms Commission, when we gave a Report on Ethics, I think the Fourth Report, we very carefully and in detail examined the issue and advocated expansion of the definition of 'corruption'. We had also advocated a new class of offences called "collusive corruption." Because when we paint all kinds of corruption with one brush, then, we are getting a lot of confusion. Suppose, somebody demands Rs.50/- for a birth certificate and the needy person is compelled to give it because if he does not give, he will be forced to waste 10 or 15 days time. There will be a lot of loss of time and money. It cannot be equated with the case in which a person gave crores of rupees in order to fraudulently obtain a contract or a land or a mining lease or a spectrum. These two are altogether different issues.

The second class of corruption is "collusive corruption." It is broadly defined as collusion between a public servant and a private entity or an individual to defraud the public exchequer or the public resources. It may be mines, it may be land or it may be some other natural resource. Therefore, this distinction must be kept in mind. In those cases, we argued that penalty must be substantially higher and more importantly, the burden of proof must be

shifted. If there is a *prima facie* evidence, it is for the party accused to prove that there was no collusion. In fact, even in case of the Prevention of Corruption Act, the Supreme Court argued that once a property is accumulated, there is a *prima facie* evidence. It is for the corrupt public servant to prove that that was not corruptly acquired. Therefore, the burden of proof must be shifted. I know that there will be some concern from many jurists and others because in this country, we have taken the burden of proof issue very seriously. Therefore, if corporates come under this umbrella of collusive corruption and shifting the burden of proof, that will take care of the problem. There is a second issue, Mr. Chairman. Increasingly, many parts of the public functioning are being parceled out to the private sector, because public private partnerships are there. Natural monopolies are now being created. If electricity supply, for instance, is given to a private sector and if we now say it is private sector; then, it is beyond the pale of the Prevention of Corruption Act. That is a very dangerous thing for the country. Therefore, wherever natural monopolies are created by State policy, there is no competition. It is because of the Government's grant of access to these resources through monopoly or access to precious irreversible natural resources. Then, we must create a mechanism by which they come under the purview of the Prevention of Corruption Act as well as the Lokpal, Lokayukta institutions, because corruption in those institutions (a) is because they are non-competitive; it has the direct impact on the pricing. (b) There is a monopoly and, therefore, they are able to benefit substantially because of the monopoly alone, without any value addition. Therefore, we have to bring them in.

CHAIRMAN: What kind of institutions these could be. Give examples.

WITNESS: In supply of electricity, for example distribution is privatized, then, Telecom and Spectrum, definitely, comes in that because of monopoly of resources. I mean, wherever natural monopolies are created by virtue of Government policy and transferring resources of the public.

SHRI PINAKI MISRA: What about the situation where there is competition?

WITNESS: Where there is competition, I would submit that it cannot be treated as a natural monopoly. That is why, I am using the expression 'Natural Monopoly'. Otherwise, you have to take every corporate entity into account. That becomes unwieldy and, probably, unsustainable.

SHRI PINAKI MISRA: Okay, but in most of these areas where the telecom operators are operating or power corporates are operating, they are all by way of competition; they are not by way of monopoly. So, that is an artificial distinction then.

WITNESS: Sir, if I am not arguing, where there is competition, you should go into their functioning.

SHRI PINAKI MISRA: Let us say Orissa, for instance, now has privatized power generation as well as power transmission.

SHRI PINAKI MISRA (contd.): It is all on the basis of competition. Four bidders come in, four bidders compete; there is savage undercutting of pricing. How can you call that monopoly?

CHAIRMAN: I think, he is saying, don't have them only in areas where there is a natural monopoly.

SHRI PINAKI MISRA: That will never be, because Government largesse you know, Mr. Chairman, is not given out on the basis of monopolies anymore. It can't be, indeed. It has to be on the basis of some kind of a competitive bidding.

CHAIRMAN: Therefore, the question would intersect with the issue when we come to it that if you are including all corporates, that distinction vanishes. So, the question is, are you going to have corporates at all or a line in between? That line would determine it.

WITNESS: You will have to have a line, Sir. But I would urge upon you this, Mr. Chairman. A distribution company in the power sector is a monopoly. At the time of awarding the distribution contract there was a competition, but if the distribution company actually indulges in a lot of internal corruption and, therefore, enhances the price, the citizen is affected directly and the citizen has no other recourse.

CHAIRMAN: I do not wish to interrupt you, we would ask questions later on, but I wish to say that that is the precise distinction between electricity and telecom. There is one problem. Now, open access means that distribution companies will compete virtually like telecom companies. It has not happened fully, the Act provides for it, but in practice, super access means that for this Parliamentary Annexe, three people can supply electricity and I can choose. You would really have the same situation ultimately and that is the object of the Act. So, you may have to decide how to draw the line which may ultimately be all corporates versus no corporates. It may be difficult to draw the line. Anyway, we would discuss that later. Please carry on.

WITNESS: Sir, I would not go into details. Britain has attempted successfully the open access system fully. But there are also other instruments in dealing with private sectors. Obviously, any kind of a jurisdiction can only be in relation to the interaction with the public, with the Government, and not in their market operations. For instance, in public tendering and contracting, in the United States there is a law called the False Claims Act. It is one of the most innovative laws. What they have done is, if there is a contracting, even if there is competitive bidding and a lowest bidder, they have had two provisions. The first is, if the Government is not the most favoured customer, in other words, even after competitive bidding, you are the lowest bidder, if you have offered to anybody in the private sector or to citizens at a price more favourable than to the government, then, automatically it comes under the purview of the Act. That means, the Government must be the most favoured customer. The second is, if a loss is sustained because of either price on account of this provision that I mentioned, or the quality or environmental damage, then, any citizen in the country can file a claim before a Federal Court. It is a civil case. It is called the Qui Tam litigation. In that case, if they are able to sustain this in a summary civil trial – it is a civil procedure and not a criminal procedure – then, the court is empowered to impose a penalty three times the loss sustained. In the case of environmental damage, the loss is computed by the court. What is important is, the person or the entity that has gone to the civil court gets 15-35 per cent of the compensation. So, an incentive is given to unearth and fight corruption, and it is not a casual law. In the past 20 years or so, the American civil courts have imposed a penalty of 27 billion US dollars. There are some entities, particularly, healthcare entities and defence entities, that were imposed a penalty of 550 million US dollars. So, very substantial penalties are imposed. Therefore, we have to look at such innovative mechanisms here. In other words, what I am arguing is, you have to go in for market mechanisms even to curb irregularities and corruption in private sector also because that is the most effective. The purse is the most telling thing and if there is a criminality, of course, the Prevention of Corruption Act will apply and we can prosecute. But we must find more innovative mechanisms to really swiftly punish them where it matters most and that is the purse.

Similarly, Sir, there is the Windfall Profits Tax Act. In the UK, they impose the Windfall Profits Tax Act in respect of many corporates. As you would recall, Sir, what happened was when a lot of entities were privatized – and that is relevant to the discussions

that we are having – even when there was no malafide in privatization and there was no whiff of corruption, there was suspicion that there was a windfall profit. Subsequently, those companies proved to have had substantial profits without having any significant value addition at technology or investment. And in that case, the British Parliament has enacted a law creating the Windfall Profits Tax. Telecom, airports, gas, water, electricity, railways, all of them were affected. Some of the firms were BAA, British Energy, British Gas, British Telecom, National Power, Northern Ireland Electricity, Power Gen, Scottish Hydro and Scottish rail track; all these were affected. I believe, it is an extremely innovative mechanism. Take for instance, Mr. Chairman, the 2G spectrum allocation. I am not prejudging the case; I know nothing more than what is given out in the papers. But there are three possibilities: one is, a good policy badly implemented; the other is, a bad policy made in a bonafide manner and badly implemented; third is, a malafide bad policy, badly implemented. Now, whatever be the case, the criminal intent is one part; if there is malafide, if there is corruption, that will be examined by the courts of law and by the Parliament. But, even if there is no corruption, if Unitech and Shwan sold off the spectrum within a few weeks and got multiple returns, there is a windfall profit. Probably, the policy-makers did not realize it; they did not intend it. Even if you give the best construction, the public exchequer cannot be penalized. And merely because I have a piece of paper, I cannot make a few thousands of crores at the cost of the nation. Now, for that if there is no legal mechanism, the country is at a disadvantage. And, therefore, there must be a Windfall Profits Tax Act in a case like that or in other cases where first come-first served is applied, for instance, mining. You know, Sir, in Andhra Pradesh and Karnataka, the most dominant issue today is how the mining leases are granted in the first come-first served basis and how because the Chinese demand has picked up dramatically -- even if you assume there is no criminality, I am not going into other facts -- suddenly the price shot up internationally by five to six times. This is not oil exploration where there is a lot of risk or technology or great investment involved; it is simply unearthing what is there, mostly by surface mining. They have got a piece of paper, not because of any extraordinary expertise or wisdom or any competition. If the State does not get back a substantial part of this profit, then this is plunder. And, therefore, if you have a Windfall Profits Tax Act along with something like a False Claims Act, then the interest would be served. In other words, we cannot have one hatchet for everything. We have to have very refined instruments, like a surgeon's scalpel, to look at emerging situations and we have experience in this country and elsewhere to help us determine what is the best course. We will, on occasion, commit mistakes. There is no harm. That is part of evolution and we will keep on correcting them. But, I believe, there are sufficient number of instruments available on the menu if this Committee is really looking at answers to the problem of private sector corruptions.

Then, about NGOs and civil society organizations, I believe, corruption is not limited to those in Government alone. There are plenty outside who are equally culpable and, therefore, wherever a civil society organization takes any substantial assistance of the Government – Mr. Chairman, I am emphasizing the words ‘substantial assistance from the Government’ – then they must be definitely brought under the Prevention of Corruption Act. For instance, an Administrative Reforms Commission looked at it very closely and we suggested for the purposes of Right to Information Act, if one crore or more is the assistance given by Government by way of a grant, or if more than 50 per cent of the budget of the organization in that year is coming from Government's resources, then it must come under the purview of the RTI Act. This is an arbitrary line. We could redraw the line; we could improve the mechanism. Some such mechanism would be ideal, but if we include everything, again it would defeat the purpose because all sundry organizations will come in and it would waste the time of these organizations. There is also a larger Constitutional issue. Article 19(1)(c) is the article through which the citizens of India have the right to form associations.

Article 19(4), Sir, as you know, is the one that mentions the reasonable restrictions that can be imposed by Parliament and the grounds on which such a law can be made. There are three restrictions mentioned by the Constitution. One is, sovereignty and integrity of India, the second is, public order, the third is morality. No other restriction is mentioned. Therefore, if we go in for a roving enquiry, it is not a very wise thing. Even the British Government created a wonderful law, a surprisingly liberal law, as early as in the 1860s in order for the civil society to function effectively. Therefore, we must hold civil society to account; there is no question on that. But we cannot bring everything under the Prevention of Corruption Act and, therefore, Lokpal and Lokayukta jurisdiction. The other laws of the land could be strengthened and in case they betray public trust or confidence, in case there is cheating etc., we can be extremely harsh.

WITNESS (CONTD.): The two provisions mentioned in the Bill here, if I remember, are (h) and (i). Clause (h) is okay where Government assistance is there if it is a substantial assistance. But receiving any public contribution is not a wise thing because, Chairman, Sir, technically if you take it to a logical extent that will include all the political parties of India because they are all civil society organizations receiving contributions from public. I do not think that we want one organization to control everything from the Prime Minister of India to political parties to civil society organizations to the Supreme Court and to High Courts. It is a very dangerous approach. We must be very cautious when we tread there. But, nevertheless, organizations that received direct support from the Government by virtue of grants in a substantial measure must be brought under this. Therefore, the jurisdiction must be applicable not only to the Prevention of Corruption Act but also to embezzlement of the public funds. Embezzlement of public funds or misuse of public funds is not covered under the PCA right now. With that minor change, we can bring in here those particular provisions. Chairman, Sir, I will make only one more point. There is one issue about the Selection Committee. I believe that, on the whole, the Selection Committee proposed in the Bill is reasonable. We can always have our own wonderful ideas. But when the law makers have come up with a reasonable draft, I think, it is reasonable. There are two nominees of the Government of India. One is an eminent jurist nominated by the Government and another is an eminent person nominated by the Government. Instead of nomination by the Government, if you merely say that rest of the 7 august members together nominate them, that will address the concern. I personally believe that I trust my Government to take care of the national security, decisions of war and peace and lakhs of crores of expenditure. But given the exaggerated concerns in the country right now it may be worthwhile to consider that these two members may be appointed by the rest of the 7 members. About the Prime Minister, our considered view is that -- let me repeat, I am not expressing my personal views and most of the views are not my personal views; they are the views of very eminent citizens of this country who held very high offices like Justice M.N. Venkatachaliah, former Chief Justice of India, Justice J.S. Verma, former Chief Justice of great eminence and integrity, Justice Santosh Hegde, member of the Drafting Committee, Justice Rajindar Sachar, former Chief Justice of Delhi High Court and PUCL Chairperson, Mr. N. Gopalaswami, former Chief Election Commissioner, Mr. T.S. Krishnamurthy, former Chief Election Commissioner, Mr. Kuldip Nayar, eminent journalist, Mr. Shanti Bhushan, eminent jurist and member of the Drafting Committee, Mr. Soli Sorabjee, eminent jurist, Admiral Tahiliani, Chairman of the Transparency International India, Mr. P.S. Ramamohan Rao, former Governor, Mr. Arvind Kejriwal, Ms. Kiran Bedi, Swami Agnivesh and members of Anna Hazare Team and so on and so forth. - - it is ideal if you leave the Prime Minister out. Since the Government has already committed in the first draft to include the Prime Minister in the Lokpal because of the heightened charged atmosphere and if the Committee feels that the Prime Minister should be brought in, it must be done with great care. There cannot be a roving jurisdiction for anybody over the Prime Minister of India's

function. And there cannot be any jurisdiction in matters relating to national security, sovereignty and integrity of India, friendly relations with foreign countries and public order. And even after that, there must be, at least, two safeguards. One, two-thirds of the members of Lokpal must be first convinced on the basis of *prima facie* evidence available to them; and then they must submit to the Parliamentary Committee consisting of, as we suggest, Vice-President of India, the Speaker and the Leader of the Opposition in the Lok Sabha. If they three sit and say, 'Yes this is a fit case for enquiry', then we should consider. But we should tread very cautiously in that respect. We have to reconcile both the concerns of probity and the concerns of stability and national security in this country. I also appeal to the Chairman if the Committee has the time and inclination it would be worthwhile to hear many of these distinguished members who manned very high offices with great probity and effectiveness because they know how institutions work. They don't have merely theoretical ideas; they know how much of flexibility is required and how much we are prone to error. Therefore, the benefit of their wisdom will be having great value in drafting this landmark piece of legislation. And obviously there is no single step, Mr. Chairman, and there are many more things to be done. But this could be an important starting point in transforming this country. We recognize that ultimately politics must be primary in the country; they are engines of change and the only antidote to politics, if any, is the better politics and more politics and not destroying political process and parliamentary institutions.

CHAIRMAN: Can you do three things after we finish the questioning? Please send us bullet points summary of your existing note that you have sent with your index. Secondly, in continuation, put additional bullet points which you are going to give in response to the questions now going to be asked. Thirdly, you can put in square brackets specific changes and suggestions in respect of the Lokpal Bill as introduced in the Lok Sabha by the Government of India. These three things if you can kindly make sure at the shortest possible convenient time to you.

WITNESS: I will do, Sir.

DR. BHALCHANDRA MUNGEKAR: Sir, I know him for the last 15 years or so. The kind of presentation he has made shows his deep involvement, research and commitment to make a good kind of Lokpal fit to deal with squarely and competently issues of corruption in the country from which we have been suffering for the last so many years. I have only one question. That question was raised even yesterday when Aruna Roy has raised that issue. That issue is inclusion of the Prime Minister in the ambit of the Lokpal Bill. Aruna Roy was of the opinion that full bench of the Lokpal will first *prima facie* find some evidence against the Prime Minister and then subsequently again the matter should be referred to the entire full bench of the Supreme Court and then the Supreme Court will be examining the matter. Having deep regards for all the names which you have mentioned and for those all judicial luminaries their character, their integrity, understanding, their whole wisdom and vision, may I ask you one thing? Have they thought as to what will be the status of the Prime Minister during the interim period once the matter regarding the Prime Minister's alleged complicity with respect to any kind of act of corruption is under scrutiny either at the Lokpal or under the Supreme Court? The Prime Minister is not only the legal or constitutional head of the State, but the moment he assumes the office he is also the moral custodian of the Constitution and he represents whatever Constitution says the *de facto* chief executive of the country. Under these circumstances, when the matter is under scrutiny at the Lokpal or the Supreme Court, will the Prime Minister continue during that period? During the interim period, what moral authority will he command of the people he represents?

SHRI JAYAPRAKASH NARAYAN: It is an extremely sound question. This is the reason why this body almost unanimously agreed. Of course, there were voices of dissent. From the names that I have read out, there were people who differed from that.

CHAIRMAN: I think, let there be, at least, two or three questions, and then you can reply. That will be quicker. So, you have got one question regarding interim status.

SHRI VIJAY BAHADUR SINGH: Only one word apart from what my hon. colleague, Dr. Mungekar, said that the Prime Minister is also the leader of the nation. Then, will the safeguards, that you are suggesting, be practical?

SHRI PARIMAL NATHWANI: I will suggest one thing. We will also have to consider the international image of the Prime Minister if something like this appears in the newspapers, or, the Lokpal is examining any matter regarding the Prime Minister. The Prime Minister has to go to many countries and meet senior politicians, and many politicians from other countries come to India. So, if a case is pending before the Lokpal against the Prime Minister, it will be very embarrassing for the Prime Minister to meet those people while these things are going on. I think, we should reconsider this provision and exclude the Prime Minister from this Bill.

SHRI S. SEMMALAI: In these circumstances, how can the Prime Minister exercise his authority over the Council of Ministers and the Government?

SHRI VIJAY BAHADUR SINGH: Under the criminal law, the limitation is till the punishment. If the punishment of an offence is ten years, then this action can take even up to ten years. So, limitation is not running out. I am saying this because one of the notes which you gave says that supposing the Prime Minister is repeated second term, then how long the people will wait. If the offence is punishable for ten years, under the criminal law, it is permissible to re-open the matter till ten years. So, there is nothing wrong. The justice can still be done.

SHRI SHANTARAM NAIK: If I have understood you correctly, you are totally for excluding the Prime Minister. Only in case it is deemed fit, you are thinking of this idea.

SHRI S. SEMMALAI: You are firm in deleting clause 17(2). But, why should we not accept the version of our Lokpal in toto as far as the Prime Minister is concerned?

श्री लालू प्रसाद : चेयरमैन साहब, मैं तो एक ही बात कहना चाहता हूँ कि हमारी कमेटी मिनी पार्लियामेंट है और इसको assignment मिला हुआ है, काम मिला हुआ है। उसमें प्वाइंट्स भी बने हुए हैं। हम उन प्वाइंट्स के ऊपर अपने कमेंट्स देंगे कि यह ठीक है, यह ठीक नहीं है। ये हमारे लिए विचारणीय विषय है। यहां पर बेसिक बात यह है कि जो अन्ना हजारे का बिल है और जो सरकार की सोच है, ये सब चीजें हमारे सामने हैं। यहां पर जय प्रकाश नारायण जी ने बहुत अच्छी बात कही है। मैं यह पूछना चाहता हूँ कि क्या हम यहां पर इन चीजों को री-ओपन कर रहे हैं? आप किसी एक्सपर्ट से किसी प्वाइंट पर कोई जानकारी ले सकते हैं। जो हमें प्वाइंट मिला है, हम उसको छोड़कर क्या नए ढांचे की संरचना करना चाहते हैं? जो बेसिक बात है, हमें उस पर एक्सपर्ट्स की राय लेना तो ठीक है। हमें तो यह लग रहा है कि कोई यह तय कर रहा है और हम बोल रहे हैं कि भाई, छोड़

दीजिए, छोड़ दीजिए। हमें तो सब लोगों के विचार सुनने के बाद ही तो तय करना है कि क्या करना है।

अध्यक्ष : हम आपकी टिप्पणी से बिल्कुल सहमत हैं। इसमें दो-तीन नियम बहुत ही स्पष्ट हैं, पहला यह है कि क्या हमारा निर्णय है, क्या हमारे विचार हैं, वह हमारी बात है, बाद में होगी, अभी वह प्रक्रिया नहीं चल रही है। आप जो कह रहे हैं, वह बिल्कुल स्पष्ट है और वह हम बाद में करेंगे। हमारा क्या गन्तव्य होगा, वह अलग बात है। दूसरी बात यह है कि आज जो कई मुद्दे उठ रहे हैं, चाहे इधर से या उधर से हों, हम तो केवल एक्सपर्ट्स से उनका मत पूछ रहे हैं। यह उनका मत है और वे कुछ भी कह सकते हैं। हम उससे सहमत हों, न हों, उससे कोई फर्क नहीं पड़ता है। अगर कुछ लोग अपना मत भी दे रहे हैं, तो वह उनका केवल मत ही है, उसमें निर्णय का कोई मतलब नहीं है। आज उनका मत यह हो सकता है, लेकिन चूंकि यह गोपनीय है, तो जब हमारी मिनी पार्लियामेंट पूरी तरह से विचार-विमर्श करेगी, तो इनका मत भी बदल सकता है, इसलिए यह सब खुला है और आप भी निश्चिंत रहें।

श्री लालू प्रसाद : जब आप सब लोगों का मत ले रहे हैं और लोगों के भी मत लेंगे...(व्यवधान)...

अध्यक्ष : मैं प्रश्न ही ले रहा हूं, मत नहीं ले रहा हूं, लेकिन थोड़ा बहुत...(व्यवधान)...

श्री लालू प्रसाद : आप मेरी बात सुनिए कि एक क्लियर बात होनी चाहिए, फिर उल्टी-पुल्टी बात चलेगी। हो सकता है कि मैं गलत हूं, लेकिन आप मेरी बात सुनिए कि सरकार के लोकपाल बिल में प्वाइंट्स बने हुए हैं और जिन एक्सपर्ट्स लोगों को बुला रहे हैं, तो आपको उसमें कोई उलझन हो रही हो, जैसे CBI है या CVC है, जो हमारे संविधान को एकदम उल्ट देता है, जो हमारी संसद का संविधान है, जयप्रकाश जी ने भी अच्छी राय दी है कि यही मेन चीज है। जो उसमें बिन्दु हैं, हमें उन पर क्रमवाइज पूछ लेना चाहिए। आप किसी से भी पूछिए कि इसका क्या हस्र होगा। हम इसको जिस उद्देश्य के लिए बना रहे हैं, उसको एचिव कर रहे हैं या नहीं, हम पीपल्स को संतुष्ट कर सकते हैं या नहीं, तो ये प्वाइंट्स कई स्तर पर मीडिया से लेकर कई जगह डिबेटिड भी हुए हैं। आपने जो लोकपाल बिल बनाया है, आपने उसके अंदर इसको रखा है। सुप्रीम कोर्ट का भी judgment है under article 105 of the Constitution. MP और फिर ex-MP, वह तो चला गया, कहीं घूम रहा होगा, उसको भी रगड़ मारेगा, इसलिए इस प्वाइंट पर लोगों की राय लीजिए।

अध्यक्ष : बात ऐसी है कि कि जितने मेम्बर्स हैं, सभी प्रश्न पूछना चाहते हैं। अभी एक प्रश्न आया है, जिस पर समय बचाने के लिए बाकी लोग ज्वाइन कर रहे हैं। वह प्रश्न यह है कि आंतरिक समय में प्रधान मंत्री का स्टेटस होगा। उसके बाद आप जो भी प्रश्न पूछना चाहें, पूछ सकते हैं। जितने भी बिन्दु हैं, उन पर आप इनका मत पूछ सकते हैं।

श्री लालू प्रसाद : मेरा एक ही प्रश्न है कि क्या आप इसको री-ओपन कर रहे हैं? हम तो पूछ रहे हैं। जय प्रकाश जी के मन में तो मिस अंडर स्टैंडिंग होगी।

SHRI PINAKI MISRA: But, it is a drafting committee. Let us re-open the point. री-ओपन तो हो ही रहा है।

श्री लालू प्रसाद : उन्होंने सप्लाई किया है और अरुणा जी ने भी सप्लाई किया है। **अध्यक्ष :** देखिए, हमारे पास एक ड्राफ्ट है। अभी जो पिछला RTI का ड्राफ्ट यहां आया था, उसमें करीब पांच सौ या छः सौ संशोधन किए गए थे। हमारे अधिकार क्षेत्र में हर प्रकार का संशोधन आता है। यदि आज आपको किसी अफ्रीकन देश में बहुत अच्छा नियम मिलता है, तो आप उस नियम को भी उठा सकते हैं। अगर अच्छा नियम न्यूजीलैंड में भी मिलता है, तो उसको भी उठा सकते हैं। हमारे अधिकार क्षेत्र में कोई सीमा नहीं है। हम क्या चुनते हैं, क्या नहीं चुनते हैं, वह दूसरी बात है। हम अभी केवल discussion कर रहे हैं। उन्होंने अपना discussion खत्म कर दिया है। हमारा इनके साथ साढ़े ग्यारह बजे तक का समय है। लोग अलग-अलग प्रश्न पूछ रहे हैं, उस पर क्या होगा, वह बाद में बात करेंगे।

श्री लालू प्रसाद : हमें लोकपाल बिल का जो assignment मिला हुआ है, उसके अलावा और भी है कि जो sense of the House and different political parties का उस पर discussion हुआ है, उसको भी स्थाई समिति में भेजा जाएगा। हमारा तो सरकार का लोकपाल बिल बेसिक प्रश्न है। उदाहरण के लिए जैसे CBI है, तो उसके एक पार्ट के इन्वेस्टिगेशन को कहा जा रहा है कि लोकपाल में दे दीजिए और बाकी पार्ट वहीं रहेगा। आप ऐसे मामलों में एक्सपर्ट्स की राय ले लीजिए।

अध्यक्ष : मैं एक बात स्पष्ट कर दूँ कि जहां तक CVC और CBI का सवाल है, तो ये दोनों डिपार्टमेंट अलग से एक दिन समिति के सामने आएंगे और अपना मत रखेंगे। आज हमारे पास जो ड्राफ्ट है, उसमें एक मुद्दा यह है कि प्रधान मंत्री पूरी तरह से बाहर होने चाहिए, आधे अंदर आधे बाहर होने चाहिए।

अध्यक्ष (क्रमागत): या पूरी तरह से अन्दर होने चाहिए। हम अभी सिर्फ प्रश्न पूछ रहे हैं और सिर्फ उनके उत्तर लिए जा रहे हैं। We have, now, completed the issue on Prime Minister's interim status. We will not ask this question again. Let him answer this. Then, we will have another question.

DR. JAYAPRAKASH NARAYAN: Mr. Chairman, this is an extremely hard question. My views, personally, are absolutely clear. The Prime Minister is the leader of the nation. In our Westminster's Model, the Prime Minister -- yesterday I mentioned it specifically -- is not merely first among equals, but he occupies a very pivotal position. There is no equivalent of Article 356 in the Government of India and the Prime Minister is not somebody who can be chosen just like that, because anybody can become Prime Minister. I am sure there are 10,000 in India who think that they are better than the Prime Minister, or, for that matter, than the incumbent or something like that. But, that is not the way the Parliamentary system works. The Prime Minister must enjoy the confidence of Parliament and the nation. Therefore, you

cannot trifle with the office of the Prime Minister. I am categorically clear on this. I even go further and say, Mr. Chairman, as a Member of the Administrative Reforms Commission, I personally drafted those pages on this subject. I have written four pages in great detail and the Members of the Commission fully concurred with me and that is the Report before us today. We specifically recommended for exemption of the Prime Minister. I have, actually, briefed the Prime Minister along with my Commission Members at that time. I specifically told Dr. Manmohan Singh that he must not have a middleclass notion of personal virtue in this case. It is an institutional issue. It is not about Dr. Manmohan Singh, it is not about an individual's middleclass perspective. Whichever party is in power, we must, in the interest of the nation, protect the institution of the Prime Minister.

CHAIRMAN: The Prime Minister allowed it, but it was overruled by his Cabinet.

DR. JAYAPRAKASH NARAYAN: I wish that it should have been done in the first draft. That was a mistake. Therefore, ideally, it should not be the case. Sir, permit me to quickly read out what the consensus document of this Round Table, which was attended by eminent people, says. It says, 'The participants expressed strong views both in favour and against the inclusion of the Prime Minister. The participants, having rich public experience at the highest levels, cited the findings of the Fourth Report of the Second Administrative Reforms Commission and the National Commission to review the Working of the Constitution and recommended exclusion of the Prime Minister from the jurisdiction of the Lokpal. It especially pointed out that the Prime Minister in the West Minister's System occupies a pivotal position and his or her accountability should be only to the Lok Sabha and not any appointed authority. Any destabilization of the office of the Prime Minister could seriously undermine the stability of Government and paralyze all administration. Even if the Prime Minister is exonerated fully after the enquiry by the Lokpal, the damage done to the country would be considerable and irreversible.' Therefore, Sir, I hold that view. But, politics, ultimately, is the art of possible. If this Committee feels, for whatever reasons, then it is necessary to consider that. We are urging you two things: It cannot be done causally. There must be a large area of functioning of the Prime Minister which must be totally exempted. And, even in the rest of the areas, there must be, at least, two safeguards. First, Lokpal, on the basis of information available, makes a request to Parliament. Then, a Parliamentary Committee -- this is important and what kind of a Committee is debatable -- has to go into that. And, we are suggesting, with all humility, the Chairman of Rajya Sabha, Speaker of Lok Sabha and the Leaders of the Opposition in Lok Sabha and Rajya Sabha, or, you could think of another team. Let this team make a determination. And, obviously, if, at that stage, the Committee feels that an enquiry is necessary, I suspect, the Prime Minister's position is untenable.

CHAIRMAN: This is a simple point. One exclusion, and after that exclusion, two additional safeguards. I understand that.

श्री शैलेन्द्र कुमार : चेयरमैन सर, मैं डा. जयप्रकाश से पूछना चाहूँगा कि कल से आज तक हम लोगों ने आपकी बात सुनी, बड़ा अच्छा लगा। आपके सुझाव बड़े अच्छे थे। आपने कल कहा कि प्राइम मिनिस्टर को लोकपाल के दायरे में नहीं रखना चाहिए, उससे देश के अन्दर अस्थिरता आ सकती है, अगर कोई बात आती है। यह बात सही है। हमारे तमाम विद्वान साथी बैठे हैं, उन्होंने सदन में भी चर्चा की थी। चाहे आन्तरिक सुरक्षा का सवाल हो, चाहे जो भी सवाल हो, उस पर तमाम लोगों ने अपने विचार रखे थे।

आपने यह कहा कि प्रदेश के सी.एम. को इसके अन्दर रखना चाहिए। आज गठबंधन की सरकारें हैं। चाहे वह सीवीसी की inquiry हो, चाहे लोकायुक्त की inquiry हो, चाहे सीबीआई की inquiry हो, लगभग सभी पॉलिटिकल पार्टिज के लोग उससे affected हैं। लोगों के अन्दर एक संशय बना हुआ है, खास कर सीबीआई की स्वायत्तता को लेकर। अगर स्पष्ट बहुमत की सरकार है, तो कोई बात नहीं है, लेकिन गठबंधन की सरकारों में यह होगा कि कल वे समर्थन वापस भी ले सकते हैं। इससे सदन के अन्दर एक संवैधानिक अस्थिरता आ सकती है। आप ज़रा इसे भी स्पष्ट कीजिएगा कि coalition governments में और स्पष्ट बहुमत की सरकारों पर इससे क्या फर्क पड़ेगा।

आपने मीडिया के बारे में नहीं बताया। आपने एनजीओ, कारपोरेट को इसमें शामिल करने की बात कही, वह बहुत अच्छी बात है। दूसरी बात यह है कि मान लीजिए कि जन लोकपाल विधेयक लागू कर दिया जाएगा, तो फिर उसमें सीवीसी का क्या रोल रहेगा, आप इसे भी स्पष्ट कीजिएगा, क्योंकि हमें दोनों के अधिकारों को परिभाषित करना पड़ेगा और दोनों की स्वायत्तता का भी ध्यान रखना पड़ेगा।

जहाँ तक कल आपने दूसरे देशों के शर्मा बंधुओं की बात कही कि recovery हुई, तो हमारी लोक सभा ने भी 11-12 सांसदों की सदस्यता को खत्म किया है। हमारा संविधान और संसद भी सर्वोच्च है।

DR. JAYAPRAKASH NARAYAN: We believe, with due respect, that the Prime Minister and the Chief Minister cannot be equated. Yes; the wording used in the Constitution, in the broader scheme of things in the Parliamentary system, are somewhat similar. But, there is only one Prime Minister who is the head of the nation and the Government. There is no equivalent of Article 356 and instability at that level has profound implications in the whole country. But, at the State, well, the Chief Minister's office is a pivotal office. The instability at the State does not have the same profound implication. And, there is, in extreme situation, Article 356. For these two reasons, we believe, the balance of convenience lies, very definitely, in bringing the Chief Minister under its purview. But, that is the reason why, Sir, while submitting yesterday, I said that the Chief Minister must be brought under Lokpal and not Lokayukta, ideally. It is because, at the national level, there will be a greater and more mature appreciation and a little distance from the political volatility in the State concerned. Now, whether it always works, I don't know. But, I believe, Chief Minister should be brought under Lokpal. That is, actually, the consensus of all the people that I have listed. But, we believe that he should be under Lokpal, not under Lokayukta for the reasons we stated. So, there is a slight distinction. We recognize the primacy of the Chief Minister in the State. But, if we start exempting the Chief Ministers and everybody, it also become politically untenable and becomes very difficult to sustain this. In our federal system, in the last twenty years, the powers are now moving from the Centre to the States. Today, in Andhra Pradesh, I can, actually, cite an instance. Sir, 430 kms. of coast line -- all the southern half of Andhra Pradesh -- is transferred to a private company as an exclusive economic zone running three separate ports. Actually, only one port is operational. Nowhere in the world we have such arrangement. All the major ports in India together have 113 or so kms. The largest port in the world, whose total turnover is bigger than all the ports of India, has 10 or 15 kms. Now, the State has that kind of awesome power. Your SEZs, land allocations, mining and many things

are all under State. Therefore, if you want to address corruption, if you don't look at State Governments very critically, we are in serious trouble. That is the reason why we believe that a Lokayukta institution is absolutely necessary under Article 253, not under Article 252 with due respect. And, the Chief Minister must be brought under the purview of Lokpal, but not under Lokayukta ideally.

As far as CVC is concerned, CVC must remain. The CVC Act, on the whole, is a good Act. It is an institution with expertise. And, a multi-member CVC is particularly a good improvement, because we have the CVC, you can have Vigilance Commissioner and somebody from the financial institutions. They have unique expertise. There is also a role, because the Government must be guided and advised on a variety of issues. And also, you must bring in some measure of accountability with autonomy of the CBI as well as the Enforcement Directorate. Therefore, the balance of convenience lies in retaining the CVC. It is a very bad idea to destroy the existing institutions with foundations and start building every time. Tomorrow, someone will say Lokpal is not working, so destroy it and do something else. It is not the way democracy functions.

CHAIRMAN: Should we have ex-officio member in the Lokpal?

WITNESS: Yes, Sir. Therefore, if the three members of the CVC are ex-officio members and if they get the same protection as is available to Lokpal, but, simultaneously, they have specific jurisdiction under the CVC Act, it will serve both the purposes. As far as the Judiciary is concerned, Judiciary cannot and should not be brought under the purview of the Lokpal and the Lokayukta institutions. Because Judiciary is trusted by the people of the country. But, at the same time, Sir, accountability should be enforced through a National Judicial Commission, for which a proposal has been prepared by eminent Jurists. I just mentioned the three Jurists – Justice Venkatachelliah, Justice J.S. Verma and Justice Krishna Iyer. They went through it in detail. As you know, Sir, even for a small word, there is going to be a lot of difficulty. Finally, a unanimous consent document has come about. I have an official communication from the Government of India that the Government of India is considering that. They are considering a proposal of a seven-member National Judicial Commission with the Vice-President, the Prime Minister, another leader of the Government, the Leaders of Opposition of both the Houses, the Speaker and the Chief Justice.

श्री शैलेन्द्र कुमार: मीडिया के बारे में आपकी क्या राय है?

अध्यक्ष: ज्युडिशियरी के बारे में इन्होंने बोल दिया है।

WITNESS: Mr. Chairman, Sir, I will be very brief. Sir, Judiciary is not exempt in any sense, in terms of all the ills that plague our Government. Time and again, Sir, I have gone on record in public, sometimes, in the presence of the current and former Chief Justices about the lack of integrity in the Judiciary. I am only saying that there cannot be one institution that will control everybody. It is not in the interest of the country. So, Judiciary must be accountable but that accountability should be, in fact, through a Constitutional amendment, alongwith the Judicial Standards and Accountability Bill being made into a law. ..(Interruptions)...

CHAIRMAN: Vijay Bahadurji, his view is that Judiciary should not be under the Lokpal. There should be strengthening of Judicial accountability. There should be a separate National Judicial Commission for appointment. These are the three things. So, he has a clear view on these three things.

WITNESS: Sir, as far as media is concerned, obviously, I can understand the anger in this country, because media is increasingly becoming corrupt. We all know and I am sure that almost every Member is experienced in terms of paid news during the election time etc. and the kind of extortion going on. But, Sir, I suspect Lokpal Bill is not the mechanism. You will have to, in my judgement, create a strong mechanism through the Press Council Act. There is a reason to revisit that Act and create strong penal provisions, particularly, the monetary penalties. There should be very strong penalties in two respects. One, when there is cross-holding and monopoly is exercised. Many countries have this mechanism in both, the print media and the electronic media. Particularly, if the share in the market of theirs is above a certain proportion, there are very tough laws preventing monopolies. Two, if there is a deliberate misleading of the public, even apart from corruption, there are very severe penalties by an independent authority. I think the law has not taken care of those issues. Press Council is a pretty weak body. It can only rap on the knuckles. There is no real fear. If we ensure that there is, actually, real fear, but by an independent authority, then, I think, article 19 (1)(a) is protected and, at the same time, the media could be held accountable. But Lokpal is not the institution through which media should be made accountable.

SHRI ARJUN RAM MEGHWAL: Sir, you mentioned about the civil society working in Britain. What is the status of the civil society in England? We want to know whether that is an NGO or a pressure group.

दूसरी बात मैं यह जानना चाह रहा था कि क्या सिविल सोसायटी के आदमी जो ब्रिटेन में काम करते हैं, वे लोकपाल के दायरे में हैं या नहीं हैं? दूसरी बात आपने कही थी कि जो collusive corruption होता है, उसमें burden of proof may be shifted. This is your suggestion. इसके लिए हमें क्या एक्ट अमेंडमेंट करना पड़ेगा या किस तरह से इसको करना पड़ेगा, इसके बारे में आपका सजेशन क्या है? यह जो collusive corruption है इसकी परिभाषा विस्तृत हो और इसमें बर्डन ऑफ प्रूफ कैसे सिफ्ट किया जा सकता है ? तीसरी बात है कि आपने प्राइवेट सेक्टर में नेचुरल मोनोपली की बात कही है। मैं राजस्थान से आता हूं और मैंने देखा है कि विंड एनर्जी और सोलर एनर्जी में जो पीपीपी मॉडल है, यह बहुत खतरनाक है। इसको प्राइवेट सेक्टर के लोग कैसे इम्प्लीमेंट कर सकते हैं, क्योंकि ये नेचुरल रिसोर्सेस हैं? Wind is a natural resource. वे इसको ले लेते हैं और डिस्ट्रीब्युशन में उनकी मोनोपली होती है। इसको हम कैसे लोकपाल के दायरे में ला सकते हैं, इसके बारे में जनता जानना चाह रही है? सोलर एनर्जी भी नेचुरल रिसोर्सेस है। जब सोलर एनर्जी को कोई गवर्नमेंट प्राइवेट सेक्टर को दे देती है, तो वह डिस्ट्रीब्युशन में मोनोपली करता है, मैं जानना चाहता हूं कि आप इसको किस प्रकार से लोकपाल के दायरे में लायेंगे? इंजीनियर कॉलेज और मेडिकल कॉलेज के बारे में हर आदमी जानता है कि वे एडमिशन के समय तीन लाख, चार लाख, पांच लाख रुपये डोनेशन लेते हैं, जब हम भी फोन करते हैं तो वे कहते हैं कि हम तो डोनेशन लेंगे, क्या ये करप्शन के परव्यु में आएगा या नहीं आएगा ? धन्यवाद।

श्री रामविलास पासवान : सर, जो शैलेन्द्र कुमार जी ने मीडिया के बारे में कहा है, वह मीडिया के प्रसारण के संबंध में कहा है, लेकिन what about corruption? मान लीजिए, एक मीडिया है, आज कोई एक जर्नलिस्ट है, उसने 500 रुपये से, हजार रुपये से, लाख रुपये से

इसको शुरू किया और मान लेते हैं कि पांच साल में जाकर वह 50 हजार करोड़ का मालिक बन जाता है, तो वह कैसे बन गया? यदि हमारे ऊपर जांच होती है, दूसरे के ऊपर जांच होती है, तो आप उसके बारे में पता क्यों नहीं लगा सकते हैं ? प्रेस काउंसिल का काम है कि किसी ने आपके खिलाफ में स्टेटमेंट दी, हम प्रेस काउंसिल में चले गए, उसका इस तरह का ज्युरिडिक्शन है। How did he earn that money? वह उसके अंडर में नहीं है, वह corruption के अंडर में आता है।

दूसरी बात है, आपने सलेक्शन कमेटी के बारे में कहा है, उससे हम लगभग सहमत हैं। लेकिन क्या आप देखते हैं कि सलेक्शन कमेटी में शैड्यूल्ड कास्ट, शैड्यूल्ड ट्राइब्स, बैकवर्ड, मॉइनारिटी के लोग या महिलाएं आ सकती हैं, क्योंकि देश की रियलिटी कास्ट है, देश की रियलिटी रिलिज़न है। हम सोचे या न सोचे कास्ट की लाइन पर सोचा जाता है, रिलिज़न की लाइन पर सोचा जाता है। अगर संविधान सभा में बाबा साहब अम्बेडकर नहीं गए होते, तो आज जो संविधान का प्रारूप है, शायद वह प्रारूप नहीं रहता। उसी तरीके से आप लोकपाल को एक संवैधानिक संस्था बना रहे हैं, तो उस संवैधानिक संस्था में जो वीकर सैक्शन के लोग हैं, इनको कैसे रखा जाए? दूसरी बात है कि अगर इनको रखा जाए, तो कैसे रखा जाए, किस क्लॉज के अंतर्गत रखा जाए ? आप इसके बारे में सजेशन दीजिए। इसके बारे में आप ही बतला सकते हैं। जैसा कि आपने कहा कि यह सलेक्शन कमेटी ठीक है, तो इस सलेक्शन कमेटी के अंतर्गत तो ऐसा होने वाला नहीं है। इसके लिए चाहे सलेक्शन कमेटी बने, चाहे सर्व कमेटी बने, चाहे लोकायुक्त बने, इसमें इस सैक्शन के लोगों का पूरा प्रतिनिधित्व हो, इसके बारे में आपकी क्या राय है? जो क्लॉस-थ्री और क्लॉस-फोर का कर्मचारी है, उसको लोकपाल के अंतर्गत रखा जाए या लोकायुक्त के अंतर्गत रखा जाए या बिल्कुल exclude कर दिया जाए?

CHAIRMAN: Now you please answer these two sets. You have got about six questions.

WITNESS: Sir, about the NGOs in other countries, I cannot speak with great authority. But, broadly, Mr. Chairman, Dr. Ambedkar made the point very emphatically when the Constitution was being promulgated. Once you have the liberty to persuade the fellow countrymen to your point of view and persuade the Parliament and the Government to your point of view through lawful Constitutional means and once you have the vote to use as a weapon to make the Government of the day do what you believe is right as a citizen; then, the other forms of protests are no longer available to citizens. This is the belief that I hold very dear. For 15 years, all of us have been tirelessly working to change the way the Indian Governments function, to improve the quality of functioning and integrity and probity. But it was always non-adversarial and always collaborative, with great respect to the institutions of the day. Sir, through that mechanism, we were privileged to have worked with various political parties and Parliament and Governments over the years to bring about improvement in Voter Registration and the 2003 law on political funding.

WITNESS (contd.): The Election and Other Related Laws (Amendment) Act, 2003 was enacted with consensus and unanimity in Parliament. There was the 91st amendment to the Constitution. We all had worked with the Government of the day and the Opposition of the

day at that time. There was the Gram Nyayalayas law and the Right to Information Act. Ms. Aruna Roy and I were the people who drafted that and we persuaded the NAC and subsequently, the Government and Parliament. I can go on and on, Sir. That is, in our judgement, the correct method.

Therefore, while any group of citizens under article 19(1)(c) of the Constitution has the right to agitate any point of view, it has to be by lawful means and, ultimately, the decision-making must be by the Parliament of the day. If the people of India want a different framework, they could express their will in a variety of constitutional ways and the vote. If the vote and the elected institutions are subordinated to the whims and fancies of individuals and groups on a given day, that will lead to anarchy. At the same time, if the citizens' voice is stifled by the elected institutions, that will lead to tyranny. We have to, obviously, traverse a golden middle path. And, I believe, that in India on the whole, the Indian Governments and political parties, with all their mistakes, have been following this golden middle path; we can trust their wisdom.

Then, Sir, comes the issue of 'collusive corruption' and 'burden of proof'. It is not a new thing, Mr. Chairman, as you know. Under Section 498 of the IPC on dowry and related issues and SC/ST atrocities, etc. we already have the burden of proof shifted. So, there is already a precedent and we can adopt the same means. There is not much of a problem there. If there is a will, we can do it. As far as the hon. Member's question on natural resources such as wind, solar and hydro energies is concerned, I understand the concern, but if we make it too expansive a jurisdiction, then there is a danger of including everything because, as you yourself have pointed out, Mr. Chairman, as long as there is a real competition in supply, if tariffs are kept under control, if tariff is the basis on which you determine the party which would supply to the State transmission grid, then public interest is reasonably protected. As I said, in future if there is going to be open access to everybody like in Britain, then probably the problem would be addressed.

Then, Sir, coming to the point about Engineering and Medical colleges, the route is two-fold. The AICTE and the Medical Council of India themselves, I dare say here, are involved in monumental corruption. Nursing Council is no exception, Sir. Almost every professional regulatory body is habitually accused of indulging in corruption.

CHAIRMAN: Just today the Dental Council has joined the galaxy.

WITNESS: In that context, we have a huge problem. The law is clear but the law is violated. To my understanding, there is no capitation fee under law, but there can be a higher fee legally collected for tuition for the Management quota and also there is a slightly higher fee for the Government-filled quota in private colleges. Unfortunately, if I may say so, my friend, Amrita Patel, who is actually running the HM Patel Memorial Medical College in Anand, told me herself when she actually did the costing and asked the Government to give a realistic tuition fee -- she didn't want to collect capitation fee, and she does not collect capitation fee -- the Government said, 'No'. The Government says, 'do what the others do, but I will give you an unreasonable fee'.

CHAIRMAN: There is an important question here. Should these colleges be covered on your grant-in-aid test or should they be covered because they discharge a public duty, or they should not be covered at all? These are private medical and engineering colleges that he is asking about. So, there are three tests: Government aid, public activity or none at all.

WITNESS: Sir, Government-aided colleges shall be automatically covered. When it is the AICTE, Dental Council, Medical Council or some other organization giving clearance, any kind of a corruption and collusion must be very emphatically covered. But for other matters

there are other laws which must be strengthened. You cannot bring everything under one law. It is necessary to control them, but bringing it all under one law means cluttering this law. There is now an over-arching definition of corruption sought to be given either by the civil society or by the Parliament. That is not wise. We have to be much more definitive.

Then, as far as the media is concerned, I fully agree with what Mr. Paswan has said. There is enormous extortion and I am told, though I have no experience, that envelopes have to be given for a Press Meet even at the smallest level without which no publication is there. Also, paid news is a common feature, at least, in some of the Southern States -- it is probably going to spread to the rest of India -- during elections; unless money is given as a package, you are not going to be covered at all and they are going to give all kinds of distorted representations. It is all very well known. My submission is, again, while it has to be curbed, it can't be brought under the same law. By all means, let us curb it and by all means this Committee should look at it.

श्री रामविलास पासवान : वह तो ठीक है कि प्रेस कांफ्रेंस वगैरह होती हैं। हम यह कह रहे हैं कि एक administrative body होती है और एक जर्नलिज्म की बॉडी होती है। You are talking about journalists. I am talking about the owners. जो उसका मालिक है, वह मालिक money कैसे earn कर रहा है, कहाँ से earn कर रहा है, इसकी जाँच तो प्रेस काउंसिल ही करेगा। वह तो corruption के अन्तर्गत आता है।

श्री अर्जुन राम मेघवाल : प्रेस रिपोर्टर को तो छूट होनी चाहिए।

श्री लालू प्रसाद : प्रेस और इलेक्ट्रॉनिक मीडिया “कंपनी” के अन्तर्गत आती हैं। इसमें “कंपनी” तो पहले से आई हुई है।

CHAIRMAN: I think the answer will have to be this. What he has said is that corporations which are aided by the Government or are getting substantial support are covered. कोई भी मीडिया हाउस 99 परसेंट कंपनी होती है, तो it will be covered on that test. That is what he is saying.

श्री रामविलास पासवान : हमने इनसे इसलिए प्रश्न नहीं पूछा कि जहाँ तक हमें बात समझ में आई कि ये कहते हैं कि कारपोरेट हाउस को लोकपाल के अन्तर्गत रहना चाहिए। अगर कारपोरेट हाउस को लोकपाल के अन्तर्गत रहना चाहिए, तो वह भी तो कारपोरेट हाउस में ही आता है। आप उसको कैसे exclude कर सकते हैं?

अध्यक्ष : वे पूरे कारपोरेट हाउस को include नहीं कर रहे हैं।

SHRI SHANTARAM LAXMAN NAIK: Sir, I would like to put a question here that could provide an answer too. Clause 17(1)(d) of the Government Bill reads, “Any Chairperson or member or officer equivalent to Group ‘A’ officer referred to in clause (c) or equivalent or above in any Board or corporation or authority or company or society or autonomous body (by whatever name called) established or constituted under an Act of Parliament or wholly or partly financed by the Central Government or controlled by it.” It says, ‘partly financed’. It means it is established under an Act of Parliament and it is covered. So, most of the print and electronic media are companies. Of course, there can be individuals.

SHRI HARIN PATHAK: They are not funded by Parliament.

SHRI SHANTARAM LAXMAN NAIK: Most of them are companies and those companies are covered under this clause. My second question relates to the citizens' charter. As I understand it, it is a means for people to know about a particular department, the forms prescribed, the officers in-charge of certain things, etc. That is all. There is no mandatory aspect involved. Are you proposing to include citizens' charter in the Lokpal and making it mandatory and punishable under the Lokpal Act, or, would you like to have some other means?

CHAIRMAN: Before you answer Mr. Paswan's question, the short point is, is section 17(1)(e) sufficient to catch corporates in your opinion or should it be changed, and in what way? जहाँ तक यह कारपोरेट को पकड़ता है, वह तो उसमें लिखा है।

WITNESS: Mr. Chairman, you are the best judge to answer that question. Clearly, there is some confusion. Section 17(1)(e) refers to the Government enterprises. It does not refer to private companies or the Companies Act or any other relevant Act. We must be clear about that. Therefore, jurisdiction cannot extend to that. Secondly, undoubtedly, there is a case for regulation and this august body understands the constitutional implications and political implications. Let us be very candid.

SHRI VIJAY BAHADUR SINGH: You stated that anybody who gets a grant should be covered. Let us take the example of BCCI. It does not get any grant, but it utilizes the stadiums; it gets a lot of police mobilization to maintain peace and order and so many other things. They are even saying that RTI should not be applied to us. If you exclude all these things, then the purpose would not be served. Anybody who is operating in the country, which has some effect this way or that way, should be covered. Otherwise, they may not take grants.

श्री रामविलास पासवान: मैं अपनी जानकारी के लिए आपसे एक प्रश्न पूछा था, यह प्रश्न मैं सभी से पूछता हूँ। मेरा प्रश्न यह है कि जो सेलेक्शन कमेटी है, उस सेलेक्शन कमेटी में वीकर सैक्शन्स के लोगों यथा SCs, STs, OBCs, Minorities और महिला का representation होना चाहिए या नहीं होना चाहिए? यदि यह होना चाहिए, तो किस clause के अंतर्गत इन सैक्शन्स के लिए आरक्षण का प्रावधान होगा?

श्री कीर्ति आजाद: अध्यक्ष महोदय, मैं दो प्रश्न पूछना चाहता हूँ और मैं इससे संबंधित उदाहरण भी दूंगा। किसी ने Kerala High Court में एक याचिका दायर किया था और उस पर आदरणीय Kerala High Court ने अपने फैसले में कहा था कि Kerala Cricket Association के जितने भी office bearers हैं, वे सब public servants हैं। अब एक बार वे public servants कह दिए गए, तो वे सब Prevention of Corruption Act में आ गए और जब इसके अंतर्गत आ गए, तो उनके ऊपर आसानी से लोकपाल लगता है।

इसी प्रकार से किसी ने Punjab Cricket Association पर एक याचिका दायर किया था। उसमें किसी ने RTI के द्वारा प्राप्त जानकारी को दिखाते हुए कहा था कि 12.53 करोड़ रुपए Punjab Cricket Association के ऊपर पंजाब पुलिस के अभी तक बकाए हैं। चूंकि वह सरकार से काफी मदद लेती है, इसलिए वह RTI Act के अंतर्गत आती है।

एक केस Karnataka Cricket Association के विरुद्ध चल रहा है। चूंकि इनके जितने भी Articles of Association हैं, उन सब में दिया गया है कि no profit, no loss पर काम किया जाएगा। जब IPL शुरू हुई, तो इन सभी स्टेडियमों ने, जिन्होंने एक-एक लाख प्रति एकड़ के हिसाब से जमीनें ली, उन्होंने इनको दो-दो, तीन-तीन, चार-चार, पांच-पांच लाख में एक-एक कॉर्पोरेट बॉक्स को बेचा। Entertainment tax exemption लेते रहे, अभी वर्ल्ड कप के लिए लेना था। जब ये सब चीजें मिल रही हैं, तो फिर यह RTI और लोकपाल के अंतर्गत क्यों न आए? आपका इसके ऊपर क्या विचार है?

CHAIRMAN: We have a little bit shortage of time. Let we take one final question from Mr. Pinaki Misra and then Mr. Majumdar. Then we close the question. Then you answer the questions.

SHRI PINAKI MISRA: Because of paucity of time I have to crystallize it very very crisply. The memoranda that you have given to us is really in two parts. One is the submission to the Department related Committee by Foundation for Democratic Reforms and the second is the views of the Round Table on Lokpal Institutions. The first is a very erudite presentation but without any specifics. The second, I find, is even more wishy-washy. My short question is: Do you have a draft because we have a Government Lokpal; we have a Jan Lokpal draft? Yesterday, NCPRI said they would give us five drafts for five simultaneous legislations that they want to come through. Would you be in a position to give us a draft? Secondly, I find that your list of attendees on this Round Table is the entire galaxy of the Anna Hazare camp; all of them were there. Was there any dissent on this opinion given by you? Otherwise, from the way I see it, the Anna Hazare camp seems to have diluted its position dramatically because many of the things that you have said here are very wishy-washy. You say this side said this, the other side said this and we leave it to the wisdom of the Parliament. That doesn't help us. Many of the views expressed in this Round Table are diametrically different from the views expressed by the Anna Hazare camp. They came up with these 18 issues which you flagged here, but they are in many respects completely different from Jan Lokpal Bill. This is more than a dissent. Now, I would like to say two other things. One is regarding NGOs. Government funding aspect of NGOs alone does not appear to be a satisfactory solution. Yesterday, NCPRI had come up with a very valuable suggestion that anybody availing of FCRA, and most of them are availing of FCRA because you cannot get foreign funds without FCRA, or availing of 80G exemption, because no Indian corporate would give anything without 80G, should be covered. Would you accept that that is a satisfactory solution? Thirdly, as far as Chief Minister is concerned, I am completely unable to understand as to why you would want only the Chief Minister not his Council of Ministers in the Central Lokpal. State Lokayuts are equally effective. We have seen it in the case of Karnataka. So, I don't understand why do you want to bring the Chief Ministers under Lokpal, not his Council of Ministers?

SHRI PRASANTA KUMAR MAJUMDAR: Mr. Chairman, CVC is empowered to check corruption in the bureaucracy from higher level to lower level. The problem arises when CVC wants sanction against higher bureaucracy but the sanction is not granted normally. Even when it is granted, the time taken is far too long as a result the accused bureaucrat continues to exercise the authority. What is your suggestion to prevent it or improve the situation? What is your opinion in respect of the proposal to take away the CBI from the ambit of CVC? How many prosecution proposals has CVC sent to the Government in the last five years and how many of them have been sanctioned by the Government?

CHAIRMAN: This will have to be asked from the CVC and CBI. He is not going to have these figures. They are going to come separately. We can ask him about your question about taking away the CBI from the ambit of CVC. Rest figures we will discuss later on.

SHRI PRASANTA KUMAR MAJUMDAR: The Prime Minister is the head of the country and also the head of the Cabinet. When Ministers are involved in corruption, then naturally the responsibility lies with the Prime Minister.

SHRI PRASANTA KUMAR MAJUMDAR (CONTD): People also think that corruption has been done with the knowledge of the PMO.

ADV. P.T. THOMAS: I have only a small question. I would like to know about the funding of the Lokpal. Is it coming from the Consolidated Fund of India? What is your opinion about it?

Second thing is that I also associate myself with the point raised by Shri Ram Vilas Paswan about the composition of the Lokpal.

SHRI RAM JETHMALANI: I wanted to remind our distinguished witness that we cannot forget that in this country, it is the common illiterate voter who has ultimately, in moments of crisis, practically rescued democracy from the coffin and revived it and put it on an even keel. Now, with that kind of an experience, where Prime Ministers have destroyed Indian democracy, must you not think that there must be some legal provision somewhere which should keep him, induce in him a spirit of humility and the feeling that he is subject to the institutional control of somebody, that there is a group of people who are constantly watching his activities, and that he is not the kind of god which he thinks he is? After all, when the election time comes, the mightiest Prime Minister has to go around canvassing for votes, go to the poor man's village and hut and beg for a vote. So, that kind of feeling of humility must remain in him during the remaining five years. So, I think it is a very salutary provision that, at least, for today, we must make him subject to the jurisdiction of the Lokpal.

SHRI JAYAPRAKASH NARAYAN: Mr. Chairman, I am greatly benefited by the very rich comments. Sir, my submission is that as far as the media is concerned, I would like to reiterate -- I can see the concern of the hon. Members -- that there is a need to regulate media in a very sensible manner within the bounds of the Constitution. But, Lokpal Bill is not the mechanism. You cannot bring everything under the sun under Lokpal Bill. Some of the Members in the Committee yesterday made the same mistake that Lokpal is the answer to all problems of India. It is not; it can never be. In fact, nothing can ever be an answer to all the problems of India. It has to be with a series of institutional mechanisms to address the problems and linkages. Therefore, the Press Council Act can actually be completely redrafted. The current Press Council Act, as hon. Member, Shri Ram Vilas Paswan, has mentioned, does not make a provision for that. But, what I am arguing is some other law or regulation for the media. Let there be a strong legislation through an independent body with the powers to punish substantially, not necessarily criminal law but a civil liability. If you impose a stiff penalty, a crores of rupees penalty, sometimes even hundred of crores, if need be, that will be a sufficient deterrent. Right now, where is the deterrent? Which media house has been punished? Have you imposed a penalty of even one crore rupees, let alone sending them to jail? But, everything that we do must be within the bounds of article 19(1)(a). Otherwise, it will be affecting the freedom of the Press, freedom of expression, and it will lead to tremendous political repercussions.

SHRI SHANTARAM NAIK: I would like to ask whether clause 17(d) also covers media companies.

SHRI JAYAPARAKASH NARAYAN: It is clause 17(e), not 17(d). It does not cover. It covers Prasar Bharati; it does not cover the media companies.

The second issue is regarding the Selection Committee to accommodate Dalits, Adivasis, minorities and so on and so forth. Sir, the Selection Committee, as envisaged, comprises wholly of *ex-officio* Members except the last two members who are nominees. Once you have *ex-officio* members, you cannot then talk about this group or that group. Sir, once you have the Prime Minister of India; once you have the Speaker; once you have the Leaders of Opposition and ruling party, we assume that they take care of interest of all segments of population of India. After all, that is what the political process of India is because there are Members of Parliament, or, the Parliament's representatives already are there. And, if indeed, there is a special need, there are two other mechanisms. One is that the two nominees appointed could be, in case there is not adequate representation, specially from that group. But, there must be the flexibility to the Committee rather than giving it by law because circumstances vary from time to time. The second is that the Screening Committees or the Search Committees appointed by this Selection Committee, and the law provides a mechanism for that, they could take care of that. You must leave it to the wisdom of these people. If you can't trust the Prime Minister, the leaders of Parliament, the leaders of Opposition, whom will you trust to take care of interests of all communities? No law can provide for all these inclusive processes. That will overburden the law. It will make the law very rigid.

श्री रामविलास पासवान: पहले पार्लियामेंट में भी तो यही हो सकता था। हां, ठीक है, मैं उस में argument नहीं करना चाहता क्योंकि it is your personal view.

SHRI JAYAPRAKASH NARAYAN: Then, Sir, as far as class-III and class-IV employees are concerned, I would like to very humbly submit that the Lokpal and Lokayukta institutions should never be overburdened with excessive jurisdiction. They must be limited to only the high functionaries, both bureaucratic and political. The rest of the employees must be accountable but through a graded mechanism under the overall umbrella of Lokpal through Vigilance Commission and the departmental heads. Similarly, in the States, they could be under Lokayukta and Vigilance organisations and departmental heads. It should not be one umbrella. That would be the death of Lokpal institution. I would like to emphasise this point.

As far as the companies under the Act of Parliament are concerned, I have already made it clear. To my understanding, the Act of Parliament refers to only those companies that are created by the Government by statute. It is essentially another expression for public sector enterprises.

Then, Sir, regarding Citizen's Charter, I would like to submit that there cannot be a prescriptive charter in a Parliament's law or even a State's law. Sir, there can be an enabling legislation facilitating the Governments at the national level and State level to notify the specific services for which charters are necessary and they can only be for specific services where there is no supply constraint and there must be a time frame. It cannot be merely a general statement and there must be a penalty for non-performance in terms of a daily penalty. For instance, in Andhra Pradesh, as I have already submitted, for every day's delay, a penalty of Rs.50 was imposed on the recommendation of the Lokayukta.

Then, Sir, as far as 17(1)(f) and 17(1)(g) are concerned, I would like to submit that when there is a grant by the Government, it is a perfectly legitimate thing. If you say because there is an exemption, you have to bring almost every organisation in the country; there are hundreds of thousands of organisations. When we are saying that the servants of Government

directly dealing with the public money, directly getting salary from the Government, directly drawing powers from the laws of the country, they should be under the Lokpal or Lokayukta, is it our case that every single organisation in the country should be under Lokayukta or Lokpal. It is an absurd situation. It will be untenable. It will destroy Lokpal and Lokayukta institution. It will be counter-productive.

WITNESS (CONTD.): The hon. Member, Shri Kirti Azad, mentioned a case of Kerala.

CHAIRMAN: Now we will conclude it. You answer Mr. Pinaki Misra's question. Rest of the questions you have covered.

SHRI KIRTI AZAD: What about my question?

WITNESS: The hon. Member made some sweeping observations. I would like to repudiate some of the observations very strongly. I take exception to the expression 'wishy-washy.' These are exceptionally well-considered papers. And the record is on the website. It was a live webcast. It is available on YouTube. The issue of Prime Minister we have already mentioned. Otherwise, on every other thing, very definitive view was taken and the full record is available in the public domain. We leave it to the wisdom of Parliament. It is generally believed to be possibly the most articulate and very carefully considered paper. These Members were present.

CHAIRMAN: That apart, only one thing is that the members of Team Anna had a contradiction.

WITNESS: This document reflects the consensus, not necessarily unanimity. On 17 issues, there was a substantial consensus. One or two dissenters may be there. Obviously, one dissent cannot be taken as a view. Consensus does not mean unanimity. Except on the issue of whether the Prime Minister be included under its jurisdiction or not, on all other issues, the consensus was there. It is in public domain. It is a public record. And two Chief Justices, who co-chaired it, actually signed it; it was vetted by them. And it was circulated to these members, including those members whom you mentioned. And they have not expressed publicly or privately any dissent to that subsequently. Now I leave it at that. Whether they subscribed to that or not or whether they changed their views, it is for them to explain. It is not for me to explain. I cannot say anything.

As far as NGOs are concerned, I covered that point. But on the point of Chief Minister, my submission is that the Chief Minister must be covered.

श्री लालू प्रसाद : सर, मैं एक सवाल पूछना चाहता हूँ।

WITNESS: On the CVC and the CBI, we have made it emphatically clear that in our judgment the CVC Act must remain. The CBI must be broadly under the CVC's jurisdiction. But the CVC must remain independent and made part of the Lokpal Institution. You cannot destroy existing institutions.

SHRI KIRTI AZAD: What is your opinion on the BCCI issue?

CHAIRMAN: Should the BCCI be covered under it or not?

WITNESS: What is the meaning of substantial assistance? The Administrative Reforms Commission has given a certain definition. Obviously, we cannot cover every single case. When we talk of substantial assistance, we leave it to the wisdom of Parliament, the rule-making authority.

SHRI HARIN PATHAK: You are covering 20 million employees of both the Central Government and the State Governments. What objection do you have to add hundred other organisations? As per your figure, under the Lokpal and the Lokayukta, you are covering 20 million employees of the State Governments and the Central Government. Then why not cover other 120-150 organisations?

WITNESS: There are two things. We are not urging that all the 20 million employees must be brought under the Lokpal or the Lokayukta. They have to be accountable. Every servant of the Government should be accountable but not under the mechanism of the Lokpal or the Lokayukta.

Two, there is a philosophical issue. Esteemed jurists like Mr. Ram Jethmalani and the Chairman would be able to answer this question much more ably. You cannot equate a private functionary or a private enterprise with a public functionary serving a public function under the law of the land. These are two different things but impinging on the liberty of the citizens.

CHAIRMAN: लालू जी, आपसे अनुरोध है कि आप संक्षेप में अपना प्रश्न पूछ लीजिए, I think, rest of it you can give in writing.

WITNESS: Mr. Ram Jethmalani made a very sharp point about Prime Minister.

CHAIRMAN: You have clearly said 'no' to that.

WITNESS: But he made another point and I would like to clarify that. We have recommended this. And this is also recommended by the Administrative Reforms Commission. It says that the definition of corruption should be expanded specifically. I am quoting from the ARC Reports which are also ratified by the round table on Lokpal.

The definition of corruption should be enlarged as per the recommendations of the Fourth Report of the Second ARC and should include (a) Abuse of office and authority even if no direct pecuniary gain to the public official results; (b) Obstruction of justice; (c) Squandering public money or wasteful public expenditure; (d) Gross perversion of the Constitution (This addresses your concern directly) and democratic institutions; and (e) Collusive bribery causing loss to State, public or public interest to be made a special offence

Sir, I am proud to say that I have specially urged the Commission to include these. I specifically included 'constitutional perversion and abuse of office.' I entirely agree with you. But that comes under a different issue. On the larger issue of inclusion of Prime Minister, I think there has been enough debate.

CHAIRMAN: We have to really end it here. The rest of it, you can give in writing.

श्री लालू प्रसाद : हमें BCCI और दूसरे खेलों पर ज्यादा emphasis नहीं देना है। बेसिक बात यह है कि शैड्यूल्ड कास्ट्स, शैड्यूल्ड ट्राइब्ज, ओ.बी.सी. और माइनॉरिटीज़ को हमें सोशल जस्टिस देना है। जब हम इतना बड़ा कानून बनाने जा रहे हैं, तो सोशल जस्टिस के विषय में, इन लोगों को रिजर्वेशन देने के विषय में आपका नज़रिया, आपका रवैया क्या है? एक तो हम इसी बात में उलझे हुए हैं कि पी.एम. को इसके दायरे में लाना चाहिए या नहीं लाना चाहिए। रिजर्वेशन के विषय में आपकी क्या सोच है? इस देश की बड़ी भारी आबादी इस तरफ टकटकी लगाकर देख रही है कि उनके लिए रिजर्वेशन का प्रावधान इसमें हो रहा है या नहीं हो रहा है? अन्ना हजारे की टीम की हमारे साथ बैठक हुई थी और उन्होंने कहा कि हम

इस लफड़े में पड़ने वाले नहीं हैं, सरकार चाहे तो करे। हम कोई finding नहीं दे रहे हैं, लेकिन लोकपाल बनाने के लिए जो कमेटी बनेगी, उसमें प्राइम-मिनिस्टर होंगे, लीडर ऑफ अपोजीशन रहेंगे और एक और सदस्य होंगे। तो जिसको हम बहाल करेंगे, वही हमारा trial करेगा। उसमें रिजर्वेशन का क्या होगा? अब इतनी बड़ी संस्था बन रही है, चपरासी से लेकर प्राइम-मिनिस्टर तक trial करने के लिए जो संस्था बैठेगी, उसमें रिजर्वेशन के मुद्दे को तो हम छोड़ नहीं सकते हैं और संविधान संशोधन भी इस बारे में होगा। तो हम इसमें आपका कमेंट जानना चाहते हैं कि इसमें रिजर्वेशन देने में या ऐसे लोगों को वहां बिठाने में कोई दिक्कत हो रही है? क्या इसमें कोई संवैधानिक या कानूनी कठिनाई है? मेरे हिसाब से जो लोकपाल बने, वह दलित होना चाहिए और हम दलित के लिए रिजर्वेशन दें। आप इस पर अपनी राय दीजिए।

SHRI PRASANTA KUMAR MAJUMDAR: I agree with Laluji.

श्री अरुण सुभाषचंद्र यादव : मैं अपने को इस प्रश्न के साथ सम्बद्ध करता हूं।

श्री अनिरुद्धन सम्पत : मैं अपने को इस प्रश्न के साथ सम्बद्ध करता हूं।

श्री शैलेन्द्र कुमार : मैं अपने को इस प्रश्न के साथ सम्बद्ध करता हूं।

अध्यक्ष : आप इस पर संक्षेप में बोलिए और बाद में लिखित रूप से अपने विचार हमें भेज दीजिए।

WITNESS: Sir, the constitutional provisions are sacrosanct as far as reservation is concerned. There is no doubt that there is discrimination by birth affecting the future of 70-80 per cent of the children of India. The future of 80 per cent of the children is determined at birth by the circumstances of their birth in this country. If you don't recognise that, we don't understand India; we do not really build a framework in which there is equality of opportunity to all. That is the reason why we have these statutory and constitutional affirmative action provisions. It should apply to all the Lokpal staff. There cannot be any difference of opinion on that issue.

Now as far as the Selection Committee is concerned, my submission is that once you have only *ex officio* members in this committee, you cannot then bring in these criteria. But where the nominated members are there, leave it to the *ex officio* members or you specifically state that there must be two members only from the deprived sections. That is entirely for the Parliament.

श्री राम विलास पासवान : पहले भी आप गोल-मटोल जवाब दे रहे थे, अब भी वैसा ही जवाब दे रहे हैं। आपकी राय क्या है? लोकपाल कमेटी है, सेलेक्शन कमेटी है, और सारी कमेटियां बनेंगी।

श्री रामविलास पासवान (क्रमागत): इसमें 20 हजार, 30 हजार लोगों का appointment करना होगा। जो कमेटी है या कमेटियां हैं, उसमें दो तरीके हैं, एक रिजर्वेशन है और एक रिप्रजेंटेशन है। हमने बाबा साहब अम्बेडकर का उदाहरण दिया। उस समय कुछ नहीं बना था,

संविधान बन रहा था और उस समय बाबा साहब को ड्राफ्टिंग कमेटी का चेयरमैन बनाया गया। प्रिंसिपल रूप में किस तरह से होगा, यह बाद की बात है। कल इसके बारे में हमने अरुणा राय जी से भी पूछा था और उन्होंने कहा कि हमने जो अपना बिल दिया है, हम अपने अमेंडमेंट में इसको शामिल कर रहे हैं। आपकी राय में इन लोगों का रिप्रजेंटेशन होना चाहिए या इन लोगों का रिजर्वेशन होना चाहिए या बिल्कुल नहीं होना चाहिए, आप इस पर अपनी राय खुलकर के बतलाइए?

WITNESS: I have made it clear that in the Lokpal staff, Lokayukta staff and all other agencies, there must be the principle of affirmative action on reservations. There cannot be two opinions on that because that is the law of the land and that is the intent of Parliament.

श्री लालू प्रसाद: जय प्रकाश जी, आप इसको डॉयल्युट मत करिए। हवा में बात नहीं होनी चाहिए। लोकपाल की जो बॉडी बनेगी, उसके पदों में बैकवर्ड क्लास, शैड्यूल्ड कास्ट, शैड्यूल्ड ट्राइब्स, मॉइनारिटी और वुमेन का स्थान कहां है? हम नये कर्मचारी बहाल करने में रिजर्वेशन की बात नहीं कर रहे हैं। जो लोकायुक्त होगा, जो लोकपाल होगा या जो उप-लोकपाल होगा या उनकी बॉडी होगी, उनकी जो समिति होगी, उसमें रिजर्वेशन कहां झलकता है? उसमें शैड्यूल्ड कास्ट और शैड्यूल्ड ट्राइब्स होगा या नहीं होगा, यह हम जानना चाहते हैं? हम शैड्यूल्ड कास्ट और शैड्यूल्ड ट्राइब्स के लिए जॉब नहीं मांग रहे हैं। जो निर्णायक बॉडी है, उसमें डिसीजन लेने के संबंध में आपका क्या नजरिया है?

अध्यक्ष : लालू जी, आपने स्पष्ट रूप से प्रश्न पूछ लिया है। अब उनको अधिकार है कि वह अपना मत रख दें और उसके बाद उनका मत खत्म हो जाएगा। हम उनके मत को बदल नहीं सकते हैं, जो उनका मत है, हम उस मत को रहने दें।

श्री लालू प्रसाद : सर, हम मत बदल नहीं रहे हैं। उनका मत हो गया, जो बॉडी बनेगी, उसमें उनका रिजर्वेशन होगा, इसका क्या मतलब है?

अध्यक्ष: हमने इनके सब व्युज देख लिए हैं। आपके व्युज भी नोट हो गए हैं। अब हम आगे चलते हैं।

श्री लालू प्रसाद : ठीक है, अब आप आगे चलिए।

CHAIRMAN: I want to thank you Mr. Jayaprakash. We have had you for an hour yesterday and over two hours today. I am just reminding you to send me your comments, particularly in square brackets on the introduced Bill and other submissions. Thank you.

(The Witness then withdrew)

CHAIRMAN: Now we will hear the team of the Bar Council of India headed by its Chairman.

WITNESSES

Shri Ashok Kumar Parija, Chairman, Bar Council of India and others.

CHAIRMAN: Now we will request Shri Parija to make his points very briefly because we will have his written submission later on.

SHRI ASHOK KUMAR PARIJA: Mr. Chairman, what I will do is, I will give some bullet points on what is our response and later on, as you said, we will send the written submissions.

To begin with, our view is this should be a constitutional body in line with the Election Commission. The structure, functions and jurisdictions may be left to be provided by a parliamentary legislation like the one we have presently. Our first submission would be, please make it a constitutional body.

The next issue would be what should be the coverage of the Lokpal. It has to be structured and the subject matter of jurisdictions needs to be defined. If we start thinking that it will be right from the top to the bottom, then the whole thing would collapse. You can't manage crores of complaints every year by any office. There are two suggestions. One, confine the Lokpal to investigate into allegations of corruption against Central Ministers and higher officers in the Government, not below the rank of Joint Secretaries. Limit it at that so far as the Lokpal is concerned. In the alternative, have different benches to hear different kinds of cases. Let us say, for Central Ministers and up to Secretaries, it could be a five-member bench; the officers below the level of Secretary could be entrusted to a three-member bench and officers below that by a single bench or division bench as the case may be.

The third issue is regarding citizen charter and grievances redressal. The Anna Hazare Lokpal Bill provides that each Government Department will have a citizen charter. We are of the view that we could have a different law for citizen charter and not mix it with the Lokpal. We would want Lokpal only to do investigation.

Now on the inclusion of Prime Minister, our view is that the Prime Minister not only holds high constitutional office, but is also of great significance, both nationally and internationally. So we want the Prime Minister out of the Lokpal. Now what we suggest is if the Prime Minister is required to be included and if there is an inquiry against the Prime Minister, let it be investigated in-camera by a bench of five-judges of the hon. Supreme Court presided by the hon. Chief Justice and five senior judges. These proceedings will be in-camera till a definite conclusion is arrived at. This, according to us, is necessary in the larger national and public interest.

Now so far as conduct of MPs within the Parliament is concerned, our view is they should be excluded from the purview of the Lokpal. What we believe is that conduct of MPs within Parliament should be excluded from the purview of the Lokpal Bill considering the constitutional provisions in respect of privileges of Members in Parliament. However, in terms of Article 105 (3) of the Constitution, the powers, privileges and immunities of each House of Parliament and of the Members and the Committees of each House should be defined by Parliament by a separate law dealing with the subject. As you all know, this has been recommended by the National Commission to Review the Working of Constitution. A new clause 3 A has been inserted to Article 105 A and under that law the MPs can be regulated.

SHRI ASHOK KUMAR PARIJA (contd.): And this has been recommended by the National Commission which was set up to review the working of the Constitution in 2000, where it said that a new clause 3 may be inserted to article 105 (a). So, that clause is already there. This is so far as Members of Parliament are concerned. So, they should be out of the Lokpal Bill. Coming to Judiciary, obviously, Judiciary has to be kept out. And the Judicial

Standards Accountability Bill, 2010, is already there. That should suffice so far as judiciary is concerned.

Now, on CBI, our view is that the CBI should be strengthened and it should be made independent of the political executive. The Anti-corruption Wing of the CBI should be separated and made completely autonomous. Now, accountability mechanisms can be evolved through a committee. Like the Lokpal, the CAG, the CVC and the CBI should have its own prosecution wing. The Director of CBI and other key officials should be appointed by a Committee, a broad committee, similar to the one which almost appoints the Lokpal. The whole idea is that the CBI should be completely independent, completely autonomous, and it should be answerable either to the authorities we are suggesting, or, if you can devise a method where it is accountable to Parliament alone. Now, on the selection of Lokpal members, the experience shows that the High-powered Selection Committee do not have time to search out appropriate candidates. Therefore, the role of the Search Committee becomes even more important than the Selection Committee. It is, essential, therefore, that the Search Committee would recommend names, through the Selection Committee, consisting of eminent people from all walks of life. In the present Selection Committee, five out of the nine members are appointed by the Central Government. Instead, the Selection Committee should be a balance between the Government, Opposition and the judiciary. The suggested committee should include (a) the CJI or its nominee, the senior-most Chief Justice of the High Court, a senior advocate of eminence to be nominated by the President, the Prime Minister, the Speaker, the Leaders of Opposition of both the Houses and one member of eminence in any other field to be appointed by the President.

So far as Whistleblowers' Protection is concerned, the Public Interest Disclosure and Protection to Persons making Disclosure Bill is pending. Now this Bill can be enacted into a law, which would include, within its ambit, the institution of Lokpal, and that would serve the purpose so far as the Whistleblowers Protection is concerned.

Now, as for procedure for removal of chairperson and members of the Lokpal, it should be similar to the procedure under article 317. I think this is the line in which the present Bill is also looked at. Now, since Parliament has the legislative competence under article 97 and the Concurrent List to make laws, we feel that the Central Act can have a Lokpal as well as the Lokayukta at the Central and State Levels, and an ombudsman, maybe, for the local self-Governments.

The last issue which we were asked to comment upon is false and vexatious complaints. Rules can be made which would be a deterrent for making such complaints. But such rules should not be so rigid that people shy away from making complaints. There, a balance has to be made under these rules. So, this, in a nutshell, is what we could get ready with since last night and this morning.

CHAIRMAN: I am very happy that you have made pointed submissions, and I ask our Members that they put equally pointed questions. I would just remind you to send us a written summary in bullet points of not only of what you have said, but also answers to the questions that you have given. Secondly and, more importantly, you look at the Bill introduced in Parliament and make suggestions in square brackets on that Bill to the extent you can.

ADVOCATE A. SAMPATH: As regards the question whether the Prime Minister has to be brought under Lokpal, you have already given your view. Here, I would like to get some clarifications regarding Chief Ministers also. Some discussions have taken place on this issue. Article 1 of the Constitution says, "Bharat shall be the Union of States." So, unless and

until there is a Federation, this nation cannot go on. Now, we want to give some privileges to the Prime Minister, but, we are not giving the same privileges to Chief Ministers. There are certain States where the number of MLAs is only 60. And, if an allegation is raised against a Chief Minister, we have seen instances where the Centre can topple the State Governments. This has happened several times, and this is bound to happen in future. Now we should not be a part and parcel of paving way for toppling of State Governments. The Centre-State relations should be in a better position than what is already there. Secondly, I would like to get some clarifications regarding media. We all know how media has become a big profession and it is even attracting foreign investments. Now can media also be brought under the Lokpal or not? What is the opinion of my friends from the legal fraternity? Thirdly, regarding corporate houses, not only companies which have been formed by enactments of Parliament but also companies which have been formed under the Companies Act and the firms which are not registered but which are entering into agreements with the Government, can they also be brought under the Lokpal?

Lastly, regarding PPP, I am not a public servant, but I am doing some public duty. I have not been given any grant or financial aid, but I am utilizing the public space or public field with some concessions. Would I be included under this?

श्री रामविलास पासवान : मुझे इसमें एक चीज़ और जोड़नी है कि इन्होंने मीडिया, कारपोरेट हाउस और एनजीओज़ के सम्बन्ध में कहा। जन लोकपाल बिल और जितने भी बिल हैं, उनमें एनजीओज़ के सम्बन्ध में कहा जा रहा है। एनजीओज़ में सिर्फ वे ही नहीं, जो गवर्नमेंट से पैसा लेती हैं, बल्कि जिनको foreign money आती है, all types of NGOs, all types of media, all types of corporate houses. They should be kept under the ambit of the Lokpal Bill or not.

SHRI KIRTI AZAD: I may add just four lines. We are talking about journalists. We have had these tapes which was a big embarrassment for the Government and others too. Some Journalists tried to fix up the Ministers in the Government. Now would that come in your definition of 'corruption' or not? I mean you are, after all, trying to fix up people somewhere who have on tapes which obviously with a mind to see that in future you may be hauled up with something or the other. Does that also come in your definition of 'corruption'? It is not only giving or taking money but also soliciting positions for various people in Government and other places.

SHRI PARIMAL NATHWANI: Sir, you have mentioned about the Prime Minister excluding from the Lokpal. But within the camera of five judges he can be called. We have the highest respect for the Supreme Court, High Court. They are really maintaining our law and rules, imposing and controlling everybody. That is really appreciated. But the Prime Minister's stature, not in the country, but worldwide, the Prime Minister who has been elected by crores of people, I think, the idea of calling the him within the camera or outside the camera does not justify, not workable. It is the reputation of the country outside the world which will be at stake.

CHAIRMAN: We appreciate that view. But it is view which he has given on the Prime Minister.

SHRI PARIMAL NATHWANI: You can you explain. Why is this exclusion of the Prime Minister from the ambit of the Lokpal Bill?

SHRI PRASANTA KUMAR MAJUMDAR: We read in the newspaper that the Prime Minister himself is willing to be included under the ambit of the Lokpal Bill. What is your opinion?

CHAIRMAN: You have about five to six questions. You please answer them very briefly. According to you, yes, no, first, then, if, no, why, or, if, yes, why? For example, you have a stand on the Prime Minister. Some Members, including Mr Ram Jethmalani have a stand that the Prime Minister should be included under the purview of the Lokpal Bill. According to you, why should he be kept outside the purview of the Bill. Just give that reason.

SHRI ASHOK KUMAR PARIJA: Our view is that the Prime Minister should be kept outside the purview of the Bill. In the event, the Prime Minister is kept under the purview of the Bill -- ultimately you are going to take a call -- any complaint against him should be looked into by the first five judges. In any case Lokpal's orders are subject matter of review by the Supreme Court. So, therefore, in the event of the Prime Minister in, it should be in camera by the first five judges of the Supreme Court to be headed by the Chief Justice; and the perception of this flows from the second question, namely media. Mr Kirti Azad has said about that. You have such an irresponsible media in this country that unless you immediately make a law to regulate the media, then, there will be a complete chaos. I mean in every case a trial is done by the media and then by courts. The solution is make a law to regulate the media. It need not be under the Lokpal, it could be another law.

श्री रामविलास पासवान : मीडिया में दो तरह के लोग हैं, एक जर्नलिस्ट्स हैं और दूसरे मालिक हैं। मान लीजिए कि यदि मालिक कोई मीडिया establish करता है और उसमें corruption का मुद्दा आता है, तो उसे आप किस category में रखेंगे? जर्नलिस्ट्स के बारे में तो हम समझ सकते हैं कि प्रेस काउंसिल ऑफ इंडिया को strengthen कीजिए, लेकिन यदि यह मालूम होता है कि मालिक ने गलत ढंग से कुछ किया है, तो इसे कैसे देखेंगे?

SHRI VIJAY BAHADUR SINGH: Sir, in case the Prime Minister is out of the purview of the Bill, could you suggest an alternate method?

SHRI ASHOK KUMAR PARIJA: Therefore, there could be another law to regulate media and media owners.

SHRI RAM VILAS PASWAN: In the case of corruption also?

CHAIRMAN: You are not in favour of Lokpal for media and media owners. You want a separate law, but in what way?

SHRI ASHOK KUMAR PARIJA: We will give that in our written reply.

श्री वीजय बहादुर सिंह : आप ज़रा यह भी स्पष्ट कर दीजिएगा, जो आपने शुरू में कहा कि it should be a constitutional body.

श्री अशोक कुमार परिजा : हम कहते हैं कि Constitution को amend कीजिए और जैसे Chief Election Commissioner हैं, वैसे लोकपाल बन जाए।

The other question was regarding NGOs. पासवान साहब ने पूछा, wherever NGOs are funded by the State, they should be covered by the Lokpal.

श्री रामविलास पासवान : अगर कोई एनजीओ देश को तोड़ने के लिए या कमाने के लिए बाहर से पैसा ले ले, तब क्या होगा? वह बाहर से पैसा ले रहा है या कुछ कर रहा है। सरकारी महकमा तो अब बिल्कुल छोटा होता जा रहा है। अब तो उदारीकरण की नीति के नाम पर pandora box खुल गया है। आपने flood gate खोल दिया है। कौन कहाँ से पैसा ले रहा है, उसे आप कैसे रोकेंगे?

श्री बलवंत उर्फ बाल आपटे : मीडिया के बारे में शुरू में जो विषय आया, वह प्राइम मिनिस्टर को include करने के context में आया। अगर आप ऐसा करते हैं, तो media trial शुरू हो जाएगा, उसको आप कैसे रोकेंगे? उसके लिए कोई कानून चाहिए और उसी समय पासवान जी ने अगला प्रश्न पूछा कि अगर मीडिया वाले पैसा लेकर काम करते हैं, तो उसका क्या करेंगे? There are two distinct questions.

SHRI HARIN PATHAK: I fully agree with him that NGOs funded by the State should come under the ambit of the Lokpal.

SHRI ASHOK KUMAR PARIJA: We will respond to it in our written submission.

SHRI KIRTI AZAD: I will just give you one example. I had said this yesterday also when Mrs Aruna Roy came to the meeting. There was Mr Ghulam Nabi Fai who was running the Kashmir American Centre from the United States. It was funded by the ISI. They were trying to break India by taking away Kashmir. So, there are NGOs like that also. This is also an example. I would like to express the concern of everybody here. This is one of the examples I am just putting across.

SHRI ASHOK KUMAR PARIJA: I got your point. We will repond.

CHAIRMAN: Companies under the Companies Act which are not PSUs, क्योंकि PSU एक अलग category हो गई है।

श्री अशोक कुमार परिजा : PSU तो अलग category हो गई है, but other companies can be considered.

श्री शैलेन्द्र कुमार : अभी जब बार काउंसिल के सम्मानित सदस्य अन्दर आ रहे थे, तो यहाँ एक बात पर बहस चल रही थी। लालू प्रसाद जी और रामविलास पासवान जी भी कह रहे थे कि जो लोकपाल की कमेटी बनेगी, सर्व कमेटी बनेगी या राज्यों में जो लोकायुक्त की कमेटी बनेगी, उनमें आरक्षण की व्यवस्था होनी चाहिए। चूँकि आज हम यहाँ पर बैठे हैं और हमारी यह चिन्ता है कि भ्रष्टाचार से जो सबसे ज्यादा ग्रसित हैं, वे बीपीएल के लोग और गरीब लोग हैं।

श्री शैलेन्द्र कुमार (क्रमागत): मैं आपसे यह पूछना चाहता हूँ कि SCs, STs, OBCs, अल्पसंख्यक और महिलाओं को भी इस समिति में रहना चाहिए या नहीं रहना चाहिए?

श्री अर्जुन राम मेघवाल: सर, मेरा altogether different issue है। यह बात आई थी कि जो लोकपाल होगा, उसकी सीटिंग हाई कोर्ट में होनी चाहिए। यह बात अखबार में भी आई है

और डिबेट में भी आई है कि जो हाई कोर्ट का परिसर है, उसको लोकपाल या लोकायुक्त use करे। इस संबंध में आपकी क्या राय है? क्या उसके बैठने के लिए अलग building होनी चाहिए?

अध्यक्ष: देखिए, यह नया issue है। अभी कोई लोकपाल नहीं है, जो हाई कोर्ट का परिसर मांग रहा है।

श्री अर्जुन राम मेघवाल: सर, इस संबंध में अखबार में एक article आया है। I have read that article. मेरा दूसरा प्रश्न यह है कि अभी गठबंधन की सरकार पर बहुत आरोप लग रहे हैं कि चूंकि गठबंधन की सरकार है, इसलिए इतने सारे भ्रष्टाचार हो रहे हैं। लेकिन जब एडवोकेट और जजेज् में गठबंधन हो जाता है, तो इस प्रकार के भ्रष्टाचार को कौन डील करेगा?

श्री कीर्ति आजाद: मैं इसमें एक बात और जोड़ना चाहूंगा कि एडवोकेट और जजेज् का आपस में सांठ-गांठ हो जाने के कारण तारीख पर तारीख पड़ता रहता है और justice delayed is justice denied वाली बात होती है, उसके ऊपर कौन ध्यान देगा?

SHRI S. SEMMALAI: The hon. Chairman had asked you to give your comments clause-by-clause. I would like to know your views on one issue. Clause 54 deals with application of limitations in certain cases. If the Lokpal is prohibited from initiating inquiry into complaints after the expiry of seven years from the date of commission of the offence, this would pave way for the offender to escape from the penalty. Some sections say that a time-limit of seven years proposed in the draft Lokpal Bill will have a negative affect and act as a deterrent to the whistleblowers. I want your views on this point.

श्री लालू प्रसाद: चेयरमैन साहब, बार कौंसिल से मेहता जी और इनके साथ विद्वान अधिवक्ता लोग आए हैं, उनका स्वागत है। हम लोगों को इनसे कानून से संबंधित प्रश्न ही पूछना चाहिए। हम यह जानना चाहते हैं कि supremacy of Parliament है और संविधान के तहत हमारी न्यायापालिका अलग है, उनकी अपनी स्वतंत्रता है, कहीं यहां छेड़-छाड़ हो रहा है, तो कहीं वहां हो रहा है। Supremacy of Parliament के रहते हुए हमारे संविधान निर्माताओं ने सिस्टम में सब कुछ बनाया है और उसी कानून के तहत, संविधान के तहत, आप लोग व्याख्या करते हैं तथा उसी के तहत लोग सुप्रीम कोर्ट, हाई कोर्ट और लोअर कोर्ट में जाते हैं। क्या अभी लोकायुक्त या लोकपाल बनाने की जरूरत है?

इसको लेकर इतना बहस रामलीला मैदान से लेकर हर जगह, चारों तरफ से target करके politicians को गालियां दी गई। आंदोलन क्या होता है, उसको अभी लोगों ने देखा नहीं है। जो यहां पर हुआ, आप लोग उसके गवाह हैं। वकील लोग भी जगह-जगह निकल गए, खास करके उत्तर प्रदेश में, यह क्रांतिकारी जगह है, वहां वे लोग भी भ्रष्टाचार के खिलाफ में निकले थे। यह जो हम लोग बिरनी के खोता में हाथ डाले, क्या इसकी कोई जरूरत थी?

भ्रष्टाचार हर जगह नस-नस में है, जिसका जो लेयर है, उस लेयर के अंतर्गत यह हर जगह है। इसकी जरूरत थी या नहीं थी? हम लोग बैठे हैं, हम लोगों को कागज वगैरह मिला

हुआ है, जो आप लोगों को भी मिला होगा, उसमें सरकार का जो लोकपाल बिल आया है और अन्ना हजारे जी का जो जन लोकपाल बिल है, उनमें 36 points हैं, जिन पर विचार करने के लिए हम लोग बैठे हैं। हम लोग इस संबंध में कोई comment नहीं दे सकते हैं कि यह ठीक है या यह ठीक नहीं है। इन सब पर आप लोगों से राय लेकर ही इसको आगे बढ़ाएंगे।

जब supremacy of Parliament है और हमारी न्यायपालिका है, यह बात ठीक है कि कहीं कोई बात होती रहती है, शिकायतें होती रहती हैं, इसलिए मैं आप लोगों को ब्रीफ कर देना चाहता हूँ। चेयरमैन साहब, समय की कमी नहीं है, इसमें समय देना भी चाहिए। अभी लाल किला के पास जो हुआ था, उसमें हम समझते हैं कि अन्ना हजारे जी भी तीन points को छोड़ दिए हैं, जिनके बारे में आप लोग पूछते रहते हैं। पहले इसमें था कि न्यायपालिका को लोकपाल के दायरे में लाया जाए। हम समझते हैं कि इस बिन्दु को उन्होंने छोड़ दिया है। दूसरा था कि प्रधान मंत्री जी को लोकपाल के दायरे में लाया जाए और तीसरा यह था कि सब जगह लोकायुक्त हो। अब इन तीनों major points को छोड़ कर सिटीजन चार्टर और जो दो-तीन points हैं, उनको लाइए तथा बाकी major points जिन पर झमेला चल रहा था, वे सारे points खत्म हो गए हैं। हम लोग ही उन सारे points को घुमा-घुमा करके ला रहे हैं। अन्ना जी ने इन points को छोड़ दिया है। इसमें कानून के तहत, संविधान के तहत जो supremacy of Parliament है और मेहता जी ने ठीक कहा कि जब राहुल गांधी ने कहा कि मंथन करके जो भी बातें निकलती हैं, उनको संवैधानिक स्टेटस मिलना चाहिए, तब पांच मिनट के अंदर ही राहुल गांधी के घर को घेर लिया गया। वे हमारे बगल में ही रहते हैं। हम 25, तुगलक रोड पर रहते हैं, लेकिन हम भी अलर्ट थे कि कहीं वे लोग यहां भी न चले आएँ। हम इंतजार करते रह गए, लेकिन कोई नहीं आया। इस बात को समझ लीजिए, क्या यह कोई मामूली बात है? ये सब सवाल हैं। हम लोग अभी जो कुछ विचार-विमर्श कर रहे हैं, इसमें कोई भी संशोधन करेंगे, लेकिन what is the suitable answer to Anna Hazareji? अन्ना हजारे जी और उनकी टीम तो टीम है, लेकिन उनके साथ ही रामलीला मैदान में और सड़कों पर जो बातें हो रही थीं, तो उनको हम लोग कैसे satisfy कर सकते हैं?

अध्यक्ष: लालू जी, आपका fundamental प्रश्न है। वे आपके प्रश्न को समझ गए हैं।

श्री लालू प्रसाद: मेरा प्रश्न यह है कि क्या इतने सारे सिस्टम्स के रहते हुए लोकपाल बिल बनाने की जरूरत है?

CHAIRMAN: Laluji, we have already answered that question.

SHRI PINAKI MISRA: About the CBI issue, Mr. Chairman, I just wanted to check it. I could not understand it. Firstly, you said the CBI Anti-Corruption Wing must be hived off. But, then, where should it be taken to? Under whose aegis will it operate? Secondly, you suggested that CBI could be directly answerable to Parliament. How do you propose to do that? Will it be via Committees? How? I am saying this because that is a very unwieldy process. You had said that it could be made directly responsible either to Parliament or 'some other authority'. You did not tell us which other authority.

SHRI SUKHENDU SEKHAR ROY: My only question is this. Since you are the apex body of lawyers, what is your opinion about the maintainability of the provisions in the proposed Lokpal Bill in the event of the Act, after it is enacted, being challenged in a court of law? How far will it be sustainable keeping in view the *Kesavananda Bharti case* and the *Minerva Mills case* and the like?

ADV. P.T. THOMAS (IDUKKI): I am associating myself with Laluji on why we need a Lokpal Bill. Shri Rahul Gandhi mentioned in Parliament on the Constitutional validity of it. What is your opinion on that?

SHRI PRASANTA KUMAR MAJUMDAR: Why even after 65 years of Independence we are to look forward for an authority, in the name of Lokpal, to be able to get rid of corruption?

SHRI RAM JETHMALANI: The most important argument that has been made for excluding the Prime Minister from the jurisdiction of the Lokpal is that he is an elected head of the State; the nation has confidence in him; he is an external symbol of our sovereignty; and, therefore he has an international reputation to preserve and so on, and therefore it is not right to put him under the jurisdiction of the Lokpal. Kindly look at it from the other point of view. India is a country in which it subjects even its Prime Minister to a Lokpal; it comes to the credit of the country's democracy. The fact that the Prime Minister of the country is subject to the jurisdiction of the Lokpal, but he has never been taken to task or hauled up by the Lokpal adds to the stature of the Prime Minister; it adds to the stature in the international field as well. Therefore, put him under the jurisdiction of the Lokpal and his moral stature, integrity, character and other things are such that no Lokpal would ever go out of his way to touch him and that would add to his honour; that would be a great guarantee of the great position that he enjoys. I think, not to put him under Lokpal is a bad argument and kindly think about it and let us know your views about it.

The second thing is, we have been hearing about the supremacy of Parliament. We have borrowed this concept from Prof. Daisy's Law of the Constitution which deals with the British Parliament. That Parliament, according to the Professor, can convert a man into a woman and a woman into a man and the courts have to accept it. But, India's Parliament is not supreme at all. It is a Parliament which is subject to judicial review. Its legislative actions can be set aside by the Judiciary on the ground that they are contrary to the Constitution, that they are contrary to the fundamental rights of the poor citizens of this country. Please make no mistake; in a republic, it is not the majority of MPs who are sovereign, but it is the individual who is sovereign because the individual has a sanctum sanctorum protected by the fundamental rights chapter where all MPs unanimously from both Houses cannot enter into and trespass into. The citizen is supreme. So, we are a republic and we are not in that sense a Constitution of pure democracy of the British type.

Lastly, please bear in mind that in India, unfortunately, today our Fourth Estate is not powerful as it should be. I want to share with this gathering that I came across a TV channel where I discovered that thousands of crores of money are coming from foreign tax havens. I wrote an article in which I asked it to be explained as to where from did you get this money; who are these tax havens giving you this money you are getting. I received a notice from them saying that I would be sued. I said, "Please. I hope, you will do it to morrow instead of day after tomorrow." I have not heard of them again. This is the condition of the Fourth Estate in this country. If the Fourth Estate was powerful, there would have been no need for a Lokpal. We need a Lokpal because other institutions have failed us today and we are trying the last one desperately. Therefore, I think, it is good to put the media also under the control of the Lokpal. But, there may be some good reasons for saying no; but, kindly consider

media's failure in its duty and you are not dealing with that kind of a media which ought to be on the ground of its reputation and utility being excluded. Please apply your mind afresh and tell us what is the view of the Bar.

SHRI ASHOK KUMAR PARIJA: Sir, let me start with Mr. Pinaki Mishra. So far as the CBI is concerned, what we suggested was that the anti-corruption wing of the CBI should be hived off and made completely autonomous and it should be accountable to mechanisms which can be involved like a committee comprising of the Lokpal, CAG and CVC. This is one suggestion. Alternatively, you could have another committee, say comprising of the Prime Minister, the Leader of the Opposition, Speaker and Lokpal, etc. This is what I meant by 'answerable to Parliament.'

On the question of Lokpal having its office in the High Court, I do not think it is a serious issue.

Mr. Kirti Azad asked regarding delay in the justice delivery system, etc. For that, the ball is in your court. The National Judicial Commission has to come in and you have to have good judges to decide the cases quickly. The appointment of judges has been taken away by the Supreme Court by a judgment. The Parliament has done nothing about it.

I was present in a National Litigation Policy. I would take just two minutes on this, please do not mind. There was a lot of discussion in Vigyan Bhavan as to how the pending cases can be disposed of; many people suggested that we should have more number of judges, retired judges should come in. Shri Ram Jethmalani was there and when they asked him in the open house discussion, he told a small story. He said that a young couple had a daughter and she asked father, "I want a brother." After four months, she again asked father, "When is he coming?" Father said, "It would take about 7 months." She said, "Why do not you employ more men?" He squarely answered the question. Therefore, the National Judicial Commission is a must. Unless you do it, there is no point saying that the system is not working. You do not have the right kind of judges, you have a lot of vacancies in the country and they are not filled. We in the Bar are suffering because of that. The answer lies with you and not with us.

On a limitation of seven years, I think, it is a reasonable time. It can not be open-ended. The seven year period is a reasonable time.

There are some questions asked by Shri Ram Jethmalani, we would like to give a detailed submission on that. Very serious questions are asked by Mr. Laluji also. We will reply.

CHAIRMAN: We thank you all individually and collectively. We hope to have your written note.

Now, we would hear Dr. Pratap Bhanu Mehta. He is an eminent writer, academic; he is a professor at Harvard University. He is the President of Centre for Policy Research. You read him every other day. He has given us a submission already. He would present his views in 10-15 minutes and then we ask pointed questions and we try to wrap it up by 1.30 p.m., if we can.

DR. PRATAP BHANU MEHTA: Thank you, Sir. It is deeply humbling to be here. This is arguably one of the most important Standing Committee meetings in the history of legislations in modern India. I think, as Laluji reminded us, this debate is taking place against the backdrop of great public anger, great public consternation and many feel that the legitimacy of representative institutions is at stake. I think, it places a burden on not just Parliament but on all of us who are thinking about these institutions. We should think with a

calm and cool head. Winston Churchill once said that whenever there is a great clamour that something must be done, it is very likely that something bad will be done and we must avoid the danger.

WITNESS (CONTD.): What I will do in the next ten minutes is, I will just lay out two or three basic principles which I think any good, effective legislation should meet. I will ask the question whether this proposed legislation meets that test, and then, I will just make a few pointed observations on three or four questions that were asked of us about the inclusion of the Prime Minister and so forth. Now, we want a legislation that is practical and effective in combating corruption, but we also want a legislation that is compatible and consistent with the highest traditions of the parliamentary democracy, and if I may be so humble to say, we also should have a legislation that does not confuse accountability with stateism. I think there is a tendency to assume that because you have more laws, because you have more institutions that (a) produces accountability, whereas often what it produces is just state control over more and more things without necessarily producing accountability. So, we have to be very careful of making that distinction. Does the Jan Lok Pal Bill meet this test? Now, if we start with what we already have, and if I may humbly submit I think part of the trouble with the debate in the recent times has been its high on rhetoric and low on fact. Under the current system, we have a whole range of institutions that are supposed to produce accountability, the CBI, courts, the whole system of institutions, the CAG, Parliament, Standing Committees, the CVC. So, the question we need to ask is, what was principally wrong in this cluster of institutions that we were not producing the kinds of outcomes we needed, particularly with respect to corruption. In my understanding, the principal bottlenecks were two. One, that you did not have any independent investigative agency; and second, for higher officials, the whole system of sanction for prosecution proved to be a big bottleneck. These were the two principal bottlenecks, at least, on the Government side. There are issues about judicial delays and so forth, which we can come to. Now, in my view, this Bill's great strength is that it addresses both of these core questions. It creates an independent investigating agency. My own view is that the CBI and its Anti-Corruption Wing should be hived off, made accountable, put under the jurisdiction of the Lok Pal. This will have two benefits. Not only will it make the investigation anti-corruption part independent of political control but it will actually also strengthen an honest government servant because right now the fear of CBI misuse is both, which is, it is used to protect people who are corrupt but it is also used to threaten people who take a stand in the course of their official duties. So, the Lok Pal Bill provides for that. It also provides an independent mechanism for pursuing prosecutions. So, in that sense, I think, the basic architecture of the Lok Pal Bill is actually right. I would also humbly submit that the Lok Pal Bill is right in actually having a very narrow, technical and precise definition of corruption, which is, it makes reference to the Prevention of Corruption Act, and the Lok Pal's jurisdiction will be only those offences under the Prevention of Corruption Act. I think, this is very important because any expansion of the Lok Pal's mandate looking into things like mal-administration, public waste will very frankly lead not just to stateism but potential overreach and paralysis in Government. We have actually seen that happen with a lot of independent institutions. So, the Lok Pal has a very important function; it is very precisely defined in this, and, I think, we should stick to that.

Now, I come to the specific question, inclusion of the Prime Minister. I think it is important how we tell the story because one of the difficulties in the debates has been that we keep saying that the Prime Minister is not included, so and so is not included. Even under the current law, it is not that the Prime Minister is above the law. The Prime Minister comes under the Prevention of Corruption Act. It is just that the mechanism by which you give expression to that law. Some people would argue it is somewhat flawed in dealing. So,

nobody is saying that the Prime Minister should be above the law. I am just surprised that why we have not made that argument more forcefully. The only question is, given the importance of that office and given the character of that office, the manner in which the Prime Minister should be brought under the Lok Pal is of some importance. My own view is that I think the Lok Pal Bill, as it currently stands, gets it mostly right. It asserts the principle that the Prime Minister is not above the law, therefore, he can be investigated after he demits office. But he makes due allowance for the fact that the Prime Minister is not just an expression of the sovereignty of the people, the risks of needless investigations, frivolous investigations against the Prime Minister as it were holding Government to ransom, keeping the country's interests are not inconsiderable and, therefore, the Prime Minister should be out of the purview of the Lok Pal while he is in office. I may also submit another consideration which I do not think has been much discussed in the context of why the Prime Minister should be kept out, or, at least, kept out while he is in office, and that frankly has to do with Parliament. My worry is that if you bring the Prime Minister under the Lok Pal, you actually weaken Parliament. Why do you weaken Parliament? What will happen is, this is just a study of institutions because we know in institutions a lot of what happens depends on lot of informal conventions and processes that are built up. The minute you bring the Prime Minister under the Lok Pal, every issue will be referred to the Lok Pal, and it will actually short circuit parliamentary debate. Most accountability is actually not about corruption. It is really about this grey zone between influence, bad judgement and so forth. If you put everything to the Lok Pal, the Prime Minister will say, "Let the Lok Pal decide. If the Lok Pal gives me a clean chit, I am exonerated." He may be exonerated in a technical sense, but that becomes a political weapon. So, I submit to you that in order to assert the importance of Parliament and the fact that the Prime Minister as head of the Government as representative of the nation principally accountable to Parliament, it is important that the Prime Minister be kept out of the purview of the Lok Pal while he is in office. I say this not because that the Prime Minister is special, but because my hunch is that Parliament will become even less important, even more weaker, if everything is put in the basket of the Lok Pal.

Now, about inclusion of Members of Parliament, my own view is that the protection provided to the Members of Parliament under article 105 (2)(iii) should be sacrosanct. I think for what you say on the floor of the House and the votes and so forth, there is a reason for that constitutional protection and that should remain. Now, again, it is important how we tell the story. I don't know why even MPs keep saying, to be very honest, "Do not include MPs". The fact is, MPs actually are included, even under the current law. They all come under the Prevention of the Corruption Act. The only thing that is given constitutional protection is their conduct on the floor of the House. Now, is this really a big impediment to making individual MPs accountable? Not really. If you look at the Prevention of Corruption Act, all the provisions are there. If you have disproportionate assets, if you have unaccounted money, if you are caught on tape taking money, and you can't account for it, independent of what you do on the floor of the House, you are actually accountable. So, my submission would be not to say the narrative is somehow the MPs are exempted, the Prime Minister is exempted, the MPs are covered. The only thing that is given constitutional protection is their expression on the floor of the House. And I think that is the correct formulation.

The third point is regarding inclusion of NGOs, private citizens, and corporates. Here, I must confess, listening to the discussion a few minutes ago, my own view is probably against the drift of the general sentiments in the country, but I think, NGOs, corporates and private citizens should be kept out of the Lok Pal Bill. Now, in one sense, they are already part of the Lok Pal Bill. And again, how you present the narrative is important. They are part of the Lok Pal Bill in the sense that in the course of investigating any corruption by public

officials, of course, the Lok Pal can call any corporate; of course, the Lok Pal can hold them into account; and, of course, there are already lots of laws that cover things like embezzlement and abetment to corruption and so forth.

WITNESS (CONTD): But the reason, I would say, keep them out, is threefold. One, in the case of public officials you have a technical definition of corruption as laid down in the Prevention of Corruption Act. To be very honest, it is not actually clear what corruption would mean in the context of private citizens, NGOs and so forth. Abetting corruption is already covered. Suppose the Lokpal when he investigates any act of corruption and inquires about who was abetting corruption, you have already mechanism for it. But you do not have a precise definition what counts as a corruption. And this I think is the distinction between accountability and *statism*, currently the way law is drafted, it is just way too wide. If you just look at 17G, if you take it as an example, any organization that collects any donation comes under the purview of the Lokpal. The first organization that will come under the purview of the Lokpal is the political parties actually even if you do not take money from government. Do you want to risk giving any state agency, no matter how independent, that kind of pervasive potential control over society? Like Montague I believe societies produce greater accountability when they have a mixed constitution, mixed constitution meaning some people have more freedom than others. Private *actors*, we normally grant them more freedom than others because they have a particular function in society. So you will not be able to define corruption technically in a correct way which can

prevent misuse of the Lokpal's office. You will probably put the dynamism of a civil society, NGO sector and so forth to a standstill and I suspect there will be a lot of political vulnerability and chaos precisely because the ambit of this is so wide. Now a question was rightly asked about foreign funds and NGOs. The fact is that you already have very draconian provisions for that. The FCRA Act and in fact, my worry frankly is that FCRA Act has been amended in a way in which it will give government much more political control over private institutions. In a liberal democracy you have to balance two things. You have to balance accountability and freedom as well. And frankly, I am in the case of NGOs and civil societies and so forth willing to risk a little bit of maleficent and corruption for the sake of their freedom because if that goes away I do not think you will have these broader accountability mechanisms that you have in place. Then quickly last two points, one is about the inclusion of lower bureaucracy. My view is that the lower bureaucracy should not come under the ambit of the Lokpal, one for very practical reason which is that then the Lokpal itself will become a gigantic bureaucracy and a gigantic bureaucracy superintending another gigantic bureaucracy is not a recipe for efficiency. You need a separate mechanism for local bureaucracy. One possible view is that that is the mandate of CVC but the CVC also not to exercise that mandate directly, it uses other existing mechanisms like the architecture of chief vigilance officers that is embedded in different institutions. We can talk about those details but I do not think that lower bureaucracy should be part of the Lokpal. The final point is about CBI and CVC, as I said, the core problem in the current system is your investigating agency is not independent. As I said, it has two consequences, it protects the corrupt and it intimidates the honest. That is the big achievement of this Lokpal Bill. If the anti-corruption wing of the CBI is made accountable to the Lokpal, there is one other reason for making it accountable to the Lokpal. It is not simply in the sense of reporting like the CBI sometimes reports to the Supreme Court. What to matter for institutions is who writes your confidential report, who determines the structure of promotion and so forth. By bringing it under the Lokpal, you actually change that entire culture which currently exists in the CBI. So, my own submission is that to peg the CBI to report to this. The CVC, as I said, the CVC Act could be amended to make it a kind of supervisory body for the lower bureaucracy. But by and large, I

think this Bill is good, precise, and I think, its precision comes from the fact that it is a very clearly defined mandate. If you muddy the mandate too much, you will get an institution that is not effective and that is not very accountable. Thank you.

CHAIRMAN: There is an interesting dichotomy here, I find that you agree with most of the features of the Government introduced Bill except the CVC and CBI issues. The CBI without the anti-corruption wing may possibly be like Hamlet without the Prince of Denmark. This is A. B, obviously, they are going to be worried that they are going to be subordinate to a Lokpal. That is one part. Second part, equally a valid point, you need independence of investigation. So, how do you react to a loud thinking question that the whole of CBI which includes anti-corruption wing and you could create a Chinese Wall on the prosecution part separately so that you have a separate investigation and separate prosecution. If the CBI Director is made a member of the Lokpal himself so that he is neither subordinate nor he remains a cripple with three quarters of his powers because you cannot develop a new investigative wing for the Lokpal for the next ten years. The CBI for all its faults has expertise in investigation. If you are going to give investigation to Lokpal without investigative wing, so you will have to have existing wing. However the CBI without its anti-corruption wing is left with nothing and their stature goes and everything goes to examine class three or class four employees, etc. If you were to consider, I am purely asking an academic question, making the CBI itself a part of the Lokpal so the function fuses there but then they function together collectively as the top end fuses...

WITNESS: One thing we know about institutional designs is that it depends on lot of things. Right now some people in the CBI will argue that look that the total strength of the CBI is 3000 and you expect us to be effective as an anti-corruption wing, it is simply not going to happen. I think structurally that is a plausible idea but my only worry about making the CBI a part of the Lokpal itself, I think the head of the CBI would be in the awkward position of having to defend as it was the recommendation of the CBI for prosecution, in a sense both act as judge and jury in this case. Even if you say sequestered the decision on who actually sanctions prosecution, I think the institutional culture particularly the CBI Director would not probably have more information but in a sense have a kind of whole big institutional apparatus behind him. De facto I think the CBI will come to play much, much bigger role in the decision of

sanction of prosecution than you probably wanted. That is my worry. But that is something that I think..

CHAIRMAN: One point, Mr. Mehta, there is no sanction in the proposed Bill except there is a scrutiny at the threshold by the Lokpal, there is no sanction in the sense of 197 or the Prevention of Corruption Act.

WITNESS: I actually agree, not sanction but in a sense decision, the threshold level decision that one needs to proceed further. I do not think I can speak or many of us outside the system can speak to this very practical question of 'will the CBI in fact be diminished if these two wings were bifurcated'. To my mind that is still a very open question. I think we need a lot more argument for that.

CHAIRMAN: Please give us note after you reflect on that.

श्री अर्जुन राम मेघवाल : मैं आपसे यह पूछना चाहता हूँ कि जो सीबीआई के डायरेक्टर हैं, क्या वे लोकपाल के पैनल में आ सकते हैं ?

अध्यक्ष: इसके बारे में इन्होंने कहा है कि वह सोचकर बतायेंगे।

CHAIRMAN: He will respond in a written note.

SHRI HARIN PATHAK: Prathapji, my concern is about NGOs. You know there are two kinds of NGOs in this country. One NGO is funded by the Central Government. Some of them are funded by the State Governments. Crores of rupees have been given by the Central Government to the NGOs. We have 4-5 Bills with us. We received about 106 suggestions from various dignitaries of the country. The Bill says that the MP's conduct or the Joint Secretary or even Class I (B and C) employees are covered. A person who is taking salary of Rs. 15,000 as a senior clerk is asked to be covered under the Lokpal. Why not the NGOs, why a superb body of the country be kept out of the purview of the Lokpal Bill?

श्री शैलेन्द्र कुमार : सर, मैं मेहता जी से पूछना चाहता हूँ कि इन्होंने कहा है कि जो निचले स्तर के नौकरशाह हैं, उनको शामिल न किया जाए। आपने देखा होगा कि हिन्दुस्तान के अंदर जो गरीबी रेखा के नीचे जीने वाले गरीब लोग हैं, आज वही लोग सबसे ज्यादा भ्रष्टाचार से परेशान हैं। अगर इनको हटा दिया जाएगा, तो मेरे ख्याल से इसका मकसद पूरा नहीं हो पाएगा। इसके अलावा मैं मीडिया के बारे में भी आपके विचार जानना चाहूंगा।

श्री विजय बहादुर सिंह : कलेक्टर, डिप्टी कलेक्टर या ITO यही लोग तो ज्यादा गड़बड़ करते हैं।

SHRI N. S. V. CHITTHAN: I associate myself with the concern expressed by Shri Shailendra Kumar.

SHRI S. SEMMALAI: I also associate myself with the concern expressed by Shri Shailendra Kumar.

SHRI ARUN YADAV: I also associate myself with the concern expressed by Shri Shailendra Kumar.

SHRIMATI DEEPA DASMUNSI: I also associate myself with the concern expressed by Shri Shailendra Kumar.

SHRIMATI CHANDRESH KUMARI: I also associate myself with the concern expressed by Shri Shailendra Kumar.

SHRI PARIMAL NATHWANI: I also associate myself with the concern expressed by Shri Shailendra Kumar.

SHRI VIJAY BAHADUR SINGH: I also associate myself with the concern expressed by Shri Shailendra Kumar.

CHAIRMAN: I am happy that you are all associating.

SHRI RAM JETHMALANI: He is my educator because whatever he writes, I read him very carefully, with great respect and attention. But I have one suggestion to make that your argument, that inclusion of the Prime Minister will weaken the Parliament is slightly a very, very misleading argument because it applies to Ministers, it applies to every bureaucrat. They are all subject to Parliament's scrutiny and then you can't put anybody under the Lokpal's jurisdiction because it will weaken Parliament. Kindly don't put that big argument because that is a very destructive of the whole Lokpal idea. On the other hand, I don't believe that a Prime Minister possessed of the integrity which is expected of him has anything to fear from Lokpal. We are assuming that the Lokpal himself is a man of the greatest integrity or considers as a group of persons who are possessed of the highest integrity. So, they are not

likely to go after an honest Prime Minister. According to me, not being hauled up by the Lokpal is a point in favour of the integrity of the Prime Minister and his international and domestic acceptance.

SHRI PRASANTA KUMAR MAJUMDAR: I associate myself with the point raised by the hon. Member, Shri Ram Jethmalani.

SHRI PINAKI MISRA: You are a very prominent member of the civil society. You run a very prominent think tank. You have given a resounding vote of confidence as far as the Government Lokpal is concerned, and, yet you have seen how a section of civil society and other sections of civil society, the Jan Lokpal group as it were has savaged the Government Lokpal Bill. How can there be such diametrically opposite reactions to one Bill? How can one section savage it, so unequivocally and so completely trashed it. They have called it Joke Pal. They have called it all sorts of names. You are very well regarded world wide and how can you say that? Where is the common meeting allowed? We are unable to understand in which way civil society can think in such extremely diametrically opposite directions.

श्री रामविलास पासवान : हमारी सिर्फ दो क्वारीज़ हैं। अच्छी बात है कि मकान में जितने अभी पिलर्स होंगे, तो मकान उतना ही मज़बूत होगा। हमारा यह कहना है कहीं इतने ज्यादा पिलर्स न हों जाएं कि रहने के लिए घर ही न बचे। इधर कांस्टिट्यूशनल बॉडी बन गई, CBI बन गई, CVC बन गया और इधर पार्लियामेंट बन गई और अब एक नया लोकपाल बन रहा है फिर लोकपाल को देखने के लिए दूसरा लोकपाल बनेगा। कल उसको देखने के लिए भी दूसरा लोकपाल बनेगा क्योंकि भगवान के यहां से तो कोई आएगा नहीं, इन्हीं लोगों के बीच में से कोई आएगा। यह प्रकृति का नियम है कि पानी ऊपर से नीचे जाएगा। वहां पर करप्शन नहीं होगा, कोई इसकी गारंटी तो ले नहीं सकता है। अभी ये कह रहे थे कि हम 60 परसेंट ही गारंटी ले सकते हैं। जब ये 60 परसेंट कहते हैं, तो 6 परसेंट बचेगा। ये जो सारी चीजें हो रही हैं, तो क्या इनसे भ्रष्टाचार की एक और लेयर नहीं होगी अथवा क्या इनसे और करप्शन नहीं बढ़ेगा? दूसरी बात यह है कि जो राष्ट्रपति की oath लेते हैं, or President is pleased, Governor is pleased. उस समय जो उनकी CR लिखी जाएगी, वह कौन लिखेगा? जो कर्मचारी बहाल होंगे, उनको देखने के लिए, उनकी CR लोकपाल लिखेगा या वे किसके प्रति जिम्मेवार होंगे? हमें आप लोग ही इस कंप्यूजन के बारे में बता सकते हैं।

CHAIRMAN: We can now round off. Mr. Mehta will end with all the questions. He will answer them together.

SHRI PRATAP BHANU MEHTA: I will try and be as brief as possible.

शैलेन्द्र कुमार जी, आपका प्रश्न अहम प्रश्न है। आम जनता को जो भ्रष्टाचार परेशान करता है, वह नीचे के स्तर पर ही करता है। I will give two replies to that. One, if you assess the workings of our current institutions, आप CVC देख लीजिए। CVC नीचे के स्तर के कर्मचारियों को पकड़ने में काफी आगे है। आप CVC की कोई भी एनुअल रिपोर्ट देख लीजिए, अगर लोकपाल के दायरे में भी उसी प्रकार की पावर्स और प्रक्रिया चली तो लोकपाल भी उसी इंज़ंट में फंस जाएगा। 'Lokpal's Annual Report will come to Parliament', 'Five thousand people prosecuted.' 'Five thousand people arrested.' What will happen to SHO, Lower

Division Clerk? This is a judgment call on how institution will run that if you burden it with lower bureaucracy they will target the lower bureaucracy because lower bureaucracy is easier to target. They don't have legal protection. They are much more naïve about the way in which they conduct money whereas the big players do it in a much more sophisticated way, so they never get caught. I think, there is a kind of injustice inherent in that because very frankly within the structure of the Indian State, we all talk about social inequality in India, but the biggest exemplar of social inequality still remains the Indian State. It is a very hierarchically organized State. Class four does not sit in the presence of class one still and one the reasons why the State is so demoralized is because the lower bureaucracy has no ownership of the State. Nobody is asking them anything about the procedures by which they function and all we will do is put another big supervisory body up on high. My own sense is, they will actually rebel against the State but each Department and each social scheme requires a mechanism of its own. MGNREGA requires a very different mechanism than a passport office does.

WITNESS (CONTD.): So, we have to think, sector-by-sector. I think that is a part of the response I will actually give to Mr. Pinaki Misra as well.

श्री शैलेन्द्र कुमार: आपने यह बताया कि छोटे स्तर के कर्मचारियों को इसके अन्तर्गत न लिया जाए। जो बड़े स्तर के हाई प्रोफाइल लोग हैं, उनके लिए सीबीआई और सीवीसी बनी हैं, फिर लोकपाल की क्या जरूरत है?

साक्षी: यह लोकपाल कोई बड़ी क्रान्ति नहीं है। इस लोकपाल की जो खासियत है, वह यह है कि अभी जो इसका बना हुआ ढांचा है और उसकी दो खामियाँ मैंने बताई कि independent investigation नहीं है और यह sanction for prosecution पर अटक जाता है, यह सिर्फ उन खामियों को दूर करता है। यह तो कहानी दिखाने वाली जैसी बात है कि आप कह सकते हैं कि हमने बहुत बड़ी क्रान्ति ला दी और बहुत बड़ी संस्था बना दी। मैं इस बिल का समर्थक इसी वजह से हूँ कि यह बिल बड़े कारगर रूप से उन दो खामियों को दूर करता है, नहीं तो आप जो कह रहे हैं, वह बिल्कुल सही होगा। अगर जन लोकपाल का ढांचा बन गया और ऐसा कोई Ombudsman बन गया, आपने करप्शन की definition बढ़ा दी, आपने maladministration or public waste आदि सब कुछ इसमें डाल दिया, तो फिर वह बिल्कुल दूसरी तरह की संस्था बनेगी।

श्री शैलेन्द्र कुमार: क्या यह सब जन लोकपाल विधेयक में है?

साक्षी: इसीलिए मैं जनलोकपाल बिल का विरोध करता हूँ। The question you asked is correct. There are two problems. One, frankly, is a political problem. Political problem, in the sense, for the last year-and-a-half or two years, as a political scientist, I feel most of the countries experiencing a sense of great leadership vacuum. This is not with respect to any particular political party. But, both opposition and the Government have been reactive to everything that is put forward. I will give you one small example and this Committee needs to take it into consideration. If we are serious about eradicating corruption, Jan Lokpal just addresses the punishment problem. Frankly, punishment is only a very small part of deterring corruption. China executes thousands of people, but still it has corruption. So, let us not be under any illusion. What you have to do is, you have to look at the circumstances which produce corruption. We know the big corruption is in five or six sectors. They are: real estate,

natural resources, spectrum and mining. Each of those sectors requires a sector-specific regulatory system and solution. Unless you enact that, none of this will work. Now, the trouble is, in order to counter the civil society's extreme demand, you, actually, need a counter narrative. You cannot keep saying that we don't like this or that and not act on all those other things. Secondly, there is a philosophical disagreement within the civil society. I think, you could judge this from my presentation. The paradox of the civil society is, it begins from the premise that the State is corrupt and its solution is to give more powers to the State. My own sense is that there needs a balance. I say it candidly that I am inclined to risk a little bit of corruption. When hundreds of flowers are blooming, some weeds would grow as well in the NGO sector. But, if you use too much of pesticide, you are going to kill the flowers. I think, we should remember the historical context. For 40-50 years, it was the orientation of the State. We are going to use disclosure, we are going to use competition and we are going to use openness to produce accountability. We keep on saying, 'let us have another agency with more powers.' So far as NGOs are concerned, I agree, NGOs should be accountable. But, there are already a lot of accountability mechanisms. For FCRA...

SHRI HARIN PATHAK: I am not talking about the FCRA. There is no doubt that the FCRA is a very strong mechanism. I want to know what about the NGOs which are funded by the Central and the State Governments, not foreign funding.

WITNESS: Under this Bill, as I said, Clause 17F explicitly talks about NGOs that receive substantial Government funding. Those should be covered, because there you have a very specific definition of corruption. But, 17G, which basically says that if your *para pandal* society collects money, it comes under the Lokpal absolutely does not make any sense.

SHRI PINAKI MISRA: You are essentially saying that the judgment of the Supreme Court in Vineet Narayan's case is actually brought to its full fruition. Then, that is the end of the matter. Basically, that is what the Supreme Court said. The judgment of the Supreme Court in Vineet Narayan's case should be brought to its logical conclusion. That is all about it.

WITNESS: Last question asked by Shri Ramvilasji is about the accountability of the Lokpal itself. I think, there is a general challenge before the Parliament. You have a whole range of independent bodies. We have created more regulatory institutions and we will continue to create one. And, frankly, we have not thought of a systematic framework about how Parliament holds those bodies accountable. This applies to as much institutions like SEBI as it will do to Lokpal. So, my own sense is that we need to have a systematic framework, rather than we do ad hoc patch work in the case of Lokpal. My own view has always been that the cornerstone of accountability in a Parliamentary democracy has to be the Parliamentary Committee system. Frankly, if the Parliamentary Committee System does not work, nothing else will. Now, it is up to Parliament to demonstrate the credibility of that system. My sense is, if Parliament demonstrates the credibility of that system, people will rally behind Parliament. We should not pretend that the solutions to political problems are outside politics.

श्री रामविलास पासवान: मेरा एक क्लैरिफिकेशन है। लोकपाल और सारी चीजें बन रही हैं। आपने प्राइम मिनिस्टर के बारे में ठीक कहा। प्राइम मिनिस्टर पार्लियामेंट को represent करता है और चीफ जस्टिस ऑफ इंडिया ज्यूडिशियरी को represent करता है। जब आप चीफ जस्टिस को कटघरे में रखते हैं, तो आप ज्यूडिशियरी को कटघरे में रखते हैं। उसी प्रकार, जब आप प्राइम मिनिस्टर को कटघरे में रखते हैं, तो पार्लियामेंट को कटघरे में रखते हैं। हम यह कह रहे हैं कि जो लोकपाल बिल और अन्य सारे बिल हैं, क्या आप long run में यह नहीं

देखते हैं कि उनसे पार्लियामेंट की जो sovereignty है, उसको dilute करने का काम किया जा रहा है?

साक्षी: मेरा तो यही मानना है कि इससे पार्लियामेंट की sovereignty dilute होगी, लेकिन गवर्नमेंट बिल की जो विशेषता है, वह यह है कि वह काफी precise है। अगर Ombudsmen होता, तब तो पार्लियामेंट बिल्कुल खत्म हो जाती। फिर वह Ombudsmen policy matters आदि सब पर अपनी प्रतिक्रिया व्यक्त करता, लेकिन यह जो बिल है, जैसा मैंने विनीत नारायण जजमेंट के बारे में कहा कि गवर्नमेंट सिस्टम में independent investigation or prosecution की जो दो खामियाँ थीं, सिर्फ उन दो खामियों को दूर कर रहा है।

CHAIRMAN: May I thank you very much Dr. Mehta? On that happy note, at least, you have one working Parliamentary Committee before you. People may agree or disagree with our views, but we are a working Committee. Mr. Mugekar has a last point to make.

DR. BHALCHANDRA MUNGEKAR: Thank you Mr. Chairman and thank you Pratap for your brilliant, pointed and sharp presentation which would definitely help us in drafting the Bill.

I wish to seek one small clarification. So far as the funds that are coming under the FCRA, I happened to attend a meeting of the Ministry of Home Affairs. I shall communicate to you all that. According to one estimate, nearly Rs. 12,000 to Rs. 13,000 crores are coming annually to India under FCRA. One of the persons who is responsible to audit the accounts of the agencies getting foreign contribution told in the meeting, presided over by the hon. Minister, that he was not able to audit the accounts, because he does not know where more than 50 per cent of money has gone. Even the Government is not in the know of things. There are two things. The first one is, money is coming in a large way. Secondly, money is taken for one purpose and there is no guarantee that it is used for that purpose only.

DR. BHALCHANDRA MUNGEKAR (CONTD.): Thirdly, there are several challenges before India's integrity and sovereignty. Over and above that, nobody knows exactly where funds are going. Under these circumstances, whatever the Government of India and the State Governments are giving, it is relatively smaller amount as compared to the foreign amount. Money is being flooded and it is totally uncontrollable. Therefore, I would submit that you please reconsider this view. Then, the agencies which are getting Central funds, State funds and also from foreign resources could be kept under Lokpal.

WITNESS: Sir, he has raised a very important point. Here is my view on this. First of all, let us be very honest. We are, unduly, fixated on NGOs. In this world, you can move a billions of dollars through private channels. The beauty of the software is that there is no product. I know of software companies that often get offers. Can you say that you did work for 'X' or 'Y'? In that context, why are we singling out NGOs as the primary threat to national integrity, national sovereignty, and so on?

SHRI KIRTI AZAD: I have already given an example of a certain NGO like this.

WITNESS: But there is an important point. My big worry is this. We have had this experience in the country. Unfortunately, I still have that experience. Freedom of expression is not as protected a commodity in this country as it should be, whether the target is the Left or the Right. What have they done in the FCRA? They have given a Deputy Secretary level

official the power to suspend the FCRA accounts. You have to prove your innocence; you do not have to prove your guilt.

Sir, one last point on the accountability and I will end with that. One of the arguments we have often made as a Civil Society Organisation to the Society Trust or Commissioner of Charity is that they have not done even a simple thing. Why don't you make all the accounts of NGOs transparent and put them on website? You will have other people holding them accountable. You will say उसका पैसा वहां से आया, वह क्या हुआ? But they are not taking even such simple steps. This is what I have to say.

CHAIRMAN: Thank you very much. I request all of you to be back by 2.20 p.m. latest. Thank you.

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(The Committee then adjourned for lunch at 1.32 p.m.) (The Committee re-assembled after lunch at 2.20 p.m.)

Witness

Shri Harish Salve

CHAIRMAN: Friends, we have a very eminent jurist, former Solicitor General of India, Mr. Harish Salve, who has kindly agreed to share his views with us. I am just reminding that the proceedings here are confidential. I would like to say just one more thing in the light of yesterday's and today's discussions that we know that we have about seven or eight major issues which keep recurring. I think he would take about 30-40 minutes and then we can have questions, but insofar as the questions involved like inclusion or exclusion of Prime Minister, persons below a certain category being included, or higher judiciary's inclusion, etc. are concerned, those could be put in the beginning as they are common to all of us and then we can have supplementary questions. It would save time that way. We have a reasonable amount of time, there is no problem, but I just thought I would set it down like that. Now, Mr. Salve.

WITNESS: Mr. Chairman, I am, indeed, grateful for this opportunity to come and share some thoughts on this issue which has wracked the conscience of our nation for some time. There are 12 broad issues which I notice the Committee has been focusing on. I would make some general comments and then address you on seven of those 12 specific issues.

The enormity of the problem is something on which I do not need to wax eloquent on. You are all very eminent elected representatives of all of us. You know the problem. You know the public sentiment. What worries me as a lawyer is that the ultimate goal of all this is to make the liberties we have given to ourselves more meaningful. Let us not adopt a path which destroys those very liberties. We have, Sir, in the past seen laws dealing with terrorism, laws dealing with narcotics, in which we have curtailed citizens' liberties. Those are externalities which work on any Government system, which work on a democracy, and we need special measures, special weapons, to fight those who indulge in that. Corruption is a social evil. If we have corruption, it is because each one of us in our own way has contributed to that corruption, and till we eradicate corruption in our hearts we will not fight this menace. It would, therefore, become, in my respectful suggestion and submission to you, very dangerous to follow a path in which we sacrifice certain basic liberties such as the rules of privacy, the rules of fair trial, the rules of impartial investigation, which as a civilized system we have adopted for ourselves, in our battle over this menace of corruption.

The second thing which I want to say is that there is a gap in our system and we need to fill that gap, and the Lokpal fills that gap. Some of the provisions which I have seen in the civil society drafts do not seek to supplement the system to fill in the gap in the system but seek to turn the system on its head. Civil liberties, federalism, separation of investigation from trial, freedom of investigation from any kind of interference, etc. are basic values. Whenever somebody criticizes our judicial system, I always say, I know it is a terrible system but the problem is that nobody has invented a better system. Are we going to throw all these overboard to create one monolithic authority that will be the master of all these services?

With great respect, as a lawyer, I cannot subscribe to any such suggestion. We have to fill in the gap which we find. I would give my suggestions on those seven or eight issues, but I beseech this Committee, please, do not fall prey to any suggestion that we must discard what we have or we must find quick-fixes for endemic problems. If we have a problem today because trials are not disposed of for 10-15 or 20 years, we do not do away with the fairness to the defence in the Code of Criminal Procedure; we need to get more judges. We cannot have a system in which the police can convict because our judges take too long. Therefore, Sir, before I address you on the specific issues, I must respectfully submit to this Committee that we have a gap in our system and please, do suggest a law which effectively plugs that gap keeping intact certain basic values in our jurisprudence, certain basic liberties which we guarantee to ourselves and the principle of federalism which has become more important to us today than it was may be even 50 years ago.

With this, Sir, I would now address you on the specific issues. Broadly, there are three heads in relation to the working of the Lokpal. One is, an effective enforcement of the Prevention of Corruption Act. The second, which shows up in the civil society draft, is addressing misconduct not amounting to corruption.

WITNESS (CONTD.): The third heading is Grievance Redressal. Sir, having spent three decades-plus in the legal profession, hands on having dealt with cases involving service law, cases of judicial review where courts have stepped in for grievance redressal and cases involving criminal law and Prevention of Corruption Act, I must respectfully submit that these three operate in very different fields. They require different mindsets. You require a generous or liberal mindset when you are dealing with grievance redressal. You have to be very careful when you are charging somebody with an offence of corruption. Putting all these three in a group of seven or a group of five, not necessarily trained in law, is bound to create more confusion and in the ultimate analysis more disquiet than the problems it will solve. There is a crying need for a grievance redressal mechanism, that is, an ombudsman for grievance redressal. You may call him a Lokpal or you may call him by any other equally good name. But, Sir, we have to keep in mind the distinction between these three facets when we address the powers of Lokpal, the width of his powers, his functions and his mechanisms. In this context, the first issue that arises is: Can we have one common law for the Union and the States or must we have separate laws? I have seen the draft of this Civil Society. In that frame, the draft, in my view, would be violative of the States' rights to govern themselves. I do not see any reason for a vote of no-confidence in the Governments of our States. They would be as responsible to public outcry and to public sentiments as the Government at the Union. I do not see any reason why we must distrust them from enacting similar laws. We cannot sacrifice federalism because a group of people do not have faith in the State Governments. If the law is to come in that form, then it cannot, in my respectful opinion, apply to the States. The States in Entry 41 List-II of the Constitution have the right to regulate their own services as any employer should. If the States have to govern themselves, it must be under their own law. Prevention of Corruption Act enforcement, undoubtedly, whether at the Union or the States, is the Union law and there can be a Union agency to enforce the Prevention of Corruption Act across the length and breadth of India. But if you get into areas such as misconduct which transcends the Union law and trenches on civil services, the rights of State Civil Servants, in my view, in this form, Sir, it would possibly run foul of the separation of legislative powers in our Constitution. I have a suggestion, Sir, and possibly the time is right to consider that. This is an excellent opportunity to frame under Union legislation a Citizens' Charter. I do not see, Sir, in my respectful submission to you, any specific Entry of the State which would apply to the framing of a Citizens' Charter and which would then put it squarely within the power of the Union Parliament. If you do frame a

Citizens' Charter, Sir, then certainly as an incidental power, the Union Parliament can appoint an agency to enforce that Charter. And if that incidentally encroaches on the State's field, that is permitted by our Constitution. The statutory Citizens' Charter can delineate broad head and confer rule-making power and this can be made binding across India because this would not be a law which would regulate governance of the State; this would be a law creating rights in individual citizens and where it comes to rights of individual citizens the federal divide does not apply. We all know and all of you know better than lawyers like me where the shoe pinches the common citizens. It is our view, Sir, that this resounding support is principally the expression of fatigued, of helplessness of average citizen. And the average citizen is, undoubtedly, affected by corruption at high places but the life of the average citizen is more affected where basic services are not available to him -- where your roads don't work, where your police system doesn't work, where your land distribution system doesn't work, where your farmer cannot get his disbursements in time, where he cannot get his seeds in time, when he cannot carry his produce in time and so on. And that is the corruption which disables this great country from achieving its true potential. Yes, corruption at high places does affect the national economy. But, I think, Sir, a Citizens' Charter, which addresses the concerns which each of us, as ordinary citizens, face in our day-to-day life, would be a far greater gift from Parliament to this country than merely yet one more authority to enforce the Prevention of Corruption Act. Sir, I may be one of those in the minority who believe that when you look across the world, India possibly has more transparency today than most countries of the world. After the RTI Act, nothing is secret in India and, I think, that is a great strength of this country. No paper is secret. And it is not new. Sir, there is a famous joke about what Mr. Daftari once told the court. He produced a paper in court in 1950s. The judge asked him, "Where have you got it from?" He said, "Anything less of Cabinet minutes you get in five minutes; Cabinet minutes take ten minutes to get." We have had an open transparent society and, I think, it has served us well. I think, the kind of transparency you have in India is more than the transparency you have anywhere else in the world. It is very interesting what people in England said when the Millennium Dome was made. How it was made and who was given the contract? When you see Defence contracts in the United States, you will realize what opacity in Government functioning is all about. So, I am very proud of our country and, I think, we live in a great country with great transparency. In fact, sometimes you feel there is a little too much transparency. So, I don't think the real problem of the average citizen is transparency at that level. We know every little detail and we are fed up of what we are hearing about 2G case. But, I think, it is far more important to know why the roads of Delhi are not being fixed. Therefore, I feel that if the Citizens' Charter is made, it will be a much bigger gift by this Parliament to the people of this country and a far more desperately needed gift and with that can come the enforcement across the country of grievance redressal.

WITNESS (CONTD): And that, Sir, would not violate any federal principle.

I move to the next head - inclusion of the Prime Minister. I must respectfully submit that there are arguments for and there are arguments against. I have not heard a powerful argument as to why in our system, the Office of the Prime Minister should be completely kept out. At the same time, there have to be areas of clear demarcated exclusion in the working of the Prime Ministerial Office which cannot be subjected to the Lokpal. Sir, the Prime Minister symbolises the head of this nation, not only within the confines of our border but globally, and if India has to take its place in the sun, whatever may be our internal differences, we are proud of whoever is our Prime Minister because we have elected him and put him in the Office and we have to create sufficient exclusions from the operation of the Lokpal law in relation to the Prime Minister's Office. Sir, I would submit, there are two models which you can look at. The U.K. has excessive exclusions, but it has list of

exclusions. Foreign affairs and the affairs relating to the security of the State are two clear examples where, obviously, the Lokpal can have no look-in. The Hong Kong law is far narrower in its exclusions. One can debate individual items, whether they should or should not go; maybe the functioning of the Prime Minister's Office in the economic Ministries needs to be put under the Lokpal. But, outside the economic Ministries, I would suggest it would be hazardous to generally subject the Prime Minister to the jurisdiction of the Lokpal. We have to strike a balance somewhere and I think, that may be a good line to consider on which it can be divided. We have to keep one thing in mind. We want the doors of the Lokpal to be open, the windows to be open for any aggrieved citizen to come in. Along with that, we run the risk of nine complaints, out of ten, being on less than responsible basis. That is a price you pay for an open system. In a system like this, to subject the Prime Minister unqualified, without exclusions, to the Lokpal may turn out to be a remedy far worse than the disease.

The third heading is regarding the control over the CBI and the CVC. Sir, I have, with great respect, strong views about subjecting the working of the CBI in its investigative area to any kind of interference. The Code of Criminal Procedure confers sole jurisdiction on the judicial system, principally the Magistracy, to oversee investigations and that is where, Sir, in my respectful submission, this power must continue to lie. If we do not have enough Magistrates, we need to provide for more Magistrates. A quick fix or a shortcut in this area would be hazardous. Sir, if the structure of the CBI, if the internal functioning of the CBI, how they recruit people, how they promote people, how they deal with people, or, if the administrative wing of the CBI is subjected to Lokpal, there can be no objection. If the CBI makes a building for itself in which the contracts are awarded in a corrupt fashion, of course, the Lokpal must have jurisdiction to look at that. But, to subject the investigation by the CBI to oversight by a Lokpal, I would submit, is one area where we are then not filling the gap, but you are supplanting the system. We have a problem of huge queues in our Courts. The problem has to be fixed by more Judges and various other ways. That should never be an excuse to displace the system. If the CBI is not investigating fairly, we need to strengthen the CBI. If there is a problem in the working of the CBI, if you are satisfied that CBI is not acting independently, make it independent because independence, as everybody knows, is a state of mind, it is a state of functioning, it is a state of governance. What is the guarantee that the Lokpal will be independent? So, we have to trust somebody. We must trust, in the ultimate analysis, each institution. Sir, some of us strongly felt you cannot have laws dictated outside the Parliament. Laws must be dictated inside the Parliament and if somebody feels that the institution of Parliament is not working well, you strengthen the institution. We strongly feel that if there are queues in the Courts, you address the problem as to why there are queues in the Courts; you don't do away with the fair procedure, you don't do away with the justice delivery system. By the same token, if your investigations are not being conducted properly, you strengthen the police; you don't displace the police. Displacing institutions is finding quick fixes which will, Sir, in my very respectful submission, be a remedy worse than the disease.

Fourth comes the question of how far the conduct of Members of Parliament can be subjected to review by the Lokpal. Article 105 is extremely clear. The control over the Parliament must lie within the Parliament. As much as the control within the Courts lie with the Presiding Officers, as much as nobody from outside Court can tell me what to say in the Court, nobody from outside Parliament can tell any parliamentarian how to behave and what to say in the Parliament, and that is far too precious a virtue for us to sacrifice or compromise. But, Sir, do take this occasion to clear up one terrible aberration that has come into our law. Where article 105 applies, there is complete immunity. But, Sir, please clarify that the immunity of article 105 is not a half-way house; the bribe taker is protected and the

bribe giver is subjected to scrutiny of the law. That judgment needs to be corrected. If it is established that somebody has taken a bribe to vote in Parliament in a particular way, with the sanction of the Speaker, because Supreme Court read that in, that can be put on a statutory basis, and if the Speaker of the House considers it appropriate, it is a matter which can be put within the domain of the Lokpal for the investigation. And, once the Speaker of the House, which means once the House, feels that it is a fit case for the Lokpal, then this artificial divide between the bribe giver and the bribe taker must go.

WITNESS (contd.): Then comes the question of grievance redressal. Sir, I have already addressed you on the Citizens' Charter. What I suggest is, taking a leaf from the current Electricity Act, which we have, a structure should be created under the Union law in which States will appoint grievance redressal authorities. So, that also respects the principle of federalism. We have it already in the Electricity Act where State Commissions are appointed. So, under the Union law, you can always leave it to the State Governments to appoint their own grievance redressal authorities. You can prescribe what the collegium will be and you can prescribe as to how that collegium will appoint the grievance redressal authority but it must be left to the States. So, while I suggest that it is a Union law which addresses the problem, it should be consistent with the principles of federalism. You create the statutory structure, the Union does its job, the States do their job.

The sixth issue, Sir, is 'inclusion of NGOs'. This is again an issue on which I have strong views. We have battled it in the courts, in the Public Interest Litigations. We have appeared on both sides. Sir, I do not need to dwell at any length before this Committee about the need, in the ultimate analysis, primarily to eradicate poverty from this country. All our constitutional rights are meaningless till such a large number of our brothers and sisters live below the poverty line. Eradication of poverty again has only one route and that route is 'development'. However you achieve that, without development, you cannot have poverty eradication. Sir, it is my experience that a large number of complaints which, at least, we have seen in the courts, and, which I see now, will go before Lokpal, are disguised attempts to block the process of development. We have, in some cases, even seen evidence of how NGOs have been used to file cases by foreign Governments, by foreign agencies to block the development projects in India. Sir, it is time that the NGOs are made accountable on issues like from where they receive their money, how do they utilize that money etc. If they want to be a part of India's governance, and, they have become a part of India's governance, then, they must share the accountability with other institutions of governance. Otherwise, you cannot claim to be a part of governance. If the civil society wants to tell the Parliament how to make laws, then, it must expose itself to the same degree of transparency and accountability which it expects from the Parliament, the Union Government and the State Governments. Speaking for myself, I have been bewildered by the objection to NGOs being brought under the Lokpal. Advocates of transparency cannot claim opacity when it comes to their private affairs.

Similarly, Sir, there is a related issue of false complaints. Yes, the definition has to be very narrow. A complaint may be demonstrably false to a person's knowledge but if a complaint is deliberately false to your knowledge, then, that complaint must be actionable. With the media the way it is, the initiation of inquiry by the Lokpal against a Government servant, against a person holding high office, against a person in public life itself will have far-reaching implications. In a situation like that, Sir, it is cold comfort to the person, whose name is dragged as a common criminal at the initiation of an inquiry, to be told after three years that there was nothing against him. So, there may be people who initiate false inquiries, not wrong but false inquiries, and, in law, there is a difference between the two. You may

genuinely make a mistake or you may deliberately give false information. If you have deliberately given false information to the Lokpal, in my view, it must be actionable.

Finally, Sir, comes the vexed question of how do you select the Lokpal. Sir, I have somewhat different views in this matter. Sir, the kind of authority which you are about to create will be no less important than a Judge of the Supreme Court of India, and, if you were to ultimately adopt the Jan Lokpal model, then, he will be a far more important than a Supreme Court Judge. Surely, he cannot be appointed by a group of lay people as is being suggested. There is a crying need for accountability in the judiciary. And, I say this as a Member of the Bar who practices in the court day in and day out. There is a crying need for accountability in the judiciary. They cannot be put under the Lokpal but, at the same time, there has to be some machinery. One very important area is the appointment of judges, and, I submit, Sir, this is a golden opportunity for this Committee to set up a collegium, which today may appoint a Lokpal but tomorrow can be extended to appointment of Judges. Why should we not have one collegium for appointment to these offices? You don't need separate collegium. Whether it has the Prime Minister -- as it possibly must, whether it has the Leader of Opposition -- as it possibly must; whether it has the Speaker of the House -- may be or may not be; whether it has the Chief Justice -- as it possibly must; you add these people, and, you add a few people and say how they are to be selected. If they are good people to appoint a Lokpal, tomorrow, you will have a strong case to say that they are good enough to appoint of Supreme Court judges. So, I submit, Sir, when you are drafting this bit of the law, please have in mind that you are creating somebody as important or depending on the structure of the law more important than a Supreme Court judge. Please create a collegium, which is appropriate for that appointment, and, you would have killed two birds with one stone. You would have laid the foundation and solved half the problem of the judicial accountability. That, Sir, is my respectful submission.

CHAIRMAN: Thank you very much for making precise, pointed and significant submissions. Now, we will have questions. I just want to set the ball rolling by asking one clarification. As I understand, Mr. Salve, you are suggesting that for grievance redressal, the Union legislature may have a law, which allows the States to appoint the authorities, somewhat like Electricity Act. For prevention of corruption, do you think that the Central Government can make a law which will be also the *Lokayukta* law for the States? It is the question which arises on the competence issue. And, related to that, you mentioned about misconduct. I am not sure whether you are putting it differently obviously from corruption and differently from the Citizens' Charter. Where does the misconduct come, and, where is that competence. That is one question. The second is about your views on the Constitutional status, if any, for this body. These are the two questions.

WITNESS: Sir, as far as Prevention of Corruption Act is concerned, it is my view that being a Union Law, you can appoint a *Lokayukta*, and, a Lokpal both. But, I would suggest, as for the grievance redressal, you create the statutory structure for the *Lokayukts* for the prevention of corruption, and, leave it to the States to appoint the Lokayukts. The *Lokayukta* for the State should not be appointed by the Union but the statutory structure, as for the grievance redressal, can be created by the Union legislature.

Sir, misconduct is, in a manner of speaking, left out for the reason that if we have a Citizens' Charter and we create enforcement of that Citizens' Charter through grievance redressal authority...

WITNESS (CONTD.): And, in that context, you have a provision saying that somebody who violates the Citizens' Charter shall be punished by a fiscal penalty. That is one area.

On misconduct, if you have the power of dismissing somebody from service, in my view, that would squarely trench on the States' legislative field.

CHAIRMAN: Under which List would you locate the power of, for example, corruption jurisdictional Lokayukta in the Central legislature?

WITNESS: Under Prevention of Corruption Act and, therefore, List III.

CHAIRMAN: And constitutional status?

WITNESS: Sir, on constitutional status, my personal view is that you should start with legislation. This is an experimental law. I am sure over a period of time, you may need to make corrections or changes once it is settled in, say, for five or seven years. Then only we know how it works. It may be a salutary idea to then give it a constitutional status.

श्री रामविलास पासवान : आपने समिति के सामने बहुत ही संक्षेप में अपने विचार रखे हैं। समिति निश्चित रूप से इन विचारों से लाभांवित होगी। हम आप से दो-तीन चीजें जानना चाहते हैं। आपने इंडियन जूडिशल कमीशन की बात कही है, तो इसमें दो चीजें हैं, जो संविधान की धारा-312 है, उसके मुताबिक ऑलरेडी यह है कि यूनियन पब्लिक सर्विस कमीशन के तहत एक इंडियन जूडिशल सर्विस होगी। जिस तरह से इंडियन एडमिनिस्ट्रेशन सर्विस है, इंडियन फॉरेन सर्विस है, उसी तरीके से यह भी होगी। 1971 में इसके लिए अमेंडमेंट किया गया, लेकिन तब से लेकर आज तक 40 सालों में उसको इम्प्लीमेंट नहीं किया गया है। इसलिए इम्प्लीमेंट नहीं किया गया क्योंकि इस बात का डर था कि इसका इम्प्लीमेंटेशन होगा तो उसमें एक परिवार का जो बोलबाला होता है, वह नहीं हो पाएगा। जिस तरह से IAS, IPS का होता है, उसी तरह से उसमें भी होने लगेगा और वीकर सेक्शन के लोग भी आने लगेगे। आज वीकर सेक्शन के लोग (एससी, एसटी या माइनोरिटीज़) लोग बिल्कुल नगण्य हैं, वे आने लगेगे। इसलिए जानबूझकर यह रख दिया गया कि सुप्रीम कोर्ट के चीफ जस्टिस राय दें। अभी तक दुर्भाग्य से उस पर राय नहीं आई है। इसका नतीजा यह हुआ कि अभी तक इंडियन जूडिशल सर्विस नहीं बन पाई। आपने इंडियन जूडिशल कमीशन कहा है, जिसका अर्थ है कि यह फिर बीस साल लेगा। आप कमीशन बनाइए, उसमें कौन-कौन लोग होंगे, क्या-क्या होगा? अंततोगत्वा आपको इंडियन जूडिशल सर्विस बनानी पड़ेगी, क्योंकि संविधान की धारा है। आपने कहा है कि अभी जूडिशरी में कोई स्टैंडर्ड नहीं रखा गया है कि कौन जज़ होंगे, क्या क्वालिफिकेशन होगी और न ही कोई ट्रांसपिरेंसी है। इसलिए संविधान की धारा-312 के अंतर्गत इंडियन जूडिशल सर्विस का निर्माण किया जाए। इसमें क्या कठिनाई हो सकती है, क्या नहीं हो सकती है, हम यही जानना चाहते हैं।

इसी तरह से आपने NGOs के संबंध में भी कहा है, लेकिन what about media and corporate houses? इनको लोकपाल के अंतर्गत क्यों रखा जाए, क्यों नहीं रखा जाए? आपने Selection Committee के संबंध में कुछ नहीं बताया है। जो Selection Committee होगी, उसमें SC, ST तथा बैकवर्ड व माइनोरिटीज व महिलाओं आदि को रखा जाए या नहीं रखा जाए। यदि रखा जाए तो किसके तहत रखा जाए या जो संविधान की धारा है, उसके अंतर्गत रखा जाए।

जब एक पेरल कांस्टिट्यूशन बॉडी बन रही है जब कांस्टिट्यूशन के तहत आरक्षण है, और वीकर सेक्शन के लोग ही करप्शन से ज्यादा पीड़ित हैं, तो फिर वीकर सेक्शन के लोगों को इसमें क्यों न रिजर्वेशन दिया जाए?

श्री शैलेन्द्र कुमार : महोदय, मैं आदरणीय पासवान जी की बातों से अपने को सम्बद्ध करता हूं। साल्वे जी, आपने तमाम बिन्दुओं का जिक्र किया है। यहां पर मीडिया के ऊपर व्यापक तौर पर बहस हुई है, तो इसमें कहीं न कहीं मीडिया भी इन्वॉल्व है। खासकर जो कॉर्पोरेट घराने हैं, हमें लगता है, भ्रष्टाचार को ज्यादा बढ़ा रहे हैं। यहां पर जो आरक्षण की बात कही गई, तो इसके लिए समितियां बनें, चाहे लोकायुक्त बने या लोकपाल बने, सर्वे कमेटी बने या कुछ भी बने, उनमें किस प्रकार से नियुक्ति हो? आज जो वीकर सेक्शन के लोग हैं, वही लोग ज्यादा प्रभावित हैं और उन्हीं के ऊपर भ्रष्टाचार की मार ज्यादा पड़ती है। इससे निजात पाने के लिए एससी,एसटी, ओबीसी या महिलाओं की भागीदारी सुनिश्चित होनी चाहिए।

श्री अर्जुन राम मेघवाल : सर, मैं साल्वे साहब से यह जानना चाहता हूं कि आपने यह कहा है कि प्राइम मिनिस्टर लोकपाल के परव्यु में नहीं आना चाहिए। आपने यह कहा है कि अगर आना भी चाहिए तो उसमें economic ministry को इन्क्लूड करना चाहिए। हम इसको elaborate करना चाह रहे थे कि economic ministry में कौन-कौन सी एक्टिविटीज़ हैं, जो इसमें आएँ। आपने जो यूके का उदाहरण दिया है, आप उसको elaborate करें। जो बात पासवान जी ने इंडियन जूडिशल सर्विस के बारे में कही है, उसमें एक आर्टिकल तो है, लेकिन उसमें एक कंडिशन डाल दी है कि राज्य सभा का एक प्रस्ताव चाहिए। राज्य सभा के प्रस्ताव की कंडिशन क्यों डाली थी, हम इसके बारे में आप से legal view जानना चाहते हैं। बाकी किसी में जरूरत नहीं है, लेकिन इसी के लिए राज्य सभा का प्रस्ताव क्यों आवश्यक है?

एक बात आपने कोलिज्म की बात कही है, तो क्या जजों के लिए, लोकपाल के लिए एक ही कोलिज्म होना चाहिए?

अध्यक्ष : यह जो इंडियन जूडिशरी सर्विस की बात है, यह अलग विषय है, लेकिन ये पहले प्रश्नों का उत्तर दे दें, अंत में थोड़ा उस पर भी बोल लेंगे।

WITNESS: The most important issue is this. Media and corporate houses के करप्शन पर किस तरीके से रोक लगाई जाए। My considered view is that we need a media regulator in India. Unlike other constitutions, especially the American Constitution where the US Supreme Court had to read in conditions, our Constitution framers in their wisdom did not give unqualified rights of free speech. Sir, constitutional law, as we lawyers have understood, is a beautiful organism which grows with the nation and with time. It is not a fossil which lies in a stone. The kind of regulation which was not needed in the 50s and 60s when we had print media may today be needed when you have electronic media. The reach of the electronic media, the swiftness with which you can disseminate information, everything has gone through a change which ten years back we could not have even dreamt of. I think we need a separate mechanism to deal with it. You can do it under the same law to regulate the media

where 'news' is either motivated or established to be motivated. And you clearly define 'corrupt news' where somebody has planted news knowing that he is planting that news.

WITNESS (CONTD.) : If you take money from somebody to show the news be it from a corporate house, be it from a political system, be it from wherever, I do not, Sir, in today's India see why they should not be ranked as severely as a corruption by a Minister or a civil servant. In fact, in our perception, as a student of Constitution Law, the 70s, 80s saw Government, Courts and Media in that order. The 90s saw Government and court, occasionally swirling around the media behind. Today, we see media, court and Government in that order. The media drives, the court backs it up and the Government follows behind. I do not think this is a way in any democracy to work. Transparency is good but being led by the 'noes' is not good. It is very good we must have a transparency. But I think the time has come where the definition of 'corruption has to be widened beyond a civil servant or a Minister or a public servant taking a bribe. This also extends to corporate houses. Any corporate house involved in any kind of corruption, I may tell you, you will hear from our corporate houses that you are interfering with our autonomy, please see the Foreign Corruption Act now enacted in the United Kingdom. If a corporate official from the U.K. takes an Indian Income Tax Officer for anything beyond dinner. Dinner is the only thing allowed. It is corruption in the U.K. He will be prosecuted in the U.K. Anywhere in the world if it is found that a foreign official has gifted a pen to an Indian or an African or an Argentinean, it will be a corruption in the U.K. and he will be prosecuted. That is how they strongly regulate their corporate houses. We need corporate houses as power houses of growth, but it is an animal which has to be controlled. Corruption today has to be dealt with wherever we find it. It is not today the preserve of the public servant or civil servant. Corruption can come from anywhere and so any argument which you hear in my submission that oh! You are unduly interfering with the corporate autonomy is not really true.

The second question related to the selection committee. Sir, with great respect, I completely share the perception that unless there is perceptible inclusiveness, the institution will not enjoy the kind of public respect and public support which needs to enjoy and that is one of the major problems with our judiciary. I share that perception. We now have to find a system which enmeshes inclusiveness with proper selection of talent and one way which we have been working on and I will place that before the Committee could be that you have a wide search committee which is appropriately represented by all sections of the society which throws up three names, four names and five names and then you have a collegium which select from out of those five or seven people which addresses both issues of inclusiveness of having the final power of appointment in a handful and manageable form. I do not think we have reached that level.

In the United States, for example, the District Attorney is elected. What more inclusiveness can you have? He is ultimately elected. So, people's representation comes in. It becomes an electoral office. Then, of course, all these social projections which we have for different segments come in. But we can take the first step towards that by having a search committee which is fairly inclusive for all segments of the society and that I feel would add strength and not dilute the institution because the person selected, the poorest, the humblest, the most needy will identify with that person.

As far as the inclusion of the Prime Minister in the ambit of the Bill is concerned, my suggestion was on the balance in India. We must include the Prime Minister, at least, in the working of the PMO in the Economic Ministry and that include the Ministry of Finance, Ministry of Mines, Ministry of Telecommunications, the Ministry of Urban Development,

Ministry of all natural resources, wherever dealing with the taxpayers' money, wherever you are dealing with the finance must come within the purview of the Lokpal Bill.

Finally, to address the question about the All India Judicial Service, there are two points of view. One is the All India Judiciary Service which will lead to judges who don't come from the Bar, essentially, but judges who start their life as judges and end their life as judges. There is an argument for it; and there is an argument against it. For example, in Europe you become a Judge to start with. It is not necessary that you practice for 15 years and then become a judge. There is nothing wrong in that system. Yes, there is a strong argument for saying Members of the Bar should ultimately be taken, but on the balance, my personal view has been that I think India for the present may be All India Judicial Service will be far better than what is being done today. Why Rajya Sabha for a reason? In the present federal system it is the high court which is the highest court of a State which appoints the State judiciary. All India Judicial Service will be an appointment of a State down from the top. I don't there is anything wrong in that. That is beyond personal view. The reason why Rajya Sabha must pass a resolution, it is the Council of the States that you must have All India Judicial Service. So be it. I think, Sir, the time has come when you must seriously consider having an All India Judicial Service.

श्री रामविलास पासवान : मैं जानकारी के लिए इसमें इतना जानना चाहता हूँ कि यदि राज्य सभा इसे पास कर देती है, तो क्या यह लागू हो जाएगा या इसमें सुप्रीम कोर्ट के चीफ जस्टिस के consent की भी जरूरत है?

श्री अर्जुन राम मेघवाल : मेरे पास कानून मंत्री का जवाब आया है कि चूँकि राज्य सभा का proposal नहीं है, इस वजह से हम इसे लागू नहीं कर रहे हैं।

WITNESS: I belong more to that world than to this world. But I must say a time has come when Parliament has to squarely address these issues without being unduly worried what the judges will feel. In my view there is no violation of the basic structure as long as whatever you do is design (a) to strengthen the institution and (b) to preserve the autonomy of that institution. As long as any changes which you make or any law which you make satisfy these two requirements there is no violation of the basic structure. The basic structure does not mean the present system, however, dysfunctional. It has become. I, for one person, feel that it is totally dysfunctional. I don't think it must continue.

CHAIRMAN: Prabhaji has a question. Before that I want to put two questions. As you suggest, the media or the corporate should be in, now different considerations apply. For a corporate what would be your defining criterion? There is already in the Bill a criterion about the State's support or the Central Government's support or State partly financed, predominantly financed and controlled. Would you suggest simply that all corporates with a capital above 'X' should be included; and how will it affect the efficiency of Lokpal of 11 members or 9 members to deal with entire corporate world? That is one.

The second is in media, a distinction was made. A media regulator, in the sense, you used, perhaps, includes both that which regulates the journalists, and journalists to the media, as well as the corporate ownership of media. Should a Lokpal look only at the corruption in the corporate ownership part or in the journalistic ethics which is running actually reporting, standards and the Press Council issues? These are two issues.

WITNESS: I will clarify. Dealing with the corporate is to definite corporate corruption. I don't think the definition will be very difficult to find. Any corporate indulging or

collaborating or benefiting out of an abuse of power or an act of corruption is committing an act of corruption.

WITNESS (CONTD): We have models in other countries, like the UK model. What is corruption? If you are giving bribe to anybody, even in a private sector today, if you bribe a customer, it is corruption. It is that wide. We may not go that far. Any corporate beneficiary of corruption who receives something in an abuse of power should be made accountable. Once we define that, I suggest that your law can have a separate section dealing with corporate corruption and create a separate authority; you may call him a Lokpal or you may call him anything else, ultimately it is a nomenclature, because again the whole approach will be different; his office will have to be differently staffed. Finding corruption in Civil Service and Government requires one set of skills; finding corporate corruption will require experts in management and experts in accountancy to detect corruption. So his office will have to be differently functioning. It will be staffed like the SEBI is staffed today. So you must create that structure within your law and I don't see any reason why that cannot be done. That is my view.

Again corruption in media. In my respectful suggestion, the corporate part will be governed by the corporate part where you can define it in terms of capital and turnover. We must address the content corruption. Planting news, which is paid news, is very dangerous today. I have seen that happens. I have had corporate clients. I do not want to name anybody. For my clients and against my clients, I have seen news running which I knew has been planted. I submit, that is corruption. Today if you are planting news against a corporation where there are 20 million or 10 million public shareholders, the promoter does not suffer because he has got his shares, he is not going to sell his shares. It is the poor shareholder who has put his life savings in that corporation who suffers. Why should he not be protected by a law which deals with this kind of content corruption in the media?

DR. PRABHA KISHOR TAVIAD: With due respect to the judiciary, you ask for more judges to dispose of cases. My observation is, the afternoon cases are listed in the evening courts, but nothing is happening and the economic burden is increasing. This is my observation. My question is about citizen charter. What will you say about cases pending at the stage of pronouncement of judgement? There is a provision that pronouncement of judgement is to be done within 60 days. There are cases pending for pronouncement of judgement and we are getting dates, dates and dates.

WITNESS: Madam, both are related issues. Evening courts, in my perception, were a bad idea to start with. It was a populist idea which had no real chance of success. Let me tell you why. Once we had an interaction in the Indo-US forum where two US Supreme Court judges came and they have got this study done. They found that if you put a three or four cases before a judge, the kind of cases we put, he can finish them in a day. If you put one trial a day, he may try and finish that trial in a day. If you put 20, 30 or 50 cases or like in our courts, 75 cases, the judge does not take his board seriously. So he does nothing because his workload is not serious. So that is why all that he does is when he sees a list of 80, he starts by saying पहले बताओ, किस-किस को तारीख चाहिए। It goes on everywhere. The whole system has become a joke. I am a lawyer, but I must confess that when somebody complained to me saying that your legal system does not work, I said. "It works; it works for me. I do not know whether it works for the litigant". So I completely confess that the way our system today is structured, we are no longer rendering service the way we should be rendering service to the consumer of justice. One of the ways this manifests itself is judges don't deliver judgements for long periods of time. The trouble is there is no accountability. All of you are accountable every five years. The judge is not accountable at the end of five or

seven years. Once you are in you are in, whether you work or you don't work. So we have known of judges who have gone through their entire term in the High Court, not pronounced a judgement and then made it to the Supreme Court. So there is a crying need for that kind of accountability. All India Judicial Service, accountability of judges, appointment of judges are issues which are related to the Lokpal. Because ultimately you are dealing with a system in which people have lost the respect for the law. That is why we have this kind of rampant corruption. Respect for law is lost when law cannot be enforced. The police is not serious in investigation. Where they are serious in investigation, they file a case. The case is not disposed of for 30 years, 40 years. Who cares?

DR. PRABHA KISHOR TAVIAD: How can we expect the citizen charter to be effective when this is the position?

WITNESS: Please make a citizen charter for the judiciary also. I think it will be a wonderful starting.

ADOCATE A. SAMPATH: There are some cases pending under the Prevention of Corruption Act. If the Lokpal comes into being, whether those proceedings have to be continued on that forum or that has to be transferred to Lokpal. Secondly, under Article 130, the Seat of Supreme Court is still in Delhi. It does not have any seat in any other part of India. So, if the same thing happens in the case of the Lokpal, then what happens? The people in other parts of India have a feeling that everything is decided in Delhi. Agitation is in Delhi, sitting is in Delhi, committee meetings are in Delhi, witness and everybody is coming to Delhi, Supreme Court is also in Delhi, everything is taken to Delhi. So we are at the mercy of Delhi.

SHR PRASANTA KUMAR MAJUMDAR: Do you think that there is need of a separate statutory body to address the common grievances of the people, common aspirations of the people?

SHRI PINAKI MISRA: Mr. Salve, you have stressed on more than one occasion that the answer really to many of these systemic problems lies in strengthening the CBI. I would like to ask you: how do you strengthen the CBI? In the Vineet Narayan Judgement of 1998, I think the Supreme Court intended to do that. Instead today we have a CBI which is far more, if I may say, pusillanimous than in 1998. It has become even more of a lapdog. This is cutting across party line, you had an NDA Government for five years and, you had a UPA Government. Nothing has changed. In the NDA or the UPA, it is Government's natural instinct to keep the CBI as a hound, as a lapdog, whichever way it wishes to employ it.

SHRI PINAKI MISRA (contd.): If that is so, then, in your opinion, what is the way of strengthening the CBI? I cannot say that this is being done in the current political atmosphere. One of the follow-up questions is this. The real issue is petty corruption. On a daily basis, people are beset with petty corruption. But the very people, who were a part of the Anna Hazare's agitation, are also recipients of petty corruption. So, it is the same people, who crib about paying the bribe by the right hand, are the people who take bribe by the left hand. It is endemic in our nature and our society. How do we get rid of that by a magic bullet!

WITNESS: I would quickly address all the questions. As for the first question regarding pendency of cases, as I understand, all cases will continue with the judicial system. So, there is no question of pending cases. If they have already reached the Courts, they will be dealt with by them. As far as the seat of the Lokpal is concerned, I am reasonably certain that the workload even for the Union Lokpal will be sufficient to justify a model which we have in India. The Income Tax Tribunal, for example, is a Central Tribunal. It is under a Central law.

But it has regional benches all over. That also gives the feeling of connect. So, we have a model; we have done it before. In fact, the drafts of all the laws contemplate Lokpal acting in Benches. You can have Benches all over India because this is one body which must reach out to the people. You must reach out to the people, not by sitting in the national capital. I fully endorse that view. Secondly, how do you address the aspirations of the people? The Citizen's Charter could be a first step. It will be a gift by Parliament to the people of this nation. I think the time is right. Thirdly, Mr. Misra asked about strengthening of the CBI. There is this litigation going on in the Supreme Court known as Prakash Singh's case; there are nine Police Commission Reports. Somewhat similar measures have to be applied to the CBI. We have to have a collegium in the selection of top five officers of the CBI. They cannot be appointed by the Government. Not just the Director of CBI, but top five officers should be appointed by a collegium, and that collegium must appoint the CBI head. The rules of the CBI must make it self-sustaining. Transfers, postings and intra-departmental movements have to be completely removed from any kind of Government interference. Then alone will any CBI become independent. Otherwise, whichever political formation it may be, the present system itself has failed is the general perception, and I, with great respect, share that.

SHRI VIJAY BAHADUR SINGH: Are you suggesting something like the Election Commission or some other independent body?

WITNESS: It has to be an independent body. There are other countries which have models. Of course, in those countries, appointment is not a problem. But then judges are appointed by the Government. We have not accepted that system. So, we need to have a completely independent body.

SHRI PINAKI MISRA: Also don't you agree that it should also have a prosecution wing? The CBI is an investigation wing, and it depends on the Government for prosecution? If the Government chooses not to prosecute, then, that is the end of the matter.

WITNESS: As for the decision whether or not to prosecute, we must follow the system; we have two mistakes in our law. In America, as you know, it is the District Attorney's Office or the State Attorney General's office, or, at the federal level, it is the Attorney General or the Solicitor General's office, which takes a final call on whether or not to press charges. In India, some judgements have taken the view that the police cannot even consult the Public Prosecutor which, according to me, is wrong. Many times, especially, in complex corporate crimes or in Prevention of Corruption crimes, you may end up filing chargesheets which fail because you got the law wrong. Now, the CBI must have a powerful Public Prosecutorial Wing. And, what hon. Shri Paswan mentioned, not only do we need an All India Judicial Service, but I would suggest that we should also have an All India Public Prosecutorial Service, to work with the All India Judicial Service. In the same inclusive way in which the Judicial Service will be constituted, the Prosecutorial Service should be constituted. That also opens up a lot of windows for overall growth in society and the All India Public Prosecutorial Service with high remuneration will work. I have seen it when the Uphar trial case was before the Trial Court – now the case is before the Supreme Court -- and I was the Solicitor General at that time. The poor Public Prosecutor came to me. He did not even know where to begin. And I searched up, with all my access to international legal materials, the law. It was a complex case of the first kind where a trial was brought. I told him, "Please prove these facts. Please ask the witnesses these questions. Otherwise, you can end in acquittal." I don't blame that man. He does not have the equipment. He does not have the skills. So, we must have an All India Public Prosecutorial Service.

SHRI KIRTI AZAD: I would like to ask something here. I feel that Section 6 (a) that was inserted in the Delhi Police Establishment Act which, obviously, says that you have to take

permission from the Government to prosecute anybody. So, would you agree with me that it should be repealed?

WITNESS: That is only a check and a safeguard where the Union Government, on the Executive side, or the CBI of its own decides to investigate the State. That was a federal check and safeguard. Once the Lokpal comes, that provision, obviously, will have to yield.

CHAIRMAN: Thank you very much. We had a very intense and a productive session. I must request Mr. Salve – he is a very busy counsel – to do two things. One is to send us a summary of his comments including answers which he has given. Secondly, to give a square-bracketed amendment version on the Lokpal Bill, as introduced. If you take the Bill and then make suggestions in square-brackets, then, that will be very focused. It will take a little bit of time. But it will be nice if you do that.

WITNESS: Thank you, Sir. I am deeply obliged to the Committee for so much patience. I will, certainly, be honoured to do what the Chairman has asked me to do.

(The witness then withdrew.)

WITNESS

Shri Udit Raj, President, Indian Justice Party
& Others.

अध्यक्ष : मित्रो, अब हम अपने लंबे सेशन के अंत की ओर जा रहे हैं। कल और आज के सैंशंस का समापन हो रहा है। मैं उदित राज जी से कहूंगा कि वे अपने साथियों का परिचय दें और उसके बाद 15-20 मिनट तक विशेष बिंदुओं की ओर हमारा ध्यान आकर्षित करें और उसके बाद हम प्रश्नोत्तर कर लेंगे। And, all of you would know that the proceedings are confidential.

SHRI UDIT RAJ: Thank you for giving us an opportunity to represent our views. To begin with, I would say it was very painful to see the way the country was taken to ransom. It all started on 16th August, and we watched and watched. But we also lost our patience after 20th August because that this was not the way the country should run. It should not be taken to ransom by a few groups claiming that the entire nation was with them. No; the entire nation was not with them. We are not a part of them. Especially, the Minorities, the Dalits, the OBCs, etc. were not a part of the team of that group. They claimed to be representatives of the Civil Society. We challenge them. We tell them that we also have our Civil Society.

SHRI UDIT RAJ (contd.): They have strength. Of course, it was the media which had mobilised it for them. For us, the media does not do it. We have our own strength. On August 24, we too had a massive demonstration at India Gate and we too urged the Government to include our viewpoint in the deliberations. We urged the Government not only to include our viewpoint but also to dispel the misinformation which had gripped the nation that they were the only people who were right-thinking, who were honest and that most of the politicians were dishonest and that those who differed with their views were dishonest. We said 'no'. We too have our voice. It is in this background that we also got interested in the entire process of the enactment of this law. We have also submitted a draft Bill, the Bahujan Lokpal Bill.

Sir, at the outset, we feel that we have a social structure in which most of us have our subjective views despite whatever knowledge we may possess. Howsoever secular we may be or howsoever much above caste and creed we may be, I strongly feel that subjectively prevails everywhere at the end of the day. The moment one says that he is a Hindu, it is

presumed that he was born, he is living and he would die in his caste. In this context, we request that the representation of the SCs/STs, Backwards and minorities should be ensured not only at the Lokpal committee level but also at the level of its search and selection process. Of course, 'probable' candidates will be selected by the Search and Selection committee. But whatever may be the final decision, eventually, out of those probable candidates there would be members and the Chairman of the Committee. So, Sir, at both the levels, there should be a representation of these classes. This is number one. Of course, it is not very difficult and it is not complicated. The system is already prevalent as we already have reservation in Government. It should be at par with that and we would request that similar representation should be there at both the levels.

Secondly, Sir, enormous amount is at stake in the Special Component Plan and Sub-Tribal Plan and there are various schemes for the upliftment of *dalits*, Backwards, minorities and the weaker sections. What we see is that there is a huge amount of embezzlement, corruption, diversion, mis-utilisation, sometimes utilisation and refund of the funds under these Plans. That act should also be considered and brought under the definition of 'corrupt practices'. Those who are involved, whether they are bureaucrats or politicians, should be brought to justice. This is also corruption. So, we are very particular that budgeting done for the upliftment of these people should be streamlined in this way. There should be transparency. Of course, the country is facing a very grim situation and I would also like to draw your attention to what is happening in the Naxal affected areas because of this. In those areas, there is huge corruption. It is not that it is a very spontaneous action on the part of the people that they are taking to guns in those areas because of misutilisation, underutilization of public money and corruption in the delivery of goods and services.

Coming to the second part, we are very serious about NGOs, the media and the corporate houses coming within the ambit of Lokpal. Having worked in the Income-Tax Department for more than ten years, I have realized that if corporate houses are kept out of the ambit of the Lokpal, we would not be able to achieve what we are trying to achieve. Corporate houses are the bribe-givers. I know of many cases where officers do not succumb to pressure, peer pressure or even pressure from politicians. They were shown the door. They were given advance postings. They were also penalized. So is the case in politics. I know how corporate houses are funding some politicians and political parties. We all know when the younger brother, Anil Ambani, accused his brother -- it has all appeared in newspapers, in put-up advertisements -- saying that he cheated of Rs.45,000 crores. It was the Government which was cheated in the case of Kaveri gas. What action was taken by the Government? Even the politicians are scared of corporate people. Bureaucrats fall in line with them. They do not take any stand before them. There used to be times when bureaucrats had adequate authority over these corporate houses but now the corporate houses have grown and they have grown so much stronger that they do not bother about Members of Parliament or even the Ministers. They remain in touch with the so-called supremos in each political party. As a result, there is huge corruption in the country. I am in agreement with the CVC when he says that the bribe-giver must also be brought to book. I endorse that view hundred per cent. Of course, Mr. Salve has also had the same view. It is there in England and many other countries. There are such examples in many Latin American countries where bribe-givers are penalized. Why should they be left out of the ambit of this law merely on the basis of the argument that it does not involve public authority? The protagonist of the Jan Lokpal Bill says this. What is this? When temptations are offered, if the source of those who offer temptations is not blocked and such people are not caught, naturally, people would be tempted. Bureaucrats will be tempted, politicians will be tempted, and so on. If we really want to address this issue of corruption, if we really want to weed out corruption, then, we

should certainly strike at the root of it. In many ways, I find that at the root of corruption are the bribe-givers. So, the corporate houses should also be brought within the ambit of the Lokpal Bill.

Coming to NGOs, I sometimes fail to understand the spectrum of morality which the Jan Lokpal Bill protagonist holds that NGOs should not be brought within the ambit of this Bill and justifies it by saying that there are other laws to take care of it. I have served in the Income-Tax Department and was the Assessing Officer for societies and trusts. I have seen that not much can be done there and there is huge corruption in that area. Unless and until it is brought within the ambit of Lokpal, I do not think we would be seriously addressing the issue of corruption. There is a murmuring also that NGOs are influenced by foreign forces and, in turn, an NGO can do anything, whether it is moral or immoral, national or anti-national. So, in that context, I would urge the Committee that the NGOs should also be brought within the purview of the Lokpal.

SHRI UDIT RAI (contd.): Why is media kept out of it? Is it a holy cow? Why? You may be afraid of including the media because you need to go by the opinion they create among the masses. I am very forthright. I may lose my political life, I don't care at all. But, I am very pained to note the role played by them. I can remember those days—it was as if a war was go. We were projected as their enemy. The entire nation is with Annaji! What the hell are you doing when the entire nation is with you on the Ramleela Ground? Go and fight elections in 2014. Win and Parliament will be yours. Then you enact the Jan Lokpal Bill. Do whatever you like. Is it not a corruption—suppressing the voice of other and exaggerating? For days together, there was no commercial break! Wherefrom these media people have compensated their revenue loss? That also should be investigated. I do not know whether the Government has a will or the politicians have a will to ask. I doubt. That is why they have discredited you.

What is an alternative of the democracy? Is anarchy an alternative? Is the Civil Society an alternative? Tomorrow, any group may come and sit on the Ramleela Ground and say that the reservation should be finished. Should we succumb to that also, as we have succumbed? The Government has mishandled it. We bring issues on reservation in private sector and addressing tribal issues, dalit issues. The media does not take cognizance of those. A Minister went to meet Annaji at Jantar Mantra. That was the point where the Government has mishandled the situation. After that, they got encouraged. The middle class thinks--लालू जी की जरूरत नहीं है, पासवान जी की जरूरत नहीं है, अब तो हम किसी तरह से देश चला लेंगे। They got encouraged. They think that all politicians are criminals, thieves and corrupt and that none is honest, as if they are honest!

Do not you think that planting of news, paid news also is corruption? Speaking white lies, loudly—is it not an act of corruption? Economic corruption is not that much dangerous to the nation as is mental corruption. When are we going to address the mental corruption? We are trying to strike at the level of corruption. Unless we have a social revolution, corruption is not going to be weeded out of the country, we are sure. We are addressing corruption in a limited area. We know it. The caste system is a source of corruption.

I have an understanding about dishonesty. Why people are dishonest? Why do they not have fraternity feelings, a feeling for fellow brothers, or about the nation? One person can have love for another, have sentiments for one person; one sentiment at one time. When we have sentiments for our own caste people, then we are exhausted by the time it comes to fellow brothers or to the nation. That is why we are pained to see absence of concern for

others. We think that they are robbing away the money to Switzerland or Mauritius. It is because of the caste system too.

Secondly, the caste system directly and indirectly de-motivates us in thinking about the nation, about others. At the most it encourages to think about kith and kin of our own caste people. I am presenting my Bill, of course. Other Bills do not have this perspective or understanding of the society. A law can be successful only when they are backed by each section of the society. For the success of the Lokpal, the Committee, the Government and various political parties should see to it that every section supports you. So far, the Jan Lokpal and other Bills talk about one aspect—they represent one section of the society. Some represent the middle-class, some represent the intellectual-class, some may represent the legal fraternity. But, we are representing the *bahujan*. Unless and until each section's feelings, views are incorporated, the law will not succeed. Each section has to support its implementation. If this legislation too meets the fate of other legislations, which are failures, then what is it? We do not want it to happen. We want to make this legislation a success. Then corruption is weeded out. I would urge you to ensure representation, to ensure accommodation of feelings of all. You should accommodate all communities—Christians, Muslims, Scheduled Tribes, Scheduled Castes, Backward Communities. If they are not taken on board at this point of time, then they will not be taken into confidence. Then, at the level of implementation, they may not cooperate. Then the law will fail. We do not want it to be a failure. This is one thing.

Coming to composition, if there is a need to expand the membership, let it happen so that every section is represented. In the Government moved Bill, it is 8+1. I think, it will not work. Let there be 15+1 or whatever it is so that every section is represented. The tenure should not be more than 3 years.

We have a profound belief that more than economic corruption, we have the mental corruption. We are not addressing that at this moment. We are addressing only economic corruption. Honesty is decided when the situation is created or opportunities offered. If Lokpal is allowed to exercise his authority, then we will know whether he will remain honest or dishonest. Teachers are honest because they do not get an opportunity to be dishonest. If those teachers are trained and sent to the police wing, then they will be known as corrupt. If police people are trained and sent to teaching field, then they will be considered honest. It is a matter of opportunity. Lokpal should not be given that much authority that it encroaches the Constitution. We will not tolerate any attempt that undermines Constitution. We have a beautiful Constitution. England does not even have one. Of course, it has an unwritten Constitution. It runs on customs. You know that the country is running very well. America's democracy is functioning for more than 200 years. It has a very small Constitution. Hardly any changes have been made. I would like to say that it is the morality of the people which runs the Government, it is not just the laws.

SHRI UDIT RAJ (CONTD.): So, too much of emphasis on law is being made these days. Of course, we should know about it. They cite the example of Singapore and Switzerland. I know about the Switzerland system and the ombudsman's power. The ombudsmen are not having as much power as we are going to give to the Lok Pal. Citing the example of Singapore is a very funny thing. Singapore is a very small country; it is smaller than our district. This example cannot be cited. That cannot be a citation to go for. So, what we say is that the revolution at the social level has to be launched, may be some day later or in future that will come and that will finally take care of all these situations like morality and other things. Then, there is economic corruption. Of course, cleansing up economic corruption from the domain of politics and bureaucracy and leaving aside other major areas will again

not help us much. The Constitution should be intact. The Lok Pal is not elected by the people. You are elected by the people. Some 15 lakh people elect you; some 10 lakh people elect you. Again, you have to seek people's mandate after four years or five years, depending on the situation. So many deterrents are there; so many checks are there on the people's representatives. Here, they are prone to corruption. Then, what are the riders, what are the conditions and deterrent measures on Lok Pal and its members that they will not do injustice? Sir, I am just finishing. I know that I am exceeding the time. I was in bureaucracy. The Scheduled Castes in higher echelons of the Government are not more than ten per cent, but corruption cases against them pending in the CVC and the CBI are more than 50 per cent. Do we presume that the Scheduled Castes are more corrupt? No. It is because those who are at the higher levels do it on pick and choose basis. Similar thing will happen when it happens. In other words, when the Lok Pal happens, similar things will happen. They will choose somebody; they will pick somebody and they will free somebody. So, that is why plurality must be ensured. The core leaders will be picked up; then, other leaders will be freed. So, this should not happen in future. More than 50 per cent cases are pertaining against the Dalit officers whose representation is a little over ten per cent. It shows that caste matters. Sir, I conclude with this small remark. Thank you very much for giving us the opportunity.

CHAIRMAN: Thank you very much. Now, we can have a few moments of question. Now, Paswanji.

श्री रामविलास पासवान : पहली बात तो यह है कि क्या आप यह समझते हैं कि लोकपाल बिल की आवश्यकता है? चूँकि आपने दो चीजें कही हैं। एक तो क्लॉज 17(i) के बारे में आपने कहा है कि the Lok Pal and Lokayukta should be an investigating and prosecuting agency and shall not have the judicial powers. यदि उसे कोई judicial power देना ही नहीं है, अभी Anti Corruption Act है और सारे के सारे एक्ट्स हैं, उस परिस्थिति में आप मानते हैं कि investigation करने के लिए CVC काफी है, CBI काफी है, स्टेट की एजेंसीज़ काफी हैं, उस परिस्थिति में क्या लोकपाल बिल की कोई आवश्यकता है?

दूसरी बात यह है कि आपने अपने representation में 10 वें नम्बर पर क्लॉज 10 के बारे में कहा है कि at least, two members of Scheduled Castes and Scheduled Tribes communities, likewise, two members from the other oppressed classes shall be there in the search/selection committee. जो लोकपाल का पद है या यह जो कमेटी है, उसमें आप representation चाहते हैं या reservation चाहते हैं? चूँकि representation उसके will पर है कि वह कभी representation दे भी सकता है और नहीं भी दे सकता है। शायद नियम इस तरह से बनाया जाएगा कि ठीक है, इनको भी मौका दिया जाए, इनको भी रहने दिया जाए। That will not be binding. जो reservation है, that will be binding. इसलिए आप यह बताएँ कि reservation होना चाहिए या representation होना चाहिए?

तीसरी बात, एक अहम मुद्दा है, जिसके तहत कहा जा रहा है कि प्रधान मंत्री और ज्युडिशियरी को लोकपाल के अन्दर रखा जाए या नहीं रखा जाए। इस पर आपकी क्या राय है?

SHRI SUKHENDU SEKHAR ROY: Sir, I associate myself with the issues raised by Shri Paswanji.

ADV. P.T. THOMAS: Sir, I also associate myself with it.

SHRI VIJAY BAHADUR SINGH: Sir, I also associate myself with the issues raised by Shri Ram Vilas Paswan.

ADVOCATE A. SAMPATH: Sir, I also associate myself with these issues.

SHRI ARUN YADAV: Sir, I also associate myself with the points raised by Shri Ram Vilas Paswanji.

श्री पिनाकी मिश्रा : आपने कहा कि सरकार में higher places पर उपेक्षित जातियों, जो एससी/एसटी के हैं, की संख्या 10 परसेंट है और उनके खिलाफ जो केसेज हैं, वे 50 परसेंट हैं। आपको ये आँकड़े कहाँ से मिले?

SHRI UDIT RAJ: Of course, we tried to get the data officially, but we have not been given assistance. लेकिन जिस तरह से सीबीआई की searches होती हैं और जो केसेज pending होती हैं, कुछ ऐसे डिपार्टमेंट्स हैं, जैसे इनकम टैक्स डिपार्टमेंट के विजिलेंस सेल हैं, उनमें जो ऑफिसर्स बैठते हैं, जब हमने उनसे पता लगाया, तो यह निकल कर आया कि लगभग 40-45 प्रतिशत एससी/एसटी के केसेज में विजिलेंस केसेज लगे हैं।

श्री पिनाकी मिश्रा : इसका मतलब है कि आपने जो डाटा collate किया है, वह कहीं लिखित रूप में होगा।

श्री उदित राज : वे लिखित रूप में नहीं देते हैं।

श्री पिनाकी मिश्रा : आपने जो data collate किया है, यह पेपर पर कुछ तो होगा या नहीं?

SHRI UDIT RAJ: Of course, we can try to do it, but they do not give it.

SHRI PINAKI MISRA: That is a very serious charge that you made. According to me, this should be buttressed. If this is so, then, certainly, a very, very in-depth inquiry should be held as to why these lopsided figures are there. I am not so sure that this is based on any empirical data.

SHRI UDIT RAJ: It is based on empirical data. Having worked in the Income-tax Department as Assistant Commissioner, Deputy Commissioner, Joint Secretary, Additional Secretary...

SHRI PINAKI MISRA: This Committee would like to know whether there is any material on record which you can produce before it. This Committee would definitely like to have that material.

Number two, you have stated in clause 6 of your memoranda that only Lok Pal and Lokayukta of Scheduled Castes and Scheduled Tribes and other oppressed sections of the society shall investigate the case against an SC/ST member and members of other oppressed sections. Similarly, you have said in clause 8 that special courts shall be notified to be presided over by members of SC/ST to prosecute the members of SC/ST. According to me, this is an extremely dangerous trend. The other day, I had been in Lucknow, and I heard that there was a gentleman from the Scheduled Caste community who has moved an application

before the Chief Justice that his case must be only heard by an SC judge. If this is going to be the nature of things in future, then, general caste people will say that they should not be heard by SC/ST judge. I mean, there is no end to those things. This is a very dangerous trend, according to me.

SHRI PRASANTA KUMAR MAJUMDAR: Sir, the delegation has said about the corporate houses. That is why I am putting a question to them. Do you think, in India, there is a vicious circle between ruling politicians, bureaucrats and powerful corporate houses?

SHRI PRASANTA KUMAR MAJUMDAR (CONTD): This should be broken because this is the root of corruption. So, do you believe in it?

श्री अर्जुन राम मेघवाल: मैं यह जानना चाहता हूँ कि आपने बताया कि अन्ना हजारे जी के आंदोलन के दौरान मीडिया में कॉमर्शियल ब्रेक भी नहीं रहा, तो उनका खर्चा किसने उठाया? क्या यह सही है कि इस दौरान एक दम ही कॉमर्शियल ब्रेक रहा ही नहीं?

मेरा दूसरा प्रश्न यह है कि पिनाकी मिश्रा जी ने अभी जो data मांगा है, वह data मुझे भी चाहिए। अगर वह data मिल जाए, तो संबंधित बात को एक आधार मिलता है। अगर नहीं मिलता है, तो यह sweeping statement कहलाता है। इससे संबंधित कहीं से भी कुछ भी data मिले, तो वह हमें चाहिए।

आपने बताया कि सब प्लान में SCP और STP में diversion of fund होता है। It should come under the corruption Act. Diversion of fund हो या मिसयूटिलाइजेशन ऑफ फंड के बारे में आपने कोई definition लिखित रूप में दी है? अगर आपने यह दें, तो ज्यादा ठीक होगा।

SHRI UDIT RAJ: I know that. पासवान जी ने पूछा कि क्या लोकपाल की आवश्यकता भी है? देश में माहौल ऐसा बन गया है और 120 करोड़ जनता के द्वारा चुनी गई लोक सभा है, वह कहीं दबी है और कमजोर हुई है। हम जब लाखों की रैली करते हैं, तो कोई खबर नहीं लेता है, लेकिन चार-चार मंत्री एयरपोर्ट पर मिलने जाते हैं। इस तरह से जनता की भावनाओं का अपमान हुआ है। इसमें गड़बड़ी जंतर-मंतर से शुरू हुई। जब आप इतना ज्यादा दब ही गए हैं, तब आपको लोकपाल बनाना ही पड़ेगा। ऐसे हमारे बहुत सारे एजेंसीज हैं, जैसे इन्कम टैक्स, फेमा, सीवीसी, सीबीआई, आदि हैं, इनको ही इम्प्रूव करके इनसे corruption free India कराया जा सकता है। Each Department has got its vigilance cell. चूंकि इस देश में इस तरह का माहौल पैदा हो गया है, इसलिए we cannot go back. यह 42 साल से pending है, इसका यह भी एक कारण है।

श्री विजय बहादुर सिंह: इसका मतलब यह है कि इसको out of fear बनाया जा रहा है?

श्री उदित राज: Fear भी है और definitely, the politicians and governments have failed to discharge their duties. When it was introduced 42 years before, either it should have been written off or it should have been accepted. मेरे कहने का मतलब यह है कि इसको अब होना चाहिए। यह भी कहा गया कि इसमें SCs का representation होना चाहिए। मैंने इस संबंध में further clarify कर दिया है कि जिस तरह से सेन्ट्रल गवर्नमेंट में आरक्षण है, उसी तरीके से

लोकपाल में दिया जाना चाहिए। हमने इसमें आरक्षण की मांग की है। If I have used 'representation' word and not used 'reservation', that does not mean we are not asking for reservation. We are definitely asking for the reservation.

अब प्रधान मंत्री के ऊपर आते हैं, इस संबंध में मेरा मत यह है कि प्रधान मंत्री को with riders लोकपाल के अंतर्गत लाना चाहिए। अगर प्रधान मंत्री को इसके अंतर्गत लाना ही है तो with riders लाना चाहिए और अगर इसको छोड़ भी दिया जाए, तो I am not vary, but of course पूरी पी.एम. की ऑथोरिटीज् को इसके अंतर्गत नहीं लानी चाहिए। अगर डिफेंस और अंतर्राष्ट्रीय संबंधों को इसके अंतर्गत ले आए, तो हम इस देश को चला नहीं पाएंगे।

अध्यक्ष: कई लोगों का भी यही मत है, जो आपका है। आप सही कह रहे हैं।

श्री उदित राज: मैं एक बात यह भी कहूंगा कि हर कमेटी में judges ही क्यों आते हैं? There are honest professors, honest

journalists, honest businessmen. हमारे देश में सिस्टम है कि हर कमीशन में judges को दे दिया जाए। ऐसा क्यों होता है? I have a strong objection to this. In no other country in the world, जहां कोई कमीशन बैठे, कोई कमेटी बैठे, तो उसमें judges आ जाएंगे। आप भी हो सकते हैं, आप भी हो सकते हैं। मैं समझता हूँ कि जितने honest आप हैं, मुझे तो कहना नहीं चाहिए, I will be transgressing my power.. Outside judiciary इतने affective और honest लोग हैं, they should also be given opportunities in many committees. ऐसा न हो कि लोकपाल में उन्हीं को बैठा दिया जाए। वे General masses से भी आ सकते हैं, अगर उनके credentials को चेक किया जाए। इस बात का भी ध्यान रखना चाहिए। Judiciary के लिए अलग से बिल आ रहा है। It encroaches upon Constitution also. Therefore, we do not think that judiciary is brought under the Lokpal. We say, 'no'.

श्री वीजय बहादुर सिंह: उदित जी, कई चीजें हैं, जहां पर Including Prevention of Corruption Act है, जो इसको देख सकता है। क्या यह जरूरी है कि यह जो mechanism आ रहा है, यह भी उसी तरह collapse कर सकता है?

SHRI UDIT RAJ: I have a doubt, I have a doubt. अगर सारे sections का सपोर्ट हो जाए, तो यह लॉ success हो जाए।

श्री विजय बहादुर सिंह: इसमें बाबू से लेकर चीफ सेक्रेटरी तक आएगा, इस तरह से इसके अंतर्गत करोड़ों employs आ जाएंगे, तो क्या जैसे अपने load से और सब फेल कर गए, वैसे ही यह भी फेल हो जाएगा? इस तरह के हजारों mechanisms हैं, जो फेल हो गए हैं। इसके क्या सबूत हैं कि हम यह जो नया mechanism लाने जा रहे हैं, वह succeed करेगा?

SHRI UDIT RAJ: Let us hope for the best. SCs, STs के pending vigilance cases का matter है, About Lokpal, in this background I said and this can be ignored also. जो आपने कहा है, लेकिन we have very bad experience. In my case when I was in a Department, my boss was

upper caste, even if I worked very hard, better than others, my CR was toned down. So, I myself have seen it. There are many cases. That is why we are skeptical about such things that if SC/ST Lokpal or members do not investigate SC/ST matters, there are chances that they will be harassed. SC/ST Commission is there. Of course, there should also be consultation with them. So, what happens is that and I have seen, if I don't like this inspector, I like this inspector, a thorough corrupt inspectors under me, I can upgrade them, I can give him certificate of honesty. A person who is honest he can be even chargesheeted also. Things happen like this. In that background only I have written it. Coming to the vicious circle, yes, we have vicious circle of politicians, bureaucrats and corporate houses. That should be broken. There is no denying the fact that there is a vicious circle. This nexus must be broken. इस nexus को तोड़ना हमारे लिए और इस देश के लिए बहुत जरूरी है।

श्री विजय बहादुर सिंह: मेघवाल जी के मीडिया वाले प्रश्न पर आपकी क्या राय है?

SHRI UDIT RAJ: My colleague will supplement it.

अध्यक्ष: उदित राज जी, ऐसा है कि now this Committee will wind up. You are the sole representative and you have spoken on behalf of everybody. That is why we made sure that we are calling you. But do you want to answer about the last point about commercial break...

SHRI UDIT RAJ: Commercial break for some television, at least एक टेलिवीजन का जो मैंने workout किया है कि अगर एक महीने के लिए कमर्शियल ब्रेक न हो, तो 100-100 करोड़ रुपए के घाटे होते हैं। आखिर यह revenue कहां से आया है? किस कॉर्पोरेट हाउसेज ने या किस देश ने इतनी बड़ी रकम दी? अगर ऐसा न हो, तो ये सब दीवालिया हो जाएंगे। 24 घंटे में कोई खबर नहीं, सिर्फ अन्ना हजारे, अन्ना हजारे ही होता था, इसके अलावे कोई और खबर नहीं होती थी। यह revenue loss कहां से compensate हुआ?

SHRI PRASANTA KUMAR MAJUMDAR: In your opinion, what will be the linguistic minority?

SHRI UDIT RAJ: I have said so in detail. I have very specifically used the word, 'religious minority', not only minority but religious minority.

CHAIRMAN: Can I talk this opportunity to thank Mr. Udit Raj. We have had a very useful discussion. I am reminding you that this is confidential but I would like you to do two or three things. If you can send me a summarised bullet point of what you have spoken, including what you have said in answer to the question in one format, it will be useful, as soon as you can. Secondly, you can take a copy of the Bill as introduced in Parliament by the Government and in square brackets indicate the changes you want on the Bill. These two things if you can do at your earliest convenience, we will be very happy. Let me thank you all once again for your inputs and we look forward for receiving this from you. Let me thank all the Members for the very industrious half weekend. Thank you.

...

(The witnesses then withdrew and the Committee adjourned at 4.21 p.m.)

The Department-related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice met at 10.00 a.m. on 1st October, 2011 in Main Committee Room, Parliament House Annexe, New Delhi.

(CHAIRMAN: DR. ABHISHEK MANU SINGHVI)

WITNESSES: Representatives of the Central Vigilance Commission:

- Shri Pradeep Kumar, Central Vigilance Commissioner.
- Shri K.D. Tripathi, Secretary.
- Shri Anil Sinha, Additional Secretary.
- Shri Anil Singhal, Chief Technical Examiner.

Representatives of Department of Personnel and Training:

- Shri Alok Kumar, Joint Secretary (Vigilance).
- Shri Ashok K.K. Meena, Director (V-II).

Representative of the Legislative Department:

1. Shri N. K. Nampoothiry, Additional Secretary.

CHAIRMAN: Friends, as you know, it is in continuation of two very productive days of meetings that we had and this is the third. We are hoping to end this meeting at 1.45 p.m. or 2 o'clock. Today, we have the Central Vigilance Commissioner, Shri Pradeep Kumar, and his colleagues and, shortly thereafter, the CBI Director and his colleagues will join us. As you know, if I may in a lighter vein say, they, these two bodies, conceived of some kind of original Lokpals. Therefore, they are very germane and relevant to the discussions we are having on the Lokpal Bill. We will then be scheduling meetings with some retired Judges and legal experts on the technical aspects. That will be later on and not today.

So, may I straightaway, without further ado, request the CVC, Shri Pradeep Kumar, to make his presentation? As everybody knows, particularly the invitees, these proceedings are confidential and they should remain absolutely like that. May I thank them for finding time for this Committee in a very focussed manner? They have always been ready and willing. In fact, we had to defer their evidence last time because we had more on our plate than what we could handle. They are very cooperative. We welcome them. May I ask the CVC to start?

SHRI PRADEEP KUMAR: First of all, I want to thank the Chairman and the august Committee for giving us an opportunity to place our views before this august Committee. We have already made a written submission before this Committee. But I will make a brief power-point presentation to take you through the salient points. We will be covering the formation of the CVC. It is a 47-year old Institution and it has evolved over the years. I would like to mention the jurisdiction of the CVC, the functions and powers of the CVC, what kind of work it does, what activities it has undertaken, measures for strengthening the CVC, -- we have some suggestions on how CVC can be made more effective -- and major differences in the approach of the CVC and the Lokpal. When we talk of Lokpal, we are talking of the Government Bill that has been introduced.

CHAIRMAN: Could you be a little louder?

SHRI PRADEEP KUMAR: This presentation is primarily in relation to the Lokpal Bill which has been introduced by the Government in the Parliament and finally our recommendations.

(At this stage, Shri Pradeep Kumar, made Power Point Presentation on functions and powers of the CVC)

SHRI SHANTARAM NAIK: Mr. Chairman, Sir, in case the presentation is restricted to why the CVC should or should not be brought under it, then we will save a lot of time. We all know about the functioning of the CVC.

CHAIRMAN: Mr. Pradeep, your papers have been circulated. But we would still like you to summarise it. Many Members would like you to summarise it. We have plenty of time. We have got two hours for you and two hours for the CBI. But after summarizing, we would like you to pointedly focus on the 20 odd issues which arise in the Lokpal Bill. We will be doing both the things.

SHRI PRADEEP KUMAR: Sir, I will be happy to answer any questions. But I thought the background etc. would help the hon. Members.

श्री रामविलास पासवान: सर, ये बहुत बढ़िया बोल रहे हैं। इससे हम लोगों को भी जानकारी मिल रही है।

SHRI PRADEEP KUMAR: I thought the Members do not know about the functioning of the CVC. So, I would explain that, and, then, the basic issues and whatever you ask, Sir, we are here to assist you.

(Power Point Presentation - contd.)

SHRI SHANTARAM NAIK: Mr. Chairman, Sir, with your permission, I would like to say that on this aspect the Committee had called the CBI and the CVC. We would very much like to know about their functioning. This is an exhaustive subject in which we are interested. But today we are interested in knowing their view whether they should be included or should not be included. If they go on speaking about the functions and powers of the CVC, measures to strengthen it, etc., then, a lot of time will be taken in this.

अध्यक्ष : हमारे पास दो घंटे का पर्याप्त समय है। कई मॅबर्स ने चूँकि इन का पूरा पॉवर पॉइंट प्रजेंटेशन नहीं पढ़ा होगा और अभी इन के 20 मिनट ही हुए हैं, मैं कहना चाहता हूँ कि पेज 16 से 20 में आप ने जो अपने प्रस्ताव दिए हैं, recommendations दी हैं, इसलिए सभी लोगों को उसे अपने संदर्भ में देखना पड़ेगा।

श्री अर्जुन राम मेघवाल : जब समझेंगे तभी तो आगे बढ़ेंगे।

श्री लालू प्रसाद : चैयरमेन साहब, इस में बहुत जगह प्रजेंटेशन अंग्रेजी में दिया है, हम तो हिंदी भाषी हैं।

अध्यक्ष : वही मैं कह रहा था कि थोड़ा सब्र कर लें, 5-10 मिनट की बात है। अच्छा मेरा एक निवेदन है कि अगर आप इन के पॉवर पॉइंट प्रजेंटेशन को देखें तो पृष्ठ 16-20 तक इन के प्रस्ताव हैं, recommendations हैं, उसे आप 10 मिनट अच्छे से summarize कर दीजिए और बहुत टाइम है। आप चिंता मत कीजिए। We have plenty of time.

(The Power Point Presentation continued.)

SHRI PRADEEP KUMAR: Sir, with your permission, I would quote a Supreme Court observation in P.J. Thomas case, the latest one of March, 2011. It says, "In our opinion, CVC is an integrity institution. This is clear from the scope and ambit (including the functions of the Central Vigilance Commissioner) of the 2003 Act. It is an institution which is statutorily created under the Act. It is to supervise vigilance administration. The 2003 Act provides for a mechanism by which the CVC retains control over CBI. That is the reason why it is given autonomy and insulation from external influences under the 2003 Act." So, this is the latest ruling of the Supreme Court. Sir, this is Center for PIL and another vs. Union of India and Another. This is a quotation. It is not given here. It is WP(C) 355 of 2010, P.J. Thomas Case.

(The Power Point Presentation continued.)

CHAIRMAN: Thank you. It is a useful summary. Let me start by assuring each and every Member that all shall get time for questions. There is a plenty of time. So, don't worry on that account at all.

Secondly, what I wish to do is, I will flag 7-8 issues which the CVC will note down. On each issue he will make comments and then pause. Then, everybody who has questions on that issue can put questions. Then, we will go to the other issue. So, we will do issue-wise. Anybody and everybody will have time. But, let us focus on the issues for two minutes.

Before I start, I request the CVC and his team, as we have told the others, that we would like you, in the shortest possible time, to send us Clause-by-Clause comments on the Lokpal Bill and more particularly in square brackets and bold face where you indicate the change in the Lokpal Bill introduced by the Government using that as a referral model. So, you can put a square bracket and cut out or indicate what you want to say. That is number one.

I will just flag those 6-7 issues. I request you and the Members note them down. Then, we will ask questions around them.

The issue number one is: I would like to know personally -- a lot hon. Members also would like to know this -- what is the recommended prosecution rate for Grade "A" and above by you, either in the last 2-3 years or on an average in the last 60 years जिसमें आपने सिर्फ प्रोसिक्यूशन रिकमंड किया है। क्वैश्चन बी- कन्विक्शन रेट क्या है? मैं क्रिमिनल की बात कर रहा हूँ, not departmental at all.

The second one is -- it is only loud thinking; this Committee has to do deliberations in confidence -- this. We are only asking you questions. To preserve your status and autonomy, if you and/or the CBI were to be made a Member of the Lokpal institution itself and exercise the same powers to the extent the Lokpal has jurisdiction, what is your reaction to this. For other things, you will remain the CVC. But, for Lokpal jurisdiction, you -- CBI and CVC -- became a part of the Lokpal. What is your view on that?

The third one is: what are the reasons for extremely low -- from presentation it appears that you have a referral rate of 3 per cent for criminal prosecution and conviction must be much lower than that as well -- conviction and how would you suggest an improvement in that? Mr. Pradeep Kumar, 3 per cent, personally, I would say is a ridiculous figure.

The fourth one is: what is your view on prior sanction/the so-called famous and infamous single directive? आप उसको सिंगल डायरेक्टिव कहिए, या प्रायर सैंक्शन कहिए, पाइंट यह है कि आज हमने जो नया प्रस्ताव रखा है लोकपाल में, कि कमेटी पहले उसको स्कूटिनाइज करेगी, फिर आगे बढ़ेगा और प्रायर सैंक्शन नहीं होगा, यह एक प्रस्ताव बिल में है, उसके ऊपर आपकी क्या टिप्पणी है? आपने यह तो स्पष्ट कर दिया, मैम्बर्स ने भी नोट किया होगा, कि लोअर ब्यूरोक्रेसी नहीं होनी चाहिए, ग्रिवेन्स रिड्रेसल नहीं होना चाहिए, अलग होना चाहिए, लेकिन आप साथ-साथ यह भी कह रहे हैं कि जो व्यापकता है ग्रेड ए और ऊपर की, वह भी नहीं होनी चाहिए लोकपाल में, लोकपाल का ग्रेड ए, ऊपर से भी कम होना चाहिए। उसमें अगर हम ग्रेड ए तक रखें, तो उस पर आपकी क्या टिप्पणी है, क्यों आप यह समझते हैं कि ग्रेड ए तक भी नहीं रहना चाहिए? तो अभी के लिए यही सात-आठ मुद्दे हैं। Let us deal with them. Then, we will go to other issues. I hope the hon. Members and the CVC have noted these. Shall we start with the first one? Any hon. Member has supplementary, he can very well ask so and the CVC would reply to that. आपकी सूची में फर्स्ट क्या है?

श्री प्रदीप कुमार: सर, 5 प्रतिशत के करीब, जितने भी केस हमारे पास आते हैं, वह पीसी एक्ट के अंदर जाते हैं, बाकी 95 प्रतिशत के करीब केसेस जो हैं, उनमें डिसिप्लिनरि एक्शन लिया जाता है। कन्विकशन रेट की फिगर मेरे पास नहीं है, वह शायद डायरेक्टर सीबीआई के पास होगी, क्योंकि जब हम रिकमंड कर देते हैं, तो उसका फर्दर फॉलोअप सीबीआई करता है।

अध्यक्ष: आपके जो फाइव परसेंट केसेस रेफर होते हैं, five percent mean what? I am not clear.

श्री प्रदीप कुमार : सर, जो हमारे पास कंप्लेंट्स आती हैं, ये कंप्लेंट्स हर तरह से आ रही हैं, हमारा कोई प्रेस्क्रीड्ड प्रोफार्मा नहीं है, एनोनिमस भी आती है, सुडो-एनोनिमस भी आती है। एनोनिमस और सुडो-एनोनिमस की जो कंप्लेंट आती है, जो उसमें वेरिफाइबल फैक्ट है, उसे भी हम सीबीओ के पास भेज देते हैं। जिस केस में हम देखते हैं कि सीरियस फ्रॉड वगैरह है, वह तो इन्वेस्टीगेशन के लिए जाएगा, नहीं तो जनरली सीबीओ के पास जाता है। उसके अंदर वह अपनी पहली तहकीकात करता है, प्रिलिमनरि, उसके बाद हमारे पास रिपोर्ट आती है। चूंकि हमारे पास हर तरफ से शिकायतें आ रही हैं, तो लगभग जैसे मैंने टेबल में बताया था, 60 परसेंट शिकायतें तो उसी समय बंद हो जाती हैं। बाकी जो शिकायतें रह गईं, उसमें से जो शिकायतें हम समझते हैं कि इसमें सीरियस फ्रॉड है और उसमें हम पनिश करने के लिए एवीडेंस भी इकट्ठी कर सकेंगे, तो फिर हम सीबीआई को पीई करके आगे कार्रवाई करने के लिए भेज देते हैं, which is called 'preliminary inquiry'. Then, they investigate and then make it into R.C. और जो बाकी केसेस हैं, जिनमें कि प्रूफ नहीं है या इतने सीरियस नहीं हैं, या हम prove नहीं कर सकते, तो वे डिसिप्लिनरि एक्शन में आते हैं।

CHAIRMAN: But, this five percent is what?

श्री प्रदीप कुमार: सर, फाइव परसेंट वे हैं, जो बाकी बचे। जो हमारे पास कंप्लेंट्स आई, जैसे एक साल में पांच हजार कंप्लेंट्स आई, उसमें से लगभग पांच परसेंट के करीब पीसी एक्ट की इन्क्वायरी के लिए सीबीआई के पास जाएंगी।

अध्यक्ष: अच्छा, उसके बाद वह प्रोसिक्यूट होता है या नहीं, आपको पता नहीं?

So, 5 per cent is the figure which they refer for criminal prosecution. That figure may not be the actual prosecution and, certainly, will not be the conviction rate.

SHRI PRADEEP KUMAR: Sir, it is not an accurate figure. It is roughly of that order.

SHRI RAM JETHMALANI: I have tremendous respect for you, personally; your institution; and, your jurisdiction. Kindly see page 2 of your document where you have specified major causes of corruption. But one of the major causes of corruption is the corruption of investigative agencies. How is it that it has totally escaped your attention?

SHRI PRADEEP KUMAR: What I have here said is what the Santhanam Committee had said at that point of time. In my presentation, I have made it clear that when the Santhanam Committee identified the problems, they listed these four major problems at that point of time. And, in fact, Vineet Narayan Judgement, which I have mentioned now...(Interruptions)

SHRI RAM JETHMALANI: I am asking your opinion today. The institution is existing in a statutory form after 2003. Today, have you noticed that one of the major causes of corruption is the corruption of the investigating agencies?

SHRI PRADEEP KUMAR: Sir, it is a major cause of concern and that is why the superintendence of the CVC was brought upon the CBI by the Supreme Court after deliberating at this question in length.

SHRI RAM JETHMALANI: Are you capable of answering simply 'yes' or 'no'?

SHRI PRADEEP KUMAR: There are problems with the quality of investigation and we constantly try to improve that. The Director, CBI, would be meeting you.

CHAIRMAN: Mr. Ram, you will not get your cross-examination answer that you want. You will only get an answer that he wants to give.

SHRI RAM JETHMALANI: No; I am most anxious that the CBI should remain under his jurisdiction.

CHAIRMAN: That we can discuss separately.

SHRI RAM JETHMALANI: I want to know what you have detected during your experience. Have you found lack of complete integrity in several cases of investigation?

SHRI PRADEEP KUMAR: I would say that 'complete integrity' is a difficult ideal to achieve. And, that is true about the CBI and other organizations also.

SHRI RAM JETHMALANI: Mr. Pradeep, don't beat about the bush.

SHRI PRADEEP KUMAR: Sir, you asked about 'complete integrity'. So, I am giving you an answer that 'complete integrity' is a difficult thing.

SHRI RAM JETHMALANI: When do you characterize a situation as 'wanting in integrity'? And, how much percentage?

SHRI PRADEEP KUMAR: Sir, firstly, our superintendence is limited. Under the provisions, we cannot direct the course of investigation. That is left...(Interruptions)

SHRI RAM JETHMALANI: I will come to that later on. Please tell me whether you recognize today that one of the major causes of persisting corruption is the corruption of investigating agencies.

SHRI PRADEEP KUMAR: Not persistent, Sir. But I will say that the quality of investigation should always be improved. And, it is a continuous effort.

SHRI RAM JETHMALANI: Why are you fighting shy of this that improvement means improvement in the quality of integrity as well.

SHRI PRADEEP KUMAR: I have said that quality of integrity is something that we are constantly...(Interruptions)

SHRI RAM JETHMALANI: That's why I am asking you...(Interruptions)

SHRI PRADEEP KUMAR: It is my job to...(Interruptions)

CHAIRMAN: Can I put it like this? We are concerned with questions and answers. He has a question and you may not be having an answer right now, but we would want a specific answer to every Member's question. If you can give it subsequently, please give it subsequently. But we do want an answer.

Secondly, I am not clear whether you also have power over criminal conduct by grade 'A' and above officers of investigating agencies.

SHRI PRADEEP KUMAR: Sir, under the Prevention of Corruption Act, whatever we...(Interruptions)

अध्यक्ष : अगर IPS officer का इस तरह का conduct है, जो grade 'A' से ऊपर है, तो उसे भी आप investigate करते हैं?

श्री प्रदीप कुमार : वह इसी ऐक्ट में आएगा, then, it will be governed under the normal laws.

अध्यक्ष : Grade 'A' से ऊपर का हो तो आपके पास आता है, अगर वह IPS officer है तो भी आता है?

श्री प्रदीप कुमार : हां, उसका यह है कि We will refer it in our Annual Report.

CHAIRMAN: I think, what Mr. Ram is asking is आपकी Annual report में भी (व्यवधान)

SHRI PRADEEP KUMAR: We have a separate portion on the CBI in our Annual Report, after the directions of Supreme Court in Vineet Narayan case. So, we do have a...(Interruptions)

CHAIRMAN: Can I suggest one thing? To close Mr. Ram's point, let us make it into two parts. You can give written answers to them, if possible. One, have you indicated in your Annual Report how many delinquent officers you have found in the CVC or in the CBI over the years? Mr. Ram is asking only about the investigative agencies. But if you have more than that, say, about the police forces also, then, please give us that figure. एक तो CVC के

अंदर, CBI के अंदर और पुलिस फोर्सेज के अंदर अगर कोई delinquency है, तो आप वह बता दें। Does that meet your point, Mr. Ram?

SHRI RAM JETHMALANI: I want to know whether you have investigated cases of lack of integrity in the investigations by the CBI.

SHRI PRADEEP KUMAR: Yes, Sir.

SHRI RAM JETHMALANI: Have you?

SHRI PRADEEP KUMAR: Sir, the thing is that when the cases come...(Interruptions) I am telling you, Sir. Please allow me to finish.

SHRI RAM JETHMALANI: I want you to finish as quickly as possible. I want a simple answer.

SHRI PRADEEP KUMAR: There are cases where we seek a report of the CBI officers against whom they are taking action under the departmental mechanism and if action is also taken under the PC Act against the CBI officers.

SHRI RAM JETHMALANI: Have you, in exercise of your powers of superintendence, come across cases in which you have found that the investigating agency is not honest?

SHRI PRADEEP KUMAR: Individual officers are not honest. I would not tar the image of the entire investigating agency.

SHRI RAM JETHMALANI: Alright. Have you come across cases in which...(Interruptions)

SHRI PRADEEP KUMAR: There are certain cases in which the conduct of individual officers was not up to the mark. But I would not tar the...(Interruptions)

CHAIRMAN: Please give the specific figures.

SHRI RAM JETHMALANI: I am not worried about figures. I am first worried about the phenomenon. He is not prepared to admit the phenomenon. What is this, Mr. Pradeep Kumar? I am really disappointed. Please tell us whether you have detected cases of lack of integrity in individual officers.

SHRI PRADEEP KUMAR: We have come across cases of lack of integrity in individual officers. What more do you like me to say?

SHRI RAM JETHMALANI: Alright. Have you found out even a single case in which you have taken action?

SHRI PRADEEP KUMAR: We will provide you the figures in this regard.

SHRI RAM JETHMALANI: Therefore, please tell us the nature of superintendence that you exercise over investigating agencies. What is it that you do to detect cases of corruption in the investigating agencies?

SHRI PRADEEP KUMAR: Sir, our superintendence is laid down by the Supreme Court.

SHRI RAM JETHMALANI: Mr. Pradeep Kumar, I know what the Supreme Court has held. You tell us what is....(Interruptions)

SHRI PRADEEP KUMAR: We act within that ambit. We don't go into individual investigations. We monitor cases where sanction for prosecution is pending with the concerned disciplinary authority.

SHRI RAM JETHMALANI: Is that all that you do?

SHRI PRADEEP KUMAR: We do that. Then, we also ask them whether there is any delay in investigation. Every month, they meet us and tell us which are the major cases that they are pursuing; what the progress is in the cases that are under trial.

SHRI RAM JETHMALANI: Please give us an exhaustive list of the nature of superintendence that you exercise over the CBI.

SHRI PRADEEP KUMAR: Delay in sanctions and prosecutions, progress of cases, in the sense, at what stages they are; what the delay is in the cases that are under trial. We also recommend appointment of Director, CBI, and all officers above ascertain level in CBI, that they are of the right record; if they are to be sent back prematurely, then, they come to us. These kinds of things are done by us.

SHRI RAM JETHMALANI: Have you finished the list?

SHRI PRADEEP KUMAR: Roughly, Sir.

SHRI RAM JETHMALANI: Do I, therefore, take it that you do not examine any investigations from the point of view of the integrity of the individual officers?

SHRI PRADEEP KUMAR: Sir, we do not go into the actual investigations that are being carried out. We are not the investigating officers.

SHRI RAM JETHMALANI: Let me put you a last question because I find that you are not of great help. Have you noticed the criticism by the Supreme Court on the integrity of the CBI, in some cases? If not, I will give you the list of those cases. Have you come across the criticism by the Supreme Court, in their judgements, about the integrity of the CBI investigations?

SHRI PRADEEP KUMAR: I have not seen them myself.

SHRI RAM JETHMALANI: You have not seen them. Okay. Now, I know what exactly ...

CHAIRMAN: Now, let us close this topic.

SHRI RAM JETHMALANI: Sir, I am very sorry; I don't expect this kind of evidence to be given.

CHAIRMAN: One minute. There are three aspects. Kindly note it down. One is, we would like to have a written note from you about the criminal or departmental action against police officials involved in investigation in the CBI and/or the CVC. That is the heart of Mr. Jethmalani's question. That is one part of it. Then, he has another question. His second question is: Do you supervise the quality of investigation? From my little knowledge, I know that the CVC does not. It is because once they handover a case to the CBI for a PE or an RC, the actual nitty-gritty of investigation inside a case is then not investigated by them. However, in the course of their investigation, in case they find some corruption by a police officer, then that becomes a corruption case under the Prevention of Corruption Act and they will take the normal action. But if you are talking about the nature and quality of the investigation -- I am not answering on his behalf -- I think, they have no jurisdiction there. Please clarify that in your note.

SHRI PRADEEP KUMAR: Sir, I am reading Section 8(b) of the Central Vigilance Commission Act which deals with the question of superintendence. It says, 'provided that while exercising the ...

SHRI RAM JETHMALANI: For God sake, please understand that, at least, I know that Act as much as you do.

CHAIRMAN: Let us do it like this. I have a suggestion. Mr. Pradeep Kumar, have you have understood the two parts of the question? You can provide the elaboration in your note. But the point that you want to make orally, you can make in just two minutes and then we can go back to the list of questions.

SHRI PRADEEP KUMAR: Sir, I am only substantiating what you said. It says, 'provided that while exercising the powers of superintendence under clause (a) or giving directions under this clause, the Commission shall not exercise powers in such a manner so as to require the Delhi Special Police Establishment to investigate or dispose of any case in a particular manner.'

SHRI RAM JETHMALANI: No, I am not asking you to tell the CBI how to dispose of a case in a particular manner. But if you find that there is no integrity in the investigation, is it or is it not a part of your function?

CHAIRMAN: Now, Ram, he will answer rest of the questions in his written note. Now, his views is, *prima facie*, as your phrase it, he does not have jurisdiction. But he will clarify it. Whatever it is, he will give it in writing. That will be his official stand. There is no problem in that. Can we now come back to the sequence with which we had started? My suggestion is, on the first issue, you make your comment very briefly. If anybody has supplementary on that, he can ask it. Everybody doesn't have to ask on every issue, and then we would go to the next issue. We will move quickly now.

श्री राम विलास पासवान : मैं इसी मुद्दे पर संक्षेप में एक सवाल पूछना चाहता हूं। हमारे पास जो लोग evidence के लिए आए थे, उनमें से कुछ लोगों ने यह आरोप लगाया था कि CVC की जो investigations होती हैं, उनमें जिन लोगों की investigations होती हैं, उनमें शैड्यूल्ड कास्ट्स, शैड्यूल्ड ट्राइब्स और बैकवर्ड क्लासेज के लोगों की बहुत संख्या होती है और वे ज्यादा victimized होते हैं और उनके खिलाफ ज्यादा आरोप लगाए जाते हैं। मैं पूछना चाहता हूं कि क्या आप इसका कोई रिकॉर्ड रखते हैं कि आपकी जो investigations होती हैं, उनमें शैड्यूल्ड कास्ट्स, शैड्यूल्ड ट्राइब्स और बैकवर्ड क्लासेज के लोगों की क्या परसेंटेज होती है? यदि आपके पास अभी आंकड़े उपलब्ध नहीं हैं, तो आप बाद में भिजवा दीजिए।

श्री प्रदीप कुमार : सर, आप जो सवाल पूछ रहे हैं, हमारे पास शायद ऐसा कोई आंकड़ा उपलब्ध नहीं है, लेकिन मैं एक बात आपकी दृष्टि में लाना चाहता हूं कि एक समस्या हमारे सामने यह रही है कि ज्यादातर हमारे पास जो केसेज हैं शैड्यूल्ड कास्ट्स, शैड्यूल्ड ट्राइब्स और बैकवर्ड क्लासेज के इम्प्लॉयीज के खिलाफ, वे क्लास "सी" और क्लास "डी" के अंदर हैं, क्लास "ए" और क्लास "बी" में उनकी संख्या बहुत कम है। तो आप जो बात कह रहे हैं क्लास "सी" और क्लास "डी" की, वह CVC के पास (व्यवधान)

श्री राम विलास पासवान : मैं क्लास "ए" और क्लास "बी" की बात भी कह रहा हूं। जनरली यह चार्ज लगाया जाता है कि जब उनकी प्रमोशन का मामला आता है, तो यह कह दिया जाता है कि इंकवायरी स्टेज पर है, मामला CVC के पास है। नतीजा यह होता है कि उनकी

प्रमोशन रुक जाती है। इसलिए मैंने कहा कि उसमें जितनी भी investigations होती हैं (व्यवधान)

श्री प्रदीप कुमार : सर, हम इसमें कोई भेदभाव नहीं करते हैं।

श्री राम विलास पासवान : आप भेदभाव नहीं करते हैं, लेकिन मैं सिर्फ फिगर्स चाहता हूं, अगर आपके पास ऐसी कोई फिगर्स हों, तो भिजवा दीजिए।

श्री प्रदीप कुमार : सर, हमने ऐसी कोई फिगर्स मैटेन नहीं की हैं।

श्री राम विलास पासवान : आप चेक करके फिगर्स भिजवा दीजिए, एस.सी. और एस.टी. की फिगर्स तो आप भिजवा ही दीजिए।

श्री प्रदीप कुमार : अगर ऐसी कोई फिगर्स होंगी, तो मैं भिजवा दूंगा।

श्री लालू प्रसाद : चेयरमैन साहब, मुझे लगता है कि विषयांतर हो रहा है। आज आपने CVC और CBI को बुलाया है, जो प्रीमियर संस्थाएं हैं, जिनकी अपनी प्रतिष्ठा है। Individual criticism तो कोई भी कर सकता है। हम लोग भी CBI से गुजरे हैं। आज हमारी कमेटी के सामने यह लोकपाल बिल है, सरकार ने यह assignment हमको दिया है। अच्छी बात है कि CVC ने अपना viewpoint यहां रखा है। मैं नहीं समझता कि हमने इनको कोई सजा देने के लिए यहां बुलाया है, हमने इनको जानकारी हासिल करने के लिए बुलाया है कि यह जो लोकपाल बिल है, जिस पर हम लोग विचार करने बैठे हैं, क्या यह लोकपाल बिल देश से भ्रष्टाचार को मिटा देगा, खत्म कर देगा? आपके द्वारा यहां यह लिखा हुआ है कि पोलिटिकल लोगों को इसमें शामिल करना चाहिए, आपने लिखा है कि लोकपाल के दायरे में एम.पीज़, मिनिस्टर सभी लोग आएंगे, यह आपकी रिकमंडेशन में 10वां प्वाइंट है। आएंगे या न आएंगे, इस पर तो कमेटी विचार करेगी, पार्लियामेंट विचार करेगी।

मैं निवेदन करूंगा कि अगर आपको बिल के बारे में कोई apprehension है, उसके बारे में आपको कोई जानकारी लेनी है, तो वह जानकारी आप इनसे लीजिए। केवल वही बात कीजिए। अगर कोई जानकारी इनके पास नहीं होगी, तो वे बाद में लिखकर दे देंगे। मैं इतना जानता हूं कि आज तक CVC पर किसी ने भी अविश्वास नहीं किया है।

अध्यक्ष : अविश्वास का सवाल ही नहीं उठता है।

श्री लालू प्रसाद : अगर हमारी एजेंसी के रहते हुए हम इसको समाप्त कर देते हैं और नयी रचना करते हैं, तो ऐसी संस्थाओं का क्या होगा? मैं पढ़ रहा था कि लाल बहादुर शास्त्री जी के जमाने में यह संस्था बनी थी, सरकारी स्तर के कर्प्शन को दूर करने के लिए बनी थी। इसलिए मैं कहना चाहता हूं कि इन लोगों से जो जानकारी आपको लेनी है, वह लीजिए और फिर हम लोग आपस में चर्चा कर लेंगे।

अध्यक्ष : आप अपने दूसरे प्वाइंट पर टिप्पणी करें, फिर हम आगे बढ़ेंगे। बताइए।

श्री प्रदीप कुमार : दूसरा प्वाइंट यह था कि CVC और CBI को लोकपाल का हिस्सा बनाना चाहिए या नहीं? जहां तक CVC का प्रश्न है, हम चाहते हैं कि वह केवल ब्यूरोक्रेसी तक ही सीमित रहे, preventive vigilance करे, punitive vigilance करे और दूसरी संस्थाओं के साथ मिलकर काम करे और integrity को बढ़ाने की कोशिश करे, क्योंकि हम समझते हैं कि इंस्टीट्यूशन के अंदर से ही कोशिश होनी चाहिए कि वह integrity लाए, क्योंकि integrity बाहर से नहीं आ सकती।

SHRI PRADEEP KUMAR (contd.): We cannot build a society on distrust and fear alone. सीवीसी यह काम करता है। पॉलिटिकल करप्शन के अंदर जो सिविल सर्वेंट्स उनके साथ लिस हैं, उनको देखने के लिए कोऑर्डिनेशन मैकेनिज्म होना चाहिए। उसमें अगर सीवीसी को आप हिस्सा बनाना चाहते हैं तो लोकपाल का एक्स ऑफिशियो सदस्य कर दें। अगर नहीं भी बनाना चाहते तो हमें कोई ऐतराज नहीं है। मैं समझता हूं कि सिद्धांत रूप से सीबीआई को लोकपाल का सदस्य नहीं बनाना चाहिए।

DR. BHALCHANDRA MUNGEKAR: I would like to seek some clarifications here.

अध्यक्ष : अगर इस मुद्दे पर कोई प्रश्न हो तो आप पूछ सकते हैं।

DR. BHALCHANDRA MUNGEKAR: First of all, I congratulate you on your excellent presentation. So far as this issue is concerned, I think you cannot take a position that CVC may or may not be made an ex-officio member of Lokpal. We want you to have a clear-cut position, because there are implications of that. We cannot keep that position ambivalent.

SHRI PRADEEP KUMAR: If you want a definitive recommendation, I would suggest that we should go by the recommendations of the Second Administrative Reforms Commission which says that CVC should be made an ex-officio member of the Lokpal.

अध्यक्ष : यह उन्होंने लिखकर दिया है।

श्री अर्जुन राम मेघवाल : सर, इसी पर मेरा एक सवाल है। आपने एक जगह कहा है कि सीवीसी को autonomy चाहिए। यह आपकी रिकमेंडेशन है। अगर सीवीसी लोकपाल में मੈबर बन गया, तब क्या आपकी ऑटोनॉमि डिस्टर्ब नहीं होगी?

श्री प्रदीप कुमार : सर, हमने यह कहा है कि सीवीसी एक्स ऑफिशियो होगा। हम यह कह रहे हैं कि सीवीसी का जो अस्तित्व है, जो पावर है और जो तरीका है, वह वैसे ही रहेगा। केवल एक्स ऑफिशियो मੈबर बनेगा, for the purposes of bureaucracy, जिससे कोऑर्डिनेशन ठीक हो सके।

श्री लालू प्रसाद : अध्यक्ष महोदय, मैं प्रदीप जी से कहना चाहता हूं कि आप लोगों से जानकारी प्राप्त करने के लिए ही आपको चेयरमैन साहब ने बुलाया है। आपने लिखा है कि एमपीज़ लोगों को स्ट्रॉंग लोकपाल बिल के अंतर्गत रखना चाहिए। इसके अलावा मिनिस्टर्स को और पॉलिटिशियंस को भी इसके अंतर्गत रखना चाहिए।

अध्यक्ष : इस पर हम अभी बाद में आएंगे।

श्री अर्जुन राम मेघवाल : सर, मेरा एक प्वाइंट रह गया था। इन्होंने 6(ए) की पॉवर्स मांगी है, power of prior approval.

अध्यक्ष : इस पर हम बाद में आएंगे।

श्री अर्जुन राम मेघवाल : इसके अलावा इन्होंने power of sanction of prosecution भी मांगा है। अगर सीवीसी लोकपाल में मैनबर होगा, तो एक ही आदमी के द्वारा इस तरह की पॉवर्स यूज होंगीं। जैसे सीबीआई के लिए आया था, जो हरीश साल्वे साहब कह रहे थे कि एक ही आदमी इन्वेस्टीगेशन करे, एक ही आदमी प्रॉसीक्यूशन करे और वही जाकर वहां मैनबर बैठे, तो क्या इससे लोकपाल की sanctity पर कोई असर नहीं होगा? यह एक मुद्दा है।

अध्यक्ष : Prior approval का जो मुद्दा है, हमारे लोकपाल बिल में अभी प्रायर अप्प्रूवल हटा दिया गया है, खुद की इन्वेस्टीगेशन देखती है कि क्या होना है। उसके साथ ही वे इसका उत्तर देंगे।

SHRI PINAKI MISRA: I would first come to your point, Mr. Chairman, which you had specifically raised, about the recommended prosecution rate and the obtaining conviction rate that comes thereafter. I find that you are handling 20,000 cases annually and out of that, 60 per cent cases are in the first stage advised closure. Isn't that an alarmingly high rate? It means that almost 12,000 cases are found to be completely without foundation. What do you attribute this to? Is this uniquely Indian? Either we are envious or malicious! Is there a whole range of reasons why Indians go in for this kind of a complaint rate which is found to be without foundation? Do you have any comparable rates with rates abroad, as to what kind of closure rates are prevailing abroad? That is my first question.

SHRI HARIN PATHAK: Let me come in here, for a moment please. I totally associate with him. If you see the figures that Mr. Mishra has rightly pointed out, on page 8, the closure rates have been increasing for the last three years. It was 1256 earlier and in 2010, it was 2082. Mr. Mishra has rightly pointed out that the closures reports constitute 60.8 per cent. Instead of increasing, it is decreasing. What is the reason for that?

CHAIRMAN: Let each Member put his question so that we don't have to come back to that Member. The CVC may note the questions down and reply to them later.

SHRI PINAKI MISRA: Now, I would like to put a general question. I would like to know from the hon. Commissioner if there are any comparable rates of closure with those world-wide. There are some other major agencies such as the FBI in the US, UK, etc. What is the level of closure there? Secondly, Mr. Commissioner, I would like to understand from you the prevailing perception. The reason why we meet here today is that there is a clamour for the Lokpal because, obviously, the institutions of the CVC and the CBI have been ineffective. That is the general public perception. That is why there is this clamour for the Lokpal. At point 21 on page 11 of your presentation, you have said that the CVC procedure is a faster procedure than that of the Lokpal. That becomes a completely self-defeating argument. Why are we going in for a Lokpal if you yourself feel that you are actually in a better position to do a much faster investigation? What is the point of having a Lokpal thereafter? In that sense, would you then not say that 'we are doing a pretty good job; don't bring in an overriding

Lokpal over us'? From what I could understand, your issue of the Lokpal is only 'grand political corruption'. That is all you want the Lokpal to focus on. So, then, you should come right out and say that grand political corruption is the only reason why a Lokpal should be instituted and nothing else.

श्री लालू प्रसाद : इसका गठन कहां अभी हुआ है? आप मेरी बात सुनिए। We are not reviewing the functioning of the CVC and the CBI. Our assignment is the Jan Lokpal Bill. इस पर बात करिए, इस पर बात होनी चाहिए।

अध्यक्ष : इन्होंने कहा है कि लोकपाल सिर्फ बड़े राजनैतिक भ्रष्टाचार के लिए होना चाहिए।

श्री लालू प्रसाद : किसने कहा है?

अध्यक्ष : मिश्रा जी प्रदीप जी से पूछ रहे हैं। उसी के ऊपर वे प्रश्न पूछ रहे हैं।

श्री लालू प्रसाद : सीबीआई की हम फंक्शनिंग हम डे बाय डे रिव्यू नहीं कर रहे हैं। अगर हम इन दोनों को ठेल देते हैं कि लोकपाल बिल में चले जाइए तो क्या हमारा परपस सॉल्व हो जाता है?

अध्यक्ष : वह मुद्दा खत्म हो गया है।

SHRI LALU PRASAD: We have to allay our apprehension कि क्या होगा। **CHAIRMAN:** We would come to that.

श्री लालू प्रसाद : हमें यह मांगना चाहिए कि अगर तथाकथित लोकपाल बना तो उसकी क्वालीफिकेशन क्या होनी चाहिए।

CHAIRMAN: We are putting questions person-wise. Let Members not repeat questions if they are identical.

श्री रामविलास पासवान : आप मेंबर्स को एक बार प्रश्न पूछने के लिए कहिए। ये लोग उन प्रश्नों को नोट करते जाएं और एक ही बार में जवाब दे दें तो वह अच्छा होगा।

अध्यक्ष : आप सभी प्रश्नों को नोट करते रहिए और फिर उत्तर दे दीजिएगा।

SHRI PRASANTA KUMAR MAJUMDAR: The CVC has acted as both the investigator and prosecutor. As a measure to improve the criminal justice system, suggestions have been made at many fora to separate prosecution from investigation. What is the CVC's view in this regard? The CVC had floated a draft anti-corruption strategy paper in 2010 inviting comments/suggestions thereon from the public and stakeholders. What is the current status of the same? How many comments and suggestions have been received and from whom?

SHRI S. SEMMALAI: Sir, I have gone through the booklet supplied by the CVC. I have a few points to make on the clarifications and explanations given by the CVC.

SHRI S. SEMMALAI (CONTD.): I presume the role of CVC in giving suggestions to the various Departments in respect of procurement policy, etc., is only advisory in nature. Why can't the CVC Act be amended so that the opinion given by the Organization to any Department can be implemented strictly? Do you have any view on it? Secondly, at present, you are talking about the corporate sector. Are you having any *suo motu* power to deal with

corruption in the corporate sector? You have mentioned in your recommendation that the Commission would like to work in close cooperation with Lokpal in fight against corruption. You have said that mechanism needs to be developed for effective coordination. One of the ways could be that the Central Vigilance Commissioner is made an *ex officio* member of the Lokpal. I think, merely nomination of CVC as *ex officio* member will not serve the purpose. Do you have any vision of such mechanism to bring synergy between the CVC and the Lokpal in curbing political and bureaucratic corruption? The CVC has got the nod from the Government to prosecute an officer of the rank of Joint Secretary and above. It takes unduly long time. I make a simple suggestion that within three months from the date of receipt of proposal for sanctioning of prosecution, the competent authority has to give its final views either 'yes' or 'no'. If not received within three months, sanction for prosecution is deemed to have been received from the authority and the CVC can go ahead with the formalities. What is your reaction to this suggestion?

श्री हरिन पाठक : सर, लालू प्रसाद जी ने एक बहुत ही अच्छी बात कही है कि हम यहां लोकपाल बिल पर चर्चा के लिए इकट्ठे हुए हैं। आज हम यहां CVC को grill करने के लिए नहीं बैठे हैं, बल्कि हम यहां सबके विचार सुनने के लिए बैठे हैं। CVC is not in our agenda.

अध्यक्ष : पाठक साहब, यह सर्वसम्मति की बात है। आप जो बात कह रहे हैं, उससे सभी लोग सहमत हैं। सुबह थोड़ा बहुत अपवाद जरूर हुआ है, तो अपवाद तो हो सकता है।

श्री हरिन पाठक : उनकी क्या रेकमेंडेशन्स हैं, अगर हम उन पर क्लेरिफिकेशन लेंगे, तो हमारा काम आसान हो जाएगा। हम यहां CVC की फंक्शनिंग पर बात करने के लिए नहीं बैठे हैं। CVC के फंक्शन पर बाद में अलग से बात होगी।

अध्यक्ष : ठीक है, वह बात मान ली गई है।

SHRI N.S.V. CHITTHAN: Sir, I got two points. It is astonishing to note that almost all the officials of both Mumbai and Delhi in the Vigilance Department have spent over a decade in the job. In fact, some of them have spent over 15 years. The CVC guidelines clearly stipulate that no one should serve beyond three years extendable by a maximum of two further years. Secondly, Air Corporation SC/ST Employees is Air India's only organization which has a separate Vigilance cadre which was created some years ago. All other public sectors including erstwhile Indian Airlines have no separate cadre. It was in violation of CVC's guidelines. I want your specific reply.

श्री अरुण सुभाषचंद्र यादव : मैं CVC से यह जानना चाहूंगा कि जो केसेज स्टेट लेवल पर कई वर्षों से पेंडिंग होते हैं और जो केसेज यहां से स्टेट गवर्नमेंट को फॉरवर्ड करते हैं, उनका स्टेटस क्या है? क्या कारण है कि दस-दस, पन्द्रह-पन्द्रह साल तक केसेज स्कूटनाइज नहीं हो पाते हैं?

मैं दूसरी बात यह जानना चाहता हूं कि कॉर्पोरेट लेवल पर काफी करप्शन हो रहा है, तो आपने अभी तक कितने केसेज को हैंडल किया है?

SHRI SUKHENDU SEKHAR ROY: Sir, I would like to invite the attention of the CVC on its recommendation at page 16, item No.31 where it is said that Lokpal should focus on Ministers, MPs and those civil servants who have connived with in grand political corruption.

My pointed question is: While saying Ministers, does the CVC include or exclude the Prime Minister, and while saying MPs, does the CVC include or exclude the Prime Minister because Prime Minister is an MP and also a Minister? Secondly, whether there will be a clash or conflict on administrative powers and status between the CVC and the CBI on the one hand, and the Lokpal, on the other hand, if this Lokpal Bill or any other Lokpal Bill comes into being.

ADV. P.T. THOMAS: Sir, I associate myself with this.

SHRI PARIMAL NATHWANI: Sir, I associate myself with this.

SHRI ARUN YADAV: Sir, I associate with this.

SHRIMATI DEEPA DASMUNSI: Sir, I associate with this.

DR. (SHRIMATI) PRABHA KISHOR TAVIAD: Everybody agrees that Lokpal should cover the major, not lower bureaucracy. We are having CBI and CVC. They are very strong bodies. We do believe that their autonomy must be maintained. Do you believe that it will be helpful in making these bodies answerable to Lokpal?

SHRI PARIMAL NATHWANI: When you are saying that your existing structure should remain intact and the other way you are saying that corporate corruption should come under the Lokpal, I would like to know if CVC is not capable enough to handle the corporate corruption and why have you suggested that it should go to the Lokpal, and your unit should remain intact? Can you explain why is it required? Secondly, you are saying about the UK Bribery Act. If you can explain this to me later on, I shall be happy.

ADV. P.T. THOMAS: Sir, I associate myself with this.

SHRI ARUN YADAV: Sir, I associate myself with this.

SHRIMATI DEEPA DASMUNSI: Sir, I associate myself with this.

SHRI HARIN PATHAK: Sir, I associate myself with this.

SHRI VIJAY BAHADUR SINGH: Sir, I associate myself with this.

श्री शैलेन्द्र कुमार : आप एक-एक कॉपी हिंदी में भी दे दीजिएगा, जो अंग्रेजी में लेना चाहें, उन्हें अंग्रेजी में दे दीजिएगा।

अध्यक्ष : आप बाद में कॉपी भिजवा दें और साथ में एक शॉर्ट नोट उस पर भिजवा दें।

श्री शैलेन्द्र कुमार : चेयरमैन सर, मैं आपसे बोल रहा हूं, बहुत जद्दोजहद के बाद बहुत देर बाद मौका मिला है, इसके लिए आपको बहुत-बहुत धन्यवाद। अभी CVC कमिश्नर साहब की बात हम लोगों ने बहुत ध्यान से सुनी। यह बात सत्य है कि आपके जो अधिकार हैं, कार्यकलाप हैं, हम लोग उस पर कोई क्वेश्चन नहीं करना चाहते हैं। हम आपसे एक क्वेश्चन यह करना चाहते हैं कि जैसे दो कैटेगिरी हैं, एक ब्यूरोक्रेसी और दूसरी राजनीतिक लोगों की, इसमें ये दो लोग हिट लिस्ट में हैं। आप यह बताइए कि उच्च अधिकारियों में ज्यादा करप्शन है कि नीचे के कर्मचारियों में ज्यादा करप्शन है? नंबर दो प्रश्न यह है कि उच्च पद पर बैठे हुए जो राजनीतिक लोग हैं, उनमें ज्यादा करप्शन है या नीचे जो राजनीतिक लोग बैठे हैं, उनमें ज्यादा करप्शन है? यहां का जो डिसकशन है, उसकी हम लोगों ने पार्लियामेंट

मैं, अपने क्षेत्र में सड़क से लेकर पार्लियामेंट तक, हमेशा इस बात की बहस की है। आज हम लोग लोकपाल बिल बनाने जा रहे हैं, जिसकी एक बहुत ही मजबूत लोकपाल बिल बनाने की तैयारी है। CVC के बारे में हम लोगों ने कभी कोई डिसकशन नहीं किया, न ही हम लोगों ने आज तक कभी हस्तक्षेप, प्रत्यक्षेप किया है, लेकिन C.B.I. के ऊपर हमेशा सवालिया निशान उठा है। उसकी स्वायत्तता को लेकर, उसको अधिकार देने की बात, उसको मजबूत करने की बात हमेशा हुई है। मैं सबसे पहले यह क्वेश्चन पूछना चाहूंगा कि जो मजबूत लोकपाल बिल आ रहा है, क्या उसमें आपको रखा जाए? यदि रखा जाए तो क्यों रखा जाए, यह सवाल है? दूसरा, कुछ साथियों ने पूछा, मैं उस पर विस्तार से नहीं जाना चाहूंगा, पहले भी बहुत चर्चाएं हुई हैं कि एन.जी.ओज., जो अपने देश में काम कर रहे हैं या देश के बाहर की फंडिंग्स से यहां पर काम कर रहे हैं, अभी संसद सदस्यों के बारे में बात रखी, मैं उस पर बताना चाहूंगा कि संसद को इससे कहीं ज्यादा पावर प्राप्त है। आपने देखा कि इस वक्त जो लोग जेल में हैं, वह संसद की ही एक कार्य प्रणाली रही है। दस-दस, बारह-बारह, पंद्रह-पंद्रह हजार में, छोटे-छोटे क्वेश्चन पूछने में, बारह-बारह सदस्यों की सदस्यता इसी सदन से बर्खास्त की गई है। दूसरा कार्पोरेट घराने को भी शामिल करने की बात है। मीडिया को लेकर भी एक महत्वपूर्ण सवाल है। क्या आप मानते हैं कि मीडिया में भी करप्शन है? क्या उसको शामिल किया जाए या नहीं किया जाए? एक और बात है कि यह जो कमेटी बन रही है, या सर्च कमेटी बन रही है, उसमें S.C./S.T./O.B.C., महिला और अल्पसंख्यकों को भी रखा जाए या नहीं रखा जाए? क्योंकि आज देखा गया है कि निचले तबके में हम, आप तो कहीं भी, कुछ पैसा देकर अपना काम करा लेते हैं, जोकि भ्रष्टाचार का एक अंग है, लेकिन जो गरीब आदमी है, जो नीचे का आदमी है, जिसके बारे में आपने अभी अपने वक्तव्य में भी कहा कि चाहे राशन कार्ड की बात हो, कोई भी बी.पी.एल. धारक हो, उसको सबसे ज्यादा करप्शन से गुजरना पड़ता है, उसका काम ही नहीं होता है। आज हम लोग यहां पर बैठे हैं। अगर आप काम कर रहे हैं या हम लोग यहां बैठे हैं तो जनता के चुने हुए प्रतिनिधि यहां पर हैं। आप इस वक्त यह प्रयास कर रहे हैं कि करप्शन दूर हो, उसको हम कैसे दूर कर सकते हैं, ये मेरे छोटे से चंद सुझाव हैं और प्रश्न भी हैं।

श्री कीर्ति आजाद : यहां पर अधिकतर सभी प्रश्न पूछ लिए गए हैं, मैं आपसे केवल एक जानकारी लेना चाहता हूं। पृष्ठ संख्या 10 को देखेंगे और उसमें 'Measures for strengthening CVC' पर जाएंगे। CVC में Investigation होना चाहिए, यह आपकी राय है, लेकिन मुझे प्रसन्नता होती, यदि आप यह कहते कि prior approval under 6A of the DSPE Act का 2003 में लगा था, आप उसको हटाने की बात करते। यही कारण है कि शुरू में पिनाकी जी ने इस बात को पूछा था कि यह politically influence करता है। Permissions मिलती हैं, नहीं मिलती है, दिल्ली पुलिस का जो स्पेशल 6A ऐक्ट था, मुझे खुशी होती यदि आप उसकी repealing के लिए कहते। मैं आपसे यह जानना चाहता हूं कि आपका इसके ऊपर क्या विचार है? दूसरा आपने भ्रष्टाचार के मानकों के बारे में कहा है, आपने कहा है administrative delays are there;

lack of transparency is there. There are a few cases. मैं आपको एक इंसिडेंट बताना चाहता हूँ कि एक match-fixing का केस हुआ था। मैंने पार्लियामेंट में 1999 में विषय उठाया था। उसके अंदर सी.बी.आई. इन्क्वारी की गई थी और

पी.ई. में खत्म हो गया था, लेकिन Hansie Cronje, जिनका एक हवाई जहाज के अटैक में देहांत हो गया, उन्होंने अपनी बात मानी थी और उन्होंने चार हिंदुस्तानियों के नाम प्रमाणों के साथ दिए थे। आप मेरी बात सुन रहे हैं? साउथ अफ्रीका के Hansie Cronje थे, उन्होंने प्रमाणों के साथ चार हिंदुस्तानियों के नाम दिए थे, जो उसमें लिखे थे। आपकी पी.ई. जो आपने शुरू में बताया, वह उस पी.ई. में खत्म हो गई, आपने उसकी पीपी बजा दी। मैं यह जानना चाहता हूँ कि जब ऐसे पुख्ता प्रमाण आपके हाथ में आ जाते हैं तो प्रश्न, जो राम जेठमलानी जी ने पूछा था, वह सबके सामने एक बहुत बड़ा प्रश्न बन जाता है। मैं आपसे जानना चाहता हूँ कि यह 6A, आप जिसकी मांग कर रहे हैं, आप इसकी रिपीलिंग के लिए क्यों नहीं मांग करते हैं, ताकि आपको पूछने की जरूरत ही नहीं पड़े? जब सभी कुछ Prevention of Corruption Act में आता है, तो why should not it be completely scrapped? You don't need any permission from the Government. You should straightaway do it. आप मुझे उस पर बताइएगा।

श्री रामविलास पासवान : मेरा एक छोटा सा प्रश्न है कि आप क्लास 1 और 2 के ऑफीसर्स के चार्जस को देखते हैं। जो लोकपाल बिल में है, वह भी क्लास 1 और 2 के ऑफीसर्स के ऊपर कहीं रखा गया है। क्या ये दोनों विवादास्पद नहीं हैं, contradictory नहीं हैं? आप उसको क्या देखेंगे और लोकपाल क्या देखेगा?

डॉ. भालचन्द्र मुणगेकर : मैं एक ही सवाल पूछना चाहता हूँ। पहली बात तो यह है कि चेयरमैन साहब ने पहले पूछा था कि five per cent of what. He may be getting thousands of cases. It may not be five per cent of all the cases. Five per cent, as I understand, of the cases which are, according to you, fit for investigation. Otherwise, that will be a totally distorted figure. Mr. Kirti Azad and many others mentioned several reasons responsible for a low conviction rate and a low prosecution rate. One major reason appears to be Government's interference. What I am saying is that there is a general perception. हम CBI के बारे में बाद में पूछेंगे, but there is a general perception that though the CBI and the CVC claim to be autonomous, for all practical purposes their functioning is subject to or subordinate to the Government.

The power of prior approval under 6A is the origin or the beginning of the Government's direct interference at the inquiry stage itself, because any Government must be looking into the political implications of giving the permission or not giving the permission. Under these conditions when you are keeping 6A, where is the question of autonomy? You want autonomy for recruiting officers. According to me, that is a trivial issue; it is not a substantial issue. If, at all, CVC is to be a competent instrument to deal with the charges of corruption, then according to me it should be totally independent in its functioning.

SHRI SHANTARAM NAIK: In fact, I had initially stated that we should keep aside the administrative power. But nobody supported me. I was alone. Now most of the questions are on the functioning of the CVC. I am also asking one of these.

SHRI HARIN PATHAK: I supported you.

SHRI SHANTARAM NAIK: The advice of the CVC is only recommendatory. हमें लगता है कि कोई बड़ी पावर है, I am telling you. When the Government wants an advice on whether an action should be taken in a matter of discipline or of corruption, the file goes to the CVC and it gives its recommendations. इसके अलावा कुछ नहीं है। ठीक है। Now my question is this. Suppose a disciplinary authority takes action and wants to give punishment. Have you got the power to recommend the quantum of punishment? And if so, how can you interfere in the functioning of a quasi-judicial authority? Please tell me.

Secondly, you have got the power to supervise the CBI because of the DSPE Act. But the CBI is a powerful body. It has got its own power to prosecute whereas yours is only recommendatory. What sort of supervision at all can you have on a body like the CBI? In fact, the question had come earlier from the Chairman.

Thirdly, you have had a legislation of 2003. There is a history behind that legislation. It was under the direction of the Supreme Court to the Government that that legislation should be enacted. After the draft was prepared, the Supreme Court insisted on the draft being shown to them. They corrected it. I would like to know whether the legislation was formed in this manner or not.

SHRI SHANTARAM NAIK (CONTD.): Lastly, you are also of the opinion that it should be strengthened. You are for a strong Lokpal. What is your opinion about giving the Lokpal a Constitutional status?

श्री लालू प्रसाद : हम कागजों में दूँद रहे हैं, हमें मिल नहीं रहा है। सी.वी.सी. को मर्ज कर दिया जाएगा, लोकपाल या जन लोकपाल बिल तथाकथित होगा या नहीं होगा, क्या आपका ऐसा कोई प्रावधान सरकारी बिल में या जन लोकपाल बिल में है?

अध्यक्ष : लोकपाल में कहा गया है कि सी.वी.सी. और सी.बी.आई. को लोकपाल इंस्टीट्यूशन में मर्ज कर दिया जाए। सरकार वाले बिल पर नहीं कहा गया है।

श्री लालू प्रसाद : तब जन लोकपाल बिल को हम लोग कहां कंसीडर कर रहे हैं?

अध्यक्ष : आपने प्रश्न पूछा है, मैं उसका उत्तर दे रहा हूँ। लोकपाल में नहीं कहा गया है।

श्री लालू प्रसाद : इसीलिए मैं पूछ रहा हूँ, जब है ही नहीं, तब हम चर्चा क्यों कर रहे हैं? Part of CBI investigating agency को कहा गया है कि आप इसको, क्योंकि उनका कोई विंग नहीं है, होगा या नहीं होगा या क्या होगा, आप जानिए, हम लोग जानेंगे, उसमें सी.बी.आई. को, विनीत नारायण केस के मामले में जो जिक्र किया गया है कि उसका सुपरिटेण्डेंट, पर्यवेक्षण देखना कि उसमें कोई गड़बड़ तो नहीं करता है, इसलिए सी.बी.आई. को इतने बड़े उच्च पद पर भेजा गया। मैं यह समझता हूँ, क्योंकि इनका अपना इनफ्रास्ट्रक्चर तो है नहीं कि ये सारे केसेज का डिसपोजल कर रहे हैं। इधर भी, जब हम रेल मंत्री थे तो विजिलेंस का एक आदमी

रहता था, उपाध्याय जी। उपाध्याय जी ने जांच की, नहीं की, क्या किया, दिया तो लोग मान लेते थे। मैं यह जानना चाहता हूँ कि हम लोग पूजा वगैरह छोड़कर यहां ज्यादा समय दे रहे हैं कि सी.वी.सी. को मर्ज करो। सी.वी.सी. के जो चेयरमैन साहब आए हैं, इसमें आपसे ज्यादा कोई काम करेगा, आपके पास क्या कमी है, वह भी बताइए। हमारे सामने यह बात नहीं है कि हम कुछ फाइनल करने जा रहे हैं। लोकपाल बिल बनेगा या नहीं बनेगा, यह तो बिग हाउस तय करेगा, पार्लियामेंट तय करेगी। सी.वी.सी. है ही नहीं। हमारा एक पार्ट यह है। हम कह रहे हैं कि सी.बी.आई. खराब है, जब हमारा सी.बी.आई. विभाग खराब है, तब हमारी इनवेस्टिंग एजेंसी वहां क्यों जाएगी? उसकी ऑटोनॉमी वैसी ही रहनी चाहिए। सी.बी.आई. ज्यों की त्यों रहनी चाहिए। आप यह चीज बताइए कि जब इसमें सी.वी.सी. विचार के लिए है ही नहीं, तो फिर हम लोग क्यों विचार कर रहे हैं? सरकार के लोकपाल बिल में जन लोकपाल बिल के भी छत्तीस प्वाइंट अकमोडेटीड हैं। जितनी चीजें लिखी हैं, हम सभी पर विचार कर रहे हैं। छत्तीस प्वाइंट्स को अकमोडेटीड किया गया है, इस पर विचार कीजिए, कोई राय हो तो दीजिए, आप तो अनुभवी आदमी हैं, हम इनसे जानना चाहेंगे कि अगर ऐसा होता है तो जो तथाकथित लोकपाल होगा, उसकी क्वालिफिकेशन क्या होनी चाहिए? आप बाद में लिखवा कर भिजवा दीजिएगा, अभी तो बाकी प्रश्नों के उत्तर दीजिए।

श्री विजय बहादुर सिंह : आप यह सेंट्रल विजिलेंस कमीशन ऐक्ट, 2003 को देखें। इसमें सैक्शन 8 में functions and powers of the Central Vigilance Commission Act are defined. It says, to exercise superintendence over the functioning of the Delhi Special Police Establishment, etc. etc. or to inquire the matter of Central Government, etc. दिल्ली स्पेशल पुलिस ऐक्ट का सैक्शन 6A कहता है, approval of the Central Government to conduct inquiry. Then, how do you reconcile when you have overall power to make inquiries against the Central Government employees and also the Delhi Special Police Establishment? Then you have to wait for the approval of the Central Government to conduct it. Once you are prima facie satisfied then, why to wait for sanction and wait for six months when the fellow goes out and the evidence is diluted? Why don't you have it at one window and reconcile Section 6A and Section 8? Please look at it. That will facilitate in speedy inquiry.

SHRI S. SEMMALAI: I also associate myself with his point.

श्री लालू प्रसाद : उसको सैक्शन करने की जरूरत है।

SHRI D.B. CHANDRE GOWDA: Sir, a new Committee is constituted, which is debating all these vital points, maybe, because of the pressure from outside against corruption. Corruption is the basis on which the Lokpal Bill has to be presented by the Government, and also the Jan Lokpal Bill. How do we coordinate between the two is one point. The Central Vigilance Commission has power to sanction. It has powers but again they want powers to be granted to sanction for prosecution under Section 6. They call it "a quasi-judicial authority". The same authority is investigating agency; the same authority has the power to prosecute; the same authority disposes of the cases; and you call it a quasi-judicial authority. One major function of a quasi-judicial authority is to respect natural justice. If natural justice is ignored or if there is violation of secrecy, what will be the position? For example, we have seen the working of Lok Ayukta in Karnataka. We have seen the report. On the basis of the report, a

number of people are inside the jail. Now, it's before the Court. So, the same authority investigates and the whistle blower goes on whistle-blowing; whether it is right or wrong, unpunished for various reasons, I do not know. We can locate one individual. He can file hundreds of cases and go on whistle-blowing in respect of whomsoever he wants. So, what restrictions the Lokpal or the CVC wants to create, if they are not in the law, for false complaints given by the whistleblowers and how they should be dealt with. If the natural justice is not maintained and if the secrecy of the evidence received is not maintained, then, the so-called accused, who is yet to be punished, will get sufficient punishment in public by glaringly painting the individual with black paint. So, Sir, this is also a creation of the Constitution. So, how will all these three or four Acts work together in agreement with each other? Don't you think that these are all multiplications of investigating agencies? How do we coordinate them? Whether it can be coordinated with the Lokpal Bill or the Jan Lokpal Bill is another question. Whether judiciary – higher judiciary or lower judiciary – is to be brought under this is a question before us. If higher judiciary is involved, I don't know what will happen. Many senior lawyers are sitting here. Article 32 comes into operation and the original jurisdiction of the Court cannot be questioned. Jurisdiction under Articles 226 and 227 cannot be questioned. Therefore, Sir, these are matters which need to be clarified by this Committee.

CHAIRMAN: As far as CVC is concerned, it is clear that judiciary should not be brought under the Lokpal. But, there is an important question of Mr. Gowda. These multiple agencies – Lokpal, CVC, CBI and others – are there. What are the connecting points of these multiple separate agencies so that there is no disharmony and a seamless inter-connectivity from one to the other is provided? That is the question.

ADV. P.T. THOMAS: I would like to point out two or three things. Regarding the Prime Minister and the Judiciary which has already been mentioned I would like to associate myself with all these things. Then, I would like to know from the CVC whether NGOs should be included within the ambit of the Lok Pal Bill or not.

The second, is what must be the status of the Lokpal. Can it be given a Constitutional status or not? What is your opinion? Then, what about the lower level bureaucracy? The Jan Lokpal Bill was advocating that the lower-level bureaucracy must be brought under the ambit of the Bill. What is your opinion? After the Vineet Narayanan's case in the Supreme Court, you have already mentioned that the superintendence of the CBI comes under the CVC. Then, what is your experience? Is it functioning in a right way?

The other thing is what about your opinion regarding the Lok Ayuktas in the State level. Some officials who appeared before the Committee told us that Chief Ministers of the States should be included in the ambit of the Lokpal. What is your opinion on this?

CHAIRMAN: We also have Mr Sampath and Mr Apte who will come later. I suppose Mr Sampath will put questions to the officials of the CBI because we will have CBI. May I remind Members that I was hoping to have ten minutes break for tea at 12 o'clock. After that we will have CBI officials. So, Mr Pradeep can take about 10-15 minutes in pointed comments. I would request and remind him please do send us a pointed reply in writing because very valuable questions and suggestions have come across the table. Don't forget the original requirement that you must also give me pointed suggestions on the Bill itself.

SHRI PRASANTA KUMAR MAJUMDAR: Mr. Chairman, I have a note to the CVC...

CHAIRMAN: Mr. Mazumdar, let us do this first. You furnish the note to the Secretariat. The will send it to him. He also got your question. He will reply to that. If you have anything

more, you can send it to the Secretariat, they will send it to him. Mr. Pradeep, many questions are overlapping. You can bunch them.

श्री प्रदीप कुमार : शुरू में मैं यह कहना चाहूँगा कि CVC और CBI को एक साथ lump करना ठीक नहीं है, क्योंकि as the Hon'ble Member here was saying, let me also make it clear, CVC is not an investigating agency. It is an integrity institution responsible for coordinating the superintendence of vigilance administration. It does not do investigation. So, this misperception that the CVC does the investigation itself should not be there. Actually the investigating agency of the Government of India is the CBI which is answerable to the Ministry of Personnel whereas the CVC has been given the autonomy which is available to the UPSC. It is an independent statutory body. So there is a fundamental difference.

The second question was why prosecution etc, is being done. CVC is on a similar footing like every integrity institution or Lokpal; and investigating agency reports to us. That is the first point.

The second point has been about the Jan Lokpal. I will deal with it briefly because in my presentation, I had not dealt with it. Its design is entirely different from the Lokpal Bill. It is overarching and omnibus Bill which seeks to bring the entire bureaucracy, entire political class, judiciary, vigilance administration and Grievance redressal machinery under its ambit. So we feel that it is not a practical thing. It will crumble under its own weight. To enforce that it wants to create a parallel bureaucracy, just because they do not have trust in the political executive or the existing institutions. They want to investigate, prosecute and also punish. So that is not something that we would support. On Jan Lokpal, I will leave it at this only.

Now, I will deal with some of the questions like prior sanctions. That is an important point. It has been felt that the senior officers need a measure of protection because abuse by police is also a matter of concern. This view has been expressed by others also. So, what has been suggested for senior officers at the decision making levels? There should be some measure of protection looking at the kind of decisions that they have to take. But it has been said that the Executive should not have that power for growing prior sanction. So, we are saying CVC which is an autonomous body, the power should be given to the CVC. Though there is one view in the civil society that this power should not be there. But ultimately we must realize that the senior officials are taking complicated decisions; so, an independent body like the CVC will take a view and it should be done in a time bound manner in three months. What is unfortunate is, sometimes, these decisions are not taken for very long time. Similarly for sanctions for prosecution, once the investigation is done, it should not be postponed indefinitely. Grant for sanction of prosecution should be given at the earliest. The CVC which is not under any Ministry and is an independent statutory body should be given that power, and that is what we have submitted to you, Sir.

On corporate sector corruption, currently under section 12 of P.C. Act, the powers are of abetment only and there is no specific provision in the definition in the prevention the Corruption Act which directly targets corporate corruption. That is why we have said, on the pattern of the U.K. Bribery Act, there should be some provision. We are also in favour of NGOs as has been provided for in the Lokpal Bill. In the Government Lokpal Bill also, there is a provision that corruption by NGOs should be tackled. So, we support that.

Somebody asked whether media should be brought under the Lokpal. Our view is that Right to Freedom of Expression is a Fundamental Right and is a cardinal principle of our democracy. So, in a sense, if you have to bring it .. (interruption)... Let me finish, it will be a

major thing. If you have to bring corruption in media under Lokpal; it must be defined clearly, whether it is paid news or otherwise. Then a separate Bill on the lines of the Judicial Accountability Bill should be brought forward. I would suggest that a separate Bill on Media Accountability should be brought forward or something similar should be brought forward rather than bringing it under a general law of Lokpal.

The other question that was asked was about...

श्री रामविलास पासवान : हमने यह कहा था कि आप क्लास 1 और 2 के ऑफिसर्स को देख रहे हैं, तो लोकपाल क्या देखेगा और आप क्या देखेंगे?

SHRI PRADEEP KUMAR: There is a basic difference. This is a question why disciplinary action is taken against Government servants. In my presentation, I tried to explain why all other people are covered only under the Prevention of Corruption Act whereas only Government servants are covered under Department of Punishment Rules. They are covered under the departmental disciplinary rules. Under the departmental disciplinary rules, under lower standards of proof also they get dismissed. So, basically the entire bureaucracy is handled under the departmental rules. It is only in selected cases that prosecution under Prevention of Corruption Act is done. If you bring the entire people under the Prevention of Corruption Act, firstly, the courts will get clogged. There will be no action taken; and the standards of proof that would be required would be much higher. So, this answers the question. The hon. Member was also asking why we say that this PC Act, if you follow an investigation which is there in the court it is not a desirable mechanism for government servants, because what is important for civil servants is if there is a corruption, action should be swift and fast, and the outcome should be certain. That is only possible in disciplinary inquiries which finish between one or two years whereas if you put them under the PC Act, this will go on and on for years and the senior officers will escape the net. These are our submissions.

श्री रामविलास पासवान: मेरा प्रश्न सीधा है, इसमें अपना सीधा-सीधा सजेशन दीजिए, लोकपाल बिल और जन-लोकपाल बिल दोनों में यह कहा गया है कि क्लास 1 और क्लास 2 के जो हायर ऑफिसर हैं, उनको लोकपाल ही देखेंगे। आपकी क्या राय है कि यह सब आपको देखना चाहिए कि लोकपाल को देखना चाहिए?

श्री प्रदीप कुमार: सर, हमारी राय है कि यह हमें ही देखना चाहिए। यह बात हमने अपने प्रस्ताव में भी लिखी है।

श्री रामविलास पासवान: यानी आपको ही देखना चाहिए, लोकपाल को नहीं?

श्री प्रदीप कुमार: सर, इसमें 1.5 लाख लोग शामिल हैं और हम समझते हैं कि यह एक अच्छा परिवर्तन नहीं होगा।

श्री रामविलास पासवान: ठीक है, हमारी भी वही राय है जो आपकी राय है, लेकिन आपके मुंह से साफ-साफ सुनना चाहते थे।

CHAIRMAN: It is almost 12 o'clock. If you have finished Pradeepji, we can wind up. If you want to take just two-three minutes more, we will wind up after you finish.

SHRI PINAKI MISRA: Mr. Chairman, Sir, I just want to have an answer on that closure. There is a very high closure rate.

SHRI PRADEEP KUMAR: Sir, I will explain that because our system is not that people are just giving a complaint with an affidavit. We get all kinds of complaints, and CVC, as an integrity institution, also receives complaints which are of the State Governments. Those which are of State Government, we send them to the Chief Secretary because they are not under our jurisdiction.

SHRI PINAKI MISRA: That is regarded as a closure.

SHRI PRADEEP KUMAR: That is regarded as a closure.

SHRI PINAKI MISRA: Okay.

SHRI PRADEEP KUMAR: So, there are different kinds of complaints. There are complaints which we do not handle at all. So, that is the reason.

SHRI KIRTI AZAD: This is exactly the matter. Sir, I will just take two minutes and, then, you can finish.

This is exactly what I was talking about. The file rests with the Chief Secretary and the CVOs; the matter that you refer to him, he sends back to them. Then the CVOs report to the Chief Secretary and it lays there. And -- what I have come to know, I will speak in a layman's language -- whosoever greases the palm gets out from the closure because there are so many cases like this. That can be quoted, where people have been indicted by the CVOs. And that goes and rests on the table of the Chief Secretary or it comes to you and you send it back, it stays there. That's it. It is finished.

SHRI PRADEEP KUMAR: I would most respectfully submit that the State Government employees are not under the jurisdiction of the CVC.

SHRI KIRTI AZAD: You should evolve a mechanism where we could have everybody under the ambit of the law.

CHAIRMAN: Do we all understand one point? Apart from the coverage, the decision to close a case is not taken by CVC, but is taken by the Departmental Head in the Department.

SHRI PRADEEP KUMAR: No, Sir. In a case of complaints where we ask that 'please send us a report'; in some cases where we think it deals with us, then the decision is taken by us. In some cases of complaints, we say, it does not deal with us. So, we have sent it for necessary action and we don't ask a report back. But in cases where we say it has to be investigated or inquired into and report, then the report comes to us. Then we look at it. Suppose in some cases of complaints there is a grievance which has to be redressed. It has been redressed.

CHAIRMAN: Therefore, as for Mr. Misra's question, if you have a very high closure rate, every case which is closed is either closed by you at the earlier stage because there is nothing to go on, or the closure by the Department has your approval.

SHRI PRADEEP KUMAR: Yes.

CHAIRMAN: Therefore, the high closure rate is with your full approval.

SHRI PRADEEP KUMAR: Yes, it is with our full approval. And there are cases of complaints which go directly to the State Government, where we don't ask for a report. That is my submission.

CHAIRMAN: Let me thank the CVC and his entire team. We have had a fairly productive, knowledgeable and a little spirited discussion, if I may put it mildly. We would request you to please send your written notes, as soon as possible, not only on the Bill but also on other issues, and, if precise and pointed, they will be very useful. We will be in touch if we want any further information. Thank you so much.

We are going to adjourn for tea. Members should kindly come back after tea. After about ten, twelve minutes, fifteen minutes maximum, we should be back here. We have the CBI.

(The Committee then adjourned for tea at four minutes past twelve of the clock.)

(The Committee re-assembled after tea-break at 12.20 p.m.)

WITNESSES: Representatives of the Central Bureau of

Investigation:

- Shri Amar Pratap Singh, Director.
- Shri Balwinder Singh, Special Director.
- Shri Alok Pateria, Joint Director (Policy).
- Shri Rajeev Sharma, Joint Director.
- Shri Saurabh Tripathi, DIG.

Representatives of Department of Personnel and Training:

- Shri Alok Kumar, Joint Secretary (Vigilance).
- Shri Ashok K.K. Meena, Director (V-II).

Representative of the Legislative Department:

Shri N. K. Nampoothiry, Additional Secretary.

CHAIRMAN: We are very happy to have with us, friends, the CBI Director and his team. In fact, they were to come earlier, but we had a full house on that day and we thought that it would be better to spend some exclusive time on the CVC and the CBI. It is now 12.22 p.m. We are planning to finish by 2 o'clock. Broadly, the Director would take about 30-35 minutes on his presentation. Still we have almost an hour for discussion. I believe that he has circulated a folder which you have. Let him make the presentation in a summary fashion pointedly and then on the basis of that we will ask questions. As we did in the previous session, the Director may kindly note down the questions specifically, then answer them in a pointed form and then follow it up with a written note afterwards. May I, of course, remind everyone in this room that the proceedings are confidential?

Before the Director starts, I want to make another important point. Please do send us, apart from everything else, at the end of the deliberations, a pointed note with the Lokpal Bill, which the Government has introduced, as the basis putting in square brackets and in bold letters the specific changes which you want in specific clauses, alterations, modifications, additions, etc. That is a separate important exercise and will help all of us to focus. Thank you. The CBI Director may now start.

SHRI AMAR PRATAP SINGH: Hon. Chairman and Members of the Standing Committee, we are very grateful to you for giving us this opportunity to present our points of view before the Standing Committee. I will very briefly make an opening statement and then we will go to the presentation and we will be happy to answer any questions that you would like to ask us.

Sir, the fight against corruption caught the attention of the nation and the Government has shown its intent by introducing a Lokpal Bill. We welcome this initiative and let me explain as to what my purpose or what my focus here today in my presentation would be. The basic theme of our presentation is that the CBI is a composite well-organised body and it has been working on anti-corruption for the last 70 years. We have handled all kinds of cases which we will be telling you during our presentation. We really feel that any kind of tampering with the existing structure would be fraught with danger. We would strongly recommend that the basic structure of the CBI should not be tampered or tinkered with. There are two Bills. You have the Jan Lokpal Bill and the Government Lokpal Bill. The Jan Lokpal Bill says that you take the anti-corruption wing out of the CBI and give it to the Lokpal. We are going to explain in our presentation why it is not possible. Because it is a composite structure, our cases are also mixed. Almost every case has an anti-corruption element that we investigate. We will be explaining all that in our presentation. It is not possible to divide our units. We have units like in Kerala, Chennai and Kolkata which are composite units. They are doing all kinds of investigations. It is like partitioning of the CBI which is not practically possible, and you will be actually destroying an agency instead of creating a fresh one. This is our basic theme.

The second theme is the Government Lokpal Bill. The Government Lokpal Bill says, give the Lokpal a fresh or a new anti-corruption investigating agency. Our thinking is that we are an anti-corruption body. We have always been an anti-corruption body right from its inception. The primary focus of the CBI has always been anti-corruption work. That is our forte and that is our expertise. So, why should the anti-corruption work be taken out of the CBI? Then what will be the CBI doing? It is a well established agency which has been there for the last 70 years. Suddenly you want to take the anti-corruption work out of the agency and we are just left with whatever the courts are giving us like some murders, dacoities, rapes, etc. We feel that the CBI should not be split. Don't take anti-corruption wing out of the CBI.

The last point which I would like to make is that if you do have the Lokpal, then the Lokpal is not going to be an effective agency unless it has the support of the CBI. You may not put CBI under it. You may put it along the CBI or you may ask the Lokpal to give all its investigations to the CBI. But the CBI must be the focal point of any anti-corruption movement in the country. You can't have an anti-corruption structure without having the CBI as part of it.

I would also like to point out that it is not so simple to create a separate agency. People say, create a separate agency. It is not so simple to create a separate agency. To create an agency it is going to take you ten or fifteen years. What would happen then that there would be nobody looking after anti-corruption. The CBI would be out of anti-corruption and you will be trying to set up a new agency which will be ineffective. So, your basic anti-corruption movement would be a non-starter unless you have the CBI in its complete present structure totally involved in whatever architecture you would be proposing. With these words, I would now start the presentation.

We would, of course, strongly suggest to the Committee to give us more autonomy, financial powers and all that. That is something that we require. We would request the hon.

Committee to consider these issues and we will be showing all this in our presentation. We will try to make our presentation as brief as possible since all of you already have a hard copy of it.

(At this stage, Shri Amar Pratap Singh, made a Power Point Presentation on the functioning and powers of the CBI)

SHRI HARIN PATHAK: So, you feel that no wing of CBI should be a part of the Lokpal.

SHRI AMAR PRATAP SINGH: Yes, Sir, because it being an investigating agency, there has to be a proper command and control system. And it can only be the Director; you cannot have ten members of the Lokpal giving directions. Like we have it in Income Tax where we have a Member (Investigation), the Director, CBI should be the only one to whom the agency should report.

(Powerpoint presentation continued.)

The main complaint against CBI is that it does not function independently, it is under the Government. We say that we have no problem if certain sanctions are given by Lokpal, but the CBI should be independent, financially and otherwise. We are suggesting that since the Director, CBI, is going to be an important person in this whole scheme, let him be recruited in the same way as you recruit any member of the Lokpal. The Vineet Narain Judgement says that you select the best out of the four batches of IPS officers and let the level of selection go to a higher level. We are suggesting that just like you are going to select the Lokpal, let the Director, CBI, be selected in the same procedure. They will have a choice of about 30 to 40 IPS officers. Let them choose the best, whoever they think is the best. So, I am sure there would be no problem in selecting the right person. Then, we are suggesting that once you have selected somebody by that process, give him a tenure of five-years. Let him have a five year tenure because, then, he can set the organization right. At the moment, we have a two-year term. For example, I took over in November last. I have been in the midst of investigation of 2G, CWG right throughout and I at times do not even know what is happening in the organization. By the time, these cases are finished, I would be winding up and I would be ready to go home. So, where does the Director have the time to see what is happening in the organization, what are the future plans and how the organization should evolve and grow? We are just fire-fighting all the time. That is why we are suggesting that the Director should be given five years. The FBI Director gets ten years. It is a mandated tenure and there was one FBI Director who was there for 48 years. But that is beside the point. What I am saying is, this is just like what you are giving to the Lokpal. I am not saying anything else. If you give the CBI Director five years, he will be able to do something in the Organization. You select the best officer and, then, give him five years.

(PowerPoint Presentation continued.)

That brings to me to the end of my presentation, Sir. Thank you.

CHAIRMAN: All right. We will take up rest of the things during the course of our discussion. We will have questions now but before that I just want to say one thing for half a minute. It is not a question of agreeing or disagreeing with him. We will decide that separately. But his stand is very clear and at the heart of that there are two or three basic principles: the CBI's *esprit de corp*, its identity, be retained; the best way of doing it is to make it a part of the Lokpal for all the issues which the Lokpal decides; for example, if we have the Lokpal for political corruption and Group 'A' officers, then the CBI is a part of the Lokpal, which also means that he is selected by the same procedure as Lokpal members are and a lot of the other problems become reduced by the fact that the same procedure for

sanction, etc. which vests with the Lokpal will now be decided and there will be no Government department doing sanctions separately.

SHRI HARIN PATHAK: So, the CBI will not be a part of the Lokpal.

CHAIRMAN: No; they will be a part of Lokpal. Let me clarify. His proposal apparently is that they will be a part of Lokpal insofar as the Director is fused with the Lokpal. Secondly, it will be for purposes of jurisdiction which the Lokpal exercises and, thirdly, he will wear his CBI Director's cap for other offences, which do not come under Lokpal so that he is the normal CBI man. And, fourthly, the most important part, is that in any investigative agency, even if the Lokpal has its own investigative agency, once the Lokpal directs investigation to start, then, the Lokpal does not go into the merits of the investigation. Say, for example, CBI is the investigative agency and he is the Director and a member of Lokpal; whether a matter should be sent for investigation or should be screened and so on, that is all what Lokpal will do. But once the Lokpal sends it for further investigation, thereafter, it is functional under the CBI Director and, obviously, because otherwise it merits the question which partly Shri Jethmalani raised, and that is where section 8(A) of the CVC was also cited and that is also a general principal of judicial law, although we now hear in the newspapers that it is being violated by the Supreme Court occasionally. But that is a different matter. So, this is the clarity as far as his presentation is concerned. Let us now ask him questions.

SHRI AMAR PRATAP SINGH: With your permission, Sir, I just want to add here that the CBI, at the moment, is quite demoralized because they are not sure where they are going, what is going to happen to the Organization.

CHAIRMAN: Actually, it is very interesting, Mr. Singh. You have come here with an apprehension, perhaps justified, – I am expressing the opinion – that the Lokpal will submerge the CBI. But if we accept your recommendation, we are going to make the CBI much, much, much more stronger. So, you might end up with a fairly good harmony of a highly strengthened CBI without submergence by the Lokpal. Let us see how it turns out.

SHRI AMAR PRATAP SINGH: Thank you, Sir. That was one apprehension in the Organization because they do not know where they are going. Secondly, Sir, this is my request. Let us not disturb the structure of the CBI because it is a reputed Organization; we should not destroy it in our bid to create a better one; otherwise, we might end up having nothing.

ADV. P.T. THOMAS: This Committee in 2008 unanimously recommended that the need of the hour is to strengthen the CBI in terms of legal mandate, infrastructure, so on and so forth. Has any substantial change taken place after this recommendation in the CBI structure? This is my first question.

The second question is: What are the major constraints the CBI is now facing in investigation and other things?

You mentioned that the CBI Director may be brought on a par with a member of the Lokpal. The way you recommend may also come under the ambit of the Lokpal because you may also be a member of the Lokpal. What is your opinion on this?

Then you said that selection of the personnel in CBI is done after a long procedure and research. I do not want to mention the names, but I can point out two-three incidents in my own State, Kerala, where a CBI officer, without any case raided a poor person's residence with the instigation of a senior police officer of the State. That officer is still in service. If some CBI officers are not up to the mark or if they indulge in some acts where they are alleged, what remedies do you propose in your structure to kick them out?

SHRI D.B. CHANDRE GOWDA: Sir, the CBI's looking forward to work with the Lokpal is a welcome feature. Should we take it that it will not be an investigating agency of the Lokpal itself and the CBI is sufficient enough to take care of investigation part of the Lokpal? It is one of the pointed questions I would like to raise. Creation of a new investigation system to satisfy the Lokpal itself is one more parallel set up. Would it be sufficient to have CBI as the investigating agency of the Lokpal?

Secondly, in dispensation of criminal justice, you are taking a long time and it is most surprising that 1,282 cases are pending in the last 10-20 years and 222 cases are pending trial over 20 years. The system of fast-track courts should be introduced in this country. Can you not give a proposal for the Government to constitute fast-track courts for speedy disposal of the CBI cases? Have you ever tried it? Would you like to make an experiment on that question? Otherwise, the courts are full with cases pending; I do not know if you are aware, the judgment comes after many accused are deceased. Thank you.

श्री लालू प्रसाद : महोदय, सी0वी0सी के विषय पर जब विचार हो रहा था तो मैंने यह माना कि अभी तो लोकपाल बिल बनेगा, नहीं बनेगा, क्या होगा, नहीं होगा, हाऊस में जाएगा, तो यह सी0बी0आई0 का अपना जो लम्बा इतिहास है, और इसने बड़े-बड़े कांडों का अन्वेषण किया तथा उनको सजा दिलाने का भी काम किया है। अब देख रहे हैं कि इसमें सी0बी0आई0 को स्प्लिट करने की बात है कि इसका जो इन्वेस्टिगेशन विंग है उसको लोकपाल के अंतर्गत दे देना चाहिए। तो यह बिल्कुल गलत है।

श्री हरिन पाठक : मना कर रहे हैं।

श्री लालू प्रसाद : यह तो मना कर रहे हैं लेकिन लोकपाल बिल में है। यह लोकपाल बिल में लिखा हुआ है कि इसकी इन्वेस्टिगेटिंग टीम उधर चली जाएगी। इस तरह से उहापोह की स्थिति है। हम लोगों का यह प्रीमियर इंस्टीट्यूशन है। यह बुरा-भला जो भी इन्वेस्टिगेट करते हैं तथा उस पर कोर्ट को फैसला लेना पड़ता है तथा कोर्ट व हाई कोर्ट में लाखों केसेज पेंडिंग हैं, इसके लिए फास्ट ट्रेक कोर्ट भी बनीं। हम सी0बी0आई0 से यह जानना चाहते हैं कि जब हमारा सी0वी0सी0 और सी0बी0आई ऑलरेडि है तो इनको सुपर पावर में जाने की क्या जरूरत है। क्या आप लोग चाहते हैं कि उसके अंतर्गत जाएं? यह गलत बात है कि प्रीमियर इंस्टीट्यूशन के ऊपर कोई आदमी बैठे। हम मेंबर हैं, लेकिन हम लोगों को पता नहीं है कि उसकी क्वालिफिकेशन क्या होगी, वह कौन आदमी है, कौन आएगा। जो भी लोग आए या नहीं आए लेकिन अभी तो कोई चीज फाइनल ही नहीं है। चेयरमैन साहब, इसलिए हमको क्वेश्चन नहीं करना है। मेरा कहना यह है कि इसमें सी0बी0आई0 को पूरी ऑटोनॉमी है तथा उनको जो और स्ट्रेंथन करना है, वह करें। इनके ऊपर जो एलीगेशन लगता है कि यह सरकार के टूल हैं, तो उससे मुक्ति करने का जरूर कोई न कोई उपाय करना चाहिए, जिससे कि यह स्वतंत्र और निर्भीक होकर के अपना काम करें। हमको किसी भी कीमत पर अपना दिमाग खर्च ही नहीं करना चाहिए कि कोई लोकपाल बिल या जनलोकपाल बिल आने वाला है तथा इनको उसमें हम डाल रहे हैं। यह बहुत गलत है। जो हमारे संविधान निर्माता रहे हैं तथा इसको हमारे पुरुषों ने तथा लोगों ने बनाया है इसलिए यह उधर नहीं जाना चाहिए।

SHRI PARIMAL NATHWANI: Sir, I associate myself with him.

SHRI HARIN PATHAK: Sir, I too associate myself with him.

SHRI SHAILENDRA KUMAR: Sir, I too associate myself with him.

SHRI N.S.V. CHITTHAN: Sir, I too associate myself with him.

श्री वीजय बहादुर सिंह : आप अपनी पेज-4 की रिपोर्ट में देखें। अभी चेयरमैन साहब ने बोला कि “CBI will look forward to working with the Lokpal.” हम यह नहीं समझ पाए कि किस टाइप की वर्किंग विद लोकपाल। आपसे मैं एग्नी करता हूँ कि इन्वेस्टिगेटिंग विंग जिसका आपको एक्सपटाईज और 70 ईयर्स का एक्सपीरिअंस है और जो लिस्ट ऑफ़ केसेज दिए, तो फिर इसका क्या रिलेशनशिप होगी, नम्बर-वन। दूसरे, आपने कहा इसमें जरा सीरियस चिंता की बात है। इनकी चार्जशीट फाइल करने का ऐवरेज पीरियड एक साल, दो साल के बीच में आ रहा है। इतनी बड़ी इन्वेस्टिगेटिंग एजेंसी और एक्सपटाईज है। Why such a delay? क्योंकि सी0आर0पी0सी0 वगैरह में अब चार्जशीट फाइल करने का 90 डेज हो गया है। अगर चार्जशीट 90 दिन के अंदर फाइल नहीं होती है तो उसको बेल मिलने लगती है। मैं यह कहना चाहता हूँ कि जब डायरेक्टर की ऐवरेज टेन्यॉर ही दो साल है, he will never will be able to see whether the chargesheet has been filed या जो उन्होंने इनीसिएट किया। तो इसके साथ टेन्यॉर बढ़ाना बहुत ही इंपोर्टेंट है चार्जशीट फाइल करने की सीमा को भी शॉर्ट किया जाए। पेज-16 की रिपोर्ट में आपने यह कहा है कि

“Full freedom to the Director to constitute investigating team and allocate cases to them.” अगर डायरेक्टर को यह भी पॉवर नहीं होगी कि कैसे कोई केस इन्वेस्टिगेट होगा, तो जैसे कोई कार चलाएगा, कोई स्टेयरिंग पकड़ेगा या कोई हॉर्न बजाएगा, how will he function? There should be no debate on issues if the HOD is the Director or Chairman; he should have the full freedom. इसमें टेन्यॉर की पोजिशन, क्योंकि ये लम्बे केसेज हैं। अगर डायरेक्टर का टेन्यॉर नहीं होगा तो जो एक्ज्यूज्ड हैं वे मैनेज करेंगे कि टेन्यॉर क्रॉस हो जाए। तो टेन्यॉर को बढ़ाना between 5-10 years is a must. और कम से कम लोकपाल के पैरेलल पर कर दीजिए और Lokpal is a different issue.

श्री परिमल नथवानी : वीजय जी, जब आप टेन्यॉर की बात करते हैं तो साथ में ऐज फैक्टर भी आएगा। That should be restructuring of the CBI; to say that if you want to give a long time to somebody, his age should be specified. Still, we are not continuing with the High Court or Supreme Court judges for 65 years.

SHRI VIJAY BAHADUR SINGH: Then, instead of demolishing the institution which has stood the test of time for more than 70 years, we can strengthen the institution.

SHRI VIJAY BAHADUR SINGH (CONTD.): And we can plug those loopholes on the basis of which the people say that it is subordinate to the Prime Minister, it is subordinate to the Home Minister, and all those things. लास्ट पाइंट यह है कि आप जो एक्शन लेते हैं, तो *suo motu* भी आपको लेना चाहिए। अब या तो हाईकोर्ट कह दे, या सुप्रीम कोर्ट कह दे।

एक माननीय सदस्य: ऐसा प्रोविजन तो नहीं है।

श्री विजय बहादुर सिंह: ठीक है, इनकी फंक्शन में डायरेक्टर, अगर उसके संज्ञान में यह बात आती है by looking to the gravity of crime, तो इसका प्रोविजन होना चाहिए कि सीबीआई स्वयं भी मान लीजिए कि कोई स्टेट गवर्नमेंट because of political reasons it is not entrusting the case to the CBI, you know that the thing is very serious but you are helpless and a silent spectator. My point is, जैसे जस्टिस भगवती साहब ने सिर्फ पोस्टकार्ड पर केस ले लिया था, why not a provision should be introduced here for taking *suo motu* cognizance?

श्री लालू प्रसाद: महादेय, इसमें यह भी है कि हर स्टेट गवर्नमेंट से कन्सेंट लेने की कोई जरूरत नहीं है। मैं भी वहां बिहार में था, सारी जगह यह वेल एस्टेब्लिश है, सीबीआई की ब्रांच हर जगह है। तो जैसा सिंह साहब बोल रहे हैं, सही बोल रहे हैं।

अध्यक्ष: ठीक है। यह भी आप अपने नोट में एड्रेस कर दें। यह पूरा इश्यू जो है, सेंक्शन का नहीं, लेकिन कन्सेंट ऑफ स्टेट गवर्नमेंट, जिसमें उच्चतम न्यायालय का निर्णय भी है। क्या आप कह सकते हैं कि कन्सेंट बिल्कुल न हो, या रेयरेस्ट ऑफ रेयर केस में हो, किस प्रकार से हो, उसमें आपका मत क्या है? It is a larger issue of federalism.

SHRI SHANTARAM NAIK: See, on the Vineet Narain case, the Supreme Court has given 16 directives. I would like to know roughly how many are being implemented or followed. Secondly, I am referring to direction 12 in which the Supreme Court has referred to the manual, and told you to follow it strictly. I want to know whether this manual is available on your website. Thirdly, direction 6 says that pre-mature publicity to any case should not be given. Is it being followed? I am asking this question because people get defamed. Supposing, there is no case against a person. By the time the report comes, he is already defamed. That is why the Supreme Court has issued this directive. Are you in a position to implement it? Then, there is one more direction regarding in-house legal advice mechanism of yours; that should be strengthened. Ever since the Vineet Narain Case, have you taken any steps for the purpose of strengthening it? I am asking this because that is the most important thing. You require a proper and effective legal advice mechanism in your organisation because you cannot apply your mind on everything. The inputs have to come to you. I want to know whether this has been implemented or not.

DR. BHALCHANDRA MUNGEKAR: I have two questions. On page no. 7 of your presentation, you are saying, "As of now, the CBI enjoys a high degree of credibility, professionalism and specialisation acknowledged nationally and internationally." On page no. 16, you are saying, "You want full freedom to the Director to constitute investigation teams and allocate the cases to them." These are apparent contradictions, in the sense that after a case is referred to you, your professionalism comes into the picture. But, then, there is somebody, and exactly we are not able to understand what kind of relationship or superintendence over CBI by the CVC is there. This is one.

But the broader perception is, going beyond all the observations you have made, generally, in our parliamentary democracy, every opposition political party, the ruling party when it becomes opposition party always accuses publicly that the CBI is used by the then ruling party as its own wing. It is politically misused and that is why the CBI does not have any credibility in the eyes of the public. This is the most important and significant question,

according to me, rather than technical and logistical matters. How is this perception valid? How do you want to remove this perception? Because if this perception is carried in the minds of the people, whatever decisions CBI might be giving, it does not have absolute credibility in the minds of the people. I would like you to react to these general perceptions.

SHRI PARIMAL NATHWANI: Sir, I associate myself with the views expressed by Dr. Bhalchandra Mungekar.

SHRI ARUN YADAV: Sir, I also associate myself with it.

ADVOCATE A. SAMPATH: Sir, I also associate myself with the issues raised by Dr. Bhalchandra Mungekar.

श्री रामविलास पासवान: अध्यक्ष जी, जो सवाल हमारे साथी ने पेज 4 का उठाया था, मैं उसी पर आना चाहता हूँ। आपने जो लिखा है - CBI looks forward to working with the Lokpal. फिर आपने अपने क्लैरिफिकेशन में कहा कि पार्टनरशिप के आधार पर दोनों का रिलेशन होना चाहिए। मेरी समझ में नहीं आता कि जब सीबीआई की इतनी अच्छी फंक्शनिंग चल रही है, तो ऐसा क्यों? फिर जो दो-तीन मामले उठाए गए कि इनको टोटल एटोनोमी दी जाए, इन पर ऐसा आरोप न लगे कि सरकार के अंदर में यह संस्था काम कर रही है, या जैसा आपने फाइनेन्स का बताया कि अगर पैसे के लिए दौड़-दौड़ कर फाइनेन्स मिनिस्ट्री के पास जाना पड़े, तो कैसे काम कर सकते हैं? स्वाभाविक है, उसमें डीमोरेलाइजेशन भी होता है। जिस तरह से इलेक्शन कमीशन है, या स्पीकर का ऑफिस है, सारा पैसा अपना खर्च करते हैं, सारी चीज सेटअप करते हैं, इस तरह की व्यवस्था आपके यहां होनी चाहिए। दूसरा, टेन्युर की बात है, जैसा आपने कहा दो साल का, कि पिछले नवंबर में आप आए हैं और अगले नवंबर में आप चले जाएंगे। यह तो सब के नॉलेज में है कि सिंह साहब जो हैं, अच्छे अफसर हैं, लेकिन दो साल में ये चले जाएंगे, तो फिर क्या होगा? एक तो जो आप कह रहे हैं कि इसमें पार्टनरशिप होना चाहिए, या किसी न किसी रूप में रहना चाहिए, मेरा क्वेश्चन है कि लोकपाल की आवश्यकता क्या है? मेन क्वेश्चन यह है कि क्या एक सेटिस्फेक्शन के लिए, देश के सेटिस्फेक्शन के लिए, लोगों की सेटिस्फेक्शन के लिए हम सिर्फ एक नई संस्था लाना चाहते हैं? क्या इसकी आवश्यकता है? यदि आवश्यकता है, तो वह इन्वेस्टिंग एजेंसी कहां से लाएंगे? भगवान के यहां से तो कोई नहीं आएगी। कहीं न कहीं से उनको भी रिक्रूट करना पड़ेगा। जो बेस्ट प्रोसिजर सीबीआई अपना रही है, उससे बेस्ट प्रोसिजर क्या हो सकता है? सवाल यह है कि वह इसे कहां से लाएंगे? क्या वह इन्हीं कर्मचारियों से लाएंगे, या फिर लोकपाल अलग नियुक्ति करेगा? और, इसकी क्या गारंटी है कि कि लोकपाल जब आएगा, उसमें करप्शन नहीं होगा? जब चीफ जस्टिस तक के खिलाफ चार्ज आ जाते हैं, दूसरों के खिलाफ आ जाते हैं, तो लोकपाल में ऐसी कौनसी पद्धति होगी? जो लोकपाल की पद्धति होगी, वह सीबीआई में एपायंटमेंट के लिए क्यों नहीं आ सकती है? इसलिए हमने यह कहा कि उसकी आवश्यकता क्या है? इसलिए आपका जो सजेशन है पार्टनरशिप होना चाहिए, मेरी समझ में न पार्टनरशिप होना चाहिए, न उसका मैम्बर बनना चाहिए। कुछ नहीं नहीं बनना चाहिए, क्योंकि उससे आपकी महत्ता घटेगी। इसलिए आपकी

जो इंडिपेंडेंट है, वह इंडिपेंडेंट रहे और जो स्ट्रेंथन करने की जरूरत है, वह आप मजबूत करें। इससे बढ़िया इन्वेस्टीगेशन का काम कोई नहीं कर सकता है, वह लोकपाल हो, या जनलोकपाल हो, वह नहीं कर सकता है।

दूसरी चीज, जो स्टेट के संबंध में यहां कहा गया, उसमें दिक्कत यह होती है कि एक केस सीबीआई को दे दिया जाता है, दूसरा नहीं दिया जाता, जैसे मान लो कि सौ करोड़ का घपला हुआ, तो सीबीआई को दे दिया और दूसरी जगह मान लो कि पांच हजार करोड़ का घपला हो गया, या ग्यारह हजार करोड़ का घपला हुआ तो वह नहीं दिया जाता है, उस परिस्थिति में स्टैंडर्ड डबल हो जाते हैं। लोगों को ऐसा लगता है कि एक जगह तो आपने सीबीआई को दे दिया है, दूसरी जगह नहीं दिया है।

श्री विजय बहादुर सिंह: *suo motu* होना चाहिए।

श्री रामविलास पासवान: हां, सबके लिए एक स्टैंडर्ड रहे। अगर एक स्टेट में कोई करप्शन होता है और दूसरी स्टेट में भी उसी तरह का करप्शन होता है, तो सीबीआई उसको *suo motu* देख ले, उसको किसी के रिकमंडेशन की आवश्यकता न पड़े, इसमें आपकी क्या राय है? अंतिम, मेरा यह कोई क्वेश्चन नहीं है, सुझाव भी नहीं है, बस इतना है कि चूंकि हम लोग हमेशा पार्लियामेंट में शेड्युल्ड कास्ट, शेड्युल्ड ट्राइब्ज के सवाल को उठाते रहते हैं, अब हम को मालूम नहीं है कि सीबीआई के जो रूल्स हैं, उसमें कहीं रिजर्वेशन का प्रावधान है या नहीं है, तो जब सीबीआई में रिक्रूटमेंट होता है नीचे से लेकर ऊपर अफसर तक, उसमें क्या गवर्नमेंट का रूल रहता है?

SHRI SHANTARAM NAIK: It is applicable to all.

श्री रामविलास पासवान: तो ठीक है। हमारी इसमें दो चीजें हैं, एक तो लोकपाल की क्या आवश्यकता है?

श्री राम विलास पासवान (क्रमागत) : लोकपाल को न लाकर क्यों न CBI को ही strengthen किया जाए? आपने जो financial powers and 5 years tenure की बात कही है, हम उससे सहमत हैं। एक स्टेट में यदि करप्शन का लेवल तय हो जाता है, तो दूसरी स्टेट में भी automatically उसको लागू करना चाहिए और CBI को *suo moto* अधिकार होना चाहिए कि वह उसको देखे।

CHAIRMAN: I have no questions, except one point. If I recollect, there was a post of Legal Advisor or something of that sort in the Law Ministry. My recollection is that it has brought a lot of disrepute to the CBI, because that gentleman is supposed to exercise veto powers regarding the initiation of prosecution. So, what is the connection and the inter-connection and the status of that post with the CBI? I would like to know whether (a) he exercises the veto powers, (b) is he from your department or is he directly recruited and should we change that? And, (c) whether you are with the Lokpal or not.

श्री कीर्ति आज़ाद : मेरे पास ज्यादा सवाल नहीं हैं, मेरे साथियों ने वे सवाल पूछ ही लिए हैं। सभी लोग आपकी स्वायत्तता की बात करते हैं। अभी आपने अपने प्रेजेंटेशन में कहा, you have done great jobs, including giving example of 2G and the CWG. I just simply want to know can you take credit for that. The simple reason is, in both the cases, it was the hon. Supreme Court which has ordered. In the case of 2G Scam, it was raised in Parliament since 2008. अभी दूसरे लोगों ने कहा कि सरकार एक सोच के माध्यम से चलती है और आप autonomy चाहते हैं। अभी CVC आए थे और हमने उनसे भी पूछा था। Delhi Police (Establishment) Act में जो सैक्शन 6(A) जोड़ा था, वह 2003 में पार्लियामेंट के ऐक्ट से ही जोड़ा गया था। अगर आपको autonomy चाहिए और काम करना है, why don't you ask for repealing of Section 6(A) of the Delhi Police (Establishment) Act. Please do let me know as to how, with due respect to you and other officers here, you would take credit for the 2G and the CWG.

श्री शैलेन्द्र कुमार : मैं आपसे पूछना चाहूंगा कि जिले से लेकर ऊपर तक, हर विभाग में यह व्यवस्था है कि जांच होती है, आरोप तय होते हैं और कुछ विभागाध्यक्षों को यह अधिकार भी मिला है कि वे सस्पेंड कर सकते हैं। इस तरह की एजेंसियां हमारे यहां हैं। उसके बाद आपने देखा होगा कि CBI है, CB-CID है, इस तरह की तमाम एजेंसियां हैं। यह बड़ी ऊहापोह की स्थिति है। जैसे आपको लगा कि आप भयभीत हैं और एक संशय बना हुआ है कि लोकपाल को ज्यादा अधिकार मिले या CBI को मिले या CVC को मिले। यह एक बहुत बड़ा सवाल है। इसमें भयभीत होने की बात नहीं है। मान लीजिए कि एक मजबूत लोकपाल विधेयक लागू हो गया, तो इसके बाद फिर वह मैकेनिज़्म क्या होगा, जिससे भ्रष्टाचार तत्काल दूर हो जाएगा? हमारी यही एजेंसियां हैं - चाहे CBI हो, चाहे CVC हो, हमें तो इन्हीं से काम लेना पड़ेगा या फिर लोकपाल में एक अलग एजेंसी बनाई जाए? उसमें भी 60 और 40 का रेश्यो होगा, जैसे आपके यहां 60 और 40 का रेश्यो है कि आप 60 परसेंट आप करते हैं और 40 परसेंट राज्यों से लेते हैं। तो एक सैट-अप लोकपाल का फिर से बने, मेरे ख्याल यह उचित नहीं होगा। मेरा व्यक्तिगत ख्याल यह है कि चाहे CBI हो या चाहे CVC हो, जो समय सीमा आपने बताई है कि 10,000 केसेज़ pending हैं और 20-20 सालों से मामले pending पड़े हुए हैं, इसलिए कहीं न कहीं आपके कार्यों पर भी सवालिया निशान समय-समय पर लगा है। हमेशा यह आरोप लगा है कि हिंदुस्तान की सर्वोच्च एजेंसी CBI, सरकार के इशारे पर काम करती है। इस तरह की तमाम बातें हैं, इनसे एक तरीके से पब्लिक में यह मैसेज़ गया है कि भ्रष्टाचार को खत्म करने में ये सभी एजेंसियां नाकाम रही हैं, इसलिए जन-लोकपाल विधेयक लाने की मांग की गई। मैं चाहूंगा कि आपको छेड़ा न जाए, आपको और ताकत दी जाए। मैं तो इस कमेटी का बहुत पुराना मेंबर हूं और हम लोगों ने पहले भी recommendations की हैं और आपने अपने प्रेजेंटेशन में भी इसे कहा है। मेरे कहने का मतलब यह है कि हम जो लोकपाल बना रहे हैं, उसमें जितनी भी हमारी एजेंसियां हैं - CBI, CVC - इन पर कम से कम निगरानी रखी जाए कि इनके काम में देर क्यों हो रही है, सही जांच क्यों नहीं हो रही है, कहां खामियां हैं और इनके काम को तेजी से करने के लिए हमें

इन एजेंसियों को look-after करना चाहिए और लोकपाल को इन एजेंसियों से ज्यादा ताकत देनी चाहिए। किसी की ताकत को कम करने का हमारा कोई विचार नहीं है। मैं आपसे पूछना चाहूंगा कि लोकपाल में तमाम मुद्दे आए हैं, जैसे कारपोरेट सेक्टर है, मीडिया है, NGOs हैं, इनको लोकपाल में शामिल किया जाए या नहीं, इसके बारे में भी आप अपनी राय दीजिए।

SHRI PARIMAL NATHWANI: Sir, I would like to know that at page 14 of the presentation, the Director of the CBI has mentioned that the CBI should get the status of FBI kind of agency internationally. I would like to know whether this proposal has been sent to the Government or whether it is pending before the Government or whether you have not sent any such proposal. This is one.

The second one is, you have mentioned about the 2G and the Commonwealth Games investigation. I would like to know whether there is any age factor to be extended in the CBI. I would like to know whether the proposal is pending. Please let me know.

SHRI N.S.V. CHITTAN: Mr. Chairman, Sir, in the presentation the Director has mentioned that the CBI needs adequate powers for its successful performance with Lokpal. Can you elaborate what are the adequate powers you need?

ADVOCATE A. SAMPATH: Sir, I would like to seek some clarifications. Kindly refer to page 5 of your presentation. I would like to see the CBI as a 100 per cent impartial investigating agency and helping in quickening the trials, and we also want freedom for it. It has to become a part of the speedy justice mechanism. That is what we want. At the same time, it should not curtail the federal structure of our country vis-à-vis the autonomy of the CBI should be upheld. When I had gone through page 5 of the presentation, the picture you have presented here is not clear. It may be a part of the inadequate staff strength. And, on the other, the Judiciary may also face such a situation. So, can you make it a little clearer? You have mentioned that 1,282 cases are pending for 10-20 years. There are complaints. But, at the same time, we all believe, the CBI is doing its best for speedy trial and speedy justice. When the people come to know that cases are pending for 10-20 years, they are aghast. So, some clarification is required on this.

The second one is, investigation of cases -- some hon. Members have also cited this example -- is done at the direction of concerned Constitutional body i.e., either the High Court or the Supreme Court. You also get cases at the instructions of the Government of India. But, at the same time, some of the State Governments also request for investigation of some cases by the CBI. I would like to know whether there are any cases which have not been taken up for investigation by the CBI just because the political bosses have not given you the permission to do that.

ADVOCATE N. SAMPATH (CONTD.): Is that not a constraint? Number three, at page No. 24 you say that the officer of Lokpal shall not have rights under articles 16, 309 and 311 of the Constitution. If Lokpal becomes a constitutional body, how can this be in consonance with that?

श्री अरुण यादव : महोदय, हम सब जानते हैं कि सीबीआई हमारे देश की बहुत ही सर्वोच्च संस्था है लेकिन आजकल देखा जाता है कि जितने केसेज सीबीआई में जाते हैं, उनके डिस्पोजल में बहुत टाइम लगता है। It takes a lot of time. In some cases, it takes around 15-20 years. उसके क्या कारण हैं, इसके बारे में बताने की कोशिश करें। हमारे कुछ सदस्यों ने

कहा है कि सीबीआई को लोकपाल से जोड़ना चाहिए। कुछ का कहना है कि नहीं जोड़ना चाहिए। इसके बारे में भी कई लोगों ने कहा जैसे लालू प्रसाद जी ने कहा, सिंह साहब ने भी कहा है। मेरा भी यही मत है। सीबीआई अपने आपमें इन्वेस्टीगेशन की सबसे टॉप एजेंसी है। मेरे विचार से हमारे सदस्यों द्वारा इस संबंध में जो विचार रखे गए हैं, उनके बारे में चर्चा होनी चाहिए। मेरा जो मेन मुद्दा है, वह यह है कि जो डिस्पोज़ल है, उसमें बहुत समय लगता है। क्या आपने कोई फास्ट कोर्ट, स्पेशली फॉर सीबीआई केसेज़, करने का प्रस्ताव दिया है?

SHRI SUKHENDU SEKHAR ROY: Sir, I would like to have reaction from the Director, CBI, on two issues. First, in its presentation, the CBI has said that they require a greater functional autonomy. I personally feel that there should not be two opinions on that. But, then, the CBI again suggests that the Lokpal can exercise general superintendence on anti-corruption matters through the Director, CBI. By saying so, are you suggesting that the CVC should not have any role? Or, for that matter, should the CVC Act be repealed?

My second point is altogether different one. You have stated that the average time taken in investigation is from one to two years, while trial takes more than 10-12 years. I am referring only one case. You have also mentioned that in your report. It is about the Purulia Arms Drop Case. It started in 1995. Now, even after a lapse of 16 years, the CBI is still looking out for the main accused. Will you please react on these two points?

श्री लालू प्रसाद : अध्यक्ष महोदय, मेरा एक प्वाइंट छूट गया था। मेरे विचार से हर बात में जल्दीबाजी नहीं करनी चाहिए। आप बहुत बड़ा निर्णय लेने वाले हैं, हम लोग और यह देश बहुत बड़ा निर्णय लेने वाला है। सीबीआई के मामले में यही शिकायत की जाती है कि फैसला आने में डिले होता है, हालांकि आज हम लोग इनकी समीक्षा करने के लिए नहीं बैठे हैं। सीवीसी सुपरविज़न करता है। मेरा विचार है कि किसी कीमत पर सीबीआई और सीवीसी के साथ छेड़छाड़ नहीं करनी चाहिए। कितने केसेज़ पेंडिंग हैं...

अध्यक्ष : साक्षियों के सामने हमारा मत क्या है, उसके ऊपर विवेचन करने की आवश्यकता नहीं है। इसके बारे में हम बाद में डिसकस करेंगे कि समिति के इस संबंध में क्या राय है।

श्री लालू प्रसाद : ठीक है। मैं इस बात को कहना चाहता हूं कि 2जी स्कैंडल में जो भी हुआ, उसमें सरकार ने हस्तक्षेप नहीं किया है। सीबीआई ने इस संबंध में तेजी से काम किया, चाहे बुरा हो या भला हो, जो गवर्नमेंट के ऊपर ऐलीगेशन लगता है कि सरकार जो चाहती है, वही करते हैं - वह बात तो बेकार साबित हो गयी। इन लोगों ने काम किया। चाहे जो भी हो, कोर्ट बहुत से मामलों में मॉनिटरिंग करता है, कोर्ट में लाखों केसेज़ पेंडिंग हैं, ट्रायल पेंडिंग हैं। हर राज्य में सीबीआई के पांच-पांच कोर्ट बने हुए हैं, कानून है, वकील लोग हैं, दोनों तरफ के वकील लोग हैं, मैं भी वकील हूं, मैं प्रेक्टिस नहीं करता हूं। मेरा यह सुझाव है कि इस संस्था को और अधिक ऑटोनॉमि प्रदान होनी चाहिए।

SHRI S. SEMMALAI: I endorse the views of the Director, CBI, that the continuity at the helm of affairs in the CBI is very essential. Take, for instance, the Federal Bureau of Investigation in the USA. So far only six Directors have been there in 110 years of its

existence whereas we have had 22 Directors in 48 years. So, the Government should make a provision for having a fixed tenure of the Director, CBI.

Then, from the presentation made here, we understand that the CBI looks forward to work with the Lokpal, but does not want it to subordinate any institution. Separating the anti-corruption wing from the CBI will result in conflict of jurisdiction is the argument. So, you are of the strong view that there is no need for a separate investigating wing under the Lokpal. So, the spirit behind your assertion is well taken. I also agree that the CBI, as a full-fledged entity, will continue to function with all its wings under its control so that it is more effective. At the same time, some adverse remarks are also there. We are hearing disturbing reports regarding the CBI work getting stalled and sidetracked due to influence paddlers. That is why there is a demand from some quarters to bring the CBI under the ambit of Lokpal. So, my view is that the CBI should fight for a statutory status free from any interference. I also feel that instead of reporting to the Government, the CBI should be made to report either to Parliament or to the Supreme Court so that its impartiality is not questioned and its functioning is not interfered by any executive authority.

SHRIMATI DEEPA DASMUNSHI : Sir, I have small and simple question. Can you give an idea for formulating any mechanism for the relationship between the CBI, the CVC and the Lokpal so that the word 'superintendence' can be clarified properly?

SHRI SUKHENDU SEKHAR ROY: I associate myself with what the hon. Member Deepa has said.

SHRI PRASANTA KUMAR MAJUMDAR: Sir, I understand from paragraph 118 of the CBI report that a consultant was appointed in 2007 to study the existing structure and functioning of the CBI, and to suggest the ways and means to improve the organizational efficiency. Who was the consultant? What was his mandate? What were his suggestions?

Two, what is the reason that a perception has been growing in the minds of the common citizen that the CBI is being misused by the ruling regime and influential accused people? Even in sensitive and high profile cases of investigation, the CBI would sometime overreact, sometimes, the pace of investigation would be slowed down; sometimes, the investigation would be abandoned and closure application would be filed in the court in spite of the fact that...(Interruptions)

CHAIRMAN: Majumdarji, my suggestion is that you ask a very pointed half-minute question and then give this memorandum to the Secretariat. They will absorb it. They will put it. Between you and Deepaji, you find a via media; between the precise one and the little longer one.

SHRI PRASANTA KUMAR MAJUMDAR: It should be read out.

CHAIRMAN: I request you to make out your point and this will be given to them in copy. There is no problem. They will get it. We will send it to them. Okay. Now, a last question and then we will have about 18-20 minutes. In that, the CBI Director will give pointed answers orally and then follow it with a written note.

SHRI PINAKI MISRA: Mr. Chairman, I hope you will give me the concession of not one question but two or three questions because they are very germane.

CHAIRMAN: Please try to be brief.

SHRI PINAKI MISRA: I will try. Mr. Director, the entire foundation of the demand for Lokpal is a perception which is very widely prevalent, that there is rampant corruption; corruption has not been dealt with. That is the foundation for the Lokpal demand. Your

presentation seems to suggest that God is in Heaven and all is right with the world there is nothing wrong anywhere. Now, there is a complete contradiction between the presentation given by you today and the perception outside for the demand for Lokpal. So, how are you going to reconcile this, because that is the entire foundation of both the Jan Lokpal Bill as well as the general clamour that there is Lokpal that CBI has been unable to deal with corruption in this country? That is the first question.

The related question to that, of course, is that there is a general perception that the CBI is either exceptionally politicized or it works under the hammer of the Supreme Court and the High Court, and is unable to have any degree of autonomy to deal directly with corruption. Mr. Jethmalani had asked a pointed question relating to the CVC, which is actually more pertinent to the CBI, because you are the cutting-edge. Is it correct that you have a rogues-gallery in the CBI of ODI officers, Officers of Dubious Integrity? Is it that there is a list in the CBI of ODI officers who continue and what is the reason that they continue there and have not been weeded out despite your assurance to us that there is a very, very strict filtration system as far as their appointments is concerned? That is my second question.

The third question is related to your suggestion that there should be a fixed tenure of, at least, five years for the CBI Director, which would render it a very piquant situation, because, that means that the Director would go up to 65 years and it makes the entire things very Director-centric. Isn't that a very lopsided view of dealing with an institution? You can't make an institution so lopsided that only one man gets to the age of 65 and everybody else retires at the age of 60. I don't know how this is going to work. Is it that Director-centric? Is the CBI Director-centric? I was under the impression that it is much more of a team effort. So that seems to be the perception.

Then, I come to my last point. You have talked about wax eloquent really in your presentation about how you are fully equipped with CFSL, etc. Is it correct that the CBI has its own Forensic Department? It is because I was under the impression that CBI is outsourcing for forensics to Hyderabad, to Ahmedabad, to Chandigarh, all over the places. I am not aware of the fact that the CBI has its own inhouse forensic laboratory. In any case, with great respect, you are way behind time. You know touch-DNA, low-count DNA which has been prevalent for the last 20 years in the West, but the CBI still doesn't have a clue about this, and, as a result of which, in major murder cases, with the greatest respect, I don't think the CBI has a very high conviction rate or a very high rate at which it can demand any kind of conviction from the people also.

CHAIRMAN: I think, we have done it well on time. So, in about 10-15 minutes, we would like the CBI Director to give some pointed answers. He will send his written answers as well. We will wind up at 2.00 o'clock. You have about, I think, in all, about 20-25 different questions. जो आप ठीक समझें, उनका जवाब अभी दे दीजिए और बाकी आप लिखित रूप से जरूर भिजवा दें।

SHRI AMAR PRATAP SINGH: Sir, I will go through them briefly. But, first of all, I would like to explain that this presentation has been there on the premise that a Lokpal is coming. The ideal situation would be that CBI is made autonomous, independent and effective. I mean, we could take care of whatever the Lokpal is doing. I don't see any problem in that. But we are working under the premises that there is going to be a Lokpal and what our relationship is going to be with this Lokpal. We made this presentation because the Government has already given a Lokpal Bill which is for the consideration of the Committee.

That is why I wanted to explain, Sir, the basic premise as to why we are saying what is our relationship with Lokpal and why we are going into so many details about it.

Now, Sir, I come to the question. One was about the delay in trial. That is one of the major issues. Let me tell you, Sir, that we have recently got 71 courts sanctioned. There was a question what we are doing about it. That should definitely help us in clearing a major backlog of our cases; but then we find that there are not enough Judges for these 71 courts. So, this is another issue, Sir, with which we cannot deal with. We don't have Judges to deal with cases in these courts. Other is, when there are not special courts, the Judges are reluctant to take up CBI cases because CBI cases are of a complicated nature; they take time and they also have disposal targets. So, this is the other issue. We had a major problem with prosecutors. Now, we are taking them on contract. So, the position has eased quite a bit now. Definitely the reason for putting up this slide was to make the Committee aware of this problem that this is one of the major issues that we have.

On the selection of officers for CBI, when I was talking about the strict selection process, I was really talking about the officers coming on deputation. We have officers belonging to the CBI also, and their normal recruitment pattern is selection from the Public Service Commission and what Paswanji was mentioning, we have a Scheduled Caste and a Scheduled Tribe quota in those selections. So just as any Government organization, we also go through the same process.

Then, the other question was how does the CVC fit in with the CBI in the Lokpal? CVC, before 2003, was not dealing with CBI at all. They have enough other work. I can ask Mr. Balwinder Singh who has worked in CVC to explain to you a little bit about CVC.

SHRI BALWINDER SINGH: Sir, the CVC, like other anti-corruption organizations in Government of India, was formed under the Santhanam Committee's report which is of 1963. So, for the last 40 years or so, from 1964 to 2003, the CVC has been functioning without superintendence over CBI. CVC's main role is to take care of departmental inquiries and misconduct of departmental nature. They have got Chief Vigilance Officers and a vigilance set-up. About 640 full-time or part-time CVOs are there who are like arms of CVC. So, CVC has enough work otherwise also.

SHRI AMAR PRATAP SINGH: So, Sir, CVC also is doing general superintendence. Therefore, we are saying that if you have a Lokpal, the general superintendence can be transferred to the Lokpal. You can't have so many bodies for superintendence. It is a choice. They have enough work, apart from just looking after CBI.

Now, the major constraints in investigation that were raised are sanction for prosecution, and Section 6(a). There was a suggestion as to why can't 6(a) be repealed? This is already in the Supreme Court and it is most likely that either the Supreme Court will order it or the Government/Parliament itself will withdraw it. Sanction is our biggest problem in anti-corruption cases.

CHAIRMAN: In the Hawala cases, Justice Verma suggested that this should be repealed. It was repealed but unfortunately a particular group of very influential bureaucrats reintroduced it.

CHAIRMAN (CONTD.): And the allegation is, they surreptitiously reintroduced it at a very advanced stage of a future Bill. Then, the Supreme Court had again commented adversely on it and is now considering its constitutionality. But it is back again, I don't know from which year. This is precisely what they had said in the Hawala case, that it should not be there.

SHRI AMAR PRATAP SINGH: It came back in the CVC Act and now it is almost in the process of getting repealed.

SHRI PRASANTA KUMAR MAJUMDAR: It is just like in the case of 2G Spectrum.

CHAIRMAN: So, you are saying that 6(a) should not be there.

SHRI AMAR PRATAP SINGH: It should not be there.

SHRI KIRTI AZAD: But you should have mentioned that in your presentation. It is not there and that is why we asked you about that.

SHRI AMAR PRATAP SINGH: But we have always been saying it everywhere that that should be the case.

SHRI KIRTI AZAD: But, I suppose, if you have a presentation, it should be specifically mentioned.

SHRI AMAR PRATAP SINGH: We are suggesting the impediments. Section 19 is another impediment. We don't say that there should not be a sanction under Section 19. We are only saying that it should be made time-bound. Section 19 of the PC Act says that any Investigating agency should take sanction before filing a chargesheet. We are suggesting that it should be made three months; let the Ministry decide within three months and then give us sanction. These are the impediments in investigation. As far as age and tenure of the Director is concerned, this was just a suggestion that given some continuity, given some time, any organization...

SHRI PINAKI MISRA: Would you recommend that the top 10, 12 officers get the same age?

SHRI AMAR PRATAP SINGH: We have no problem with that.

SHRI PINAKI MISRA: That may be made more.

SHRI AMAR PRATAP SINGH: As it is, we do have tenures. Everybody has a five seven-year tenure. It is only when one gets to the Director level, that because he doesn't have service left, he has this tenure. Everybody else gets a tenure.

CHAIRMAN: May I add here for Mr. Misra's benefit that as you know, in our Lokpal Bill which has been introduced, there is a provision of '65 or five, whichever is earlier'? Now, in the event that the CBI Director is a member and part of the Lokpal, he has to fuse with that. There would be a large number of activities of the CBI, as a whole, which are not in the Lokpal. For that, the normal CBI rules would apply except that the CBI Director would be in a special class. You are right to that extent.

SHRI AMAR PRATAP SINGH: But, Sir, I would also like to point out that most of our officers get seven years on deputation in the CBI. Once they come back, most of them are there for seven years.

DR. BHALCHANDRA MUNGEKAR: Sir, we are not concerned with the five or seven-year deputation and the privileges one gets as a Director. The question should be looked at just from the point of view of continuity and judiciously using the expertise when a person reaches the stage of Director.

SHRI AMAR PRATAP SINGH: Sir, the other issue that came up was whether the CBI takes up cases *suo motu*. All our cases are *suo motu* except in the States. Now, again, this Organization is actually only meant for Central Government public servants. So, it is not

meant to deal with corruption in the States. That is not in its mandate at all. Only if the Courts or the State Governments give us cases, can we go in. So, that is a Constitutional problem. Maybe, you would have to take it up in the Parliament itself.

SHRI SHANTARAM NAIK: I would like to give an example here. There was a new item in that a complaint was filed before the CBI, Goa, about mining and the CBI, Goa, referred it to its Andhra Pradesh unit. Can they *suo motu* refer it to the Andhra Pradesh unit?

SHRI AMAR PRATAP SINGH: Sir, I will check this up. But we can take it up. We have this flexibility. If one branch is overloaded, we can give it to our Central units also.

SHRI SHANTARAM NAIK: It has been referred to you, and you have not taken cognizance of it so far.

CHAIRMAN: I think you should deal with it in your note, but I would take half a minute to explain it. It is very clear that when the CBI wants to take up a case itself or when the Central Government wishes to do so, there is a lack of power because of the State power. However, an exception has been created to some extent that where the Supreme Court directs, or, in some cases, the High Court takes it up on the text laid down by the Supreme Court's recent judgement, then of course, this federal aspect is slightly overridden, but that puts a very strong restraint because they cannot do it *suo motu*. That is the present state of affairs. Possibly, you would require a Constitutional amendment.

SHRI PARIMAL NATHWANI: What is the status of your pending proposal about getting the CBI FBI-kind of powers?

SHRI AMAR PRATAP SINGH: Sir, the work of CBI is quite different from that of the FBI. When we spoke about it in the Standing Committee, it only meant that the status of the Director should be like that of the FBI. It was not about the working as such. We were just mentioning about raising the status.

SHRI PARIMAL NATHWANI: What do you mean by that? What is the difference between the status of the FBI and the CBI?

SHRI AMAR PRATAP SINGH: Sir, we would circulate a note on the powers of the FBI to the Committee.

SHRI KIRTI AZAD: You did not tell me about how you took credit for the 2G and CWG cases?

SHRI AMAR PRATAP SINGH: Sir, on the CWG case there was absolutely no Court order. All the investigation has been absolutely done by the CBI itself.

SHRI KIRTI AZAD: It took you quite long.

SHRI AMAR PRATAP SINGH: Sir, we had started immediately after the Games.

SHRI KIRTI AZAD: It was being discussed. The CVC had come out with a report. The CBI had come out with a report. Everything was there in the papers.

SHRI AMAR PRATAP SINGH: Sir, I think that is the 2G case.

SHRI KIRTI AZAD: That was the CWG case. I was the one who opened the debate on CWG. I know about it. There were reports since 2007 on Commonwealth Games and nothing was done.

SHRI PRASANTA KUMAR MAJUMDAR: Why did the CBI defy the Government?

SHRI KIRTI AZAD: I have got quite a few cases with me and I have already mentioned it.

श्री रामविलास पासवान: आपकी जांच एजेंसी बहुत ही बढ़िया है, हम लोकपाल के संबंध में जानना चाहते हैं कि आदमी को लोकपाल को कहां से लाना चाहिए? यदि इसी में से लेना है, तो उसकी नजर में इसमें से तो सब करप्ट हैं। आपने शुरू में बहुत अच्छी बात कही है, चूंकि आपके दिमाग में यह बात है कि लोकपाल सरकारी विधेयक ऑलरेडी पेश हो चुका है, तो आपने उसी को मद्देनजर करके सारी बातें कही हैं। आपने एक लक्ष्मण रेखा खींच दी है कि यह इस दायरे में होना चाहिए। जब आपकी एक जांच एजेंसी है, उसी के इन्वेस्टिगेशन का काम किया जाए, उसी के जजमेंट का भी काम किया जाय, तो इसी तरह के काम के लिए किसी संस्था की कोई आवश्यकता है? यदि आवश्यकता है तो फिर उनके बीस हजार, तीस हजार इंप्लॉइज कहां से आएंगे?

श्री अमर प्रताप सिंह: हम आपकी बात से बिल्कुल सहमत हैं। आप हमें पूरी functional autonomy दे दीजिए, तो CBI सेन्ट्रल गवर्नमेंट का काम तो जरूर देख सकती है। हमारी स्टेट में कोई पावर नहीं है।

श्री रामविलास पासवान: वहां तो लोकायुक्त करेगा, वहां पर लोकपाल नहीं होगा।

CHAIRMAN: You may send us a detailed note on this. We are coming close to 2 o'clock. I would like you to conclude it in two-three minutes.

SHRI PINAKI MISRA: Could you just address the issue that I made about officers with dubious integrity in the organization?

SHRI PRASANTA KUMAR MAJUMDAR: Mr. Chairman, I have just one more question. CBI is an autonomous body. The CBI defied Government on the 2G Spectrum scam.

CHAIRMAN: We understand your point. Let them send a note.

DR. PRABHA KISHOR TAVIAD: You have said that you take one or two years for investigation. This time must be reduced.

CHAIRMAN: None of the important issues has been left out in the oral reply. He would give a written reply to the Committee. Now, may I thank you all? As I said, we would very much like to have these two things. We would like to have your pointed, written responses and we would like you to give a square-bracketed note, with bold face, on the Lokpal Bill itself that we introduced in Parliament. Thank you all.

(The witnesses then withdrew and the
Committee adjourned at 2 o'clock.)

The Department-related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice met at 4.30 p.m. on 13th October, 2011 in Committee Room '074', PLB, New Delhi.

(Chairman -- Dr. Abhishek Manu Singhvi)

Witnesses:-

- Justice M.N. Venkatachalaiah, Former Chief Justice of India.
- Justice J.S. Verma, Former Chief Justice of India.

DOPT

- Shri Alok Kumar, Joint Secretary
- Shri Ashok K. K. Meena, Director

Ministry of Law and Justice

1. Shri N.K. Nampoothiry, Additional Secretary.

Chairman: I extend a very warm welcome to both of you. Sorry for slight delay because we were discussing house-keeping matters inside. You came well before time. The Committee has a great pleasure in welcoming you both and thank you for responding so quickly to our relatively short invitation.

As the Committee knows, these are two of our most eminent former Chief Justices of India and they have spoken about certain aspects of the Lokpal Bill. We are particularly happy to share their views and experiences. I believe, of course, that they will speak principally on the aspect on which they have spoken and written which is the aspect of elevating this Bill to a constitutional status.

CHAIRMAN (contd): So, I leave the floor to you.

JUSTICE M.N. VENKATACHALAIAH: Hon. Chairman, very distinguished and respected Members of Parliament, it is my great privilege. I am deeply sensible of the honour of this invitation. I lived in Delhi for almost 40 years and I had not been inside this beautiful building even once. Once, the Speaker had invited me, but somehow, on that occasion, I had to deny myself the honour of being inside these beautiful premises. It is a great institution. Indian Parliament has a great reputation all over the world. In 1947, when Panditji opted for the universal adult franchise, the Western Press said, "It is the biggest gamble in history with 330 million ignorant people, illiterate people. How do you work this democracy and adult franchise?" I have all those old cuttings with me. On 13th of August, 2007, the same paper came out with two articles. It said that the Indian democracy is robust, but it is the rowdiest democracy in the world. It said that this is a great experiment which the Parliament has sustained. And, every civilization has to absorb the ups and downs and some degree of self-criticism. But, by and large, out of the pillars of this democracy, perhaps, the strongest pillar has been this. The other day, a university asked me to speak on some aspects of Indian democracy and development. One student asked me a question, "Which institution - the Supreme Court, the Press, or, the Parliament - has contributed the most for the maintenance of democracy in this country?" Sir, I am from the Judiciary. I have been a lawyer and Judge for 60 years. I became a lawyer in 1951. I said that an honest assessment is that the Parliament has guided this country through, perhaps, some of the most difficult times, when even courts became a little reactionary. The very first case was in 1951, that is, the Gopalan case. We let down the liberty of the people. It took 27 years for us to correct ourselves and in

the Maneka case, we said that in article 21, life and liberty shall not be deprived other than in accordance with the procedure established by law. We reduced it by saying that it shall not be done otherwise than by the procedure prescribed by the Legislature. We brought down law into procedure. But, we corrected ourselves.

Ladies and Gentlemen, it is a great privilege. Once, Dr. Ambedkar was asked, “Why have you prescribed this elephantine-size Constitution? Why have you put in all administrative details into the Constitution? And, it is a lawyers’ paradise. Why did you do that?” He said, “I am not apologetic about it. I cannot take the risk of omitting administrative details from the Constitution unless the country is saturated with the Constitutional morality.” He said that no constitution will work by itself unless there is a sense of constitutional morality and the spirit of the constitution. He said, “In this country, Constitutional morality and democracy are merely topped on Indian soil. They have not taken roots. So, I cannot take the risk of omitting administrative details from the Constitution and leaving it alone for the Legislature to prescribe.” And, the Constituent Assembly debates attained spiritual heights. Actually, nowhere in the world, we had seen that kind of debates. That was just in the aftermath of the colorcast of the partition; we lost almost 7 lakh lives in the course of the disturbances. In spite of that pressure, the debate was simply elevating. The one concern was to save this country from the scourge of such happenings for the future generations of India. Still, when we read the debates, we see the amount of passion they had for the future of this country. Every debate did not dwell upon contemporary bad experience. They did not go on to impart universality to individual aberrations. They wanted to build a great country.

Today, Augustine once said, “Oh God, make me holy, but not today; I have some unholy things to do. We will wait for an opportune moment to do that.” This is what has happened to corruption in this country. Well, all of us want to get rid of this scourge of corruption. First thing is moral issues, ethical issues relating to corruption. It diminishes the humanity. The second is about the principle that highest office in a republic is the ‘citizen’. Citizenship is the highest office in a republic. When there is an extortionate corruption, it diminishes the individual, the citizen, and diminishes the quality of democracy itself. That has happened. We have seen happening this before our very eyes. The third is the developmental issues; how corruption can retard this country’s progress and its competition in the comity of nations.

In ten years from now, the science and technology will change the world beyond recognition. The human society, ten years hence, will bear no resemblance to the one in which we live today. Somebody said that the 20th century was the century of America and the 21st will be that of China and India. I think, it is not the century of any country; it is the century of new biology, century of new science, new medicine, new physiology and a whole host of things that can change civilization. All cross-over points in civilization have two factors in common. One was a demographic explosion, the volatility of population, combined with a new source of energy. If we trace the history of mankind, first came the bio-mass as a source of energy, from animal labour, human labour, steam power, electricity, gas, etc. Then came a very interesting development – information and computers as the source of energy. Fifty years from then came the knowledge as the source of energy. And, 15 from now, plus or minus five, you will have a new source of energy, which will be a thing based on but beyond knowledge. And, spiritualism will be a source of human energy. These are great changes that will occur in the world. You will see that small thing, called the sixth-sense, which the Pranav Mistry has produced. He has used a beautiful incidence. A cross-examining council will have a button here in the court. The moment it captures the photograph of the witness, sends it to the Google, the Google tells everything about him. You will not have to even ask

his name. You will have your goggles and his antecedents will be written on his chest. Everything will be known.

JUSTICE M.N.VENKATACHALAI AH (CONTD.): Medicine, science and all this is going to be fantastic kind of things. We have come here today. I have carried my old bonds across the sub-continent to be here. I have heard brilliant arguments from Ram in court, from Abhishek and today we are here, Varma and I, to plead before you for something on behalf of the future generations of this country. We have a historic opportunity today. History has re-enacted itself, sixty years later, to give us the great privilege of sharing the future generations of our country from the scourge of a kind of a habit which has become endemic in developing countries. In England, at one point of time, corruption was so notorious, so widespread that Englishmen were ashamed of it. Then came the analysis which a committee went into. There is a beautiful work on corruption in the developing countries from Ronald Wraith and another author. There they said, out of the three elements, power, status and wealth, if you combine any two in any office or institution, corruption is inevitable. They said we would design offices and institutions so that more than one of these elements is not available. A man who has power has no status or wealth; a man who has wealth has no status and power. Here, wealth and power have always a tendency to exchange themselves. Power and wealth are tradable entities. This is a problem which every civilisation has faced. In England, traditionally, wealth, power and status remain in different hands, though occasionally this kind of osmosis was attempted. But in India, there is a concentration of wealth, power and status in some groups, and this is going to be the most dangerous thing for the future of this country, particularly for the development of science and technology. Whenever I go to an Australian University, either the Chancellor or a Professor is a Fellow of the Royal Society. There are 168 Fellows in the Royal Society in Australia, and we are 250 times Australia's population and we have just 16 of them. It is not that a Royal Society's fellowship is a benchmark for excellence in science but generally it has been accepted as that. Great changes have occurred. If you see the building of the Royal Society, they have put on a board 'don't take any man for it'. Everything must be proved by practical evidence. The greatest disservice corruption has done is in the field of higher education. Today we are supposed to be a middle-income emerging market economy. Our per capita income, I suppose, subject to correction – Dr. Singhvi may correct me. He is more knowledgeable than me in many matters, or in all matters for that matter – is about 980 dollars or so. We are a middle-income emerging market economy. To remain here, let alone move up to what is called a high-income technology based export economy, we require at least 15 per cent of our university age of population in the age group of 18 to 24 to be in the Universities. Today we have just about 8 per cent. If you want to have 15 per cent, you may have to have another 700 more universities.

DR. BHALCHANDRA MUNGEKAR: Today, we have 13.5 per cent and we should have minimum of 20 per cent.

JUSTICE M.N.VENKATACHALAI AH: Okay. I am happy to know that we have 13.5 per cent. I think, in a recent book, one of the economists said that 20 per cent would be an ideal figure. But quality of university education is what we should be worried about. In fact, I interact with Universities. I asked a physics professor: What is this Large Hadron Collider doing there in Cern experiment? Some of them had not even heard of it. What is it that they are going to prove by that experiment? 400 feet below the ground, 27 kms of tubings have been done and a nuclear bombardment is going on there. What is it that they are going to prove? I think, some time Dr. Singhvi or Ram should persuade the Government to send brilliant students of physics and mathematics to go and see what is happening there. More than anything else, we have this problem. So far as this Constitutional framework is

concerned, we know a case in which one State repealed the enactment to get rid of the Lok Ayukta. This is the potential of our democracy. If you want to get rid of a man, you get rid of the law. This is the culture that we are developing. There is, for example, in nuclear physics, a chain reaction. In sociology, there is a negative social critical mass. If about 30 per cent of our population lose faith in the justice of their society and lose faith in the justice of their Government, there is a negative social critical mass which unleashes a chain reaction. The disenchantment with institutions of democracy, institutions of governance unleashes a sense of cynicism which works as a power of destruction, not as a power of re-construction. I think, we have reached a stage where there is disenchantment with institutions of democracy, institutions of governance and justice of their own society. If this is the situation, I think, we should perhaps take a strong look at our legal framework. Dr. Ambedkar put it beautifully, 'I don't want to take the risk of omitting any administrative detail from the Constitution unless there is a saturation of Constitutional morality amongst all sections of society.'

JUSTICE M.N. VENKATACHALAI AH (CONTD.): I don't think we have achieved that yet. With your permission, I would quote him. He says, "It is only where people are saturated with Constitutional morality that one can take the risk of omitting from the Constitution details of administration and leaving it for the Legislature to prescribe them." We all realise that we have not yet attained that. I think it is very important for us that we give a constitutional framework. Then we have to see how the law will work out. The function of the Government is not a simple thing. I would like to quote a small passage from Morley's *Notes on Politics and History*. He says, "Everybody who knows anything, knows that it is a waste of our short lives to insist on ideas perfection. Popular Government, or any other for that matter, is no chronometer, with delicate apparatus of strings, wheels, balances and escapements. It is a rough heavy bulk of machinery, that we must get to work as best as we can. It goes by rude force and weight of needs, greedy interests and stubborn prejudices." This is how a government works. I know that overemphasis on paranoia of corruption demoralise the administration; the honest officers feel frustrated.

In 1946, we were producing just six million tonnes of wheat. In 2000, we were producing 79 million tonnes of wheat. In 1947, we were producing 1,372 mw of electricity. Today, we have installed capacity of almost 1,80,000 or 2,00,000 mw. It is something unbelievable. We conducted five year plans. You must give credit to bureaucracy where it is due. It is easy to criticise everything in the world. In 1800, the world had just one billion population. It took 131 years to add the second billion. The sixth billion was added in 11 years. Our planners had all this information. They knew that there would be tremendous amount of pressure. But the planning was on a different line and conception itself was different. In 1800, 68 per cent of the American workforce was in agriculture. By 2000, it became 3.5 per cent. Imagine the kind of mobility in the rural areas, problems of new cities, urbanisation, planning, healthcare, and education. There are 490 million children below 14 years. There will be 30-40 million new voters in the course of next four years. We have given them *lathis*, nothing else. What is the quality of primary education? There is an enormous amount of work which cannot be handled unless we have a dedicated and honest administration. We should not create a fear psychosis by this kind of a thing. There should be an intelligent way of handling it, a very sensitive way of handling it. Honest officers should not be under some kind of a fear psychosis. They will be paralysed with inaction. Most of them don't want to take a decision out of fear that somebody would raise an issue. You can always find fault with somebody. A man who runs may stumble. A man who sits will never stumble. The problem is how you balance it, and that is the genius of Parliament. You have this great opportunity of saving this country and taking it forward to new heights. In another ten years, science and technology is going to change the whole thing. How do we integrate

ourselves with this? How do you deal with this system of either inaction on account of fear of accusation or corruption? We request you to kindly consider a constitutional declaration which gives people a feeling that you have taken this decision and then decide how the law should be framed.

I think before you take cognisance of a crime and punish a man, you must have an arrangement like a grand jury where preliminary examination must be so good and so strict that no honest man is exposed to dishonour. You have seen any number of cases in which honest people have suffered. But that is a matter of detail. You must have a constitutional exhortation that will assure people that they live under the protection of an adequate system. That is what is important. Somebody long ago said this about our own judicial system and that applies with a fortiori today. He said the laws are hundred years before the needs of times. The courts are 200 years behind the needs of time; and the judges are 300 years behind. I think sometimes we present an archaic picture of the way we function. It is a very patient population that suffers this silently. All this we had discussed. I had the good fortune to head the National Commission to Review the Working of the Constitution. All these points, including the importance that we should place on science and technology, were discussed. A boy gets a first-class doctorate from a first-class university in India or abroad either in physics or mathematics or biology or in basic sciences. But there are no takers for basic sciences today. You must put him on velvet and see to it that he goes to a university in India and teaches and to keep him in India you must give him an allowance. Otherwise, you cannot nurture it. You cannot have teachers. We have law colleges proliferating everywhere. You don't have law teachers. In fact, I was tempted to go and sit in Ram's classes. He told me as a Minister he would go to National Law School of India University. I heard you in a large number of cases. Today, I am arguing before you. My clientele is the people of this country whom you represent. On their behalf, I have taken a *vakalat* to come and plead before you. Kindly seriously consider putting this as a constitutional declaration. Public is simply waiting for it. There is too much of rabble-rousing about it. Parliament must come and hold the hands of people and say that we are having a constitutional exhortation that we will provide you a beautiful system of protection from corruption.

JUSTICE M.N. VENKATACHALAI AH (CONTD.): That should not be a witch hand. This is possibly what we have come here to place before you for your gracious consideration that unless you have a constitutional provision, all other things become a little hazy. You give a clear direction. The paramount and supreme institution of the country, the Parliament of India, must come out and assure us that it will protect us from corruption and this is possible, in our view and my brother shares my view, that in principle you must have this. Other things will follow. How you shape the Act, what kind of provisions should be there, how many people should be there, etc. are matters of detail. That can even change from time to time. But, this one is important. Thank very much for a patient hearing.

CHAIRMAN: Thank you. Before I turn to Justice Verma, I must thank you for the most exhorting and most uplifting address. The important thing is that his emphasis is on the ethical and philosophical foundations of the whole matter. It not only reminds us of our great responsibility but it also takes us back to the real foundation of the whole issue. I think the important point is – although he may talk of development, science and technology and progress – how interconnected they are with the issue of corruption. It's a small world and all are interconnected. It also reminds us of a very historic opportunity and we have to put ourselves on that high *kasauti* which the Chief Justice has reminded us. I thought that nobody is suggesting that if at all there is a constitutional inclusion, it should be of any great detail. It should be a broad declaration of basic principles which, on the test of Justice Venkatachalaiah's address, means that we are now partially saturated with constitutional

morality because not all details are required to be put in the Constitution. So, at least, we expect ourselves to have been partially saturated. I am not sure whether it is true or not. But, certainly, that's the assumption. May I now ask Justice Verma to give us several more details? He has also written on the subject and he will explain to us.

JUSTICE J.S. VERMA: Thank you very much, Mr. Chairman and hon. Members. Let me first say that both of us here are present to discharge the citizens' duty. It was very gracious of the Chairman to talk to me personally and say that the Committee would want to hear us. Well, with our usual diffidence, I was a bit reluctant but then, as usual, he was very persuasive. So, I said that I and my dear friend, Justice Venkatachalaiah, would come together. We have sat in the court together for quite long. We had been together for several years along with another good friend of ours, Justice L.M. Sharma, who retired first being the oldest, then he retired and I retired after him. So, it was a surprise to us when someone remarked that these three are known to be very good friends but you will not find one judgment, although they have sat together in all important judgments, in which they have agreed and then, we realised that it was so.

But, let me begin by saying that here, we are in total agreement. The first thing which I want to say is, I want to adopt the practice which we followed in the court. Sometimes, the less laborious of the two which, between us, I always was, I would like him to say a thing and I would say that I agree. So, I begin by saying I agree with everything which he has said. There are just a few things which very often in the court also, he left for me, to go into the nitty-gritty. So, I will confine myself to those.

Before I come to the specific points, I would like to make a few preliminary observations. No one has any doubt, and it has been expressed by everyone, politicians of all shades and people from all walks of life, that this crusade against corruption, the environment created in which everyone willingly joined, was to show that everyone wants a remedy – a suitable and effective remedy – to combat corruption. There are no two opinions about it. I, for one, have no doubt that when he says everyone, he really means it. I am not at all influenced by the scepticism. Particularly, when you combine all classes to which the people of the country can ultimately be divided, I was wondering if the entire class of all sections is corrupt, then, how have we reached where we have reached? At least, there are a few everywhere. But, to dub the entire category of any particular class, according to me, is blasphemy and is not correct. It is not reasonable at all.

Now, according to me, once having raised that issue and having got a commitment from all sections of the society – and admirably from politicians of all shades, cutting across party lines – to a genuine and full commitment to bring about a law which would be effective, I thought that the job, which was begun by whosoever, ended there and then began the task of the experts in the field. We had to remember that we have to work within the constitutional framework. It's all right that every one of us is an individual and it is in that spirit that we are before you here today. Once in a while, both of us would be speaking somewhere or writing some article or saying something because everyone in a democracy is entitled to voice his opinion and expect his opinion to be considered by whosoever has to decide. But, I can't say that what I say is the only thing which you will have to accept. I can't substitute myself for this entire body of politicians or Committee of Parliament. The Constitution has entrusted that task to you. So, I was indeed very upset when I heard – of course, it began with a particular individual and then, later on joined by many – every one of us is above Parliament. According to me, that's sacrilege; that's blasphemy. That has to be rejected outright. So, I would urge you not to believe that or have any doubt in that regard. I don't think anyone would subscribe to that view except a few who, I think, need to be better

educated on the subject. I also strongly believe and somehow it had something to do it. My very distinguished friend as the Chairman of that Commission also in his report mentioned this. I was supposed to chair that committee in which suggestions were to be made for operationalisation of the Fundamental Duties.

JUSTICE J.S. VERMA (CONTD.): ... in which the Chairman's distinguished Father, Dr L.M. Singhvi was one of the members, Dr Karan Singh and a few others. The very first duty is to abide by the Constitution. Now if you have to judge him, first and foremost fundamental duty of every citizen to say something which is contrary to the Constitution, I think, it is disturbing and, therefore, that is also something to be noted of. Now, if the demand is universal without any exception is of a strong Lokpal as it ought to be, which everyone has accepted, I am sure, that if anyone did not believe in it, at least, in the present environment he has neither said it nor he is going to say it. So, one must also take advantage of the existing environment and to seize on the basis that is what I would urge upon the hon. Members of the Committee here to proceed on the basis that if anyone says that they have any difficulty in mustering a majority, well, then, that is going back against one's own declaration that the entire nation is behind me and everyone believes in. If 100 per cent say that 75 per cent is less than 100, then, that is ordinary arithmetic. Where is the problem? As I mentioned some doubts which are being expressed, I am confining myself only to the nitty gritty which according to me if people really believe in them, then, probably they have not done their home work which they ought to, and if knowingly they are saying it, then, it is worse.

Now one of the objections is, other parts I will come later, because it is being said day in, day out that this is a centrifuge, it will delay the process. I don't understand how it will. You see everyone means what he is saying and everyone says we want a strong. There could be nothing stronger than a Constitutional mandate. Well, it does not need much intelligence to accept that a Constitutional body any day could be stronger. Then, look at the implications. The implications are these.

Another argument given which I heard yesterday from very eminent person that time will be taken for ratification by half the States. I do not want to name anyone. Well, it does not fall under the proviso of article 368. That is why the draft which we try to draft and circulate it states the minimum and contains nothing which is debated. It contains only that much which everyone says we agree to. As a matter of fact, I was watching a couple of debates in Parliament and, I think, it was the first time I saw on T.V. recently one was that in which a resolution was passed to break the deadlock, etc. What high are they to debate? When we were in the court, I remember, Mr Jethmalani had appeared in many of those cases and you bear me out, we said in the court so many times that the quality of the Constituent Assembly debates were of such a high order. They had so many things to do and yet that kind of learning, we do nothing else except try to interpret law. You see they were doing the job, at least, as good or may be even better. I found, I am not saying it because I am not known to say something which I don't believe in. I was pleasantly surprised because of the environment created by people whom I thought knew better. By the high degree of commitment in the debate and the earnestness with which every Member cutting across party lines spoke on the subject.

The other thing was the debate in the Rajya Sabha which I heard about the impeachment of Justice Soumitra Sen. I can understand the lawyers Member speaking as they did. Although, of course, I told many of them that well one of your best performances was what I saw on T.V. better than what when you charge a few lakhs of rupees to appear in the court. But the non-lawyers what they spoke were so impressive. I see this is the potential of the Parliament.

How can you say that we ignore all of you and I am going to decide and you sit there only to apply धोबी मार्का, चिड़िया लगा दीजिए आप, हमने लिख दिया, आप दस्तखत कर दीजिए।

I mean that is just not done. It is not only something against the Constitution. I mean, how can anyone think of it? How can you doubt the potential of those people who are committed? Now, in this kind of environment, with this kind of potential, I think, it should take only one day to pass a Constitution Amendment Bill which does not contain anything which is debated or or debatable issues that can be left for the law to be enacted thereunder like the provisions for the Election Commission. That is what we have tried to do. We are not experts in this. So, we have tried to do the best. It could be modified and amended by those who are experts in drafting, etc. But we are trying to say not a single word except to provide a declaration that there could be a Constitutional body and once this Constitution Amendment Bill is passed so that it becomes a part of the Constitution. Then, there are several other implications which have got to be taken note of. This is something which cannot be ordinarily amended like an ordinary statute by some simple majority. It would be difficult. Secondly, if it becomes a basic feature and, therefore, a part of the basic structure which personally, I think, my friend agrees, ultimately it will become a part of the indestructable basic structure of the Constitution which any kind of change in the political equations or formulations, it would be beyond amending power even of Parliament. So, the demand is for a strong Lokpal. If you make it a part of the Constitution, give it a Constitutional status then that is something which is a permanent feature. So long as the Constitution is there it will be there. The only thing required thereafter is to enact a law in which you can take care of all those issues which are being debated, and simply saying that nothing has been done for 44 years, therefore, you must do it today, well, it does not mean that for 44 years I have not eaten, so, today I will eat so much that my system fails. What is necessary is that we have to keep that in mind for ensuring that we don't take a day longer than what is necessary. Once the Constitution Amendment Bill is passed, then, it becomes a part of the Constitution. The major commitment which is oral and every day I am surprised to hear that someone says so and so has gone back. The other fellow says now he has gone back, so, I retrieve what I have said earlier, now, at least that tamasha will end once it is a part. So, you have taken the first step which is a long step and thereafter all that you have to provide is nitty gritty in the law, debate that and deal with those issues. What I suggest, of course, that is incidental but certainly not connected with it. Simultaneous with this Bill which you ultimately will have to make, the Parliament will have to make legislation to provide for every other thing, the Judicial Accountability Bill, are all connected matters, we should move so that, at the same time, when you deal with them, you can take care of those things. I am deliberately not saying anything about the Judicial Accountability Bill because that matter is over. Someone may think that we are not interested in it. We have already said on it. Whatever is required to be put in here, the Constitution itself makes an accepted treatment of the judiciary in the Constitution, deal with it, put it there. I see no difficulty in this Constitution Amendment being made because if it does not contain any of the contentious issues, it merely makes a declaration of this thing as a Constitutional body, which becomes embedded in the Constitution. Well, I think the major premise is achieved.

JUSTICE J. S. VERMA (CONTD.): So far as following the legislation is concerned, to whatever extent my assistance is needed, when that situation arises, I will be available. Generally I would like to say this. It is not correct to think that a law alone will be a panacea for all ills. If that were so, we would not have untouchability because article 17 in the original Constitution abolished it long ago, and we would not have bonded and child labour since articles 23 and 24 would have taken care of those things. Ultimately, a holistic approach will be required and, as Justice Venkatachaliah has pointed out, ultimately, the morality aspects

and the ethical values will have to be addressed. You have any system, but the working of the system, its faithful implementation, I think, will also have to be seriously addressed by you when you think of the details. A mechanism to ensure whatever you provide is also properly and faithfully implemented and if anyone fails to do that, an effective mechanism should be there to enforce accountability and ensure that. When I say existing laws, you are not going to enact a new law to cover the field of combating corruption for the first time. That is already an offence. What are those areas where the existing provisions failed? Is there any deficiency in the law? If that be so, can it be corrected? Well, you have to address that. If it is implementation, why has the implementation failed? You have to address that. I just want to give an example and I feel embarrassed because I have something to do with that judgment. Autonomy is given to the CBI by the Supreme Court. Now, has it really been implemented? Of course, if something more is required to be done to give autonomy, we do that. Please examine why the autonomy which was given has not been effective. Try to, while enacting the law, fill that gap also. I don't think that can be done with a gun held at the head and a particular date being fixed. Then it is better to be safe than sorry. That is a sure method. If you rush through all that, then you are going to repent later. By "you" I mean all of us. The net result would be देखा, हमने तो कहा था कि ये कुछ नहीं कर सकते । Let that not happen. These are, I think, the ethical components which are very important and, therefore, they are related to the implementation part. So, kindly address that also and these are some of the general observations which I have to make.

JUSTICE M. N. VENKATACHALIAH: What I wish to request you is that there are some volatile situations in the history of our country. When things become volatile, it affects the public faith in governance and justice. You can't solve things by being clever. Nobody can solve things by being clever. Even if you apply time-tested hon'ble methods it will not guarantee success. But if you don't do so, it will guarantee failure. Kindly bear that in mind.

CHAIRMAN: Thank you both, former Chief Justices of India. Now, the Members here have already a draft circulated and certainly the main focus is on the Constitutional status issue. So, please feel free to ask questions on it. I just want to ask one question. You have put these clauses, Chief Justices, and in particular 329B on the Lok Ayukta and I personally think it is done rightly, but this has to be debated. You used the phrase "appropriate legislature" in the Lok Ayukta context which deliberately leaves whether it is the Central legislature or the State legislature.

JUSTICE J.S. VERMA: I will tell you why. I forgot to mention that. In the article which I have written I have dealt with that. It is just like this. Article 253 of the Constitution clearly provides that for the purpose of implementing an international treaty, convention, etc., the Parliament is entitled to enact for the whole or any part of the territory. We have already a precedent. The Protection of Human Rights Act, 1993 was enacted by the Parliament. We deal with not only the Constitution and the National Human Rights Commission but also the State Human Rights Commission. It is for the whole. So, you can adopt that method so that the Parliament enacts for the whole country. Now in clause 1 or sub-article 1 we have said "appropriate legislature" in the case of Lok Ayukta. Why? We didn't want to put this thing directly because one contentious issue could arise. Some one may say that the spirit of federalism is being eroded. Now "appropriate legislature" puts this matter beyond controversy at this stage and thereafter you can decide.

CHAIRMAN: Absolutely.

JUSTICE J. S. VEMA: In passing the Constitution (Amendment) Bill both these appropriate legislatures could be either the Parliament under article 253 or the State legislature.

CHAIRMAN: Rightly, Chief Justice, on all controversial issues, one of them could well be a federal debate. Therefore, you have kept it open. As far as the Constitutional model is concerned, this is a non-controversial, simple and short model. My question is slightly different. I am going slightly beyond the Constitutional amendment. I am simply asking your own personal view, howsoever subjective or otherwise, as to value judgement. Would you consider that in exercise of this power this Standing Committee should recommend that the federal legislature exercises the power to suggest or create broadly the elements of a Central legislation for Lok Ayukta or not?

JUSTICE J.S. VERMA: Personally, I am of the view, and that is what I wrote in the article also, that it should be under article 253 and that is why we have given the illustration of the Protection of Human Rights Act. That will ensure uniformity throughout the country. You see the problems which we faced. Both of us were in the NHRC and we tried that every State should have a State Human Rights Commission also. But the States dilly-dallied and they did not. That is why here we have said that there shall be a Lok Ayukta. There it was optional. There shall be a Lok Ayukta, it has to be there and it has to be appointed. My preference would be for a federal legislation because that is something which will ensure uniformity. The State would be involved only in making the appointment. But so far as the provisions are concerned, today, in the case of Lok Ayukta what you have is that you have all kinds of Lok Ayuktas everywhere. I am sorry to say this. I don't want to mention it. I told one Chief Minister, "Did you go about looking for the most convenient person that you could have in my fraternity to be made a Lok Ayukta?". After all the office is meant to keep everyone on tenterhooks that you do your job properly. You are looking for a man who will turn a blind eye to all wrong things which you do and whose past has been that. Therefore, the appointment process also ...

SHRI RAM JETHMALANI: Mr. Chairman and my colleagues in the Committee, I don't think that we are dealing with ordinary witnesses who come before us. Speaking for myself, both these gentlemen are not just ex-Chief Justices of India, but in their own right they are social philosophers as well as models of both intellectual and fiscal integrity. That almost compels me to address them as "My Lords" which I did all my life. But I think I wouldn't do that. But they know the kind of respect that I have for them. I am not doing a sort of cross-examining the witness. I am only trying to get some information to educate myself.

SHRI RAM JETHMALANI (contd.): First of all, you should realize one problem which we have. We are all Members of some political party or the other, and we, necessarily, have to respond to public opinion. And to the extent to which that public opinion is concentrated and very loud and intense, we are bound to respond to it. So, my only objection against making the Lokpal, today a matter of constitutional creation, is that this will take a little more time. We must legislate now; create a Lokpal, satisfy the urgent public need which we are facing, and there is time enough to incorporate the main provisions of that legislation in the Constitution so that, ultimately, the Lokpal becomes non-removable by a simple majority in any Legislature. You know, I have the greatest respect for Dr. Ambedkar. He was a giant constitutional lawyer and a knowledgeable jurist. But I do not want to put the Lokpal Bill in the Constitution for the reasons which Dr. Ambedkar gave. I would avoid putting the details of our Lokpal Bill into the Constitution because then, our experience tells us that every time we need an amendment, we will have to amend the Constitution. It will become a very, very difficult project altogether because we are starting with almost a new experiment now, and

this new experiment will make us embark on various lines of thought which all of them can't possibly be incorporated in the legislation. And, tomorrow, we might find that our method of approach was totally wrong, that we need to change the course, and then, we would have to amend the Constitution. Therefore, I, entirely, agree; but the reason is not what Dr. Ambedkar gave for producing a very unwieldy, the detailed document. The reason is that I want this job to remain completely immune from interference by trivial and sometimes not very responsible majorities in the Legislature. Is there any particular objection to our starting with Lokpal, which is the creation of a Parliamentary statute? And in good times, we will also incorporate this in the Constitution so that the urgent public need which is now being felt, to which we are bound to respond in a democratic society, is satisfied.

CHAIRMAN: I must remind Mr. Ram only two things. Mr. Verma has, specifically, said that according to him, this can be passed in one day. He also said that the model before you, - I hope you have a copy - is a three provisioned, non-detailed, completely bereft of details, structured for the Lokpal alone. So, they are not proposing any detailed thing in the Constitution.

SHRI RAM JETHMALANI: There is already objection to this. People have said that this is a method of delaying it. Therefore, why unnecessarily give people a chance to say it? Let us give a full-fledged democracy. People want legislation, and let us give them legislation. And, you never know, sometimes, you may not be able to get a two-thirds majority, and then, it will create another furore, and we will be in the same position in which we were. But is there any particular objection to our proceeding with the legislation and then waiting for salient provisions to be incorporated in the Constitution in good times, but as early as possible.

JUSTICE M.N. VENKATACHALAI AH: I would, respectfully, request Ram, just argue our point for a change. What we have been trying to urge upon you is that it is a historic moment which is not served by satisfying transitory interest and rabbleroising. It is a deep thing. And there is no question about an Act being brought into force as early as possible, and the priority of the Act coming into force cannot be sacrificed for the sake of a constitutional amendment...

SHRI RAM JETHMALANI: In principle, there is no objection to this suggestion at all. But we do not wish to create an impression that we are now trying to delay it by adopting it. That is all my anxiety.

JUSTICE J.S. VERMA: I may just add one thing. I quite see your point, and we had also deliberated over it before we decided to say what we have said. The problem which we foresee is this. The moment you come to the Act being first and the Constitutional part coming later, the Act will have to provide on those issues also which are already contentious, and, therefore, the passing of this Act will be delayed. There are so many factors which are bound to delay it, whereas you can have a skeleton Constitutional Amendment expressly providing for the law which can be in the offing simultaneously.

SHRI RAM JETHMALANI: I whole-heartedly agree with this view that what shall be incorporated in the Constitution shall be as minimal as possible so that we can, with ease, proceed with the amendments of the law. No problem at all. The second point which I want to make is this. You made a great statement which warmed the cockles of my heart. You said that within ten years, you expect that the world will be totally different from the world in which we are living today. Do you tell me that you think, in ten years, corruption will cease to be a source of energy?

JUSTICE M.N. VENKATACHALAI AH: I think the world that will be made over by the next generation, you will see what kind the next generation will be, what kind of education

they will have, and they will have far greater attractions than the pettiness of corruption. Life will be more exciting and things will be different.

SHRI RAM JETHMALANI: I am not putting a question to you now as ex-Chief Justices. But this is a question to you as a moral philosopher. I don't believe that you can legislate character. If that is true, I really want your advice as to what steps which we, in Parliament, can take for the purpose of bringing about a change of character.

JUSTICE M.N. VENKATACHALAIAH: I can only take you back to Mahabharata, as to what happened when Kamsa administered his State with ruthlessness and exploitation. The *rishis* opposed him. He went to the guru of his father-in-law, Jarasandha. He was Bahooka. He went and told him, "You are a great sage and a wise man. Tell me, how can I suppress these fellows?" He said, "Give them a good administration, righteous administration." Kamsa said, "I am not going to do that. I will do what I think I enjoy doing. Tell me how I can suppress this opposition." He said, "I will tell you a secret. Do this. Corrupt the young minds. Give them all the pleasures of the world. Destroy families. Set up sons against their father, father against his sons, mother against father. You create this unrest."

JUSTICE M. N. VENKATACHALAIAH (contd.): "They would be squabbling. They won't interfere with your administration". The morality, as you said, can't be taught. It must be observed as an example of how institutions have collapsed. But I have faith that the new generation will come out with their own answers.

SHRI RAM JETHMALANI: So, you are not suggesting that we corrupt the few honest men that are left, to create the situation of Mahabharat!

Now, on the Lokpal Bill itself, there are two contentious issues on which I would like to have your advice. First is the inclusion of the higher judiciary and, then, the Prime Minister. What are your personal views on this?

JUSTICE M. N. VENKATACHALAIAH: On both, I have made it clear in the Constitution Review Commission Report that the Prime Minister's Office must be kept out of it. You have no idea of what the Prime Minister's Office is in a parliamentary democracy. If you see R. H. S. Crossman's 57 page introduction to Walter Bagehot's *English Constitution*, he says there is an increasing Presidentialisation of the Office of the Prime Minister. I am not saying of any particular kind of a thing but the point is that a Prime Minister may have to pay a Rs.100 crore bribe to a foreign agent to save the country from the disaster of a war. How are you going to anticipate all this? So, this is the view I take that, well, it can become the most destabilizing temptation if you have this. But you have found your own answers for this that if he does a wrong thing, you will haul him up after he retires.

SHRI RAM JETHMALANI: I am one of those who almost persuaded you to change the method of appointment of our Judges. Did it succeed?

CHAIRMAN: We have to have it somewhere else some other time.

JUSTICE J. S. VERMA: May I answer the two points? On the Prime Minister, of course, both of us are of the same view. I have one past experience to mention. I look at it as something which I had thought of much earlier. It was when the Emergency came and I am telling you what I told Justice Krishna Iyer myself because I was myself a Judge from 1972 and was involved in entertaining the *habeas corpus* petitions. I told him that I blamed him more than the then Prime Minister for Emergency. He said I was being cruel. I said I am, but, deliberately, to illustrate my point. I said, "You heard the whole day the stay application. There was instability already throughout the country and outside with people speculating and all kinds of rumours going on. Then, you made an order, the net result of which was you will

sit in the chair of the Prime Minister but you can't function as the Prime Minister". He said, "What would you have done"? I said, "Without hearing any argument, I would have, in one minute, either most likely stayed without reservations, or, refused. If you refuse, then, immediately, the successor will be chosen. There will be no room for speculation, no room for instability". Now, my fear is, the State Chief Minister is not in that category because you have the provision for President's Rule, etc. etc. Now, this happens not only nationally but, internationally, there is instability. Then, to try to answer my point, some people said, "Then, the Chief Justice of India". I said, "No". I said if the Chief Justice of India goes, the rest remain by virtue of their power; it does not matter. But if the Prime Minister goes, the entire Cabinet goes.

JUSTICE M. N. VENKATACHALAI AH: Particularly in the context of the neighbourhood of this country, a country which has the Centre and the States which have their own problems, it is a great problem.

JUSTICE J. S. VERMA: That is my view for consideration. Now, so far as Judiciary is concerned, well, as I see it, the Constitution itself, as initially framed, treats the Judiciary separately and not only the higher judiciary but even the subordinate judiciary.

JUSTICE M. N. VENKATACHALAI AH: Make it more rigorous.

JUSTICE J. S. VERMA: Yes. Now, article 50 clearly provides and mandates separation of Judiciary from the Executive. Article 235... I mean, Mr. Jethmalani, you know all that better than I do. But I am speaking from my own experience as a Judge and the former CJI. Article 235 gives control over subordinate judiciary and also the High Courts; there is no one else. In the case of the higher judiciary, the Parliament comes in as the ultimate authority. And according to the law which was made in 1968 or any other law, you will have a body but the final word would be of the Parliament, not of a few individuals as such. Then, you cannot discuss the conduct of any High Court or Supreme Court Judge; those are articles 121 and 211 in the State Legislature or Parliament except on a motion for removal. Now, with all these provisions being there..

SHRI RAM JETHMALANI: Those provisions will have to go in any event.

JUSTICE J. S. VERMA: That is different. But so long as they are there?

SHRI RAM JETHMALANI: I agree.

JUSTICE J. S. VERMA: Now, therefore, what we have been saying, you know very well Mr. Jethmalani. You know my strong dissent with my learned brother in the majority in *Veeraswami* case 20 years back. I wrote that dissent and I said that there is a felt need, you enact a law, enforce accountability but this will not apply because this will not work. Unfortunately, that apprehension came true. I was told that I would also be the Chief Justice, why can't you give permission, no one will ask. I am saying this to this august assembly, I offered to give permission to record the FIR. You know it, I told you after that. A number of High Court Judges and even the gentleman who was to succeed me because there was material which was not supported. Anyway!

SHRI PINAKI MISHRA: Chief Justice Venkatachalaiah talked about the constitutional morality aspect. Needless to say that all constitutional morality is really based on political morality in our system of things. Chief Justice Verma lamented the fact that the *Vineet Narain* judgment is not being given effect to by all parties concerned since that day. On a bipartisan basis, the political class which has been in power has ensured that there has been sabotage and really the felt need for the Lokpal today is because of non-implementation of that. The CBI Director was candid enough to say that to us, as was the CVC who appeared

before us, said that we are perfectly capable of tackling all corruption provided we have the autonomy as is envisaged in the *Vineet Narain* judgment. So, my humble question to both the learned Chief Justices is that, in the absence of political morality/constitutional morality as given in today's scenario, will one more law, one more institution add yet another layer of, perhaps, corruption because that would be such a powerful body that the more power you give it the more chances of it being corrupt will be there because if we really give the CBI more power and the CVC more power, I think that should be adequate. This is a very, very important point of view which has been canvassed here. So, when Chief Justice Venkatachalaiah exhorts us that this is such a historical moment, I do not know whether everybody is convinced that it is indeed such a historical moment. And there are many shades of opinion in Parliament which believe that you are really adding another huge labyrinth of bureaucracy to the already humungous bureaucratic set up which, to find ten or twenty thousand or thirty thousand people among us who are going to be so honest as to be the effective arms of the Lokpal is impossible. You can't get men from Mars. These are men amongst us. If they are not working in the current scenario, how are they going to work in that scenario? What is the magic bullet?

JUSTICE M.N. VENKATACHALAI AH: This is a very important observation. We proceed on the assumption that possession and display of strength is very often a substitute for the need to use them. Existence of a powerful body itself is a deterrence; it is not persuasion, but a deterrence. Crime is prevented by not severity of punishment, but by certainty of punishment. Therefore, if a strong body is there which will give a message that punishment will be certain, not necessarily severe, then the philosophy is that possession and display of strength is itself a substitute for the need to use that. This is the basis.

JUSTICE VERMA: There is only one point I would like to mention. When CBI and CVC are mentioned, they could be appointed by the same law as members of the body. You could consider the same process for their appointment; I wrote in that judgment is over time you gain experience. If you are going to have a more effective procedure for appointment of Lokpal, then the same should apply also for the CBI Director and CVC. Why not consider they to be ex-officio members of the Lokpal just as in the case of National Human Rights Commission you have Chairman and others as ex-officio members. You could think of that system.

SHRI SHANTARAM NAIK: By and large, we are not supposed to express our opinion but ask you questions. Since Jethmalaniji has taken the liberty of opposing the Constitutional amendment, I would like to express very much in favour of a Constitutional amendment for the simple reason that those who are agitating are asking for a stronger Lokpal legislation. If I give 60% marks for the ordinary legislation, I can give 90% marks for a Constitutional amendment. Therefore, from that point of view, this becomes the strongest and those who are opposing stand exposed.

I come from Goa. There a point crystallized by those who are agitating; I am not naming them. They have got certain basic points. One point is that they are opposed to the State legislating in this matter. Each State has representatives; there are people who are propagating this idea. In my State, they are just opposite. The representatives of those people here, in Delhi, who are propagating that idea, have pressed the Goa Government and we had no option but to legislate and pass the Bill other day. Just because these people were demanding and pressurizing us, we had to pass the Lokayukta Bill, just three days before. This is the point I wanted to mention.

My question now is, as far as the Chairperson of Lokpal or Lokayukta is concerned, would you have any objection if a person from the public is appointed? Today we are talking

of a retired justice. If a man of eminence from among the public is appointed as the Chairperson of Lokpal or Lokayukta, have you got any objection?

JUSTICE M.N. VENKATACHALAI AH: No. I personally think that the Bill talks of a search committee. The selection is by default. There is no other way in which you think. But, if there is an eminent Indian who can fit in the eligibility, why not? We know the judiciary inside very well.

श्री रामविलास पासवान: बहुत-बहुत धन्यवाद। आप लोगों ने कई बहुत ही महत्वपूर्ण प्रश्नों का उत्तर दिया है, जिनके बारे में बहुत कम लोग हिम्मत करके बोलते हैं, उदाहरण के लिए आपने बताया कि प्रधान मंत्री को इसमें रहना चाहिए या नहीं। चूंकि अभी जो हवा चल रही है, उसमें एक ही तर्क दिया जाता है कि प्रधान मंत्री इसमें क्यों नहीं हों, ज्यूडीशियरी इसमें क्यों नहीं हो। शुरू में जब स्ट्राँग लोकपाल बिल लाने की बात हो रही थी तो प्रधान मंत्री और ज्यूडीशियरी को भी उसमें डाले जाने की बात आ रही थी। अभी आपने हेल्थ और सीबीआई के सम्बंध में भी बताया। कुछ लोग कहते हैं कि व्यक्ति संविधान से ऊपर है, लेकिन आपने कहा कि संविधान और पार्लियामेंट से कोई भी व्यक्ति ऊपर नहीं है। जो स्ट्राँग लोकपाल बिल की बात कर रहे हैं, वे यह कहते हैं कि नहीं, व्यक्ति संसद से बड़ा होता है।

दूसरा, आपने सही कहा कि कोई भी अपनी बात को रख सकता है, लेकिन कोई डिक्लेट नहीं कर सकता है। प्रजातंत्र में प्रदर्शन करने का अधिकार सबको है, धरना देने का अधिकार सबको है, लेकिन क्या किसी को यह कहने का अधिकार है कि इतने दिन में आप इसे करो, नहीं तो यह हो जाएगा, वह हो जाएगा। हम लोग यह जानना चाहते हैं कि कल अगर कोई आदमी 50 लाख लोगों को ले करके बैठ जाए और कह दे कि जो माइनॉरिटीज़ हैं, उनकी नागरिकता खत्म कर दो, जो SC/ST हैं, उनका रिजर्वेशन खत्म कर दो या उनके वोटिंग राइट्स को खत्म कर दो, सिर्फ पढ़े-लिखे लोगों को वोट देने का अधिकार हो, क्या यह सीधे-सीधे संविधान के ऊपर हथौड़ा नहीं होगा?

हम आपसे एक चीज़ और भी जानना चाहते हैं। वेंकटचलया साहब ने आंकड़ों के साथ बताया कि पहले हमारा देश कहां था और आज कहां पहुंच गया है। यह सही है कि किसी कानून के तहत मंत्री लोग जेल में हैं या एमपी लोग जेल में हैं, लेकिन एक होता है एग्जिस्टिंग कानून को मजबूत करना और एक होता है अलग इंस्टीट्यूशन बनाना। अभी जो कानून है, क्या वह बिल्कुल जर्जर हो गया है, खत्म हो गया है? क्या न्यायपालिका खत्म हो गई है अथवा जो इन्वेस्टिगेशन एजेंसीज़ हैं, जैसे सीबीआई है, सीवीसी है, क्या वे खत्म हो गई हैं? सीबीआई और सीवीसी को और पावर्स दे करके क्या इन्हें और अधिक मजबूत नहीं किया जा सकता? क्या यह उचित है कि एक ही इंस्टीट्यूशन एप्लीकेशन भी ले, इन्वेस्टिगेशन भी करे और जजमेंट भी दे? इस देश में फिर न्यायपालिका की क्या आवश्यकता है, सीबीआई या सीवीसी की क्या आवश्यकता है? हमारा मानना है कि दो ही चीज़ें हो सकती हैं, या तो सशक्त लोकपाल रहेगा या सशक्त ज्यूडीशियरी, सीबीआई, सीवीसी रहेंगे।

आपने सिलेक्शन कमेटी की बात कही। यह देश विविधता से भरा हुआ है। कोर्ट के जो जजमेंट्स आते हैं, जिस पक्ष के लोग वहां रहते हैं, उनकी तरफ ही अधिकांशतः उनका झुकाव रहता है।

श्री रामविलास पासवान (क्रमागत): हम लोगों ने यह मंडल कमिशन में भी देखा। कहीं terrorism का मामला आता है, तो उसमें भी एक सेक्शन में minority के जो लोग रहते हैं, उनकी एक अलग opinion बन जाती है। क्या उस परिस्थिति में आप यह सही नहीं समझते हैं कि जो लोकपाल बने और उसकी जो committees हों, चाहे वे search committees हों या selection committees हों, इन सारी committees में weaker sections के लोगों का, Scheduled Casts, Scheduled Tribes, Backward Classes, neglected classes, Minority के लोगों का और women का भी representation रहना चाहिए, जिससे कि उनके ऊपर कोई शक की सुई नहीं घूम सके। यही हमारा आपसे जानना है।

JUSTICE M.N. VENKATACHALAI AH: Sir, the first question is about the legitimacy of this kind of movement, rebel or uprising; I would quote what Ambedkar said. "If we want to maintain democracy not merely in forms but also in fact/effect, the first thing in my judgment you must do is to hold fast to constitutional methods of achieving our social or economic objectives. It means we must abandon the bloody methods of revolution, it means we must abandon the method of civil disobedience and non-cooperation and Satyagrah; when there was no way left for constitutional methods of achieving social and economic objectives, there was a great deal of justification for non-constitutional methods but when constitutional methods are open, there can be no justification for the unconstitutional methods. These methods are nothing but grammar of anarchy and sooner they are abandoned better for us." So far as the agitational part is concerned, this is what he warned us of sixty years ago and we must see it again. Secondly, the composition, for example, the social issues you mentioned, they need to be addressed. How they should be addressed it is the genius of Parliament in making the law. But the mere exhaustion of the Constitution that you should have a strong body, the alternative it is putting the same thing in a different way. Why don't we strengthen the CBI, why don't we strengthen the CVC? It is exactly the same argument that we are strengthening society; we are strengthening governmental apparatus by innovation. Tomorrow some other body may be necessary. But the question, the argument, the basic argument is that we must have a strong body against corruption. One thing which occurs to all of us is to have a body which you may call it Lokpal or you call it CBI or you call it anything, but it must have a comprehensive remit to contain corruption. This is the idea which has come uppermost.

श्री रामविलास पासवान: सर, मैंने तो उस बारे में कहा था, जो उनकी एक डिमांड चल रही है। आपने पढ़ा होगा कि न्यायपालिका के ऊपर उनका कहना यह है कि लोकपाल किसी को dismiss कर सकता है, जजमेंट दे सकता है। यदि वह उसमें जजमेंट देगा या किसी को डिसमिस करेगा, तो हाई कोर्ट में ही जाकर। वह सिर्फ क्लास-1 और क्लास-2 के लिए ही नहीं है, बल्कि वह क्लास-3 और क्लास-4 के लिए भी है। जब वह क्लास-3 और क्लास-4 को भी करेगा, तो..

JUSTICE M.N. VENKATACHALAI AH: This is judicial part, judicial adjudicative part.

अध्यक्ष: पासवान जी, लोकपाल तो सिर्फ इसे prosecuting agency को रेफर करेगा। वह खुद नहीं करेगा।

श्री रामविलास पासवान: सर, मैं लोकपाल की बात नहीं कर रहा हूँ, मैं तो जनलोकपाल की बात कर रहा हूँ। जनलोकपाल में जो कहा गया है, उसमें से एक यह है कि इतने investigation officers होंगे...

जस्टिस जे.एस. वर्मा: पासवान जी, आप वह बिल्कुल सही कह रहे हैं। ऐसा नहीं है कि वह investigators, prosecutors and executional सब चीज़ें एक साथ रख सकता। इसीलिए, I am sorry to use the word that is quite 'absurd'.=

आपने आखिरी बात composition की कही। कोर्ट में भी हम लोग यह कोशिश करते थे कि वहाँ सभी तबके के लोगों का representation होना चाहिए। उसकी एक वजह होती है। ऐसी जितनी भी bodies होती हैं, उनको जो भी काम करना होता है, उनमें अपनी जो plural society है, उसका reflection दो वजहों से होना चाहिए। पहली वजह तो यह है कि उसमें लोगों की आस्था है और इससे उनको ज्यादा confidence होता है। दूसरी वजह यह है कि बहुत-सी चीज़ें, जो हम नहीं समझ सकते, उनको शायद दूसरा आदमी समझेगा और उसके बताने से हमारी भी समझ सुधरेगी। इसके लिए वह attempt होना चाहिए। लेकिन, उसके लिए सिर्फ यह नहीं कि आप कोई hard and fast rule कर दें, जैसे कि कोई कोटा बाँध दें, बल्कि यह उनका काम होना चाहिए, यह उनको देखना चाहिए, जो कि composition के लिए काम करते हैं। आपने इस मामले में जो प्रश्न उठाया है, उस पर हम लोग भी एक जमाने से सोचते थे, लेकिन अब चूँकि बंदिश थोड़ी-सी कम है, इसलिए हम इस पर ज्यादा कह सकते हैं। एक काम जो होना चाहिए, जिसमें कि हम लोग पीछे रह गए, जिसका उल्लेख संविधान में शुरू में ही किया गया था, हमेशा opportunity देकर equalize करने की कोशिश करनी चाहिए। ऐसा गेम्स में भी होता है। जैसे, टेनिस में अगर कोई handicapped player होता है, तो वह थोड़ा कमजोर खिलाड़ी है, इसलिए आपने उस handicapped को दो प्वायंट्स पहले ही दे दिए। ऐसा attempt नहीं हुआ। संविधान में आर्टिकल 45 में 10 साल की सीमा free and compulsory education की थी। इसके पीछे यह मान्यता थी कि दस साल में इसको कवर कर लिया जाएगा। लेकिन, आज भी कहा जाता है कि ऐसे लोगों की संख्या 45 per cent है, जो illiterate की category में आते हैं, तो उसको सिर्फ संविधान में article 21 A fundamental right बनाने से क्या होगा? Fundamental right कोई जादू की छड़ी तो है नहीं। इसलिए, इस मामले में भी मैं implementation की बात करता हूँ।

आपने एक और बात जो पहले कही कि जो हैं उनका क्या नहीं हो सकता? आपने अगर ध्यान दिया होगा, तो मैंने यह भी कहा था कि existing laws को भी आप study कीजिए कि क्या उन existing laws में कोई deficiency है? Deficiency उनके content में है या

implementation में है, तो इसमें holistic view लेने की आवश्यकता है। यह काम आप लोगों के लिए बड़ी गम्भीरता से करने के लिए है।

डॉ. प्रभा किशोर ताविआड: सर, मैं रामविलास जी की बात से खुद को सम्बद्ध करती हूँ।

CHAIRMAN: Thank you.

SHRI D.B. CHANDRE GOWDA: Mr. Chairman, I was excited to hear the opening sentence of Justice Vermaji that it is citizen's duty. You have not conveyed your views to the Committee but to the whole of this country, what is the duty of a citizen. Being the topmost judge of this country, you responded to the call of the people and especially as citizen's representative, which itself conveys the concern, not just of the Lokpal but the concern of the country. I am at the outset grateful to you for this very one sentence. Of course, I have had enough opportunity to be with Justice Venkatachalaiahji because we often go to him to consult him on various issues but keep ourselves incognito.

SHRI D. B. CHANDRE GOWDA (CONTD.): The ethical duty is just not sitting in the House and giving a message. It is here. What is the ethical duty? he has conveyed it through his presence in this very House. I have 2-3 doubts in my mind. First is, as you rightly pointed out that Constitution is to be amended and we discussed about Kesavananda Bharthi's case 1972, the basic structure of the Constitution, to make Lokpal the basic structure of the Constitution, the pre-condition is that we should amend the Constitution. I don't think it is an easy job. Everybody is on us and every Member is facing the problem. Every one of us should answer the public as to when do you bring the legislature. Therefore, before they get beyond patience you must do something. So, therefore, constitution of Lokpal is one thing and the composition is yet another thing and much more so, the collegium is the third part. You heard the passing remarks as to whether the Chief Minister should have his own choice in the Lokayukta in every State or not. It is a very, very interesting point. Can we substitute in the Bill that no person from the State should be the Lokpal or Lokayukta of the State along with the Members? Secondly, the qualification required to become a Lokpal or a Lokayukta should be little liberal in the sense, a Supreme Court judge who owns a site in a private housing society, if somebody comes before and says that he owns one more site in a private housing society, the course open for the judge of that level is only to submit his resignation and get lost. Today what we are facing in Karnataka is, nobody is prepared to offer himself or herself to occupy the chair of Lokayukta for the small reason that our so called declaration that we have made before the people, either under article 17 or accountability and all these details. Could we have a system of getting an appointment of Lokpal or Lokayukta in any other form of collegium is one aspect and the second aspect of it is, does the Lokpal have its own agency as has been rightly pointed out by Shri Ram to have a separate judiciary and a separate police power to investigate cases or can we use the services of the available resources in the country well tried and tested? For example, CBI, Central Bureau of Investigation is an institution which began in 1941 much prior to independence to try the import export of First World War or Second World War. So, therefore, such institutions could be used if they prepared to or we also had it in the Constitution itself or should we have a separate agency which will go into these details. We are honored, Sir, and as an advocate I could not argue a case before like Ramji but I had an opportunity to come before you to seek myself something and especially with respect to the basic questions like what is a citizen of a country. Thank you.

JUSTICE M. N. VENKATACHALAI AH: The first thing is, to say that he should not come from the State would be unconstitutional. I don't think it would be correct for anybody to say

that. These are the marks of the volatility of the time and we have to get over it and I am sure we will get over it and I am sure Indian Parliament will grope in a hurry and will be able to solve this problem. Imagine, Sir that the right to a person professing the Sikh faith to carry a *kirpan* had to be explicitly provided in the Constitution. You can see the kind of diversity that we are trying to harmonise. You don't know what kind of work that the Constitution makers did. It is perhaps the greatest civilizing experience to go through the debates in the Constituent Assembly. You don't know. You are the inheritors of that great tradition and I have no doubt that you will solve this problem. It is not such a simple thing. It is bearing with a nation with so much of diversity with a billion people and their aspirations, of 480 million of children below the age of 14. Fifty-three per cent of your population are below 25 years. A young nation is looking up to a future and you have got to provide for something. There is no absolutism in this thing. What is good today may not be good tomorrow. The world will change so fast that all this will become obsolete. I tell the people who frisk us in the airport that you are frisking and searching everybody to search somebody who is not there. The problem is we have got to go through this kind of thing. A country's experience which is located in States has their own problems all round us. The scientists, sociologists, political scholars have identified 29 problems of a country which is surrounded by States which have their problem. I won't use the word, 'failed State' and what are they and how do we deal with it? How could a Prime Minister handle a country like that? It is not such a simple thing. If we are debating some of the most profound issues of our current politics, it is not such a simple thing. Mere extortion of the Constitution, putting provision will solve our problem and we can live ever after is not the question. Constantly, we have got to attend to it and that is the job of the Parliament to give guidance to the country. There are no answers. Many illnesses have no cure. Many vital questions you have raised. We have no ready answers. Experience alone must tell us, educate us.

JUSTICE J. S. VERMA: Just a few words about the Lokpal. Lokpal is having a separate institution for investigation, I think, that part was covered at least incidentally and what we felt is you can't have a parallel mechanism for all this and secondly Lokpal is not going to discharge all the functions right from investigation to judiciary nor is it going to replace that. It is only going to fill in the blank and for example, we said about CBI. CBI could be one of the Members of the Lokpal. Now, I read in the newspapers, of course, you people would know better, that one of the reasons given by the CBI Director when he appeared before this Committee was that the same offence of corruption may involve so many other things. How are you going to separate that? You need to fill in the gap and you need to improve the system which are already existing and now sub-planning every existing institution with one body, Lokpal! That is not the answer. It is putting it very bluntly. You are not going to get people from above to become Lokpal. It is only from amongst us leaving out the retired ones like us who are going to the Lokpal. If they have failed somewhere they are going to fail elsewhere also. It is not going to be a panacea for all ills.

श्रीमती मीनाक्षी नटराजन: आपने जो institutional body बनाने की बात कही है, उससे मैं अपनी सहमति जाहिर करती हूँ, लेकिन आपसे यह जानना चाहती हूँ कि उसका ढांचा कैसा होगा? क्या उसका structure हमारे चुनाव आयोग की तरह होगा?

उसमें नीचे के स्तर पर, प्रदेश के स्तर पर और उसके नीचे के स्तर पर, जैसा कि वे लोग जन लोकपाल में lower bureaucracy को इसमें include करने की बात कर रहे हैं, उस

पर आपके क्या विचार हैं? अगर हम कोई institutional body बनाते हैं, तो हम उसमें इन चीजों को कैसे incorporate करेंगे?

श्रीमती मीनाक्षी नटराजन (क्रमागत): मैं एक और विषय पर आपका विचार जानना चाहती हूँ। आजकल liberalization का दौर है और कॉरपोरेट हाउसेज लगातार काम कर रहे हैं, लेकिन उनमें जिस तरह के स्कैम्स सामने आए हैं, वे चौंकाने वाले हैं। हमें उन्हें किस तरह रेगुलेट करना चाहिए, इस पर आपके क्या विचार हैं? क्या उन्हें भी इस लोकपाल के अंतर्गत रखा जाए या फिर उनके लिए अलग से कोई कानूनी प्रावधान होना चाहिए?

हमारे कई साथियों ने इसी संदर्भ में इस स्टैंडिंग कमिटी की पिछली बैठकों में मीडिया के बारे में भी प्रश्न उठाये हैं। इस संबंध में आपकी समझ से क्या किया जाना चाहिए?

JUSTICE M.N. VENKATACHALAI AH: The British has brought out a law -- The Bribery Act, 2010 -- which came into force on 1st June, 2011. In the Bribery Act, they have contemplated two kinds of corruptions -- active corruption and passive corruption. The Act is a very novel kind of an example. It starts with an example that 'R' means 'receiver', 'P' is the 'payer', etc. That is how they have identified. They have made a very beautiful law in response to the International Convention Against Corruption and the OECD's prescriptions and all that. They have made a beautiful law. I have studied it very carefully. But, it is very complicated in its application to Indian conditions. You must evolve it. As Mr. Chandre Gowda pointed out, we committed the mistake in the Supreme Court by setting up of parallel institutions. We don't trust the existing institutions. So, we have other institutions. Neither of them work; one works at the cross purpose of the other. So, established institutions you must take advantage of, control them and see that there is homogeneity of understanding and all that. This is the genius of administrators. You have brilliant administrators and they will give you the models of how we should integrate all the available talent, unify them and use it for the purpose. This is very important.

Media, of course, you cannot touch it. Press must have a press above on its own. If there is a press above the press, it will be a correct thing. You cannot bring it under this kind of legislation. These are the things which must evolve. We cannot find all answers in one go and solve all problems of India in one session. The Parliament will debate each one of these things. Our request is, please express your intention through Constitutional commitment and exhortation for the present. How you shape these things depend on the genius of the people who draft it with the assistance of experts and the CVC, CBI will be available to you. You consult all of them and make a working model. If you make it too tight, it is difficult. They must have a little play at the joints. Otherwise, you cannot work it out at all.

श्री अर्जुन राम मेघवाल: मैं आपसे सिर्फ तीन चीजें जानना चाहता हूँ। पहली चीज़ यह है कि लोकपाल का जो पैनल बनेगा, उसमें जुडिशल मैम्बर्स और नॉन-जुडिशल मैम्बर्स का रेश्यो क्या होना चाहिए? It is a debatable issue. कुछ लोग ऐसा कहते हैं कि उसमें जुडिशल मैम्बर्स ज्यादा होने चाहिए, जबकि कुछ लोग कहते हैं कि नॉन-जुडिशल मैम्बर्स ज्यादा होने चाहिए। इस इश्यू पर हम आपकी राय जानना चाहते हैं।

दूसरी चीज़, जैसा आपने बताया कि the Directors of CBI and CVC must be Ex-Officio Members of the Lokpal. यह बात आपने उसकी strengthen के लिए बतायी। मैंने

न्यूजपेपर में एक आर्टिकल पढ़ा था, जिसमें यह कहा गया था कि investigating agency and prosecuting agency same नहीं होनी चाहिए। अगर सीबीआई investigate भी करेगी तथा फिर उसके prosecution के लिए परमिशन भी देगी और अगर इसमें उसका डायरेक्टर होगा, तो इससे constitutional problem के साथ-साथ legal problem भी सामने आ सकती है। ऐसा एक आर्टिकल मैं किसी ने बताया था।

तीसरी चीज़, जो मैं आपसे जानना चाहता हूँ वह केवल जनरल नॉलेज के लिए है, वह लोकपाल से संबंधित नहीं है। आप माफ करें, लेकिन आजकल जजेज़ हर जगह बहुत कमेंट्री करते हैं और यह कहा जाता है कि it is not a part of the judgment. अगर यह part of judgment नहीं है, तो इसकी legal sanctity क्या है?

जस्टिस जे.एस. वर्मा: कुछ नहीं है।

श्री अर्जुन राम मेघवाल: अगर इसकी legal sanctity नहीं है, तो ऐसा क्यों किया जा रहा है? आजकल ऐसा सुप्रीम कोर्ट के लोग और हाई कोर्ट के लोग कर रहे हैं। यानी हर जगह और हर स्तर पर यह हो रहा है और फिर वे कहते हैं कि यह जजमेंट का पार्ट नहीं है, हमने इसको कहा है, आप इसका पालन कीजिए। Executive के लिए कई बार यह बड़ा मुश्किल काम हो जाता है कि इसका पालन कैसे किया जाए। मेरे ये दो-तीन प्रश्न थे, थैंक्यू।

जस्टिस जे.एस. वर्मा: जो आखिरी सवाल है, उसका जवाब मैं दे देता हूँ। ऐसा है कि मैं मीडिया वालों को भी यही कहता हूँ। वे मुझे honorary capacity पर बुलाते हैं और मैं उनको डॉट-फटकार सुनाता रहता हूँ। मेरा कहना है कि आप उनको बोलने से तो नहीं रोक सकते, लेकिन जो वे कहते हैं, उसको छापना या टेलीविजन पर दिखाना, वह तो आपके हाथ में है! So, just black out all that, because many a time people speak for it being known to others.

श्री अर्जुन राम मेघवाल: मैंने शायद आपका अथवा किसी और का आर्टिकल पढ़ा था कि 1861 में हाई कोर्ट की स्थापना हुई थी। 1861 से लेकर 1961 तक कमेंट्री नहीं की जाती थी, लेकिन 1961 के बाद कमेंट्री ज्यादा बढ़ी है। इसके पीछे क्या रीज़न है?

श्री रामविलास पासवान: वर्मा साहब, उसमें एक ही चीज़ है कि मीडिया के बारे में आप जो कह रहे हैं या जैसा अभी मैडम ने कहा, तो मेरा यह कहना है कि मीडिया जजमेंट को कम छापता है, वह कमेंट्री को ही ज्यादा छापता है। इसलिए आप जो उपदेश उनको देते हैं, वह उनको हजम नहीं हो पाता है।

JUSTICE M.N. VENKATACHALAI AH: One judge advised Judges to have a sip of holy water in their mouth, not swallow it till the arguments are over.

श्री अर्जुन राम मेघवाल: मेरा जुडिशल और नॉन-जुडिशल वाले प्रश्न का जवाब अभी नहीं मिला है।

जस्टिस जे.एस. वर्मा: आपने जो इसकी कम्पोजिशन की बात की है, उस संदर्भ में पर्सनली मेरा मत यह है कि आदमी को देखना चाहिए। यह कोई जरूरी नहीं है कि हर जज पूरा जुडिशल हो। जुडिशल का मतलब यह है कि जुडिशल बैकग्राउंड होने के कारण उनको एक्सपीरियंस होता है। That component is important for decision-making, for performing that function. लेकिन, उसमें अगर ऐसा कहा गया है, तो यह सोचिए कि अगर उसमें पाँच आदमी हैं, तो उनमें से दो हों, तो बेहतर है, क्योंकि एक ही आदमी की राय पूरे एरिया को कवर करे, यह उचित नहीं है plurality is a democratic principle तो उसका all elements represent होना चाहिए। यह किस proportion में होना चाहिए, it is the matter of detail. क्योंकि उसमें हम लोग deliberately नहीं गये हैं, बल्कि हम लोग मुख्य रूप से Constitutional status पर बात कर रहे हैं।

DR. PRABHA KISHOR TAVIAD: Sir, with due respect to judiciary and hon. former Chief Justices, I would like to say that you have not mentioned about the Citizens Charter. The Jan Lokpal people are asking for the Citizen Charter. सर, हम आपसे यह जानना चाहते हैं कि वर्तमान में ऑलरेडी कानून है, तो after argument, counter argument and supplementary argument, there is a clause that judgment is to be pronounced within sixty days. But, we can have only dates and dates and dates and not the judgment. So, how can we expect other people or officers to observe the Citizen Charter?

जस्टिस जे.एस. वर्मा: जो आजकल हैं, अगर वे इस सवाल का जवाब देते, तो ज्यादा अच्छा था, क्योंकि हम लोगों को छोड़े हुए तो काफी दिन हो गये। यहाँ पर यह कहना जरूरी है कि it is very disturbing. अगर आप हमारा मत पूछें, तो हम तो यह चाहते हैं कि जो ऑकड़े हैं, they should be available. अब आपने चूँकि यह बात कही है, तो मेरी समझ से चीफ जस्टिस का भी काफी रोल होता है, क्योंकि direct provision पर वह नहीं है। मैं आपको अपनी एक्सपीरियंस बताता हूँ। In 1985, I became Chief Justice in Madhya Pradesh, this was always there, but not so much as it is talked of now कि साल भर के लिए रुका है, तो the very first month which I completed I called Registrar and asked him to circulate my figures of how many cases heard and send them to all the Judges and also a copy to the Bar. That was the indirect way. एक जज साहब थे, उनके बारे में यह मालूम हुआ कि उनके यहाँ बहुत सारी जजमेंट्स पेंडिंग हैं। मैंने उनको बुलाया और कहा कि देखिए, अगर आपके पास काफी काम है, तो आप नये केसिज़ मत सुनिए, जब तक कि ये फैसले न हो जाएँ, लेकिन आप घर में नहीं बैठेंगे, कल से लिस्ट लगेगी और उस लिस्ट में रहेगा for delivery of judgments.

JUSTICE J. S. VERMA (CONTD.): Let people see.

कुमारी मीनाक्षी नटराजन: सर, मेरा क्वेश्चन अलग है, जन लोकपाल मांगता है सिटीजन चार्टर, तो how can we expect from the other officer to follow this? यह जन लोकपाल जो मांगता है, उसका मेरा सवाल है।

CHAIRMAN: One of the demands of the Jan Lokpal's is that they want a Citizen's Charter for each Department also regulated by the same Lokpal body. Her question goes even beyond

that. How can you expect bureaucrats to observe a Citizen's Charter when Judges don't observe it in delivering judgement within 60 days?

JUSTICE M.N. VENKATACHALAI AH: The question that she has raised is a very pertinent question.

JUSTICE J. S. VERMA: Transparency is the only answer.

अध्यक्ष: सर, आपके सेंटिमेंट से सब सहमत हैं। इससे किसी को कोई दुविधा नहीं है और इससे किसी को असहमति नहीं है।

श्री विजय बहादुर सिंह: सर, मुझे याद है, जब मैं प्रेक्टिस करता था, तो वेंकटचेलैया साहब पहले जज थे कंस्टीट्यूशनल हिस्ट्री में कि लॉर्ज नंबर ऑफ जजेज ने इनके खिलाफ कुछ भी कहा, आपने ट्रांसफर की एक प्रथा लगाई थी। आपने एक एफर्ट किया था जुडिशियरी में, जिसका पूरी कंट्री में एक बड़ा एप्रिशिएशन हुआ। वह जो आपने अभियान चलाया था, वह आप ही तक सीमित था, उसके बाद रुक गया। उसमें बहुत सी दिक्कतें आईं और धीरे-धीरे पूरे एपायंटमेंट की पावर सुप्रीम कोर्ट में निहित हो गई। उस समय मैं इलाहाबाद हाईकोर्ट में सीनियर एडवोकेट था, अब मैं पार्लियामेंट में आया हूँ, मैंने यह सब पूरा देखा है। मेरा पाइंट यह है कि जनता चाहती है कि करप्शन पर लगाम लगे, इसे रोका जाए। यह जुडिशियल इंडिपेंडेंस, इंस्टीट्यूशन लाइक सीवीसी, सीबीआई, इवेन इंडियन पीनल कोड, जहां यह एडमिनिस्ट्रेशन हो रहे हैं, इवेन एपायंटमेंट एकाउंटेबिलिटी जुडिशियरी वगैरह का हमारा सब है, मेरा डाउट यह है कि क्या सिर्फ लोकपाल को नियुक्त करने से, चाहे कंस्टीट्यूशनल अमेंडमेंट का आपने कहा, क्या करप्शन का इस्यू अकेले लोकपाल से सोल्व हो सकता है? अगर नहीं हो सकता, तो क्या तब तक जो और 9-10 लॉ हैं, जो simultaneously इसको डील करते हैं करप्शन एक्ट और दुनिया भर के एक्ट, इन सबका होलिस्टिक हारमोनियस पैकेज नहीं आएगा, तो जो जनता की अपेक्षाएं हैं कि करप्शन पर ब्रेक लगे, क्या वह एचीव हो पाएगा? क्योंकि अगर आपने लोकपाल बना दिया, लेकिन जो इन्वेस्टीगेशन एजेन्सी होंगी, उसमें कौन होंगे? वही दरोगा जी जो इंडक्ट होकर के सीबीआई में चले आए या जो जोर लगाकर होम मिनिस्ट्री ने एपायंट कर दिया, डायरेक्टर साहब बन गए, लेकिन जो आज जनता की मांग है करप्शन पर एक एफेक्टिव मैकेनिज्म की, जिससे करप्शन पर रोक लगे, वह पूरी होगी? यह नहीं कि जब सीएजी पाइंट करे, तभी करप्शन समझ में आए। क्या यह हो पाएगा?

जस्टिस(रिटायर्ड) जे.एस.वर्मा: देखिए, ऐसा है, इसीलिए हम लोगों ने यह कहा था कि जनता को आश्वासन देने के लिए अगर संविधान में यह आ जाता है, तो अभी जो जुबानी बातचीत है और जिस पर शक है कि इरादा है या नहीं, वह खत्म हो जाएगा और आवश्यकता कानून बनाने की होगी। एक बात पर अगर आपने ध्यान दिया होगा, हम लोगों ने यह कहा कि एग्जिस्टिंग लॉ जो हैं, उनको स्टडी करिए, होलिस्टिक एप्रोच होना चाहिए, क्योंकि सिर्फ एक कानून बनाने से अगर कोई एविल खत्म होता, तो बहुत से एविल जो आजकल बरकरार हैं, वे नहीं होते। यह तो आपका कहना सही है और यही हम लोगों की भी राय है कि यह कर

दीजिए, उसके बाद होलस्टिक एप्रोच, इसमें यह कि तमंचा लगाकर कहा जाय कि फलां तारीख तक हो वह नहीं हो सकता।

SHRI VIJAY BAHADUR SINGH : Once Napoleon said, "Never fear to negotiate, but no negotiation under fear." तो मतलब यह कि तमंचा लगाकर हम वह नहीं कर सकते कि कल तक नहीं होगा, तो मैं वहां जाऊंगा, परसो आपको हरवा दूंगा, नरसो आपके लिए मुसीबत कर दूंगा, आपके विधायकों, आपके पार्लियामेंटेरियन्स के घर जाऊंगा। इन सब चीजों से कोई फीयर होकर काम करे, तो क्या यह पब्लिक के लिए, 120 मिलियन पब्लिक के लिए करप्शन में अपना सही आन्सर होगा ?

JUSTICE M.N. VENKATACHALAI AH: They are personifications of a kind of an attitude people have developed as a result of a kind of constant day-to-day harassment of ordinary man. This is the anger which has taken this form.

JUSTICE J. S. VERMA: Actually that is why we have suggested that take some steps which appear to be a long step in that direction so that things does not remain only oral talk. If you pass this skeleton constitution, it will be a commitment in the Constitution which no one can tinker thereafter. And then, you must take this time requisite. जैसे फैसला देने में लोग देरी करते हैं, मत करिएगा। जजेज का फैसला रुका रहता है, वैसा मत करिएगा, जल्दी से कानून बनाइएगा।

DR. BHALCHANDRA MUNGEKAR: First of all, please allow me to express my personal sense of gratitude because today's evening will be registered in your name. I am neither lawyer nor the student of constitution or law; I am a student of Economics and more so of Political Economics. As you are talking about the constitutional morality, there are also ethics of Economics because Economics without ethics can create disaster. And Political Economics' founder like Harold Laski, Marshal and many others were talking about ethics of Economics. That is why it is enlightening and once again I express my sense of gratitude. I think this Committee has no mandate to go for or not to go for any kind of law or whether this law can be effectively taking the corruption away. This Committee is mandated to bring into existence agency like effective Lokpal.

There are seven points you have given about how the constitutional body is superior to the statutory body. I think that is the ultimate question. I have gone through carefully all the seven points and also the model legislation that you have prepared. You have provided the minimum constitutional architecture to convince the nation that this country is serious about dealing the issue of corruption. The last clause 7 of the note that you have prepared says that "Constitutional provisions set out the most important normative concerns of society by establishing a constitutional body to fight corruption. This country will be establishing a civilizational commitment to offer the probity in public life." I think this is the essence of why you are suggesting constitutional body vis-à-vis the statutory body. I am fully in support of the constitutional body vis-à-vis the statutory body for that very reasons that you have outlined. Now merely making this a kind of constitutional body, as you have yourself suggested, is not going to solve the problem because in order to bring constitutional amendments into effect the required rules were to be prepared and that will be providing the logistics in order to give real effect to the constitutional amendment. There is another point which has been set out in the note giving the superiority of the constitutional body vis-à-vis

the statutory body. A constitutional body will be protected from challenges in a court of law if its powers and functions are in conflict with the Constitution or any other statute. Constitutional provisions establishing a constitutional body may be challenged only on the ground that it is in conflict with the basic structure of the Constitution. Why is there this kind of apprehension that making these amendments would, in any way, come in conflict with the basic structure of the Constitution? That needs to be explained.

DR. BALCHANDRA MUNGEKAR (CONTD): Second important point is that you are suggesting that the power for the Parliament to make these amendments emanates from article 253. Now, this article deals with legislation for giving effect to international agreements. You have mentioned here, “implementing any treaty, agreement or convention”.

But, there is the question of delay. Now, we have to discuss in the Parliament because if two-third majority of the States is required to make this kind of an amendment.

श्री विजय बहादुर सिंह : Proviso में नहीं है।

CHAIRMAN: Proviso is only for these categories.

DR. BALCHANDRA MUNGEKAR: But, then, the question is that if it is the case, then, article 252 also deals with giving the power to the Parliament that any two States accept this kind of amendment.

CHAIRMAN: I will explain. The only thing is that the Constitution amendment only gives the basic empowering legislation permitting, enabling appropriate Legislature which may be federal or State. In the event that we want to put the State legislation also here, we can consider in terms of article 253 either a model like the National Human Rights Commission or indeed the parts of the RTI Act.

जस्टिस जे.एस.वर्मा : यह जो आपने कहा basic structure का, once it becomes a part, you see, a Constitutional amendment can be challenged only on the ground that it violates the basic structure, that is, any of the basic features, whereas an ordinary law can be challenged also on the ground that it conflicts.

CHAIRMAN: In fact, Justice Verma is saying more. He is saying that in due course, this amendment will itself become part of the basic structure so that challenge on the basis of basic structure will not be there.

SHRI RAM JETHMALANI: It must be unamendable basic foundation of the original Constitution.

JUSTICE M.N. VENKATACHALAI AH: There are two aspects in this. One is that once you make this empowering law, you cannot question that amendment on the basic concept.

श्री शैलेन्द्र कुमार : सर, मैं जस्टिस वर्मा और जस्टिस वेंकटचेलैया जी को बहुत सुनता था, बहुत देखता था, इनके बहुत से फैसले मैंने देखे हैं। मैं इस समिति में आपका स्वागत करता हूँ। आपके यहां आने से इस समिति की गरिमा बढ़ी है और मेरे ख्याल से आप एक मजबूत लोकपाल विधेयक बनाने में एक महत्वपूर्ण कड़ी साबित होंगे। आपके बहुत अच्छे सुझाव आए हैं। मैं केवल एक सवाल पूछना चाहूंगा कि आज देश में भ्रष्टाचार के मुद्दे को लेकर लड़ाई लड़ी जा रही है। हम लोग तो लोक सभा से हैं और हम जनता से चुनकर आते हैं। हमारे यहां अन्ना जी की पूरी टीम गई थी, मेरे क्षेत्र में गई थी और उन्होंने कहा है कि जो-जो लोग इस

कमेटी में हैं, उन सांसदों के क्षेत्रों में जनमत संग्रह कराया जाए। चार-पांच दिन मेरे क्षेत्र में रहकर उन्होंने वहां जनमत संग्रह कराया। इससे लोगों में बहुत संशय है, डर है, भय है और लोगों पर प्रेशर डाला जा रहा है तथा हम लोगों पर भी प्रेशर डाला जा रहा है। ये तमाम बातें हैं। देखा गया है कि ऊपर जो भ्रष्टाचार है, वह तो है ही - 2G Spectrum, Commonwealth Games - यदि इन चीजों में भ्रष्टाचार नहीं होता, तो शायद अन्ना हजारे जी की उत्पत्ति भी नहीं होती। इन घोटालों की वजह से ही अन्ना हजारे जी की उत्पत्ति हुई है। आज अगर देखा जाए, तो सबसे ज्यादा जो परेशान है, वह गरीब आदमी है। आज आप देख लीजिए कि चाहे ब्लॉक हो, चाहे तहसील हो, चाहे कचहरी हो, वहां पर दीमक और घुन की तरह भ्रष्टाचार व्याप्त है। वहां कोई भी फाइल बिना सुविधा शुल्क दिए आगे नहीं बढ़ती है। जो गरीब आदमी है, वह तो यह सुविधा शुल्क नहीं दे सकता है। इसलिए वह ज्यादा suffer कर रहा है। हिंदुस्तान में गरीब लोगों की संख्या बहुत ज्यादा है, जिनकी चिंता हम BPL के रूप में करते हैं। आज तक उनकी गणना भी हम सही रूप में नहीं कर पाए हैं। इसलिए ऐसी कौन सी व्यवस्था बनाई जाए जिससे इस समस्या का समाधान हो सके? यहां CBI भी आ चुकी है, CVC भी आ चुके हैं, वे भी बहुत बौखलाए हुए हैं कि कहीं ऐसा न हो कि हमारा महत्व खत्म हो जाए, हमारी स्वायत्तता खत्म हो जाए, हमारी ताकत खत्म हो जाए। इस तरह की तमाम चर्चाएं हुई हैं कि आप इसमें प्राइम-मिनिस्टर को भी शामिल कीजिए, मंत्री ऑफ पार्लियामेंट को भी शामिल कीजिए, कारपोरेट घरानों को भी शामिल कीजिए। NGOs का भी जिक्र आया।

जस्टिस जे.एस. वर्मा : NGOs का तो अपोजीशन है।

श्री शैलेन्द्र कुमार : हां, उनका अपोजीशन है, लेकिन हम लोग चाहते हैं कि उनको भी शामिल किया जाए। आज अरबों-खरबों रुपए विदेशों से आते हैं, करोड़ों रुपए इन NGOs के पास आते हैं और देश की अर्थव्यवस्था को प्रभावित करते हैं। इसलिए उनको भी शामिल करने की बात होनी चाहिए। इसलिए लोकपाल का स्ट्रक्चर कैसा होना चाहिए? अभी तमाम सदस्यों ने कहा कि हम ही आवेदन करें, हम ही उसकी सुनवाई करें, हम ही सजा दें। इसलिए आज जो भी एजेंसियां बनी हैं, कानून बने हैं, वे भ्रष्टाचार को रोकने में निष्प्रभावी हैं। तो इसको कैसे मजबूत किया जाए?

जस्टिस जे.एस. वर्मा : इसका बड़ा छोटा सा जवाब है कि आपको ये चीजें ध्यान में रखनी हैं कि जब आप कानून बनाएंगे, तो उस कानून में क्या होना चाहिए, वहां किस चीज की जरूरत है। सुनिए सबकी, लेकिन वही करिए जो आपकी समझ में उचित हो। मुझे कोई शक नहीं है कि इक्का-दुक्का लोगों को छोड़कर सारी जनता यही मानती है कि आप लोगों को यहां चुनकर इसीलिए भेजा गया है कि आप इन चीजों के लिए कानून बनाएं और हमारे संविधान के मुताबिक जो भी कानून आप बनाएंगे, वह हम सबको मान्य होना चाहिए। अगर हमको पसंद नहीं है, तो संवैधानिक तरीके से हमें उसे बदलने की चेष्टा करनी चाहिए।

इसलिए आप इन सब चीजों को ध्यान में रखिए और इन्हें ध्यान में रखकर ही कानून बनाइए।

SHRI BALAVANT *alias* BAL APTE: Sir, this really is a tribute to the Indian democracy that two persons, who occupied highest positions, have come before a Parliamentary Committee to give evidence.

JUSTICE J.S. VERMA: Actually, I wanted to, in my own way, along with my friend, indicate how absurd was that proposition, dangerous proposition, which someone was trying to propound that any individual, whosoever he may be, can be above a constitutional body.

SHRI VIJAY BAHADUR SINGH: It also surprised me.

JUSTICE J.S. VERMA: It did not surprise me; it shocked me.

SHRI BALAVANT *alias* BAL APTE: Sir, when I found that everybody is using the slogan that we want a strong Lokpal, the real problem, which hurt and probably, that is why, there was a large support to the agitation, was that the common man is facing the problem of corruption everyday and in every aspect of life. The real question, therefore, is not the corruption in the form of the Commonwealth Games or the 2G Spectrum. It is good for media; it is good for reading in the newspapers. But, what hurts people and why people are agitated is the day-to-day corruption which they face and whether this strong Lokpal is going to be an answer to that hurt. The real issue is not how Ministers will pay for their corruption. The real issue is the common man, who goes in the market, who goes to every public office, is facing corruption. For that, what kind of structure will be there? What is meant by strong Lokpal? Will he be a kind of a hunk? I really find that for the entire country, what kind of a structure may be there.

JUSTICE J.S. VERMA: My answer is short. You are absolutely right.

SHRI BALAVANT *alias* BAL APTE: Because under the French Administration law, they have almost a parallel cadre of such people. They came from the same training school.

JUSTICE J.S. VERMA: That is why, our suggestion is that the Government should take a step. You see, most of the people whom we see on the TV, they don't even know as to what are the contents of this draft. They think that if you do this, all corruption will go. What is necessary is to take one such step which will disabuse their mind of this impression. But, then, in our understanding, something which can be done in the quickest time and be seen as a step in that direction, a positive step in this direction is this and this has to be done with a cool head.

SHRI BALAVANT *alias* BAL APTE: For them, an empowering Constitutional provision will not give anything.

JUSTICE M.N. VENKATACHALIAH: That by itself will not give anything. But, that will be the declaration of your commitment. Technology has so many answers for all these problems. In fact, in Bangalore, Municipal Tax Assessment used to be harassment for the owners. Today, due to the online system, you don't have to go to anybody. You eliminate personal contact and they are bound to answer this, and if they don't answer it, this becomes final. Electronic communication systems are so powerful today. This is what is necessary. But, declaration of commitment should be there.

CHAIRMAN: Thank you, Sir. Before concluding, I must put on record certainly not for myself alone but for the entire Committee, our deep genuine appreciation, not only for erudite views, for pointed answers, for frank and forthright answers but also that you have

spoken with such elegance and some literature as well. May I, once again, thank you very much indeed? Please, feel free to send us in writing any supplementary thing in addition to what you have already given us if you have any afterthought on any issue. We are grateful to both of you once again. It has been a great pleasure and privilege to have you today with us. Thank you.

(The Witnesses then withdrew and the Committee adjourned at 7.15 p.m.)

The Department-related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice met at 4.15 p.m. on Friday, the 14th October, 2011 in Room No. 63,

Parliament House, New Delhi.

(CHAIRMAN: DR. ABHISHEK MANU SINGHVI)

List of Witness:

Confederation of Indian Industry

- Shri B. Muthuraman, President
- Shri Sunil Kant Munjal, Past President
- Shri Harpal Singh, Chairman, National Committee on School Education
- Shri S. Sen, Principal Advisor
- Shri Sunil K. Misra, Director
- Shri Shreeram Lakshman, Deputy Director

CHAIRMAN: Friends, I welcome you to this meeting of the Committee. As you know, the proceedings of this Committee are confidential, and, what you say here should remain confidential.

I have 45 minutes' time, and, within that time, we want some time for ourselves for questioning. Please feel free to share your views. To focus the discussion, I would like to start by saying that from the past discussions, what appears to be of concern to Members, and, of course, Members are free to articulate them separately, firstly, your comments on the Lokpal Bill itself generally on any issue on the one introduced by the Government, and, later on, you can send, if you like, written proposals, which preferably should have square brackets indicating the changes, if any, that you want in the draft. Secondly, as far as oral evidence is concerned, in particular, I believe, the Committee would like to hear from you as to whether - - and this is all loud thinking, it is confidential thinking, there is no judgement yet -- corporates and the corporate world should be subject to a Lokpal / Lokpal's counterpart, and, thirdly, if you say yes to the second point, what should be the defining line on the basis of which you would have corporates in. Whether all corporates can be in, or, whether a legal test should be drawn to decide which corporates and how etc. That is the third aspect. Please feel free to speak. I am giving you the general idea.

SHRI B. MUTHURAMAN: Sir, I thank you very much on behalf of all of us. We really appreciate that the Standing Committee asked the CII to present its views.

CHAIRMAN: Before that, please introduce your colleagues.

SHRI B. MUTHURAMAN: Sir, you mentioned that we should talk on the Lokpal Bill and the corporate sector and, if so, how and so on. I would like to start with a little bit of a general thing, if it is acceptable to you.

Sir, corruption is all pervasive in India and it is impacting India in several ways. It is making the public lose confidence in the administrative machinery. It is impeding the growth of the country. It is impacting foreign direct investment. It is increasing the cost of basic

goods to common citizens. It is making the country more and more uncompetitive. It is also lowering the esteem of the country in the international arena, and the list is long. In short, corruption is actually damaging the country in several ways. One of the most damaging aspects of India is actually the severe corruption.

We believe that there are two key measures that need to be put in place in order to progress towards a corruption free environment. One is, create systems and processes that make it difficult to adopt corrupt practices and that makes above the board transaction, produce desired results in a fair and just manner in the interest of the country. The second is, create machinery, mechanisms and laws that identify and punish those who are indulging in corrupt practices in a severe manner quickly and transparently, which is where the Bills like the Lokpal Bill fits. The first one, which is creating systems and process, is much more difficult. It takes a lot of time, but it is a more sustainable thing in a country for a long period of time.

I am going to detail out some measures that will foster a corruption free environment and this is something which must be a part of India's journey as it goes forward. One is funding of Central and State elections – what manner of funding, what is the allowable budget, disclosure of accounts by political parties and candidates. Second is simple and transparent policies in allocation and pricing of natural and limited public resources. Third is open and transparent process in public procurement. Fourth is extensive application of IT and e-governance in all Government activities. Then, removal of discretionary powers with Government. Then, education for all and a compulsory course on ethics to be a part of the school, college and university curriculum. Next is the improved productivity levels in all sectors so that availability of goods and services exceeds demand and there are no shortages. Next is an independent media and a vibrant civil society. Next is periodical systems and process of audit of all Government processes and systems and benchmarking with global best practices and changing them all the time. The next is timeline for delivery of public services and stipulated action for not sticking to delivery timeline. Lastly, we need police and judicial reforms, but I am not detailing them here.

The second part – one is creation of environment, creation of processes and systems – is creation of law and machinery to punish corrupt practices. While it is simpler than the first, it is also an essential part of the journey towards creating a corruption free environment. It is in this context that the CII very much welcomes the introduction of the Lokpal Bill.

I will now go into the specific comments of the CII. I am making comments principally on seven or eight issues which we have found from the media and from the discussions as the more contentious of the issues. Where there has been a broad agreement on issues, we are not dealing with those in the interest of time.

The first issue is the inclusion of the Prime Minister. We believe that the Prime Minister should be outside the purview of the Lokpal Bill. We also believe that he could be investigated after he demits office. The rationale for our saying this is that the Prime Minister is the head of the Government and he needs to run the Government on a day-to-day basis and anything that hampers his ability to run the Government is something which is not going to be good for the nation. Secondly, he represents the country not only here but overseas also, and there is a lot of image building that is necessary from the point of view of Prime Minister's image, Prime Minister's ability to work and so on. The third is, any false investigation, which could come about in such machinery and such processes, would belittle his position and he cannot be retrieved easily. So, in view of all this, we believe that the Prime Minister should be outside the Lokpal Bill and he could be investigated once he demits office.

The second issue is on financial independence. The CII's view is that the Lokpal should make its own budget. By budget we mean a plan, what is the business plan of the Lokpal Bill for the year, what are the activities, how many people are likely to get investigated, what is the approximate number and, therefore, what is the cost, etc. So, Lokpal needs to make its own budget. And we believe that the budget should be approved by the Parliament. The Parliament of India is the supreme body and we believe that the budget of the Lokpal should be approved by the Parliament. We also believe that it should become a part of the financial budget of the country. To which budget head it goes is not so much of our worry, but we believe that it should go into the financial budget of India. The rationale for that is this would help maintain Lokpal's independence so that it is able to create its own budget and act according to the need instead of having to seek Government's permission for any additional staff. But the overall budget and the questioning of the budget and, therefore, the decision on the final approval of the budget needs to be done by the Parliament as a whole.

The third issue is on judicial standards and accountability. It is very critical to common man. We believe that Lokpal should not cover Judiciary. We believe that we should strengthen the existing Bill in the Parliament. I understand that there is a Bill in the Parliament and we believe that that Bill needs to be re-looked and strengthened. We also believe that the Judiciary needs to be helped to perform better through setting up more courts, more infrastructure, more application of technology and also promote arbitration. Unfortunately, unlike in the developed countries, the arbitration process is not sufficiently mature in India. A good, well-matured arbitration process can actually reduce the number of cases going into the courts. The rationale for all this is that we believe that independence of the Judiciary should be maintained. The Judiciary needs to be kept separate because if the linkage between the Judiciary and the Lokpal, cases will be going there. If it covers the Judiciary, the Lokpal will become entirely unwieldy. We don't see any need for it.

The next issue is on citizens' charter. We believe that it should not be under the Lokpal. Citizens' charter is an important subject. Every citizen has a right to be heard; every citizen has a right to make sure that what he is seeking in terms of fair and just is rewarded correctly. But there are better ways of doing it. We believe in institution of better and transparent systems of e-governance. Some of the States have come out with some of the laws and so on where you specify the timeline for providing certain public services and the penal action that can be taken if the timeline is not met. I believe that this is going to be a day-to-day affair. There is going to be a large number of cases and a proper system of governance is the one that will solve it better.

SHRI B. MUTHURAMAN (CONTD.): The next issue is on whistle blower protection. We believe that we should strengthen the Public Interest Disclosure and Protection of Persons Making the Disclosures Bill, 2010. The Bill, I understand, is currently in the Parliament and we believe that that Bill is one which needs to be strengthened and makes sure that whistle blowers are protected.

The next issue is MPs action inside the Parliament. We believe that the existing arrangement should continue. The Privileges Committee should take care of the MPs' action inside the Parliament. If there is any lacuna in the functioning of the Privileges Committee or if the Privileges Committee is lacking any teeth in the manner in which it can act, I believe that needs to be looked at and that needs to be strengthened.

The next issue is on CBI. CII is of the view that the CBI's Anti-Corruption Wing should not merge with the Lokpal. It should be a separate independent entity. CBI, if I am not mistaken, was formed in 1943 and it is an institution which has run for some 65 or 67 years.

We believe that it is one of the better run and well done institution of this country and, therefore, there is no need to merge the Anti-Corruption Wing into the Lokpal. The rationale for that, apart from the fact that it is an organization which has served this country well over a long period of time, is that we also believe that the CBI has three wings and these three wings work together. And it is important for information from one wing to be flowing into the other wing for effective functioning of these wings and, therefore, breaking up is not going to solve the problem. We believe that existing organization needs to be strengthened. Creation of any new organization is not a panacea for all ills. We also believe, as a recommendation, that the Director of the CBI and the Director of the CVC should be made members of the Lokpal in order to promote a collaborative behaviour in terms of ensuring that investigations are done quickly and one agency helps the other agency and so on.

The next issue is on lower bureaucracy. We believe that this has been a contentious issue. It is an issue not so much in terms of principle but in terms of administrative efficiency. We believe that all bureaucracy should be included under the Lokpal, but we also think it may become an unworkable proposition from the point of view of numbers. So, if for the first few years, let us say 3 to 5 years, Lokpal should restrict itself only to higher bureaucracy and after it settles down and starts functioning well, then you can add lower level bureaucracy. If we include the whole bureaucracy from the day one, we believe that the whole thing might collapse and it may not be able to function as effectively as everyone expects it to function. That is our suggestion. In principle, we would like all bureaucracy to be under the Lokpal, but we believe that there has to be a time-scale where you start only with senior bureaucracy and maybe after four or five years you include all bureaucracy depending upon the way it is functioning.

The next issue is on phone tapping. CII believes that the present arrangement for seeking Home Secretary's permission should continue. If Lokpal or Lokayukta, as the case may be, recommends that a particular case of phone tapping should be done, the Home Secretary should be obliged to follow the advice on the basis of certain norms. So, we believe that the existing arrangement should be continued.

The next issue is on Lokayukta. We believe that the Lokayuktas should be set up in all the States of India through appropriate State Legislations and we believe that there should be an enabling provision in the Lokpal Bill to accommodate this.

The next issue is on the definition of a complaint. CII's view is that if a public servant commits an offence under any law of the land as it exists today or as it may come about in the future, this would constitute a complaint.

The last issue is on the Selection Committee. On the members of the Selection Committee, we believe that the Selection Committee should comprise the Prime Minister, the Speaker of the Lok Sabha, the Leaders of the Opposition of both Houses of Parliament, a sitting Supreme Court Judge, Chief Justice of High Court to be nominated by the Chief Justice of India, and an eminent jurist. We want to keep this list short, and not too big and that is why we have arrived at this. We also believe that we need a Search Committee. We believe that the Search Committee should prepare the list of candidates and the President of India should set up this Search Committee.

Now I want to cover the corporate sector and make a few remarks. CII and its members are 100 per cent in favour of promoting good governance and corruption-free practices in the corporate sector. There is no doubt about it. In fact, to give you a little bit of history, CII was a first industrial body in India to evolve a corporate governance code for its members to bring focus on ethics and corporate governance and this has been done in the

early part of 1990. In fact, more recently, CII has taken a series of measures in the last one or two years among its members and I want to list some of the measures that we have taken. One, we have published the code of business ethics for all our members. We have been raising awareness through meetings with members and the youth across the country where some of us are personally involved; exposing members to ethics and values and leadership programme. We have come out with a publication on best practices of anti-corruption. We work with international agencies to understand their experiences. Many of our members talk to school and colleges to include ethics and values as a part of their curriculum. We also believe that there are several existing mechanisms to check corporate activities like the Ministry of Corporate Affairs, Competition Commission of India, SEBI, Serious Fraud Office, Economic Offence Wing and so on and so forth. We would very much welcome strengthening of these to make sure that implementation is even more serious than what it is today. CII has always welcomed tightening of the regulation. In fact, from the point of view of corruption-free practices, we have always welcomed regulations which make corporate behaviour better like what is in today's Companies' Bill, in the Mergers and Regulations Act and in the Competition Commission of India's Rules. Everywhere CII has supported tightening of these regulations. In view of all this, we believe that for corporate sector there are enough mechanisms which are existing already. What we could is that we can improve the implementation of this mechanism. We can implement this mechanism better and make sure that they function even better than what they are today, I think, it will be better. It is in view of these that CII recommends that the corporate sector should not be covered under the Lokpal because there are existing mechanisms in plenty. Sir, I think, I have covered aspects that you wanted me to cover. We will be very happy to answer any clarification.

CHAIRMAN: First of all, let me thank you for being present here in a very powerful delegation headed by its President. Your presentation was very focused, pointed, and precise on almost all the 10-12 major issues. I just wanted to ask you a question which is on everybody's lips. Hon. Members will also ask some questions. For the political class or for the bureaucratic class, the two classes which are primarily supposed to be the target of new legislation, there are already hosts of mechanisms to police them. There is the CBI, the CVC, police, etc. Your last point was that no Lokpal would be required for the political class or for the bureaucratic class. The only clause for all corporations financed or controlled by the Central Government, and it would include statutory corporations also, in this Bill is 17 (e). We are concerned here with the private sector. The second question, if you answer the first question in the affirmative, is how? But I am on the first question first. You are saying that you would not require any new mechanism for any class and we should strengthen existing mechanisms. Possibly the reason we are looking at a Lokpal Bill is because we find that over 60 years of experience, middle, new and old ones have partially or fully failed and except recently top politicians never had the tough end of the stick. I think none of us here can think of any incident in 60 years when top corporates, including now, have had the tough end of the stick. So the direct blunt question is: On that reasoning, do you still want the entire corporate class to be out? And let us assume they are in, what is your defining line?

DR. BHALCHANDRA MUNGEKAR: I associate myself with this question.

SHRIMATI DEEPA DASMUNSI: I also associate myself with this question.

SHRI HARIN PATHAK: I think all the Members associate themselves with this question. This is the view of the entire Committee.

SHRI B. MUTHURAMAN: You are asking two questions. One is as to what is the logic behind this.

CHAIRMAN: With that logic, everybody else should be excluded as well.

SHRI B. MUTHURAMAN: And if the answer is that it should be included then what the defining line should be. The reasons for exclusion of corporations from the Lokpal Bill are these.

One, there are existing strong mechanisms. It is not that they are weak mechanisms. Over the years, many corporates whether Satyam or anybody else have been punished. It is not that people got scot-free.

Two, industrial corporations are also responsible for their shareholders. They exercise their judgement on whether to put their money in a particular company or not or whether a particular company is good or not. It is not as much of public money as it is in other cases or as in the case that we are dealing with today.

But let us assume, for a moment, it is included in it, I am answering your second question. Suppose the Government decides that the corporates should be under it. I am answering it in spite of the fact that the first part of my answer is that it should not be included.

CHAIRMAN: No concession would be recorded on behalf of CII. Don't worry.

SHRI B. MUTHURAMAN: The answer to your second question is this. Where you find that the entity is owned hundred per cent by public money or it is very largely held by public where a significant public interest is involved and where corporation is large enough to make an impact because of large public ownership, in those cases you might want to look at it and include it in the Lokpal. While one may say that there are existing organisations like the CVC, the CBI, and so on and so forth, there are people who question their independence. None of the organisations, which are looking at the corporates, has anything to do with corporates whether it is the Ministry of Corporate Affairs or whether it is SEBI. They don't have any linkage whatsoever with the corporates. They are completely independent. The independence of their organisation with respect to corporations is unquestionable. That is not the case with either the CBI or the CVC because of some of the linkages which ought to be there, and which in a natural course will be there.

On your first question, we believe corporate sector should not be under the Lokpal because mechanisms and instruments that we have today are completely independent of corporations and they can do what they want to do.

Secondly, if you think that it should be included, my view or our view would be that where the ownership is largely public and therefore the public money is involved, you might like to consider it.

CHAIRMAN: The second question is very important. You are saying that where there is large public ownership, corporates may be included. We have to be more specific. Public ownership means a model where over 70 per cent is widely held by the public. But almost all the companies have heavy loans where let us assume debt-to-equity ratio is very high. That is also public money which is funding the company. So which line are you drawing? Are you suggesting that a closely-held family company should be out? But above an 'x' percentage, say 60 per cent or more, held by the public should be in. What is your exact suggestion on this?

SHRI B. MUTHURAMAN: I have two suggestions. One, if it is a public sector company where it is entirely public money, in any case it is included.

Two, in case it is largely public either directly or indirectly through a banking system and so on..

CHAIRMAN: Are you talking of shareholding?

SHRI B. MUTHURAMAN: I am talking about ownership.

CHAIRMAN: Not that where 65 per cent share of the company are held by the public?

SHRI B. MUTHURAMAN: That is what I mean.

CHAIRMAN: No. You mean to say where 'x' percentage or more is held by government institutions. Is that what you mean?

SHRI B. MUTHURAMAN: No. By public.

CHAIRMAN: Okay.

SHRI B. MUTHURAMAN: We are talking about public. If there is a significant percentage of holding by the public and that significant percentage could be 75 per cent or 80 per cent, whatever one thinks reasonable, they could be considered. But I would still go back to first question to say that there are enough safeguards in the system and there are completely independent bodies looking at the corporates.

श्रीमती मीनाक्षी नटराजन : सर, मुझे इसमें सिर्फ दो महत्वपूर्ण बिन्दुओं की ओर आपका और इनका ध्यान आकर्षित करना है। एक तो इन्होंने कहा कि जो existing laws हैं, वे corporates को govern करने के लिए काफी पर्याप्त हैं। अगर उस दृष्टि से देखें, तो फिर हमारी ब्यूरोक्रेसी और जन-प्रतिनिधियों के लिए भी काफी पर्याप्त कानून हैं, उन्हीं कानूनों के तहत वे बाद में भी regulate होंगे।

इसमें एक दूसरी बात यह भी है कि इन्होंने कारपोरेट हाउसेज के विषय में जैसा कहा कि 70 फीसदी या इससे ऊपर हम किसी भी तरह का criteria बना लें कि जिसमें इस प्रकार से पब्लिक का participation होगा, share होगा, तब जाकर उस पर यह लागू होना चाहिए। अव्वल तो वे यह कह रहे हैं कि उन्हें इसके अन्दर होना ही नहीं चाहिए। लेकिन इसमें बात यह है कि जब कभी कोई बड़ा उद्योग स्थापित होता है, तो सरकार उसे मुफ्त में जमीन देती है, कई रियायतें देती है, बिजली, पानी के मामले में सब कुछ सरकार उसको मुहैया कराती है, तब जाकर उद्योग खड़ा हो पाता है। ऐसे में वे पूरी तरह से अपने आपको governance से दूर कैसे रख सकते हैं। इसलिए मुझे यह कहना है कि इसमें छोटे-बड़े का सवाल नहीं आता, क्योंकि जब उद्योग की स्थापना, खास तौर पर बड़े उद्योग की स्थापना होती है, तो उसमें सरकार द्वारा काफी मदद दी जाती है, तब जाकर उसकी स्थापना होती है।

SMT. DEEPA DASMUNSI: I want to add something along with this question. जब भी कोई स्कैम सामने आता है, उस समय गवर्नमेंट में जो मिनिस्टर्स हैं, वे लोग पकड़े जाते हैं। They are behind the bars, but not the corporates. मेरा क्वेश्चन इसी से संबंधित था कि जब भी कोई इश्यू सामने आता है, चाहे वह ट्रू-जी स्कैम हो, माइनिंग स्कैम हो या फिर कोई और स्कैम हो, उनमें only the government people are behind the bar, not the corporates. लेकिन जो ब्राइब

लेते हैं और जो देते हैं, दोनों equally punished होने चाहिए। But, then he was saying कि कॉर्पोरेट के लोग इससे बाहर रहें। जब इस तरह का कोई इश्यू सामने आता है, तो why do you want to keep them outside?

श्री शैलेन्द्र कुमार: चेअरमैन साहब, आपके माध्यम से मैं इनसे यह जानना चाहता हूँ, आपने अपने उद्बोधन में क्लॉज वाइज़ सारी बातें रखीं और स्वीकार भी किया कि देश में हर जगह भ्रष्टाचार है, फिर आपने कॉर्पोरेट सेक्टर को बिल्कुल अलग करने की बात कैसे कही? आपने अभी सत्यम का उदाहरण दिया कि ऑलरेडी उसके आरोपियों को सजा मिल गई है, लेकिन दूसरी तरफ लोक सभा के 12 एमपीज़ भी तो हटाए गए हैं और वे तमाम मिनिस्टर्स और एमपीज़ आज जेल में हैं। अगर सीबीआई और सीवीसी सबके लिए है, तो फिर लोकपाल की जरूरत ही क्या है? यह पब्लिक का इश्यू है और पब्लिक की भागीदारी हर जगह है, तब कॉर्पोरेट सेक्टर को इसमें रखना भी तो बहुत जरूरी है। लोकपाल के दायरे से इनको कैसे दूर किया जा सकता है? यह बहुत गम्भीर विषय है।

डा. प्रभा किशोर तवियाड: सर, इसी सिलसिले में मैं भी एक वाक्य बोलना चाहती हूँ। इन्होंने बताया, जब हम लोन लेते हैं, we give interest. बड़ी-बड़ी कंपनियां एनपीए हो जाती हैं और one time settlement करने में बहुत सारा सरकारी पैसा चला जाता है। मैं जानना चाहूंगी कि क्या यह होना चाहिए?

SHRI B. MUTHURAMAN: Firstly, I want to make it clear that we are not saying that corporates should not have good governance. Our corporates should have corruption-free atmosphere. We are saying that if there are people in the corporations who are found to be corrupt, then, they must be punished, as they are being punished today. Apart from people in the political arena who are in jail, there are also senior executives from corporates who are in jail. And, we are in favour of punishing corporate executives who are corrupt. I want to make it once again clear that the CII is very strongly against corruption, and it is very strongly against corruption in corporates.

श्री शैलेन्द्र कुमार: कौन ईमानदार है और कौन बेईमान है, इसका मापदंड क्या होना चाहिए?

अध्यक्ष: शैलेन्द्र जी, मैं एक बात स्पष्ट कर दूँ। बहुत स्पष्ट रूप से इनके मत में दो चीज़ें हैं, एक तो यह कि इसमें कॉर्पोरेट्स को नहीं होना चाहिए क्योंकि वे प्राइवेट हैं एवं साथ ही बाकी कई संस्थाओं द्वारा संचालित हैं। यह इनका मत है, इसमें सही गलत की बात नहीं हो रही है।

दूसरा, अगर उनको संचालित करना है तो उसकी कसौटी यह होगी कि वह आम जनता द्वारा लगभग 60 प्रतिशत से ज्यादा publically widely held होना चाहिए। अगर वह publically held नहीं है, तो फिर उनको संचालित ही नहीं करना चाहिए। इनके यह दो मत हैं। अब हम इनके मत को मानें या न मानें, यह अलग बात है।

श्री शैलेन्द्र कुमार: चेअरमैन साहब, हम इनके मत से बिल्कुल डिफर करते हैं। हम इनके मत को बिल्कुल नहीं मानते। इनके कहने से तो यह मतलब निकलता है कि निजी क्षेत्र के लोग शोषण करते रहें।

एक माननीय सदस्य: यह तो उनका मत है, that is their opinion.

श्री लालू यादव: यहां पर विभिन्न संगठनों को बुलाया गया है और यह चर्चाएं हुई हैं। हर आदमी, चाहे मीडिया का हो या कोई और हो, यही कह रहा है कि हम लोग पोलिटिकल सिस्टम को नेस्तनाबूत कर रहे हैं, चोर हैं, इनको फांसी दो, सब खा गए ये, लेकिन काले धन में कोई पॉलिटीशियन नहीं है, सभी दूसरे लोग हैं। चूंकि गवर्नमेंट में हम लोग दिखाई देते हैं, इसलिए तमाम जगह हम लोगों का नाम आता है। चाहे एनजीओ हो, कॉर्पोरेट हाउसिज हों, मीडिया हो, सब जगह एक ही चर्चा है कि हम इफेक्टिव लोकपाल बिल बनाने जा रहे हैं और इसमें सबकी भागीदारी हो, सबको कॉन्फिडेंस में लेकर एक बेहतर लोकपाल बनाया जाए। आप लोगों को भी इसी संदर्भ में यहां पर बुलाया गया है। आपने अपनी राय दी है, आपकी राय को हम लोग जबरदस्ती बदल नहीं सकते हैं।

मैं आपसे एक सवाल पूछना चाहता हूं कि अपने देश में जो एग्जिस्टिंग कानून व्यवस्था है, जैसे संविधान है, न्यायपालिका है, सीवीसी है, सीबीआई है, supremacy of parliament है, उसमें क्या कमी आ गई है? 40 साल पहले लाल बहादुर शास्त्री जी और हमारे पुरखों ने बड़ा चिन्तन किया, विचार किया कि भ्रष्टाचार को हम कैसे मिटाएं? लोकनायक जयप्रकाश नारायण जी ने भी इस सवाल को उठाया था। यह कोई नयी चीज नहीं है। यह बात सही है कि हमारे देश में जो बिज़नेसमैन हैं, हम उनकी मजबूरी और लाचारी को महसूस कर सकते हैं। यह जो Nexux है, इसमें चाहे गवर्नमेंट हो, सब जगह काम का एलोकेशन होता है। आप लोगों में भी कॉर्पोरेशन होता है, तभी करप्शन की बात आती है। उसी का फल हम लोग सब जगह देख रहे हैं। इसके बारे में हमने आपसे राय मांगी थी, वह आपने दे दी है। हम लोग यह जो बिल बनाने जा रहे हैं, अभी यह सदन में जाएगा, जहां बहुत सारे अमेंडमेंट्स इत्यादि होंगे। लेकिन क्या इससे भ्रष्टाचार मिटेगा? देश के अन्दर सब जगह भ्रष्टाचार है। हम यह जो चर्चा कर रहे हैं, आप लोगों की नजर में क्या इससे सम्पूर्ण रूप से करप्शन मिट जाएगा?

हम लोगों ने देखा कि इस आन्दोलन में एनजीओज़ ने मूवमेंट करने में, गाली देने में और कैंडल जलाने में काफी मेहनत की। जगह-जगह पर यह सब हुआ। विषय से अलग हट कर दूसरे विषयों में भी उस स्ट्रीम के लोग बोल रहे हैं, जिसका खामियाजा हम सबको भुगतना पड़ रहा है। हम लोगों को भी यह अच्छा नहीं लगता है। क्या इन चीजों से करप्शन मिट जाएगा? अगर इन चीजों से करप्शन नहीं मिटता है, तो आप लोगों का क्या सुझाव है? जरूरी नहीं है कि आज ही आप अपना जवाब दें। बाद में लिखित में जवाब भेज दीजिएगा ताकि कमेटी को आप लोगों का मार्गदर्शन मिले। यह न हो कि किसी एक पार्टी या एक तरफ के लोग ही किसी चीज का निर्णय ले लें।

कल यहां पर दो चीफ जस्टिस आए थे, और भी कई लोग आ रहे हैं। हमारे चेअरमैन साहब सीरियसली इसके लिए लगातार मीटिंग्स कर रहे हैं। हम सब लोग भी बहुत सीरियसली इसमें लगे हुए हैं। क्या इससे भ्रष्टाचार मिटेगा?

कॉर्पोरेट हाउस इसमें रहें या न रहें, इसके बारे में अभी आपने अपनी राय दी। जो रह गया है, उसे लिख कर भेज दीजिएगा। हमारे दूसरे मित्र भी आपसे सवाल पूछेंगे। हम लोग आपको कोई पार्टी नहीं मान रहे हैं कि हम दो अलग-अलग पक्षों में बैठे हुए हैं।

श्री लालू प्रसाद (क्रमागत): इस पर आपकी क्या सोच है? मैं मुथुरमन जी को बहुत पहले से जानता हूँ, ये टाटा परिसर में थे। इन सब को मैं जानता हूँ। हमारे सामने एक सवाल है। हम सब चर्चा करते हैं कि धन और धरती बँटनी चाहिए, जिसको जितनी जरूरत हो, उसे उतनी मिलनी चाहिए, लेकिन जब इन्हें बाँटने का सवाल आता है तब नारे बदल जाते हैं- 'धन और धरती बँट कर रहेगा, अपना-अपना छोड़ कर'। जब हम कोई कानून बनाते हैं तब यह देखते हैं कि इससे हम affected तो नहीं हो रहे हैं? हमने अन्ना जी को सुझाव दिया था। अन्य जो लोग आते हैं, उनको भी मैं बोलता हूँ। उन्होंने भी कहा कि 'इससे भ्रष्टाचार नहीं मिटेगा, लेकिन इससे साठ प्रतिशत लोग डर जाएँगे'। अन्ना जी ने जो कहा, उसको quote करते हुए मैं कहता हूँ। हमने कहा कि Right to Property जब तक Fundamental Rights में रहेगा और इस पर कोई ceiling नहीं लगेगी, तब तक आदत नहीं छूटेगी। मैंने या किसी दूसरे आदमी ने आपसे पैसा ले लिया। अब हम उसे बैंक में जमा नहीं करेंगे, कहीं बाहर जमा नहीं करेंगे और कोई प्रॉपर्टी भी नहीं खरीदेंगे, बल्कि उसे किसी दूसरे व्यापारी को दे देंगे और कहेंगे कि इसे रखे रहो, जब हमें इसकी जरूरत पड़े तो दे देना, नहीं तो अगर इसे गायब करना हो तो गायब कर देना, क्योंकि इससे यह भी होगा।

मेरी समझ में हमारे सामने यह एक अलार्मिंग सवाल है कि इसको कैसे मिटाया जाए? हम इसे कैसे मिटाएँ, इसका जवाब कोई नहीं दे रहा है। Right to Property और नहीं तो जो हमने बेईमानी की, आपने, इसने या उसने बेईमानी की, आज़ादी से लेकर इतने दिनों तक मुम्बई से लेकर दिल्ली, लखनऊ या पटना के सभी मोहल्लों में एक-एक आदमी के पास 10-15 प्रॉपर्टीज़ हैं, तो क्यों न हम लोग संविधान में, कानून में further यह बात भी रखें कि सारी प्रॉपर्टीज़ को सरकार take over करे और उनको nationalize करे। आप कागज पर चाहे जितने कानून बना लीजिए, यह ढूँढ़ने से कहीं नहीं मिलेगा, कोई चतुर-चालाक को पकड़ नहीं पाएगा। हमारा कहना है कि सारी प्रॉपर्टीज़ को take over किया जाए और उनका पुनः वितरण किया जाए, जिसको जितनी जरूरत हो उसके पास रहने दिया जाए और बाकी surplus ले लिया जाए। इस पर भी आप लोग अपनी राय दीजिए।

अध्यक्ष: लालू जी ने कई महत्वपूर्ण प्रश्न उठाए हैं। उन पर आपको जो भी प्रस्ताव देने हैं, वे लिखित रूप से दे दें।

श्री लालू प्रसाद: इस तरह, मुझे दो ही बातें कहनी हैं। क्या आप लोग इस पक्ष में हैं कि देश की सारी प्रॉपर्टीज़, जैसे- लोगों की प्रॉपर्टीज़, उनके फार्म हाउसेज़, बड़ी-बड़ी जमीनें और बैंकों में जमा काला धन, पीला धन या उजला धन, सबको एक बार take over किया जाए, उनका सर्वे किया जाए और उसके बाद इसे redistribute किया जाए? इस पर आप लोग अपनी राय दीजिएगा कि हम लोग क्या करें।

SHRI SHANTARAM NAIK: Corporate members are hauled up some times for having been involved directly in criminal cases just as things are happening. There are other aspects where in a matter where there are MoUs between countries or foreign participants, there under the charge of conspiracy sometimes foreign businessmen are hauled up or charges are leveled. In either case, in this new scenario, the country wants to tighten its criminal laws whether through the Lokpal or otherwise. Is it going to affect investment in India and, if at all, it affects, should it bother us as a country or is it that irrespective of what is happening, we should not bother about it?

SHRI B. MUTHURAMAN: If I may ask just for clarification, are you asking whether all these corrupt practices are affecting foreign investment in India?

SHRI SHANTARAM NAIK: Yes.

SHRI B. MUTHURAMAN: It is actually very seriously affecting foreign investment. After all, when an investor from the overseas wants to invest in India, he wants confidence that everything will go as per the normal practice, that he will get licenses, he will get environmental clearances, he will get the license to produce on time, he will get his land on time and so on and so forth, in a straightforward manner. If he loses that confidence, then, he will not come. So, in our view, because of the scams that have happened in the country and because of the media hype about the scams, there is already a feeling overseas that India may not be such a great place for investment. Investments are actually slowing down. So, it has a very big impact on investment. That is my answer.

SHRI SHANTARAM NAIK: But don't you think tight regulations may scare away potential investors?

SHRI B. MUTHURAMAN: No. By tight regulations will not scare away people. They will actually encourage people to come.

SHRI SUNIL KANT MUNJAL: Sir, I will take just a minute. Laluji raised a very fundamental issue about corruption in society in general. I remember when we were young, we used to have a subject called Moral Science in schools. It does not exist in any curriculum in any school anywhere. I don't know कि यह किसी स्टेट में है।

SHRI ARUN YADAV: It is still there as a subject now in most places.

SHRI SUNIL KANT MUNJAL: I don't think it is there in most places. But you may be right it may be there in some places, Sir.

Sir, this is a larger issue of societal behaviour itself. So, we certainly need to work on that which is why हमने जो सजेशन दिया है, वह केवल लोकपाल बिल के लिए ही नहीं है, वह इस पर है कि हमारा जो current system, process, attitude है, उसके ऊपर भी काम करना जरूरी है। Long-term sustainable solution वही है। Lokpal is like a policeman. वह तो

सिर्फ यह बता सकता है कि आप गलत काम कर रहे हैं या नहीं कर रहे हैं। वह उस काम को सही तो नहीं करा सकता। Which is why one of the issues that we have had, with the whole process which has been going on, is we may be getting at the wrong end of the stick at this moment. But regardless of that, because it has come to the point where it is, it needs to be addressed. It is essential to address it today where it is.

Logically, we should have started from the other end first which is simplification. There are two big places from where the corruption is coming right now in India. One is the interface between Government and industry and the second is the interface between the Government and the citizen. Our belief is that both these interfaces can be reduced and whatever is left can be simplified and actually automated. So, if we can reduce the human interface between these two entities, a large part of corruption can go out of the system.

If you think back a little bit, the first big push for corruption in independent India came when we had very high taxes. We had 93 per cent taxes. So, we encouraged people to go out of the system and to generate income and not report income. As our taxes have lowered, our tax compliance has actually improved. But still in our systems, whether they are systems of getting permissions where you file for a birth certificate, passport, death certificate or where you have the ability to get an undue benefit from the Government, corruption is the most rampant.

And you are right by the way, in these cases, the bribe giver and bribe taker also, where the bribe giver is getting undue benefit, should also be punished but not in the cases where he has been blackmailed to get some thing which is rightfully his or hers. I think we need to make this clear distinction between these two. Sometimes, you want to go and file for a birth certificate और इंस्पेक्टर आपको बोलता है कि आप मुझे पैसे नहीं दोगे तो मैं यह आपको नहीं दूँगा। Absolutely, that person who has to give something to get that birth certificate, which is rightfully his, must not be punished. That discrimination, I think, is necessary. However, अगर मैं पैसे देकर कोई extra benefit ले रहा हूँ, which is not due to me, then, absolutely, both the sides should be punished. We need to create that distinction between the two kinds of corruption.

Basically, you can cull down corruption into five categories and all of them have to be treated differently. So, there is no broad-brush answer to everything. But the Lokpal is a mechanism; Lokpal is not the answer. इसलिए, जो point आपने कहा है, वह बिल्कुल सही है। उसका होना जरूरी है, लेकिन उससे corruption खत्म नहीं हो जाएगी। इसके लिए हमें काफी काम करने की जरूरत है। And it is not difficult to do.

श्री बी. मुथुरमन: I just would like to add to what Laluji said. The question is very valid. खाली एक लोकपाल से भ्रष्टाचार खत्म नहीं होगा। लोकपाल से भी ज्यादा महत्वपूर्ण thing is system and processes को correct करना है।

श्री अर्जुन राम मेघवाल: आपने बताया कि लोकपाल के लिए separate बजट होना चाहिए। क्या आपका कहने का मतलब यह है कि इसके लिए अलग डिपार्टमेंट होना चाहिए? जब लोकपाल बनेगा, तो वह किसी मंत्रालय के अधीन आएगा। आपका कहने का मतलब इसके

लिए अलग मंत्रालय बनाने का था या किसी मंत्रालय के अधीन करके इसका बजट बनाने का था?

श्री बी. मुथुरमन: मैं यह कह रहा हूँ कि लोकपाल एक साल के लिए जो बिजनेस प्लान बनाएगा, उससे उसका Financial Budget आएगा। The Budget should be prepared by the Lokpal based on what it will do during the year, but the Budget should be passed by Parliament.

श्री अर्जुन राम मेघवाल: जन लोकपाल वाले भी कह रहे हैं कि इसके लिए अलग बजट होना चाहिए, अलग मिनिस्ट्री होना चाहिए। क्या आपका भी यही मत है?

SHRI B. MUTHURAMAN: I am not saying that.

श्री अर्जुन राम मेघवाल: दूसरी बात आपने कहा कि arbitration process strong होना चाहिए। क्या आप यह लिख कर भेज सकते हैं कि किस-किस कंट्री में arbitration process अच्छा है?

SHRI B. MUTHURAMAN: Yes, we can do that, Sir.

श्री अर्जुन राम मेघवाल: तीसरी बात आपने कहा कि इसमें कॉरपोरेट सैक्टर्स को नहीं आना चाहिए और इस संबंध में आपने जवाब भी दिया है। इंजीनियरिंग कॉलेजेज और मेडिकल कॉलेजेज में एडमिशन के समय जो capitation fee लगती है, इसको existing system कंट्रोल नहीं कर पाती है। प्राइवेट हॉस्पिटल्स में डॉक्टर्स normal delivery के बजाए caesarian delivery कर देते हैं, इसको existing system कभी पकड़ नहीं पा रही है। डॉक्टर तथा एडवोकेट की फी निश्चित नहीं है। जहां electricity की चोरी होती है, उसको existing law पकड़ नहीं पा रही है। मैं आपसे पूछना चाहता हूँ कि क्या existing law को strengthen करने से ये सब चीजें पकड़ में आ जाएंगी या इन सब चोरियों की जांच करने का अधिकार लोकपाल को हाना चाहिए?

आपने NGOs के बारे में जवाब नहीं दिया। जो NGOs बाहर से funding होकर आती हैं, उनको लोकपाल के अंतर्गत आना चाहिए या नहीं आना चाहिए? कॉरपोरेट सैक्टर्स में banking & financial system में एक OTA (One Time Settlement) सिस्टम होता है, जिसमें भ्रष्टाचार की बहुत सी शिकायतें सुनने को मिलती हैं। क्या यह existing system से दूर नहीं हो पा रही है? क्या इसको लोकपाल के दायरे में आना चाहिए या नहीं आना चाहिए?

SHRI B. MUTHURAMAN: Sir, we will give answers in writing for all the questions. We will submit to you a full report including the presentation we made to you.

CHAIRMAN: As early as possible. Also, on the Lokpal Bill itself you may send, in square brackets, any specific nitty-gritty changes.

SHRI BALAVANT ALIAS BAL APTE: You have raised a wider question and my question relates to that. If corruption is to be eradicated, if we do not want—in our vocabulary the speed money, educating people—then, can the industry within itself have a mechanism to control this? Can they have a code of conduct which will not permit this?

SHRI B. MUTHURAMAN: We realise this, it is very important. CII is very much in favour of it. We have formed a code of ethics very recently. Before that, we had a code of governance. We are going to dwell deeper into it. If somebody does not conform to certain code of ethics, he may not be even a member of CII. So, we are very serious about the subject. Internally, we want to institute this and we have started with code of ethics.

SHRI BALAVANT ALIAS BAL APTE: Corruption at higher places begins with you.

SHRI B. MUTHURAMAN: That I may not agree.

SHRI HARPAL SINGH: If I can just respond to this question, I would say that the widest definition of corruption is the abuse of public power for private benefit. Now the question is: Who holds the public power? Anybody who has the right over public asset and public money has the power. The beneficiary could be public or private. So, at the first instance, our suggestion is that the people who exercise public power over public asset should really be subjected to some overarching guidelines and I believe that the Lokpal would address that need. The other is, which is very important and fundamental, in the area you cannot be the prosecutor, the judge, and the convict under the same garb. The way the current system is, as far as the private side or the corporate side goes, to the extent that they have not been charged for the wrong doings is only a poor implementation of the law that already exists. We would strongly support along with you all to make sure that anybody who is in the corporate or private side, should be subjected to the law of the land.

But, in no part of the law, the corporate or private sits as the judge or as part of any of the institutions that govern us—whether it is SEBI or any other institution—we are not part of that. Whereas, in the case of other entities, be it the bureaucracy or others who exercise power, they do not have an independent entity. We believe, as a polity, as a country, everybody should be subjected to this. To your point, we cannot more strongly say that we will do everything to make sure that robustly doing better than the governance.

DR. BHALCHANDRA MUNGEKAR: Sir, first of all I will congratulate you for your extremely comprehensive presentation and all the views. I agree with your views on the societal issues, the systemic issues, code of ethics, etc, except the last point that you disagree over including corporate sector in the Lokpal. I think, Chairman, in the initial proposition comprehensively and implicitly expressed of the view of not only this Standing Committee Members, but probably of the entire country also.

The basic sources of corruption according to public perception are three. Firstly, you are very well aware that it is the political class, secondly it is bureaucracy, and thirdly the corporate sector. It was just now mentioned that it was the abuse of the public power for private good. Similarly, use of private power for private good, for private purposes is also a major source of corruption.

Sir, you are all aware that the structure of the Indian economy is undergoing a change. Agriculture stands at only 14% of GDP, industry is only 25% or so, services and corporate sector is coming nearly 60% or so. That is why, when the people's perception is that there is a nexus among the political class, the bureaucracy and the corporate sector, when the two major sources of corruption are brought under the Lokpal, it would be extremely difficult from public point of view to leave the corporate sector out of the Lokpal. That is why, the only alternative, as I feel and as Chairman suggested, what would be the defining lines in order to bring corporate sector under the Lokpal? In the given situation, as I understand the public opinion, it would be extremely difficult and impossible and also undesirable—because there is tremendous use of private power in order to control and influence the political decision-making process in the country—to put the corporate sector out of the Lokpal.

SHRI B. MUTHURAMAN: Sir, if I may respond to you briefly, I may be repeating the points my two colleagues have said. The difference between a public servant and a servant in private sector is the system of judgment of the malpractice in private sector; it is completely independent of the corporate. There is no corporate involved in the Competition Commission of India or in SEBI or in the Ministry of Corporate Affairs. It is completely independent. The most important thing in investigation, judgment and punishment is the independence of the judge compared to the person who has committed the crime. In the case of public servants, it is not so. That is the reason why Lokpal is important for a public servant. That is the prime point we are making.

CHAIRMAN: These are the questions intended to get best out of you. There is at the moment complete loud thinking, no decision, no prejudgement. Thank you very much. As I have told you, you send those written notes.

SHRI B. MUTHURAMAN: Sir, we are thankful for giving CII the opportunity.

(The witnesses then withdrew)

WITNESSES:

FICCI:

Shri R. V. Kanoria, Vice-President

Shri Arun Chawla, Assistant General Secretary.

CHAIRMAN: We are very happy to have you all here. May I remind you that these proceedings are completely confidential and as I said to the other group perhaps everybody here would like to have your views as pointed as focussed a manner as possible on three aspects in particular, one, on the list of 20 odd issues which arise in the Lokpal Bill. You need not give all of them but a very pointed 'yes-no' answer and perhaps a sentence as to why, Prime Minister included not included, etc. The second and more important from the point of view of Chamber Of Commerce which we asked your predecessors is whether you would consider including or subsuming corporations within the ambit of a Lokpal or a Lokpal like body. Third question follows very closely with the second, if you have a 'yes' to the second or partially 'yes' to the second, in what manner do you define the line to be drawn if corporates are to be included, all corporates. As you know, public sector concerns are already included and abetments of offences are already included. So, would you suggest those with a widely held public that above 'x' per cent be included or whatever the test you want to propound. So, there are three broad heads. Thank you.

श्री लालू प्रसाद: आप अपनी बात हिन्दी में कहिए ताकि हम लोग उसको अच्छी तरह से समझ सकें।

श्री आर.वी. कनोरिया: सर, आजकल अपने देश की भाषा हिंग्लिश हो गयी है, जिसमें अंग्रेजी और हिन्दी, दोनों को साथ-साथ बोला जाता है। मैं अपनी बात में कोई-कोई शब्द अंग्रेजी में बोल दूँगा।

सर, आपके जो बीस मुद्दे हैं, मैं उन पर पहले नहीं जा रहा हूँ। मैं पहले कॉर्पोरेट के मुद्दे पर आ रहा हूँ, क्योंकि मेरी समझ से वही आज आपके लिए महत्व की बात है।

पहली बात तो यह है कि हमारे प्रेजिडेंट, हर्ष मरिवाला साहब ने यह स्टेटमेंट भी दी थी। लालू प्रसाद जी, मैं आपकी परमिशन से इसको अंग्रेज़ी में पढ़ रहा हूँ, in a democracy, the right of the country is in Parliament in determining the nature of legislation and change in established law is supreme and sovereign. मैं यह समझता हूँ कि आज किसी भी method से पार्लियामेंट की supremacy dilute नहीं होनी चाहिए। यदि मैं जिस spirit में भी कोई ऐसी चीज़ कहूँ जिससे लगे कि ऐसा नहीं है, तो आप उसको उसी spirit में लीजिएगा कि Parliament should be supreme.

अब पहली बात यह है कि इसमें कॉर्पोरेट्स कवर होने चाहिए कि नहीं होने चाहिए? इसको एक लाइन में हम यह कह सकते हैं कि ये उस extent तक कवर होने चाहिए कि कोई collusive corruption का केस हो, जिसमें graft हो। मैं समझता हूँ कि आज economic offences, tax offences, fiscal offences के लिए SEBI है, इनकम टैक्स एक्ट है, FERA है या FEMA है। उस तरह के offences को कोई additional legislation की दरकार नहीं है, लेकिन करप्शन के लिए आज के दिन ऐसा legislation नहीं है, जिसमें कॉर्पोरेट्स के against भी कोई एक्शन हो सकता है। जैसे, यदि tendering process में collusion हो, I can explain it better in English.

Now, I would like to submit that we have circulated all our views. We have already said that coverage of corporates under the Lokpal should be covered to the extent of their involvement in collusive corruption and we have given the example of mining scam in Andhra Pradesh and 2G scam. We believe that it should be so because it affects the interest of genuine corporations. The next aspect of which, the whistleblower combined with this because what is happening, unfortunately is that the corporate is finding it difficult to bring about the complaints because they are always afraid that under some legislation, under some other law they will be victimised. If we make a complaint against an income tax officer, then it will result in income tax raid and things like that. So, within the whistleblower policy we would require some legislation to ensure that corporate are also protected to the extent of their either through identity or through other means. There should be adequate protection to whistleblower, not in individual capacity but in the capacity of a corporate as an institution. I think that aspect would like to be taken care of. The third aspect, which is also related to one of the issues just under discussion whether lower grade officers are brought within the ambit of the Bill or not, honestly speaking, maximum harassment which the corporates are facing is from the lower grade officers. We believe and you know there are almost 70 odd legislations under which corporates have to act.

SHRI R. V. KANORIA (CONTD.): Most of the decision making is done at levels which are below that of the Joint Secretary and others. We feel that the scope of the Bill should be extended to the lower grade officers. Related aspect in this lower grade is also the question of Citizen's Charter. The concept of bringing about a Citizen's Charter has already been embodied in the draft Bill but non-compliance of Citizen's Charter does not have any penalties associated with it. So, we believe that there should be some method which is tantamount to corruption or non-adherence to a charter is also tantamount to either abrogation of duty or corruption. It depends on interpretations. So, I think, that is also an important aspect which we would like to be taken into account. We also feel that the definition of corruption needs to be widened. We have already put in our paper as to what form we would like it. You would pardon us that since we are not legal drafties of this nature, we would like

to embody that it should be willfully giving any undue benefit to any person or entity causing loss to the public exchequer and betraying public trust. As to why this has prompted is because we find that maybe in some cases the due process has been followed. Say for example, again I come to a Government entity. Maybe that a due process has been followed but within the due process it may not have been done with sufficient time given for everyone or all those who should be able to participate or that it is done in a non-transparent manner where the tender itself by its mere wording is directed towards to particular entity or corporate and more so, we find that also what is happening is, that the terms of the tender are changed after the wording of tender. Now, I think we also need to cover post facto issues like that because there have been instances where FIRs have been changed after land allocations have been made. So, we believe that within this entire framework all of these are also caused because we have not addressed the underlying laws which govern these processes. So, the underlying laws, and that is again a general point which we are making, which has not been made in the paper, which we have circulated to you, is that all these laws need to be revisited to avoid any misinterpretation or dichotomous interpretation of the law where there maybe one or another way of interpreting and, I think, one of the fundamental problems we have is because we leave those kind of options available for decision to be taken. One more aspect which I would relate to corporate is that, this is again derived from the point that corporates are very shy sometimes of making complaints because they tend to get victimized. One way of possibly avoiding is to also take cognizance of offences not only on the basis of the receipt of a complaint but also to have *suo motu* powers to take cognizance. Let us say, as a result of either a Press disclosure or as a result of a investigation by an independent agency which gets to be known to the Lokpal. So, we are saying that there should be powers available to take cognizance and investigate and initiate a trial on the basis of *suo motu* evidence. I think, as far as the specific points with regard to corporates are concerned, I think, I have covered what we would like to say in a nutshell. You are free to put questions. On that we can answer. Now I will cover some of the other general aspect, either on the basis of your asking us the question or I could cover.

इस में whistle blowers या complainants की जो penalties हैं, that we think is just much too harsh and it is actually a deterrent to a complainant because the penalties associated with the person who has actually indulged in corruption is, in fact, lower in some cases and I would like to make this general point that this whole concept of detention, detention as a means of punishment, needs to be discouraged. I think increasingly we find that even the courts are resorting to detention where evidence is not forthcoming and this detention can last for years and years at the end of which a person might be found to be not guilty. So, we are going against the very roots of jurisprudence. Secondly, I feel that Judicial Accountability Bill should be independent of the Lokpal Bill. We believe that the judiciary's independence should be undermined, but, at the same time, it is very necessary to have a Judicial Accountability Bill and we believe that it should be a parallel legislation to the Lokpal Bill and again I am going into a fundamental principal that justice delayed is justice denied. So, whenever we talk about judicial accountability, simultaneously we must also be talking about judicial reforms to ensure that the time aspect of handling cases is addressed. The next point is with regard to extension of Lokpal to States. We think that it is absolutely necessary that there should be a dispersed mechanism which is capable of handling issues related to corruption even at the State level. So, we would encourage similar Lokpals in the State with sufficient amount of teeth similar to the proposed legislation. I think that unless the Lokpal is given the powers to actually take action, we find -- and maybe I am right or wrong on this -- that when it is decided that corrupt officer, for example, is guilty, then the Lokpal will act only as a recommendatory authority to the Government to take action against the officer. We

believe that the Lokpal should have the power to actually take independent action without having to go back to the Government.

अध्यक्ष : धन्यवाद। अब मेंबर्स अपने प्रश्न पूछेंगे। मैं सिर्फ एक बात कहना चाहता था कि आप ने कॉर्पोरेट्स के बारे में जो कहा, उस में एक मूल मुद्दा यह है कि अगर आप कह रहे हैं कि कुछ क्षेत्रों में इन को include करना चाहिए। आप जानते हैं कि कानून में कुछ हद तक एक सीधी लकीर बनानी पड़ती है और वह लकीर मुड़-मुड़कर नहीं चल सकती। तो आप के अनुसार किस आधार पर वह लकीर बनायी जाए? स्पष्ट रूप से आप ने टैंडर का उदाहरण दिया, किसी और केस का उदाहरण दिया, लेकिन कानून में जो लकीर बनानी पड़ेगी उस में एक कानूनी आधार चाहिए कि किन कॉर्पोरेट्स को include किया जाए, किन को बाहर रखा जाए? अगर किसी का समावेश किया जाए तो किस आधार पर किया जाए, किसी को बाहर रखा जाए तो किस आधार पर रखा जाए? उस कसौटी के ऊपर आप की क्या टिप्पणी है क्योंकि आप कह रहे हैं कि कुछ लोगों को इस के दायरे में लाना चाहिए। वह कैसे निश्चित हो, किस प्रकार वह कसौटी बनायी जाए, उस पर मैं आप का मत चाहता हूं। उस के बाद पाठक जी प्रश्न पूछेंगे।

श्री आर०वी० कनोरिया : देखिए, इस के लिए या तो कोई value लगायी जा सकती है कि कितना नुकसान exchequer को हुआ या कितना फायदा कॉर्पोरेट को हुआ। उस पर आप 10 करोड़, 20 करोड़ या 50 करोड़ की लिमिट रख सकते हैं। मैं बिना सोचे इस के ऊपर कोई सुझाव नहीं देना चाहता हूं।

अध्यक्ष : यह बहुत महत्वपूर्ण है। आप इस बारे में लिखकर दें।

श्री आर०वी० कनोरिया : हम इस पर सोचकर आप को लिखकर दे सकते हैं।

अध्यक्ष : कनोरिया जी, एक चीज का और ध्यान रखें कि यह इस आधार पर तय नहीं हो पाएगा कि नुकसान कितना हुआ, निर्णय यह करना होगा कि निजी सेक्टर की जो प्राइवेट कंपनीज हैं, उन में आप कैसे लकीर बनाएं? क्या यह लकीर ऐसी होगी कि सिर्फ प्राइवेट कंपनीज इस के अंदर होंगी? सिर्फ सौ करोड़ वाली कंपनीज इस के अंदर होंगी, 10 करोड़ वाली होंगी या ऐसी कंपनीज जिनके shareholders 7 परसेंट से ज्यादा पब्लिक में हैं? तो यह कोई-न-कोई टेस्ट रखना होगा। घोटाले के बाद यह मालूम करना कि कितने का घोटाला हुआ, उस आधार पर यह मुश्किल होगा।

श्री आर०वी० कनोरिया : मैं जब कॉर्पोरेट्स की बात कर रहा था तो मैं यह भी स्पष्ट करना चाहता हूं कि मैं सिर्फ निजी सेक्टर के कॉर्पोरेट्स की बात नहीं कर रहा था। मैं जब कॉर्पोरेट्स की बात कर रहा हूं तो मैं पब्लिक सेक्टर के कॉर्पोरेट्स की भी बात कर रहा हूं।

अध्यक्ष : वह प्रावधान already है। केन्द्र सरकार द्वारा जो भी owned हैं, वे सब हैं। उसी प्रकार से लोक आयुक्त होगा तो प्रदेश सरकार वाली सभी कॉर्पोरेट्स होंगी। यह जो बात हो रही है,

विशेष रूप से चैंबर्स ऑफ कॉमर्स के विषय में, वह निजी सेक्टर वाले कॉर्पोरेट्स के विषय में हो रही है। आप लिखित रूप से जल्द-से-जल्द दे दें।

श्री आर०वी० कनोरिया : हम लोग इस पर सोचकर आप को बताएंगे।

अध्यक्ष : उस के साथ-साथ यदि आप को लोकपाल बिल के किसी प्रावधान में संशोधन चाहिए तो स्कवैयर ब्रेकिट्स में उस प्रावधान के अंदर लिखकर भेज दें तो फोकस रहेगा।

श्री आर०वी० कनोरिया : ऐसा कर देंगे।

SHRI HARIN PATHAK: Thank you Mr. Chairman. Mr. Kanoria, you have made a two-page presentation with regard to some of the observations you have made. I have two small queries for my satisfaction. The first one is with regard to jurisdiction of enquiry. You are of the opinion that *suo motu* powers to take cognizance, investigate and initial trial have to be given to Lokpal. But, Now-a-days, you know the fashion of media trial. If anything occurs, media -- print or electronic -- immediately starts its trial. If *suo motu* power is given to Lokpal and the amount of pressure mounted by media is such that it will be difficult for bureaucracy or any political functionary to function, unless and until some concrete proof is there. So, I would like to know what your view is in this regard.

The second point which you have covered in page number 1 is a little bit confusing. You have said in the last two lines, 'If corruption is to be controlled at the ground level, then the ambit of the Lokpal Bill should be extended to officers of all ranks and classes...' -- Mr. Chairman, FICCI further says, --'Further more, there is a collusion from top to bottom and it is difficult to establish corruption at a particular level.' Once you are saying that it is possible to curb corruption and then you come to the conclusion or opinion that it is very difficult to establish the corruption at a particular level. So, I failed to understand these two points.

SHRI R.V. KANORIA: Sir, I will take the second question first because it is an easy question. The last two lines say, "Further more, there is collusion from top to bottom and it is difficult to establish corruption at a particular level" is an unnecessary appendage here, because the first paragraph itself covers this aspect.

As I said in the very beginning, the Parliament is supreme and I would expect the hon. Members of Parliament to read in any case.

Now, as far as *suo motu* is concerned, I think, this concept, actually, derives from the fact of fear of complaint. It may not be a power which is given in a sense that it should be *suo motu*, but it could be *suo motu*. Let us put it like that. So, it could be *suo motu*. That means, if Lokpal, in its opinion, feels that there should be a case initiated, it should not be restricted to only taking up a case in case of a complaint. I think, the spirit behind it is that.

श्री अरुण यादव : अध्यक्ष जी ने आप से जो पहला क्वेश्चन किया था it was very important question कि किस तरह से आप उस को लेने वाले हैं। मैं इसी को उन के साथ सम्बद्ध करना चाहूंगा और Whatever is your concern about that, you should give us in writing about that.

SHRI SHANTARAM NAIK: Sir, my question is: There are companies registered under the Companies Act which do the business of electronic media. Are there any such companies, which are registered under the Companies Act doing the business of electronic media, registered with FICCI as members? If so, what is the code of ethics you have laid down to them?

SHRI R.V. KANORIA: We will check it and get back to you, Sir.

श्री लालू प्रसाद: कनोरिया जी, इसमें शायद आपने यह नहीं बताया कि प्रधानमंत्री आउट रहें या इन रहें। इस बारे में आप लोग बता दीजिएगा। लोकपाल बिल में आज आप लोगों की भागीदारी हो रही है, सिर्फ पार्लियामेंट के लोगों की भागीदारी ही नहीं, इसमें आप लोगों का भी एसोसिएशन लिया जा रहा है, आप लोगों से भी राय ली जा रही है। हम लोग चाहते हैं कि देश भर के सभी लोगों की रजामंदी से एफेक्टिव लोकपाल बने, जो तथाकथित भ्रष्टाचार है, वह मिटे। आप लोगों के अनुसार सो-कॉल्ड लोकपाल के लिए क्या क्वालिफिकेशन होनी चाहिए? किस महानुभाव को, कैसे लोगों को इसके लिए चुना जाए, जो बिल्कुल सब के सिर के ऊपर बैठे रहें? कॉरपोरेट हाउस, एनजीओ, मीडिया, पोलिटिकल लोग, अफसर लोग, कर्मचारी लोग, सीबीआई, सब उसी में मांग रहे हैं कि दे दो, यह दे दो, वह दे दो। आपके अनुसार लोकपाल की क्वालिफिकेशन क्या होनी चाहिए? वह जो लोकपाल बनते हैं, इस बात की क्या गारंटी है कि वह भ्रष्टाचार मिटा पाएंगे? और, अगर वहां उनके दफ्तर में भ्रष्टाचार होता है, तो उनको नापने के लिए क्या मैकेनिज्म होना चाहिए? एक यह बात है, बाकी जो कॉरपोरेट हाउस है, बिग कॉरपोरेट हाउस है, कंपनी है, आप लोग भी जानते हैं, हम भी जानते हैं, सब लोग जानते हैं, इसमें जैसा आपने कहा कि बाद में सब देख के, चूंकि आप लोगों की अलग-अलग एसोसिएशन है, तो इसमें सारी चीजों को देखकर आप अपनी राय देंगे, तो वह आप बाद में दे दीजिएगा। हमारा सवाल यह है कि इससे क्या भ्रष्टाचार मिटेगा, आप इसकी गारंटी देते हैं? लोकपाल बिल जो है, जो इससे लोकपाल बनेगा, क्या उससे देश में बिल्कुल एकदम भ्रष्टाचार मिट ही जाएगा? आज सारा काम छोड़कर देश भर में यही डिस्कशन हो रहा है। सारे मीडिया में यही छाया हुआ है। जितना ये आंदोलन करने वाले करें, उसको इलेक्ट्रॉनिक मीडिया ने वैसे ही सब को फूँका है। यह कौन फुंकवा रहा है, वह हम सब लोग जानते हैं। आप लोग बताइए, हम लोग बिल बनाएं, आप लोगों को इन बिन्दुओं पर बोलना चाहिए कि ये सही हैं, या गलत है। अभी लिख के देने से कोई फायदा नहीं है, क्योंकि अभी यह आपके लोग, एसोचेम के लोग, सभी आए हुए हैं, आप लोग बाद में लिखवा कर भेज दीजिएगा। हम लोग उसको पढ़ लेंगे और हम लोग निश्चित तौर पर आपके सुझावों पर तवज्जोह देंगे। हम लोग चेयरमैन साहब को देखते रहते हैं, अपना एक-एक पाइंट लिखते रहते हैं, इन्होंने सारे पाइंट्स लिखे हैं, अपना नोट करते रहते हैं, इसके लिए धन्यवाद के पात्र हैं। आप लिखकर भेज दीजिएगा।

अध्यक्ष: धन्यवाद, लालू जी। अभी इन्होंने महत्वपूर्ण प्रश्न उठाए हैं, इन पर अगर आप कुछ कहना चाहें, तो कह दें।

श्री आर. वी. कनोरिया: सर, मैं कहना चाहता हूँ कि यदि कोई भी बिल या लेजिस्लेशन है, तो उसका पहला एग्जम्पशन ट्रस्ट होना चाहिए। मैं समझता हूँ कि यह समझ कर बिल नहीं बनाना चाहिए कि भ्रष्टाचार है, बल्कि यह समझ कर बनाना चाहिए कि भ्रष्टाचार नहीं है और

यदि भ्रष्टाचार हो तो उससे कैसे डील किया जाए। तो मैं यह समझता हूँ कि जो भी लॉ बनाया जाए, वह सबसे पहले यह समझ कर बनाया जाए कि इनहेरेंटली जो हम इंसान हैं, ऑनैस्ट हैं और ट्रस्ट के बेसिस पर लॉ बनना चाहिए। मैं देखता हूँ कि कई बार लॉ इस तरह बनते हैं, मैं कोई इस तरह का उदाहरण नहीं देना चाहता, लेकिन उसका एग्जम्पल यह होता है कि सब गड़बड़ करेंगे और उसके अनुसार लॉ बना दिया जाता है और फिर उसमें जो गड़बड़ नहीं करते हैं, वे तकलीफ पाते हैं। मैं यह समझता हूँ कि जो भी आप बिल बनाएं, ट्रस्ट के बेसिस पर बनाएं। दूसरा, आपने यह कहा कि जो लोकपाल है, यदि वही भ्रष्टाचार करे तो क्या होगा? मैं यह समझता हूँ कि जब जुडिशियली एकाउंटिबिलिटी बिल को अलग करना चाहते हैं, तो जुडिशियरी जो है वह फेयर डिजीजन देने के काबिल है। यदि कोई लोकपाल भ्रष्टाचार करता है, तो जुडिशियली एकाउंटिबिलिटी बिल में या और किसी एक्ट के अनुसार प्रोविजन होना चाहिए, ताकि जुडिशियरी उनको ट्रायल करके, मतलब जैसा बिल में भी प्रोविजन है कि उनको हटाया जा सकता है, लेकिन यदि बिल के अनुसार नहीं हट सकते हों तो एटलीस्ट जुडिशियल प्रोसेस के अनुसार हट सके, इस तरह का प्रोविजन होना चाहिए। तीसरा आपने क्वैश्चन पूछा और आप राइटिंग में चाहते थे, कि लोकपाल के दायरे में प्राइम मिनिस्टर रहने चाहिए या नहीं रहने चाहिए, मैं समझता हूँ कि यदि उस फिलोसफी को मैं लूँ कि ट्रस्ट के अनुसार होना चाहिए, तो जो इस कंट्री के हाइएस्ट पोस्ट पर हैं, वह इस लोकपाल बिल में नहीं होने चाहिए।

श्री लालू प्रसाद: आप लिखित में भी भेज दीजिएगा, रिकॉर्ड में रहेगा।

SHRI SUKHENDU SEKHAR ROY: I have only one pointed question. You have stated in your suggestions that Lokpal should have *suo moto* power to take cognizance, investigate and initiate trial. As per the Constitution, we have separation of power for the judiciary, the executive and the Parliament. Are you suggesting that this Lokpal should be an extra-constitutional body combining all powers of the executive, the judiciary and the investigating agency? I would like to have some clarification on this point.

SHRI R.V. KANORIA: I think the word 'trial' may be an incorrect word. It may be 'initiate action'.

SHRI ARUN CHAWLA: What the Lokpal has the jurisdiction to take on the basis of a complaint, they should have the capacity to take it on a *suo moto* basis.

श्री अर्जुन राम मेघवाल: अध्यक्ष महोदय, मैं दो-तीन पाइंट्स आपके ध्यान में लाना चाहता हूँ। यहां कवरेज में आपने यह कहा है कि मिनिस्टर प्रजेंट हो, चाहे एक्स-मिनिस्टर हो, वह कवरेज में आना चाहिए और एम.पी. जो प्रजेंट हो, चाहे एक्स-एम.पी. हो, वह कवरेज में आना चाहिए, लेकिन ग्रुप-ए आफीसर्स के बारे में आपने नहीं कहा कि ग्रुप-ए आफीसर्स प्रजेंट में होंगे वही आएंगे, या जो आफीसर रिटायर्स हो जाएंगे, वह भी आएंगे या नहीं आएंगे? एक तो इस बारे में हम आपसे क्लैरिफिकेशन चाहते हैं। दूसरा, आपने अपने कवरेज में यह लिखा है, एक शब्द उपयोग किया है - level-playing field. तो What is the parameter of level-playing field? What is the index? लेवल प्लेइंग फील्ड के किस तरह के पैरामीटर हैं, जो

इंडिया में नहीं हैं, बाहर हैं और इससे लेवल प्लेइंग फील्ड कैसे डिस्टर्ब होगा? That we want to know. यह आपने अपने कवरेज में नंबर दो में लिखा है, सेकेंड पैराग्राफ में है। तीसरा, आपने यह कहा है कि lower grade officers are harassing more. यह आपने अपने प्रजेंटेशन में कहा। लोअर ग्रेड ऑफीसर्स से आपका क्या अर्थ है? Whether you are talking about cutting-edge officers or middle-level officers? क्योंकि आपने यहां कवरेज में ग्रुप-ए आफीसर्स लिखा है और ग्रुप-ए के बाद लोअर लेवल का मतलब कटिंग-एज से है और बीच में आपने कहा है कि करीब-करीब 70 ऐसे डिपार्टमेंट हैं, जहां से आपको लायसेंस लेने पड़ते हैं। यह लायसेंस देने वाला मिडल लेवल आफीसर होता है, जो स्टेट सर्विस से बिलॉग करता है। इसमें आपका परपज कौन सा है, कटिंग-एज लेवल आफीसर्स से है, इंस्पेक्टिंग आफीसर्स से है, या लाइसेंस इश्यू करने वाली अथोरिटी से है? इस बारे में हम आपसे क्लियर होना चाह रहे हैं। चौथा, आपने यह modification of ToR की बात कही थी, टर्म ऑफ रेफरेन्स की। एक बार जब टैंडर में टर्म ऑफ रेफरेन्स बन जाता है और किसी कारण से उसका मोडिफिकेशन करना पड़ता है, जैसे कई बार परिस्थितियां बदल जाती हैं, कई बार कंडीशन बदल जाती है और कई बार आपका जो विज्ञापन होता है उसमें जो 15 दिन का समय होता है या 21 दिन का समय होता है उसको भी चेंज करना पड़ता है, तो आपके अनुसार टर्म ऑफ रेफरेन्स की वाइडली डेफिनेशन क्या है? यह टर्म ऑफ रेफरेन्स बहुत बड़ा इश्यू होता है, थोड़ा सा भी मोडिफिकेशन किया, सपोज करो टर्म ऑफ रेफरेन्स 21 दिन पहले विज्ञापन का है, यदि नहीं दिया और उसे 15 दिन का कर दिया, तो क्या ऐसा टर्म ऑफ रेफरेन्स इस करप्शन में आएगा? हम आपसे ये कुछ क्लैरिफिकेशन चाहते हैं।

SHRI R.V. KANORIA: I think it is better because we have very specific points. I think, when we have mentioned Group 'A' Officer, it is as it appears in the present Bill. And, what we are saying is that you extend the coverage beyond Group 'A' Officers. In all cases, we are saying that former officers should also be included. As far as the question is that up to what level, we are saying that anybody who is associated in giving licences and so on. I think, यह जो level playing field वाली बात है, लेवल और नॉन-लेवल में अंतर यह है कि यदि ऐसे कोई टैंडर हों, जिनसे कोई non level playing field create होता हो, यानी दो लोगों में कंपीटीशन पहले से ही है ... (व्यवधान)

श्री अर्जुन राम मेघवाल : मैं level playing field को क्लियर करना चाहता हूं कि जैसे हमारे यहां ब्याज 7 परसेंट है और अमरीका में ब्याज 2 परसेंट या एक परसेंट है। कोई बैंक मैनेजर यह कह सकता है कि मेरे यहां investment आ रहा है, तो मैं उसे 3 परसेंट करता हूं, तो क्या यह करप्शन में आएगा, यह मैं आपसे पूछना चाहता हूं।

SHRI R.V. KANORIA: It is a difficult question. Still, we will work it out.

श्री शैलेन्द्र कुमार : कनोरिया साहब, आपने यहां पर जो प्रस्तुतीकरण दिया, वह बहुत अच्छा था और आपने लगभग सभी बातें क्लियर की हैं। यह तो आप मानकर चलिए कि भ्रष्टाचार

ऊपर से लेकर नीचे तक है। आपने निचले लेवल की बात की है, वाकई गरीब आदमी इसमें बहुत पिस रहा है और वह करप्शन को झेल रहा है। मैं यह जानना चाहूंगा कि भ्रष्टाचार की परिभाषा क्या है, कौन-कौन से भ्रष्टाचार हैं, यह आप जरा लिखकर भेज दीजिएगा और लोकपाल को क्या पावर होनी चाहिए? वह शिकायत भी सुने, उसकी जांच भी करे, उसके बाद सजा भी दे - यह व्यवस्था होनी चाहिए या हमारी जो तमाम एजेंसियां हैं, जैसे CBI है, CVC है या न्यायपालिका है, इसमें कर देना चाहिए, इसके बारे में आप अपने विचार भेज दीजिएगा।

श्रीमती मीनाक्षी नटराजन : मेरा अनुरोध यह है कि आप इन सवालों के जवाब लिखित रूप में भेज दें। जब अध्यक्ष जी ने आपसे coverage of the corporate sector पर सवाल किया था, तो आपने कहा था कि आप इस पर और विचार करके जवाब देना चाहते हैं। मेरा उसमें एक बिंदु और है कि एक तो आपने टेंडरिंग वाली बात स्वयं रखी और जहां-जहां monopolistic business होता है, उसकी बात भी रखी। तीसरी बात यह है कि जहां पर आपने माइनिंग वगैरह का उल्लेख किया है, वहां पर पहले चाहे आपने Environment विभाग से उसके लिए NOC लिया हो और आपने कहा हो कि आप उसका पालन करेंगे, लेकिन बाद में भारत में तो कारपोरेट हाउसेज कभी भी clear-up costs या environment costs को नहीं भरते हैं और जब वहां पर प्रदूषण फैलता है, नदियों में फैलता है या जमीन पर फैलता है, तो वह बात सिर्फ कारपोरेट हाउस तक ही सीमित नहीं रह जाती है, पूरी पब्लिक उसमें involve हो जाती है। तो क्या आप चाहेंगे कि इसको इस बिल के purview में रखा जाए? इस पर आप विचार करें, क्योंकि फिलहाल हमारे यहां इसके लिए बहुत सीमित कानून हैं, जो इस पर विचार नहीं कर पाते हैं और बहुत आसानी से वे कारपोरेट हाउसेज भाग जाते हैं। हमारा भोपाल उसका भुक्तभोगी है, जब कि वहां पर आइसोसायनाइट गैस का रिसाव हुआ था और आज तक वहां के लोग इसको भुगत रहे हैं। इसलिए मेरा निवेदन है कि आप हमें इस बारे में अपना जवाब जरूर भेजें कि इनको include करने के बारे में आप क्या सोचते हैं?

श्री आर.वी. कनोरिया : अध्यक्ष जी, अभी मैं यह बता सकता हूं कि मेरे ख्याल से यह लोकपाल का विषय नहीं है। मैं समझता हूं कि इसके लिए पहले ही कानून बने हुए हैं और यदि किसी केस में न्याय नहीं हो पाया है, तो मैं समझता हूं कि इसके लिए judicial reforms की दरकार है और वह अलग कानून में कवर होता है।

श्री लालू प्रसाद : लोकपाल के आने से भ्रष्टाचार मिटेगा या नहीं मिटेगा, इस पर आप लोग अपनी राय दीजिए।

CHAIRMAN: Mr. Kanoria, thank you for finding time. I would like to remind you that these proceedings are confidential. Secondly, please give us pointed replies and if you like, give us in square brackets your views on individual provisions in the Lokpal Bill. Please send these things as soon as convenient to you. Thank you.

(The Witnesses then withdrew.)

WITNESSES FROM ASSOCHAM

1. Shri Dilip Modi, President
2. Shri D.S. Rawat, Secretary General
3. Shri R.K. Handoo, Co-Chairman, Legal Committee

CHAIRMAN: Representatives may start their presentation.

SHRI DILIP MODI: Sir, first of all, thank you very much for giving us this opportunity. आपका बहुत-बहुत शुक्रिया कि आपने हमें यह मौका दिया। चूंकि CII & FICCI ने काफी प्वाइंट्स आपके सामने प्रस्तुत कर दिए हैं, we will try to give some overall comments. In the pages that we have circulated for the benefit of all the hon. Members, we have tried to restrict ourselves to how the corporate sector is looking at this whole issue of prevention of corruption and what are the suggestions thereof. I think, with respect to each provision of the Bill, अगर आप हमारे कमेंट्स चाहते हैं, तो वे हम आपको भेज देंगे।

अध्यक्ष : यदि आप चाहें तो शुरुआत में उन तीन मुद्दों पर ज्यादा फोकस करें, जो हमने अभी बाकी लोगों से पूछे हैं। वे होने चाहिए या नहीं, अगर हों, तो किस कसौटी पर, किस सीमा के अंतर्गत हों?

श्री दिलीप मोदी : सर, हमारा overall view यह है कि जैसे अभी लालू जी ने कहा कि एक लोकपाल बिल भ्रष्टाचार को नहीं मिटाएगा। हमारे संविधान में ऐसे बहुत से provisions हैं और आज की तारीख में आप देखिए कि abetment in Prevention of Corruption Act ऑलरेडी कारपोरेट्स को कवर करता है। तो मेरे ख्याल में यह कहना कि कारपोरेट्स को यहां पर कवर करने से करप्शन मिटेगा, हमारे हिसाब से यह सही नहीं होगा। हमें यह लगता है abetment का जो क्लोज है, Prevention of Corruption Act में, उसमें कारपोरेट्स ऑलरेडी कवर हो जाते हैं। तो हमारे हिसाब से वे abetment में आ ही जाएंगे, लेकिन करप्शन एक ऐसा मुद्दा है, जो कारपोरेट सेक्टर के लिए बहुत ही concern का मुद्दा है। इसलिए हमारा यह तात्पर्य नहीं है कि कारपोरेट सेक्टर नहीं चाहता कि करप्शन न मिटे। Corruption is a disease which has to be taken care of. एक चीज है कि देश का जो विश्वास हमारे संविधान में और हमारी संसद में होना चाहिए, वह नहीं टूटना चाहिए। बहुत इमोशनल अपील पर इस लोकपाल बिल की ड्रॉफ्टिंग हो रही है। इसलिए हमने एक कमेंट इसमें डाला है कि एक comprehensive statute की तरह लोकपाल बिल को देखा जाए। अगर हम graft को reduce करना चाह रहे हैं, करप्शन को reduce करना चाह रहे हैं, तो Prevention of Corruption Act में बहुत सी definitions हैं कि bribe क्या होती है, किसको bribe treatment देते हैं, इस बिल को ड्रॉफ्ट करते समय इन चीजों को भी नज़रिए में रखा जाए। हमें लगता है कि हमारा एक कंसर्न यह है और जो हमने अपने नोट में भी लिखा है कि देश में decision-making का प्रोसेस नहीं रुकना चाहिए। आज की तारीख में हमारा देश एक ऐसी राह पर चल पड़ा है कि हमें देखना होगा कि इसकी प्रगति न रुके। तो जो bold decision-making है, policy-making है, जो legislature और bureaucracy दोनों को मिलकर करनी है, वह slow down नहीं होनी चाहिए और उसके लिए

बहुत जरूरी है कि जो definition हो, वह क्लियर होनी चाहिए। हमने इसमें लिखा है कि, “for this reason, it is important to precisely and exactly define the conduct that is prohibited by the statute and is subject to investigation.” यह बहुत clear definition हमें clearly बतानी चाहिए जिससे कि कोई officer हों या Member of Parliament हों, वे ऐसा न करें कि कल investigation हो जाएगी, तो हम decision लेना ही बंद कर दें। And, the offences to be investigated under the statute should be clearly and precisely defined without any ambiguities. अगर decision making रुक जाती है, तो हमारा देश रुक जाएगा और हम नहीं चाहते कि ऐसा हो। दूसरा प्वाइंट जो हम बताना चाहते हैं, वह है with respect to allocation of resources by Government. इसमें हमने कहा है कि again, it is part of comprehensive statute that we are recommending that the Lokpal Bill should not be seen in isolation, but in the context of a comprehensive statute, resource allocation के लिए एक बहुत ही clear and transparent process होना चाहिए। अभी level playing field की बात आई।

(1N/MCM पर क्रमशः)

MCM-GSP/1n/6-20

श्री दिलीप मोदी (क्रमागत) : कुछ एक चिट्ठी भी लिखी गई जिसमें ऑनलाइन ऑक्शन की बात हुई। But transparency in allocation of resources बहुत जरूरी है। उसमें meritocracy will prevail और कार्पोरेट सैक्टर में भी एक लेवल प्लेइंग फील्ड आगे जाकर आएगी। सर, हमारा तीसरा प्वाइंट with respect to participation of corporate sector to reduce graft है कि अब इसमें जो हमें एक सेंस मिलता है, जब हम अपने मेंबर से बात करते हैं कि लोग आगे आकर खुलकर नहीं बोलते हैं कि देखिए, गलत हो रहा है। उनको यह लगता है कि उनको ह्रास किया जाएगा। तो आज की तारीख में जो भी कार्पोरेट सैक्टर होता है वह या तो एन0जी0ओ0 के थू आप देखिए या कोई पब्लिक इंटरेस्ट लिटिगेशन, ये सब चीजें यूज करते हैं, क्योंकि लोग सामने आने में घबराते हैं और घबराते इसलिए हैं क्योंकि वे कहते हैं कि जिसके खिलाफ हम कम्प्लेंट करेंगे वह ही कल को आकर हमको ह्रास करेंगे, तो हम क्यों कम्प्लेंट करें। तो जो सर, कंसेप्ट है विसल ब्लोअर प्रोटेक्शन का, उसको हमें समझना चाहिए कि आज की तारीख में अगर हमें कार्पोरेट सैक्टर में यह सिस्टम लाना है तो आप खुलकर बताइए कि अगर कुछ गलत हो रहा है तो वह क्यों हो रहा है और कैसे हो रहा है, जिससे कि अगर मेरा कम्पटीटर कुछ गलत कर रहा है और मैं गलत नहीं करना चाह रहा तो मैं किसको जाकर बोलूँ। तो कोई मकेनिज्म होना चाहिए, चाहे लोकपाल के अंदर या किसी और स्ट्रेच्युट के अंदर, जिसमें कोई विसल ब्लोअर प्रोटेक्शन पॉलिसी लाई जाए और कार्पोरेट को एन्फ्रेज किया जाए कि आप आइए, बिना डर आइए और आपको सिस्टम ह्रास नहीं करेगा। सर, हमारा चौथा प्वाइंट है with respect to provision dealing with false complaints उसमें हमारा यह कहना है कि we have to encourage people अगर कुछ गलत हो रहा है तो वह कम्प्लेंट करें but we have to figure out how to deal with false complaints. अभी जो ड्राफ्ट है

लोकपाल बिल का, उसमें इम्प्रेजनमेंट की बात कही गई है। हमें लगता है कि शायद यह कुछ स्ट्रोंग वे है of dealing with false complaints, because to prove a criminal case is not easy. तो आज की तारीख में responsibly लोगों को सामने आना चाहिए लेकिन इम्प्रेजनमेंट थोड़ा सा harsh method होगा, शायद उसको एक बार फिर से देखा जाए और there is other statute dealing with defamation and all that. यह इश्यू एड्रेस कर सकते हैं। सर, हमारी तरफ से एक फाइनल प्वाइंट, हमने बहुत स्पेसिफिकली अपने नोट में लिखा है कि judiciary should be kept out of this Bill because the independence of judiciary is very important and it is very important that this independence be maintained, and, today, सर, हमारा जो संविधान है, कंस्टीट्यूशन है, it provides for checks and balances. So, I think, we have to ensure that those checks and balances remain. सर, हमारे ब्रॉडली ये प्वाइंट्स हैं। अगर आपका स्पेसिफिक क्वेश्चन हो किसी मुद्दे पर हम अभी एड्रेस कर सकते हैं?

अध्यक्ष : कार्पोरेट पूरी तरह से बाहर होने चाहिए। कार्पोरेशन निजी प्राइवेट कार्पोरेशन यानी सरकारी पब्लिक सैक्टर को छोड़कर लोकपाल जैसी कोई भी संस्था के बाहर होने चाहिए या उनके अधिकार क्षेत्र में होने चाहिए?

श्री दिलीप मोदी : सर, हमें लगता है कि वे Prevention of Corruption Act में कवर हो जाते हैं। अगर कल कोई निजी कार्पोरेशन ग्राफ्ट में इन्वोल्व्ड होते हैं तो वे अबेटमेंट केस में कवर हो जाएंगे।

अध्यक्ष : अगर हम यह कहें कि वे कार्पोरेट हो रहे हैं इसी लोकपाल में, तो आप उस एजम्पशन पर किस कसौटी, किस टैस्ट पर इंकलुड करेंगे कार्पोरेट को? अगर निजी कार्पोरेट को इंकलुड करना है तो आप किस कसौटी पर करेंगे?

श्री दिलीप मोदी : यह हम आपको लिखित देंगे।

SHRI SHANTARAM NAIK: You have got some misunderstanding. The Prevention of Corruption Act is the law which will be applicable. Lokpal or Lokayukta is the authority. So, saying that the Prevention of Corruption Act covers corporate houses makes no sense. The question is: whether you would like to be covered by the authority called Lokpal or Lokayukta. In any case, the law will be there.

SHRI DILIP MODI: Sir, we want to ensure that there is no corruption in the corporate sector. To that extent, we understand the spirit of it. But the Chairman mentioned a point that when we talk about creating an Act, then, we have to be specific as to the kind of corporates, and, how do we draw the line. That has to be thought of because we do not want a situation where it leads to misinterpretation. To that extent, we have to think as to how it should be defined, and, as to how the corporates should be covered.

श्री अरुण सुभाषचंद्र यादव : मैं मोदी जी से पूछना चाह रहा था कि आपने यहां बहुत अच्छा इश्यू रैज किया है कि रिसोर्सिज का जो एलौकेशन होता है उसमें ट्रांसपिरेंसी होनी चाहिए।

Online system के अलावा have you adopted any system? कुछ आपने बनाया है या can you suggest some new system जिससे हम transparency ला सकते हैं ।

श्री दिलीप मोदी : सर, कई सिस्टम ऐसे हैं जो हम आपको बतला सकते हैं।

श्री अरुण सुभाषचंद्र यादव : हमारे पास जो ऑनरेडि सिस्टम है उसके अलावा और कोई सिस्टम आपके पास है या आपने कोई सोचा है जिससे हम इस सिस्टम को और अच्छा कर सकते हैं? If you can give this to us in writing, it will be good.

श्री अर्जुन राम मेघवाल : आपने इसमें लिखा है कि फाल्स कम्प्लेंट का भी प्रोविजन है, उसमें रिकंसीड्रेशन करना चाहिए। अब यह जो सरकारी लोकपाल है उसमें यह लिखा हुआ है कि अगर फाल्स पाई जाएगी तो सजा होगी। लेकिन जनलोकपाल यह कहता है कि इसमें सजा नहीं रखें, खाली जुर्माना रखें। आप किससे सहमत हैं, क्या चाहते हैं आप?

श्री दिलीप मोदी : सर, हम यह कह रहे हैं कि अगर आप किसी को कहते हैं कि आपने कंप्लेंट की और वह फाल्स है तो हम आपको पांच साल के लिए जेल में डाल देंगे अगर वह फाल्स कंप्लेंट प्रुव हो जाए। तो हम कह रहे हैं कि वह हमको बहुत harsh लग रहा है। तो उसको कम किया जाए।

श्री अर्जुन राम मेघवाल : अगर फाल्स नहीं होगी तो जेल में कौन डालेगा। आप जुर्माना चाहते हैं या सजा चाहते हैं?

श्री दिलीप मोदी : सर, हम चाहते हैं कि सजा हो लेकिन इतनी सख्त न हो। ऐसी न हो कि वह कहे कि हम आगे कंप्लेंट नहीं करेंगे।

श्री अर्जुन राम मेघवाल : फिर वह पेपर में कैसे आएगा।

श्री दिलीप मोदी : सर, आपने सजा दे दी, फिर जुर्माने का क्या होगा?

श्री अर्जुन राम मेघवाल : लॉ में प्रावधान है, जुर्माना अलग है। जुर्माना या सजा या दोनों।

श्री अरुण सुभाषचंद्र यादव : माननीय सदस्य जो कह रहे हैं वह बड़ा इंपोर्टेंट इश्यु है कि आप कह रहे हैं कि सजा होनी चाहिए या जुर्माना होना चाहिए। यह बताएं?

श्री दिलीप मोदी : सर, हमारे साथ वकील साहब भी आए हैं। वे ही इस बारे में कंफर्म बताएंगे।

श्री आर०के० हांडू : सर, हमारा यह व्यू है कि अगर विसल ब्लोअर कल को फाल्स प्रुव हो गया तो there should be punishment लेकिन इतनी परपोर्शनेट हो कि कल को वह कंप्लेंट करना चाहे तो डेटर न हो जाए कंप्लेंट करने से। उसमें आप सजा देंगे, फाइन देंगे या दोनों देंगे जिसका प्रावधान आज की तारीख में भी codes में है, enactments में है, वह कितना परपोर्शनेट रहना चाहिए वह जितने भी माननीय मेंबर पार्लियामेंट हैं, वे डिसाइड करेंगे, हम

डिसाइड नहीं कर सकते। लेकिन यह है कि परपोर्शन होना चाहिए ताकि एक बेलेंस टिके। यह भी न हो कि लोग एक मास्क लगाकर कंप्लेंट करने का धंधा शुरू करें और जब पूरा हो जाए तब तक जिस आदमी के खिलाफ कंप्लेंट हो उसका बेड़ा गर्क हो जाए। पर्पज यह है। तो जो विसल ब्लोअर कहते हैं और जो हम कहते हैं 'immunity' वह एक किस्म का masked face complainant भी है। अगर उसके मुंह पर हमने पर्दा रखा और उस पर्दे को हमने नहीं उठाया तो यह एक किस्म की न्यूसेंस बनती है और जो विक्टिम होता है और जब तक उस विक्टिम का खात्मा हो जाए तब तक वह उसको वाच डेस्प्रेटली करेगा और पता है कि मेरे खिलाफ कुछ भी नहीं होगा। लेकिन एक बेलेंस बनाने के लिए हमारा व्यू यह है कि कंप्लेनेंट को भी यह पता होना चाहिए कि अगर कल को उसने कुछ गलत काम किया या उसने फाल्स कंप्लेंट की या किसी को विक्टिमाइज करने की कोशिश की, जो एक्च्युअली हो भी रहा है, तो उसको प्रिवेंट करने के लिए एक परपोसनेट इतना होना चाहिए ताकि कल को वह भी पीछे न हटे और कंप्लेंट करने से कंप्लेनेंट घबराए नहीं और अगर करे और फाल्स हो तो उसको यह भी पता हो कि मेरे को भुगतना होगा।

श्री लालू प्रसाद : मोदी जी, मैं आप महानुभावों से, सब लोगों से मैं यह पूछता हूँ कि हम हवा में सभी लोग दौड़े जा रहे हैं कि बड़ी भारी कोई चीज मिलने वाली है, स्वराज आने वाला है, राम राज्य आने वाला है। करप्शन, करप्शन, करप्शन, सब जगह खेत खलिहान से लेकर सब जगह करप्शन है। क्या यह करप्शन मिटा देगा। कौन मिटा देगा? क्या यह बिल बिल्कुल मिटा देगा? हम सब बेकार की बात इस बिल पर कर रहे हैं। इसलिए जिसके मन में जो आ रहा है, आकर पॉलिटिकल सिस्टम को गाली देता है। मतलब है कि हम सब लोग और जो सिस्टम है, जो संविधान है, जो पी0सी0 ऐक्ट है, सतर्कता आयोग है, सी0वी0आई0 है, यह सारा देखने के लिए ऑलरेडि है कानून में। आप देखें कि केन्द्र के कई मंत्री जेल में हैं। तो यह सब बातें जो भी चल रही हैं, हम सब लोग बिल्कुल हवा में आंख बंद करके चले जा रहे हैं, चाहे कारण जो भी हो।

श्री लालू प्रसाद (कमागत): इनके बारे में हम आपको बता देते हैं। जो मेरी समझ है, उसके अनुसार देश फिर इन लोगों को गाली-गलौज करेगा, इससे भ्रष्टाचार मिटने वाला नहीं है, भ्रष्टाचार और बढ़ेगा। सारी जगह पर, कारपोरेट हाउस को लाओ, इसको लाओ, उसको लाओ, उसके नाम पर कम्प्लेंट कराओ और सब पैसे खा जायेंगे ?

अध्यक्ष: माननीय लालू जी।

श्री लालू प्रसाद: सर, अभी हमारी बात खत्म नहीं हुई है। आप लोग जो अपने सुझाव दे रहे हैं, इनके बारे में हमने अन्ना जी से भी बात पूछी थी और वह बोले कि 60 प्रतिशत लोग डर जायेंगे, 100 प्रतिशत भ्रष्टाचार खत्म नहीं होगा। हम लोगों को अपना आचार, विचार, सदाचार सब ठीक रखना होगा। इलेक्ट्रॉनिक मीडिया में जो सब विज्ञापन कर रहा है, हमारे देश की संस्कृति को बिगाड़ रहा है, घर-घर को बिगाड़ रहा है, हम लोग लालच में पड़े जा रहे

हैं। ये सब ornaments बेच रहा है, इधर लगा रहा है, उधर लगा रहा है, देश का सब नाश करके छोड़ दिया। हम लोगों ने जब supremacy of Parliament की बात कही तो सब ने आलोचना शुरू कर दी कि लालू विरोध कर रहा है, लालू नहीं चाहता है, उस समय आप लोग चुपचाप बैठे हुए थे, सारा देश बैठा हुआ था, लोग कह रहे थे कि एमपीज़ को घेर लो। राहुल गांधी ने बोल दिया कि इसको संवैधानिक स्टेटस मिलना चाहिए, तो उनका दो दिन यहां पर घर घर लिया। उनके घर पर लोग टोपी लगाकर आ गए थे। कहां से इतने आदमी आ गए? जो खेल दिल्ली में हो रहा था, उसको आपने देखा? रात में क्या हो रहा था? इसलिए आप लोग इसको ठीक से देखिए। मोदी जी आपने सही बात कही है। आप इंडस्ट्रियलिस्ट हैं, देश की लक्ष्मी है, यह बात ठीक है, आप लोगों को भी तकलीफ नहीं हो। अगर आप लोगों का कोई शोषण करता है, दोहन करता है, तो उसके बारे में बताइए और उससे देश को कैसे छुटकारा दिलाया जाए, यह भी बताइए। आप इसके बारे में लिखकर भेज दीजिएगा।

अध्यक्ष: लालू जी ने जो महत्वपूर्ण प्रश्न उठाए हैं, उनका जवाब आप लिखित रूप से बाद में भेज दीजिएगा। अब हम मीटिंग का अंत एक आखिरी प्रश्न से करेंगे, जो बच गया था।

श्री अर्जुन राम मेघवाल: मोदी जी, अभी एक स्टडी आई है कि RTI is a progressive Act. लेकिन RTI आने के बाद आपने यह भी कहा है कि डिसिजन मेकिंग प्रोसेस रुकना नहीं चाहिए। उस स्टडी में यह कहा है कि RTI progressive लॉ है, लेकिन डिसिजन मेकिंग में उसका प्रभाव पड़ रहा है और विपरीत प्रभाव भी कई जगह पर पड़ा है। अगर लोकपाल आता है, जैसा कि अभी आपने कहा कि डिसिजन मेकिंग प्रोसेस पर प्रभाव पड़ेगा, इसके बारे में हम कुछ टेक्निकल चीजें आपसे जानना चाह रहे थे, क्योंकि एसोचेम एक अच्छा संगठन है।

श्री दिलीप मोदी: सर, हमें लगता है कि उसका प्रभाव पड़ेगा। इसके बारे में हम डिटेल में लिखित रूप से बतायेंगे।

SHRI R.K. HANDOO: We wanted only to endorse what is exactly said by hon. Lalu ji and that is what the President has also said at the outset. हम इमोशन में इस लोकपाल बिल को न लायें, पूरी समझदारी से इसको लायें। इसमें कोई दो राय नहीं है और तभी हमारा भी व्यु यही है कि Parliament should be supreme. The Prime Minister should be out of the purview of this Act. The High Court Judges and the Supreme Court Judges should be out of the purview of this Act. जो existing laws हैं और इसका कोऑर्डिनेशन कैसे होगा ? कोई complainant CBI में भी complaint करेगा पब्लिक सर्वेंट के खिलाफ और कोई लोकपाल में भी करेगा। अब कौन एक्शन लेगा, कौन डिसाइड करेगा इसका कोई प्रॉविजन नहीं है?

अध्यक्ष: आप सब लोग आए, इसके लिए आपका बहुत-बहुत धन्यवाद। आपके सभी विचारों को, सभी इन-पुट्स को बहुत ध्यान से देखा जाएगा। अंत में, मैं आपको तीन चीजें बता दूं कि एक तो ये सभी चीजें गोपनीय हैं। नम्बर दो, कई सारे प्रश्न अभी आए हैं, इनके उत्तर प्वाइंटिड रूप से लिखित में हमें भेज दीजिएगा, वे हमारे रिकॉर्ड पर रहेंगे। तीसरी बात यह है

कि लोकपाल के अंदर जो प्रावधान हैं, उनमें आपको जो भी संशोधन चाहिए, उनको आप कम से कम समय में भेज सकते हैं। आप लोग आए, इसलिए आपका बहुत-बहुत धन्यवाद।

**(The witnesses then withdrew and
the Committee adjourned at 6.35 p.m.)**

THE DEPARTMENT-RELATED PARLIAMENTARY STANDING COMMITTEE ON PERSONNEL, PUBLIC GRIEVANCES AND LAW AND JUSTICE MET AT 2.00 P.M. ON 21st OCTOBER, 2011, IN MAIN COMMITTEE ROOM, PARLIAMENT HOUSE ANNEXE, NEW DELHI.

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SHRI DEEPAK GOYAL: Hon. Members, the Secretariat has received the information that the hon. Chairman of the Committee will be joining the Committee a little late, that is, around 3.30 p.m. Since we have to start the meeting to hear the witnesses, as per the rules, we have to opt one from amongst the Members to chair today's meeting.

(Hon. Members suggested that Shri Shantaram Laxman Naik should chair the meeting.)

(SHRI SHANTARAM LAXMAN NAIK in the Chair)

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List of Witnesses

National Commission for Scheduled Castes

- Shri P.L. Punia, Chairman

Delhi Commission for Protection of Child Rights

- Shri Amod K. Kanth, Chairperson; and
- Shri Shashank Shekhar

Federation for Economic Freedom

- Shri Bharat Gandhi, Political Reformer and Author; and
- Shri Aruneshwar Gupta, Advocate, Supreme Court

United Nations Development Programme

- Ms. Caitlin Wiesen, Country Director
- Ms. Alexandra Solovieva, Deputy Country Director
- Ms. Sumeeta Banerji, Assistant Country Director & Head; and
- Ms. Rakhika Kaulbatra, UN Co-ordination Adviser

Transparency International India

- Shri P.S. Bawa, IPS, Chairman

PRS Legislative Research

1. Shri M.R. Madhavan;
2. Ms. Kaushiki Sanyal; and
3. Ms. Harsimaran Kalra

Akhil Bhartiya Vidhyarthi Parishad (ABVP)

1. Shri Sunil Ambekar, National Organizing Secretary; and

2. Shri Sunil Bansal

Shri P.S. Krishnan (IAS Retd.)

Indian Social Institute

2. Dr. Christopher Lakra, Executive Director;
3. Dr. Ibrahim Qureshi
4. Dr. Paul Diwakar
5. Prof. Sushma Yadav; and
6. Dr. Usha Ramanathan

Gandhian Sewa and Satyagraha Brigade

1. Shri Shambu Dutt, Adviser
2. Justice Kamleshwar Nath

Bharat Raksha Manch

1. Shri Om Prakash Gupta, IFS National Working President
2. Shri Rattan Lal Gupta

& Others

OFFICIAL WITNESSES

Ministry of Personnel, Public Grievances and Pensions

Department of Personnel and Training

- Shri Alok Kumar, Joint Secretary
- Shri Ashok K.K. Meena, Director

Ministry of Law and Justice

Legislative Department

- a) Dr. Sanjay Singh, Joint Secretary
- b) Shri Diwakar Singh, Deputy Legislative Counsel

CHAIRMAN: My distinguished colleagues of the Committee, I welcome you all to this meeting. I heartily welcome the witnesses who have come here to place their views before the Committee on the Lokpal Bill, 2011. I also welcome senior officers of the Department of Personnel and Training and the Legislative Department.

As you are aware, the Committee is, presently, examining the Lokpal Bill, 2011. In this process, a Press release was issued to seek suggestions from the public on the Bill and in response to Press release, the Committee received a number of memoranda, which have already been circulated to the Members.

Having analyzed the memoranda received on the Bill, it was noted that some organizations/individuals were desirous to appear before the Committee for tendering oral evidence on the Bill. Accordingly, in today's meeting, we have invited some of them to apprise the Committee of the various provisions of the Bill.

Witnesses can make their presentations one by one. Considering the time constraints, I would request that each presentation should be limited to ten minutes. Only one member from each organization should make the presentation. Hon. Members of the Committee may seek clarifications after the presentations are over.

The proceedings of this meeting are confidential. Now, we will start with Shri P.L. Punia.

श्री पी.एल. पुनिया: श्रीमान्, मैं उत्तर प्रदेश के बाराबंकी से लोक सभा का मैम्बर हूँ और राष्ट्रीय अनुसूचित जाति आयोग का चेयरमैन हूँ। मैं आदरणीय अध्यक्ष जी और सभी सदस्यगण का आभारी हूँ कि आपने मुझे इस सम्मानित समिति के समक्ष अपने विचार रखने का मौका दिया। यह एक बहुत ही महत्वपूर्ण समिति है और एक महत्वपूर्ण कानून बनने जा रहा है। इसके माध्यम से एक बहुत ही महत्वपूर्ण व्यवस्था लागू होने जा रही है। राष्ट्रीय अनुसूचित जाति आयोग में इस पर विचार हुआ। वहाँ प्रस्ताव पास हुआ और उस प्रस्ताव के आधार पर हमने यहाँ पर पत्र लिखा और अनुरोध किया कि हमें भी अपने विचार रखने का मौका दिया जाए। मैं आपका आभारी हूँ कि आपने राष्ट्रीय अनुसूचित जाति आयोग को यह अवसर प्रदान किया है।

महोदय, इस आयोग की नियुक्ति आर्टिकल 338 के अन्तर्गत हुई है। उसी में प्रावधान है कि सभी मामले, जिनमें अनुसूचित जाति, अनुसूचित जनजाति, पिछड़ी जाति और माइनोरिटीज़ में भी जो पिछड़ी जातियों में सम्मिलित हैं, उन सब के grievances को देखने का हमें अधिकार है। राष्ट्रीय पिछड़ी जाति आयोग है, लेकिन उसको इंदिरा साहनी केस के अन्तर्गत पिछड़ी जातियों को मंडल आयोग के दायरे में लाने और उससे उनको बाहर करने का अधिकार दिया गया है। हमने सरकार को लिखा है, मंत्रालय को लिखा है कि पिछड़ी जातियों से संबंधित अधिकार भी राष्ट्रीय पिछड़ी जाति आयोग को दे दिए जाएँ, लेकिन जब तक संविधान में संशोधन नहीं होता है, तब तक राष्ट्रीय अनुसूचित जाति आयोग ही पिछड़े वर्गों की समस्याओं को देखने और उनके अधिकारों की रक्षा करने के लिए भी हमेशा सुझाव देता रहा है और उसके लिए हमेशा प्रयासरत रहता है। मंडल आयोग रिपोर्ट में ही लिखा है कि जो non-Hindu backwards OBC 8.44 per cent हैं, उनका भी दायित्व इसी आयोग को है। इसीलिए मैंने पत्र के माध्यम से आपसे जो अनुरोध किया था, उसमें निवेदन किया था कि अनुसूचित जाति के साथ-साथ पिछड़ी जाति और अल्पसंख्यक वर्गों के लोगों को भी इसमें प्रतिनिधित्व दिया जाए तथा उनके अधिकारों की रक्षा का ध्यान रखा जाए।

आपने लोकपाल बिल 2010 के माध्यम से इस कानून में यह प्रावधान किया है कि इसमें एक चेयरपरसन होगा, उसमें 8 सदस्य होंगे और इसमें किसके माध्यम से नियुक्ति होगी। इसमें राष्ट्रपति जी के द्वारा नियुक्ति की जानी है और उसके लिए सेलेक्शन कमेटी बनी है। सेलेक्शन कमेटी में प्रधान मंत्री जी के अलावा Speaker, the Leader of the Opposition in Lok Sabha and the Leader of the Opposition in Rajya Sabha, one cabinet Minister, one sitting Judge of the Supreme Court nominated by the Chief Justice of India, one sitting Chief

Justice of a High Court to be nominated by the Chief Justice of India, one eminent jurist nominated by the Chief Justice of India and one eminent public figure to be appointed by the Government. इस तरह से प्रधान मंत्री के साथ 8 ऐसे लोग हैं, जो सेलेक्शन कमेटी में सम्मिलित हैं। उन पर विचार करने के लिए उन्होंने Search Committee का प्रावधान किया। Search Committee के बारे में बहुत ज्यादा उल्लेख नहीं किया गया है। Search Committee के बारे में सिर्फ यही है कि इसमें वे लोग हों, जिनको special knowledge हो और जिनके बारे में यह समझा जाए कि वे selection करने में useful हैं। ऐसे लोगों को Search Committee में सम्मिलित किया जा सकता है। उसमें कितने लोग होंगे, किस-किस वर्ग के होंगे, कैसे क्या होगा, इसका कोई उल्लेख नहीं किया गया है। To be specified, prescribed इसमें लिखा हुआ है। हमने निवेदन किया था कि अनुसूचित जातियों, पिछड़ी जातियों और अल्पसंख्यकों का प्रतिनिधित्व Search Committee में भी हो, सेलेक्शन कमेटी में भी हो और जो लोकपाल set up हो, उसमें भी हो। ऐसा होना बहुत जरूरी है। जो लोकपाल establishment set up होगा, उसमें एक चेयरपरसन होगा और आठ सदस्य होंगे। उनमें से चार ज्यूडिशियल मैम्बर होंगे और चार एडमिनिस्ट्रेटिव मैम्बर होंगे। एक तो ज्यूडिशियल मैम्बर में हो सकता है और एक एडमिनिस्ट्रेटिव मैम्बर में हो सकता है, लेकिन उसमें प्रतिनिधित्व जरूर होना चाहिए।

सर, मैंने यह भी लिखा कि भ्रष्टाचार की परिभाषा को और व्यापक किया जाए, लेकिन इस बिल में भ्रष्टाचार नाम की चीज़ तो कहीं नहीं लिखी है। इसमें यही लिखा है कि Prevention of Corruption Act को ही इसमें रखा जाएगा। उसके चैप्टर-3 के सेक्शन 7 से 16 तक में उल्लेख किया गया है कि क्या-क्या 'offences' हैं और उन 'offences' को ही as such मान कर लोकपाल के सामने complaint हो सकती है। इन 'offences' में ज्यादातर यह है कि कोई रिश्ता ले रहा हो या official position का misuse किया जा रहा हो, यह उसमें 'offences' में सम्मिलित है।

सर, हमारा यह मानना है कि अनुसूचित जाति, पिछड़े वर्गों को समाज में बराबरी में लाना चाहिए। जब Special Component Plan चला या जो योजना चली, उनका मुख्य उद्देश्य यह है कि समाज में जो सामाजिक गैर-बराबरी है और आर्थिक गैर-बराबरी है, उसको खत्म कर समाज के सभी वर्गों को बराबरी पर लाने के लिए special schemes का provision किया गया। जब Special provisions को सही ढंग से लागू नहीं किया जाता है, जिन बिरादरी के लोगों को जो safeguards दिए गए हैं, उन safeguards का अगर deprivation हो रहा है और उनको सही ढंग से लागू नहीं किया जा रहा है, जो Special Component Plan या Scheduled Casts Sub-Plan के माध्यम से फंड्स की earmarking का प्रावधान है, उन प्रावधानों को जान-बूझ कर लागू नहीं किया जाता है..।

श्री पी.एल. पुनिया (क्रमागत): कहा यह जाता है कि हमने पैसा खर्च कर दिया, लेकिन जो पैसा अनुसूचित जाति के उत्थान के लिए लगाया जाना है, वह जनरल स्कीम्स में खर्च होता

है जैसे हाइवे कंस्ट्रक्शन, बाईपास कंस्ट्रक्शन, एड्स पब्लिसिटी इत्यादि, या फिर उस पैसे से किसी लेक का beautification हो जाता है। ऐसे में यह कोई भी नहीं कह सकता कि अगर हाइवे का कंस्ट्रक्शन हो रहा है, उसमें अनुसूचित जाति के उत्थान की कोई योजना है। जान-बूझ कर लोग ऐसा करते हैं, इसलिए उनको भी लोकपाल के दायरे में आना चाहिए। आरक्षण के लिए जो प्रावधान किए गए हैं, अगर उनका सही ढंग से पालन नहीं किया जाता है, तो वह लोकपाल बिल के दायरे में होना चाहिए।

बहुत से लोग यही समझते हैं कि जब इस कार्य के लिए राष्ट्रीय अनुसूचित जाति आयोग बना हुआ है, तो एक किस्म से वह भी उन लोगों के लिए लोकपाल ही है, फिर उसी से काम क्यों नहीं चल रहा है। इसके बारे में बताना चाहूंगा कि यह बात सही है कि राष्ट्रीय अनुसूचित जाति आयोग है, संविधान के आर्टिकल 338 में इसका प्रावधान किया गया है, लेकिन उनके लिए जो इयूटीज़ लिखी गई हैं, उनमें यह प्रावधान भी है कि अगर कोई स्पेसिफिक कंप्लेंट होंगी, तभी वे उनकी जांच करेंगे। उस दौरान उनको सिविल कोर्ट की पावर होगी और ऐसे में किसी को भी तलब करके बुलाया जा सकता है, कोई भी रिकॉर्ड मंगवाया जा सकता है, लेकिन यह सिविल कोर्ट की पावर मात्र इंक्वायरी के समय तक ही सीमित है। इंक्वायरी समाप्त करने के बाद उनके द्वारा अगर कोई डायरेक्शन दी जाती है, तो उस डायरेक्शन को लागू करने या उसके इन्फोर्समेंट का उनके पास अधिकार नहीं है। तब कह दिया जाता है कि यह मात्र रिकमेंडेशन है, सिफारिश है और उसको यह अधिकार नहीं है कि उनको इन्फोर्स किया जा सके।

अध्यक्ष: आप रिपीट मत कीजिए, दो-चार बिन्दु कह कर अपनी बात समाप्त कीजिए।

श्री लालू यादव: पुनिया जी, हम इसमें थोड़ा हस्तक्षेप करेंगे। देखिए, इसमें विषय और प्वाइंट्स सीमित हैं। जनलोकपाल बिल या सरकारी लोकपाल बिल का कुछ बिन्दुओं पर combination है, हमारी समिति को केवल उसी पर आपका मार्गदर्शन चाहिए। इसके बारे में आपको पहले ही पेपर मिल गए होंगे, जिसमें बहुत सारे विषय हैं और जिन पर आपका विद्वत्तापूर्वक मार्गदर्शन बाद में लिखित में भी भेजा जा सकता है।

श्री पी.एल. पुनिया: मान्यवर, मैंने जो अनुरोध किया था, उसी अनुरोध के आधार पर आज इस समिति के समक्ष अपना साक्ष्य देने के लिए मुझे बुलाया गया है। जो बिन्दु मैंने अपने पत्रक में उठाए थे, मैं स्वयं को उन्हीं तक सीमित रख रहा हूं। उसमें मैंने अनुरोध किया था कि सर्च कमेटी हो, सिलेक्शन कमेटी हो, लोकपाल सेटअप हो और उसमें अनुसूचित जाति/जनजाति का प्रतिनिधित्व हो। उसी के संबंध में मैंने बताया कि इस वर्ग को आगे बढ़ाने के लिए और गैर बराबरी को खत्म करने के लिए कुछ योजनाएं अवश्य हैं और आरक्षण की भी अपनी सुविधा है। इस संबंध में Special Component Plan और Scheduled Caste Sub-Plan के पैसे का जो diversion होता है, उसको भी इसमें सम्मिलित करते हुए इस बिल में उसका प्रावधान किया जाए।

श्री लालू यादव: पुनिया जी, यह इतना इम्पोर्टेंट पद क्रिएट होने वाला है और इन सारे aspects को इसमें देखा जाएगा। लोकपाल और उनके सहयोगियों के पदों में SC/ST, OBC, minorities के रिज़र्वेशन के संबंध में आप क्या सोचते हैं कि यह होना चाहिए या नहीं होना चाहिए?

श्री पी.एल. पुनिया: इसमें अनुसूचित जाति, अनुसूचित जनजाति, ओबीसी, माइनॉरिटीज़ को आरक्षण देना पड़ेगा, क्योंकि आपके जो मिस्लेनियस प्रोवीज़ंस हैं, उनमें एक प्रावधान है कि चाहे वे मैम्बर्स हों, चाहे उनका स्टाफ हो, वह पब्लिक सर्वेंट की हैसियत से काम करेगा। चेअरपर्सन और मैम्बर्स भी उसी हैसियत में होंगे, इसलिए जितना भी रिक्रूटमेंट किया जाएगा, उसमें आरक्षण का नियम लागू करना ही होगा।

चूंकि जो लोकपाल सेटअप है, यह इतना महत्वपूर्ण है, अगर उसमें पिछड़ा वर्ग या अनुसूचित जाति का कोई प्रतिनिधित्व नहीं होगा, तो मैं समझता हूं कि उनके अधिकारों की सुरक्षा की कोई गारंटी नहीं है। यह बहुत आवश्यक है।

अध्यक्ष: क्या और कोई मुद्दा है, जिस पर आप खास तौर से बताना चाहेंगे।

श्री पी.एल. पुनिया: मैं सभी बिन्दुओं पर कुछ न कुछ कह सकता हूं, लेकिन मुख्यतः मुझे जो कहना था, वह मैंने कह दिया है।

SHRI J.B. MOHAPATRA: I am presently working as a Commissioner of Income Tax in Delhi. When I submitted the memorandum to this hon. Committee, I was a Joint Secretary in the J.B. Enquiry Committee. What I am going to say is from investigator's point of view and Department's point of view as to how these particular provisions in the Bill will interface and how they will succeed or how they will fail. Now I come to clause 12. Clause 12 would seek to put up an Investigation Wing. Will the Investigation Wing be manned by the CBI or anybody else? That we do not know as of now. That part of the CBI role in the post-Lokpal has not been clarified as yet. Now, I have not commented in the memorandum for what purpose CBI has been left behind and why it has not been commented upon. My personal view is that the word 'investigation' in clause 12 has been used pretty much generally and almost frivolously in many enactments. Investigation is the life blood of the whole anti-corruption wing of any organization. Investigation as a subject is never taught in any university in India. There is nothing called like Investigator Certificate. It is not like auditing or accounting. Investigators are nurtured and they are seasoned, and as time grows out of clinical experience they get the acumen and the expertise. My point is that, as of now in India, which organization, public or private, has got the best and the talented people. It is the CBI. Secondly, when CBI comes in it is not coming in alone. It is coming with a lot of other expertise also. It has linkages with other organizations like Chief Technical Examiner, CPWD, Central Forensic Lab, etc. All those linkages are there. So, you are brining in not only experienced manpower but you are bringing in experienced linkages also which are very much vital in making Lokpal.

CHAIRMAN: You mean that CBI services should be engaged by the Lokpal. It is not ruled out in this Bill.

SHRI J.B. MOHAPATRA: At the end of the day, CBI is the investigating agency. It will act within the purview of the Government or it can act outside the Government also. My

suggestion is that CBI with its expert manpower, linkages and a lot of experience should not be let go. It should be put to its best use and it should be made part of Lokpal.

CHAIRMAN: Please come to your next point.

SHRI J.B. MOHAPATRA: Now, I come to the next point. In this Bill, for the Lokpal, three kinds of investigative powers are given under clauses 13, 31 and 32. Clause 13 talks about the powers given to the Deputy Superintendent of the Police. These are all CPC and CRPC powers. If you look at clause 31, these are the powers under the CRPC and the Civil Procedure Code for summoning, for getting the evidences on record and taking the statement on oath. In clause 32, these are the curtailed powers of the CRPC. It is given to the officers who are borrowed by the Lokpal in order to assist them. My simple submission is that these kinds of differential powers will be a handicap at the working level for the simple reason that clause 31 of the draft Lokpal Bill cannot be delegated because the powers of the delegation of Lokpal given in the Bill itself, what Lokpal can delegate to its own employees, are the financial and administrative powers. That means, powers mentioned in clause 31 cannot be delegated. So, you cannot delegate the power of summoning witnesses and taking the statement on oath. That means, the Lokpal *per se*, the head of the organisation, has to get involved. Once an investigation starts, everyday, he has to summon and he has to record the evidences. My short point is that Lokpal himself cannot be saddled with thousands of investigations per day. So, there should be provisions in the Bill to delegate these powers to the investigator. This is very important. These powers cannot be delegated because the draft Bill says that only the financial and administrative powers can be delegated. So, powers mentioned in clause 31 cannot be delegated.

SHRI LALU PRASAD: If these powers cannot be delegated, then who will control the functions?

SHRI J.B. MOHAPATRA: Once you delegate the powers, you always have the original control. You are delegating powers for some work to be done.

SHRI ARJUN RAM MEGHWAL: But, your point is that as per proposed Bill, the power cannot be delegated.

SHRI LALU PRASAD: Without powers, how will they function?

SHRI J.B. MOHAPATRA: The point is that it is only a draft Bill. I am saying that there should a provision in this Bill for delegation of these powers also. I come from Income Tax Department. Now, section 131 of the Income Tax Act says that even an Income Tax authority of the level of ITO can record a statement and I don't think that Income Tax Officers have created mayhem by issuing the summons and taking the statements. This has been there.

CHAIRMAN: There is some substance in your point. We will examine that.

SHRI VIJAY BAHADUR SINGH: What he is saying that power of investigation has been vested only to the Lokpal. So, others have become redundant.

SHRI J.B. MOHAPATRA: This will create a lot of problems.

CHAIRMAN: Hon. Members want to know that you have to prove that how the delegation is bad in law.

SHRI J.B. MOHAPATRA: Delegation is not bad in law.

CHAIRMAN: Your point can sustain only if delegation is bad in law.

SHRI J.B. MOHAPATRA: Exactly. It should be delegated. If you have given the power of investigation to a police officer, why should we not give the power of summon to an officer under Lokpal?

CHAIRMAN: He says that a delegation which has been given to an IO is not a correct provision.

SHRI VIJAY BAHADUR SINGH: I will explain. What he is saying that under the CRPC, in the investigation, the *Darogaji* can select whom he is examining and he can take the statement. But, in the Lokpal, in view of the interpretation of clause 31, which he is mentioning, only the Lokpal will order.

SHRI J.B. MOHAPATRA: Let me clarify. Now, clause 13 says that D.S.P. level officer can have the powers as given in the normal circumstances. Those powers are taken from CRPC and CPC. Now, in clause 31, Lokpal will have five powers.

CHAIRMAN: We will examine it. You give it in a bullet form.

श्री लालू प्रसाद: मोहपात्रा जी, इसमें पेंच पर पेंच, contradiction पर contradiction है। इसका क्या समाधान है? आप अपना अधिकार रखना चाहते हैं, और लोग अपना अधिकार रखना चाहते हैं।

श्री जे.बी. मोहपात्रा: माननीय सदस्य, मेरा कहना यही है कि कानून में थोड़ा-सा tinker कर लेंगे, थोड़ी-सी सबकी बात सुन लेंगे।

श्री लालू प्रसाद: हम लोग कितना कानून बदलेंगे? आज हर आदमी सोचता है कि हम अलग रहें।

श्री जे.बी. मोहपात्रा: माननीय सदस्य, कानून को बदलना नहीं है। सर, मैं तीसरे point पर आता हूँ। यह भी मुझे काफी important लग रहा है। Third proviso to clause 17 says that religious trusts, associations of persons, or societies are not be regarded as public servants for this purpose. Now, proviso below clause 17(1)(g) says that religious trusts are not be proceeded against under the Lokpal Act. Now, look at clause 17(3), it says that any person other than mentioned in clause 17(1) can be proceeded against. There is a contradiction and my view is that if religious trusts are exempt from the Lokpal Bill, tomorrow, other charitable institutions like hospitals, education institutions, etc. will also come. When the CRPC, CPC or the Income Tax Act do not exonerate these kinds of religious charities from being proceeded against, why give an exemption in the Lokpal Bill?

CHAIRMAN: We have noted that point. Now, continue with the other point.

SHRI J.B. MOHAPATRA: Now, clause 17(3) says that any action to be taken by any person, who is not a public servant, can be proceeded. That means, a contractor who is having business with the Government, or a consultant who has been appointed, can be proceeded against. He is not a public servant; he is not an employee of the Government, but he can be proceeded against if he is found to be involved in the allegation of corruption. The point is that he can be proceeded against under the Lokpal Act. Now, that is the end of the story. All other authorities, all other public servants in the Lokpal Bill have been saddled with two liabilities. One is under the Prevention of Corruption Act and under the disciplinary rule. Now, when it comes to any person, that is, consultant or contractor, why should we give them

this exemption? Why should we not debar them administratively from participating in government contracts or tenders?

SHRI HARIN PATHAK: That is a very good point.

SHRI J.B. MOHAPATRA: So, the point is that action against any private contractors, consultants, etc, who is found to be guilty under the Lokpal Act should also be administratively addressed.

Now, under clause 24, all the information and all the documents will have to be provided to the accused public servant at the preparatory stage, the moment you start an inquiry. Now, at the preparatory stage, what is available with the investigators? It is a complaint only. This complaint will carry not only the name of that public servant but also other names. It may be a conspiracy. Now, the point is that once you are making that particular allegation open to the public servant before you start an investigation, that means, the entire plan of action of investigator will be revealed. Now, the complainant might say that he does not want his name to be made public under the Right to Information Act.

SHRI J.B. MOHAPATRA (CONTD.): Now, the other persons, whose names are there in the complaint, might seek anonymity under section 11 of the Right to Information Act. Section 8 of the Right to Information Act is there; section 11 is also there. All these things are there. Under the Lokpal Act, how can you, without paying heed to the provisions of the Right to Information Act give all the documents at the preparatory stage in the hands of the public servant? So, this will hamper the investigation in a big way.

SHRI VIJAY BAHADUR SINGH: No, no. He says, it will be there with them, so, it will be very difficult to investigate.

SHRI D.B. CHANDRE GOWDA: As soon as a complaint is filed, it is the duty of the Judge or the Court or the Lokpal or the *Lokayukta* to communicate to the concerned person, and, call for the explanation. That is 'natural justice'. How do you satisfy that by keeping everything secret? What is happening today? In the Anti-corruption Act, you file a complaint; without FIR, without chargesheet, call him before the Court, send him to the jail, and, wait for his explanation. Can this be continued in this country?

CHAIRMAN: Inspection of all the relevant documents is his fundamental right.

SHRI J.B. MOHAPATRA: No, inspection is not his right. Having the gist of the complaint, which affects him, is the right of the public servant. Don't allow him the inspection of all the documents.

CHAIRMAN: Anyway, you have made your points. The question is: where do you draw the line?

SHRI J.B. MOHAPATRA: Sir, I have to say something on clause 28 and 29.

SHRI VIJAY BAHADUR SINGH: The concept of 'natural justice' has widened. If you are going to rely on any document, which has direct or indirect bearing on the case, it has to be made available to him.

SHRI J.B. MOHAPATRA: Sir, clause 28 says that once a complaint is filed with the special court, immediately, the public servant is to be served with notice for disciplinary proceeding. But in the case of other public servants who are hon'ble Members of Parliament or Ministers, it is the competent authority, which will take ninety days' time to decide whether any action is to be taken or not. When it comes to Government servant, there is no right of examination of the investigation report or the recommendations of the Lokpal, and,

straightway, you start the disciplinary proceedings. In my view, it is unfair. Let the disciplinary authority give him the right to examine the document on the basis of which the chargesheet has been filed in the Special Court because things would have been happened, many documents would have been discovered, witnesses would have been coming forward at a later stage.

CHAIRMAN: Thank you. You have made your point.

श्री लालू प्रसाद: चेयरमैन साहब, मेरा आपसे आग्रह है कि चूंकि इनको कहीं जाना है और इन्होंने अपनी बातें पूरी नहीं की हैं, इसलिए इनको अलग से बुलाया जाए।

अध्यक्ष : इन्होंने लिख कर दिया है।

श्री लालू प्रसाद: लिख कर दिया हुआ कौन पढ़ता है? आप इनके लिए कोई दूसरा दिन फिक्स कीजिए ताकि इनकी बातें ठीक से सुनी जाएँ।

अध्यक्ष : दूसरा दिन अभी बाकी नहीं है।

श्री लालू प्रसाद: कैसे बाकी नहीं है?

अध्यक्ष: उन्होंने अपनी पूरी बातें लिख कर दी हैं।

श्री लालू प्रसाद: अगर इन्होंने लिख कर दी हैं, तो उन्हें कोई कितना पढ़ेगा? सामने बैठ कर बातें करना और फिर पूछना अलग बात है।

CHAIRMAN: You have made good points and we will consider these.

SHRI ARJUN RAM MEGHWAL: What is the objection to clause 29?

SHRI J.B. MOHAPATRA: Look at the disharmony or inequity, Sir. In clause 28, it says that the Government will take thirty days' time to issue the chargesheet. In clause 29, a problem is there that the competent authority will decide as to what action is to be taken or proposed to be taken. Even though a chargesheet is filed against a Member of Parliament, still, the competent authority might say, no action is needed. This is the difference, which I am going to mention.

CHAIRMAN: We will duly consider all your points. In case, you want to give any additional points, you are welcome to submit the same in writing.

SHRI J.B. MOHAPATRA: Sir, there is one point about the limitation for filing of the complaint. It speaks about the seven years' time. Suppose a Government employee who has an average career of 36 years commits some criminal misconduct in the 1st year, in the 8th year, in the 19th year, in the 27th year, nothing is going to happen to him because of limitation clause. Would you like to see this man in Government service?

SHRI VIJAY BAHADUR SINGH: The limitation starts from the day when it comes to the knowledge also. So, it can be covered. Suppose a man has committed a mistake ten years ago, but it has come to knowledge only an year ago, then, the limitation period would start from the day when the thing has come to light.

SHRI J.B. MOHAPATRA: Sir, it is the 'commission of the offence' and not 'coming to knowledge'. Suppose, he has made a mistake in the 1st year, 8th year and 19th year, nothing is going to happen, and, he will continue to be there. I have some more interesting points. If time is given, I would be happy to share them with you. Thank you.

CHAIRMAN: You have made your points. Now, I call representatives of Delhi Commission for Protection of Child Rights. Shri Amod K. Kanth, Chairman, and, Shri Shashank Shekhar.

SHRI AMOD K. KANTH: Sir, we represent the Delhi Commission for Protection of Child Rights as well as 'PRAYAS', a voluntary organization. आप जानते हैं कि "प्रयास" बच्चों से जुड़ी एक संस्था है, जो कि राष्ट्रीय स्तर पर काम करती है। हमारा एक छोटा-सा प्रेजेंटेशन है और यह समय के अंदर ही हो जाएगा। इसमें कोई चिन्ता वाली बात नहीं है। We have had many consultations. We had consultations with some of the Members of Parliament and some very senior persons concerned with this entire process. We had consultations with voluntary organizations. We also discussed all other Jan Lokpal Bills, and, we felt the need for fundamental changes.

(At this stage, Shri Amod K. Kanth made a Power Point Presentation)

श्री लालू प्रसाद : आप को interrupt कर रहा हूं। कोई चीज पार्लियामेंट में accept नहीं हुई है।

श्री आमोद के० कंठ : पार्लियामेंट में Sense of the House communicate किया गया है।

SHRI LALU PRASAD: There is different sense in the House also. Each and every Member has separate sense.

श्री आमोद के० कंठ : लेकिन हम लोगों ने जो यह तैयार किया है, यह sense of the house को ध्यान में रखकर तैयार किया है।

श्री लालू प्रसाद : आप ने यह एक-दो आदमियों की बात सुनकर तैयार किया होगा। वहां जितनी पार्टीज हैं, उन का अलग-अलग सेंस है। हम लोग खुद search कर रहे हैं कि असली सेंस क्या हुआ।

श्री आमोद के० कंठ : आप मुझे मौका दें। मैं अपना प्रजेंटेशन पेश कर दूँ तो अच्छा रहेगा।

श्री लालू प्रसाद : आप ने गलत किया, इसलिए मैंने आप को interrupt किया। आप ने कहा कि हम ने इसे स्वीकार कर लिया है।

(Powerpoint presentation)

SHRI ARJUN RAM MEGHWAL: Do you want bifurcation of the CBI?

SHRI AMOD K. KANTH: No, Sir, we don't want bifurcation. The CBI can continue as it is but सिर्फ anti-corruption wing accountable हो सकती है।

SHRI PARIMAL NATHWANI: This is the dual power of the CBI. One way is, the Government will not give any approval to the CBI and then the CBI will use the chain of Lokpal and they will start investigation. There will going to be a big confusion, I think.

SHRI AMOD K. KANTH: No, Sir, according to our suggestion, the CBI will remain accountable only to Lokpal. The accountability of the CBI, so far as its anti-corruption wing is concerned, can remain only with the Lokpal. Accountability in other matters can remain with the Government also because there are different kinds of matters.

(Powerpoint presentation)

CHAIRMAN: There has been a consistent view that to exclude the anti-corruption wing of the CBI and to put it under the Lokpal might be to make the CBI like Hamlet without the prince of Denmark. Without it, the CBI will have nothing. Do you therefore still think that the CBI should report to the Lokpal with its anti-corruption wing going there? The CBI thinks that its ethos, its history, its culture, its prestige, its status and its functional efficacy will vanish.

SHRI AMOD K. KANTH: Sir, I was in charge of anti-corruption wing of the CBI for four years and I handled Hawala case and Harshad Mehta case. I understand how the CBI functions. The issue is that it is not difficult at all. Anti-corruption Wing has a separate system of functioning. The laws are separate. If you transfer the entire CBI there and make it accountable to the Lokpal, it will be useless because it is not concerned at all with other seven areas. I mentioned seven wings of the CBI. Six wings of the CBI except Economic Offences Wing have nothing to do with Lokpal. Why should we place the entire CBI under Lokpal? It will be a pointless exercise. If you want to make the CBI accountable to Lokpal with regard to anti-corruption matters, this is the only way possible. I would like to make an important point here. No investigating agency is subordinate to anybody. So far as investigation is concerned, the CBI and at the level of the State Government some agencies when they become autonomous are able to report to court of law and nobody else. Lokpal cannot control it.

SHRI PRASANTA KUMAR MAJUMDAR: On inclusion of Prime Minister under Lokpal, you have said that this constitutional privilege is available to the President of India and the Governors in States; it has not been provided in the case of Prime Minister of India. Strong opinion among some sections suggests that all actions of the Prime Minister except those

related to security and other strategic issues of the country should be brought under the ambit of Lokpal. In your presentation, you have not listed your view in this matter. I would like to know your view in this regard.

CHAIRMAN: Please answer this question briefly. After this we will hear all the witnesses and ask questions at the end.

SHRI AMOD K. KANTH: Anyone who has knowledge of our Constitution and Indian laws knows that the rule of law does not exclude the Prime Minister of India at all. Only the President and the Governors have the constitutional immunity. Even today the Prime Minister can be easily investigated. In fact, to make a special provision for the Prime Minister will be a wrong suggestion.

SHRI BHARAT GANDHI: Hon. Chairman and respected Members and participants, I would like to speak in Hindi.

सर, हम मानते हैं कि इस देश में सत्ता का मतलब पैसा होता है, यानी जिसके पास, जिस संस्था के पास, जिस सरकार के पास जितना पैसा होता है, उसके पास सत्ता का उतना हिस्सा होता है और जिसके पास जितना कम पैसा होता है, उसके पास उतनी कम सत्ता होती है। पैसा ही सत्ता की मापनी है और पैसा ही आजादी की मापनी है। मैं आप लोगों से निवेदन करूंगा कि मैंने यह बिल पढ़ा था, जो सरकार का बिल है, लेकिन वह मुझे मीडिया ने पढ़वाया था, क्योंकि जब जन-लोकपाल के नाम से टीवी चैनलों का बिल आया, जिसे मैं देश के उद्योगपतियों का बिल कहता हूँ। जब इन उद्योगपतियों के बिल को टीवी चैनलों ने उठाया और इस देश में मार-काट, खून-खराबे की नौबत पैदा की, तो सरकार झुकी, संसद ने शनिवार को असाधारण बहस की। मैं यह मानता हूँ कि यह सब कुछ जो हुआ, वह अच्छा नहीं हुआ। इसलिए आज यह ऐतिहासिक समय है, स्टैंडिंग कमेटी की यह बैठक इतिहास में लिखी जाएगी, यह मानकर के कि लोकतंत्र के तीन स्तंभ माने जाते हैं, विधायिका, कार्यपालिका, न्यायपालिका, लेकिन एक स्वघोषित स्तंभ है मीडिया और मुझे लगता है कि मीडिया इन तीनों स्तंभों को खा गया है, पेट में ऐसा हजम कर गया है कि अब मैं यह देखता हूँ कि संसद की जो बिजनेस एडवायजरी कमेटी है, जो संसद के लिए बिजनेस तय करती है, वहां संसद में जो बिजनेस तय किए जाते हैं वह अखबार पढ़कर के तय किए जाते हैं। जब संसद के नियम-कानून बने थे, तो इसलिए नहीं बने थे। अब समय बदला है, जब सब कुछ मीडिया ही कर रहा है, तो संसद का, सरकार का औचित्य भी और प्रासंगिकता भी पुनर्विचार करने योग्य पहुंच गई है कि शायद अब संसद की भी जरूरत है या नहीं? क्योंकि अगर सब कुछ मीडिया ही तय कर रहा है, वही फैसला कर रहा है, तो लोकपाल का बिल जो सरकार की ओर से आया और जो जनलोकपाल के नाम से आया, पहले तो मैं लब्बोलुआब यह कह दूँ कि इन दोनों में, चाहे सरकार का लोकपाल बने, चाहे मीडिया का लोकपाल, ये दोनों ही देश के लोगों पर टैक्स का बर्डन होगा, इससे भ्रष्टाचार किसी सूरत नहीं जा सकता, चाहे हू-ब-हू अन्ना जी जो डिमांड कर रहे हैं वही बन जाए, तब भी भ्रष्टाचार नहीं जाएगा और सरकार जो चाह रही है वह बन जाए, तब भी भ्रष्टाचार नहीं जाएगा।

श्री विजय बहादुर सिंह: आप सुझाव दीजिए।

श्री हरिन पाठक : भरत जी, मैं आपका बहुत सम्मान करता हूँ। आपने बहुत अहम बातें रखी हैं। हम सबको भी राजनीति में 40-45 साल हो गए हैं। हमें संसद ने जो जिम्मेदारी आज सौंपी है, the responsibility which is entrusted to us by the Parliament is just limited to this particular Bill. पार्लियामेंट ने जो जिम्मेदारी हमें सौंपी है, वह इस बिल के संदर्भ में है, तो आप इस बिल के संदर्भ में सुझाव दें। बाकी देश की वर्तमान परिस्थिति पर किसका क्या रोल है, उपदेश की सारी बातें हम सब साथ बैठकर देश के बारे में चिंता कर सकते हैं, but, we are here for this Bill. If you have any specific suggestions to make as far as this Bill is concerned, kindly restrict to that so that we can do justice to everybody.

श्री भरत गांधी : पाठक साहब, मैं बिल के प्रोविजन्स पर जो बात करने जा रहा हूँ....

SHRI D.B. CHANDRE GOWDA: What that means is, media is running a parallel agency.

SHRI HARIN PATHAK: We know that. But, this is not the debate today. Mr. Gowdaji, now, my specific point to Mr. Bharatji is: Are you in favour of media being covered under the Lokpal? Please tell us that. This is my specific question.

अध्यक्ष : भरत जी, आपको सूची भेजी गई है। जहां तक इस समिति का सवाल है, उसमें हम यह पुनर्विचार नहीं कर सकते कि हम लोकपाल बिल करें ही नहीं, कोई भी लोकपाल बिल न हो। वह हमारे अधिकार क्षेत्र के बाहर की बात है। आपको यह बताना है, संक्षेप में और कम समय में बताना है क्योंकि और बहुत से लोग हैं कि उन पच्चीस बिंदुओं में से आप कोई भी दो बिंदु चुन सकते हैं, चार चुन सकते हैं, दस चुन सकते हैं। वे बिंदु इस लोकपाल बिल में होने चाहिए या उसके बाहर होने चाहिए और उनका संक्षेप में कारण, आपके मत के हिसाब से, नहीं तो यह विवाद और डिबेट तो बहुत व्यापक है।

श्री भरत गांधी : चेयरमैन साहब, मैं

श्री लालू प्रसाद : गांधी जी....

अध्यक्ष : भरत जी, आप जो कुछ भी यहां बोलना चाहें, बोलें, जो यहां आवश्यक है। उसके बाद आप उसको लिखित रूप से पूरी तरह से सप्लीमेंट कर सकते हैं।

श्री भरत गांधी : आप मुझे मेरे दस मिनट दे दें।

श्री लालू प्रसाद : गांधी जी के ऊपर राष्ट्रपिता महात्मा गांधी जी का असर है। इन्होंने कहा कि जिसके पास जितना-जितना पैसा, उतनी-उतनी सत्ता। इस देश में ज्यादातर कांग्रेस पार्टी का और बी.जे.पी. का शासन रहा, तो दो पार्टियों के पास साधन और पैसा मतलब गांधी जी ने जो अभी आदर्श बताए, यह उनमें से है। ठीक है, वे बोल रहे हैं, अब उनको बुलाकर हम कुछ कह नहीं सकते हैं। मतलब अपने घर में बुलाकर उनको तकलीफ नहीं देनी चाहिए, वे जो सोचकर आए हैं, जो उद्गार उन्होंने संजोकर रखे हैं और अभी व्यक्त किए, उनके लिए हम आपको appreciate करते हैं, लेकिन चेयरमैन साहब, हम यह भी नहीं कह सकते हैं कि अभी हमारे सामने विषय लोकपाल बिल का है, इसके प्वाइंट्स पर ही बोलिए। आदमी यह भी बोल सकता है कि इसकी जरूरत ही नहीं है। उन्होंने जो बात बताई है, इससे कोई लक्षण-रूप-रंग

नहीं देख रहे हैं, जो so-called corruption discuss हो रहा है। तो गांधी जी की जो राय है, वह हम ले लें, उनका एक प्वाइंट तो हो गया, वे महसूस नहीं करते हैं, बहुत से लोग महसूस नहीं करते हैं, इसलिए हम लोग compel नहीं कर सकते हैं कि आप यही बोलिए या इसी में से बोलिए कि यह बनना चाहिए या नहीं बनना चाहिए।

श्री भरत गांधी : मैं उसी में से बोलूंगा, चेयरमैन साहब ने जो restrictions लगाई हैं, मैं उसी दायरे में बोलूंगा।

श्री लालू प्रसाद : मैंने तो आपकी मदद की।

श्री भरत गांधी : उसके लिए धन्यवाद। तो यह बात मैंने इसलिए बताई कि बिल में एक शब्द आया है public functionary. Who is public functionary? जब हम आगे बिल पर सुझाव देने जा रहे हैं, अगर हम यह बात न बोलते, तो एक अधूरापन, बिना ज़मीन के जैसी बात होती, इसलिए मैंने बोला। अब मैं सीधे उस बिल पर आ रहा हूं। सबसे पहले तो 9 मई, 2011 को भरत गांधी व अन्य राजनीतिक सुधारकों की तरफ से लोकतांत्रिक लोकपाल विधेयक, Democratic Lokpal Bill ऑनरेबल प्रेजीडेंट को दिया गया और स्टैंडिंग कमेटी को भी यह बिल दिया गया, जिसमें हमने यह कहा कि दोनों ही बिलों में जो बातें हैं और हमने जो बिल पेश किया है, वे contradict नहीं करतीं, यानी कि जो प्रोविज़न्स हमने बिल में दिए हैं, वे प्रोविज़न्स ज़रूर बिल में incorporate किए जाएं और जो प्रोविज़न्स गवर्नमेंट के बिल या इंडस्ट्रियल हाउसेज के बिल में contradict कर रहे हैं, उनको eliminate कर दिया जाए, delete कर दिया जाए, नंबर एक। नंबर दो कि करप्शन के मामले में दोनों ही बिलों में, चाहे वह हाउसेज की तरफ से आया है या गवर्नमेंट की तरफ से, उसमें एक झुकाव है। वह झुकाव यह है कि इंडस्ट्रियल करप्शन सही है, beneficial for the nation है और गवर्नमेंट का करप्शन खतरनाक for the nation है। अभी मैं मानता हूं कि इसके भी तर्क हैं कि अगर करप्ट लोगों के लिए गवर्नमेंट में गुंजाइश बनाई जाएगी, तो intelligent लोग गवर्नमेंट में आएंगे। अगर करप्शन को पूरी तरह रोक दिया जाएगा, तो non-intelligent लोग गवर्नमेंट में आएंगे, क्योंकि अगर हम यह मान लें कि करप्शन का स्कोप हम इंडस्ट्री के लिए बनाएंगे, तो उसमें investment आएगा, विदेश से पैसा आएगा, इसलिए इंडस्ट्री करप्ट रहनी चाहिए, industrialists करप्ट रहने चाहिए। अगर हमारे ऑनरेबल लॉ मिनिस्टर की बात को सही माना जाए तो यह लॉजिक लीगल करप्शन, ऐडमिनिस्ट्रेटिव एंड पोलिटिकल करप्शन में भी लागू होता है।

श्री वीजय बहादुर सिंह : गांधी जी, किस प्रोविज़न से यह आपका inference draw हो रहा है? आप धारा बता दीजिए।

श्री भरत गांधी : मैंने देखा कि गवर्नमेंट के बिल और इंडस्ट्रियल हाउसेज, दोनों के बिलों में यह बात कहीं नहीं है, एक भी प्रोविज़न नहीं रखा है कि ब्राइबरी देने वाले, घूस देने वाले के लिए भी कोई प्रोविज़न होगा, कोई पनिशमेंट होगा।

श्री अर्जुन राम मेघवाल : आपका मतलब है कि जो जनलोकपाल है, वह इंडस्ट्रियल हाउसेज का बिल है, यही कहना चाहते हैं आप?

श्री भरत गांधी : मैं बार-बार यही कह रहा हूँ, क्योंकि वह इंडस्ट्रियल हाउसेज ने मेरे तक पहुंचाया। अगर मीडिया उसको उठाता नहीं, तो मैं क्यों उसको पढ़ता? तीसरी बात यह है कि अगर लोकपाल बने तो उसमें घूस देने वाले को भी ज़रूर पनिशमेंट क्या दिया जाएगा, प्रोविज़न क्या होगा, जांच क्या होगी, उसका मैकेनिज़्म भी आना चाहिए, जो absent है। यह प्रोविज़न होना चाहिए। चौथी बात यह है, मैं एक विशेष रिक्वेस्ट करूंगा कि सी.बी.आई. रहे या न रहे, सी.बी.आई. के मामले में सुप्रीम कोर्ट में केस गया था कि यह Constitutional body है या नहीं? Indian Constitution में clear लिखा है कि police is a subject under the domain of the State Government and not the Central Government. CBI is also police but it is working under the Central Government. Constitution के किस प्रोविज़न के अंतर्गत सी.बी.आई. सेंट्रल गवर्नमेंट में हो सकती है, यह अपने आप में questionable है। एक दूसरी बात है कि investigation के लिए सी.बी.आई. का रिकॉर्ड है कि वह 98 परसेंट मुकदमे हार गई है। थाने की जो पुलिस है, जो लोकल पुलिस गांवों में काम करती है, उसका भी हारने का इतना रिकॉर्ड नहीं है, जितना सी.बी.आई. का है। इसका मतलब लोकपाल या कोई investigating agency ज्यादा effective बने, इसकी requirement तो है, यह doubtless है, लेकिन हम सी.बी.आई. पर इतना ज्यादा ज़ोर नहीं दे सकते कि अंदर रखें कि बाहर रखें। हमारा ध्यान तो करप्शन पर होना चाहिए कि करप्शन खत्म हो, चाहे जैसे हो, अंदर रखने से खत्म हो या बाहर रखने से खत्म हो।

पांचवीं बात, मैं एक बात और कहना चाहूंगा कि जो कोई भी संवैधानिक पद पर बैठता है, चाहे प्रेज़िडेंट के पद पर, चाहे प्राइम मिनिस्टर के पद पर, चाहे किसी भी Constitutional post पर कोई बैठता है, तो मैं इस स्टैंडिंग कमेटी में आप लोगों के माध्यम से एक रिक्वेस्ट करना चाहूंगा कि उसको प्राइवेट प्रॉपर्टी रखना allow न किया जाए।

श्री भरत गांधी (क्रमागत): वह लोकपाल पर भी लागू हो। यह जो लोकपाल बन रहा है, अभी पूनिया साहब थे, अब नहीं हैं, इसमें एस.सी.\एस.टी. का रिप्रजेंटेशन हो, ओ.बी.सी. का रिप्रजेंटेशन हो, गरीबों का रिप्रजेंटेशन हो, इंडस्ट्रीवाले तो जबरदस्ती रिप्रजेंटेशन ले ही लेंगे, कुल मिलाकर सबका रिप्रजेंटेशन हो और इसका एक सॉल्यूशन है कि लोकपाल इलेक्टड हो। लोकपाल का चुनाव हो, इसकी कोई स्क्रीनिंग कमेटी नहीं होनी चाहिए, ऐसा कुछ भी नहीं होना चाहिए कि दस-बीस लोग तय करें कि फलां आदमी लोकपाल होगा। हमने अपने डेमोक्रेटिक बिल में यह सजेस्ट किया है कि देश के गांव के प्रधान और देश के ब्लॉक प्रमुख का ओपन इलेक्शन हो, एक ही दिन में बिना खर्च के इलेक्शन होगा और उसमें यह तय कर दिया जाए कि जो भी आदमी इलेक्शन में जीते, वह लोकपाल बने, जो हारे वह लोकपाल न बने।

श्री अर्जुन राम मेघवाल : आपने अपने नोट में यह भी कहा है कि सुप्रीम कोर्ट का जज ही इसमें चुनाव लड़ सकता है ?

श्री भरत गांधी : सर, मैंने यह बात इसलिए कही कि इस देश के मीडिया ने, इस देश के लोगों को ज्यादा बरगला दिया है और यह कह दिया कि सुप्रीम कोर्ट के जज सबसे ईमानदार

होते हैं और संसद में जाने वाले सब बेईमान होते हैं। यह जो मैसेज चला गया है, इसकी मजबूरी में मुझे यह प्रॉविजन करना पड़ा है।

श्री अर्जुन राम मेघवाल: आपने यह प्रॉविजन डाला है कि सुप्रीम कोर्ट का जज ही चुनाव लड़ सकता है।

अध्यक्ष: आप इनको समाप्त कर लेने दीजिए। अगर किसी को एक दो कमेंट्स ऐड करना है तो कर दीजिए।

श्री भरत गांधी: सर, हमारे साथ अरुनेश्वर गुप्ता जी हैं, जो सुप्रीम कोर्ट में एडवोकेट हैं, वह भी इसके बारे में बोलेंगे।

अध्यक्ष: आप उनको बोलने का चांस दे दीजिए और उसके बाद बाइंड-अप करिए।

श्री भरत गांधी : सर, कुछ बेसिक बातों पर गुप्ता जी बोलेंगे। सर, मैं अनिर्वाचित लोकपाल का पूरी तरह से विरोध करता हूं और अगर ऐसा होगा, तो देश के टेक्स पर बर्डन होगा, वह कुछ लोगों का कठपुतली होगा, चाहे नेताओं का कठपुतली हो, चाहे उद्योगपतियों का कठपुतली हो। चुनाव हो तो लोकपाल बनना चाहिए, अगर चुनाव न हो तो लोकपाल नहीं बनना चाहिए। सर, बहुत-बहुत धन्यवाद।

श्री लालू प्रसाद : वोटर कौन होगा?

श्री भरत गांधी : मुझे ऑन्स्वर देने दीजिए। पूरे देश के गांव के प्रधान या ब्लॉक प्रमुख वोटर होंगे। इसके अलावा मैं इसे पार्लियामेंट के ज्युरिडिक्शन पर छोड़ना चाहता हूं। चूंकि गांव के प्रधानों का रिजर्वेशन है, प्रधानों का ओ.बी.सी. और एस.सी./एस.टी. का रिजर्वेशन है। इसमें पूनिया साहब की बात भी आ जाएगी और ओ.बी.सी. का रिजर्वेशन भी हो जाएगा।

श्री वीजय बहादुर सिंह : इसमें आपने एम.पी., एम.एल.ए. को क्यों महरूम कर दिया है?

अध्यक्ष : ऐसा है इस तरह से यह खत्म नहीं होगा।

श्री शैलेन्द्र कुमार : आप इसमें पब्लिक के चुने हुए सभी रिप्रजेंटेटिव्स को ले लीजिए।

श्री भरत गांधी : गांव के प्रधान के लिए रिजर्वेशन लागू है, इसलिए इसमें ओ.बी.सी. का रिप्रजेंटेशन हो जाएगा, एस.सी./एस.टी. का रिप्रजेंटेशन हो जाएगा।

श्री शैलेन्द्र कुमार : पब्लिक के चुने हुए जो प्रतिनिधि हैं, उनको भी इसमें शामिल कीजिए कि वे भी वोट दें।

श्री भरत गांधी : मैं इनको शामिल नहीं करना चाहता हूं। मैं इसका कारण आपको बताता हूं कि देश में तीन लोगों के पास, PM, CM, DM के पास पॉलिटिकल पॉवर है। ये जो तीन एम हैं इनमें से जो CM है, इसके इलेक्शन में हमारे एम.एल.ए. वोटिंग करते हैं, उनको वर्टिकल पॉवर है, इसी तरह से एम.पी. के पास पॉवर है और वे PM चुनते हैं, हमारे गांव प्रधान

डायरेक्ट इलेक्टड होते हैं, लेकिन उनके पास कोई वर्टिकल पॉवर एवेलेबल नहीं है, जो रोल प्ले करे, इसलिए हम उनको देना चाहते हैं।

श्री लालू प्रसाद : गांधी जी, आपकी बात सही है। आप गांधियन रास्ते पर चल रहे हैं, जो संभव ही नहीं है।

अध्यक्ष: मैं यह स्पष्ट कर दूँ कि किसी एक संस्था से एक से ज्यादा व्यक्ति नहीं बोल सकता क्योंकि आप जानते हैं कि बहुत सारे व्यक्ति बोलने के लिए बैठे हुए हैं। हम इसमें एक दो मिनट का अपवाद श्री अरुनेश्वर गुप्ता जी के लिए कर रहे हैं, लेकिन यह अपवाद अन्य लोगों के लिए लागू नहीं होगा।

SHRI ARUNESHWAR GUPTA: I will take only two minutes.

अध्यक्ष: आप, जल्दी खत्म कर दीजिए। आप दो मिनट में खत्म कर दीजिए। शैलेन्द्र जी, अभी नहीं।

SHRI ARUNESHWAR GUPTA: Mr Chairman, thank you, for special support.

I am just making three short points. One though it looks funny and reaction to it. There was an election of the Lokpal. It is a very serious issue. I have circulated a document entitled "The Federalist". This document was written by Alexander Hamilton, James Madison and John Jay. The American independent document was prepared in 1776. There was a paper written because the Confederation took place. It was circulated to everybody. This paper was written almost every day. I am just quoting from that document which is 76 in number. I have circulated it to all of you. I will just quote a paragraph because this shows that there are three ways of appointment by the President. The second is it has been adopted here by the Assembly of People which is under section 4. Section 4 gives the list of people who will appoint the Lokpal. Now the problem with the Assembly of people is what exactly it says and I will read from page 437. It is very tell-tailing.

"There is nothing so apt to agitate the passions of mankind as personal considerations, whether they relate to ourselves or to others, who are to be the objects of our choice or preference. Hence in every exercise of the power of appointing to offices by an assembly of men, we must expect to see a full display of all the private and party likings and dislikes, partialities and antipathies, attachments and animosities, which are felt by those who compose the assembly. The choice which may at any time happen to be made under such circumstances, will of course be the result either of a victory gained by one party over the other, or of a compromise between the parties. In either case, the intrinsic merit of the candidate will be too often out of sight. In the first, the qualifications best adapted to uniting the suffrages of the party, will be more considered than those which fit the person for the station. In the last, the coalition will commonly turn upon some interested equivalent: "Give us the man we wish for this office, and you shall have one you wish for that." This is what is happening in the appointment of judges by the collegium. "This will be the usual condition of the bargain. And it will rarely happen that the advance of the public service will be the primary object either of party victories or of party negotiations."

If you want to stop this, get out of this. This is my first point. Ultimately, it should not be by the Assembly of People It should be by only the President who get information from everybody, who is not here, who is not one of the part under section 17 or it should be by an

election. As suggested by Mr. Gandhi, it should be by an election because that will also be a referendum on the Lokpal. Today, there is no referendum.

I will finish in two minutes. The second issue is that under section 12 of the Prevention of the Corruption Act, 1988. It deals with the punishment on abetment of offences. Now second section says extend it to the whole of India and apply to the public servants. The whole Lokpal applies to the public servants. If the power is with the Lokpal to deal with anybody, he can seize, investigate and direct the people which include four words which are being used here "Any person, either person or whoever". Section 43 says "whoever". I don't understand what exactly it means. That means any person. So in the ambit of the Lokpal you should cover both the persons who give the bribe and the person who takes the bribe. Ultimately, if you see section 2(d), this will be the first objection. When anybody files a complaint, the complaint is made in such a form that the public servant has committed an offence. But the issue is along with him is a person who is giving a bribe and also committing an offence. Now he will say prima facie there is no complaint against me. Since there is no complaint against me, investigation cannot continue. So there will be a stay by the court or any other investigation that is taken up with reference to any action which is being there. This will be to cover any person who is also objecting to the Lokpal and really to go into the clauses. Sections 8 and 9 of the Corruption Act dealt with obtaining, accepting or attempt to obtain. The only way was fill up these. This is what the courts used to do. Now, you have come up with the concept of assets. **SHRI ARUNESHWAR GUPTA (CONTD.):** That anybody who has got large assets is the only person who can be corrupt. This is the way the investigation will continue. The assets are not created out of nothing. The assets are only transferred from one hand to another hand. Here the basic problem is parking of funds outside. This parking of funds outside is always done by companies which exist outside. So, they have to be covered.

The last point is regarding the jurisdiction. Under clause 17 you have covered the Prime Minister after he demits the office. Similarly, every judge, whether High Court or Supreme Court, should also be covered after he demits office.

(DR. ABHISHEK MANU SINGHVI in the Chair)

CHAIRMAN: I must point out, however, that regarding your second point, there is a provision, clause 17(3), which says, "The Lokpal may inquire into any act or conduct of any person other than those referred to in sub-section (1), if such person is associated...." So, all forms of abetment and association are covered. That is a matter of interpretation.

SHRI ARUNESHWAR GUPTA: Then the language of the complaint will have to be widened.

CHAIRMAN: It is not that he is only entitled to go against the bribe taker. The bribe giver will also be covered. It is subject to some other details.

SHRI ARUNESHWAR GUPTA: There should be punishment for him.

CHAIRMAN: I must remind all of you that you should consider sending a memorandum suggesting the changes, in square brackets, in any particular clause -- you may focus on it -- on this draft Lokpal Bill. If you can send it within a week or two weeks, it will be very good. Thank you.

May I now call on the representatives of the UNDP team to make their presentation?

MS. SUMEETA BANERJI: Respected Chairman and Members of the Standing Committee, first, I would like to start by thanking you for giving us, the United Nations Development Programme, this opportunity. I work on democratic governance at UNDP in India.

We actually took the opportunity to really focus our research on some of the global examples coming from several countries. There is a very clear focus on issues which are being discussed in the public domain. We have covered four broad issues, jurisdiction, accountability, citizens' charters and we would like to share with you a number of presentations on the documents that we have already circulated to the Committee. This background research is based on the inputs received from a couple of Anti-Corruption Commissions in other countries, Anti-Corruption Academies and democratic governance and corruption experts in several countries and UNDP's own Centre of Excellence at our headquarters in New York, in regional centres and in UN Office of Drugs and Crime (UNODC) as well. We are basing our submission here from the inputs received from different parts of our organisation.

Just one thing we want to share upfront. This document shares examples on how some aspects have been addressed in anti-corruption laws in these countries. We would like to leave it to the Standing Committee to see how these are applicable in India's context. Any queries, particularly, on very specific legal issues we would like to refer them back to our UNDP experts. If there are any particular questions we would like to receive them and we will come back to the Committee with studied and considered responses.

(Then the witness made a power-point presentation.)

SHRI HARIN PATHAK: Madam, what you are saying is all there in these papers. You have provided us the hard copy. It would be better if you come to what your conclusion is. What are your suggestions? That would be more beneficial to the Committee.

SHRI VIJAY BAHADUR SINGH: You only tell us which clause should be included and which should not be included.

MS. SUMEETA BANERJI: Sir, I would go back to my first point. We have taken this opportunity to bring experiences and examples from several countries along with specific provisions of the law from those countries. We will share provisions as well as full text of the law.

SHRI ARJUN RAM MEGHWAL: What is your experience in regard to the USA and Japan?

MS. SUMEETA BANERJI: We could not manage to get hold of the law in Japan.

CHAIRMAN: Let them make their presentation. You can just make it concise because we have your written note. If you make some pointed suggestions then we will have questions and answers.

MS. SUMEETA BANERJI: Sir, what we have basically done is we have brought the global examples. We will not like to share any specific point of view at this stage. We have just brought examples from different countries. We also wanted to say that there is the International Legal Advisory Council which looks at anti corruption legislation and we have offered *pro bono* support to look at the draft law.

CHAIRMAN: We appreciate your research; we appreciate your inter- country comparisons and we also appreciate the fact that you are available as a support organization for further research and all that. If you have anything in mind about any of these specific issues like Prime Minister's inclusion, CBI, CVC, etc. you can give us a short submission in writing.

Now Transparency International India.

SHRI P.S. BAWA: Sir, I am really honoured to be present here. We express full faith in the legislative process and in the genius of those who have brought out a wonderful and fruitful Bill on the Lokpal. We feel that there is no infallible document which must be accepted and it is only this process of give and take and understanding each others views that something ideal is likely to emerge. Before I mention the specific points which we would like to recommend in the draft Bill, I would like to compliment the Drafting Committee for some of the wonderful things, which we had always wished but never expected, in the Bill. Nobody has pointed it out, not even the Government and none of the drafters of the Bill. I thought there is a good opportunity to compliment those who have drafted it. One is that the Lokpal is apolitical. He will not be a Member of Parliament or connected with any political party. I will just highlight a few of these provisions. The President of India is empowered to remove or suspend any member of the Lokpal pending an inquiry by the Supreme Court. It is a wonderful provision. There is a restriction on post-retirement employment. It is also an excellent provision. The Lokpal is completely independent in appointing its own staff. It will not be guided by the Central Government. The investigation agency is independent. It will have a separate wing. It is another point whether in the interim the Anti-Corruption Wing of the CBI is brought under this or the Lokpal has its own independent investigation agency later on, that is entirely different. But the Lokpal will have an independent investigating agency. It will also have an independent prosecution wing. The removal of the single directive which we have been asking, has been accepted in the Lokpal Bill, under clause 27 (1) that there is no discrimination and you can go ahead with the inquiry. There is a removal of sanction to prosecute again under clause 27. There is a provision for the attachment of assets of the corrupt public servants pending inquiry. The Lokpal can advise the Government that the officer may be transferred or suspended and can also advise for recovery of loss from the convicted public servant. There will be as many special courts as the Lokpal will ask. It will not have to depend on the budgetary provisions. All the expenses of the Lokpal will be charged under the Consolidated Fund of India. Last but not the least, this Act will override all other Acts. Therefore, I think we must compliment some of the wonderful provisions that have been included.

Now I come to the second aspect where I would specifically mention as to what we think and what ought to be done. One is about the jurisdiction. It has been mentioned that it will only look into the cases of Grade 'A' officers. Our contention is that Grade 'A' is not defined in any law. It is a sort of a financial categorization of Grade 'A', 'B' and 'C' officers. This criterion, based on the salary, is not a correct criterion. Therefore, this defies the equality clause in the Constitution where justice is to be delivered to everybody and everybody is equal before law. We feel that the Bill should cover all public servants irrespective of their being category a, b, c, or whatever it is. The second objection is: if the officer has gone back to his own State after having served in the Centre on deputation, the consent of the concerned State Government shall be required. It is not necessary because Lokpal would be an overarching authority in all these matters. So where the officer who was serving on deputation with the Government of India was involved in a corruption case, even if he goes back, there is no need for the Lokpal to seek the consent of the State Government.

Thirdly, if the Parliament considers that by including everybody under the Lokpal it will be overloaded, then all others and even category 'A' has to be legally defined. It must be mentioned in this law that all others shall be dealt with by a, b, or c agencies.

SHRI P.S. BAWA (contd.): There is no need to exclude any category of persons from the purview of the Lokpal, whether Lokpal directly looks into the matter, or, it gets looked into by another agency which is under this or which is a parallel agency or some other agency which is, independently, looking into this. So, this is on jurisdiction clause. Coming to clause

23 - Procedure in respect of inquiry and investigation, we feel that the defaulter had been given a very, very long rope because at every stage of the inquiry, the Lokpal will give the person an opportunity of being heard. Even at the stage of preliminary investigation, there is an opportunity of being heard. Even when the chargesheet is to be filed, this person will be given another opportunity to be heard. So, this is like saying, “बता, तेरी रज़ा क्या है?” It is like, you tell the Lokpal what action you want to be taken against. I think this is too lenient a view. There are two other clauses which I could not make out, whether they are different from this clause, that is, permission to be heard, or, they are independent. So, our view is that there is no such provision under the Prevention of Corruption Act. When we are investigating a case, we always give an opportunity to the accused person, to the suspect, of being heard. He is being heard at every stage. So, we feel, that ‘being heard’ clause is too liberal...

CHAIRMAN: Bawaji, you are making good points. But you have made them in your note. Don't read out from there.

SHRI P.S. BAWA: When you look at clause 29, that is, action against Members of Parliament, the Lokpal will send a charge sheet to the Special Court. But the process will have to wait till the sanction of the Competent Authority, and ninety days have been given for that sanction. I think this is too untenable a period to be given to the Competent Authority which must decide this within 30 days. And we are not sure, when the decision of the Lokpal is placed on the Table of the House, whether there would be a discussion in the House on this, or, whether it would only be a formality. We want some clarity on this issue, and this should be clarified in the law. This appears to be a little ambiguous at this point of time when you read the text.

Then, clause 56; this is about legal assistance. According to the draft Bill, it is incumbent on the Lokpal to give legal assistance to a defaulter. We are against this. In no other law, even the law on murder, does the Government takes responsibility on its shoulders to give that. It is only in honour of Directive Principles of State Policy that legal aid for those, who are indigent and those who cannot afford, has been evolved. Here, we are evolving a different law, by giving a lot of concessions, financial assistance and legal assistance to a person who has committed a very serious offence of corruption. So, we are against this obligation of the State or the Lokpal to protect such a person...

SHRI VIJAY BAHADUR SINGH: Bawaji, this is a good point.

SHRI P.S. BAWA: I now come to Offences and Penalties. These are only meant for the complainant, and we are against that because this will discourage a complainant. Secondly, this is discriminatory. The reason is that when a complainant goes to the CBI and the defaulter is acquitted, there is no such penalty on the complainant. Then why should there be any penalty on this complainant who has come to the Lokpal and whose case has not seen the logical end of a conviction? So, there is discrimination between the two. My third point on this is that a law on defamation already exists. If I, as a public servant, am being defamed by a complainant, I can invoke the Defamation Law. And, my fourth point is this. The Lokpal would consist of very high ranking judges, and every Bench will have one Judge of the Supreme Court or the retired Judge of the High Court. So, we assume that under the *prima facie* rule, the complainant, whose complaint is being looked into, is *prima facie* okay, and therefore, there is no malice or there is nothing fictitious in that. That should be the assumption. Therefore, we are against Chapter 14 which deals with offences and penalties of the complainant in case of certain things.

I come to clause 16 which deals with power to make rules. I am mentioning this because we have a bad experience. The Benami Transactions law was enacted in 1988, but even after 21

years, rules have not been framed. We had to invoke the Right to Information Act; we had to go to the CIC, and the CIC has given instructions to the Government that rules should be framed. This is again one year old. But rules have not yet been framed.

Now, I come to my last point. The Government of India has ratified the U.N. Convention Against Corruption. There are obligations of the Government under the Convention, and we suggest that clause 17 on the Prime Minister should be reconciled with the spirit of the U.N.C.A.C. And we do not have any definite views whether the Prime Minister should be included or excluded. Hypothetically, if the Prime Minister had been included in this atmosphere, probably, there would be a clamor for him to resign on moral grounds. Anyway, we leave it to the wisdom of the Committee to decide this. But, our point is that all the articles of the Convention must be reconciled with this Bill so that we are not embarrassed at that forum.

One more significant point is that there is a need for Lokayukta in all the States. Now, if we see the analogy of the Protection of Human Rights Act, 1993, it contains provisions for State Human Rights Commissions. Now, the same Lokpal Bill can also make a provision for Lokayuktas in the States. Our suggestion is that it will simplify all the matters, and we will not have to go to the States which do not have these.

Our last point is this. The hon. Law Minister also had mentioned it in one of his articles that a few Bills, which would deal with corruption, will also be brought out. Now, we have the Judicial Standards and Accountability Bill, Public Procurement Bill, Whistleblowers Protection Bill, Public Service Delivery Act, Electoral Reforms, etc. which are all inter-related. So, when you are dealing with the problem of corruption, then, all these Bills must be taken up simultaneously, and we are very confident that Parliament, being very serious these days, would bring these Bills into effect. Thank you very much.

MS. SANDHYA JAIN: Sir, we just wanted to say that we really appreciate the effort. I want to make a couple of points. We had made a critique of the Jan Lokpal Bill and submitted it. It is on record. And, we are not talking about that now. We thank you for the opportunity. Now, we are speaking on the official Bill which was introduced in Parliament and is before the Standing Committee. We want to put it on record and appreciate that successive Parliaments have tried to bring about Lokpal after it was first voted by late Dr. L.M. Singhvi. For whatever reasons behind its failure, now, there is a public atmosphere of revulsion against corruption in many corporate, bureaucratic and political circles. I would also like to put on record and appreciate that the Government has taken action even though there is no Lokpal. So, it is not as if there is no anti-corruption activity in the absence of Lokpal. What we do feel is, we had resented when certain kinds of activities took place to pressurize Parliament by saying that Parliament is not supreme and certain things will have to be done even without scrutiny or discussion. It was this that forces us to take a view on this and intervene.

Now, I appreciate that Parliament is trying to bring an effective legislation against corruption which is all-India in nature. I appreciate that it is not going to include the PMO within its purview. I think, this demand is only to lower the dignity of the Office of the Prime Minister and demoralize the Government. It was a political demand; more than an anti-corruption measure *per se*.

Specific to your proposed legislation, Sir, we have some very broad sweeping comments to make. We are not going into the nitty-gritty of the Bill. I come to Chapter - II which deals with Establishment of Lokpal. You have given a composition consisting of Chairperson plus eight Members and four of whom are judicial Members. You want that Chairperson to be the Chief Justice of India or a Judge of the Supreme Court and 50 per cent

should be either from retired High Court Chief Justices or they should be members of the Supreme Court. And, you also like to have other Members who are experts in various fields and we have no problem with this. But, what I want to say here specifically is this. As a person in public, I always regard Parliament and its supremacy. I feel, Parliament is the most accountable institution, because it faces the people regularly and the people have the right to change either the Government or an individual MP or an MLA. Therefore, your accountability is very high and it is judged regularly. This does not apply, in my humble opinion, to the Judiciary. And, some of us have serious reservations about giving a fledgling institution like Lokpal, which is going to be the thrust of anti-corruption activity in this country, to Judiciary and the legal fraternity in the manner that is proposed in the Bill. My specific reservation which I would like to bring on record is, we have the former Chief Justice of the SC who was made as the Chairperson of the National Human Rights Commission. After that, there were serious charges of disproportionate wealth accumulated against his close kin. He refused to undergo scrutiny. He refused to step down. He refused an RTI on his Income Tax Returns while he was in office. And, there is no means of moving against him. Then, we have no provision in law today to scrutinize judgments of Judges who became controversial and against whom peculiar things have happened. There is a case where the CAG has found very major actions of corruption against a major leading corporation of this country and there is a judgment which linked it with a Judge. But, that has not been scrutinized. No Member of Parliament has spoken till today. So, can we really have those kinds of people in Lokpal? I think, not. You have one Chief Justice of India. The country had the worst disaster -- The Bhopal Gas disaster. A special hospital was created and it was found to be catering to the elite and not to the victims. So, when the scandal has become 'too much', he resigned. But, there is no action.

CHAIRMAN: Ms. Sandhya, you have made your point that Judges should not be there or should be there minimally. We understood the point.

MS. SANDHYA JAIN: Then, you have Lokayukta. One Lokayukta has resigned in a State after some of his land deals become controversial. Before you can recover, the deputy of the same Lokayukta goes out because his land deals are coming under scrutiny. So, there is some peculiarity. Sir, Judges have a weakness of getting out of turn allotment of plots which needs to be looked into. Then, with your permission, I want to make a point. Parliament does allow the freedom of speech. Look at the activist lawyers. The lawyers are supposed to be swearing by the Constitution very much like MPs who are also supposed to uphold the Constitution. You have one legal luminary who has just said, 'if you are unhappy, you separate from the country and the country may disintegrate.' And, nobody has said a word on that. You have high profile lawyers who are getting out of turn allotments from State Governments where there are charges of corruption against the Chief Ministers; nobody says a word against that. You have States where there is law that non-farmers cannot buy agriculture land and the lawyers are getting out of turn allotments!

SHRIMATI DEEPA DASMUNSI: Same is the case with journalists. The journalists are getting plots allotted from the State Governments. So, the same is the case with journalists.

MS. SANDHYA JAIN: Sir, I have no problem of your bringing media under any kind of scrutiny. Actually, the rule has always been that dog does not bite dog. But, now, the crime situation in the country is changing. So, I would like the same law for everyone.

Finally, I want to make one more point about activist lawyers. When the worst human disaster -- Bhopal Gas Disaster -- took place in the country, we found some of the leading lawyers of the country, instead of being with the human rights violators who are otherwise very good at human rights were not with humans at all, but were with the Union Carbide.

Some of the lawyers were found to be on 'retainership.' It means, he will not appear for victims. They were in the pockets of those corporate.

SHRI VIJAY BAHADUR SINGH: So, you want that if two sides go to court, one side should not have any representation at all.

MS. SANDHYA JAIN: No, Sir. I am only pointing out the lacunae. The entire top legal luminary of this country found on the pay roll of the Union Carbide and there was no one to represent the victims.

SHRI VIJAY BAHADUR SINGH: There were half-a-dozen very good lawyers from that side.

MS. SANDHYA JAIN: Sir, another point I want to make is relating to Selection Committee. We are sticking to our time-limit. On the Selection Committee, we don't want judges or lawyers for reasons we have given, because they will influence the Prime Minister and all. So, I trust politicians more than anyone else. We would like you people to decide who should be the Lokpal.

Then I come to the point relating to the Search Committee. This is the crux of the matter. Selection Committee is a formality. The Search Committee is going to do the whole thing. I think, you should have a system that PMO should be the nodal office for Selection Committee. It can give public representation -- as we have come here after looking at your newspaper advertisement -- asking the public that whoever wants to recommend a person can do so by giving reasons. As a citizen, let me recommend a person for Lokpal office. And, at the same time, please don't weigh it by saying, 'Oh! This man has got 200 votes. So, he should be selected.' It cannot be like selection through SMS as we see in television. Logical reasons have to be looked into.

CHAIRMAN: You can give us in writing whatever is left out.

MS. SANDHYA JAIN: Sir, we all know about the media. We have heard about the paid news scandal. You have a clause that Jt. Secretary and above needs Government's sanction for prosecution. I think, if you waive that and confine Lokpal to Jt. Secretary and above officers, you will have a focused anti-corruption, because my experience is that corruption is a top-down affair, it never be bottom-up affair.

MS. SANDHYA JAIN (CONTD.): So, don't go for *chaprasis*, don't go for *sarkari* drivers; go for the top corporates, go for the KG Basin, go for the media and things like that.

श्री अर्जुन राम मेघवाल: ये कह रही हैं कि उसमें टॉप लॉयर और टॉप मीडिया सब होने चाहिए।

सुश्री संध्या जैन: देखिए, अगर नीरा राडिया को नहीं पकड़ेंगे, तो फिर किसको पकड़ेंगे?

अध्यक्ष: ठीक है, थैंक्यू। अगर आपको कुछ और सुझाव देना हो, तो आप उसे लिखित रूप में दे दीजिएगा।

श्री लालू प्रसाद: संध्या मैडम, आप हमारी बात सुनिए। हम अभी आपका ओजस्वी भाषण सुन रहे थे। हम लोगों को आपसे बहुत-से क्वेश्चंस पूछने हैं, इसलिए कृपा करके आप धैर्य से बैठिए और हमारे सवाल का जवाब दीजिए। हमारा यह impression था कि चेयरमैन साहब आपको मीडिया के संदर्भ में ही चुन कर बुलाये होंगे। बाहर मीडिया वाले यह पूछ रहे हैं कि

हम लोगों की तरफ से किसको बुलाया गया है? यह हमको खुद मालूम नहीं है। चेयरमैन साहब, जो इम्पोर्टेंट मीडिया और एसोसिएशंस हैं, उनको आपने बुलाया है या नहीं? क्योंकि बाहर में सब पूछ रहे हैं कि किसको बुलाया गया है? सारे एडिटर्स को एक दिन बुलाइए।

अध्यक्ष: एडिटर्स गिल्ड और एनबीसी को बुलाया गया है, जो कि विजुअल और प्रिंट मीडिया से संबंधित हैं। यह आपको दी गयी लिस्ट में भी लिखा है।

श्री लालू प्रसाद: लेकिन वे कहाँ हैं?

अध्यक्ष: वे बाद में आएँगे।

सुश्री संध्या जैन: सर, हम यहाँ इसलिए आये हैं, क्योंकि हमने रिक्वेस्ट दी थी।

श्री लालू प्रसाद: यह ठीक है कि आप यहाँ आ गईं, आपका स्वागत है। जब हमने आपको समय दिया है, तो हम लोग आपकी बात सुनने के लिए ही यहाँ बैठे हैं, जबकि आप लेट से आयी हैं। हमें आपसे कई सवाल पूछने हैं, अगर आपके पास टाइम हो तो आप यहाँ रुकिये।

अध्यक्ष: ये थोड़ी देर रुकेंगी। अब पीआरएस अपनी बात कहें।

SHRI M.R. MADHAVAN: Sir, I thank you for having given us the opportunity to present our points before the Standing Committee. Sir, we have focused our presentation to five brief points where the Bill is at variance or contradiction with some existing laws or some pending Bills. So, we are just focussing mainly on those issues now, because many of the other issues have been discussed by many others.

The first one, which some others have also pointed out, is that what happens to the role of the Central Vigilance Commission if the Lokpal Bill is passed in its current form. The CVC, under the 2003 CVC Act, has the jurisdiction over the Group 'A' officers and members of All India Services. This Bill also has jurisdiction over those people. So, who will be inquiring anti-corruption cases? Will it be the CVC or the Lokpal? That needs to be resolved. There is no provision in this particular Bill that amends the CVC Act to resolve this contradiction. In the earlier Lokpal Bills as well as the second ARC report, the recommendation was that the Lokpal would be only for Ministers and MPs. The ARC had suggested that there should be an organic link between the Lokpal and the CVC, in case of any collusion between Ministers and officers. So, there was no contradiction in those formulations. I just wanted to point this out.

Sir, my second point, which is, actually, very minor is that the Prime Minister, according to the Bill, will be covered once the Prime Minister demits the office. Clause 54 of the Bill is a limitation clause which prescribes a time limit of seven years from the date of the alleged corrupt action. That is what clause 54 says. What happens if there is a Prime Minister for two consecutive terms -- for example, the current Prime Minister? So, what happens if there is a Prime Minister for ten years in a row and there is a case where the Prime Minister is alleged to have done a corrupt action in the first three years. So, we need to do some resolution to this, because there is a clear contradiction in the intent and what, actually, is there in the Bill.

Sir, the third point I want to raise is the issues related to protection of information related to national security. This Bill does not have any specific provision that safeguards

information related to national security or public safety. In fact, clause 26 says that the Lokpal has the power to require any public servant to furnish any information which is relevant to the inquiry; Clause 24 says that a person against whom the Lokpal proposes to initiate an investigation has the right to inspect any record in connection with the case and extract information that is considered necessary to defend his case; Sub-clause 23(7) says that an inquiry may be held *in camera* in certain exceptional circumstances. However, the Bill does not provide for further proceedings to be *in camera* or there is also no exclusive provision to hold the final trial case *in camera*. Now, of course, the Cr.P.C. section 327 permits a judge to hold trials *in camera*, but it does not say that it should be mandatory in cases of national security, unlike in the offences of rape, etc. under section 376, 376 (a), (b), (c), (d) of the IPC, where it is mandatory that such trials should be held *in camera*. So, my question is: What happens if there is a corruption issue coming up and there is also a national security angle? To add to this, clause 57, which is the overriding clause, says this Act will override all the existing legislations and I presume that that includes the Official Secrets Act.

Now, stepping back a bit, the 2001 Lokpal Bill which was introduced in Parliament had included the Prime Minister within its purview, but it explicitly exempted any complaints related to matters of national security as well as public order. However, even in that Bill, this exemption was limited only to the Prime Minister. Presumably, there would be other senior people such as the Defence Minister, the Defence Secretary, the Home Secretary, etc. who would also be privy to issues related to national security and public order. So, possibly, one should formulate some clause which protects that.

Then, it is pertinent to see here that the RTI Act, actually, explicitly permits the Government to reject any request that has any such ramifications.

Sir, my fourth point is related to clause 17 which says that private citizens in certain cases could be deemed public servants and could be included under the purview of Lokpal.

Then, Sir, the question is whether NGOs should be included or not. I would just like to point out that clause 17 (1) (g) says that the Bill includes not only NGOs, it also includes any association of persons. This would include companies; it would include unregistered groups, etc., which have obtained donations from the public. The Bill also deems all officers, Directors, etc. or such groups as public servants. If we look back at certain other laws, the Offences and Prevention of Corruption Act, 1988, we will find that they are restricted to taking of gratification, which is bribe, by a public servant in his official capacity. To me, it is not clear, how an officer of a private trust or a society can be accused of corruption. He can be accused of embezzlement; he can be accused of various other crimes, but how does such a person, who is taking donation from the public, actually, causes loss to the exchequer, which is what we narrowly define as 'corruption'. If we look at the IPC, 'public servant' is defined in section 21. There are 11 different categories of persons which are included in the definition. If you look at them together, it, essentially, includes any person who is in the service or pay of the Government or a local authority, a corporation established by law or a Government company and receives a fee or commission for the performance of public duties. So, in some sense, if we take the IPC as a guidance to determine who should be determined a public servant, one could conclude that any one who performs the function of the State, directly or indirectly, and is compensated by the exchequer for performing a public duty is the person that section 21 of the IPC covers as 'public servant'; it does not cover any one else. Under the RTI Act too, the definition of 'public authority' includes the NGOs which receive Government funding; it does not include other donations.

SHRI M.R. MADHAVAN (CONTD.): This Bill also requests every public servant is required to declare his asset. This implies that members of the private trusts or societies, if

they receive donation, would have to declare their assets. This could be a breach of citizens' right to privacy. One has to see that. There is another clause 17(i)(f) which may need some clarification. It says that association of persons, wholly or partly, financed and aided by the Government, whose annual income is above the prescribed amount would be under the purview of the Lokpal. So, they are getting financed by the Government. That is what it says. Now what exactly is financed? That needs to be clarified. One could interpret, let us say, a company which takes financing, which is a loan, from a public sector bank, would that be considered finance? So, what do we mean by financing in this Bill? My last point is on the false and frivolous complaints. The amount of penalty is given here. This is quite different from other legislations for similar offences. I will just cite three of them. Two of them are currently Bills in Parliament where the Standing Committee has given its Report. One is the Public Interest Disclosure Bill, that is, the Whistle Blower Bill. The Bill itself says that falls complaint carries a penalty of imprisonment up to two years and a fine up to Rs.30,000. The Standing Committee in its report says that "It is certainly opposed to the quantum of punishment prescribed in the Bill. It recommends penalty should be substantially reduced." The Judicial Accountability Bill says that "the imprisonment up to 5 years and fine up to Rs.5 lakhs." But the Standing Committee concluded that "in any case it should not exceed the punishment provided under the Contempt of Courts Act which is 6 months and a fine of Rs.2,000." There are three drafting slippages in the Bill. Firstly, clause 23 details the process of investigation and enquiry. It provides time limit for preliminary investigation for the preliminary enquiry and the enquiry. It does not provide any time limit for investigation under clause 23(6). I guess that it is a slippage which needs to be rectified. Again clause 28(1), there are words clause (c) or clause (d) which, when you read, is obvious that the intent is clause (d) or clause (e). Similarly in clause 29(1), instead of clause (a) or (b), it should be clause (c) or (c) because the Bill cannot apply to clause (a) in any case. With these words, I would like to conclude.

श्री सुनील अंबेकर (अखिल भारतीय विद्यार्थी परिषद) : धन्यवाद। मेरे साथ सुनील बंसल जी हैं।

मैं बहुत ही short में अपनी बात रखूंगा। पहला मुद्दा अध्याय क्रमांक 2 में जो 9th clause है जिस में अध्यक्ष और सदस्यों को एक बार पदभार लेने के बाद अन्यत्र कार्य करने पर पाबंदी लगायी गयी है। हम इस क्लॉज का समर्थन करते हैं क्योंकि इस के कारण लोकपाल के बारे में विश्वसनीयता बनी रहेगी और उस के भेदभाव रहित रवैये के बारे में लोगों का विश्वास बढ़ेगा। चैप्टर 3 में जो बाकी Investigation agencies के बारे में क्लॉज 12, 13 व 14 में प्रावधान हैं, वे पर्याप्त हैं। सी0बी0आई0 के बारे में कहना चाहूंगा कि कुछ लोगों के द्वारा जो विषय उठाया जा रहा है कि सी0बी0आई0 की Anti Corruption Wing को जोड़ देना चाहिए। हम इस के समर्थन में नहीं हैं क्योंकि हमारे यहां विभिन्न Agencies चाहिए। अगर एक ही जगह सभी को लगा दिया तो उस के कारण कहां न्याय मिलेगा, ऐसी परिस्थितियां पैदा होंगी। इसलिए absolute पावर कहीं नहीं जानी चाहिए और इस में Investigation Wing के लिए क्लॉज नं0 12, 13, 14 में प्रावधान किए गए हैं, मुझे लगता है कि वे sufficient हैं। उसे शासन से अलग रखना अलग मुद्दा है। वह लोकपाल के बारे में नहीं है। उस के बारे में अलग से विचार कर सकते हैं।

अध्याय क्रमांक 6 जिस में लोकपाल के jurisdiction के बारे में कहा गया है, उस में प्रधान मंत्री को इस में रखना चाहिए भले ही जो सुरक्षा से संबंधित Law and Order के मामलों से इसे अलग रखा जा सकता है। बाकी प्रधान मंत्री को इस में शामिल किया जाना चाहिए। इस से लोगों में लोकपाल के प्रति आस्था बनेगी। बाकी क्लॉज 17 (एफ) में ट्रस्ट के बारे में या एन0जी0ओज0 के बारे में लिखा गया है। उस में पहला नंबर है सरकार द्वारा सहायता प्राप्त संस्थाएं, उस का हम समर्थन करते हैं। उसे रखा जाना चाहिए और उस के बारे में जो भी amount of grant सरकार तय करेगी, वह उसी समय तय किया जा सकता है। हम इस में दो और प्रकार के एन0जी0ओज0 को जोड़ना चाहते हैं - एक, जो विदेशों से धन प्राप्त करते हैं। दूसरे, जो कॉर्पोरेट और निजी कंपनियों से donations लेते हैं। भले ही छोटा donation न रखें इसलिए मैं सुझाव के तौर पर कह रहा हूँ कि जो सालाना 5 करोड़ से ज्यादा donation लेते हैं। बड़े-बड़े एन0जी0ओज0 हैं जो सरकार के निर्णयों को प्रभावित करते हैं। यह मुद्दा बहुत महत्वपूर्ण है। इसलिए जब तक हम निर्णयों को प्रभावित करने वाले economic sources को catch नहीं करेंगे तब तक करप्सन नहीं रुक सकता है। इसलिए कॉर्पोरेट कंपनियों व निजी क्षेत्र से donation लेने वाली संस्थाओं के लिए 5 करोड़ से ऊपर लेने वाली संस्थाओं की लिमिट रखें और उन को इस में जरूर शामिल किया जाना चाहिए। बाकी लोकपाल बिल में जो अन्य छोटे-मोटे ट्रस्ट और दुनियाभर के लोगों को शामिल किया गया है, मुझे लगता है कि उस प्रावधान को हटा देना चाहिए। केवल तीन प्रकार के ही ट्रस्ट इस में रखे जाने चाहिए - जो सरकारी donation लेने वाले हैं, विदेशों से धन लेने वाले हैं और प्राइवेट कंपनियों से एक निश्चित amount से अधिक लेने वाले हैं। बाकी इस का दायरा नहीं बढ़ाना चाहिए अन्यथा फिर यह कोई काम ही नहीं कर पाएगा और इस का misuse ही होने की संभावना है। तीसरा, 17(2) में प्रावधान है कि संसद के अंदर जो सांसदों का काम होता है, उस को शामिल नहीं किया जाना चाहिए। हम इस का समर्थन करते हैं क्योंकि संसद का महत्व, गरिमा और सर्वोच्चता कायम रहनी चाहिए। इस के बारे में कोई compromise नहीं होना चाहिए। इसी अध्याय में Lower bureaucracy के बारे में उल्लेख आता है क्योंकि इस में केवल ग्रुप "ए" के अधिकारियों को शामिल किया गया है। लेकिन सामान्य लोगों को रोजमर्रा के जीवन में नीचे के अधिकारियों से सामना करना पड़ता है। दूसरी भी एक बात आती है कि अगर इस में सभी को शामिल कर लेंगे तो इस का volume इतना बड़ा हो जाएगा कि फिर कुछ काम ही नहीं हो पाएगा। इसलिए इस बारे में हमारा एक सुझाव है कि आने वाले समय में हर ऑफिस के लिए एक Citizens charter घोषित किया जाता है जिस में time schedule, जिम्मेदार अधिकारी और उस की प्रक्रिया निश्चित कर दी जाए और एक निश्चित ग्रुप या उस से ऊपर के अधिकारी को उस के लिए जिम्मेदार माना जाए। इस अधिकारी को अगर नीचे के कोई अधिकारी काम नहीं करते हैं तो उन पर कार्यवाही करने के और अधिकार दिए जा सकते हैं, disciplinary authority दी जा सकती है। फिर ऐसे अधिकारी की कक्षा में अगर इस प्रकार के Citizens charter को नहीं माना जाता है या उस का implementation सही नहीं किया

जाता है या लोगों को न्याय नहीं मिलता है तो कार्यवाही उसी अधिकारी पर ही होनी चाहिए जो उस क्षेत्र के काम के लिए जिम्मेदार हैं। इस से हम लोगों को न्याय भी दे पाएंगे और लोकपाल का volume भी नहीं बढ़ाएंगे और निश्चित top officers को इस के लिए जिम्मेदार बनाएंगे। हम को लगता है कि इस का यह एक रास्ता निकाला जा सकता है।

अध्याय क्रमांक 11 में विशेष अदालतों को जो अधिकार दिया गया है, assessment of loss and recovery का जो प्रावधान क्लॉज 42 में किया गया है, वह बिल्कुल रखना चाहिए। यह बहुत ही आवश्यक है।

इस के पश्चात् अध्याय क्रमांक 14 के क्लॉज 49 में false complaint के बारे में सजा का प्रावधान किया गया है। हम को लगता है कि उस में 2 साल से 5 साल तक या रुपए 25000 से 2 लाख तक पेनल्टी की सजा रखी गयी है, वह लोगों को complaint करने के लिए प्रोत्साहित करने की जगह जिस के पास कम evidence होगा या इतना पक्का evidence नहीं होगा, वह investigation के लिए लोकपाल के पास जा ही नहीं सकता। आगे जाकर तो उस को ही सजा हो जाएगी। इसलिए हमें लगता है कि ऐसा कोई प्रावधान इस में नहीं रखा जाना चाहिए, लेकिन इस में दो बातें जोड़ी जा सकती हैं। जो शिकायतकर्ता जानबूझकर गलत document दे रहा है या evidence को tamper कर रहा है, उस में गड़बड़ कर रहा है, उन को सजा होनी चाहिए या जिन व्यक्तियों की complaint कम-से-कम 5 बार गलत साबित हो गयी है, उन को जरूर सजा मिलनी चाहिए अन्यथा यह प्रवृत्ति बढ़ेगी कि complaint करते रहो। इसलिए उस प्रवृत्ति को भी कहीं-न-कहीं रोकने की आवश्यकता है। दूसरे, झूठी शिकायत करने वालों को जो protection दिया गया है कि उन की केस केवल स्पेशल कोर्ट में चलेगी। पॉइंट नं0 2,3,4 में उस के बारे में जो protection दिया है कि स्पेशल कोर्ट में चलेगी या जिस के बारे में complaint है, उस के कहने पर ही वह लिया जाएगा, वह प्रावधान रखना चाहिए।

श्री सुनील अम्बेकर (क्रमागत): संस्थाओं के बारे में क्लॉज नंबर 50 में जो प्रावधान किया गया है, उसमें भी मैं चाहूंगा कि मैंने जैसे क्लॉज 49 के लिए सुझाव दिए हैं, वही सुझाव क्लॉज नंबर 50 में भी लागू होना चाहिए। इसमें पनिशमेंट के बारे में जो दस साल तक की सजा का प्रावधान है, वह पर्याप्त नहीं है, हमारा सुझाव होगा कि लाइफ इम्प्रिजनमेंट, आजीवन कारावास की सजा भी दी जा सकती है, लेकिन उसका प्रमाण यह होना चाहिए कि व्यक्ति किस स्तर का है, मतलब उस पब्लिक सर्वेण्ट का स्तर क्या है, अधिकार क्या है और वोल्यूम ऑफ करप्शन क्या है? अगर इसके लिए हम कोई पार्ट बना लेते हैं, तो उसके अनुसार सजा का प्रावधान होना चाहिए विद द परपोशन। मेरा अगला पाइंट यह है कि विह्स्ल-ब्लोअर्स या विटनेस के बारे में सामान्यतया कोर्ट तो प्रोटेक्शन देता ही है, लेकिन आजकल की परिस्थितियों को देखते हुए लगता है कि इसके बारे में कोई निश्चित प्रावधान करना चाहिए। लास्ट पाइंट मेरा लोकायुक्ता के बारे में है, लोकायुक्त हर प्रांत में होना चाहिए, लेकिन लोकायुक्त और लोकपाल को जोड़ने की कोई आवश्यकता नहीं है, वे स्वतंत्र

रूप से काम करें। अगर दोनों से न्याय नहीं मिलता है, तो व्यक्तियों के लिए कोर्ट खुले हैं। इसलिए इनको अलग-अलग रखना चाहिए। अवसर देने के लिए बहुत-बहुत धन्यवाद।

SHRI RAJEEV DHAVAN: I want to make two comments of Constitutional principle, and then, I want to go through principles that underlie this Bill and where changes might be required. एक बार जब हम लालू जी से मिले थे डब्ल्यूटीओ पर, तो उन्होंने कहा कि देखो भाई, इंटरनेशनल न बोलो, नेशनल न बोलो, कंस्टीट्यूशनल बोलो, तो हम पहले कंस्टीट्यूशनल बोलेंगे। There are many people in this country, including myself, who are very grieved by this process with which Parliament is examining this Bill. We may not be members of *jan* movement. We are solidly anti-corruption, but, at the same time, we feel that both, our voice and our intervention, have, in fact, been taken over. This is fundamental to the working of a parliamentary democracy. We believe in the working of Parliament. We do not believe that Parliament can be pre-empted in this way. Even if there is a resolution, we believe that this Parliament is totally free to look at these matters afresh. It is not just the voices that you have heard at Jantar Mantar or at meetings with the Ministries; it is also the voices that you hear otherwise because if the future of this Bill and its principles are already sown up and all we are doing is tinkering with a few phrases, then some of us believe that the Constitution will be shortchanged by this process. Kindly bear this in mind. It is extremely important. Whatever one may say about the sense of the Parliament resolution, this Committee and this Parliament is supreme and frankly, it is not encumbered in any way. I think that it is very necessary to understand this so that our faith in parliamentary democracy is not taken away.

My second point on constitutional principle is that this particular Bill is really in violation of constitutional democracy. When England produced its Bill way back, it made sure that everything was routed through Parliament. Complaints went through Parliament; reports came through Parliament. This was the model of 1968 in India. Two significant models came after that. After the Emergency, the political model came, and then, in Prime Minister, V.P. Singh's time, the political corruption model came. It is very important to understand that we are now creating a parallel institution. अगर किसी को गवर्नमेंट को गिराना है, किसी के खिलाफ जाना है, तो उसको पार्लियामेंट जाने की जरूरत नहीं होगी। जो प्रोसेस लोकपाल के सामने पेश किया जाएगा, उसी प्रोसेस से एक पोलिटिकल प्रोसेस चालू हो जाएगा। तो जितने सेफगाइर्स थे पार्लियामेंटरी मोडल में, वे सब अलग हो गए। इसलिए कहा जा रहा है कि यह एक पोलिटिकल इलीट मोडल है। जो भी पत्थर फेंकने काबिल है और फेंक सकता है, तो उसको अब कोई पोलिटिकल प्रोसेस से नहीं जाना है, उसके लिए यह ऑर्गेनाइजेशन, संस्था बन रही है। इसको देखते हुए, we have now gone too far. This is not a Lokpal Bill. This is an anti-corruption Bill. And, what has happened, unfortunately, is all three elements have now got mixed in this Bill and the Bill, in my respectful view, is unworkable. Bearing in mind what the Chairman said, maybe we have to make alternative suggestions as well. Of course, I will. If we treat this as an anti-corruption Bill and mix into it the Commission of Inquiry process, that process in Commissions of Inquiry is endless and it is a part of this Bill. Now do we want an anti-corruption criminal model? Or, are we chasing from Lokpal which has long gone out of our agenda before 1979? I will treat this as an anti-corruption Bill no more. आप उसको लोकपाल बुलाइए, जो भी बुलाइए; this is an anti-corruption Bill. Why do I say that it is unworkable? Let us start from the beginning. I believe this collegium to appoint nine

people is unworkable. So, I have suggested that you need a much smaller manageable collegium. कोई कहता है कि आप जर्नलिस्ट को न रखिए, कोई कहता है कि आप जज को न रखिए, कोई कहता है कि वकीलो को न रखिए, and our suggestion is that when you have the Prime Minister, it is not necessary to have the Home Minister. You have the Leader of the Opposition, the Speaker of the House and the Vice-President. Then, there is a nominee of the Chief Justice of India. This, we believe, is sufficient to choose the Lokpal. Because, all this is done in *maidan*, अरे साहब, इसको भी रख लीजिए, इसको भी रख लीजिए। अब वे रखे जाएंगे, नौ लोग बैठेंगे I Suppose, the appointment is 5:4. क्या होगा? We will have a 5:4 Lokpal, or, a 6:3 Lokpal. आपने कहा है कि सर्च कमेटी है, some consensus must take place. My second point is that a Lokpal of nine people is unwieldy. नौ लोग लोकपाल में नहीं हैं, संस्था नहीं चल सकती। अमेरिकन सुप्रीम कोर्ट में देखिए, 9 लोग बैठते हैं, डिजीजन उनकी होती हैं 6-3, 5-4 करके I You need an effective Lokpal of three people in our submission. You can make all Judges; I am not bothered about that. यह तो हो गया कलेजियम और कलेजिएट। लोकपाल क्या होगा? Don't create a body which is unwieldy and unworkable.

अब आइए तीसरे पाइंट पर, कि जब यह बॉडी बन जाती है, इसके बाद इसका प्रोसीजर क्या होना चाहिए? पहले तो मैं समझता हूँ कि जितने भी, ऐसी बात नहीं है कि हमारे पास इंडिया में लोकपाल नहीं हैं, हैं I NHRC is a Lokpal, but only for human rights. SC/ST Commission is there; Women's Commission is there. They are all specialized Lokpals. They look at particular things and examine them. अब जब यह लोकपाल आपके सामने आता है, first thing is that इसकी जुरिस्टिक्शन तो आपने कह दी है that it will be limited to corruption as defined in the Prevention of Corruption Act. जो लोकपाल से संबंधित बातें होती हैं, वह यह है कि mal-administration देखेंगे, बहुत सी चीजें देखेंगे, वह हट गया है। We are only concerned with criminal corruption; nothing else. Where do we go from here? आपने कहा कंप्लेनेंट को उसमें सजा मिलेगी? अरे, क्यों सजा देते हैं कंप्लेनेंट को? रिच कंप्लेनेंट है, वह एक लाख रुपया दे देगा, जो पुअर कंप्लेनेंट है वह कुछ नहीं दे पाएगा।

SHRI RAJEEV DHAVAN (CONTD.): If somebody, and, this is how the NHRC has worked on its jurisdiction, tells a lie on affidavit, there is a procedure under section 340 which you can introduce saying that it is perjury. लोगों को बताएं कि अगर तुम्हारे affidavit में थोड़ी गलती आ गई, तो आप जेल भी जा सकते हो और इसके बाद, आपको फाइन भी पड़ेगा, तो this is not the way to encourage a Lokpal. I think, the fear that if you are committing perjury, is, in my view, is enough. अब देखते हैं कि हमने इसमें क्या किया है? इसके procedure में क्या बात है? अगर आप इस बिल का क्लॉज 23 देखें, तो it is a strange mixture of enquiry and investigation. आप क्लॉज 1 से सीधे क्लॉज 10 पर आइए। क्लॉज 10 कहता है कि अगर एक prima facie view है, तो investigation चालू हो जाएगा और उसके बाद रिपोर्ट आती है, उसको आप देखिए और decide कीजिए कि क्या करना है? दूसरा procedure क्या है? दूसरा procedure है कि preliminary inquiry होगी, उसमें नोटिस दिया जाएगा। फिर

उसके बाद लोकपाल decide करेगा कि उसके बाद हम investigation कराएं या न कराएं। इतने में आप यह opportunity देंगे, to be heard. फिर उसके बाद investigation होगा। Investigation के बाद जब रिपोर्ट होगी, तो उसमें inquiry होगी और जब inquiry होगी, तो अगर कोई non-public servant है, उसको आप नोटिस देंगे, that is the Kiran Bedi case by the way. You remember the case of 1988, which we now refer to as slang as 'the Kiran Bedi case', wherein she said, "I have a right to be heard". उन्होंने कहा, ठीक है। She said, I have a right to cross-examine. तो यह जो आपका streamlined political corruption का criminal model है, यह तो procedure within procedure से खत्म हो जाएगा। As a lawyer, I can tell you, we will drive a coach and horses through clause 23. आप जाएंगे, investigation करेंगे, हम कहते हैं कि preliminary investigation क्यों नहीं किया? Let us keep the simple procedure and try and understand what we are doing here. We are trying to convert the investigation into the Lokpal as a police investigation but we are not saying so. Have all the powers of police stations, supervision स्टेट का नहीं होगा। Section 36 के under जो higher officer का होता है, वह नहीं होगा। So, ultimately, under the supervision of a Lokpal, the investigation is a police process because once an investigation is approved, a challan can be filed. Therefore, the core of clause 23 is to run an investigation which will result in a challan. इसके इर्द-गिर्द इसमें इतनी बातें शामिल हो गई हैं that it is unworkable. Utterly, totally, in my respectful view, it is unworkable because the old history has come here कि Commission of Inquiry के जो provisions हैं, वे भी इसमें आने चाहिए। Criminal Law provisions हैं, वे भी आने चाहिए और लोकपाल provisions भी आने चाहिए। ठीक है, कुछ लोग पकड़े जाएंगे। जो पकड़े नहीं जाना चाहते हैं, वे तो इस process से निकल ही जाएंगे। Infact कोई गलत complaint आ जाएगी, तो वे कहेंगे कि अरे, तुम अपना फाइन दे दो, दूसरी बात हम यह complaint नहीं सुनेंगे। तो जो criminal process है, इसको कैसे मज़बूत किया जा सकता है, that is, in my respectful submission, what is before this Committee. To dilute that provision is a mistake, and, it is diluted. अब देखते हैं कि इसमें क्या है? लोकपाल बिल में एक प्रॉब्लम यह है कि इसके बाद prosecution ...(व्यवधान)... आप कुछ कह रहे हैं?

श्री लालू प्रसाद : धवन साहब, आप विशुद्ध देशी बात बोल रहे हैं।

श्री राजीव धवन : अब इसमें आते हैं कि prosecution कौन करेगा? जब हेगड़े साहब ने अपना निर्णय कोर्ट को भेजा, तो कर्णाटक हाई कोर्ट ने यह कहा कि आप अपना Public Prosecutor नहीं रख सकते हैं। Public Prosecutor ही आपका prosecutor हो सकता है। यह प्रॉब्लम फिर आई, जब जयललिता जी ने कहा कि हमारी Investigation Team को कौन represent करेगा? वह बात थोड़ी अलग है। तो इस बिल में यह है कि investigation भी और prosecution भी, ये दोनों लोकपाल के हाथ में होंगे। मैं इसके खिलाफ नहीं हूं पर जो आपके provisions हैं कि इसका जो रंग-रूप है, वह सी.आर.पी.सी. से कैसे मिलेगा, यह सफाई से नहीं किया गया है। आप अपने sections 57, 58, 59 को देखिए। सैक्शन 57 कहता है - This

Bill will override. सैक्शन 58 कहता है - It is in addition to and not in derogation of. If it is in addition to, then, the other one also applies. सैक्शन 59 कहता है कि सिर्फ ये Acts अमैंड हो रहे हैं। अब आप बताइए, can the CVC Act, the CrPC and this Act survive together? If so, how? Unless you clean the Lokpal Bill, in my respectful submission, this simply cannot be done.

Now, I come to the other features of this Bill. The question of the Prime Minister is a difficult question. Either you follow that all administration will be there because please remember that the Prime Minister and the Cabinet is collectively responsible to the House and not to the Lokpal. Once he gets tainted, obviously, many elements of that collective responsibility will disappear. But if from 1979, successive Governments have said, नहीं, हम प्राइम मिनिस्टर, मिनिस्टर्स और एम.पीज़ - सबको include करेंगे। पहले नहीं था, क्योंकि पहले जब bureaucrats निकाले गए थे.... 1979 की कमेटी की रिपोर्ट पढ़िए, सोमनाथ चटर्जी और भूपेश गुप्ता जी की जो स्पीच है। एक बार जब मुझे भूपेश गुप्ता जी मिले, तो मैंने कहा कि मैंने आपका dissent पढ़ा, तो उन्होंने कहा कि Bureaucrats are laughing कि politicians फंस गए हैं और हम सब लोग इसमें से निकल आए हैं।

Anyway, this is the model that you have chosen now as far as this is concerned. The Prime Minister cannot be given an indirect immunity under this Act because effectively it says of everybody else. आपको अगर शामिल करना है तो शामिल कीजिए और अगर शामिल नहीं करना है, तो मत कीजिए, but if you say that the Prime Minister is under the jurisdiction of the Lokpal but everything will be differed, you are, in fact, giving him something which neither the Constitution nor any Statute gives him, namely, an immunity until he demits office. I am not saying to go to one provision or the other provision. Certainly, the political target number one in this country has to be the Prime Minister. Some people will refer to those who advice the Prime Minister but I do not want to go into that. If you want to put political target number one into this Bill, it cannot carry any immunity. If, for principal reasons, you say that it is effectively the Prime Minister, who is responsible to the House, then, exclude the Prime Minister. It does not make sense to have half version.

Now, I come to two, three other things. I have already exceeded the given time. This business of the other statutes, please re-concile the statutes. I asked my friend, Mr. Amod Kanth as to how much of the jurisdiction of the CVC will be left after this. They are also bodies that charge, that are responsible for the investigative process. That is right. Please bear that in mind. Therefore, as a criminal law model, please work with it.

Then, comes the question of lower bureaucracy. I think, as far as lower bureaucracy is concerned, there should be a clause that they can be added later. I am not saying to do it now. The reason is very simple – petty corruption will come to the Lokpal and real corruption will not come to the Lokpal. Therefore, introduce the clause now so that the business is there and you can introduce them later.

SHRI RAJEEV DHAVAN (CONTD.): Let's see how it works. I have serious difficulties about Parliament legislating on the Lok Ayuktas of the States. The States have their Lok Ayuktas. Maybe they will firm up; maybe they will not firm up. What difference does it make if you take that very provision and then put it in the Lokpal Bill here like the States Human Rights Commission? I think many States have enacted it. One or two States have

been very effective. Please leave it to them. Ultimately, when you look at the Lokpal Bill in its workability, why do I say only three people are required? I just want to clarify that. In all Lokpals throughout the world whether it was the European Commission of Human Rights पहला एक वेटिंग प्रोसेस होता है कि आप ज्युरिडक्शन में हैं या नहीं। मान लीजिए it is against an officer who is not really under the Lokpal. So, immediately somebody has to say इसको निकाल दो, यह तो हमको सुनना ही नहीं है। I have suggested in my note, you have two registrars who vet it. After that, you send it to the Lokpal, consisting of three persons, no more. That Lokpal will decide, yes, *prima facie* this is to be sent to investigation, no notice to anybody at this stage. जब इन्वेस्टिगेशन की रिपोर्ट आएगी, you have two decisions to make. एक रिपोर्ट का हिस्सा जाएगा as चालान और दूसरा हिस्सा जाएगा back to the Government or the authority concerned कि आप इसमें क्या करना चाहते हैं। Mr. Chairman you very rightly pointed at your watch. आपने जो कहा है, हमने एक डिटेल नोट तो आपको दिया है। इस पर हमें जो टिप्पणी देनी है, उसके लिए एक हफ्ते की मोहलत आप हमें दे दीजिए। हम दीपावली के बाद भिजवा देंगे।

अध्यक्ष : आप दीपावली के बाद भिजवा दीजिएगा। साथ में अगर आप चाहें, तो जो लोकपाल बिल का वर्जन सरकार का है, उसमें कुछ जोड़ना या घटाना हो, तो उस पर फोकस करके भेज दीजिएगा। एक प्रश्न जल्दी में आपसे है। आपका इस विषय में क्या मत है कि अगर 252 प्रावधान के अंतर्गत अंतर्राष्ट्रीय ट्रीटी में भारत ने भ्रष्टाचार के विरुद्ध ट्रीटी साइन की है, उसकी पावर का इस्तेमाल करते हुए केन्द्रीय संसद कानून बनाए, जिसमें एनएचआरसी मॉडल के अंतर्गत लोकायुक्त के विषय में भी चर्चा हो, क्या यह संवैधानिक है या असंवैधानिक है?

श्री राजीव धवन : सर, मैं समझता हूं कि यह संवैधानिक है, क्योंकि यह लिस्ट 1 Entry 97 में आएगा। यह सिर्फ कांस्टीट्यूशनल बात नहीं है। जब लोकायुक्त स्टेट में है और सब स्टेट के हैं, कलीजियम स्टेट के होंगे, तो मैं समझता हूं कि उनको भी डेवलेप करने दीजिए।

अध्यक्ष: आपका विरोध है, लेकिन संवैधानिक विरोध नहीं है। एक तरह से प्रदेशों की ओर छोड़ दिया जाए, यह विरोध है।

श्री राजीव धवन : इसमें कुछ संवैधानिक नुक्स निकलेंगे। आपने तो इमीडिएटली कह दिया, जो सिविल लॉ वाला लॉयर होता है, वह कहता है सोचकर बताऊंगा और जो क्रिमिनल लॉ वाला लॉयर होता है, वह कहता है कि अरे साहब, आप जेल नहीं जायेंगे, हम बोल रहे हैं। अभी मैंने आपको क्रिमिनल लॉ वाला रेस्पॉंस दिया है।

अध्यक्ष: आप इस सब का रिटन नोट में जिक्र कर दीजिएगा।

श्री राजीव धवन : सर, हम आपको संक्षेप में फिर से एक नोट दे देंगे। सर, आप मुझे अब जाने की इजाजत दे दीजिएगा।

श्री अमोद के. कंठ : सर, अभी धवन साहब मौजूद हैं। मैं एक छोटी सी बात कहना चाहता हूं। सर, धवन साहब सैक्शन 23 की बात कह रहे हैं, इसमें बहुत महत्वपूर्ण प्वाइंट है।

अध्यक्ष: समय की प्रॉब्लम चल रही है।

श्री अमोद के. कंठ: सर, बहुत छोटा सा प्वाइंट है। इन्होंने चूंकि बताया है, I have a background of investigator and I am not able to understand at all how do you distinguish preliminary inquiry and preliminary investigation. It is a very serious issue because it is very chaotic. I mean, either you have preliminary inquiry ending investigation because investigation is a legal process. It is done CrPC.

श्री राजीव धवन : सर, अब मुझे जाने की इजाजत है?

अध्यक्ष: किसी माननीय सदस्य को इनसे कोई प्रश्न पूछना है, तो पूछ सकते हैं, क्योंकि अब इन्होंने जाना है। वैसे तो हम प्रश्न बाद में करने वाले थे।

श्री अर्जुन राम मेघवाल: आपने ओवर राइटिंग के बारे में कहा था कि इस पर ओवर राइटिंग प्रॉविजन लागू नहीं होंगे, ऐसा कैसे हो सकता है? मैं जानना चाहता हूं कि क्या इस पर ओवर राइटिंग प्रॉविजन लागू होंगे?

श्री राजीव धवन: आप क्लोज 57, 58 और 59 को पढ़िए।

श्री अर्जुन राम मेघवाल : मैंने इनको पढ़ लिया है।

श्री राजीव धवन: देखिए, क्लोज 57 कहता है कि 'shall have effect notwithstanding anything contained in another Act or in any instrument'. क्लोज 58 कहता है कि 'the provisions of this Act shall be in addition to and not in derogation of'. 'Addition to' ठीक है, 'not in derogation' का मायने है कि कोई और स्टेट्यूट के खिलाफ नहीं होगा। अब आप आ जाइए क्लोज 59 पर और 59 शैड्यूल के साथ पढ़ा जाएगा।

श्री अर्जुन राम मेघवाल : आपका कहना है कि इसमें कंटाडिक्शन है, बाकी ओवर राइटिंग प्रॉविजन तो हो सकते हैं।

श्री राजीव धवन : मैं समझता हूं कि जैसे आप पब्लिक प्रॉसिक्युशन लोकपाल के अंदर ले रहे हैं। आपने एक प्रॉविजन 'may' दिया है, अगर आप चाहते हैं कि पब्लिक प्रॉसिक्युटर लोकपाल ही अपाइंट हो, तो उस क्लोज में होना चाहिए 'notwithstanding anything in the CrPC'.

श्री अर्जुन राम मेघवाल : ठीक है।

SHRI P.S. KRISHNAN: Hon. Chairman and hon. Members, thank you very much for this opportunity. I have prepared the Samajik Nyaya Lokpal Bill on behalf of more than 80 SC, ST, BC, minorities and women organisations. We represent a spectrum of inclusiveness of Indian society. I have prepared this Samajik Nyaya Lokpal Bill with focus on these neglected categories, including children also. I will mention only bullet points. If you want details, I will give the same to you. One is the imperative necessity for representation of these categories of people through reservation. There is a principle behind it and there is also pragmatic reason behind it. Just to give an example, where there is no reservation, there is not a single Secretary to the Government from the SC/ST category, and BC is almost nil. There is

not a single Judge in the Supreme Court from the SC/ST category. So, let the SC/ST or BC have a fuller say.

There are about twelve points, Sir. Reservation is the most important thing. Reservation in Lokpal, reservation in Lokayuktas, reservation in the selection committees, reservation in the search committees, reservation in the panel of preparers, like UPSC, at the preliminary stage, at the main stage, they prepare the panels of all these categories so that when you select, there will be adequate number.

The next point is: What should be the number?

SHRI P.S. KRISHNAN (CONTD.): Mr. Rajeev Dhavan wants the composition to be very small. I don't think it will be possible. You have put 8+1; Jan Lokpal has put it 10+1; and I would suggest that 1+12 would make it very beautiful. You will have two representatives from the SC, one representative from the ST, and three representatives from the BC of which one will be from BC minorities. It is a very lucky number for India. Similarly, there should be reservation for its staff.

My next point is enlargement of definition of corruption. As many people have remarked, corruption is not just giving and taking of money. Diversion of money earmarked for the Special Component Plan for the SCs, or for the Tribal Sub Plan for the STs, or for the BCs, Muslims and minorities, or for children, even if there is no other corruption, should be treated as corruption in the larger context.

On qualification or disqualification or qualities of Lokpal Members, whatever they have put here, it is okay. But I want to add one or two things there. It talks of 'impeccable integrity' which is okay. You should also add 'freedom from unconstitutional caste bias'. It is a very important thing from the point of view of these people and they should be sensitive towards the issues of the SCs, the STs, the BCs, the BC minorities and women & children. As far as disqualification is concerned, you can add there, 'those who are disqualified or convicted or charged by a court on offences pertaining to the SCs, the STs, the BCs, women, children, etc.'

My next point is prevention of witch-hunt of the SC employees. I have got some data with me. It is indicative. I have got individual cases also. There is no protection for them. There is a witch-hunt of honest officers who try to implement the Constitution and to help people of the weaker sections. They should also be protected.

As far as remuneration for members of the Search Committee is concerned, no salary should be there. Only those people who want to serve should come there. Those people are coming after a full career. They are either retired judges or officers. Therefore to provide them with a further salary, I think, is unnecessary. They should be given high status and functional facility.

Whistleblower protection and other things should come under the Lokayuktas. It does not matter whether there is one Bill or two Bills. It can be Judicial Lokpal and Grievance Lokpal.

I want to particularly mention that in preparing this Bill, we have been very conscious of the fact that our Constitution is sacrosanct. It was drafted by Dr. B.R. Ambedkar and it was supported by the national leadership of Jawaharlal Nehru among others. It is one of the best Constitutions in the world. No other Constitution has got specific provisions for social justice for the SCs, the STs, the BCs, the BC minorities, women and children. Everything is mentioned here. Even reservation is mentioned here. Our Constitution is sacrosanct and so

also the Parliamentary system. Nothing should be done to weaken it. These are very important. We have kept that in view.

The Government must ensure that the Constitution remains sacrosanct. We should not give the impression that we will move very fast if one lakh people assemble anywhere. I have prepared this Bill in consultation with many organisations of the SCs, the STs and the BCs of the country. I have prepared a comprehensive amendment of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. I was responsible for drafting it originally in 1989 following Rajiv Gandhi's commitment on 15th August from the Red Fort in 1987. People were opposing the Government itself. But I know that there are deficiencies. People have also experienced it. So we made comprehensive amendments. In 2009, we sent it. Two years have already passed. I don't know why it was not implemented.

There is this problem of manual scavenging. Why should a safaikarmchari go into the sewer when we have got better technology? I prepared a comprehensive Bill. It was cleared by the Working Group of the Labour Ministry. Now it is between the Ministry of Social Justice and Empowerment and the Ministry of Labour. We would request this body to recommend all legislations which have been proposed by various bodies. We don't say that you should only recommend this. We are trying to help you. We have also prepared a Bill for Special Component Plan. These Bills also should be processed with the same sense of urgency as is being shown in this case. Thank you. Kindly allow my other friends to speak for a minute.

CHAIRMAN: I have got your memorandum. They are at liberty to give us short notes. Please rest assured that all the names will be archived in the system. We are thankful to you. I must tell the hon. Members that this gentleman is well above 80 and he is extremely active and alert which is a good thing. We will have a short break here. We have seven-eight institutions, including the Editors Guild. We have to keep it in mind. Mr. Lakra, take only one minute.

DR. CHRISTOPHER LAKRA: This memorandum, including the suggestions, was prepared in consultation with eminent people. And Mr. Krishnan was also a part of it. We agree with his points. I will highlight only those points which were left.

One is the tenure of office which is given in clause 6. It is for five years. We would like to make it seventy.

On manner of selection and appointment, it has to be appointed by the President of India on the recommendation of the Selection Committee.

On removal of Lokpal, the Members of the Lokpal may be removed by an order of the President after an enquiry by the Supreme Court.

On grievance redressal mechanism, there should be a separate mechanism. It may take the form of citizens' charter and it can be separately legislated. Lokayukta could be part of the Lokpal Bill, which is a Central Bill, but it could be meant for the States and concerned States may implement it. It may be formulated by the Lokpal Committee itself.

On question of punishment, our view is that it should be decided after the enquiry.

On false, frivolous and vexatious complaints, there should be a mechanism to restrict them. These are already covered but I want to make it clear that there should be a distinction between a complaint which could not be proved and a complaint which is frivolous or vexatious or false. Of course, there should be a separate legislation for the protection of whistleblowers.

CHAIRMAN: It is with the Committee. We request you to please conclude now.

DR. CHRISTOPHER LAKRA: Thank you.

CHAIRMAN: Thank you. We will have a short break of ten minutes.

(The Committee then adjourned for tea.)

CHAIRMAN: Now, we are really short of time. I am going to request the one-minute people to actually take only one minute and close. कुरैशी जी, चूँकि आपने कहा है कि आपको जल्दी है, इसलिए आपको out of turn मौका दे रहा हूँ। आप एक मिनट में अपनी बात कह सकते हैं।

डा. इब्राहीम कुरैशी : माननीय अध्यक्ष महोदय और माननीय सदस्यगण, पूरे विश्व में हिन्दुस्तान पहला मुल्क है, जिसके संविधान में न केवल धार्मिक अल्पसंख्यकों के संवैधानिक अधिकारों के संरक्षण की व्यवस्था है, बल्कि सामाजिक और शैक्षणिक अधिकारों के संरक्षण की व्यवस्था भी है। माननीय अध्यक्ष महोदय, सामाजिक न्याय बिल में हमने सभी बिन्दुओं का समावेश किया है। मैं सिर्फ एक बात की तरफ आपकी तवज्जह दिलाना चाहूँगा कि NGOs, कारपोरेट सेक्टर्स और धार्मिक और सामाजिक ट्रस्ट्स हमारे मुल्क के लोगों की फलाह और बहबूदी के लिए foreign countries से FCRA के अन्दर aid लाते हैं। मैं आपकी जानकारी में ला दूँ कि इस मुल्क में मुस्लिम समुदाय की 140 बिरादरी OBC और 20 ST के अन्दर हैं। कुल मुस्लिम पॉपुलेशन का 80 परसेंट OBC और ST के अन्दर covered है। उनकी फलाह और बहबूदी के लिए गवर्नमेंट की अपनी स्कीम्स तो हैं ही, लेकिन इंटरनेशनल और नेशनल लेवल पर NGOs जो पैसा लाती हैं, उसका 20 परसेंट भी हमारी कम्युनिटी को नहीं पहुँचता। इसलिए NGOs और कारपोरेट सेक्टर्स, जो FCRA के through पैसा लाते हैं, को भी इस बिल में करप्शन की जो परिभाषा है, उसमें शामिल किया जाए।

Witnesses:

Editors Guild of India

1. Shri T.N. Ninan, Chairman and Editorial Director, Business Standards
2. Ms. Coomi Kapoor, Journalist
3. Shri Suresh Bafna, Journalist

CHAIRMAN: Now, Editors Guild of India will take about 5-7 minutes. Their representatives are here. Please send us your written note also.

SHRI T.N. NINAN: Thank you, Sir. As you know, the Guild has over 200 members representing mostly large and medium media organisations, both print and electronic. Each of these media outlets has its own views and perspective on current issues. There is no unanimity of views. Indeed, the very definition of free press means that there cannot be such unanimity. As such, while the publications will have their views on the Lokpal Bill, the Guild, *per se*, has no view. Your Secretariat has been kind enough to send us a copy of the Bill. We have circulated that to our members with a request to communicate their views either directly to the Committee or route their responses through the Guild. There is one issue on which the Guild does have a view, and a strong one.

SHRI T.N. NINAN (CONTD.): The invitation that we have received from the Joint Secretary in the Rajya Sabha Secretariat says and I quote, "The Committee would also be interested to have your views on the inclusion or otherwise of media persons/media houses within the fold of the proposed legislation."

I wish to state that this specific issue has been discussed two days ago by the Executive Committee of the Guild, and the unanimous view was that it would be wrong, and, perhaps, violative of the freedom of press, to bring the media under the Lok Pal. As office-bearers, we have been asked to present this view to this Standing Committee in unambiguous terms and to state that any such move would invite strong opposition from the media.

If we leave aside the official media, the media in India privately owned. It does not take money from the taxpayer. The Lok Pal is supposed to make public servants accountable to the people of India. Journalists are not public servants, they are not paid by the state. They are private actors who are accountable to their readers and viewers. There is a difference, and if I may say so, it is a fundamental difference.

When considering the role of the Lokpal, we submit that you cannot and should not cross the line and go from state to non-state. If that line is to be crossed, then, the same logic could be extended to the entire corporate sector. We could also have the CAG and CVC and CBI look into the media and the corporate sector as a whole. And ask the Election Commission to supervise elections to the Editors Guild! With due respect, Sir, the proposition is devoid of logic. I wish to state that the press in India is free, it is competitive, varied and it is heterogeneous. If anyone does not like what one publication says, he or she has the freedom to read another. If someone doesn't like any existing publication, he or she can start a new title--it is every citizen's right to start a publication, and espouse whatever views he or she holds.

If the press goes wrong, as it will when there are so many thousands of voices, there are well-established remedies. There is the Press Council of India to rap the press on the knuckles when complaints are made. Where there is defamation and libel, there are courts. Where there is the problem of paid news, which was a scandal unearthed by the press itself and not by any investigation agency, the Election Commission has stepped in to take action. So for every specific problem, there is a specific remedy. We don't see the need for a general ombudsman. There is the question of practicality.

We have thousands of publications, and hundreds of TV channels. And lakhs of journalists. What will the Lokpal do? Inquire into complaints from any and everyone on each and every one of these publications? And how will it inquire? Will it go into how and why a reporter function in the manner that he or she did? Will it start checking phone calls and reporters' notebooks? Will it check the computer records of a newspaper to see who cleared a news report? It is an impossible task. And if anyone were to attempt it, it would de facto become an assault on the press, because the very nature of our work is such that people will get upset with us and file complaints. Sir, we are aware that there is disquiet in the Government about the criticism it has received from the media in recent months. We are also aware that various moves are being made to put pressure on the media. We understand that guidelines have been issued to withdraw advertisements from certain publications. Guidelines have been proposed for the broadcast media, under which agents of the Government will sit in judgement on TV channels. The Press Council Chairman has been talking of canceling newspaper licences, which he is not empowered to do. An atmosphere is being created in which the media is being put under pressure. We have seen such phases before. In the late 1980s, a draconian Bill was drafted on defamation. The press fought that, and the Bill was dropped. Now also,

Sir, the press will fight any move aimed at curbing its freedom. We look o this Committee to protect our freedom. Thank you for giving us a hearing on this important issue.

CHAIRMAN: Mr. Ninan, you had to go early, we make an exception and put a few questions. I request my Members not to repeat. Let me ask on behalf of all of you the question which is upper most. Mr Ninan, you made very unequivocal and somewhat provocative statement rightly so. You are speaking on behalf of your entire community. There is some misunderstanding. I do not think there has been in this Committee any discussion or even a proposal or even a thought to try to regulate the press and journalists in content, in writing and in action. On behalf of the entire Committee, I would like to convey two issues. Number one is every segment of society not only state actors but actors with whom those state actors deal with and including those companies or NGOs do receive heavy Government funding. If such entity is to be subject to Lokpal, should the journalists' world or the press world in its business avatar in the ownership of business interest in the press -- that is all we are talking about -- be exempt. We are not talking about journalistic content at all. For example, where ownership of the press, and I am now going further here state versus non state line being blurred, where ownership of press resources as in India today is always done by private people is based upon extremely heavy investment of Government land, Government subsidy, Government support is another aspect. So, on two questions we want in dwriting later on. (a) The press ownership aspect, the business ownership interest of those who run the press; (b) In particular are the demarcating criteria be the degree of Government support in cash or kind? That is the defining line, and that includes the issues like paid news. We are not talking of purely journalistic practices which you may or may not have in the law of defamation, in the last of the Press Council or in the law of other things.

SHRI T.N. NINAN: If I may respond, the Editors' guild does not represent the owners. It represents the Editors'. Owners body is the Indian Newspaper Society.

CHAIRMAN: I invited them and they said they were unable to come because they have no issue on this.

SHRI ARJUN RAM MEGHWAL: Reporters are not independent.

CHAIRMAN: The important point is we invited INAS also.

श्री अर्जुन राम मेघवाल: एक मीडिया 10 साल पहले छोटी-सी बिल्डिंग में रहती थी, लेकिन आज वह बहुत बड़ी बिल्डिंग में रह रही है, क्या इसकी जाँच नहीं होनी चाहिए? ऐसा कैसे हो सकता है?

SHRI T.N. NINAN: As the Chairman rightly said, there is a business aspect and there is content editorial aspect. We are only speaking on the content side because we are a body of Editors. We don't speak on the business side. However, since you posed two specific questions to us we will call a meeting at short notice of our Executive Committee. On the basis of what the Committee advises us to do, we will communicate to you in writing.

CHAIRMAN: We would like you to put this question to your Committee and whatever they decide, you can send it to us in writing. Thank you very much.

SHRI T.N. NINAN: We will do so.

अध्यक्ष: अब अखिल भारतीय संत समिति की बारी है। आपसे अनुरोध है कि आपमें से कोई एक व्यक्ति बोले, लेकिन संक्षेप में अपनी बात कहे।

आचार्य प्रमोद कृष्णमः आदरणीय अध्यक्ष महोदय और सभी सम्मानित सदस्यगण, अध्यक्ष जी ने बड़ा जोर देकर कहा कि अखिल भारतीय संत समिति संक्षेप में अपनी बात कहे। मुझे इस बात पर बड़ा खेद है कि हम बड़ी पेशेंस से आपको शुरू से सुनते रहे और जब हमारी बारी आई तो आपने हमें ऐसा आदेश दे दिया।

अध्यक्ष: नहीं, नहीं। मैं तो सब को अपनी बात संक्षेप में कहने को कह रहा हूँ। आपको भी उतना ही समय मिल रहा है, जितना अन्य लोगों को मिल रहा है।

आचार्य प्रमोद कृष्णमः दूसरी बात, लालू जी को देख कर मुझे थोड़ा डर भी लग रहा है, क्योंकि पार्लियामेंट में अक्सर मैंने उन्हें बीजेपी के सांसदों को डाँटते हुए सुना है। जहाँ-जहाँ देश में भगवा वेश धारण किए कोई दिखता है तो मान लिया जाता है कि यह व्यक्ति भाजपा का होगा। इसलिए, लालू जी से मेरा अनुरोध है कि थोड़ी कृपा-दृष्टि बनाए रखें।

श्री लालू प्रसाद: आप निर्भीक होकर अपनी बात कहिए।

आचार्य प्रमोद कृष्णमः माननीय महोदय, हम आपको बहुत धन्यवाद देना चाहते हैं कि राष्ट्र के इतने ज्वलंत मुद्दे पर हमारी राय जानने के लिए आपने हम लोगों को यहाँ बुलाया है। इसके लिए अखिल भारतीय संत समिति आपको धन्यवाद देती है।

मैं उत्तर भारत में अखिल भारतीय संत समिति के अध्यक्ष के रूप में सेवा कर रहा हूँ। ऐसा नहीं है कि भारत के लाखों-करोड़ों संतों का मत वही हो, जो हम कहने जा रहे हैं। ऐसा भी नहीं है कि जो हम कहें या जो हमारे विचार हों, उन्हें आप उसमें रखें ही। इतनी गलतफहमी में भी हम नहीं हैं कि जो हम कहेंगे वह कानून बन जाएगा, परन्तु एक नागरिक होने के नाते और एक राष्ट्रभक्त होने के नाते हमें अपनी बात कहने का अधिकार है और आपने हमें यह सम्मान दिया है।

आचार्य प्रमोद कृष्णम (क्रमागत): मैं आप सबसे एक निवेदन करना चाहता हूँ कि यह देश election से चलेगा या selection से चलेगा। यह राष्ट्र जब स्वतंत्र हुआ, तो बड़े महान विद्वानों ने एक संविधान की रचना की, जिसके अंतर्गत विधायिका, कार्यपालिका और न्यायपालिका की स्थापना हुई। जैसा पूर्व विद्वानों ने कहा कि अगर किसी व्यक्ति को किसी से शिकायत है, तो वह दूसरे के पास जा सकता है, अगर दूसरे से शिकायत है, तो तीसरे के पास जा सकता है और अगर सबसे शिकायत है, तो वह न्यायपालिका की शरण में जा सकता है।

लोकपाल बिल या जन लोकपाल बिल को लेकर राष्ट्र की जनता और राष्ट्र के सामने जो भी वर्तमान परिदृश्य उपस्थित हुआ है, मैं बड़ी बेबाकी से कहना चाहता हूँ और धन्यवाद देना चाहता हूँ, एक तो लालू प्रसाद जी को और दूसरे युवा सांसद राहुल गांधी जी को, जिन्होंने बेबाकी से संसद में पूरे देश के सामने अपनी राय रखी। अगर यह लोकपाल बिल, जैसा कि सिविल सोसाइटी चाहती है, उसी स्वरूप में आपने देश को दे दिया, तो क्या यह भारत के संविधान की आत्मा से छेड़छाड़ नहीं होगी? भारत का संविधान यह अधिकार देता है कि देश में स्वतंत्र न्यायपालिका हो। क्या न्यायिक शक्तियाँ किसी एक संस्था के अधीन

कर दी जाए, किसी एक व्यक्ति के अधीन कर दी जाए? मैं आपसे करबद्ध अनुरोध करना चाहता हूँ और आप ही से पूछना चाहता हूँ कि आप इतने कमजोर क्यों हो गए? देश के करोड़ों लोगों ने अपना विश्वास व्यक्त करके इस संसद का गठन किया और उस संसद ने पूरे राष्ट्र के सामने एक फैसला लिया। सौ करोड़ से अधिक आबादी वाला यह देश है, अगर आप किसी से भी पूछेंगे, चाहे आप अनपढ़ से पूछें, पढ़े-लिखे से पूछें, व्यापारी से पूछें, सर्विस क्लास से पूछें, अधिकारी से पूछें, नेता से पूछें, ऐसा कौन है, जो यह कहता हो कि इस देश में भ्रष्टाचार खत्म नहीं होना चाहिए, लेकिन माहौल ऐसा बन गया है, जैसे बाकी सब लोग भ्रष्ट हैं और चंद लोग जो अंग्रेजी का अखबार पढ़ना जानते हैं और अंग्रेजी बोलना जानते हैं, वही ईमानदार हैं। सिविल सोसाइटी के फोबिया से आप लोग इतना डर गए हैं कि आनन-फानन में लोकपाल बिल प्रस्तुत करके उसे पास कराना चाहते हैं। अगर आपने आनन-फानन में यह लोकपाल बिल पास कर दिया, तो मेरा स्पष्ट मत है कि इस लोकपाल से देश का भ्रष्टाचार बिल्कुल खत्म नहीं हो सकता है, बल्कि भ्रष्टाचार और बढ़ जाएगा। आज गरीब जनता का काम पांच परसेंट से सात परसेंट देकर चलता है, तब दस से बारह परसेंट हो जाएगा और हम लोग कहीं के नहीं रहेंगे।

मेरा आपसे करबद्ध निवेदन है, अगर ज्यादा बोलूंगा, तो आप कहेंगे कि बाबा ने प्रवचन शुरू कर दिया, कि आज भ्रष्टाचार केवल MP नहीं कर रहे हैं, MLA नहीं कर रहे हैं, मंत्री नहीं कर रहे हैं, लेकिन देश में ऐसा माहौल बन गया है, यह मैं आपके पक्ष की बात कर रहा हूँ, कि जैसे जो MLA, MP, मिनिस्टर हैं, वे ही भ्रष्ट हैं, वे ही चोर हैं। यह माहौल आज किसने बनाया?

अभी एक विद्वान व्यक्ति मीडिया के विषय में बोल रहे थे। निश्चित और निःसंदेह इस राष्ट्र की मीडिया पर अंकुश लगना चाहिए, वरना यह राष्ट्र लोकतंत्र की दुहाई देने को तरस जाएगा। हमारे माननीय सांसद श्री अर्जुन राम मेघवाल जी ने बहुत अच्छी बात कही। मैं इनकी बात का समर्थन करता हूँ। मैं भी जब कॉलेज में था, तब कुछ लोग 10 हजार, 12 हजार या 14 हजार रुपए की तन्ख्वाह पर कोई Times of India में, कोई जनसत्ता में, कोई नवभारत टाइम्स में काम करते थे। आज वे सब लोग हजारों करोड़ के चैनलों के मालिक कैसे हो गए? क्या यह भ्रष्टाचार नहीं है? क्या केवल एक सांसद भ्रष्ट होता है? क्या केवल विधायकों के भ्रष्टाचार पर आप पाबंदी लगाने के लिए बैठे हैं? मेरा आपसे आग्रह है कि इस राष्ट्र में सबसे पहले तो मीडिया पर अंकुश लगाना चाहिए। मीडिया खबर नहीं दिखा रहा है, खबर बना रहा है। खबर create करने का अधिकार उसे संविधान ने नहीं दिया है। उसे स्वतंत्र न्यायपालिका के साथ स्वतंत्र पत्रकारिता करने का अधिकार है। मीडिया को निष्पक्ष होना चाहिए। लेकिन, माफ करना, आज मीडिया निष्पक्ष नहीं रहा है। आज मीडिया खबर दिखाने की बात नहीं करता है, बल्कि खबर create करता है, character assassination करता है और उसके बदले में blackmailing करता है।

यह जो आंदोलन है, इंडिया गेट से लेकर राष्ट्रपति भवन तक का, जंतर-मंतर से राष्ट्रपति भवन और संसद तक का, माफ करना, यह देश, गरीबों का देश आज भी झोपड़ी और गांवों में बसता है। हमारे दूधेश्वर महादेव, जहां 20 लाख लोग कांवर का जल चढ़ाते हैं, बद्रीनाथ से राकेश नाथ जी आए हैं, जहां करोड़ों लोग दर्शन करने जाते हैं, दुर्गा दास जी जम्मू से पधारे हैं, वहां लाखों लोग आते हैं, लेकिन क्या लाखों लोगों का समर्थन इन महात्माओं को मान लिया जाए? लाखों लोगों की श्रद्धा भगवान के उस स्वरूप में है। ऐसे ही इस देश का प्रत्येक नागरिक भ्रष्टाचार को खत्म करना चाहता है। अफसोस की बात तो यह है कि बहन मायावती जी ने कहा कि भ्रष्टाचार खत्म होना चाहिए, मुलायम सिंह जी ने कहा, अमर सिंह जी ने कहा कि भ्रष्टाचार खत्म होना चाहिए और हंसी तो तब आई, जब चौटाला साहब बोले कि भ्रष्टाचार खत्म होना चाहिए। देश का प्रधान मंत्री कहता है कि भ्रष्टाचार खत्म होना चाहिए। देश का हर आदमी कहता है कि भ्रष्टाचार खत्म होना चाहिए। हम संत लोगों को भी यह नौबत आ गई कि राष्ट्र के इस मुद्दे पर अपनी राय जाहिर करने के लिए अपने-अपने खर्चे से हम यहां तक चले आए।

मैं इस कमेटी के अध्यक्ष डॉ. अभिषेक मनु सिंघवी जी को धन्यवाद देना चाहता हूँ, जिनसे पहले से मेरा कोई परिचय नहीं है, चूंकि लोग आरोप भी लगा सकते हैं। इन्होंने मेरी एक चिट्ठी पर हमको आमंत्रित किया, इसलिए ये धन्यवाद के पात्र हैं और आप सभी लोग धन्यवाद के पात्र हैं कि आप अपना समय हमें दे रहे हैं और हम राष्ट्र हित में अपनी बात कह रहे हैं। यह बड़े दुर्भाग्य की बात है कि कोई यह कहने को तैयार नहीं है कि लोकपाल बिल भ्रष्टाचार को खत्म करने के लिए लाया जाए या केवल face saving करने के लिए लाया जाए।

अभी एक वक्ता ने कहा कि प्रधान मंत्री, राष्ट्रपति, आदि के बारे में भारत का संविधान कहता है कि देश में सब एक जैसे हैं। सब एक जैसे कैसे हो सकते हैं? प्रधान मंत्री हाउस में कोई घुस कर देखे और हमारे आश्रम में आधी रात में भी लोग तंग करते हैं। फर्क हो गया या नहीं? कहने-सुनने में बात ठीक लगती है, लिखने में बात ठीक है, लेकिन व्यावहारिक रूप से हमको उस पर सोचना पड़ेगा। देश का प्रधान मंत्री, देश का रक्षा मंत्री अगर मिनट-मिनट किसी के बुलावे पर आएगा, एक पांच पैसे या दस पैसे का लिफाफा लिख कर भेज दिया जाएगा और शिकायत दर्ज हो जाएगी, तो यह देश कैसे चलेगा? यह मुल्क कैसे चलेगा? यह मुल्क नहीं चल सकता है। भारत के करोड़ों लोगों का विश्वास इस देश की संसद में है और परमात्मा की कृपा से आप सब सांसदों को उसने यहां तक पहुंचाया है, आप सब आत्म चिंतन करें। लेकिन, इस देश का भ्रष्टाचार खत्म कैसे हो, यह हमसे मत पूछिए। आप आत्म चिंतन करके संकल्प लीजिए, देश के करोड़ों लोग आपके साथ खड़े हैं। लेकिन आप तो फालतू में डर जाते हैं।

गांधी जी के तीन बंदर थे – एक देखता नहीं था, एक सुनता नहीं था और एक बोलता नहीं था, लेकिन अन्ना के पांच बंदर हैं, जो खूब बोलते हैं और अन्ना मौन रहते हैं। बंदर बोलते हैं और मजेदार बात यह है कि जब उनसे कहा जाता है कि तुमने यह चोरी की है, तुमने फलां-फलां जगह यह चोरी की है, तब वे कहते हैं कि नहीं, हमने चोरी नहीं की है, बल्कि हमने इस पैसे का इस्तेमाल यहां की जगह वहां कर दिया। “तुम बनाओ, तो बाटा, हम बनाएं, तो मोची।” “तुम करो, तो सदाचार, हम करें, तो भ्रष्टाचार।” मैं आपसे करबद्ध निवेदन करने के लिए आया हूँ। इस राष्ट्र को आज एक नेतृत्व की आवश्यकता है। अगर केवल लिखे हुए संविधान से, लिखे हुए कानून से ही देश चलता, तो पूरा संविधान तो लिखा हुआ है। IPC लिखी हुई है, फिर न्यायपालिका के अंदर बहस की जरूरत क्यों पड़ती है? न्यायाधीश FIR पर फैसला क्यों नहीं करता है? वह गवाहों को बुलाता है, उसकी फेस रीडिंग करता है, फिर आत्म चिंतन करता है और फिर निर्णय करता है। मेरे कहने का तात्पर्य मात्र इतना है कि विवेक को लगाइए। अगर भ्रष्टाचार मिटाना है, तो लोकपाल बनने से भ्रष्टाचार नहीं मिटेगा। हमारा पूर्ण समर्थन संसद को है, संसदीय व्यवस्था में हमारी आस्था है। इसलिए जब अध्यक्ष जी ने कहा कि आप पहले बोलिए, तब हमने कहा कि नहीं, हम पहले सुनेंगे। आज हर व्यक्ति अधिकार की बात कर रहा है, कर्तव्यों को भूल गया है। अगर सारी शक्तियां लोकपाल में दे दीं और लोकपाल भ्रष्ट हो गया, तो? आखिर लोकपाल बनेगा कहां से? हिन्दुस्तान के ही आदमी को तो आप लोकपाल बनाएंगे, यूनान या भूटान से तो नहीं लाएंगे!

आचार्य प्रमोद कृष्णम (क्रमागत): अगर वह भ्रष्ट हो गया, तो उसकी जाँच कौन करेगा? फिर वही न्यायपालिका की बात आएगी और अगर न्यायपालिका को उनके अधीन कर दी, तो संविधान जो स्वतंत्र न्यायपालिका का अधिकार देता है, उसका क्या होगा? हमारे एक संत ने मुझे अभी बताया कि जनलोकपाल बिल में यह प्रावधान देने की भी बात हो रही है कि किसी का भी फोन टेप कर लो। वह निजता का अधिकार है, वह बड़ी विशेष परिस्थितियों में होना चाहिए।

जहाँ तक प्रधान मंत्री को लोकपाल में लाने का सवाल है, तो पहली बात हम यह कहते हैं कि जिस प्रकार आपके पास लोकपाल नहीं, बल्कि कई आयोग, ह्यूमन राइट्स कमीशन और महिला आयोग हैं, ऐसे ही करप्शन को रोकने के लिए पूरी समिति से मेरा करबद्ध अनुरोध है कि आप कोई एक सशक्त आयोग का गठन कर दीजिए, जिससे संविधान की मर्यादा रह जाएगी, संसद की गरिमा रह जाएगी। आप सब से अनुरोध है कि आप सशक्त शक्तियों से प्रदत्त एक संस्था हैं, आप अपनी शक्तियों को पहचानें। आप चुनाव हारने से मत डरिए। जितने सांसद हैं, सब दलीय राजनीति से ऊपर उठें। कोई व्यक्ति कुछ कहता है, तो उसको डाँटने लगते हैं, दूसरा कहता है, तो उसको कोई डाँटने लगता है। आप राष्ट्र के लिए दलीय राजनीति से ऊपर उठकर चिन्तन कीजिए। लोकपाल के लाने या उसे बनाने से इस देश का भ्रष्टाचार कतई नहीं मिटेगा, बल्कि भ्रष्टाचार उस दिन मिट जाएगा, जब आप शक्तियों

को पहचान कर उस पर कोई निर्णय लेंगे। आज देश आपकी तरफ देख रहा है। उस आन्दोलन में पूरा देश आपके साथ था, लेकिन आपने निर्णय नहीं लिया। निर्णय लेना एक बात है और निर्णय न लेना दूसरी बात है, लेकिन आप लोग तो अनिर्णय के अनिर्णय में भी फँसे हुए हैं।

देश की तीनों सेनाओं के अध्यक्षों को किसी भी लोकपाल के दायरे में लाकर देखिए, देश संकट से गुजरेगा। सुप्रीम कोर्ट के चीफ जस्टिस या सुप्रीम कोर्ट के तमाम जस्टिस अगर लोकपाल के दायरे में आ गये, तो अराजकता पैदा हो जाएगी। न्यायपालिका का अधिकार, संविधान जो स्वतंत्र न्यायपालिका की बात करता है, उसका गला घुट जाएगा। इस देश में जनतन्त्र है, उसको जनतन्त्र रहने दीजिए। अगर बनाना जरूरी ही है, तो इतने राज्यों के जो राज्यपाल हैं, मेरे ख्याल से उनको उदघाटन और समापन के सिवाय कोई काम नहीं है। उनमें शक्ति निहित कर दीजिए। आपके अंदर असीम शक्तियाँ हैं। इतने बड़े बंगले और इतने बड़े गवर्नर्स हाउस हैं। जब बेचारे बुजुर्ग हो जाते हैं, बीबी-बच्चे सब साथ छोड़ देते हैं, तब उनको गवर्नर बनाया जाता है। उनकी उस शक्ति को आप विस्तृत कर दीजिए।

अध्यक्ष: स्वामी जी, समय का थोड़ा ध्यान रखें।

आचार्य प्रमोद कृष्णम: जी बस, हो गया। मेरे तीन प्वायंट्स तो ये हो गये। अब मेरा अगला प्वायंट यह है कि अखिल भारतीय संत समिति अपना यह मत देती है कि अगर इसे बनाना ही है, तो फिर इसमें तमाम बहुराष्ट्रीय कम्पनियों को रखिए, क्योंकि देश में स्वास्थ्य सेवाएँ, ट्रांसपोर्ट, तमाम तरह की एजुकेशन, इन सब का निजीकरण हो चुका है। 1985 के बाद यह उदारीकरण की बात की गयी है। माननीय प्रधान मंत्री उस समय वित्त मंत्री थे और नरसिंह राव जी उस समय प्रधान मंत्री थे। इन्हीं दोनों की देन है कि देश की सरकार पर आज कुछ नहीं है, सब प्राइवेट सेक्टर में चला गया है। आप इन पर नियंत्रण कीजिए, क्योंकि ये राष्ट्र की अस्मिता, अस्तित्व और दिशा को प्रभावित कर रहे हैं। अगर लोकपाल बनाना ही है या उसको आप जो भी स्वरूप दें, अगर आप उसको लोकायुक्त कहें, तो वह आज है, अगर आयोग का नाम दें, तो वह है। अगर गवर्नर के हाथ में शक्तियाँ दें, तो वह आपके ऊपर निर्भर करेगा, लेकिन इनको उसमें रखिए। मीडिया को उसमें रखना चाहिए। प्रधान मंत्री को उससे अलग रखना चाहिए, देश के रक्षा मंत्री को उससे अलग रखना चाहिए और देश की तीनों सेनाओं के अध्यक्ष को उसके प्रति जवाबदेह नहीं होना चाहिए। देश के सांसदों को भी जनता के प्रति जवाबदेह होना चाहिए, किसी एक बाबू और किसी एक लोकायुक्त के प्रति जवाबदेह नहीं होना चाहिए। क्यों डर रहे हैं आप? आप सशक्त निर्णय तो करिए!

स्वास्थ्य संबंधी तमाम सरकारी और गैर-सरकारी संस्थाओं तथा अस्पतालों को लोकपाल के दायरे में सम्मिलित किया जाना चाहिए। समस्त शैक्षणिक संस्थाएँ, चाहे वे इंजीनियरिंग कॉलेज हों, मेडिकल कॉलेज हों या छोटे-छोटे पब्लिक स्कूल हों, उनको इसके अंतर्गत रखना चाहिए। मैंने देखा कि सैंकड़ों पब्लिक स्कूलों ने अपने बच्चों को लाकर इंडिया

गेट से मार्च कराया। इस देश में सबसे बड़ा भ्रष्टाचार तो पब्लिक स्कूल कर रहे हैं। मैं पूछना चाहता हूँ जो प्राइमरी में मास्टर है, डाक्टर है, इंजीनियर है, कौन भ्रष्ट नहीं हो गया है? एक आदमी भ्रष्ट नहीं है, बल्कि भ्रष्टाचार जड़ में पहुँच गया है। इसलिए, अगर लोकपाल इस तरह से बनाना है, तो माफ कीजिए, फिर आप लोकपाल बनाने की कवायद मत कीजिए, फिर आप यह कहिए कि हमें पूरा संविधान बदलना है। अगर आपको संविधान की मूल आत्मा को जीवित रखना है, उस भाव को जीवित रखना है, तो माफ कीजिए, इस लोकपाल से वह खंडित होगा, नहीं तो कोई आयोग बना कर या वर्तमान में आपके पास जो सिस्टम है, उसी में शक्तियाँ निहित करके या संसद को कोई ऐसी शक्ति देकर यह किया जाए। मैं नहीं समझता कि इसकी कोई जरूरत है, क्योंकि आपके पास हर शक्ति है।

अध्यक्ष: स्वामी जी, समय की पाबंदी है, इसलिए अब आप अपनी बात समाप्त करें।

आचार्य प्रमोद कृष्णम: मैं एक बात और कहना चाहता हूँ कि समस्त केन्द्रीय और राज्य स्तरीय ब्यूरोक्रेसी, जिसको लोअर ब्यूरोक्रेसी कहते हैं, उसको इसके अधीन जरूर रखिए, क्योंकि आम आदमी का काम उसी से पड़ता है। अब इससे अधिक कहूँगा, तो फिर और झगड़ा बढ़ेगा।

अध्यक्ष: आपका बहुत-बहुत धन्यवाद। ओम् शांति, शांति, शांति।

आचार्य प्रमोद कृष्णम: आपने मुझे समय दिया, इसके लिए आपको भी धन्यवाद।

अध्यक्ष: इसके अतिरिक्त आप संस्था के रूप में या आपके साथ जितने संबंधित व्यक्ति हैं, उनकी तरफ से लिखित रूप में अपने सुझाव हमें जल्द से जल्द हफ्ते, दस दिन में भिजवा दीजिएगा।

श्री अर्जुन राम मेघवाल: हम आपके सुझाव लिखित में भी चाहते हैं।

श्री शैलेन्द्र कुमार: आप अपने सुझाव लिखित में भी दी दीजिए।

आचार्य प्रमोद कृष्णम: बिल्कुल। हम लोग लिखित में भी जरूर सर्कुलेट करेंगे।

श्री वीजय बहादुर सिंह: बहुत अच्छा बोले आप।

आचार्य प्रमोद कृष्णम: धन्यवाद।

अध्यक्ष: धन्यवाद। गांधियन सेवा एंड सत्याग्रह ब्रिगेड से श्री शम्भूनाथ दत्त और जस्टिस कमलेश्वर नाथ जी उपस्थित हैं। अब आपमें से एक व्यक्ति संक्षेप में अपनी बात कहें।

जस्टिस कमलेश्वर नाथ: आदरणीय अध्यक्ष जी और स्टैंडिंग कमिटी के समस्त सदस्यगण, मैं आप लोगों का आभारी हूँ कि आपने गांधियन सेवा एंड सत्याग्रह ब्रिगेड को यह अवसर दिया कि लोकपाल बिल पर हम अपनी बात कहें।

मैं यह निवेदन कर रहा हूँ कि हमने तीन write-ups आपके पास भेजे हैं। एक 19 अगस्त 2011 का है, जो ऑफिसियल लोकपाल बिल पर है। दूसरा, 29 अगस्त 2011 का है, जो इफेक्टिव लोकपाल के ऊपर एक विशेष टिप्पणी है और तीसरा लेख, 7 सितम्बर 2011 का है।

अध्यक्ष: हमें ये तीनों मिल गये हैं और ये सर्कुलेट भी हो गये हैं। आपका अपना जो प्वायंट है, वह बतायें।

जस्टिस कमलेश्वर नाथ: अगर ये तीनों मिल गये हैं, तो आपको बहुत-बहुत धन्यवाद है। उसको देखा जाए और जरूर पढ़ा जाए। अब मैं इसके मिनट्स पर आता हूँ। ज्यूरिस्टिक्शन ऑफ लोकपाल। पीसी एक्ट के अतिरिक्त, आईपीसी की धारा 166 से लेकर 171 तक बढ़ा दें।

नम्बर दो, क्या लोकपाल को संवैधानिक स्तर यानी Constitutional status दिया जाए? हमारा मत यह है कि अभी नहीं। वर्तमान समय में जो लोकपाल बिल है, आप उसको अधिनियमित करें, कालांतर में आप उसे संवैधानिक स्तर दें।

तीसरा प्रश्न हायर जुडिशरी से संबंधित था कि इसको लोकपाल के अंतर्गत आना चाहिए या नहीं। हमारा मत है कि इसको नहीं आना चाहिए।

चौथा प्रश्न सीवीसी और सीबीआई के बारे में था। हमारा मत है कि सीवीसी और सीबीआई को लोकपाल में merge नहीं होना चाहिए, मगर लोकपाल के पास इन दोनों पर एक supervisory power होनी चाहिए। हमारे Constitution के article 227 में जो अवधारणा है, उसी के अनुसार लोकपाल का सुपरविजन सीवीसी और सीबीआई पर होना चाहिए, कंट्रोल नहीं होना चाहिए।

पाँचवा प्रश्न यह था कि क्या पूरी ब्यूरोक्रेसी को लोकपाल के अंतर्गत लाया जाए? हमारा विचार है, नहीं।

अगला प्रश्न यह था कि क्या राजकीय ब्यूरोक्रेसी को लोकपाल में लाया जाए?

श्री जस्टिस कमलेश्वर नाथ (क्रमागत) : हमारा सुझाव है कि राजकीय ब्यूरोक्रेसी को एक अन्य विधायन के द्वारा जिसे लोकपाल एक्ट कह सकते हैं और जिस का मॉडल हमारे ऑल इंडिया लोक आयुक्त एवं उप-लोकयुक्त कांफ्रेंस ने 2005 में बनाया था और केन्द्रीय सरकार को दिया था, उस मॉडल के आधार पर प्रत्येक राज्य में लोक आयुक्त का गठन होना चाहिए और कुछ राज्यों में जो वर्तमान स्थिति है, उस के स्थान पर इसे लाना चाहिए। मूल रूप से हम यह कहना चाहते हैं कि जो 2005 का मॉडल ऑल इंडिया लोक आयुक्त, उप-लोक आयुक्त कांफ्रेंस ने बनाया है, वह कर्नाटक का जो लोक आयुक्त 1984 का है, उस पर आधारित है। यह मेरा अनुभव है और मैं अपने अनुभव की बात इसलिए कह रहा हूँ क्योंकि मैं कर्नाटक राज्य का उप-लोक आयुक्त 1992 से 1997 तक रहा हूँ। यह मेरा निजी अनुभव है कि जो

कर्नाटक का लोक आयुक्त एक्ट है, वह एक सशक्त एक्ट है और उस के आधार पर पूरे भारत के लिए एक लोक आयुक्त एक्ट बनाया जा सकता है। मैं अपने गांधियन सत्ता ब्रिगेड के विचार दे रहा हूँ कि प्राइम मिनिस्टर को लोकपाल के अंतर्गत लाया जाए, परंतु safeguard के साथ। उन safeguard को हम नेशनल सेक्युरिटी का मैटर, पब्लिक ऑर्डर का मैटर और इंटरनेशनल अफेयर्स का मैटर कहते हैं। इन के अतिरिक्त जो भी प्राइम मिनिस्टर की कार्यवाही है, वह लोकपाल के अंतर्गत होनी चाहिए। हम सिटीजंस चार्टर को पुष्ट करते हैं। हर डिपार्टमेंट में समयबद्ध कार्य करने के लिए और समय अंतर्गत कार्य न करने पर पेनल्टी लगाने का और victim को compensation देने का प्रावधान सिटीजंस चार्टर में होना चाहिए। लोकपाल को search and seizure of documents की भी पावर होनी चाहिए। आज जो लोकपाल बिल हमारे पास है, उस में शायद search and seizure of documents का अधिकार नहीं है। सेक्शन 10 कर्नाटक लोक आयुक्त एक्ट में जिस तरह से power to search and seize of documents and property है, उसी प्रकार का अधिकार लोकपाल बिल में भी होना चाहिए। इस लोकपाल बिल में एक सेक्शन 51 है, यह समाप्त होनी चाहिए। हम पूरे बल से कहते हैं कि धारा 51 समाप्त होनी चाहिए क्योंकि इस के रहते हुए लोकपाल का प्रतिष्ठान बेकार है। मैं आप को यह सेक्शन पढ़कर सुना देता हूँ : No suit, prosecution or other legal proceedings under this Act - इस में investigation भी है, inquiry भी है -- shall lie against any public servant -- पूरा एक्ट पब्लिक servant से संबंधित है -- in respect of anything -- कुछ भी किया हो -- which is done in good faith. मैं पूछना चाहता हूँ क्या corruption good faith में हो सकता है? Corruption and good faith can never go together. यह सवाल ही नहीं पैदा होता। उस के बाद लिखा है or intended to be done in discharge of official functions. जो ऑफिसियल functions है, उस में अगर intention भी है तो आप बरी हैं। और अंतिम है, in exercise of his powers. यह जो exercise of powers है, यही occasion है करप्सन का क्योंकि किसी को शक्ति या अधिकार है कुछ कार्य करने का, उस शक्ति का उपयोग करने या न करने से करप्सन होता है।

अध्यक्ष : मैं आप को बता दूँ कि आप ने क्लॉज 51 का जिक्र किया, यह standard क्लॉज है। आप समझ रहे हैं कि यह उन के बारे में है जिन को भ्रष्टाचार के लिए prosecute किया जाएगा? यह उन के विषय में नहीं है। यह उन के विषय में है जो लोकपाल के ऑफिसर्स हैं और जो investigate करेंगे, जो हर पुलिस ऑफिसर के लिए होता है ..

श्री जस्टिस कमलेश्वर नाथ : क्षमा करें, वह धारा 52 है स्टाफ के लिए। धारा 52 के लिए मैं कुछ नहीं कह रहा हूँ। वह होनी चाहिए, लेकिन 51 निकलना चाहिए। Corruption in good faith तो मैंने पहली दफा कानून में पढ़ा है!

अध्यक्ष : आप सही कह रहे हैं। इन दोनों में विविधता है क्योंकि अगर 51 का अभिप्राय है कि जो व्यक्ति भ्रष्टाचार कर रहा है, उस के लिए defence है तब तो आप सही फरमा रहे हैं। यह तो गलत होगा क्योंकि यह पूरा protection होगा।

श्री जस्टिस कमलेश्वर नाथ : उस की भाषा बोल रही है।

CHAIRMAN: Now Social Justice Forum on Lokpal.

DR. PAUL DIWAKAR: Sir, I will just take one minute. I will not repeat the points that have been shared earlier by Shri Krishnan. Primarily, Clause 17 talks about jurisdiction, offences under Prevention of Corruption Act. We feel that this Bill, if at all it has to protect the vulnerable, then it has to take a little larger view because the issues that are pertaining to the Scheduled Castes, Scheduled Tribes, OBCs and some of the minorities have not been taken into this Bill. At least Rs. 1,50,000 crores are being diverted every year and this has been done by different levels of functionaries by their rejection or not able to implement it. So this needs to be taken into account.

श्री ओम प्रकाश गुप्ता: माननीय अध्यक्ष जी एवं समस्त सदस्यगण, मैं आप का आभार प्रकट करता हूँ कि आप ने हमें इस चर्चा में शामिल होने का मौका दिया।

मैं काफी बातें जो यहां पर कही जा चुकी हैं, उन को नहीं दोहराऊंगा। मैं तीन-चार बातें जो नोटिस की हैं, उन के बारे बताना चाहूंगा। डा० साहब, जो रिजर्वेशन की बात शुरू में उठी, हम यह चाहते हैं कि लोकपाल के लिए या जो भी और कानून हो, उसे जांत-पांत की राजनीति से अलग रखा जाए। उस में इस टाइप की कोई रिजर्वेशन न हो क्योंकि इस से एक और controversy पैदा होती है।

दूसरा, सी०वी०सी० और सी०बी०आई० की जो बात चल रही थी, उस में Anti Corruption Department को लोकपाल के दायरे में लाना चाहिए और मीडिया का रोल बहुत constructive होना चाहिए। मीडिया एक बहुत important pillar है और उस का रोल towards the nation and the people of this country बहुत constructive होना चाहिए। Election of Lokpal is already discussed. अभी जैसे कि जन लोकपाल की बात स्वामी जी ने कही, मैं उन की सारी बातों से इत्फाक रखता हूँ और उन्हीं बातों को ध्यान में रखते हुए हम ने दिल्ली के आर्कबिशप को तीन दिन पहले एक लेटर लिखा कि आप अन्ना जी के नेतृत्व में बनी India Against Corruption Committee से quit करें। आप को यह जानकर खुशी होगी कि आर्कबिशप इस कमेटी से बाहर हो चुके हैं। स्वामी जी बाहर हो चुके हैं, दिल्ली के आर्कबिशप ने इस कमेटी से resign कर दिया है और स्वामी अग्निवेश जी भी इस कमेटी से बाहर हो चुके हैं। मैंने इन सभी को लेटर लिखे थे और इमाम उमर इलियासी भी इस कमेटी से बाहर हो चुके हैं। हम यही चाहते हैं कि चंद मुट्ठीभर लोगों के हाथों की कठपुतली न बनें। यह संसद 120 करोड़ लोगों का एक मंदिर है। उन की बातें सुनी जानी चाहिए और जो लोग इस में चुनकर आए हैं, उन्हें जनता ने चुनकर भेजा है। उन के हाथ में सारी पॉवर है। वे इन चंद मुट्ठीभर लोगों की बातों में न आएँ और वे अपनी आत्मा से पूछें कि हम क्या कर रहे हैं? हम सब जानते हैं कि करप्सन है, लेकिन करप्सन को कैसे निपटाना है, यह बात संसद से अच्छी तरह कोई नहीं समझ सकता।

CHAIRMAN: Now, we will hear the Consumer Online Foundation. Mr. Krishnan, we already have your written memorandum. You may kindly not repeat the points made in it.

SHRI S. KRISHNAN: Thank you very much for the opportunity given to us. Firstly, I would like to put some suggestions before you which can be incorporated in the form of rules and regulations. We have suggested three important things which we would like to share with the Members of Parliament. Sir, if there is a resolve that every citizen's letter shall be acknowledged within one week, then, it should be made mandatory that every citizen's letter shall be answered within three months or six months. There should be a commitment that it shall be answered finally. The second thing is that everybody, who has got a public contact, must wear a name badge. This does not cost money. This would show the earnestness of the Government and the Government machinery to be transparent and accountable, and that it means business. We are suggesting this as a blueprint for implementing Government-friendly machinery. Then, I would like to stress on the importance of information. It is absence of information which encourages touts and encourages corruption. When I was a Consultant in the Department of Administrative Reforms, I was instrumental in setting up 49 Information and Facilitation Centres in every Ministry/Department which will make available information relevant to the Ministries in terms of schemes that are implemented by them; in fact, all kinds of information were made available. Unfortunately, this has gone into disuse. This should be made mandatory that whichever organization comes under the purview of the Lokpal should have Information and Facilitation Centres available, and its functioning should be monitored.

I have two points more. There is no mention in this Bill regarding the culpability of the bribe-giver. There are three views possible. One is that the bribe-giver is compelled by circumstances to give bribe because he has no other way. The other is, he is tempting the honest officials...

CHAIRMAN: You read Section 17. There is something there. You can react to that in writing.

SHRI S. KRISHNAN: I have read that. I want to say another aspect of it. The third is, if you penalize him, then, corruption will not come out, if you think that he will be afraid. Three things stand in the way of change in our country. One is fear. I am afraid that if I complain, my position will be worse. The second thing is apathy that I will get my job done by hook or by crook. I do not care for the system, and I will not lift my little finger. Then comes cynicism that nothing is going to happen. We have to overcome these, and that is where I come to my next point regarding protection of whistleblowers. I think there should be a provision for whistleblowers. The eternal vigilance is the price of democracy. There are any number of people who are willing to complaint and come forward and give the feedback, but they are afraid...

CHAIRMAN: We have a full report on that proposal for whistleblowers. This Committee itself has given that Report.

SHRI S. KRISHNAN: Then, Sir, we will be somewhat anachronistic if we say that there are already enough provisions in the country, and, if these are implemented, there is no need for the Lokpal. But it is too anachronistic for us to say that. Many people have said that. What we want is that as the Financial Memorandum says, it will cost about Rs.700 crores, or, it may even cost around Rs.1,000 crores by the time you have to implement it. So, we want you to examine the existing system thoroughly and you bring them into the Lokpal as much as possible so that it functions.

CHAIRMAN: Now, Confederation of All India Traders.

श्री प्रवीण खंडेलवाल: चेयरमैन सर, बहुत-बहुत धन्यवाद। मैं देश भर के व्यापारियों की ओर से आपको धन्यवाद देना चाहता हूँ इस बात के लिए, कि व्यापारियों को भी इस प्रकार की

बैठक में बुलाया जाता है, बेशक उनका क्रम में नंबर शायद नीचे से ही हो, लेकिन उन्हें आमंत्रित किया जाने लगा है।

सर, क्लॉजवाइज ऑलरेडी हमने आपको जवाब भेज रखा है, जो पहले आपके पास भेजा था, इस समय मैं उस पर नहीं जाना चाहता। मैं केवल एक विषय की ओर आपका ध्यान दिलाना चाहता हूँ कि जिस मुद्दे पर यह बातचीत हो रही है करप्शन, वह करप्शन पूरे लोकपाल में कहीं पर डेफिनेशन में नहीं है और न ही उसका कहीं पर कोई जिक्र है और जो प्रिवेंशन ऑफ करप्शन एक्ट, 1988 है, उसमें भी उस करप्शन का कोई जिक्र नहीं है। आखिर किस करप्शन की बात हम कर रहे हैं और किस करप्शन पर यह लोकपाल बिल बनाना है, ऐसा कहीं पर भी, न लोकपाल बिल में और न प्रिवेंशन ऑफ करप्शन एक्ट, 1988 में जिक्र है।

श्री प्रवीण खंडेलवाल (क्रमागत) : तो मेरा आपसे एक निवेदन यह है कि यदि इस लोकपाल बिल में उसको add कर दिया जाए, तो मैं समझता हूँ कि इसकी प्रासंगिकता बन जाएगी।

दूसरे, मैं देख रहा हूँ कि सबके सुनने के धैर्य की एक सीमा होती है, इसलिए ज्यादा कुछ न कहते हुए मैं केवल दो विषयों की ओर इस समिति का ध्यान दिलाना चाहता हूँ, क्योंकि जिस कानून की रचना आप करने जा रहे हैं, उससे उनका बहुत गहरा ताल्लुक है। पहली बात, जब हम लोकपाल की बात करते हैं, तो ऐसा मालूम पड़ता है कि हम भ्रष्टाचार के खिलाफ किसी नए कानून की बात कर रहे हैं। वास्तव में 1947 में पहला भ्रष्टाचार का कानून बना, 1952 में वह अमेंड हुआ, 1954 में संथानम कमेटी की recommendations के बाद वह बना और बाद में 1988 में Prevention of Corruption Act बना, लेकिन क्योंकि इन सारे कानूनों का execution सही तरीके से नहीं हुआ, इसके साथ-साथ जो हमारे पास दूसरी authorities हैं, उनका execution नहीं हुआ और execution के साथ-साथ officers की accountability कहीं पर नहीं थी, इसलिए यह नया रूप सामने आया, इसलिए हमें इस बात को सुनिश्चित करना होगा कि executive wing की accountability को हमें 100 परसेंट डिफाइन करना होगा, फिर चाहे लोकपाल हो, Prevention of Corruption Act हो या कोई भी हो, उस कानून की प्रासंगिकता रहेगी, एक तो मेरा submission यह है।

मेरा दूसरा submission यह है कि लोकपाल के इस मुद्दे को लेकर अभी हम भ्रम की स्थिति में हैं कि हम किस मुद्दे पर लोकपाल की बात कर रहे हैं? वह लोकपाल क्या होगा और भ्रष्टाचार के किन मुद्दों को वह address करेगा? क्या लोकपाल बनने के बाद Prevention of Corruption Act खत्म हो जाएगा? जो different departments हैं, उनमें जो Vigilance Department काम कर रहे हैं, क्या वे खत्म हो जाएंगे? जो other statutory bodies हैं, उनका क्या होगा या एक ही विषय पर तीन-तीन, चार-चार एजेंसियां काम करेंगी, लोकपाल को बनाते समय हमें इसको भी ध्यान में रखना होगा। मैं केवल दो बातें आपके ध्यान में लाकर अपनी बात को समाप्त करूंगा। एक नए किस्म का भ्रष्टाचार इस देश में पनपा है। वह

भ्रष्टाचार है बहुराष्ट्रीय कंपनियों का और बड़े कॉर्पोरेट घरानों का। सर, यह जो डिपार्टमेंटल पार्लियामेंटरी स्टैंडिंग कमेटी है, मैं बहुत विनम्रता के साथ आपका ध्यान दिलाना चाहता हूँ कि ऐसी ही एक डिपार्टमेंटल पार्लियामेंटरी स्टैंडिंग कमेटी, जिसने इसी प्रकार से बहुत मेहनत करके, छः-छः, आठ-आठ घंटे की सिटिंग देकर पार्लियामेंट ऑफ इंडिया को एफ.डी.आई. रिटेल पर 8 जून, 2009 को एक रिपोर्ट सौंपी थी, लेकिन यह जानकर ताज्जुब होता है कि जिस डिपार्टमेंट की वह पार्लियामेंटरी स्टैंडिंग कमेटी है, उसी कॉमर्स मिनिस्ट्री का डिपार्टमेंट डी.आई.वी.पी. न मालूम किन कारणों से उस रिटेल सैक्टर में एफ.डी.आई. लाने के लिए उसमें डिस्कशन पेपर और दुनिया भर की चीजें लेकर आया है, तो सवाल यह उठता है कि क्या, एक तरफ जो वर्ल्ड का सबसे बड़ा ग्लोबल रिटेलर है, जब वह यह कहता है कि मैंने 11 मिलियन डॉलर हिंदुस्तान में lobbying पर दिए और यहां पर प्रतिक्रिया नहीं होती है? एक तरफ पार्लियामेंट की स्टैंडिंग कमेटी की रिपोर्ट है और दूसरी तरफ इस प्रकार का एक डिस्कशन पेपर आता है, तो यह किस प्रकार के भ्रष्टाचार को इंगित करता है? इस प्रकार के भ्रष्टाचार पर किस प्रकार से इस देश में अंकुश लगाया जाए, यह लोकपाल को बनाते हुए हमें तय करना होगा।

अध्यक्ष : आपका अंतिम प्वाइंट...

श्री प्रवीण खंडेलवाल : सर, मेरा अंतिम प्वाइंट सिर्फ इतना है कि जिस लोकपाल की बात हम करते हैं, कहीं वह कोई सुपर पावर तो नहीं बन जाएगा? हमने दिल्ली में ही देखा है कि सुप्रीम कोर्ट की मॉनिटरिंग कमेटी अपने आपको हाई कोर्ट से ऊपर समझने लगी है। वह यह कहती है कि We are Supreme Court और वह हाई कोर्ट के स्टे को भी उठाकर फेंक देती है। उसी मॉनिटरिंग कमेटी के आगे म्युनिसिपल कॉरपोरेशन का ऐक्ट, डी.डी.ए. का ऐक्ट, केंद्र सरकार के नोटिफिकेशन्स और दूसरे ऐक्ट बेमानी हो गए हैं, तो क्या कल को यदि कोई लोकपाल ऐसा आएगा, तो जो Statutory provisions हैं, उनकी सुरक्षा भी रह पाएगी या नहीं, इस बात को भी हमें सुनिश्चित करना होगा।

सर, बाकी जो सेंट्रल विजिलेंस कमिशन ने सितम्बर, 2010 में National Anti Corruption Strategy पर कुछ सुझाव मांगे थे, उसमें हमने जो response दिया है, मैं आपसे निवेदन करूंगा कि हमारे उस response को, जो हमने आपको भी दिया है, उसको हमारा extended argument मानकर हमारे submission को मान्यता दी जाए।

अध्यक्ष : बहुत-बहुत धन्यवाद। आपने बहुत स्पष्ट कहा। अब लास्ट दो Organisations हैं – डा. सुवेश पट्टनायक और श्री रंजीत सिंह। पट्टनायक जी, आप संक्षेप में बोल दीजिए।

DR. SOWESH PATTANAIK: I don't know why that organization's name does not appear. I think, there is some mood against the so-called terminology of 'Civil Society.' It is because it has been abused and misused and we declare that the Civil Society has a different connotation as well. Civil Society means...

CHAIRMAN: You belong to which organization?

DR. SOWESH PATTANAIK: I represent the Civil Society for Truth. Sir, I have circulated the hardcopy of the PowerPoint presentation.

(PowerPoint presentation)

श्री वीजय बहादुर सिंह : लोकपाल के अंदर एस.सी./एस.टी. होना चाहिए या नहीं होना चाहिए, इसके बारे में आपकी क्या राय है?

DR. SOWESH PATTANAIK: Sir, if you don't have a provision of the Scheduled Caste/Scheduled Tribes for forming the Supreme Court collegium, I don't think it should be a part of this. So, the acts and conduct of all the Members of Parliament should be under the Lokpal purview.

CHAIRMAN: How would you do that --have all the acts of MPs under the Lokpal purview - - when there is a Constitutional bar?

DR. SOWESH PATTANAIK: Sir, I think article 105 (2) makes a reference which is an extrapolation. Sir, sub-clause 17(2) is an extrapolation of article 105 (2). I don't think article 105 (2) protects corrupt practices like that of cash for votes, JMM bribery case...

CHAIRMAN: Not only is there a provision, but, unfortunately or fortunately, there is a Supreme Court judgement which says so. There is a provision in article 105 (2) and also a Supreme Court judgement.

DR. SOWESH PATTANAIK: Also, in light of the failure of the Ethics Committee of Parliament, I believe there should be a provision which includes the acts of the ...

CHAIRMAN: You can, certainly, say that it should be modified but if you are saying that in the existing law it can be, I don't think what you are suggesting is right. It should be modified. Can you try to wind up shortly?

DR. SOWESH PATTANAIK: Sir, the primary focus is on the inclusion of private or non-governmental sector under the Lokpal. Here, I would like to quote Gandhiji where he said, "If non-Government corruption stops, the Government corruption cannot go on." Sir, you gave us very little time. We have so much to say. I can't, actually, make out what to leave and what to state before you.

अध्यक्ष : आप पांच मिनट का समय और ले लीजिए।

DR. SOWESH PATTANAIK: Sir, we would like to say that the Prevention of Corruption Act 1988 is the operating law for the Lokpal. It sees the public functionaries' corruption as a starting point. Can we have a law which distinguishes between private and public corruption? So, it should not start with any discriminatory approach but it should start with a fair approach.

CHAIRMAN: We will look into your memorandum. You can send us a very short summary because yours is a very detailed one. We will have it analysed. Send us a two or five page summary if you can. Okay. Thank you.

DR. SOWESH PATTANAIK: Sir, there are a few points, I will just rush through them in one minute.

CHAIRMAN: Okay.

DR. SOWESH PATTANAIK: Sir, in terms of Oath of affirmation, if you refer to sub clause 9(4)(1), our standpoint is, no Member including the Chairperson should be ever eligible for

any post of public office. In terms of investigation, the Lokpal should have its own independent investigation agency but it can use the services of the existing investigation agencies like the CBI or CBDT. In such cases, it should function under the direct control and supervision of the Lokpal. Later on, with the preliminary investigation, that process should exist because in normal investigation processes, as Mr. Amod Kanth and Rajeev Dhavan also pointed out, it becomes chaotic. But in the present circumstances, at the police station level, you have a preliminary inquiry which is, actually, not provided for in the section 150 of the Cr.P.C. So, I believe that the process which is laid down is good.

CHAIRMAN: Please do end now.

DR. SOWESH PATTANAIK: Sir, in terms of punishment and penalty that is provided for, we propose that there should be a form of reformatory measures as punishment, so to say community work, community services, because it is a loss to the public exchequer. These people should be acting somewhere in public domain where they could be visible. So, community service or community work could be a part of reformatory measures as punishment.

CHAIRMAN: Okay. Now, we will really end this.

श्री वीजय बहादुर सिंह: आप अन्ना हजारे की सिविल सोसायटी वाले लोकपाल से एग्री हैं या नहीं हैं?

DR. SOWESH PATTANAIK: No, we do not. Civil society is something which is relatively autonomous from the State rather than being a part of the State.

CHAIRMAN: So, you are in disagreement with the Jan Lokpal Bill.

DR. SOWESH PATTANAIK : We don't rival democracy. I don't want to take names but this is our position as to what civil society is all about.

CHAIRMAN: Thank you. Now, Mr. Ranjit Singh.

श्री रणजीत सिंह : माननीय अध्यक्ष तथा कमेटी के सभी सदस्यगण, मैंने लिखकर पहले ही आपको दे दिया है, इसके अलावा मेरे तीन-चार प्वाइंट हैं, जिनके बारे में, मैं बोलना चाहता हूं। एक प्वाइंट यह है कि हमारे पास सीबीआई, सीवीसी में बड़े एक्सपर्ट्स हैं, इनको एक्सपेंड किया जाए। जो लोकपाल है, इसको सिर्फ मॉनिटरिंग की अथॉरिटी दी जाए तथा और कोई अथॉरिटी न दी जाए। सीबीआई और सीवीसी का फास्ट एक्सपेंशन किया जाए और इसका जितना भी खर्चा है वह कंसोलिडेटेड फंड ऑफ इंडिया से न लेकर जितने भी सरकारी आदमी हैं या जो रिप्रजेंटेटिव्स हैं, उनकी सैलरी से as a सेस काटा जाए, जिस तरह से डीजल सेस है, एजुकेशन सेस है। जब तक किसी पर तगड़ी पेनल्टी नहीं लगती है, तब तक जो कानून हैं, ये किसी काम के नहीं हैं। मेरा एक सुझाव यह भी है कि कैपिटल पनिशमेंट भी इंट्रोड्यूस की जाए, तभी काम होगा, अदरवाइज काम नहीं होगा। जब लोगों को लाइन में खड़ा होना पड़ता है, धक्के खाने पड़ते हैं और सरकारी अफसर लोगों का खून पीते हैं, ऐसे अफसरों को पनिशमेंट मिलनी चाहिए। इसके लिए उसमें एक ऐसा प्रपोजल कर दिया जाए कि जो भी आदमी culprit हो, उसे पहले अपनी सफाई का पूरा मौका दिया जाए।

सर, एक एडमिनिस्ट्रेटर रिफार्म्स कमीशन बनाया जाए और जो करप्शन के मूल कारण हैं, पहले उनको पकड़ा जाए। जैसे इसमें लिखा है कि वह केवल कम्प्लेंट्स को देखेंगे। उसका क्या होगा जब एक आदमी रिश्त देता है और और दूसरा आदमी लेता है, वह तो अननोटिस जा रहा है। मेन एक्टिविटीज़ गवर्नमेंट की हैं और इसमें काफी लोग रिश्त दे रहे हैं और ले रहे हैं।

श्री रंजीत सिंह (क्रमागत) : उसके बारे में यहाँ कोई ज़िक्र नहीं है। यही मेरे प्वायंट्स थे।

श्री वीजय बहादुर सिंह : आपने कहा कि किसी को फाँसी दे दी जाए। यह clear नहीं हो पाया कि किसको फाँसी दे दी जाए।

श्री रंजीत सिंह : Anti Corruption Act के लगभग 10 साल हो गए हैं, लेकिन इससे काम नहीं चलेगा, क्योंकि लोग बहुत smart हो चुके हैं। वे इतना ज्यादा smart हो गए हैं कि आप उन्हें पकड़ नहीं पाएँगे। इसलिए अगर capital punishment होगी, इसे देने की जरूरत नहीं पड़ेगी, तो उससे अपने आप सारा काम ठीक हो जाएगा।

श्री भरत गाँधी : मैं चेयरमैन साहब से एक निवेदन करूँगा कि आप चाहें तो मुझे फिर से बुलाएँ। एक बड़ा सवाल है, सरकार की यह चिन्ता है कि विंटर सेशन में क्या होगा? इसके बाद पार्लियामेंटरी स्टैंडिंग कमेटी की यह चिन्ता थी कि कौन से provision में क्या सुधार करना है। मैंने आज दिन भर के discussion में देखा और हमें लगता है कि और दिनों में भी यही बात हुई होगी। संसद की अपनी चिन्ता है कि विंटर सेशन में सभी सांसदों के घरों पर हमले होंगे, क्योंकि ऐसा कहा जा रहा है कि वे भ्रष्ट हैं। मेरा कहना है कि सरकार भी अपनी ही है। हम भले कांग्रेस या बीजेपी के हों, लेकिन as an institution, गवर्नमेंट हमारी है, पार्लियामेंट हमारी है, यहाँ तक कि उद्योगपति भी हमारे हैं और अन्ना जी भी हमारे हैं। इसके बावजूद मानसून सेशन में जो समस्या थी, वह विंटर सेशन में जस की तस बनी हुई है। मेरे पास इसके कुछ उपाय हैं। मैं चाहता हूँ कि सरकार का यह बोझ उतरे कि वह विंटर सेशन में इसे कैसे handle करे। पार्लियामेंटरी स्टैंडिंग कमेटी की अपनी रिपोर्ट में कुछ बातें आएँ, जिनसे विंटर सेशन में वह समस्या खड़ी न हो, जो मानसून सेशन में थी।

अध्यक्ष : भरत जी, यह बड़ा व्यापक मुद्दा है, इस पर यहाँ discussion नहीं हो सकता।

श्री भरत गाँधी : मुझे अलग से एक बार मौका दें।

अध्यक्ष : अगर अलग से हो सकेगा, तो ऐसा कर लेंगे। Let me thank all of you.

(The witnesses then withdrew and the Committee
then adjourned at 6.41 p.m.)

**THE DEPARTMENT-RELATED PARLIAMENTARY STANDING COMMITTEE
ON PERSONNEL, PUBLIC GRIEVANCES, LAW AND JUSTICE MET AT 4.15 P.M.
ON THURSDAY, THE 3RD NOVEMBER, 2011 IN ROOM NO. 63, PARLIAMENT
HOUSE, NEW DELHI-110001**

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(CHAIRMAN: DR. ABHISHEK MANU SINGHVI)

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CHAIRMAN: Friends, I welcome all of you to this meeting. Today, Shri Lalu Prasad Yadav and Shri Ram Vilas Paswan are not coming because they are out of town. Before I call the witnesses in, I would like to make a short point. We are starting the meeting with 'Team Anna'. Today, they are making presentations to their heart's content. I have deliberately kept it a little longer so that if they have any grievance, they can keep on telling us whatever points are there, and, then, tomorrow, we will ask questions. I don't think that there is any point in asking them questions today. So, you can hold your horses till tomorrow, and, then, we will go point-wise.

Today, they may finish earlier, and, then, we will also hear representatives from the NSUI for five minutes. Because ABVP came, they were also very keen to come, and, because, balance must be maintained. It does not matter, we will hear them for five minutes at the end, if necessary, but, basically, it is 'Team Anna'. Thank you. Let us call the witnesses.

List of Witnesses

- Shri Shanti Bhushan
- Shri Prashant Bhushan
- Shri Arvind Kejriwal
- Shrimati Kiran Bedi

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CHAIRMAN: Friends, I have very great pleasure in welcoming you. A new word has been coined for all of you, 'Team Anna', but individually I welcome each one of you. As you know, the proceedings of the meeting are confidential. It is interesting that we started our business with you and virtually we are ending our deliberations with you because most of our deliberations, as far as witnesses are concerned, are largely over.

SHRI PRASHAN BHUSHAN: Sir, I will try and take you very quickly through the amendments that we have proposed. I hope that this document that we had sent has been circulated. I will very briefly mention the amendments and why we have proposed them.

The first amendment that we have mentioned is that this Bill should have a provision for having Lokayuktas in the States as well, just as the Right to Information Act has a provision for having State Information Commissions in the States, in order to ensure that there is a uniform model for Lokayuktas in the States. Today, we have Lokayuktas in some States. We don't have Lokayuktas in other States. Even among the States which have Lokayuktas, the models are very different and most of them, all of them, are very very seriously deficient in terms of jurisdiction of the Lokayuktas, in terms of selection and independence of the Lokayuktas, etc. So, what we have said here is that there should be

Lokayuktas in the States on the same model as the Lokpal in the Centre. In fact, yesterday, the Uttarakhand Legislature has passed the Lokayukta Bill for the State of Uttarakhand which is on the same lines what we had suggested. It is virtually exactly on the same lines which we had suggested for the States. In fact, the draft of this Uttarakhand legislation on Lokayukta can be verbatim reproduced at the end of this Bill to be the model of Lokayuktas for all the States. It is our suggestion because that will make the Lokayuktas on a uniform model, will make them functionally independent, will give them full authority to investigate all public servants which are under the State and prosecute them. So, this was passed unanimously with the approval of Legislators of all the parties in Uttarakhand yesterday.

SHRI PRASHANT BHUSHAN (CONTD.): The second amendment, which we have mentioned here, pertains to selection of the Chairman and the Members of the Lokpal. There is a critical difference between the model that we had given in the Jan Lokpal Bill and what has been given in the Bill which was introduced in Parliament. What we had suggested was that the Selection Committee for selecting the Lokpal should be a broad-based one. In our model, we have the Prime Minister, the Leader of the Opposition in the Lok Sabha, the Comptroller and Auditor General of India, the Chief Election Commissioner of India, two sitting judges of the Supreme Court, and two sitting Chief Justices of the High Courts. These judges will be selected by collegium of all the judges of the Supreme Court. This is for the four judges. Two judges of the Supreme Court and two Chief Justices of High Courts would be selected by collegium of all the judges of the Supreme Court and then the last three Chairpersons of the Lokpal. Of course, initially there will not be the previous Chairperson. But after some time, as it goes on, there will be retired Chairpersons of the Lokpal. The last three will also be ex-officio members of the Selection Committee. There are between eight and eleven persons in the Selection Committee in our Bill. Moreover, this Selection Committee will appoint a Search Committee. That Search Committee will consist of ten persons. Five out of these ten will be chosen by the Selection Committee from amongst the retired judges. We have said retired Chief Justices of India, retired Chief Election Commissioners, and retired Comptroller and Auditor Generals of India. From amongst them, they will select five persons and then those five persons will co-opt another five persons from civil society in the Search Committee. That Search Committee will prepare a short list which will be three times the number of persons to be selected and thereafter the Selection Committee will select the required number of persons from the short list. We have also provided for a measure of transparency in the selection. The shortlisted names shall be placed on a public website so that members of the public should be able to point out whatever they want to point out about those shortlisted persons to the Selection Committee, so that the Selection Committee can take all that into consideration before finalising its selection. In the Government's Bill, which was presented in Parliament, the Selection Committee consists of nine persons, out of which effectively five persons are nominated by the Government. There is the Prime Minister. There is another Minister in that Selection Committee. There is one Speaker who is usually a Member of the Ruling Party. There is an eminent jurist nominated by the Government. There is an eminent person nominated by the Government. Five out of nine persons in the Selection Committee are essentially selected or nominated by the Government and therefore in this model we have a situation where selection of the Lokpal will be essentially dominated by the Government. The Government can virtually decide who's to be selected as the Lokpal. That is why we are pleading that there should be a broad-based Selection Committee dominated by independent constitutional authorities. We have suggested like the CEC, the CAG, and judges. They are all independent constitutional authorities. This is the second amendment that we have suggested.

The third amendment is regarding eligibility. This is not so important. I can skip that. We have already given it.

The fourth amendment is very important. It is regarding removal of Chairperson or Members of the Lokpal. There is a crucial difference between the Government's Bill, which was presented in Parliament, and our Jan Lokpal Bill which we had given. In our Bill, removal of Members of the Lokpal or the Chairman will be done by a complaint made to the Supreme Court by any member of the public. So anybody who has any information or evidence about misconduct having been committed by any member of the Lokpal can make a complaint to the Supreme Court. In the Government's Bill, only the Government can make a complaint to the Supreme Court. This is the first difference. Members of public cannot make a complaint as far as Government's Bill is concerned. The second difference is that in our Bill the power of suspending a Member of the Lokpal rests with the Supreme Court. The Supreme Court will nominate a bench which will enquire into the matter and it can order suspension of a Member of the Lokpal. As far as Government's Bill is concerned, as soon as a complaint is made to the Supreme Court by the Government, the Government can immediately order suspension of the Lokpal. This is the other critical difference. We are suggesting that it should only be the prerogative of the Supreme Court to order suspension, and not the Government. Because if you allow the Government to suspend a Member of the Lokpal, that compromises the independence of the Lokpal. That is a very, very critical amendment.

The fifth amendment is that the CBI should be merged into the Lokpal. There are two basic reasons for this. One is that the Lokpal will get at least initial investigating machinery with it. Actually, we are not saying that the entire CBI needs to be merged with it. We are saying that part of the CBI, which is devoted to corruption investigation, should be merged with it. Today, the CBI is bifurcated into two wings. One wing of the CBI investigates corruption. Its another wing investigates special crimes like terrorism, economic offences, etc. We are saying that the anti-corruption wing of the CBI should be brought under the Lokpal. There are two reasons for that. One is that the Lokpal will get a starting machinery of investigators and then they can recruit their own investigative staff. But the second reason, which is more important, is that we feel that corruption investigation of all public servants should be done only by one body. Normally, under the Indian legal system, when one offence is committed, only one agency is nominated for investigating that offence. This argument will apply equally to not bifurcating the bureaucracy by excluding the lower bureaucracy from the jurisdiction of the Lokpal. The offence of corruption should be investigated only by the Lokpal and by no other agency. Once you bifurcate jurisdiction of investigation for corruption on this basis that higher bureaucracy will be investigated by the Lokpal and lower bureaucracy will continue to be investigated by a different agency, then two problems will arise. One, when you lodge an FIR, you don't know as to who may be the accused. The accused may be a higher bureaucrat or may be a lower bureaucrat or both. Therefore, you don't know who will start the investigation. If you have bifurcated jurisdiction on the basis of higher and lower bureaucracy and you have said that the Lokpal will investigate higher bureaucracy and the CBI will investigate lower bureaucracy, then the problem will be that you don't know whether to lodge an FIR with the Lokpal or with the CBI and therefore who's to start the investigation. Second problem is this. Suppose you lodge an FIR with the CBI thinking that only lower bureaucrats are involved and then they find that higher bureaucrats are also involved and Ministers are also involved.

SHRI PRASHANT BHUSHAN (CONTD.): Then, will the investigation be transferred to the Lokpal that will create all kinds of functional confusion. Therefore, we are of the very

firm view that only one agency, and that should be for corruption investigation Lokpal, should be the one and the only agency to investigate corruption. That is amendment no.5.

Amendment No.6, that is, the jurisdiction. Now, this is a very, very important issue. In our Bill we have made it very simple. The Lokpal will investigate the offence of corruption irrespective of who is involved in that offence. The only difference being Lokpal will investigate the Central Government public servants and Lokayuktas will investigate State Government public services and local public servants. Now, irrespective of whether the person accused is a bureaucrat, is a bank officer, is an MP, a Judge, a Minister, all those will be investigated by the Lokpal. The only safeguard that we have created is that before starting the investigation of an MP or a Minister or a Judge, the 7 member bench of the Lokpal would have to grant permission for investigation as well as permission for launching the prosecution, that is, filing the charge-sheet. This is a very important safeguard that we have created which will prevent any kind of frivolous investigation of these persons, MP, Judges and Ministers. But other than that Lokpal must have the authority to investigate everybody, right from the top to bottom as we keep saying beyond Prime Minister, all public servants should come within the jurisdiction of the Lokpal and this thing that has been done in the Government's Lokpal Bill, that is, excluding firmly lower bureaucracy, excluding the Prime Minister, excluding the higher judiciary and excluding the MPs also in so far as the offence of corruption relates to their casting any vote or saying anything in Parliament, all those have been excluded from the jurisdiction of Lokpal, we feel that so far as MPs are concerned, subject to article 105 that means because whatever parliamentary privileges are there they will not be affected by this investigation. However, if a constitutional amendment is being thought of, then, our suggestion is we should have a proviso to article 105 introduced. That proviso, should say, however, that parliamentary privilege shall not extend to taking a bribe for voting or for speaking in Parliament. That will not be covered by Parliamentary privilege because unfortunately, the Supreme Court judgment in the JMM case has caused a lot of confusion in this regard. Therefore, we are very very, clear, very firmly of the view all public servants from top to bottom belonging or associated with the Central Government should come within the investigated ambit of the Lokpal. As I said, the bifurcation, apart from being totally unnecessary, unreasonable exclusion of the Prime Minister is totally unnecessary. In fact, our Constitution does not contemplate excluding the Prime Minister from corruption investigation. In fact, even the Prime Minister's election was sought to be put beyond challenge in the courts by way of the 39th Constitutional amendment. Even that amendment was struck down, unanimously by the Constitution Bench of the Supreme Court has been violative of the basic structure of the Constitution which is equality and the rule of law. Therefore, the proposition that the Prime Minister should not be investigated for corruption during his tenure as Prime Minister till he retires is a proposition which is totally opposed to the basic feature of the Constitution. It is not permissible under our Constitution. In fact, if such an exclusion is made, it will be struck down by the Supreme Court on the very ground on which the 39th Constitutional amendment was struck down by the Supreme Court. Therefore, the Prime Minister and all public servants must be brought under this. The argument that is being given is that if you bring in lower bureaucracy, the Lokpal will be overburdened and will not be able to function, etc., to our mind, is not a correct argument. Firstly, if you exclude the lower bureaucracy this will create functional confusion because very often the higher and the lower bureaucracy are all involved together in the same act of corruption. Secondly, for the lower bureaucracy also you need some credible independent corruption investigation machinery. That is what the UN Convention against Corruption also says that you need an independent anti-corruption institution for investigating all public servants whether high or low. This is about jurisdiction.

Then, amendment 7 is independence and autonomy of the Lokpal. See, we feel that Lokpal should have independence which is guaranteed in three ways. Firstly, full functional independence. That means, it should not require anybody's permission to investigate public servants or to prosecute them. They should be able to do it themselves. Secondly, financial autonomy, that is, if they require, if they feel that they need more investigators for doing investigations within a reasonable time, then, they should have power to recruit more investigators depending upon the need and the Government will be automatically required to provide the necessary budget for that many people. They should not have to seek the permission or the approval of the Government in expanding their work force in order to meet their needs, etc., but subject to a maximum, what we have provided in the amendment that we have proposed is subject to a maximum of 0.25 per cent, that is, quarter per cent of the Government's budget. Up to that limit they should have full autonomy. If they want anything beyond that, then, of course, the Government's approval would be required or some budget would have to be approved. But within quarter per cent, which we feel is quite reasonable, for anti-corruption machinery, up to a quarter per cent of the Government's budget, they should not seek the approval of the Government.

Then, delegation of powers and functions is under amendment No.8.

SHRI ARVIND KEJRIWAL: The Central Government's draft on the functions have to be performed by the eleven member body, will practically become impossible for those eleven members.

SHRI PRASHANT BHUSHAN: I am sorry. The third one, their selection should not be controlled by the Government. I have already dealt with that.

SHRI ARVIND KEJRIWAL: In fact, I would also like to add, we are just flagging these issues. Each and every detail is on record. Whatever is there on record should also be considered because we are discussing all the amendments.

So far as delegation of powers and functions is concerned, it will become practically impossible for these eleven members to function if they were to take all the decisions, if they were to perform all the functions. Therefore, what we have suggested is that they should have the power to delegate their functions to various levels of bureaucracy within the Lokpal.

SHRI ARVIND KEJRIWAL (CONTD.): Unfortunately, the Central draft says that all the powers and functions have to be performed by the eleven Members. It will get flooded with so many cases that it will get clogged.

SHRI HARIN PATHAK: What will get clogged?

SHRI ARVIND KEJRIWAL: Delegation of powers within Lokpal.

SHRI PRASHANT BHUSHAN: In fact, certain functions must be exercised by those eleven members. For example, granting permission for investigating MPs, Ministers and Judges, this has to be done by a bench of the Lokpal. ...(Interruptions)... Similarly, there would be certain other functions which would have to be done. But for investigation, prosecution, all these decisions need not go to those eleven members. There will be thousands of cases which will be investigated by the officers of the Lokpal. Now, for each case, the officers of the Lokpal, who will be like CBI officers, don't have to seek the approval for every case. Suppose some clerk or some junior level officer has to be chargesheeted, who is not a Minister or an MP or a Judge. You don't have to go to the Lokpal to seek approval for chargesheeting that just as the CBI does it today. In the same way, the Lokpal officers should be able to do it. But for certain very critical functions, only for those functions, the bench of the Lokpal would be required to do it.

Amendment 9 is regarding procedure for inquiry. You see, unfortunately, the Government's Bill has made several provisions, Sections 23, 24, 25 and 26, which have created a completely new procedure for investigation by the Lokpal, which is not the procedure contemplated by the Code of Criminal Procedure. See, under the Code of Criminal Procedure, registration of an FIR is essential for starting any investigation; you don't get any powers of investigation till you register an FIR; you can't do search, seizure etcetera. Now, in the Government's Bill, they have said that even before registering an FIR, first a preliminary inquiry must be conducted -- that is essential according to the Government's Bill -- and in that preliminary inquiry, you must first hear that public servant, against whom you propose to register an FIR, which means that you are precluding the possibility of a surprise search at his residence or at his office, wherever it is, by first having to hear him in a preliminary inquiry before you can even register an FIR. And, thereafter, it says that after registering the FIR, even after the investigation is done, before filing the charge-sheet, you have to again call him and give him a hearing etcetera. So, in our view, these are totally unnecessary. As we have said, for certain critical functionaries like MPs, Judges and Ministers, we have already provided that before investigation and before prosecution, they will not only hear them, but even a higher level bench, a seven member bench of the Lokpal, will decide. But this kind of new procedure which is sought to be created under the Government's Bill will totally frustrate the purpose of the investigation in many cases. It will cripple the investigating body. It is totally unnecessary. The normal rules of Cr.PC should apply.

Then dismissal of Government servant: you see this is also very important.

SHRI VIJAY BAHADUR SINGH: In Cr.PC, there is no opportunity. Why are you saying that opportunity for higher-ups be there, but for others, no?

SHRI PRASHANT BHUSHAN: No opportunity. What we are saying is that a seven-member Bench will decide whether the investigation should be initiated and whether the prosecution should be initiated. That is only to prevent certain higher level functionaries from being harassed on some frivolous complaints etc. So, in order to safeguard that, we have provided for that safeguard. But beyond that, nothing is required by way of amending the Cr.PC for this investigation.

Then dismissal of Government servants: this is very important. You see, once a Government servant -- I am not talking about judges but about Government Servants -- has been found guilty of corruption, he is chargesheeted by the Lokpal. A charge-sheet is filed against him for corruption. At that stage, the question arises that he should also be removed from his office because naturally, a corrupt public servant should not normally continue in office. Now, in the Government rules, there are procedures for departmental inquiry etc. But, very often, we find this in many cases, particularly, if the corruption involves people right up to the Minister, then that corrupt public servant -- suppose he is a Secretary or a Deputy Secretary or whatever it is -- is not removed. They are protected by the Government; they are not removed. So, you have several situations where a person is being prosecuted for corruption and yet, he is continuing in his office. Therefore, what we are saying is that as soon as a charge-sheet is filed by the Lokpal, this departmental inquiry against that officer can also be conducted by the Lokpal, and the Lokpal should have the power to decide whether this officer should be removed or should not be removed from office, and if it recommends...

SHRI HARIN PATHAK: Removal or suspension?

SHRI PRASHANT BHUSHAN: Both. Suspension as well as removal.

SHRI ARVIND KEJRIWAL: But for elected representatives, we are not asking for removal.

SHRI PRASHANT BHUSHAN: This will obviously not apply to elected representatives.

SHRI HARIN PATHAK: That I know.

SHRIMATI KIRAN BEDI: Prashant, if I could go back to amendment No.9?

SHRI PRASHANT BHUSHAN: Yes. Sure.

श्रीमती किरन बेदी : सर, मैं वह सैक्शन एकदम नहीं निकल पा रही हूँ, लेकिन अगर हम लोग इस inquiry procedure पर, जो सरकारी बिल ने दिया है, अगर यह procedure करें तो मेरे खयाल से हम दो procedure बना रहे हैं। क्योंकि सरकारी बिल में आप सी.बी.आई. को नहीं ला रहे हैं, आप लोकपाल की एक अलग investigating agency बना रहे हैं, आप सी.बी.आई. की नहीं बना रहे हैं। हम जो कह रहे हैं, Anti-corruption Wing सी.बी.आई. का है, इसका मतलब इस देश में दो प्रोसिजर हो जाएंगे, सी.बी.आई. अपना प्रोसिजर according to Cr.PC चलाएगा और लोकपाल की एजेंसी, जो नई बना रहे हैं, वह इस प्रोसिजर से जाएगा। So, we are now creating two kinds of procedures. Both the agencies, according to the Lokpal, are doing investigation in corruption cases. But CBI is following the Cr.PC, and Lokpal, the new agency, is creating a new procedure, which this new Lokpal Bill is creating. That is my submission. Thank you. ...(Interruptions)... I was just mentioning the hazards, the dangers of creating two systems, two procedures. Thank you.

SHRI PRASHANT BHUSHAN: One thing I just wanted to make clear. You see, the departmental inquiry to be conducted by the Lokpal will be done by a designated Judicial Officer within the Lokpal set-up. Under the Lokpal, there will be designated Judicial Officers who will be selected by the Lokpal, who will be conducting the inquiry. Some retired Judges or even some retired civil servants would be selected by the Lokpal; they would be conducting the departmental inquiry against those public servants against whom charge-sheets have been filed for corruption.

SHRI PRASHANT BHUSHAN (CONTD.): Amendment No.11 is power to direct suspension or transfer of officer pending investigations. This is also important. Actually in the Government's Bill they have just said, "recommend". We are saying that it should be "direct". That means, if there is some Government servant who is likely to interfere with the investigation, etc., if the Lokpal feels that for the purpose of being able to carry out a proper investigation, then for that purpose they can either order or direct either suspension or transfer of that Government servant. In the Government's Bill they have said that they can "recommend". We are saying that the recommendation should be binding on the Government. They should be able to direct. It should be mandatory.

As regards complaints against staff of the Lokpal, one fear was expressed. If the Lokpal machinery itself becomes corrupt, what will happen? This fear has been expressed by several people. Now for that we have provided several layers of accountability in our Bill for the Lokpal. Firstly, we have provided that the Lokpal will require to function transparently. That means the details of their investigations which they have conducted will be posted on a public website immediately after the investigation is over so that the people can see how they have conducted the investigation, whether they have done it properly or not, etc. Secondly, any citizen can make a complaint against the Member of the Lokpal to the Supreme Court. But what about the machinery under the Lokpal? There is a whole investigative machinery

under the Lokpal. If somebody has a complaint against them, that will not go to the Supreme Court. That will either go to the Lokpal because the eleven Members of the Lokpal will have administrative control over the machinery under them or to the independent Complaints Authorities. We have proposed that, as in the Uttarakhand Lokayukta Bill, in every State there would be one or more Complaints Authority. In larger States like Uttar Pradesh there could be four or five Complaints Authorities. For every ten districts there could be one Complaints Authority. They will also be selected by the Selection Committee in a similar manner. We have said that the Complaints Authority shall consist of five members to be selected and nominated by a Committee of three persons, namely, Chief Justice of the High Court of the State, Chairman of the State Lokayukta and Chairman of the State Human Rights Commission. So, these three Members shall select the five-member Complaints Authority. If there are two or more Complaints Authorities to be set up, they will select those two or three Complaints Authorities district-wise.

Any member of the public can make a complaint to this Complaints Authority against any staff of the Lokpal, all these investigators or other staff of the Lokpal. A complaint can be made to the Complaints Authority which will be independent of the Government and independent of the Lokpal also. That will be another thing.

Then we have provided that there will be an annual performance and financial audit of the Lokpal by the C&AG and the audit report will be placed before the Public Accounts Committee every year so that it will provide another measure of accountability for the Lokpal.

Lastly, of course, every order of the Lokpal shall be subject to the writ jurisdiction of the High Court and the Supreme Court.

Then amendment No.13 relates to punishment for frivolous and mala fide complaints. In the Government's Bill, the punishment has been made very severe.

श्री अरविंद केजरीवाल : सर, सरकारी बिल में यह लिखा हुआ है कि अगर कोई शिकायतकर्ता शिकायत करेगा और उसकी शिकायत में sufficient सबूत नहीं मिलेंगे, तो उसे दो साल की कैद हो सकती है। इसमें दोनों हैं – 'frivolous' भी है और 'insufficient evidence' भी है। अगर सबूत साबित हो गए, तो 6 महीने की सजा है। इस प्रकार भ्रष्टाचारी को 6 महीने की सजा है और शिकायतकर्ता को 2 साल की सजा है। There is a huge anomaly. उसमें यह लिखा है कि अगर मैंने लोकपाल में जाकर शिकायत की, तो मैं जिस ऑफिसर के खिलाफ शिकायत करूँगा, he gets immediate right to file a case against me in the Court. उसकी जाँच वगैरह का भी कोई प्रावधान नहीं है। वह तुरंत मेरे खिलाफ कोर्ट में केस file कर सकता है और फिर मैं कोर्ट में केस लड़ता रहूँगा कि मैंने तो शिकायत की थी और उस शिकायत में अभी उस भ्रष्टाचारी के खिलाफ जाँच शुरू होगी, लेकिन मेरे खिलाफ बिना जाँच किए मामला सीधे कोर्ट में चला जाएगा। साथ ही मेरे खिलाफ कोर्ट में केस file करने के लिए सरकार उस भ्रष्ट ऑफिसर को free में वकील देगी। इसमें यह लिखा हुआ है। I think this is overloaded against the complainant. So, I think, this needs to be changed. हमारा यह कहना है कि we need to encourage people to come out. On the one hand, हमें frivolous complaints से बचना भी है, लेकिन at the same time, ऐसा न कर दें कि कोई शिकायत करने की हालत में ही न

बचे और शिकायतकर्ता कोर्ट-कचहरी के चक्कर काटने लगे। That is all the concern that we have.

SHRI VIJAY BAHADUR SINGH: It should be fine, not imprisonment.

SHRI PRASHANT BHUSHAN: We have said that you can impose a fine up to rupees one lakh.

श्री अरविंद केजरीवाल : वह fine लोकपाल करे, क्योंकि यह लोकपाल को पता है। कोर्ट को तो जाँच होने के बाद ही पता चलेगा। अगर जाँच के दौरान लोकपाल को लगता है कि यह बदमाशी कर रहा है, तो Lokpal can impose a fine.

श्री परिमल नथवानी : इसमें बहुत harassment भी हो सकती है, क्योंकि complaint डालने वाले लोग तो कुछ भी complaint डालते रहते हैं। अगर आपसे बात नहीं बनती, तो वह आपके खिलाफ complaint डाल देगा। We want a clarification कि उस complaint को process करने में कोई checks and balances रहता है या नहीं?

श्री अरविंद केजरीवाल : अगर insufficient evidence है, तो लोकपाल के अन्दर preliminary inquiry तो होगी ही। अगर उसमें लोकपाल को लगता है कि यह व्यक्ति गलत complaint कर रहा है, frivolous कर रहा है, जान-बूझकर कर रहा है, तो Lokpal can impose a fine on him. अगर आप fine बढ़ाना चाहें, तो fine बढ़ा दीजिए। But the principle is that you impose a fine on that person and get away with it.

SHRI PARIMAL NATHWANI: Before a proceeding takes place, the Lokpal can decide immediately to penalise the wrong complainant.

SHRI ARVIND KEJRIWAL: If *prima facie* they feel, they can do that. वह तो CrPC में already है। आप FIR के पहले भी preliminary inquiry कर सकते हैं।

अध्यक्ष : अभी इन्हें अपना presentation करने दें, स्पष्टीकरण हम कल करेंगे।

SHRI SHANTI BHUSHAN: We would welcome the intervention from the hon. Members because then, of course, it clears straightaway.

CHAIRMAN: I am only saying that we will do the clarifications as you go along. But the question-answer session could be at the end if we finish early; otherwise, tomorrow. That is all what I am saying. We will have the question-answer session at the end if we finish early and we will keep tomorrow's session fully for question-answer.

SHRI PRASHANT BHUSHAN: In amendment No.14, we have tried to give a slightly expanded definition of corruption. We have said that the act of corruption should be defined in a slightly expanded manner beyond the Prevention of Corruption Act. So, we have said, "anything which is punishable under the Prevention of Corruption Act". Then, secondly, "wilfully giving any undue benefit to any person or obtaining any benefit from any public servant in violation of any laws or rules".

SHRI PRASHANT BHUSHAN (contd.): This should also be treated as an act of corruption. If somebody wilfully violates the rules in order to give any undue benefit to a private person, then, that should also be an offence.

Then, as regards victimization of a whistleblower or a witness, for example, if a Government Servant for *malafide* reasons deliberately suspends a whistleblower, an officer who is a whistleblower who makes a complaint to the Lokpal saying that this corruption is going on in his department and that whistleblower is suspended by the person who is involved in that corruption, then, that victimization should also be considered to be an act of corruption.

Then, as regards repeated violation of Citizens' Charter by a public servant, one can understand if it is once or twice, but if a public servant is repeatedly violating the Citizens' Charter, the Citizens Charters created by departments themselves, then, that should also be considered as an act of corruption.

SHRI VIJAY BHADUR SINGH: Do you mean to say that only one violation may not be treated as such?

SHRI PRASHANT BHUSHAN: It may not be treated as corruption but a penalty can be imposed. उसके लिए penalty का प्रावधान हम लोगों ने अलग से कर रखा है। उस पर हम आगे आएँगे। इसके बारे में वहाँ पर बताया गया है, जहाँ Citizen's Charter के बारे में डील किया गया है।

Then, coming to willfully taking up employment or paid assignment or consultancy with entities with whom the public servant has had official dealings, actually यह एक बहुत इम्पोर्टेंट प्रोविजन हम लोगों के जनलोकपाल बिल में है; in fact, हम लोगों ने तीन miscellaneous provisions रखे हैं at the end of the Jan Lokpal Bill which have gone unnoticed so far, which are supplementary measures to prevent corruption. The first is that no public authority shall give any contract, lease, license or any other form of largesse to any person without transparency and without a public auction unless it is treated as an emergency measure where a public auction cannot be done and in that case the public authority will have to record the reasons in writing for not giving that lease, license, contract by means of a public auction. This will prevent the kind of 2G situation or even the giving away of plots by way of discretionary quotas which has been going on rampantly today. All this will be prevented by this provision because, then, you will have to record reasons in writing as to why you cannot hold a public auction for this particular thing. If you can justify that, then, it is all right. But you will have to justify by recording reasons in writing.

The second provision is that no public official will be entitled to take up a job, consultancy or assignment with any authority with whom he has dealt with in his official capacity, with any body. That means, if he has been dealing with a particular company in his official capacity, for example, if you are the TRAI Chairman and you are dealing with these telecom companies and immediately after your retirement you take up a job with those telecom companies, then, this is another kind of legalized corruption which has been going on and which needs to be stopped, and, therefore, we have stopped that by that provision and we have provided this to be an offence.

Then, talking of amendment no. 15, duty to stop corruption in ongoing works, this is another important provision. If the Lokpal, while investigating a matter, comes to know that a particular contract is about to be given out for corrupt considerations and that it has got some evidence to show that this contract, though not yet formalized, is about to be given out, then, he can recommend the stopping of it. For example, take this Air India contract. You find that the requirement is for 28 aircraft and suddenly, 111 aircraft are being purchased. Now, if the

Lokpal has evidence that this is being done for corrupt considerations, then, it can recommend that this purchase of 111 aircraft should be stopped. In that case, the Government has the option either to accept that recommendation or to reject that recommendation, for reasons to be recorded in writing, in which case the Lokpal can go to the High Court to enforce that recommendation which has been rejected by the Government. So, that is the idea.

SHRI ARVIND KEJRIWAL: So, here the Court is also coming into the picture. Sir, there was an apprehension that if you give the powers to the Lokpal to direct stopping of any work, then Lokpal would become a super power and, it will be able to stop any kind of work. So, what has been suggested is, if the Lokpal feels that there is some corruption going on in ongoing works, then, rather than punishing the people after everything has taken place, he can actually make a recommendation saying 'why don't you make these changes?' And, if the Government feels that that recommendation is good, then they can make the changes and if they feel it is not good, then they would reject it. If the Lokpal feels the rejection is valid, he stops there; if he feels that the rejection is invalid, then he takes the matter to the court and the court also gets an opportunity to sit in judgment.

SHRI PARIMAL NATHWANI: Don't you feel there will be day-to-day interference?

SHRI PRASHANT BHUSHAN: But this is essential because this is only in those situations where the Lokpal comes to the conclusion that this contract is about to be given out or this lease is to be given out and it is being given for corrupt considerations. Then, it can make that recommendation to the Government that 'look this is corruption' because otherwise that damage is done. You see, 111 aircraft are purchased and 40-50 thousand crores are spent from the public exchequer and Air India goes down the drain. You are paying out Rs.5000 crores as interest for the rest of your life for purchasing those aircraft which are lying idle. Therefore, before that happens, if the Lokpal comes to know of it, it can make that recommendation; it is only a recommendatory power. Beyond that, if the Government doesn't agree, it can refuse for reasons to be recorded in writing and then, if the Lokpal feels that the reasons are not good, then they can approach the High Court. It will, at least, put a break to this kind of a thing.

SHRIMATI KIRAN BEDI: Section 9 of the Uttarakhand Lokayukta Bill, 2011, says, "If during any investigation under this Act, the Lokayukta is satisfied that any preventive action is necessary in public interest to prevent the ongoing incidence of corruption, it may make any recommendation to the public authority concerned to stay the implementation or enforcement of any decision or take any such action as is recommended by the Lokayukta. The public authority shall either comply with the recommendation of the Lokayukta or reject the same within 15 days of the recommendation thereof. In the event of rejection of its recommendations, the Lokayukta may approach the Uttarakhand High Court for seeking appropriate direction to be given to the public authority". So, this has already been included in the Uttarakhand Bill.

SHRI ARVIND KEJRIWAL: In fact, all the suggestions that we are giving are hundred per cent from the same law.

SHRI VIJAY BAHADUR SINGH: So are you fully approving the Uttarakhand model, lock-stock-and barrel?

SHRI ARVIND KEJRIWAL: Yes, Sir, hundred per cent. Whatever we are suggesting is there from the Uttarakhand model. If that could be replicated at the Centre..

SHRI VIJAY BAHADUR SINGH: But you are saying that your model is based on the Uttarakhand model.

श्री प्रशांत भूषण: लेकिन, इसमें थोड़ा-सा फर्क है। इसमें उतना ही फर्क है जितना Centre and State में होता है। बाकी module same है।

श्रीमती किरण बेदी: वे आपको जो नए सजेसंस दे रहे हैं, वे इधर आ चुके हैं।

श्री अर्जुन राम मेघवाल: अभी आपका एक स्टेटमेंट यह था कि अगर सेंटर का एक्ट weak होगा, तो उत्तराखंड वाला कमजोर हो जाएगा, उसका क्या मतलब है?

श्री अरविंद केजरीवाल: उसका मतलब यह है कि चूंकि यह सब्जेक्ट Concurrent List में आता है और अगर सेंटर कोई कानून बनाता है, तो वह स्टेट वाले को supersede करेगा। अब अगर यह कानून बनेगा, तो इसमें हम यह कह रहे हैं कि सारे राज्यों के लिए लोकायुक्त भी बनने चाहिए। अगर आप इसमें लोकायुक्त बनाएँगे, तो वह उत्तराखंड वाले एक्ट को supersede करेगा।

SHRI SHANTI BHUSHAN: In fact, this Uttarakhand Bill which has been passed will have to be assented to by the President in order to become a law. It is a legislation in the Concurrent List which is repugnant to many existing laws, namely, Cr.P.C. etc. Therefore, it will require to be assented to by the President. They will be sending it. Our request to this hon. President would be to grant the assent immediately.

SHRI PRASHANT BHUSHAN: Most importantly, we want that the model of the Lokayukta which this Committee recommends be on the lines of the Uttarakhand Act.

Then, the amendment 16, power to take *suo motu* action, we have said that the Lokpal can act on a complaint of anybody or even *suo motu* if they come to know.

Then, amendment 17 is the power to get its orders complied with. We have said in this that a Lokpal Bench may punish a public servant with imprisonment of up to six months or with fine or with both if he fails to comply with its order for ensuring their compliance. Otherwise, if the authorities do not comply with those orders; suppose, they feel that continuance of a particular Government servant is going to hinder investigation by Lokpal and they order the transfer of that official, yet that transfer is not done, in that case they — just like the High Court—they will be given the powers of contempt restricted up to six months imprisonment. उत्तराखंड बिल में maximum three months imprisonment का provision है।

श्री अरविंद केजरीवाल: उन्होंने change करके इसे और ज्यादा कर दिया है। They have given the power the Lokayukta the same powers of contempt as are enjoyed by the High Court and the Supreme Court. कैट का जो formulation है, उसको उन्होंने copy and paste किया है।

श्रीमती किरण बेदी: अगर मैं वापस Amendment 16 पर जाऊँ, जिसमें Power to take *suo motu* action है, तो मैं इसके लिए section 17 of the Lokayukta Bill रेफर कर रही हूँ। The title is: Transparency in Lokayukta organisation. It has brought even the RTI section 4 in it. I would just read these lines: “The Lokayukta shall maintain complete transparency in its functioning and shall ensure that full records of inquiry or investigation is conducted under the Act; after

it the conclusion is made public by being put on the website.” Interestingly, the Lokayukta will also ensure effective implementation of section 4 of the RTI for transparency within the Lokayukta except for those covered under section 8 of the RTI. इस तरह आज हम यहाँ तक भी पहुँच गये हैं। आज हमारे सामने आरटीआई के सेक्शन 4 की जो प्रॉब्लम आ रही है, उन्होंने यहाँ mandatory include कर दिया और लोकायुक्त के लिए यह mandate कर दिया कि आप यह भी करवा सकते हैं। सेक्शन 4 में यह प्रावधान था कि हर डिपार्टमेंट को information *suo motu* डाल देनी चाहिए, इन्होंने यह भी इसमें include कर दिया।

SHRI PRASHANT BHUSHAN: Then, the next amendment is No.18, power to tap telephone. Today, under the rules made under the Indian Telegraph Act, it is only the Home Secretary which has the power to grant permission to tap telephone. The power to tap telephone is an essential power of investigation, particularly investigation for corruption. Very often, the evidence for detecting that corruption is taking place comes only from tapped telephone conversations. Unless the Lokpal has independent power, it cannot depend on the Government or the Home Secretary to allow tapping of telephones. This Lokpal is being constituted as a very high-level authority. Therefore, of course, the permission to tap should be given by the bench. Therefore, the amendment that we are suggesting is, not by any officer of the Lokpal but only by a bench of the Lokpal. The bench can permit the tapping. This bench is a far safer authority than the Home Secretary apart from being independent. Therefore, we have said, “For the purpose of investigation of offences related to acts of corruption, the appropriate bench of the Lokpal shall be deemed to be the designated authority under section 5 of the Indian Telegraph Act empowered to approve interception and monitoring of messages of data or voice transmitted through telephones, etc.”

SHRI ARVIND KEJRIWAL: A wrong impression is being created as if a new power is being sought to be given to tap telephones, जैसे कि हम कोई नयी पावर देने की बात कर रहे हैं। लोकपाल के पास टेलीफोन को टैप करने की पावर तो होगी ही under other laws, लेकिन आज उन्हें होम सेक्रेटरी से परमिशन लेनी पड़ेगी। होम सेक्रेटरी से परमिशन लेने का मतलब यह है कि सारी चीजों का खुलासा हो गया। There is a conflict of interest; वहाँ से information सब को divulge हो जाएगी। इसलिए यह independent होना चाहिए। हम कोई नयी पावर देने की बात नहीं कर रहे हैं, बल्कि हम केवल यह suggest कर रहे हैं कि rather than permission being given by the Home Secretary, the permission should be given by the bench of the Lokpal.

SHRI HARIN PATHAK: Prashantji, will this phone tapping be sustainable in the court of law?

SHRI PRASHANT BHUSHAN: Yes, of course. Phone tapping is well-recognised as a power of investigation. Every investigating authority resorts to it—income-tax, CBI, Enforcement Directorate. The only thing is, today permission is granted by the Home Secretary. We want to have a change in that.

श्रीमती किरन बेदी: मैं अपनी पर्सनल एक्सपीरियंस से आपको बता सकती हूँ कि यह information जब वहाँ तक जाती है या जब उनसे इसकी परमिशन मांगी जाती है, तो उसकी confidentiality कई बार compromise हुई है। इसका मतलब यह है कि हम लोकपाल में एक

conflict ले आएँगे कि यह information कहाँ से निकली। अगर एक ही जगह centered जिम्मेवारी रहे, तो यह investigation के interest में है।

दूसरी चीज़ यह है कि एक ही होम सेक्रेट्री इतने सारे मामलों की गहराई नहीं देख पाते। जब आप यह जिम्मेवारी एक बेंच को दे रहे हैं, तो आप केवल एक होम सेक्रेट्री ही नहीं क्रियेट कर रहे हैं, बल्कि आप इसमें in a way सात होम सेक्रेट्रीज़ की जिम्मेदारी लगा रहे हैं। इस प्रकार, एक होम सेक्रेट्री के बनिस्पत एक बेंच की जिम्मेवारी better है, यह भी important है। In the bench would be responsible people.

SHRI PRASHANT BHUSHAN: The Lokpal will be investigating only corruption. In that investigation...

CHAIRMAN: There are 34 amendments. We have reached 18; let us finish it today.

SHRI PRASHANT BHUSHAN: Amendment No.19, powers under FEMA and Prevention of Money Laundering Act. The rationale is, today if investigations have to be done regarding accounts in foreign countries; say, in the 2G scam, the CBI is doing the investigation within India. But, a lot of it has gone into the foreign bank accounts also, etc. But, foreign bank accounts' investigation is entrusted to the Enforcement Directorate under the FEMA. Therefore, what we are saying is, while investigating the offences of corruption, the Lokpal should also enjoy the powers enjoyed by the Enforcement Directorate under the FEMA and PCA.

श्री अरविंद केजरीवाल: एक ही एजेंसी उन सारे केसिज़ को करे, वह हर जगह के लिए ब्रेक न हो।

SHRI PRASHANT BHUSHAN: For the purpose of foreign investigation also relating to that act of corruption, दूसरी एजेंसी पर depend न करना पड़े।

Then, other miscellaneous powers and functions of the...

SHRI ARVIND KEJRIWAL: Basically, prevention should also be a part of Lokpal. It is not just catching the people. अगर work practices में ऐसी चीज़ें हैं, work practices सुधारने के लिए हैं, so, it should be a regular exercise that a Lokpal in active consultation with various Departments should recommend changes in their work practices -- it is only a recommendatory power – on an on-going basis. It is entirely up to the Departments to what extent they agree with that and they do not agree to that.

श्री प्रशांत भूषण : इस में दो-तीन चीज़ें और लिखी हैं। एक तो यह है, इस पर कुछ लोगों ने आपत्ति उठायी थी, to prepare a sentencing policy for offences under the Prevention of Corruption Act and revise it from time to time. इस का यह मतलब यह नहीं है कि that they will supersede anything or change anything or overrule anything under any Act. मान लीजिए Indian Penal Code में there is a provision कि इस offence के लिए यह minimum, यह maximum sentence होगा, उस को ये लोग supersede नहीं करेंगे। But, within that, within the

sections of the Indian Penal Code, कि अगर इस तरह का offence हो तो फिर normally इतना punishment होना चाहिए। वह recommend करना है। Ultimately तो वह कोर्ट ही करेगा। This is just a policy framework that they can prepare; otherwise, that is the job of the court कि वह कितना sentence देती है। Then, the next amendment is about Transparency and Accountability.

श्रीमती किरण बेदी : एक पॉइंट reinforce करना चाहूंगी। यह है Chapter 3 of the Lokayukta. चैप्टर 3 का 5 का (क्यू) बड़ा interestingly लिखा है। यह हम ने Hong Kong Anti Corruption Authority में भी Prevention policies पर देखा था, which is very useful. ऐसी कोई Authority/national body हमारे देश में नहीं है। यह हमारे देश के लिए बड़ा helpful रहेगा। वह यह है कि “To make recommendations to public authorities in consultation with them to make changes in their work practices, to reduce the scope of corruption and whistleblower victimization. The concerned authority shall send its compliance report to Lokayukta within two months specifying detailed reasons wherever they choose to reject.” यह एक बहुत अच्छी guidance रहेगी, oversight of directions. कोई trend निकलता है, कोई newspaper expose होता है या information. So they can look into it and advise that Department for adoption of good practices.

श्री प्रशांत भूषण : इस में Other Miscellaneous Powers and Functions में 3 और important provisions हैं : 5,6,7. ये हैं “While investigating any offence under the Prevention of Corruption Act 1988, Lokpal shall be competent to investigate any offence under any other law in the same case.” मतलब यह है कि if that act of corruption also involves some other offence under the Indian Penal Code or whatever, then, they can also file charge sheet for other offences also.

Then, the Lokpal shall inquire into the assets declaration statements filed by successful candidates after any election to any seat in any House of Parliament. They can examine that asset declaration because if it is found that the asset declaration is false, etc.,...

SHRI ARUN YADAV: They can certify it.

SHRI HARIN PATHAK: He has to certify it before the District Magistrate before filing his nomination. Mr. Arvind is well aware of it. The Income-tax authorities also look into that affidavit.

श्री प्रशांत भूषण : इसे छोड़ भी सकते हैं

श्री हरिन पाठक : आई0टी0 उसे करती है। हर चुनाव जीतने वाले को आई0टी0 नोटिस भेज देती है।

श्री प्रशांत भूषण : इसे छोड़ भी सकते हैं।

SHRI VIJAY BAHADUR SINGH: It will be abused.

श्री प्रशांत भूषण : इसे छोड़ दीजिए।

SHRI PRASHANT BHUSHAN: Not so important. इस में 7 है, “The Lokpal shall prepare an appropriate reward scheme to encourage complaints from within and outside the government to report acts and evidence of corruption. Provided that the total value of such reward shall not exceed 10 per cent of the value of the loss recovered or loss prevented. यह तो Income tax में भी है।

Then, the next amendment is about transparency and accountability of Lokpal. हम लोगों ने इस के लिए कई provisions suggests किए हैं। No.1, the investigation in any case shall not be closed by the investigating officer without recording reasons for such closure. No.2, the hearing in any proceedings before the Lokpal shall be held in public except in an exceptional circumstance where it is not in public interest to do so and the reasons for the same shall be recorded in writing before those proceedings are held in camera. हां, public hearing होगी। The hearings held in public shall be video recorded and shall be made available to the public on payment of copying cost. No.3, a Parliamentary Committee shall do an annual appraisal of the functioning of Lokpal. The Lokpal shall submit a compliance report, mentioning detailed reasons where it does not accept the recommendations of this committee, to the Parliament. It shall be placed on the Table of the two Houses of Parliament. That means, in addition to the CAG audit, CAG ऑडिट तो annually होगा and that will go to the PAC. But, in addition to that, the Parliamentary Committee can do its own annual appraisal of the functioning of the Lokpal also, and that report will go to the Lokpal.

No.4, the Lokpal shall publish every month on its website the list of cases received during the previous month, list of cases disposed with brief details of each such case, outcome and action taken or proposed to be taken in that case, list of cases which are pending and minutes and records of Board meetings. बोर्ड मीटिंग मतलब लोकपाल की मीटिंग। तो यह ठीक है। The Lokpal shall maintain complete transparency in its functioning and shall ensure that full records of any investigation or inquiry conducted under this Act after its conclusion is made public by being put on a public website, which I have mentioned.

Then, the next amendment is about whistleblower protection. This is also very important, actually. It is said that whistleblower protection के लिए there is some Bill in the offing. There is a proposed Bill on Whistleblower Protection. You see, what we feel is that so far as the whistleblower protection for corruption is concerned, where the complaints are being made to the Lokpal, the power to protect that person, that whistleblower must vest with the Lokpal. मतलब यह है कि अगर उस को कोई complaint आती है, from some whistleblower, और उस complainant को, उस whistleblower को victimize किया जाता है, either by physical threats or by administrative harassment, उस को suspend कर दिया जाता है, वगैरह तब उसे प्रोटेक्ट करने की पॉवर लोकपाल के पास होनी चाहिए। That means, he should have the power to give him physical protection and to protect him from administrative harassment.

श्री अरविंद केजरीवाल : मैं इस में बहुत strongly request करूंगा कि जो whistleblower का दूसरा बिल आ रहा है, if this Committee can recommend withdrawal of that Bill because उस बिल में सी0वी0सी0 को अथॉरिटी बनाया है for whistleblower protection. अब सी0वी0सी0

के पास किसी को प्रोटेक्ट करने की न तो रिसोर्सेस हैं, न पॉवर्स हैं। The CVC is an advisory body.

SHRI ARUN YADAV: Should the CVC be abolished?

SHRI ARVIND KEJRIWAL: The CVC should be phased out after this Lokpal Bill. The CVC should have no role to play.

SHRI VIJAY BAHADUR SINGH: Mr. Yadav is asking whether the CVC will be abolished after this Bill.

SHRI ARVIND KEJRIWAL: Yes, we would like the CVC to be abolished.

श्री वीजय बहादुर सिंह : वह defunct हो जाएगा।

श्री अरविंद केजरीवाल : Whistleblower protection CVC नहीं कर पाएगा। सी०वी०सी० के पास टोटल 232 कर्मचारी हैं। पूरे देशभर में उन के पास न तो मशीनरी है, न पॉवर है। It is an advisory body. सुप्रीम कोर्ट ने 2003 में, in Satyendra Dube case, they made the CVC as a nodal agency for whistleblower protection. और पिछले सात साल का डाटा हम देखें तो सी०वी०सी० ने एक भी केस में किसी को protection provide नहीं किया, either professional or physical protection. पिछले एक साल में लोगों के 13 मर्डर हम देख चुके हैं because of various reasons. उन में से कई लोग सी०वी०सी० के पास गए थे, लेकिन एक भी केस में किसी को सी०वी०सी० protection नहीं दे पाया। तो जो Whistleblower Protection Bill है, वह सी०वी०सी० को कोई additional powers या additional resources देने की बात नहीं करता, वह केवल सुप्रीम कोर्ट का जो ऑर्डर था, उस को formalize करता है, that under this Bill, the CVC will act as the nodal agency for whistleblower protection. So, our humble submission is that this Standing Committee may recommend that Whistleblower Protection Bill should be withdrawn, and this responsibility of providing whistleblower protection should be given to the Lokpal.

SHRI ARVIND KEJARIWAL (CONTD): Nothing can be done, I mean, it has to be passed or dropped.

SHRI HARIN PATHAK: It is still pending.

SHRIMATI KIRAN BEDI: If I could refer to this, it is a very good section given by the Bill. It says, it is Chapter 10 of the Whistleblower, any public official linked with the reward scheme.. अगर यह Whistleblower को कानून में डाल दिया जाए, तो इससे बहुत करप्शन खत्म हो जाएगी, क्योंकि डिपार्टमेंट के अंदरूनी व्यक्ति को जितना मालूम होता है कि उसका डिपार्टमेंट क्या कर रहा है, इतना बाहर के आदमी को नहीं मालूम होता। An insider has much more information and authentic information and would even have evidence of the note sheets, of the orders, of the conversations which you never know. Now with this reward scheme, including the whistleblower and giving them protection under the Lokpal, would be very effective in prevention, not only in detection, in prevention. This section reads like that. 'Any public official or any other person having information of any corruption in any public authority would be encouraged to send the information confidentiality to the Lokayukt and it shall be the duty of the Lokayukt to get an inquiry made into such information and if necessary get investigation made under the Prevention of Corruption Act, 1988. Lokayukt

may issue necessary orders to provide protection to the whistleblowers from any physical harm or administrative harassment. Identity of such whistleblowers shall also be protected if the whistleblower so desires. For achieving this objective, it shall be competent for the Lokayukt to give suitable direction to the Government for providing security as well as to other authorities to ensure no harassment is caused to such whistleblowers. Orders under this section shall be passed expeditiously; it is a time limit of fifteen days. Investigation complaints by whistleblowers facing physical or professional victimization..' underlining the words, 'professional victimization', 'shall be fast tracked and completed within three months of the receipt.' जिस दिन लोकपाल में यह क्लॉज आ गया, अंदर के डिपार्टमेंट में करप्शन उस दिन से बंद हो जाएगी, या बड़े डर के होगी, एवीडेंस आ जाएगा, प्रोटेक्शन मिलेगी और करप्शन में प्रिवेंशन आएगी। This is all I wanted to say.

CHAIRMAN: यह उत्तराखंड का जो बिल है, It is supposed to be following the Jan Lokpal Bill. Uttarakhand Bill is supposed to be following the JLB. Your submissions are making it suggest as if you are following the Uttarakhand Bill. So, the idea and what we understand is that what you are saying is the primary model which is here and the Uttarakhand is a manifestation of that model.

SHRIMATI KIRAN BEDI: When Mr. Prashant Bhusan is making a clause, I am just explaining to you actually the language of the clause how far it has gone and how far it needs to go and why it needs to go. That is all I am trying to explain.

SHRI VIJAY BAHADUR SINGH: In short, you are suggesting that the Whistleblower Act and the CVC have become redundant and it should be withdrawn in view of this.

SHRIMATI KIRAN BEDI: It needs to go hand in hand.

SHRI VIJAY BAHADUR SINGH: Reason you have given is that it has staff of 230 and all that but it amounts to the same.

श्री शैलेन्द्र कुमार: प्रशांत जी, आपसे निवेदन है कि आपने जो यह बिल बनाया है, जन लोकपाल बिल और जो आज आपने यहां प्रस्तुत किया है अमेंडमेंट बिल, इसे आप हिंदी में उपलब्ध करवा दीजिएगा। आपकी वेबसाइट पर भी यह बिल हिंदी में नहीं है, अंग्रेजी में है। हम लोगों को अंग्रेजी कम आती है।

श्री अरविन्द केजरीवाल: सर, आपके पास तो ज्यादा इन्फ्रास्ट्रक्चर है, स्टैंडिंग कमेटी अगर इसको हिंदी में करा ले, तो ठीक होगा।

श्री शैलेन्द्र कुमार: नहीं, नहीं। आप हिंदी में उपलब्ध करा दें, तो मेरे ख्याल से वह ठीक रहेगा।

श्री अरविन्द केजरीवाल: सर, हमारे पास टेक्नीकल ट्रांसलेशन वाले लोग नहीं हैं।

श्री शैलेन्द्र कुमार: आप इतनी बड़ी सिविल सोसायटी चला रहे हैं और आप कह रहे हैं कि हिंदी का कोई आदमी ट्रांसलेशन के लिए नहीं है। हम लोग हिंदुस्तान में रहते हैं। बहुत से लोग अंग्रेजी नहीं समझ पाते, इसलिए आप इसको हिंदी में उपलब्ध करा दें। प्रशांत जी ने

अभी कहा कि वेबसाइट पर है, मगर वेबसाइट पर गांव का आदमी कहां जाता है। ग्रामीण क्षेत्रों में बिजली इतनी नहीं है, वहां वेबसाइट पर कैसे जाएगा?

अध्यक्ष: आप बाकी दस्तावेजों के लिए इसको इस्यून बनाएं, लेकिन अपवाद के रूप में जहां तक जेएलबी का सवाल है, इसको मैं सेक्रेटरिएट से कहकर अनुवाद करवा दूंगा और सर्कुलेट करवा दूंगा। हर डॉक्यूमेंट का ट्रांसलेशन आप मत मंगाएगा, इसको करा देंगे, इससे समय बच जाएगा।

SHRI PRASHANT BHUSAN: Now amendment 23, appeal against the order of the Lokpal, we have just provided that any orders passed by a bench of the Lokpal or any officer of the Lokpal shall be subject to the writ jurisdiction of the High Court under article 226. Ordinarily, High Court shall not stay the order. However, if it does, it will have to decide the case within two months, otherwise ... अब यह डाउटफुल है, आप सही कह रहे हैं। This is a doubtful provision. अगर कंस्टीट्यूशनल अमेंडमेंट होता है, तो फिर it can be put as a proviso... Then it will come as a proviso to 226.

SHRI SHANTI BHUSAN: In 226 I had made this amendment when I happened to be the Law Minister. I had said that in any cases if the orders are granted by the High Court ex parte and the respondent moves an application for vacation of the stay order, it is not decided even for one year and that ex parte order continues, so I had provided that if that application for vacation of the interim order was not disposed of within six weeks, the stay order shall automatically stand vacated.

अध्यक्ष: शांति भूषण जी, उसकी हालत वही हुई, जैसा अपने ऑर्डर 39 में भी ऐसा ही प्रावधान है कि तीन महीने में एक्स पार्टी injunction करना चाहिए और चुनाव के लिटिगेशन में 6 महीने की समय सीमा है, दोनों की हालत आप देख रहे हैं कि सच्चाई क्या है।

श्री प्रशांत भूषण : इसमें तो यह था कि ऑटोमैटिक वेकेशन, लेकिन हो यह रहा है कि 15 दिन के बाद वे फिर से एक्सटेंड कर देते हैं। एनीवे, यह बात ठीक है कि इसके लिए 226 में प्रोवाइजो डालना पड़ेगा। अगर यह बिल कंस्टीट्यूशनल अमेंडमेंट की तरह आता है, तो हमारा निवेदन है कि 226 में यह प्रोवाइजो डाल देना चाहिए, नहीं तो आज जैसा राइट टू इंफोरमेशन एक्ट में हो रहा है कि हाईकोर्ट स्टे करके डाल देता है और 6-6 साल तक, 8-8 साल तक स्टे चलता रहता है, वही हालत होगी।

श्रीमती किरण बेदी : कई जगह बीस-बीस साल है।

SHRI PRASHANT BHUSAN: 24, regarding punishment, we have suggested, यह हम लोगों ने बोला है -'For any act of corruption the punishment should not be less than six months of rigorous imprisonment and may extend to imprisonment of life, that is, life imprisonment. Special Court may take into consideration the higher rank of an accused person to inflict a more server punishment.' This is just guidance. 'If a victim of corruption is from a socially and economically backward section, the punishment should be higher. यह भी गाइडेंस के लिए है। If the victim of corruption is from a socially and economically

backward section.. मान लीजिए, कोई शेड्युल्ड कास्ट का है, कोई इकोनोमिकली बैकवर्ड क्लास का आदमी है, उसको विक्टिमाइज किया जा रहा है, क्योंकि वह वीक है और वह अपने आपके लिए कुछ कर नहीं सकता, तब फिर Normally the higher punishment should be awarded to the offender. It is only guidance. ऐसा है कि अगर आप कोई हेल्पलेस आदमी को विक्टिमाइज कर रहे हैं, मान लीजिए, Just because he is helpless, वह आपसे लड़ नहीं सकता, वह अपने राइट्स को एन्फोर्स करने के लिए कोर्ट जा नहीं सकता, आप उससे घूस मांग रहे हैं, मान लीजिए राशन कार्ड देने के लिए। वह शेड्युल्ड कास्ट का आदमी है, बहुत ही गरीब है, उसको आप विक्टिमाइज कर रहे हैं, क्योंकि आपको मालूम है कि वह आपसे लड़ नहीं सकता, वह अपने राइट्स को एन्फोर्स नहीं करा सकता और आप उससे घूस ले रहे हैं, तो फिर वह पनिशमेंट

श्री अर्जुन राम मेघवाल: आप उसकी डेफिनेशन कैसे करोगे? अगर कोई शेड्युल्ड कास्ट का आदमी आईएएस अफसर होगा, तो क्या होगा? आप उसकी डेफिनेशन कैसे करोगे?

SHRI PRASHANT BHUSHAN: Social and economically backward लिखा है, अगर किसी कमजोर आदमी को आप victimize कर रहे हैं। यह तो guidance की तरह है, कोर्ट तय करेगा, यह कोर्ट के guidance के लिए है। (4) says “If the beneficiary of an offense is a business entity, in addition to the other punishments provided for under this Act and under the Prevention of Corruption Act, a fine of up to five times the loss caused to the public shall be recovered from the accused and the recovery may be made from the assets of the business entity and from the personal assets of its Managing Directors, if the assets of the accused person are inadequate.” मतलब यह है कि This is for deterrence. जैसे 2G वाले लोग हैं, if the beneficiaries are these big business houses etc. then the fine that can be recovered from them. हम लोगों ने नॉर्मली यह प्रोवाइड किया है कि जितना नुकसान हुआ है, उसका 10 परसेंट नहीं, What we have provided is, at the time when the trial court is deciding, at the end of the trial, the trial court shall make an assessment of the loss caused by that act of corruption. Public exchequer को कितना नुकसान हुआ, आपके करप्शन के कारण, जितना नुकसान हुआ, that will be apportioned by the court among the various accused. उसमें जो-जो लोग शामिल हैं, Trial Court will try to apportion those loss and in addition to sentencing them to imprisonment etc. they will also pass an order for recovery of the loss from those accused. हम लोगों ने इसमें सिर्फ इतना जोड़ा है कि अगर वह beneficiary कोई business entity है, कोई corporation वगैरह है, तो उनसे up to five times, यानी आप उनसे ज्यादा रिकवरी कर सकते हैं, यह नहीं कि 5 times ही किया जाएगा, up to five times किया जा सकता है। (5) says “If any company or any of its officer or Director is convicted for any offence under Prevention of Corruption Act, that company and all companies promoted by any of that company’s promoters shall be blacklisted and be ineligible for undertaking any Government work or contract in future.” अगर किसी कंपनी का conviction हो जाता है corruption के लिए, तो वह कंपनी और उसकी associated companies यानी उसी प्रमोटर की जो associated companies हैं,

उसी प्रमोटर ने जो और कंपनीज़ चलाई हुई हैं, उन सबको गवर्नमेंट कांट्रैक्ट से ब्लैक लिस्ट कर दिया जाएगा।

श्री अर्जुन राम मेघवाल: आप इसमें यह भी शामिल करिए कि वह आदमी दोबारा नयी कंपनी नहीं बना सकेगा।

SHRI HARIN PATHAK: जिनका संबंध कंपनी से नहीं है, लेकिन वे प्रमोटर्स कोटा से मार्केट से खरीदते हैं, उनका क्या होगा? Those who are owners but those who have purchased from promoters quota.

SHRI PRASHANT BHUSHAN: Only the promoters. कई बार ऐसा होता है कि वही प्रमोटर्स तीन-चार कंपनियां बना लेते हैं।

SHRI VIJAY BAHADUR SINGH: It is okay.

SHRI PRASHANT BHUSHAN: Then, (6) says “If a public servant is convicted under the Prevention of Corruption Act, such public servant shall stand removed from his office.” यह तो कन्विक्शन के समय है।

(7) says “Wherever Lokpal directs imposition of financial penalty on any officer under this Act to be deducted from his salary, it shall be the duty of the Drawing and Disbursing Officer of that Department to implement such order, failing which the said Drawing and Disbursing Officer shall make himself liable for similar penalty.” यह तो ठीक है। अब Citizens Charter के बारे में केजरीवाल जी बताएंगे।

श्री अरविंद केजरीवाल : इसमें हमारा यह कहना था कि नीचे के लेवल पर आम आदमी को भ्रष्टाचार से डील करना पड़ता है। हर डिपार्टमेंट के अंदर कुछ ऐसे आइटम्स होते हैं, जिनके लिए पब्लिक डीलिंग करनी पड़ती है और आम आदमी का harassment होता है। हर डिपार्टमेंट में अगर उसको identify करके Citizens Charter में डाल दिया जाए, तो Citizens Charter के violation पर हमारा जो मॉडल था और कल सरकार ने जो Public Grievances Redressal Bill announce किया है, हम लोगों ने उसे बैठकर पढ़ा है। हमारा यह कहना है कि लोकपाल के बेंच के पास कोई कंप्लेंट न जाए। अगर सारे केसेज़ लोकपाल के पास आने लग गए, तो सबको अपना राशन कार्ड बनाने के लिए दिल्ली आना पड़ेगा और वह workable model नहीं है। हमारा यह कहना है कि जैसे राज्यों के अंदर लोकायुक्त है, लोकायुक्त का एक अफसर या दो अफसर हर ब्लॉक के लेवल पर appoint हो जाए और मान लीजिए कि हम कहते हैं कि राशन कार्ड 15 दिनों में बन जाना चाहिए, यदि 15 दिनों में राशन कार्ड नहीं बना, तो मेरी पहली अपील Head of the Department को जाएगी, वे अगले 30 दिनों में ... (व्यवधान)

श्री अरुण सुभाषचंद्र यादव : गांव का आदमी ब्लॉक में जाएगा?

श्री अरविंद केजरीवाल : जी, बिल्कुल। वह BDO के पास अर्जी देगा, अगर BDO ने 30 दिनों में नहीं किया, तो उसके बाद ब्लॉक के लेवल के ऊपर लोकायुक्त का एक अफसर बैठा होगा।

लोकायुक्त के केस में ब्लॉक के लेवल पर बैठेगा और लोकपाल के केस में जिले के लेवल पर बैठेगा। लोकपाल केवल सेंट्रल गवर्नमेंट के डिपार्टमेंट्स के लिए है और लोकायुक्त केवल स्टेट गवर्नमेंट डिपार्टमेंट्स के लिए है। ये अलग-अलग हो गए। इनकम टैक्स डिपार्टमेंट का केस लोकपाल के पास जाएगा, लेकिन राशन वाले का केस लोकायुक्त के पास जाएगा। लोकपाल या लोकायुक्त का एक अफसर जिले के लेवल पर या ब्लॉक के लेवल पर बैठा है और मेरी अपील उसके पास जाएगी। उस अफसर की यह जिम्मेदारी होगी कि वह Head of the Office और उस अफसर पर पैनल्टी लगाए और वह पैनल्टी मुझे कंपनसेशन के रूप में दी जाएगी। यह हम लोगों ने इस प्रस्तावित बिल में लिखा था। कुछ लोगों का यह मानना है कि अगर ऐसा हुआ, तो हजारों grievances आ जाएंगी और flooding हो जाएगी।

श्री वीजय बहादुर सिंह : केजरीवाल जी, उसमें एक practical difficulty आएगी। जैसे BDO से चला गया Head of the Department के पास, Now, BDO से वह dissatisfied है, उसके बाद आप कह रहे हैं कि लोकायुक्त और लोकपाल, दोनों के आदमी बैठेंगे। Why don't you give one more appeal to CDO? Otherwise, मान लीजिए कि कोई ऐसी चीज है, जो BDO नहीं कर रहा है, तो CDO can make a grievance. वरना आप बहुत ज्यादा loaded हो जाएंगे।

श्री अरविंद केजरीवाल : कर सकते हैं। हमने एक अपील इसमें डाली थी। जब उत्तराखंड सरकार के साथ बातचीत हुई, तो उन्होंने internal 2 appeals डाली हैं।

श्री वीजय बहादुर सिंह : जैसे BDO के बाद आप कलक्टर को कर दो। कम से कम वह ensure तो करे। वह workable होगा।

श्री अरविंद केजरीवाल : यह चेंज कर सकते हैं। उन्होंने उत्तराखंड में जो डाला है, वह बिल्कुल ठीक मॉडल लगता है। उसमें उन्होंने यह चेंज किया है कि first appeal तो local officer के पास जाएगी, second appeal या तो Collector or Principal Secretary level के अफसर के पास जाएगी। अगर वह भी satisfy नहीं करते हैं (व्यवधान)

अध्यक्ष : आप इसे जल्दी पूरा कर दीजिए।

श्री अरविंद केजरीवाल : हमारा केवल यह कहना था कि अगर यह grievance लोकपाल या लोकायुक्त के अफसर के पास जाती है, तो It should be mandatory to impose penalty. हमारा यह कहना था कि पैनल्टी इंपोज करना mandatory होना चाहिए और जो तनख्वाह कटेगी, वह इसको कंपनसेशन के रूप में मिले। मैं थोड़ा सा दोनों के बारे में comparison करना चाहूंगा। सरकार ने अभी कल जो Public Grievance Redressal Bill प्रस्तुत किया है, उसमें grievance की definition बहुत ज्यादा vast है। मैं पहले Income Tax Department में था। अगर Income Tax Department का Citizens Charter हमें बनाना हो, तो मेरे हिसाब से उसमें केवल 5 आइटम्स आ सकते हैं - लोगों को रिफंड लेना पड़ता है, PAN लेना पड़ता है, TAN लेना पड़ता है, एक Rectification Effect होता है, एक Appeal Effect होता है - इन पांच चीजों में

95 परसेंट से ज्यादा आम आदमी के करप्शन का समाधान हो जाता है, लेकिन अगर हम grievance देखें, तो grievance कुछ भी हो सकती है कि आज मैं गया था, मुझे बैठने के लिए ठीक से जगह नहीं मिली, मेरे साथ बदतमीजी की गई। हर तरह की grievance हो सकती है। हमारा यह कहना था कि वे grievances जिनसे रिश्तखोरी जन्म लेती है, उनको आप लोकपाल के दायरे में ले आइए, बाकी सारी grievances आप Public Grievance Redressal Commission को दे दीजिए, हमें कोई दिक्कत नहीं है। केवल उन grievances को जिनसे रिश्तखोरी जन्म लेती है, अगर वे grievances 3 अपील करने के बाद भी solve नहीं हुईं, तब तो पैनल्टी लगनी चाहिए और अगर लोकपाल के पास तीन-चार बार उसी अफसर का मामला आ गया, तो It should be deemed to be an act of corruption.

श्री अरविंद केजरीवाल (क्रमागत) : उसमें यह कहा जा रहा है कि अगर सुबूत होगा कि *mala fide* है, अब मुझसे रिश्त मांगी तो मैं क्या सुबूत दूँ? मेरे पास कोई सुबूत नहीं है। जब मैं ऊपर जाकर कहता हूँ कि राशन कार्ड बनाने के लिए मुझसे रिश्त मांगी, तो कहते हैं कि सुबूत दो, गवाह लेकर आओ। मैं कहाँ से सुबूत लेकर आऊँ? तो repeated violence of Citizens Charter should be deemed to be corruption, rather than citizen having to prove that.

श्री प्रशांत भूषण : जो हम लोगों ने अमेंडमेंट दिया है, उसके डीटेल्स तो इसमें हैं। 26 में कहा है कि 'Every investigating officer shall endeavor to complete the investigation of an offence within a period of six months but when necessary he may obtain extension of time from a Bench of the Lokpal. In any case the period of investigation shall not extend 18 months.'

श्री वीजय बहादुर सिंह : उसको आप तीन महीने कीजिए to be extended up to six months. हरेक को minimum six months कीजिए। छोटा सा grievance पकड़ में आ गया, लेकिन छः महीने बीत गए।

श्री प्रशांत भूषण : हम लोग तो यह कह रहे हैं कि normally investigation छः महीने में खत्म हो जाना चाहिए। जो छोटा होगा, वह तो तुरंत खत्म हो जाएगा।

श्री वीजय बहादुर सिंह : छः महीने तक तो wait ही करेंगे।

श्री प्रशांत भूषण : नहीं, नहीं, ऐसा कुछ नहीं है। Normally छः महीने ठीक है। उसके बाद हमने कहा है कि in any case, 18 महीने में खत्म हो जाना चाहिए। किसी investigation में 18 महीने से ज्यादा नहीं लगने चाहिए।

श्री वीजय बहादुर सिंह : राशन कार्ड 18 महीने तक....

श्री प्रशांत भूषण : नहीं, नहीं, राशन कार्ड नहीं, यह तो करप्शन के investigation की बात हो रही है। Chief Justices of High Court – यह provision बहुत important है। यह अमेंडमेंट 26 में (2) है - 'Chief Justices of High Court will constitute such number of special benches in respective High Courts to hear cases under this Act, to ensure that an appeal in any case is

decided as expeditiously as possible and not later than six months.' हम लोगों ने अपने बिल में यह रखा था कि that the Lokpal will determine कि कितने Special Courts की ज़रूरत है to ensure that the trial of corruption cases is completed within one year. वह already गवर्नमेंट के बिल में है। हमने अपील के लिए भी इसमें डाल दिया है कि High Court should do that.

श्रीमती किरण बेदी : प्रशांत जी, इसमें मैं एक चीज़ on record लाना चाहती हूं। अभी जो अरविंद ने कहा, मेरी request है कि यह on record ला दिया जाए। It is with reference to Chapter XII, Section 26 of the Uttarakhand Act. यह वही ज़िक्र है, जो कि second appeal और first appeal किसको जानी है, मैं उसे पढ़ूंगी नहीं, लेकिन इसे record पर ला दिया जाए, धन्यवाद।

SHRI PRASHANT BHUSHAN: I now come to Amendment No. 27. Some consequential amendments are required in other laws to bring it in line. वह तो सारा फॉर्मल है। अब जो हमने mention किया था, 'other provisions to prevent corruption.' It is Amendment No. 28. उसमें एक ट्रांसपेरेंसी का भी है। अब देखिए ये हैं – “No Government official shall be eligible to take up jobs, assignments, consultations, etc., with any persons, company, or organisation that he had dealt with in this official capacity.

(2) All contracts, public-private partnerships, transfer by way of sale, lease and any form of largesse by any public authority shall be done with complete transparency and by calling for public tender/auction/bids unless it is an emergency measure or where it is not possible to do so for reasons to be recorded in writing. Any violation of this shall make the contract/largesse void. The details of all such transactions would be put up by the public authority on a public website.

(3) All contracts, agreements or MoUs known by any name related to transfer of natural resources, including land and mines to any private entity to any method like public-private partnerships, sale, lease or any form of largesse by any public authority shall be put on the website within a week of being signed.'

आज तो यह हालत है कि लोगों को पता ही नहीं लग रहा है और लोग आर.टी.आई. में पूछते रहते हैं, धक्के खाते रहते हैं और सालों-साल तक पता नहीं लगता। तो यह तुरंत पब्लिक वेबसाइट पर आ जाना चाहिए। Then, 'Any bribe giver may be granted immunity from prosecution by the special court if he voluntarily and gives timely information to the Lokpal about the giving of bribe by him with entire evidence for the purpose of getting the concerned bribe taker/public servant caught and convicted, provided he also relinquishes all the illegitimate benefits which he had received by the giving of that bribe. If the information provided by such bribe giver is subsequently found to be false, the immunity could be withdrawn by the special court.'

फिर कुछ miscellaneous provisions हैं Property Returns के बारे में।

श्री अरविंद केजरीवाल : वैसे तो सरकारी बिल में यह आ गया है कि हर Government Servant को हर साल अपनी प्रॉपर्टी डिक्लेयर करनी पड़ेगी लेकिन कर्णाटक में एक अच्छा

सैंक्शन था, जिसको हम ला सकते हैं। अगर मान लीजिए कि अगस्त के end तक टाइम लिमिट है, तो उसको एक महीने की और

मोहलत दी जाए। अगर वह सितम्बर end तक नहीं करता, तो अगले महीने से उसको तनख्वाह मिलनी बंद हो जाए, जब तक वह अपनी property declare नहीं कर देता।

उसके बाद यह है कि सरकारी लोकपाल बिल में यह डाल दिया गया कि सात साल से पुराना केस वे नहीं देखेंगे। Prevention of Corruption Act में ऐसा कोई प्रावधान नहीं है। इसमें कोई टाइम लिमिट नहीं है और सी.बी.आई. के लिए भी टाइम लिमिट नहीं थी, तो हम इसमें जबरदस्ती क्यों टाइम लिमिट डाल रहे हैं? टाइम लिमिट नहीं होनी चाहिए। जो original Prevention of Corruption Act था, उसी को as it is रखना चाहिए। This time-limit, in our opinion, should be withdrawn. उसके बाद सरकारी लोकपाल बिल में यह है कि जो accused हैं, उनको लोकपाल free legal help देगा, तो हमारा कहना है कि जिसने करप्शन किया है, उसके पास तो वैसे ही बहुत legal help होती है। हमें नहीं लगता कि उसको legal help की जरूरत है।

मोटे-मोटे तौर पर हमारी अमेंडमेंट्स ये हैं कि अपने अंदर का procedure और सारे रूल्स बनाने की पावर लोकपाल के पास होनी चाहिए। इसमें लिखा है कि सरकार उनके रूल्स बनाएगी, वह नहीं होना चाहिए। Let Lokpal be an independent body. फिर अमेंडमेंट नंबर 32 है Chairperson के बारे में। सरकारी लोकपाल बिल कहता है कि it should be a retired Chief Justice of India only. हमें लगता है कि, it should not be restricted to the retired Chief Justice of India only. Let it be more open.

The last one is relating to Judiciary. Judiciary के लिए सरकार बार-बार यह कह रही थी कि judiciary के लिए अलग बिल होना चाहिए। अब जो अलग बिल बनाया, Judicial Standards and Accountability Bill, उसके अंदर Prevention of Corruption Act के investigation के लिए, उसके criminal investigation के लिए कोई प्रावधान नहीं है। It is only about their professional misconduct which is an offence. तो न इधर रखा और न उधर रखा। हमारा यह कहना है कि Judiciary के भी Prevention of Corruption Act के violation को इस लोकपाल बिल के दायरे में लाना चाहिए। जैसे उत्तराखंड में वे lower judiciary को दायरे में लेकर आए हैं, तो इस लोकपाल के दायरे में High Court और Supreme Court के judges को क्यों नहीं लाया जा सकता? वे इसके दायरे में आने चाहिए।

अगर हम लोग Constitution का अमेंडमेंट सजेस्ट कर रहे हैं, जैसा कि अखबारों में आ रहा है कि Constitution अमेंड किया जाएगा, to give Constitutional status, तो हम यह सजेस्ट करेंगे कि दो अमेंडमेंट्स लाए जाएं। एक है आर्टिकल 105, लॉ कमिशन, जिसके चेयरमैन वेंकटचलैया थे, उनकी Chairpersonship में 2001 में एक रिपोर्ट आई थी, जिसमें उन्होंने formulation दिया था कि आर्टिकल 105 को अमेंड करके क्या होना चाहिए? वही

formulation हमने इसमें लिखा है, तो जो लॉ कमिशन की recommendation थी, वह implement होनी चाहिए।

लास्ट है, आर्टिकल 311 में लिखा है – No punishment can be given to any bureaucrat by any authority less than appointing authority. उसमें हमारा यह कहना है कि less than appointing authority and Lokpal यह डाल दिया जाए तो लोकपाल उसको punishment दे सकेगा।

श्री प्रशांत भूषण : सर, मैं उसके बारे में थोड़ा सा बताना चाहता हूँ। आज यह प्रावधान है कि या तो लोकल पुलिस या सीबीआई जज का investigation कर सकती है। वीरास्वामी के जजमेंट से सुप्रीम कोर्ट ने यह बोल दिया कि क्योंकि लोकल पुलिस और सीबीआई सरकार के अंडर होती है, इसलिए ज्युडिशियरी की independence प्रोटेक्ट करने के लिए investigation से पहले चीफ जस्टिस ऑफ इंडिया की prior permission लेनी होगी। हम लोगों ने यह देखा कि चीफ जस्टिस ऑफ इंडियर permission नहीं देते, उन्होंने कई केसेज में permission नहीं दी - हम लोगों ने भी अप्लाई किया, लेकिन उन्होंने permission नहीं दी। उसमें उनका conflict of interest होता है। कई बार चीफ जस्टिस ने ही उसी जज को appoint किया होता है, कई बार चीफ जस्टिस उसका दोस्त होता है, कई बार चीफ जस्टिस honest भी होता है, उसको लगता है कि हम head of the judicial family हैं, इनको protect करना हमारी ड्यूटी है। उसमें conflict of interest हो जाता है। इसीलिए जो लोकपाल हम लोग बना रहे हैं, वह एक बिल्कुल independent authority बन रही है, जो सरकार से भी independent है और judiciary से भी independent है। फिर अगर वह investigation करे तो किसी को उससे प्रॉब्लम नहीं होनी चाहिए, खासकर तब, जब हमने 7 मੈम्बर्स बेंच का सेफगार्ड भी रख दिया है कि Seven-member Bench of Lokpal will grant permission for investigation or prosecution. तो किसी को क्यों आपत्ति होनी चाहिए? After all, a seven-member bench is far safer than a single Chief Justice. यह तो बिल्कुल independent authority बनायी जा रही है। इसलिए यह ज्यादा better है इसलिए हायर ज्युडिशियरी यानी हाई कोर्ट और सुप्रीम कोर्ट के जजेज को बिल्कुल..... Therefore, we are of the firm view that the Judges of the High Courts and the Supreme Court must come under the investigative ambit of the Lokpal.

श्रीमती किरन बेदी : उत्तराखंड ने लोअर ज्युडिशियरी को इन्क्लूड किया है।

SHRI SHANTI BHUSHAN: I will be very brief and I will speak only on a few topics. My first point is about the constitutional amendment. We have no objection in this regard. In fact, we would welcome a constitutional amendment to give a constitutional status to the Lokpal, subject to two conditions. One, Mr. Seshan had suggested a Bill which would have involved ratification by fifty per cent of the State Assemblies because it was altering the legislative list. It is not required in this case. No alteration in the legislative list is required. Therefore, it must be ensured -- if that is going to be constitutional amendment Bill – that it will be passed by the Parliament itself without the requirement of being sent to the State Legislative Assemblies. Of course, it will have to be ensured, and I have no doubt, that two-third majority of those present and voting would be available, particularly after the Uttarakhand

experiment. When Uttarakhand, where all the major parties are present, has already put their seal of approval on all these provisions, I don't see any difficulty with the political parties, here at the Centre, also endorse all these suggestions. One thing more, it should not be a mere skeleton Bill. If it has to be a constitutional amendment Bill, it should not merely provide that State Legislatures and the Lok Sabha would be competent to enact a Bill. The constitutional amendment Bill must itself make all the provisions so that as soon as the constitutional amendment Bill is adopted all the provisions – the powers of the Lokpal, the functions of the Lokpal, the authority of the Lokpal – get passed by this constitutional amendment alone. There is no problem in doing it. It can be done and it should be done.

Second, when we drafted the Jan Lokpal Bill, we had gone by the provisions of the UN Convention Against Corruption, to which India was a signatory right from 2003 or 2005. This UN Convention Against Corruption was not ratified for a long time, but it has been ratified now in 2011. Once it has been ratified, it becomes the international obligation of India to enact a law which is totally in line with the UN Convention. That is why I would invite the attention of the hon. Members to only three or four parts of the UN Convention. The UN Convention defines 'public official'. The public official, which will be investigated by the Ombudsman, namely, Lokpal, created under the UN Convention. It says, "Public Official" shall mean any person holding a legislative, executive, administrative, or judicial office of a State Party, whether appointed or elected, whether permanent or temporary, whether paid or unpaid, irrespective of that person's seniority". So, all persons all bureaucrats, all Ministers, all MPs and MLAs, all Judges, everyone comes under the definition of 'public authority'. Again, it says what will be the power of such an independent authority. It says, "The Convention shall apply, in accordance with its terms, to the prevention, investigation and prosecution of corruption and to the freezing, seizure, confiscation and return of the proceeds of offences established in accordance with this Convention." So, everything, namely, freezing, seizure, confiscation and return of the proceeds is covered. Then, 'independence' is also clearly provided by the UN Convention. It says, "Each State Party, namely, every country, shall grant the body (anti corruption institution) or bodies referred to in paragraph 1 of this article, the necessary independence, in accordance with the fundamental principles of its legal system, to enable the body or bodies to carry out its or their functions effectively and free from any undue influence". Then, why are we providing for the selection body to consist of different persons? Only two persons from amongst politicians – the Prime Minister and the Leader of the Oppositions – are sufficient so that the entire Parliament is represented there. But there are four Judges. There are two other constitutional authorities, namely, the CAG and the Chief Election Commission. The reason is, after all, the Prevention of Corruption Act involves and provides for those who are in a position to take bribes. Therefore, those who are performing administrative functions, whether Ministers or bureaucrats or Judges, they are in a position to take bribes. Therefore, the authority has to be independent of those. If those very persons, who are sought to be investigated, get the power to appoint the investigating authority, then, you can imagine what will happen. That is exactly what was happening before the UN Convention came into existence. The CBI, the police, all of them are under the control of the Government. It is the Government that has the power to take bribe. And, if they have the power to control the investigating authority, then, evidently, what has been happening will keep on happening. And, it is not possible for the Supreme Court to monitor investigation in every case because they have limited time. It is only account of the intervention of the Supreme Court, by monitoring important cases of corruption, that certain things are happening, something which had not happened during the 60 years. We find, in that spectacle, very important people, whether bureaucrat or big businessmen or Ministers, etc. are in jail today. Therefore, that is the result of independent investigation. That is why it is

necessary that the appointment procedure is that such which provides for total independence and the Government does not control the selection process at all. It has further provided two functions, "in particular, each state party shall endeavour to apply within its own institutional and legal systems, codes or standards of conduct for the correct, honourable and proper performance of public functions". That is why some of the provisions of the Jan Lokpal Bill are directed to that effect. It further provides, "Each State Party shall also consider, in accordance with the fundamental principles of its domestic law, establishing measures and system to facilitate the reporting by public officials on acts of corruption to appropriate authority when such acts come to their notice."

SHRI SHANTI BHUSHAN (CONTD.): This is whistleblower. Internally, if the officials themselves find that such corruption is going on, unless this provision of whistleblower and protection to the whistleblower is not there, many acts of corruption will not come for notice and for being dealt with properly.

Finally, Article 30 also provides that 'each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures, through which a public official, accused of an offence, established in accordance with this Convention may, where appropriate, be removed, suspended or reassigned by the appropriate authority, bearing in mind respect for the principles of presumption of an offence.' And, that is why we had provided that after investigation, if the Lokpal comes to the conclusion that a case is made out and a chargesheet goes to the court so that he can be prosecuted and punished, then he should have the power to deal with it. This power has always been with the Government. Even after sending a case to court, the Government starts a Departmental inquiry after giving him opportunity and he is removed in some cases. So, this power should go to an independent authority, namely, the Lokpal which will recommend either his dismissal, removal, reduction in rank or anything else and which recommendation will be binding on the Government.

Thereafter, the question of higher or lower bureaucracy comes. It has been dealt with but I would like to bring only one aspect to the attention of the hon. Members. Sometimes what happens is -- let me talk as a former Minister -- if a Minister wants something improper to be done, what he would do is, in order to escape, he would direct a lower official to put up such a note that 'this should be done.' Thereafter, the higher officer will just put his initial. They will just keep on initialing; and right up to the Minister, it will be initials. That is what happens. Now, when an investigation starts, if the Lokpal has the power only to investigate the Joint Secretary and above, they will say, 'Look here, we only approve the proposal which was made by an Under Secretary or a Deputy Secretary. We know nothing further about it.' So, the truth will not come out. It is only possible if the Lokpal has the authority to investigate that official also, the lower official, who has made the primary fault, misleading note, which he can't justify. And, he would be asked, 'Look here, the facts were these. How did you make this note? The highest bidder was so and so but you said that 'the contract should be awarded to so and so.' How did you do it?' Then, he can't answer that question. He might then say, "Well, look here, I had orders from the Minister or from the Secretary to put up this note.' And, then only the Secretary or the Minister would be caught. Therefore, this kind of thing, namely, to deprive the Lokpal of the authority to investigate officers below the Joint Secretary is very pernicious. It is dangerous and should not be allowed to be done, because, otherwise, I don't see any reason of it. All of them are public servants; all of them have to be investigated by the same authority. Why is it that the lower officers should not be investigated by the Lokpal and they should continue to be investigated by those persons who are still under the Government? Is it a way to protect the Ministers or higher bureaucrats? I can't understand it. Otherwise, I can't see any justification for it.

Then, one more controversial question was, whether the Prime Minister should be included or not. Now, what is the justification? The Prime Minister may be a very big man. But, after all, he is a public servant. Only because a big paraphernalia of a large number of cars goes, people start feeling as if the King Emperor is going; but the fact remains that under the Constitution and under the law, he is a public servant. Now, it may be regarded as a term of abuse. One may say, 'Look here, you are calling the Prime Minister as servant, public servant.' Now, it appears like that, but that is a fact. He has been appointed the Prime Minister on behalf of the people of India through instrumentalities of the Constitution to serve the people, to get a salary and work for them. So, he is a public servant and why should a public servant not be answerable? It was just said that it is not possible that a Prime Minister will take a bribe. Today, we have a very honest Prime Minister. But we can't say that it will be so for ever. Some day, there may be a corrupt man. Anybody could become the Prime Minister and that person may be highly corrupt. Are we trying to say that till he demits office-- for five years or ten years, he may continue to be the Prime Minister -- he should have the authority to loot the country to whatever extent? It is being done by granting him total exemption from investigation and prosecution, because, without investigation, no successful prosecution would be possible. You want to put a stop at the investigation itself. Therefore, a Prime Minister will keep all the defence purchases under him and say, 'all right, out of the defence purchases to the extent of lakhs of crores of rupees, I can take Rs. 20,000 crores in this deal, 10,000 crores in that deal. Let me keep all the juicy portfolios under me so that the Government cannot be bothered and therefore the Government can keep on making any amount of money and no investigation can be started.' I think this will be totally discriminatory. Maybe, even the Supreme Court might strike it down. How is he different from any other Minister? He is first among them. Therefore, he is a Minister like anybody else. He can have any portfolio, etc. Therefore, it will be totally pernicious to keep the Prime Minister out of it. In fact, without any qualification, the Prime Minister must be included in the ambit of the Lokpal Bill.

Same about the higher judiciary. So far as the Judicial Standards and Accountability Bill is concerned, which has already been approved by the Cabinet, it is crystal clear that it does not make any provision for investigation of a criminal offence of bribery. It does not make any provision for chargesheeting a Judge or Chief Justice, etc. Had there been a criminal investigation by an independent authority under that Act for contravention of the Prevention of Corruption Act, well, we would not have minded it. If an independent authority had been created to investigate and prosecute the Judges also, we wouldn't have minded it. But it doesn't. It only is concerned with standards. There is not even an independent authority. So, it is controlled only by the Judges. This is impossible. Do we want to perpetuate judicial corruption? Everyone knows what the people are feeling about the judicial corruption in the lower courts, High Courts, even in the Supreme Court, etc. Even today the Chief Justice of India has many cases. We are fortunate that today we have a very, very honest Chief Justice and that is why certain things are changing in the Supreme Court. But the institution has to provide for every kind of contingency. Tomorrow, instead of having a very honest Chief Justice, well, maybe, some corrupt Chief Justice may come again and if there is no independent mechanism to investigate those Judges, the country will be in for a rude shock.

Then, I will talk about grievances. For grievances again, there has to be an independent authority.

SHRI SHANTI BHUSHAN (contd.): Independent authority is the crux of the matter. Wherever you provide for a totally independent authority, armed with full powers, that would put a very big break on corruption. In the Jan Lokpal Bill what we had conceived was that

there would be a eleven member-body. They would not be performing any judicial function. Their basic function is investigative, administrative, at best, in some cases, judicial. All these functions can be delegated, so that in some cases the powers could be exercisable only by a bench of the Lokpal Members, but in other cases, it should be competent. They will have powers to frame their own rules and regulations by which they would provide for delegation at the appropriate level, considering how important that particular power is. Therefore, there must be a power to delegate whenever the Lokpal considers the delegation of functions necessary.

Then, talking of phone-tapping, although Prashant has spoken about it, let me add my voice also. Today, corruption can never be fully investigated unless the power of tapping phones is there. Sixty years, back that was not the position, but today everyone is talking on a mobile phone, etc. All the deals are fixed on mobile phones. Even the 2G scam came to light only because, fortunately, the Income Tax Department had tapped the phones of Radia. So many things came out in tapes. The beauty about tapping a telephone conversation is that it cannot be refuted. If a conversation has taken place, there is direct and clear evidence. Then there is no question whether a witness should be believed or should not be believed. If you tap a telephonic conversation, it is a direct piece of evidence. Therefore, the best possible evidence in cases of corruption can only come through tapping of phones. The only thing is, Home Secretary's permission is required under the present law. That is why we are providing that instead of the Home Secretary, in cases of corruption investigated by the Lokpal, this authority to grant permission to tap telephones must be granted to the Lokpal.

Ms. KIRAN BEDI: Sir, I have one point to add on behalf of the civil society. I won't take much time.

We referred to the United Nations Convention Against Corruption. I would like to draw your attention to article 13. You are making us sit behind a board called the civil society. I would like due space for this clause to be included in the Jan Lokpal Bill or the Lokpal Bill. Article 13 says, "UNCAC, dealing with the participation of society, provides that each State party shall take appropriate measures within its means and in accordance with the fundamental provisions of its domestic law to promote the active participation of individuals and groups outside the public sector such as civil society, non-governmental organizations and community-based organizations in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threats posed by corruption. This participation shall be strengthened by such measures as enhancing the transparency" – which we have talked about – "promoting the contribution of the public to decision-making processes, ensuring that the public has effective access to information." Access to information is coming in, Sir, through the websites that we are talking about. But, I think, we could look at in what way we could associate civil society in education, in prevention, in reporting and even seeking information as active participants and asking questions from our elected representatives. In fact, this was the biggest blockage we have had so far. When we were into the agitation, we kept requesting our elected representatives, 'please, go back to your constituencies, check out what they have to say, etc.' But there was no separate forum through which we could reach out to them. I am saying, here is section 13. We could incorporate the role, a mandatory role or a directional role for the elected representatives and public officials. For instance, my suggestion is, there must be a provision for regular town-halls both by public officials, bureaucrats and our elected representatives. Community centres, Sir, have been appointed.

SHRI VIJAY BAHADUR SINGH: What do you mean by town-halls?

श्रीमती किरण बेदी : सर, मैं आपको town-halls के बारे में बताती हूँ। Town-halls का मतलब यह है कि जो आपके क्षेत्र में कम्युनिटीज सेन्टर्स हैं, जिला परिषद् हैं, पंचायत घर हैं, आप उनको town-halls कह सकते हैं। आपके पास जिला परिषद् है, पंचायत घर हैं, शहरों में आपके पास कम्युनिटीज सेन्टर्स हैं, इनमें regularly अगर हमारे elected representatives और जो हमारे पुलिस कमिश्नर हैं, जो हमारे डिप्टी कमिश्नर हैं, ये कम से कम एक बार once in three months mandatorily लोगों से मिलें। इसमें यह नहीं कि ये सिविलियरिटी से दूर हों, बल्कि लोगों से मिलें, ताकि लोगों को एक खुला मंच मिले।

SHRI ARUN YADAV: It is there.

Ms. KIRAN BEDI: I am looking at the Lokpal Bill. आप तो करते हैं। आप जरूर करते हैं। मैं यह कह रही हूँ कि सभी करें और आप mandatorily करें, legally करें। Chairman Sir, I am only trying to see how we could incorporate section 13 of the UNCAC somewhere into the provisions of the Lokpal Bill, so that people start feeling associated by law, by rules and regulations. I think this is mandatory. Otherwise, we will have to keep asking. Some of them are just wonderful. Some MLAs and MPs do it, but if this comes through a legal provision, if this provision for town-hall comes regularly once in three months where our bureaucrats. कई bureaucrats करते हैं और कई नहीं करते हैं। अगर हम UNCAC का प्रोविज़न ले आएँ, so that civil society is engaged in this Act as well.

अध्यक्ष : हम आज इस मीटिंग की कार्यवाही यहीं समाप्त करते हैं और कल आप से सवा चार बजे मिलेंगे। एक बात यह है कि जो बाहर बीस-पच्चीस लोग हैं, उन्होंने आपकी फोटो लेने की मांग की है। हम उनको एक बार यहां पर बुला लेते हैं, उसके बाद आप चल जाइए। धन्यवाद।

(The witnesses then withdrew.)

Witnesses:-

National Students' Union of India (NSUI)

- Shri Roji M. John, Vice President
- Shri Bharat Kumar
- Shri Shahnawas Khan
- Ms. Leni Jhadhav

CHAIRMAN: I welcome you all. You know that we are running very late and I was told that you would be very brief and take about 5 or 10 minutes. आप जितना संक्षेप में हो सके, जल्दी हो सके, बोलिएगा, हम आपके आभारी होंगे। आप अपना परिचय देने के बाद एकदम से शुरू कर दीजिए। So, we will appreciate you to be focused.

SHRI ROJI M. JOHN: First of all, we thank this hon. Committee for giving us this opportunity to present our views on the proposed Lokpal Bill.

To start with, the National Students' Union of India welcomes the Lokpal Bill, 2011 as it proposes to establish a comprehensive mechanism and body to fight corruption in India. We congratulate the UPA Government for introducing this legislation and we are confident that the proposed legislation will help the country in its fight against corruption. As a responsible organization representing the student community in the country, we consider it a duty to give our views and suggestions on the Bill.

Corruption for any civilized society is a curse and it hampers the development process. In India, it is all pervasive and operates at all levels. As Shri Rahul Gandhi, hon. Member of Parliament, pointed out in the Lok Sabha, the poor carry the greatest burden of it and fighting corruption is integral to eliminating poverty. NSUI believes that the issue of corruption needs to be dealt with utmost seriousness. Therefore, a legislation that will ensure punishment of the corrupt is not sufficient to root out corruption. Punishing the culprit is the basic principle of any law. However, reforming the society to refrain from doing the crime, in this case, corruption is more important. Therefore, our efforts should be to create a curative system than being punitive.

As a student organization, we feel that the process of reforming the society and sensitizing people against corruption should start from the schools. Like the way *Panchatantra* appeals to the children and influence their moral being, the curricula should include teachings against the evils of corruption.

Further, the main reasons for corruption in any society are the shortcomings in the delivery of public services, lack of transparency in public procurement, huge money involved in the election process and functioning of political parties, etc. We need effective laws to address all these issues to root out corruption and reduce the burden of the Lokpal. Pending legislations like Judicial Accountability and Standards Bill, Citizens Right to Grievance Redressal Bill, legislations to reduce the discretionary powers of public authorities, etc., should also be passed along side the Lokpal Bill.

We understand that the Lokpal will create a legal framework for combating corruption. Therefore, the constitution of a statutory body for this purpose may not be sufficient considering the gravity of the problem. Therefore, we recommend that the proposed Lokpal shall be made a constitutional body accountable to the Parliament as suggested by Shri Rahul Gandhi. We understand that many eminent personalities supported this view. Former Supreme Court judges like Justice Venkatachalaiah and Justice J.S. Verma have already presented this view before this hon. Committee. It can be a body like the Election Commission of India. We have witnessed its smooth and unbiased functioning in the country.

We also propose few other changes in the Bill. Regarding Selection Committee, clause 4(1)(h) of Chapter II gives a lot of powers to the Central Government in terms of nominating members to the Selection Committee. So, we feel that instead of eminent jurist to be nominated by the Central Government, this shall be replaced with the Central Vigilance Commissioner. Appointment of Secretary and other officers and staff of the Lokpal shall be made by the Chairperson or such Member or officers of Lokpal as the Chairperson may direct. Provided that the President may by rule require that the appointment in respect of any post or posts as may be specified in the rule, shall be made after consultation with the UPSC. In this case, we recommend that all the major staff appointments in the Lokpal shall be made by the UPSC or the SSC. It also talks about the consent of the State Government with regard to initiating inquiry against certain officers working in the State Governments who were earlier working with the Union or other bodies related to the Central Government. In this case, we recommend that there shall not be any requirement of consent from the State

Government in respect of such officers. Instead the Lokpal shall initiate inquiry against such officers by intimating the State Government.

Regarding penalties for false complaints, we feel that the Bill is too harsh on frivolous complaints. While we appreciate the intention of it, this might risk the whistleblowers in the process. People might be deterred to complaint fearing a harsh repercussion if they are unable to convince the court. Hence, we propose that the penalty that has been set for false complaints be reduced. On other clauses set out in the Bill, we are in agreement with the Bill proposed by the Government. We once again thank this hon. Committee for giving us this opportunity.

SHRI ROJI M. JOHN (CONTD): This is happening at every level. So, this corruption can be rooted out only if the attitude of the common man is changed. For that, we need a law on sensitization of education. That, we propose, should start from schools.

डॉ. प्रभा किशोर तविआड : सर, कानून में ऐसा होना चाहिए कि घूस नहीं लेना है और घूस नहीं देना है।

श्री शैलेन्द्र कुमार : चेयरमैन सर, मैं एक क्वैश्चन पूछना चाहूँगा। आप लोग छात्र राजनीति से जुड़े हैं। कई डिग्री कॉलेजेज और यूनिवर्सिटीज में छात्र संघों के चुनाव नहीं हुए हैं। छात्र यह कहता है कि उसका सेशन नियमित नहीं है, examinations नहीं हो रहे हैं, पढ़ाई नहीं हो रही है और बड़े पैमाने पर भ्रष्टाचार व्याप्त है। क्या आप इस बात की सिफारिश करते हैं कि लिंगदोह कमेटी की सिफारिश के अनुसार पूरे देश में विश्वविद्यालय से नीचे स्तर तक छात्र संघों के चुनाव होने चाहिए, ताकि भ्रष्टाचार दूर हो सके?

अध्यक्ष : आपने एक व्यापक प्रश्न पूछ लिया। हम इसे कभी और discuss कर लेंगे।

SHRI ROJI M. JOHN: I think, this is a larger issue. That will not help to stop the corruption.

CHAIRMAN: Thank you very much. We will meet tomorrow.

(The witnesses then withdrew and the Committee adjourned at 6.53 p.m.)

**THE DEPARTMENT-RELATED PARLIAMENTARY STANDING COMMITTEE
ON PERSONNEL, PUBLIC GRIEVANCES, LAW AND JUSTICE MET AT 4.15 P.M.
ON FRIDAY, THE 4TH NOVEMBER, 2011 IN MAIN COMMITTEE ROOM,
PARLIAMENT HOUSE ANNEXE,**

NEW DELHI-110001

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(CHAIRMAN: DR. ABHISHEK MANU SINGHVI)

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CHAIRMAN: Friends, I welcome all of you. Before we call the witnesses, and, have the photo opportunity for two minutes, I would like to say something. All the Members would appreciate that this is a very intense discussion over two days. So, I think, everything possible is going to be covered by the time we finish this. We all understand that we are not going to agree to everything which they say. वे जो कहें, उसके साथ सहमत होना न तो आवश्यक नहीं है और न ही ऐसा होता है। लेकिन, मैं समझता हूँ कि हम कुछ अनुशासित रहें, थोड़ा restraint रहें। इसमें झगड़ने की कोई आवश्यकता नहीं है, अगर वे आपकी बात से सहमत नहीं हैं और आप उनकी बात से सहमत नहीं हैं। मेरा कहना है कि आप उनसे pointed questions पूछें। उस पर उनका जो जवाब आता है, वह उनका मत है। उनसे सिर्फ वार्तालाप करने से कोई फायदा नहीं है, because I don't think that you can convert their views or they can convert yours. I would also request that everybody will have enough time, लेकिन अगर किसी सदस्य ने कोई प्रश्न पूछ लिया है, तो किसी अन्य सदस्य को वही प्रश्न पूछने की आवश्यकता नहीं होगी। उससे हमारा थोड़ा समय बचेगा और समय बचने से फायदा यह होगा कि हर व्यक्ति को ज्यादा टाइम मिलेगा।

So, instead of having a dialogue with them, I think, we put pointed and supplementary questions but make it in a form of question so that it is focused and quick. We have around 2 ½-hours' time. Let us call them.

SHRI HARIN PATHAK: Sir, I have a small point. Sometimes, it becomes necessary to have a dialogue with them. Because the way they have created an image of the politicians and political parties, इसलिए किसी समय तो उनको ठीक तरह से लेना पड़ेगा और उनको अपने ढंग से बात कहनी पड़ेगी।

अध्यक्ष: मेरा एक ही निवेदन है। यहाँ पर सब को अपनी बात कहने की पूरी स्वतंत्रता है, कोई रुकावट नहीं है। मेरा निवेदन यह है कि आप वार्तालाप भी आप सप्लिमेंटरी या प्वायंटेड क्वेश्चन के फॉर्म में कर सकते हैं। आप अपनी बात कह सकते हैं। लेकिन उनको सिर्फ नीचा दिखाने से या झगड़े से कोई फायदा नहीं होगा। वे आपकी टोन से समझ जाएँगे कि आप क्या कह रहे हैं। वह संदेश जाना जरूरी है, बाकी आप अपना तरीका उसमें अपनाएँ।

SHRI PRASANTA KUMAR MAJUMDAR: Mr. Chairman, perhaps, today, the Committee is going to conclude the process of hearing the witnesses, and, maybe, in the next meeting,

we will be taking up clause-by-clause consideration of the Bill. Sir, I have written my suggestions in this regard, which, on behalf of my Party, RSP, I am handing over to you.

CHAIRMAN: Kindly give it to me. I will see into it. There is no problem.

List of Witnesses

- Shri Anna Hazare
- Shri Shanti Bhushan
- Shri Prashant Bhushan
- Shri Arvind Kejriwal
- Shrimati Kiran Bedi
- Shri Manish Sisodia
- Shri Suresh Pathare

CHAIRMAN: Friends, may I again extend to all of you a very warm welcome? We are happy to have you all today, with three additions, I am told, headed by Mr. Anna Hazare.

As you know, today's session is entirely for questions-answers. I will ask my colleagues to ask questions. You can decide amongst yourselves who wants to answer. We have plenty of time, and, I think, if keep to the discipline, we will be able to have a very constructive and intense interaction. So, may I set the ball rolling by asking Mr. Shantaram Naik? अन्ना जी, क्या आप कुछ बोलना चाहेंगे?

श्री अन्ना हजारे : जन लोकपाल कानून एक सशक्त कानून के रूप में आना चाहिए। इस के लिए स्टैंडिंग कमेटी में प्रपोजल आया है। सरकार में थोड़ी सी कमी दिखायी दे रही है कि इस स्टैंडिंग कमेटी में सिविल सोसायटी का ड्राफ्ट आया है, सरकार का ड्राफ्ट आया है, लेकिन उस में टुकड़े कर के अलग-अलग कानून बन रहे हैं, यह बात बराबर नहीं है। और यह बनने में भी दोष नहीं है। संसद में आने के बाद संसद द्वारा उसे बनाने में भी संविधान के मुताबिक दोष नहीं है, लेकिन वे कानून काफी कमजोर बन रहे हैं, जैसे कि सिटीजन चार्टर का कानून है। आप कानून अलग से बना रहे हैं, परवाह नहीं। Judicial Accountability Bill में, corruption का मुद्दा कहीं नहीं है और हम लोग तो corruption की बात कर रहे हैं! उस में corruption का मुद्दा नहीं है। इस में पद को निकालने वगैरह की बात रखी गयी है, लेकिन corruption का मुद्दा नहीं आया तो ऐसा कानून बनाकर क्या होगा? तो यह जो अलग-अलग टुकड़े बनाकर कानून बन रहे हैं, यह ठीक नहीं लगता है। इसलिए स्टैंडिंग कमेटी में इस बात को सोचना जरूरी है, ऐसा हमें लगता है।

SHRI SHANTARAM NAIK: I start by presuming that the civil society members are here because they accept the jurisdiction of this Standing Committee. I have to say this only because there were other views outside. Otherwise, I would not have mentioned that the jurisdiction of this Committee, the powers of this Committee, and consequently the powers of Parliament are recognised by the members of the civil society who are present here.

At the outset, I would like to say that the Lokpal Bill or the Jan Lokpal Bill whatever it is does not contain the provisions dealing with corruption per se. These are contained in the Prevention of Corruption Act, 1988. I would like to stress here that it was in 1988 that it was passed during the Prime Ministership of late Rajiv Gandhi. Unfortunately, no one mentions this very fact that a strong law was enacted during his regime and that is the law which is in force. People, including of my party, are sent to jail and people may go in future also because of this substantial law which takes care of corruption issues in the country today. It is not because of the Lokpal or any other law. This I want to put on record.

Secondly, as regards civil society's other suggestions, kindly think over this. If we bring in all sections of employees under the jurisdiction of Lokpal as suggested by you, including matters relating to discipline, you cannot imagine, although you say this is not correct, the number of cases that the Lokpal will be burdened with. They may run into lakhs and lakhs. Today, there are a number of authorities dealing with disciplinary matters. There are number of sessions courts and special courts which are dealing with corruption matters. If you put the entire thing under the institution of Lokpal, I am sure it will crush like anything. I am not opposing it. I am just mentioning it. Suppose it crushes because of this burden, I hope the Government will not be blamed that it did not give the infrastructure, finances, etc. Inherently, the burden, which you people are suggesting, may lead to crushing of this institution even before it is born. Kindly consider this aspect.

Now I come to the issue of Prime Minister. Of course, you have expressed your view and you have the right to do so. On many issues, even for the smallest mistake, a minister is asked to tender his resignation. Forget the sentence, even for a word. If a preliminary enquiry is ordered against a Prime Minister, will that Prime Minister be able to remain in office? As per our convention and tradition, the man will have to resign. And the next person will come to office. It is not difficult to make another complaint and again a preliminary enquiry will be ordered. Forget about charges, I am talking only about preliminary investigation. If a preliminary investigation is ordered against any Prime Minister, he cannot survive in office. Imagine the number of Prime Ministers we may have if this system is followed.

Shri Shanti Bhushan yesterday said that lower bureaucracy should be covered under it because a Minister may say that he will not write a note and instead he will ask the officer to write it and the officer will be blamed. This is what you suggested yesterday. Things like who should write a note and who should decide on a policy matter are laid down very clearly under rules of business framed by the Government under the Constitution of India. It is not left to the whims and fancies of any Minister to say that an officer will write and he himself will not write. Kindly express yourself on this.

Lastly, a suggestion has been made that the Lokpal will have the right to recommend, cancel or modify lease, licence, etc. How can an instrument, which has been entered into by two-three parties, be modified by the Lokpal? How can Lokpal be a party to it? How can it do that? Some sort of temporary injunction is mentioned here, though the wording is not there. Suppose it issues an order restraining an authority to do or not to do something. If the authority does not do it, the Lokpal has the power to make an appeal before a High Court. First of all, I do not think a prestigious institution that we are creating should go to a court of law for filing an appeal. Apart from that, you have mentioned only High court. On a particular issue, jurisdiction may lie with a civil court or remedy may lie with a civil court or remedy may lie with a district court, not necessarily with a High Court. But you are specifically saying that only a High Court will do it. How can you say that? Kindly explain it.

श्री अन्ना हजारे : इस बात को रखा गया कि नीचे से लेकर ऊपर तक के ऑफिसर्स को इस में रखना बड़ा कठिन है। भ्रष्टाचार कहाँ नहीं है? दुनिया में हर देश में भ्रष्टाचार है, लेकिन और देशों के भ्रष्टाचार और हमारे देश के भ्रष्टाचार में फर्क यह है कि हमारे देश में भ्रष्टाचार में जो सामान्य लोगों के जीवन के साथ जुड़े हुए प्रश्न हैं, उन में भ्रष्टाचार है। उदाहरण के लिए राशन कार्ड है, पासपोर्ट है, जब तक हम इस भ्रष्टाचार की जड़ में नहीं जाएंगे तब तक गरीबों को न्याय नहीं मिलेगा। इसलिए यह तो उस में आना बहुत जरूरी है कि सामान्य लोगों को न्याय देने के लिए जड़ से लेकर ऊपर तक के ऑफिसर्स इस में आने चाहिए। हमारे देश के भ्रष्टाचार और और देशों के भ्रष्टाचार में जो फर्क है, वह यह है। इस पर हम जो बार-बार कह रहे हैं, जड़ से लेकर ऊपर तक कैसे होगा, क्या होगा, आप यह कर के तो देखिए, 0.25 बजट का उस में देकर देखिए।

श्री अन्ना हजारे (क्रमागत): नहीं होता, तो बाद में देखना चाहिए, लेकिन गरीबों का प्रश्न पहले है।

श्री शान्ताराम लक्ष्मण नायक : (मराठी में)

श्री अन्ना हजारे: लोकपाल मतलब लोकपाल के पास नहीं जाएंगे। उनके जो ऑफीसर होंगे ब्लॉक लेवल पर, उनके पास जाएंगे, डायरेक्ट लोकपाल के पास नहीं जाएंगे। जो उनके ऑफीसर होंगे ब्लॉक लेवल पर, उनके पास जाएंगे, लोकपाल के पास इतनी भीड़ नहीं करेंगे। इसलिए यह कानून में ऐसा हम लोगों ने कहा है।

SHRI PRASHANT BHUSHAN: This issue that you have raised about disciplinary powers also being given to the Lokpal will lead to enormous number of cases before the Lokpal. You see, we are giving very limited disciplinary jurisdiction to the Lokpal only in those cases where the Lokpal has decided to file a charge-sheet against a Government servant for corruption. Once a Government servant has been charge sheeted for corruption, then, the job of disciplinary proceedings becomes very simple. It is only in relationship to that act of misconduct which relates to his corruption all the evidences are already there before the Lokpal. The Lokpal will ask that Government servant "what is your explanation to this?" This is the evidence against you which shows that you have committed this act of corruption. He will give his explanation. After hearing him, the Lokpal will pass an order that this Government servant needs to be removed or whatever. So, only in those cases and the additional work involved in this will be very little because he has already done the investigation and found the evidence which shows that this person is involved in an act of corruption. Therefore, for all other disciplinary matters, for all other cases of misconduct those will be handled by the disciplinary authority. We are not saying all disciplinary matters of Government servants should come to the Lokpal. Only when a Government servant has been charge sheeted for corruption, so, that will not excessively burden.

Then, you are saying regarding the Prime Minister that if a preliminary inquiry is ordered against the Prime Minister, can he continue? The question is we have said today under the law, the Prime Minister is not exempt from corruption investigation, whether it is a preliminary inquiry, or, whether it is a regular investigation, all can be done today against the Prime Minister by the CBI, or, by the regular police, the only difference is now the Lokpal will do it. We have been saying that it is not proper for an agency controlled by the

Government to investigate the Prime Minister. If that investigation has to be done, it has to be done by an agency which is independent of the Government. We have put an additional safeguard there that a seven member bench of the Lokpal will examine whether there is a prima face case against the Prime Minister, other Ministers, MPs and Judges, give that permission. Only after that permission has been given will an investigation start. In fact, yesterday, I had pointed out that exempting the Prime Minister would make this law unconstitutional. Exactly this argument was given for the 39th constitutional amendment. They said that if the Prime Minister's election is challenged in a High Court and set aside by the High Court, then the Prime Minister's continuance becomes untenable. Even the challenge makes it untenable. The Prime Minister will be weakened and, therefore, the Prime Minister's election was put beyond challenge. That was struck down though it was a Constitutional amendment. It was unanimously struck down by a Constitution Bench of the Supreme Court, holding it to be discriminatory, as well as arbitrary, and against the rule of law. Therefore, it is not tenable.

Mr. Shanti Bhushan can answer the third question which was asked about him.

SHRI SHANTI BHUSHAN: What I know under the rules of business is after all the facts are there, on the basis of those facts, some decision has to be taken by the Government. I know the first note is made at a very lower level. The first note is never made at the Joint Secretary's level because what is being said in the Government Bill is only the Joint Secretary and above will be subject to the jurisdiction of the Lokpal, not people below. No Joint Secretary does it. In very rare cases he does the first noting. The first noting is at very junior level. Then, it travels upwards. What I said yesterday was that, now, on the facts, let us take the case of a tender. The Government has to decide whom to give the tender. Now, the junior level officer writes in his report, so and so invited, so and so disqualified on this ground, although two were not disqualified. Their financial bids were lower yet those financial bids are not sought to be accepted. There is no reason as to why those bids should be rejected. Now he does not mention all these facts in his note although it is a five page note. But he omits to mention the facts. Therefore, if he is asked on the basis of these facts, how did you write this note? He won't be able to explain but if he is outside the jurisdiction of the Lokpal and the Lokpal starts only with the Joint Secretary level, the Joint Secretary will say, well, here was the note made by an Under Secretary. It was a detailed note. On reading that note, the Deputy Secretary could not find anything wrong with it. He approved it. It came to the Joint Secretary. He approved it. It came to the Additional Secretary. He approved it. Then, it came to the Secretary. He approved it. Then, it came to the Minister. He approved it. What wrong have I done? After all, the facts were mentioned in the note of the Under Secretary. So, they will have a full alibi. Well, on the basis of the note of the Under Secretary, what is wrong that you are attributing to us? No wrong. So, unless the Lokpal can go and question that Under Secretary, how did you write this note on these facts? He cannot explain. Then, either he will have to say look here this is absurd note written by 'A' because the Minister called me and said you have to write this note. My entire future was under the Minister. I could have been intimidated by the Minister. So, I could not resist the Minister. So, I had to write that note. Therefore, unless the Lokpal is given the authority this alibi will be there.

As you mentioned, under the Prevention of Corruption Act, it defines the "public servant" and provides for prosecution of a public servant. Now, before prosecution there has to be an agency which must investigate. Now, under the normal law, under the code of Cr.P.C. it is the police in some cases, it can go to the CBI. Those are all agencies under the Government. Normally any offence under the Prevention of Corruption Act would be committed by some Government servant or Minister or Secretary or lower level official or anybody. Therefore, he will be a part of the Government. How can an agency which is under the Government be

expected to carry out an impartial investigation. That is the trouble which is going on for the last so many years, namely, the CBI. Only the other day there was a report in the press, somebody wrote, somebody has filed a petition against Mulayam Singh Yadav. The CBI said that his assets were disproportionate to his known sources of income. Therefore, he has to be prosecuted under the Prevention of Corruption Act.

SHRI SHANTI BHUSAN (CONTD.): Then that vote, crucial vote, on nuclear deal, 2008, was pending because the CBI said, "The assets in the name of his wife, in the name of his daughter-in-law, have to be included because they must be *benami* properties of Mulayam Singh Yadav." Now, somebody goes to a law officer, the Solicitor-General, secures her advice; you can't take into consideration the assets of the wife and the daughter-in-law and, therefore, there is no case for disproportionate assets of Shri Mulayam Singh Yadav. On that basis, Mulayam Singh Yadav's entire team, after the resignation of the Left, joined with the Congress to bail them out. But even their numbers were not sufficient. Some further numbers had to be secured, and that is the whole case of Cash-for-Vote Scam. Therefore, the CBI, again and again, against Chief Ministers, had shown that whenever the ruling party wants, they will give a report against a person; when the ruling party doesn't want, they will dilute it, and so on. That is why the U.N. Convention wanted an independent agency in all cases of corruption. They never said that corruption against high or low should be investigated by them. That is what the Code of Criminal Procedure also says. That is why Lokpal has to have the authority to investigate all cases of corruption under the Prevention of Corruption Act, whoever he may be.

अध्यक्ष : Injunction पर आपको कुछ कहना है?

SHRI SHANTI BHUSAN: Sir, what we feel is that sometimes, when a particular officer is being investigated, it may turn out, it may appear to the investigating agency that if he continues to remain on that post during the investigation, the investigation is likely to suffer, and in which case what was contemplated was that the Lokpal should have the authority to give a direction for the transfer etc.

श्री प्रशांत भूषण : ये contract का पूछ रहे हैं, मैं बता देता हूँ। Now, you see, we have only given a recommendatory power to the Lokpal because if the Lokpal finds that a particular transaction is happening for corrupt considerations, then, normally, if that transaction has not been completed, if that contract, lease or licence has not been given, then it should be stopped. All that he has said is that in that case, if the Lokpal has found that this transaction is taking place for a corrupt consideration, then he should be able to recommend to the Government to stop that transaction. If the Government feels that the advice of the Lokpal should not be accepted, they will refuse to that advice by giving reasons, in writing, In that case alone, if the Lokpal feels that the Government's refusal is not correct, then they will approach the High Court. We have given jurisdiction to the High Court because normally, against these things, one would approach the High Court so that a sufficiently high-level court deals with the matter.

CHAIRMAN: I am going to ask, Mungekarji, just a supplementary. I will interrupt with supplementaries to keep the focus. It just struck me, as you all were speaking, this lower bureaucracy point and I am advised by the Joint Secretary, sitting next to me, and subject to correction, that the coverage of Group 'A' and above is largely from S.O. (Section Officer) and above, certainly Under Secretary and above. So, most of the Section Officers are included. So, on question no. one, supplementary is that if you really have everybody who has any power of decision making, including a power of being corrupt in any reasonable position of power, I don't think you can go beyond the Section Officer. Of course, below

that, you have Assistants, you have Drivers, you have Peons etc. But to catch big frame or medium frame corruption, you are covering Section Officer, Under Secretary etc., etc., Joint Secretary up to the top. So, it is not that Group 'A' is a highly truncated circumscribed zone. Would you not think that the efficacy, the efficiency of the Lokpal would be highly heightened if it went after everybody, from S.O. and above? And the second quick question and supplementary on that is, you are right, Mr. Bhushan, that 39th Amendment, because it sought to substantively exempt the then Prime Minister, altogether, in an arc of immunity, -- I am now asking a more legal question; I want you view genuinely on this -- put one person in a special class; it virtually conferred an immunity on an executive, of his position holder whereas the present Government Bill actually includes the Prime Minister completely. It completely includes, substantively. It only defers the procedure of prosecution. So, I am just asking the second question also that you are actually, fully without any subject matter exclusion; you are not excluding any subject matter from the Prime Minister.

SHRIMATI MEENAKSHI NATRAJAN: Sir, one point on that 39th Amendment. 39th amendment के struck down होने के बारे में आपने कल भी जिक्र किया था और आज भी जिक्र किया है। वह प्वाइंट इसलिए struck down हुआ था और यह बिल्कुल सही बात है कि हमारे देश में जो चुनाव होता है, वह चुनाव प्रधान मंत्री पद के लिए नहीं होता है, बल्कि चुनाव सांसद का होता है और सभी सांसदों का चुनाव बराबर चुनाव है और सभी सांसद का चुनाव लड़ते हैं और जिस पार्टी के सबसे ज्यादा सांसद चुनकर आते हैं, वे अपनी पार्टी के नेता को प्रधान मंत्री बनाते हैं। इसलिए वह struck down हुआ था, क्योंकि वह चुनाव प्रधान मंत्री का नहीं था। एक सांसद का चुनाव निश्चित तौर पर स्पेशल चुनाव नहीं हो सकता, इसीलिए उन्होंने उसको struck down किया और यह माना कि चूंकि वे चुनाव लड़ते समय प्रधान मंत्री नहीं थीं, वे सांसद का चुनाव लड़ी थीं, इसलिए उन पर वह कानून समान रूप से लागू होगा।

श्री शांति भूषण : क्या आप लोग चाहेंगे कि प्रधान मंत्री कितनी भी रिश्त ले रहा हो, यदि पांच सालों तक वह प्रधान मंत्री है, तो उसकी जांच तक नहीं होनी चाहिए? उसके खिलाफ केस भी नहीं चलना चाहिए? यानी मामूली पटवारी के खिलाफ तो केस चले, एक पुलिसमैन के खिलाफ केस चले, छोटे आदमी के खिलाफ केस चले, लेकिन प्रधान मंत्री अगर हजारों-करोड़ों रुपए की रिश्त लेता है, तो उसकी जांच भी न हो, केस भी न चले? वे जांच होने पर क्यों इस्तीफा दें? अगर केस गलत है, तो उनको इस्तीफा देने की जरूरत नहीं है। अगर केस में दम है और जांच में निकलता है कि हां, वे दोषी हैं, उन्होंने 2 हजार करोड़ रुपए की रिश्त ली, तो आप चाहेंगे कि जिन्हें आप देश का प्रधान मंत्री बनाते हो, उसके बाद उन पर केस न चले, उनको कोई सजा भी न दी जाए, यह कैसे हो सकता है? सारा संसार हिंदुस्तान पर हंसेगा, अगर यह कहा जाए कि प्रधान मंत्री रिश्त लें, तो उनकी जांच भी नहीं हो सकती, उन पर केस नहीं हो सकता। इस पर सारा संसार हंसेगा।

श्रीमती मीनाक्षी नटराजन : आप विनम्रता से बात कीजिए, आप नाराज़ क्यों हो रहे हैं?

श्री शांति भूषण : सीधी सी बात है।

अध्यक्ष : ठीक है, यह आपका मत है।

श्रीमती मीनाक्षी नटराजन : हमने भी अपनी बात रखी है ... (व्यवधान)

श्री शांति भूषण : अगर लोकपाल नहीं करेगा, आप कह रहे हैं कि exempted नहीं है, तो लोकपाल जांच नहीं करेगा, फिर कौन जांच करेगा? ... (व्यवधान) मैं अपनी बात रख रहा हूँ कि उनकी जांच होगी या नहीं?

CHAIRMAN: I think, we can continue this in the atmosphere in which we managed to do....(Interruptions)... I don't think, Mr. Shanti Bhushan meant it in any disrespect. ...(Interruptions)... We are all Members of Parliament. They have a view different from you; it does not mean that they are necessarily wrong or *vice versa*. ...(Interruptions)...

श्रीमती मीनाक्षी नटराजन : आप विनम्रता से अपनी बात रखिए ... (व्यवधान)

CHAIRMAN: All of us are trying to do our best. ...(Interruptions)... We may not always have the same approach, but we are trying to do our best. ...(Interruptions)...

श्री वीजय बहादुर सिंह : यह तो शांति भूषण जी की शैली है।

श्री लालू प्रसाद : चेयरमैन साहब, इन सब चीजों पर मत जाइए; you have to decide what we have to do. मैं यह जानना चाहता हूँ कि डेमोक्रेसी में, प्रजातंत्र में संविधान के तहत हमको काम करना है और इस सिस्टम में सबको काम allotted है। हम लोग अभी यहां लोकपाल बिल पर विचार कर रहे हैं, जो सरकार ने हमें दिया है, जनलोकपाल बिल पर विचार नहीं कर रहे हैं। सरकार ने पार्लियामेंट में कहा है, आप लोगों को मालूम ही होगा कि जो आपके 26 points थे, वह आपका मत था। आप लोग कह रहे हैं कि हमने लोकपाल को यह पावर दी है, वह पावर दी है, मैं पूछना चाहता हूँ कि आप लोग पावर देने वाले कौन होते हैं? यह आपका मत हो सकता है कि आप चाहते हैं कि ऐसा हो। अभी प्रशांत भूषण जी बोल रहे थे कि हमने यह दिया है, हमने वह दिया है, अभी जो जवाब आ रहा था उसमें वे ऐसा बोल रहे थे।

श्री लालू प्रसाद (क्रमागत) : तो सरकार का जो लोकपाल बिल है, उसमें आप समाहित हैं, उस बात पर हम लोग विचार करने बैठे हैं। हम झगड़ा करने के लिए नहीं बैठे हैं, यह मिनी पार्लियामेंट है। यह सब आप लोग जानते हैं, विद्वान लोग इसमें बैठे हुए हैं। जो विभिन्न organizations हैं, चाहे सी.बी.आई. हो, सी.वी.सी. हो या जो अन्य संस्थाएं हैं, उन संस्थाओं को, साधु-संतों को, विद्वानों को, पत्रकारों को, जो बार काउंसिल है, सबको बुलाकर हम लोग उनसे मार्गदर्शन ले रहे हैं कि देश में एक कानून बन रहा है, लोकपाल बिल बन रहा है। अन्ना जी की राय, उनके विचार और नीयत पर हम कोई संदेह नहीं करते। Communication gap हो सकता है दूसरी चीजों में और पार्लियामेंट के मामले में, तो under Constitution, क्या हम भारत के संविधान की कोई नई रचना करने जा रहे हैं? Under the Constitution, डेमोक्रेसी में हमें act करना है, काम करना है और आप सब लोगों से मार्गदर्शित होकर हम लोग कोई

फैसला लेंगे, राय लेंगे और अपने विचार bigger House को शीतकालीन सत्र में देंगे, लेकिन इधर हम लोग देख रहे हैं और यह बड़ा दुखद है कि अखबारों के सैकड़ों लोग यहां खड़े रहते हैं और पूछते हैं कि आप लोगों ने क्या-क्या चर्चा की? हम लोग उनको नहीं बताते हैं और secrecy को maintain करते हैं, गोपनीयता को maintain करते हैं और जब आप लोग यहां पर आते हैं, तो पूर्व संध्या से ही आप लोगों का शुरू हो जाता है। आप लोगों का प्रवचन बाहर ही शुरू हो जाता है कि मैं तो विरोध करने जा रहा हूं, मैं नहीं मानता हूं। जैसा आदरणीय अन्ना जी ने कहा कि खंड-खंड-खंड-खंड करके, तोड़कर हो रहा है, तो पता नहीं क्या हो रहा है? हम भी मैम्बर हैं, हमको तो पता ही नहीं कि हम लोग कहां पहुंचे हैं? हम लोग तो अभी discuss कर रहे हैं, लेकिन आप लोग जो राय दे रहे हैं, कल मैं नहीं था, कल कहा गया कि सी.बी.आई. को इसमें पार्ट ले लो, सी.वी.सी. को खत्म कर दो, इनको ले लो, उनको ले लो, उसमें यह मत रखो, वह मत रखो, cut piece, cut piece बात आप लोगों की तरफ से हो रही है, तो इन चीजों के लिए विनम्रतापूर्वक आप लोगों से निवेदन है कि आप लोग committed हैं, हम भी committed हैं। अन्ना जी ने शुरू के दिनों में ही कहा कि सब लोग मिल-जुलकर बेहतर लोकपाल बिल बनाएं, ताकि भ्रष्टाचार का नामोनिशान मिटे और day-by-day के काम में, जैसे Citizen Charter की बात आई थी, याद होगा, जब आपका फास्ट तोड़ने की बात हुई थी, तो हम सब लोगों ने आपका आदर किया। प्राइम मिनिस्टर से लेकर स्पीकर तक सभी लोगों ने कहा कि सबसे ज्यादा चिंता आपकी life की है, इस फास्ट को तुड़वाना चाहिए। प्रणब बाबू ने भी कहा, वे कागज़ तो सब अभी आए नहीं हैं, different political parties के different मत हैं और आप conclude कर करने जा रहे हैं। कौन political party, कौन individual क्या बोले, क्या मत है, the sense of the House, there is a difference in the sense of the House. हमारी राय कुछ है, किसी की राय कुछ है, किसी और की राय कुछ है, तो sense of the House, जिसमें Citizen Charter, lower bureaucracy, जिसमें day-by-day के कामों में license हो, राशन कार्ड हो, दूसरी तरह की बातें हैं, तो ये ठीक बोल रहे हैं, उसमें कहां contradiction है? हम लोग तो आप लोगों से मार्गदर्शन चाहते हैं, ताकि यह बेहतर बिल बने और हम सब मिलकर आगे चलें। फिर शांति भूषण जी का हम बहुत आदर करते हैं, ये हमारे दल में भी रहे हैं, उस समय मंत्री भी रहे हैं। तो शांति भूषण साहब का बहुत आदर है, वे बुजुर्ग हैं, हमारे लॉ मिनिस्टर रहे हैं, अब बात यह है कि जो लोकपाल हम बनाने जा रहे हैं, तो क्या दो पावर सेंटर रहेंगे? जो लोकपाल होगा, जिनको इतनी ताकत और शक्ति सारे देश की हम लोग दे रहे हैं, चाहे इसमें हमको एन.जी.ओज़ को लेना है या मीडिया को लेना है, big houses को लेना है, corporate houses को लेना है, तो करप्शन के मामले में जो hatred पैदा किया जा रहा है कि राजनेता ही चोर हैं, ये ही चोर हैं, politicians ही चोर हैं, तो यह बहुत दुखद है हमारी डेमोक्रेसी के लिए। हमने यह सवाल कई लोगों के सामने रखा और आप लोगों के सामने भी रखना चाहते हैं। हम जानना चाहेंगे कि जो लोकपाल बने, सबके above, सबसे ऊंचाई पर हम लोग लेकर चलें, उनको बनाएं, सारे अधिकार पार्लियामेंट से उनको हम

दे दें, तो क्या देश से भ्रष्टाचार मिट जाएगा? सी.बी.आई. है, सी.बी.आई. को investigating team को कहा जा रहा है, तो सी.बी.आई. नहीं चाहता, हम नहीं जाएंगे उसमें। हमको देना है तो पूरा ब्लॉक ही डाल दो उसमें, तो इन चीजों को बैठकर बड़ी peacefully, coolly हमें करना है। हम सब लोग committed हैं और हम लोगों को सुनकर तकलीफ होती है कि नहीं, हमारे अनुसार पास करो। तो dictate नहीं करना चाहिए कि हम जैसा कहते हैं, वही करो। यह ठीक नहीं है और कहीं-कहीं देखते हैं कि चुनाव के मामले में कहते हैं कि हिसार में हमने हरा दिया फलाना पार्टी को, तो ये लोग बहुत गलतफहमी के शिकार हैं। हिसार की, हरियाणा की राजनीति को जो लोग जानते हैं, उन्हें पता है कि वहां पर jat versus all होता है, फिर भी चौटाली जी का बेटा 6,000 वोट से हार गया। जाट भाइयों के खिलाफ, जैसे हमारे खिलाफ भी बिहार में सब आदमी इकट्ठे हो जाते हैं, तो आप यह जो गलतफहमी पालकर रखे हुए हैं, यह हमें ठीक नहीं लगता कि हिसार में हमने हरा दिया तो सब जगह हम हरा देंगे। हम उधर निकलेंगे, हम इधर निकलेंगे।

CHAIRMAN: You have made your point. आपने sense of the Committee बता दी है।

श्री लालू प्रसाद : Sense of the Committee का मतलब है कि आदरपूर्वक जो सवाल पूछना हो, वह हम लोग पूछ लें और फैसला तो हम लोगों को लेना है।

अध्यक्ष : देखिए, इसमें पूछने की तो कोई बात ही नहीं है। जहां आदर होगा, वहां आदर मिलेगा और काम अच्छे से होगा। मैं समझता हूं कि इसमें निश्चित रूप से कुछ मुद्दों में असहमति है।

श्री लालू प्रसाद : अगर नहीं होगा, तो कैसे मिलेगा? कोई बाहर बोले कि ये लोग चोर हैं।

अध्यक्ष : नहीं, वह बात ठीक है। You have made your point.

श्री लालू प्रसाद : यह क्या हो रहा है हमारे देश में, वह बताइए। जो आदमी बोलता है कि ये चोर हैं, इनको फांसी लगाओ, सड़कों पर मारो, क्या-क्या कहा जा रहा है? हम नहीं कहते कि अन्ना जी के मुंह से इस तरह की बात कभी आई हो, कभी नहीं कहा इन्होंने। ये बोल भी नहीं सकते, लेकिन जो बात हो रही है, इसके लिए हम लोग दुखी हैं।

CHAIRMAN: That is why I am saying that Laluji has conveyed the sense and I think that we should now move on. Let us not spend too much time on this.

श्री बलवंत उर्फ बाल आपटे : अध्यक्ष जी, मेरा एक सुझाव है। हम अभी पहले सदस्य के प्रश्न के बाद चर्चा चला रहे हैं। तो हमें यह ध्यान में रखना चाहिए कि यह debate नहीं है, इसलिए मेरा सुझाव यह है कि यदि हममें से हरेक के प्रश्नों के उत्तर की अपेक्षा हम उनसे करते हैं, तो इस प्रकार debate न चलाते हुए let everybody raise his issue. Let them note it and let them answer. Specific questions should be put to them.

CHAIRMAN: I have said it before some of you came in and about 18 of you had come in, and before we have called them. I said, "We have two to two-and-a-half hours. Let us ask pointed questions. Let them give the answer". Some of you were not there at that time.

SHRI BLAVANT *alias* BAL APTE: The questions should be pointed. But the answers will not be.

CHAIRMAN: Now it is 5.08 p.m.

श्री शांति भूषण : आपकी अनुमति से एक चीज कहना चाहूंगा। यह समझना कि लोकपाल को बहुत ऊंचा बनाया जा रहा है, ऐसा कुछ नहीं है। वह तो सिर्फ जांच कर सकता है। जांच करके कोर्ट में केस भेज सकता है, अगर उसको लगे कि यह भ्रष्टाचार proved है, तो कोर्ट है, कोर्ट तय करेगा कि charge proved है या नहीं।

CHAIRMAN: I understand your point Shanti Bhushanji. Let us keep pace. Let us keep going.

श्रीमती किरण बेदी : चेयरमैन सर, श्री नायक का एक प्रश्न आया था on the lower bureaucracy. मैं उसमें थोड़ा संक्षेप में बताना चाहूंगी कि जो इस वक्त की हालत है....

अध्यक्ष : आप इसको नोट कर लीजिए, फिर इनके प्रश्न के बाद मैं उत्तर दीजिएगा।

डा. भालचन्द्र मुणगेकर : चेयरमैन सर, कल अन्ना जी नहीं थे, तो मैं व्यक्तिगत तौर पर अन्ना जी का स्वागत करता हूं और महाराष्ट्र का होने के नाते डबल स्वागत करता हूं।

डा० भालचन्द्र मुणगेकर (क्रमागत) : स्वागत इसलिए करता हूं कि इस देश की जो एक बहुत बड़ी समस्या है, उसके संबंध में आपने अच्छी तरह से कदम उठाया। There is a consensus amongst the people of the country that corruption needs to be fought lock, stock and barrel. The draft Bill, the Jan Lokpal Bill, that you have prepared has come out of your whole approach towards corruption. But let us presume that all the Members sitting here, the Committee, is a mini Parliament. As mini Parliament, we have got the mandate to express the opinion of 1.2 billion people. There may be eighteen or nineteen Members but all the parties are represented here and we represent the consensus and the opinion, howsoever diverse the opinion of political parties may be. But this is the Parliament and we have got the mandate to deal with all the evidence to represent 1.2 billion people in the country.

Now, Chairman, Sir, before I come to certain issues and seek the clarifications, let me just mention about the political-philosophical issues. The most important philosophical political issue is that the Constitution, as all of you know, and as Shanti Bhushanji knows, is not only a collection of letters. The collection of letters or the legal document is not called the Constitution. As you know, the Constitution is sanctioned by certain moral traditions and conventions of the society. The Constitution is evolved over social, cultural, political and historical ethos and the Indian Constitution, in that sense, should be considered as a social revolution. Chairman, Sir, I will be taking one or two minutes more than what I usually take.

During the last six or seven hundred years' history of political democracy, it is the Indian Constitution alone that granted the adult franchise to its citizens. In 1950-51, the rate of literacy was just 11 per cent. Not England, not France, not America, not a single country in the world, got at one stroke of pen the right to adult suffrage. This was a revolution.

Now, I went through the Lokpal Bill and the Jan Lokpal Bill. First of all, Chairman, I want to understand what the difference is between Jan and Lok? Or what is the distinction between Sansad and Jan Sansad? Basically, Jan and Lok, the distinction which is sought to be made between these two expressions is just superfluous, redundant and irrelevant. One may say that this is the view of the civil society.

The second question is that the entire draft that you have mentioned appears to be that politicians at all levels, as also the bureaucracy, alone are responsible for corruption. Now, politicians and the bureaucracy on the one hand and excluding them is the entire civil society. This is absolutely fallacious for the very simple reason that, after all, wherefrom is the bureaucracy coming. The bureaucracy is coming from amongst the civil society. Who are contesting the elections? Wherefrom the Ministers, the Prime Minister are coming? So, why is there distinction between the civil society and the so-called non civil society, namely, the bureaucracy and the Parliamentarians or the legislators or the Ministers alone? This is a kind of trade off. If civil society is not corrupt, wherefrom the Ministers are bringing the money to get into corruption? If civil society is not involved in corruption, wherefrom the bureaucracy is bringing the money? Politicians are not printing the money or giving orders to the Reserve Bank of India to print currency. IAS officers are not printing the money. That is why this distinction, according to me, one can say does not pass the test of validity of reason. I want to have a clarification from the witnesses on this.

Thirdly, taking into account जैसा अभी अन्ना जी बोल रहे थे कि सरकार का यह प्रयत्न है कि अलग-अलग, खंडित रूप से एक-एक लॉ या कानून हो रहा है, and also taking into account the whole tenor of the Jan Lokpal Bill, it is not proper for me to call it the so-called Jan Lokpal Bill because it is the nomenclature of that Bill, it is possible to express a view, it runs counter to the basic principle of the distribution of powers as far as the Constitution is concerned amongst the Executive, the Judiciary and the Legislature. Whatever powers the Executive, the Judiciary, the Legislature, administrative, may have, independence of Lokpal is different. Now, there is no doubt about it. This country has not suffered because of the scarcity of laws and I do not know why one is so euphemistic about the law. This country has not suffered because of the famine and drought. This country has suffered because of the non-implementation of the law or the bad implementation of the law. But here, everybody is concerned about making laws. Now, coming to this point, let me talk about the Judiciary. The Selection Committee according to your Bill consists of eleven persons. Out of eleven persons, two are ex-CJIs and two are ex Chief Justices of High Courts. Out of eleven members, four, that is, more than one-third, are to come from Judiciary and you hold the view that the Judiciary itself is corrupt. There are several observations of the Supreme Court naming certain number of Judges in the High Courts. Now, why one is placing undue emphasis on this? I have got full respect for the judiciary; it is not because I am a Member of Parliament, but this Selection Committee will be deciding who should be the chairman of the Lokpal on the basis of the Search Committee. Now, overwhelming powers are given to the judiciary, which is itself under the clout, and we have seen Chief Justices of the Supreme Court, we have seen High Court Chief Justices, we have seen the impeachment of the judges of the High Court. I do not know why this undue confidence or faith is placed in judiciary alone at the cost of the Executive and the Legislature. There is no role for the Judiciary if the Legislature doesn't make the laws. The fundamental function of the Judiciary is to interpret the laws. Now, if there is no law, for example, what would the Supreme Court or the High Court do? Therefore, when the source itself is assumed to be corrupt, what can you do? That is why separation of powers came about. Coming to the Prime Minister, I was talking about the constitutional morality. I was surprised when Shanti Bhushanji said that when there is a

case of corruption and there is primary investigation against the Prime Minister, if we don't include the Prime Minister, then we shall be made a laughing stock. But that will be applicable even to the President of India. The President of India is the head of the Executive, may be nominal, but what is the logic to exclude the President of India? Secondly, suppose, for example, the Prime Minister is guided by certain moral considerations and constraints. The Prime Minister is not guided by any law or judgement of the Court. Suppose, Shri Anna Hazare or Shri Shanti Bhushan is the Prime Minister, I am sure that as I know you, you would not wait for the final investigative agency's report. Let us distinguish between the Prime Minister, Minister and Chief Justices. If the Chief Justice of the Supreme Court resigns, there is no instability in the country. If the High Court is abolished, for example, another High Court can take on the duties of that High Court. But if a complaint is received against the Prime Minister and the Prime Minister is so sensitive, and let us presume that all Prime Ministers are not involved in corruption, and at that point of time, he compel himself to resign, then what happens? We are providing a mechanism for political chaos and instability in the country.

Now, your draft does not even remotely mention anything about the corporate sector and the NGOs. I am saying this because they deal with money. I am not talking about whether the corporate sector should be there or not. Your argument does not make any reference to the NGOs.

DR. BHALCHANDRA MUNGEKAR (CONTD.): The last point is, you are saying, '0.25 per cent of the gross revenue of the Central Government should be spent for this kind of a thing'. This country is spending, and I shall be on the record, less than 0.5 per cent of the GDP on the entire technical education in the country. The technical education in the country, as of now, as I am discussing today, spends only 0.5 per cent of the GDP. Now, here, you are talking of spending 0.25 per cent of the gross revenue. What happens here is that in the Jan Lokpal Bill with honesty of removing corruption from the system lock, stock and barrel, ultimately, methods are suggested in such a way that there are parallel government or parallel non-governmental agencies, controlling the executive, judicial, administrative and financial powers in one hand. The Indian Constitution recognizes decentralization of power. Annaji has fought throughout his life, I have seen him, for decentralization of political power. But, here the course is entirely reversed that entire concentration of political power.

And the last point, Sir, is this. For frivolous complaints, you are suggesting...

DR. D.B. CHANDRE GOWDA: How many last points you have?

SHRI PINAKI MISRA: You must be fair. You have already taken fifteen minutes. This can't go on like this. Fifteen minutes is a long time. The questions must be pointed; the questions should be to the point. What is this long peroration going on?

SHRI PRASANTA KUMAR MAJUMDAR: Mr. Chairman, Sir, I have to catch my flight.

CHAIRMAN: We will have to do something about time. If you agree, we can sit tomorrow again in the morning. But that is the only thing I can suggest. Because if we go on like this, then, we will have to sit tomorrow again. I want to certainly finish it. That is why I am saying, let us finish it today because we have had two days now for them. I can only appeal to each Member to be specific.

SHRI HARIN PATHAK: You put pointed questions to them. Do not give advice to them. If you want some clarification, then, you must get the clarification.

SHRI N.S.V. CHITTHAN: Sir, it is a very important Bill, and we have to discuss it in detail.

CHAIRMAN: Mr. Chitthan, there is no doubt that all interventions, including Dr. Mungekar's have lot of substance. But all of us can make the same point in pointed form, like one, two, three. And, we don't have to really, as he rightly put it, take more time. Let us put a self-imposed limitation of maximum five minutes. I appeal to your sense of balance. Ultimately, you all have to do it yourself.

His last point is, Annaji's position has been decentralization, and it is a supreme irony that he is proposing a highly centralized Lokpal. That is his last and a very important point. It is a good point.

SHRI PRASANTA KUMAR MAJUMDAR: Mr. Chairman, Sir, you know, India had accepted in 1991 the neo liberalization policy, economic policy, which is the main root of corruption. How can we stop corruption without changing the economic policy of the Government?

CHAIRMAN: Okay, you have made your point. Can we quickly have the answer to what Dr. Mungekar has said? Then, we can go to Mr. Meghwal.

श्रीमती किरन बेदी : यह कहा गया कि नीचे तक अगर जाएंगे तो अंडर सैक्रेटरी तक तो हम कवर कर ही रहे हैं तो हमको नीचे जाने की क्या जरूरत है। मैं यह कहना चाहती हूं कि हम सब जानते हैं कि क्राइम ऑफ करप्शन बहुत रेम्पेंट है। मैं एज ए पुलिस ऑफिसर बता सकती हूं कि जिस तरीके से चोरी की कम्प्लेंट थाने में आती है इस तरीके से, तजुर्बे से करप्शन की कम्प्लेंट थाने में आती नहीं, क्योंकि इसके लिए थाने हैं ही नहीं। इसके लिए हमने सिस्टम नहीं बनाया, क्योंकि हमने व्हाइट कॉलर क्राइम को एक्च्युअली सीरियस क्राइम अपने देश में समझा ही नहीं। छोटी चोरी जेब कटिंग हो जाती है, तो आ जाता है, छोटे झगड़े होते हैं तो पुलिस स्टेशन पर आ जाते हैं। लेकिन कोई घूस मांगता है तो उसको मालूम है कि आम आदमी के लिए कोई थाना नहीं है। क्यों नहीं थाना है, थाने हैं, वहां आ सकता है। लेकिन थाने में उसको विश्वास नहीं है कि अगर मैं पुलिस स्टेशन जाऊंगा तो मेरी बात सुनी जाएगी, क्योंकि वह पुलिस स्टेशन वाले पर भी विश्वास नहीं है। तो पहली बात, we all know that crime of corruption is rampant. और यह मैं ही नहीं कह रही हूं, जितनी भी स्टडीज छपी हैं India Against Corruption के ऊपर आप वेब साइट पर देख लीजिए कि यह हमारी प्रोपर्टी और heinous crime से भी ज्यादा है। But I would say it is an unreported crime. But it is a talked about crime, it is a prevalent crime, it is unrecorded crime. Why is it unrecorded because we have not given any avenue of release? क्योंकि उसके पास कोई साधन नहीं हैं। दूसरी चीज, आप कहेंगे कि एंटी करप्शन डिपार्टमेंट हैं। मैं मानती हूं, हैं। लेकिन वह proportion to the need बिल्कुल ही, deficient है, बिल्कुल inadequate हैं, बड़े कमजोर हैं, ill-equipped हैं और लोगों से दूर हैं, आम आदमी से एंटी करप्शन डिपार्टमेंट दूर है। जैसा अन्ना जी ने कहा कि हम आम आदमी के भ्रष्टाचार की बात कर रहे हैं लेकिन आम आदमी के भ्रष्टाचार के लिए हमारा सिस्टम नहीं है। इसलिए हम लोग यह बोल रहे हैं। तीसरी चीज, जो सिस्टम ऑलरेडि है वह सिर्फ इनएडिक्वेट ही नहीं है, वह इंडिपेंडेंट भी नहीं है। आपने कभी देखा है कि एंटी करप्शन डिपार्टमेंट किसी स्टेट में, Sir, it is not independent, and it is not trusted. Therefore, I would say, we need a credible system, a system which is trusted, a

system which is professional and a system which is independent. That is why मैं हिन्दी में इसलिए बोल रही हूँ कि अन्ना जी डायरेक्टली सुन पाएंगे, क्योंकि यही हमारी सारी मुहिम रही कि आम आदमी तक यह पहुँचे। आम आदमी की, जैसे घरेलू हिंसा नहीं थी, हमारी सरकार ने डॉमेस्टिक वॉयलेंस ऐक्ट वह भी यूनाइटेड नेशंस की कंवेन्शन से आया, और आम आदमी तक गया और आज आम औरत अपनी घरेलू हिंसा की शिकायत कर सकती है क्योंकि आज कानून था। पहले पुलिस वाला उसको वापिस भेज देता था कि घरेलू हिंसा है, घर का मामला है, जाओ। लेकिन अब नहीं कह सकता। अब प्रोटेक्शन ऑफिसर हैं, हमने सिस्टम बनाया, हमने एक अनरिपोर्टेड, अनडिटेक्टिड क्राइम को हमने एक ढांचा दिया। मेरी यही प्रार्थना है स्टैंडिंग कमेटी को कि कृपया इस गरीब आदमी का जो करप्शन से हाथ खड़े कर चुका है, उसके पास भी आज कोई सिस्टम नहीं है रिपोर्ट करने का, वह पुलिस स्टेशन में नहीं जाएगा। आज वह लोकपाल मांग रहा है कि मुझे लोकपाल मिले, जिसमें मैं जा सकूँ।

श्री अन्ना हजारे : इसी में जोड़कर मेरे दो मुद्दे हैं। जैसे हमारे देश में प्रशासन सेवा और जुडिशियल लिंकड है। ये दो लाइनें हैं इनका रेशो आगे बढ़ाने के लिए। हर प्रशासन सेवा और जुडिशियरी दोनों में भी अगर दोषी है तो उसको पनिशमेंट देने का अधिकार है, प्रशासन सेवा में भी है। लेकिन आज देश में प्रशासन सेवा में इतनी बड़ी गलतियां होने पर भी पनिशमेंट नहीं देगा। मिसाल के तौर पर गांव में एक नल योजना बनी। वह बी0डी0ओ0 के पास जाता है, लेकिन कोई सुनता नहीं है। वह सी0ओ0 के पास जाता है लेकिन कोई सुनता नहीं है। वह कमिश्नर के पास जाता है कोई सुनता नहीं है। वह मंत्रालय में जाता है तो वहां भी कोई नहीं सुनता है। तो फिर सामान्य लोगों को कहां जाना है। इसीलिए यह लोकपाल बिल है। एक तो आज उसकी सुनने के लिए कोई नहीं है, प्रशासन सेवा में आज कोई सुन नहीं रहा है। हमारे पास तो लाखों प्रपोजल हैं, एक बात। दूसरा है कि प्रशासन सेवा में जो आज हमारा खर्चा है, जैसा साहब ने बताया कि प्रशासन सेवा में हर राज्यों का सेंट्रल का खर्चा 72 से 75 परसेंटेज पर चला गया। अगर टोटल बजट का हम 75 परसेंट मेनेजमेंट पर खर्चा करते हैं तो हमारे डवलपमेंट के लिए क्या है। वह 25 प्रतिशत है और उसमें भी करप्शन है। तो यह देश कैसे आगे बढ़ेगा। इसलिए हमें इन दोनों बातों के लिए सोचना है कि प्रशासन सेवा में कार्रवाई नहीं हो रही है जिसके कारण हमें कुछ सोचना पड़ेगा। दूसरे, जो मैंने खर्चा पर बतलाया, यह हो सकता है कि अगर हम लोग प्रयत्न करें कि मेनेजमेंट खर्चा ऑनली 30 परसेंटेज पर अच्छा काम हो सकता है। यह हम लोगों ने प्रयत्न किया है। तो अगर इस तरह की सोच नहीं होगी तो यह देश कैसे आगे बढ़ेगा। इन बातों पर हमें सोचना है।

अध्यक्ष : आप एकदम प्वाइंटेड प्रश्न पूछें, और जो बात हो गई है उसको दोबारा न करें।

श्री शांति भूषण : अभी यहां पर दो प्रश्न उठाए गए हैं, मैं उनका जवाब देना चाहूंगा। इन्होंने कहा है कि President हो, इस बारे में मेरा यह कहना है कि संविधान ने President और Governor को इसीलिए immunity दी थी कि उनके खिलाफ कोई क्रिमिनल केस नहीं चल

सकता है, इसलिए President का रहना तो बहुत जरूरी है और वही प्रधानमंत्री बनाता है। अगर प्रधान मंत्री इस्तीफा दे दे तो देश में कोई आफत नहीं आएगी। ऐसा कई दफा हुआ है। जब पं० जवाहर लाल जी की death हुई थी, तो तुरंत गुलजारी लाल नन्दा जी को कार्यवाहक प्रधान मंत्री बना दिया और उसके बाद लाल बहादुर शास्त्री जी को oath दी गई। आप यह तो नहीं कह सकते कि Prime Minister कभी नहीं मरेगा । यदि किसी की death हो जाती है तो उस समय जो प्रक्रिया होगी, उसी के अनुसार काम होगा। अगर उसके खिलाफ शिकायत है, तो उसको resignation देने की जरूरत नहीं है। यदि Chief Justice of India के खिलाफ कोई शिकायत होगी, तो वे resignation तो नहीं देंगे। पहले उनके खिलाफ जांच होना जरूरी है। अगर जांच होने के बाद उन पर केस चलेगा, तो हो सकता है तब वे resignation दे दें।

दूसरी बात यह कही गई कि Parallel Government हो, तो Parallel Government की बात नहीं है। संसद सिर्फ एक कानून बनाकर पुलिस की बजाए लोकपाल को जांच का अधिकार दे रही है, एक ऊंचे अधिकारी को दे रही है, इंडिपेंडेंट अधिकारी को दे रही है, तो फिर Parallel Government का सवाल कहां पैदा होता है? वह तो उन्होंने CRPC में जांच के लिए रखा था। कानून बना है, और CBI को भी उसमें रखा है। कोई भी कानून बनाकर किसी को भी दे सकते हैं।

अध्यक्ष : शांति भूषण जी, अगर आप प्रत्यक्ष प्रमाण देखें तो आज के माहौल में कई ऐसे आरोप, गतिविधियां, कानूनी प्रक्रिया चल रही हैं कि इनके विरुद्ध जांच करो। मैं यहां पर किसी का नाम नहीं ले रहा हूं, आप सभी जानते हैं कि ऊपर से लेकर नीचे तक, मंत्रियों से ऊपर तक की भी मांग मांगी जाती है। मैं सिर्फ एक प्रश्न पूछ रहा हूं और अपने आप से भी उतना ही पूछ रहा हूं, जितना कि आप से पूछ रहा हूं कि अगर कल को खुदा न खास्ता, एक छोटा सा मैजिस्ट्रेट कहे कि मैं इसमें इनके विरुद्ध जांच करता हूं तो क्या इस कमरे में बैठे सभी लोग उस व्यक्ति का इस्तीफा नहीं मांगेंगे? आप देखिए, आज की तारीख में क्या आप एक्सपर्ट कॉमेंट्स देंगे कि अखबार में उस आदमी को इस्तीफा नहीं देना चाहिए? मैं तो आपको सच्चाई बता रहा हूं।

श्री शांति भूषण : वह शिकायत भी करेगा, तब भी लोग इस्तीफा मांगेंगे।

अध्यक्ष : क्या देश में एक ऐसा व्यक्ति होना चाहिए कि आप कम से कम पांच वर्ष बाद उसके विरुद्ध आरोप लगाएं। आप उसको पांच वर्ष तक छोड़ दें, ताकि वह काम करे। वह कहीं पर भाग तो नहीं सकता है। He cannot run away anywhere; he will be liable.

श्री शांति भूषण : देखिए, आरोप लगाने से तो कोई किसी को नहीं रोक सकता है, इसलिए प्रधान मंत्री को Tough-skinned होना चाहिए। अगर वह जानता है कि झूठे आरोप हैं, तो उसको इस्तीफा देने की जरूरत नहीं है।

CHAIRMAN: Frankly, between you and me, Shantiji, you would not give that comment in the newspaper if somebody orders an inquiry. This is entirely between you and me.

श्री शांति भूषण : फिर तो प्रधान मंत्री को already इस्तीफा दे देना चाहिए था, क्योंकि रोज उनके खिलाफ आरोप लगते हैं।

CHAIRMAN: Anyway, it is just a debate.

श्री अर्जुन राम मेघवाल : सर, मैं अन्ना जी का स्वागत करते हुए, अपने दो-तीन Pointed Questions पूछना चाहता हूं। मैं यह जानना चाहता हूं कि 1988 में यह act बना था, लेकिन उसके बाद भी भ्रष्टाचार कम नहीं हुआ तो फिर माफिया पनपने लगा। इसके बाद एक एन.एन. वोरा कमेटी बनी तथा उसके बाद *युनाइटेड नेशन्स कन्वेंशन एगेंस्ट करप्शन* की बातें आईं और उसमें आर्टिकल 31 व कई और चीजें लिखी गईं। उसके बाद यह बात आई कि देश से भ्रष्टाचार कैसे खत्म हो, क्योंकि एक्ट बहुत थे, लेकिन फिर भी यह खत्म नहीं हुआ और इसलिए यह आंदोलन यहां तक पहुंचा। मैं आप से इस बारे में दो-तीन बातें पूछना चाहूंगा कि जो फोन टैपिंग का अधिकार होम सैक्रेटरी से लेकर लोकपाल को देने का है, अभी 31 एजेंसीज को वह अधिकार तो है, लेकिन परमिशन होम सैक्रेटरी से लेनी पड़ती है। मैं केवल यह जानना चाहता हूं कि ombudsman पद्धति में किन-किन देशों में फोन टैपिंग की पावर ombudsman को है?

दूसरी बात यह है, जैसा कि आप कह रहे हैं कि प्रधान मंत्री लोकपाल के अंडर होना चाहिए। नेशनल सिक्युरिटी और पब्लिक ऑर्डर के सिलसिले में आपका क्या कहना है? यह बात आपके अमेंडमेंट में भी नहीं आई है। इस बारे में और दूसरे देशों में क्या स्थिति है?

आपके अमेंडमेंट-2 के पैरा-3 में लिखा है कि Five members will be from the civil society. जो पांच मेम्बर्स होंगे, वे तो आपने तय किए हैं कि CAG और judicial service से होंगे। ये जो पांच मेम्बर्स civil society से होंगे, इनकी qualifications और selection के बारे में आपने दो-तीन पैराग्राफ तो दिए हैं, लेकिन जब भी हम पब्लिक में जाते हैं, debate करते हैं तो कई बार पब्लिक हम से भी पूछती है कि यह selection कैसे होगा और इसमें पांच लोग कौन होंगे? इस प्रकार का इश्यु लोगों के मन में रहता है।

मैं दूसरी बात नेशनल जुडिशल कमीशन के बारे में जानना चाहता हूं, क्योंकि यह अमेंडमेंट में भी नहीं है। आप कानून के अच्छे जानकार हैं। आपने यह बात इसलिए कही है कि जुडिशरी में भ्रष्टाचार है तथा यह और बढ़ता जा रहा है। इस बारे में जस्टिस सेन गुसा और जस्टिस भल्ला का केस सामने आया है। इनके मामलों में FIR की permission नहीं दी गई, इसलिए ये मामले पब्लिक में उभरकर आए कि यदि कोई हाई जुडिशरी का आदमी भी करप्ट हो और CBI उसको permission नहीं दे, तो इसका विकल्प क्या हो? इससे जनता में यह message जा रहा है कि लोकपाल शायद Chief Justice of India से भी ऊपर बनने जा रहा है। इसको क्लीयर करना पड़ेगा। जनता मानती है कि कोई ऐसी संस्था जरूर हो, जो सबसे ऊपर हो। बाकी सब तो किसी ने किसी के प्रति accountable हैं, लेकिन लोकपाल किस के प्रति accountable होगा, हमें यह चीज भी clear करनी चाहिए।

मेरा अगला बिन्दु है, Coverage of corporate sector, NGOs and media under the Lokpal. हमें इनमें भी करप्शन के काफी केस सुनने को मिलते हैं। आप इन सेक्टर्स में कैसे करप्श दूर करेंगे, मैं यह जानना चाहते हैं।

मेरा अंतिम प्रश्न है कि प्राइवेट सेक्टर में भी करप्शन बहुत है। मैं आपको teachers का उदाहरण देता हूं। उसको दस हजार की सेलरी पर दस्तखत करवाए जाते हैं और उसको मिलते हैं केवल पांच हजार। इसके साथ ही उनसे यह भी कहा जाता है कि आप बाहर किसी को मत बताना, केवल यही बताना कि आपको दस हजार रुपये मिलते हैं। इस प्रकार से उनके साथ शोषण होता है, आपके इस बिल से यह कैसे दूर होगा? आप देखिए कि हॉस्पिटल्स में किस प्रकार से शोषण होता है, जहां पर नॉर्मल डिलीवरी होनी चाहिए, वहां पर डॉक्टर्स अपनी पावर का मिस यूज करके सिजेरियन कर देते हैं। इस प्रकार के केसेज कहां डील होंगे? केवल सरकारी सेक्टर्स में करप्शन है, ऐसा नहीं है, बल्कि करप्शन काफी जगहों पर है। आपको इसे सभी जगह से हटाना पड़ेगा, तभी बात बनेगी। अन्ना जी का कहना है कि करप्शन को ब्रेक लगाना है, तो इसको कैसे रोका जाएगा? मेरा अगला प्रश्न यह है कि बाकी कमेटीज में भी क्या वीकर सेक्शन के लोग होंगे या नहीं, यह मैं जानना चाहता हूं।

अध्यक्ष : सात questions, लेकिन संक्षेप में पूछे हैं, इसलिए आप भी संक्षेप में ही जवाब दें।

CHAIRMAN: Each person wants answers to his focused questions. That is the problem. I am going to ask two-three people here and then decide because they are all sitting here. I will keep rotating. Don't worry, we will have time.

श्री प्रशांत भूषण : यह प्रश्न कई लोगों ने पूछा है कि NGOs और private sectors का करप्शन लोकपाल के दायरे में क्यों नहीं रखा गया है? देखिए, करप्शन की definition अगर आप Prevention of Corruption Act में देखें, उसमें कहा गया है कि यदि इसमें कोई सरकारी संस्था या सरकारी अधिकारी involved है तो उसी को corruption माना है। इसका यह मतलब नहीं है कि कोई निजी संस्था या कोई निजी आदमी fraud नहीं कर सकता, cheating नहीं कर सकता, तो लोग fraud भी करते हैं, cheating भी करते हैं और *क्रिमिनल मिस एप्रोप्रिएशन* भी करते हैं। उसको Prevention of Corruption Act में corruption नहीं माना गया है, unless की वह किसी सरकारी संस्था या सरकारी अधिकारी को घूस देते हैं या भ्रष्ट करते हैं। जहां तक सरकारी अधिकारी जिस corruption में involved है, यानी कि अगर कोई प्राइवेट कम्पनी या कोई NGO किसी सरकारी अधिकारी या संस्था को भ्रष्ट करता है, तो वह तो लोकपाल के दायरे में ही आएगा।

श्री प्रशांत भूषण (क्रमागत) : अगर कोई प्राइवेट संस्था या एन.जी.ओ., किसी दूसरे आदमी, मान लीजिए की कोई प्राइवेट संस्था है, उसका जो ट्रेजरर है या मैनेजर है, उसने उस संस्था के पैसे का गबन कर लिया तो इसको करप्शन नहीं कहा जाता, इसको फ्रॉड या मिस-एप्रोप्रिएशन कहा जाता है। क्योंकि इसमें सरकार इनवोल्व नहीं है, इसलिए इसके लिए जो

नॉर्मल सरकारी संस्था है, पुलिस या और कोई जो भी संस्था है, वह उसकी तहकीकात कर सकती है।

श्री हरिन पाठक : प्रशांत जी, जो सरकार से ग्रांट्स लेते हैं।

श्री प्रशांत भूषण : वह है, वह हमारे कानून में भी है।

श्री हरिन पाठक : विदेश से भी पैसा आता है, पैसा पैसा होता है, अगर हम प्रधान मंत्री को लेना चाहते हैं, एम.पी.जी. की चालीस साल की कार्यकृति को रिस्क में लेना चाहते हैं, मैं कई एन.जी.ओ. को जानता हूं।

श्री प्रशांत भूषण : हम यह नहीं कह रहे हैं कि जांच नहीं होनी चाहिए।

श्री हरिन पाठक : प्रधान मंत्री आए और एन.जी.ओ. रह जाएं, यह लोगों में कोई अच्छा मैसेज नहीं है। आप एन.जी. ओ. के साथ जुड़े हुए हैं, अगर एम.पी. नहीं होगा, तो मेरा मैसेज गलत जाएगा। मैं कहता हूं मैं पहले होना चाहिए कि मुझे फांसी दो।

श्री प्रशांत भूषण : वह बिल्कुल होना चाहिए, सवाल यह है कि वह लोकपाल के दायरे में हो या जो नॉर्मल अथॉरिटीज हैं, उनके दायरे में हो।

श्री वीजय बहादुर सिंह : प्रशांत जी, इसको क्लैरिफाई कीजिए। अभी आपने एक एग्जैम्पल दिया कि एक एन.जी.ओ. है, गवर्नमेंट से कुछ नहीं करता, लेकिन एक एन.जी.ओ. स्कूल चला रहा है और स्कूल में मास्टर को 20,000 रुपये पर दस्तख्त करा रहा है, लेकिन मास्टर को 5,000 या 10,000 रुपये दे रहा है, क्या उसको करप्शन नहीं कहा जाएगा?

श्री प्रशांत भूषण : वह एक तरह का करप्शन है।

श्री वीजय बहादुर सिंह : फिर आप उसको भी उसमें रखिए।

श्री प्रशांत भूषण : देखिए, ऐसा है, सवाल यह है कि उसके लिए क्यों जरूरी है कि लोकपाल ही उसकी इनवेस्टिगेशन करे। लोकपाल को हमने सरकारी भ्रष्टाचार के लिए क्यों बनाया? लोकपाल को सरकारी भ्रष्टाचार के लिए इसलिए बनाया, क्योंकि जो नॉर्मल पुलिस एजेंसीज हैं, जो नॉर्मल इनवेस्टिगेटिंग एजेंसीज हैं, वे सरकार के अंदर होती हैं, इसलिए जहां सरकार जिस भ्रष्टाचार में इनवोल्व्ड है, उसके लिए आपको स्वतंत्र संस्था चाहिए। जिस चीज में सरकार इनवोल्व्ड नहीं है, मान लीजिए किसी ने, जैसे रामलिंगा राजू ने अपनी कम्पनी का पैसा गबन कर लिया, उसके लिए जो नॉर्मल पुलिस की संस्था है या सेबी वगैरह हैं, वे इसका इनवेस्टिगेशन कर सकती हैं। वे संस्थाएं सरकार के तहत होती हैं, लेकिन अगर रामलिंगा राजू पुलिस या सेबी को घूस देकर अपना इनवेस्टिगेशन नहीं होने देता, तब उसकी जांच जरूर लोकपाल में जाएगी, क्योंकि पुलिस और सेबी सरकारी संस्थाएं हैं। जहां-जहां सरकारी संस्थाएं इनवोल्व्ड हैं, उसकी जांच लोकपाल में जाएगी, लेकिन अगर किसी गबन में या

मिसएप्रोप्रिएशन में, जहां सरकारी संस्थाएं इनवोल्ड नहीं हैं, उसकी जांच नॉर्मल पुलिस कर सकती है।

अध्यक्ष : प्राइम मिनिस्टर, नेशनल सिक्योरिटी, सिविल सोसायटी और जो बाकी पांच-सात बिंदु हैं, उन्हें खत्म कर सकते हैं। क्या आपके प्वाइंट्स अभी तक खत्म नहीं हुए हैं?

श्री रामविलास पासवान : हम बाद में बोलेंगे, अभी तो हम सिर्फ एक ही बेसिक प्वाइंट उठाना चाहते हैं कि आपकी लड़ाई करप्शन के खिलाफ है, भ्रष्टाचार के खिलाफ है या आपकी लड़ाई सिर्फ सरकारी भ्रष्टाचार के खिलाफ है? यह बेसिक प्वाइंट है कि क्या आप भ्रष्टाचार को देश से मिटाना चाहते हो या आप सिर्फ सरकारी कर्मचारी के भ्रष्टाचार को देश से मिटाना चाहते हो?

श्री प्रशांत भूषण : उसका आन्सर बड़ा सिम्पल है कि हम सभी भ्रष्टाचार को मिटाना चाहते हैं।

श्री रामविलास पासवान : यदि सभी भ्रष्टाचार को मिटाना चाहते हैं, तो कॉर्पोरेट हाउस को और एन.जी.ओज. को बाहर क्यों रखना चाहते हैं?

श्रीमती दीपा दासमुंशी : जब कोई टेंडर प्रोसेसिंग में आता है, तो उसके लिए जो सरकारी पैसा लेगा, उसको सजा मिलेगी और टेंडरिंग प्रोसेस में जो कॉर्पोरेट हाउस इनवोल्ड है, उसको सजा नहीं मिलेगी।

डॉ. प्रभा किशोर तविआड : वह भी होना चाहिए।

श्री प्रशांत भूषण : उसको भी मिलेगी। यह गलतफहमी है। यह बात सभी लोगों को अच्छी तरह से समझ लेनी चाहिए।

डॉ. प्रभा किशोर तविआड : जो पब्लिक मनी यूटिलाइज करते हैं, वे सभी इस दायरे में आने चाहिए।

श्री प्रशांत भूषण : वे सब आएंगे। पब्लिक मनी, जहां भी इनवोल्ड है, वे भी लोकपाल के दायरे में हों, यह हमारे जन लोकपाल बिल में हैं।

श्री रामविलास पासवान : प्रशांत भूषण जी, हम लोग भी किसी मूवमेंट से निकले हैं, हम लोग भी भ्रष्टाचार के खिलाफ के आंदोलन में जेल गए हैं, उस समय, इमरजेंसी में हम भी जेल में थे, सब लोग साथ थे, लेकिन हमको यह लगता है कि इंटरेंशनली करप्शन है, आज 70%-80% पैसा कॉर्पोरेट हाउस के पास है। आज वह करप्शन का स्रोत बन गया है और आप यह कह रहे हैं कि जो कॉर्पोरेट हाउस का करप्शन है, वह फ्रॉड है और सरकारी कर्मचारी का जो कृत्य है, वह करप्शन है, आप यह बात कहते हैं और यही बात जब आप पब्लिक मीटिंग में कहते हैं, प्रैस में जाकर बोलते हैं, ये प्रैस में जाकर पब्लिक मीटिंग करे तो शायद ये कॉर्पोरेट हाउस को बचाना चाहते हैं, ये एन.जी.ओज. को बचाना चाहते हैं, ये सिर्फ सरकारी

कर्मचारी के नाम पर, छोटे कर्मचारी को फंसाना चाहते हैं। जैसा टोटल रिवोल्यूशन, जो उस समय में था, जब आप करप्शन के खिलाफ बात करते हैं, तो आप टोटल करप्शन की बात क्यों नहीं करते हैं? Either it is in Govt. Sector हो, प्राइवेट सैक्टर में हो या एन.जी.ओ. में हो। आप इन सारे सैक्टर्स को जोड़कर क्यों नहीं चलते हैं? यह हमारा सीधा-सा सवाल है।

डॉ. प्रभा किशोर तविआड : जब वन टाइम सैटलमेंट करते हैं, कितना करप्शन हो जाता है।

अध्यक्ष : आप प्वाइंट्स बता दीजिए, बेसिक प्वाइंट है कि आप इनको क्यों एक्सक्लूड कर रहे हैं? अगर एक्सक्लूड कर रहे हैं तो आप इसके लिए और क्या विकल्प बताना चाहेंगे?

श्री शांति भूषण : देखिए, एक्सक्लूड नहीं कर रहे हैं। अगर कॉर्पोरेट हाउस के पास पैसा है और वे करप्शन के लिए इस्तेमाल करते हैं, तो यहीं तो जाएंगे, किसी सरकारी संस्था, जिससे उनको कुछ लेना है, उन्हीं को घूस देंगे। जब वे उनको घूस, रिश्त दे देंगे, तो उसमें दोनों ही लोकपाल के दायरे में आएंगे, लेने वाला भी और देने वाला भी। लोकपाल दोनों की जांच करेगा। लेकिन अगर कोई ऐसी चीज करते हैं, दूसरा जुर्म, जो कि किसी को घूस या रिश्त देने का नहीं है, तो उसकी जांच, जो पुलिस है, वह कर सकती है। जैसे 420 का केस है, चीटिंग है, बहुत सारी चीजें हैं, उनकी तो पुलिस जांच कर ही सकते हैं। उस केस में पुलिस को क्यों रोकेंगे, पुलिस उसी केस में नहीं करती है, जहां उसका दायरा नहीं हो।

अध्यक्ष : यह तो सभी को क्लियर है कि इनका प्रस्ताव है कि लोकपाल के ढाँचे में यह नहीं आना चाहिए। मैं एक बात से इसका अंत करना चाहूंगा कि आप इसको छोड़ दें। क्या आपका कुछ सुझाव है कि देश में इस प्रकार के भ्रष्टाचार यानी कॉर्पोरेट, मीडिया या एन.जी.ओ. के लिए कोई ढाँचा होना चाहिए। बहुत संक्षेप में बताइएगा।

श्री शांति भूषण : आप कोई भी ढाँचा बना दीजिए, हमें कोई फर्क नहीं पड़ता है। हमें कोई ऐतराज नहीं है, आप कोई भी ढाँचा बना दीजिए।

श्री अरविंद केजरीवाल : मैं थोड़ा सा कहना चाहूंगा कि हम कोई नया क्राइम डिफाइन नहीं कर रहे हैं, हम क्राइम की सजा भी डिफाइन नहीं कर रहे हैं, जैसे नायक साहब ने बहुत अच्छी बात कही है कि 1988 में माननीय राजीव गाँधी जी ने प्रिवेंशन ऑफ करप्शन ऐक्ट बनाया था, आज बस उस ऐक्ट की एनफोर्समेंट एजेंसी लोकपाल होगी। यह नंबर वन बात है कि जो क्राइम है, वह वहां पर डिफाइन्ड है, करप्शन क्या है, वह वहां पर डिफाइन्ड है, हम उस करप्शन की भाषा को नहीं बदल रहे हैं, हम नया क्राइम नहीं बना रहे हैं, अगर उसमें एन.जी.ओ. आती है तो आती है, उन्हें कॉर्पोरेट हाउस आता है तो आता है, हम नया नहीं बना रहे हैं, हम तो जो प्रिवेंशन ऑफ करप्शन ऐक्ट है, उसी की इंडिपेंडेंट एनफोर्समेंट एजेंसी को बना रहे हैं। रामविलास पासवान जी का बहुत इम्पोर्टेंट मुद्दा है, बाहर आंदोलन बड़े भ्रष्टाचार के लिए है, सब किस्म के भ्रष्टाचार के लिए है, लेकिन जन लोकपाल कानून केवल प्रिवेंशन

ऑफ करप्शन ऐक्ट के एन्फोर्समेंट के लिए है। उसके अलावा आंदोलन के जरिए और भी बहुत सारे किए जाएंगे।

अध्यक्ष : आप संक्षेप में प्रधानमंत्री, फोन टैपिंग, नेशनल सिक्योरिटी के एक्सक्लूजन के बारे में जल्दी से बताएं।

श्री शान्ति भूषण : नेशनल सिक्योरिटी का भ्रष्टाचार से कोई ताल्लुक नहीं है। शायद आपको नेशनल सिक्योरिटी का यह डर है कि कुछ ऐसे कॉन्फिडेंशियल डॉक्यूमेंट्स हो सकते हैं, which may have a bearing on our national security, उसके लिए एविडेंस ऐक्ट में सैक्शन 123 है। अगर कोई जांच अधिकारी भी उन कागजों को मांगे, कोई भी अदालत समन करे, तो उन कागजों को देना जरूरी नहीं है, क्योंकि एविडेंस ऐक्ट का सैक्शन 123 उनको यह अधिकार देता है कि, क्योंकि हम समझते हैं कि इन डॉक्यूमेंट्स को देने से नेशनल सिक्योरिटी पर आँच आएगी, हम वे कागज नहीं देंगे। यह बात ऑलरेडी लॉ में है। सिक्योरिटी करप्शन के इनवेस्टिगेशन में भी अगर कोई कागज ऐसे हैं, जिनका नेशनल सिक्योरिटी से कंसर्न है, उनको देने की कोई जिम्मेदारी नहीं है।

श्री शान्ति भूषण (क्रमागत) : प्रधान मंत्री या किसी मंत्री या किसी और ऑफिसर को कोई भी document, जो national security पर bearing रखता है, Evidence Act के सैक्शन 123 में already यह protection दिया हुआ है कि वह कागज देने की जरूरत नहीं है।

अध्यक्ष : Phone tapping के बारे में बताइए।

श्री प्रशांत भूषण : आपने phone tapping के बारे में पूछा कि किसी दूसरे देश में Ombudsman के पास यह power है या नहीं। हमने इसे directly examine नहीं किया है, लेकिन हमें पूरा विश्वास है कि जिस-जिस देश में Ombudsman को investigation की power है, वहाँ उसके पास phone tapping की power भी जरूर होगी, क्योंकि phone tapping investigation का एक बहुत important tool है। आज सारी investigation agencies को यह power है। इस पर टेलीग्राफ ऐक्ट में सिर्फ एक restriction लगा दिया गया है कि इसके लिए होम सेक्रेटरी की permission लेनी पड़ेगी। अब जब हम लोग corruption की investigation के लिए बिल्कुल एक सरकार से स्वतंत्र एजेंसी, लोकपाल बना रहे हैं और अगर उस investigation में phone tapping एक necessary tool है, तो उस necessary tool को use करने के लिए अगर फिर से सरकार से permission लेनी पड़े, तब तो लोकपाल की independence compromise हो जाएगी। इसीलिए लोकपाल को ही वह power होनी चाहिए।

श्री परिमल नथवानी : प्रशांत जी, मैं आपसे phone tapping के बारे में एक प्रश्न पूछना चाहता हूँ। Home Secretary is the head of the security of the country. यह एक सबसे बड़ी authority है। Can you not keep one nodal officer from Lokpal who can make day-to-day coordination with the Home Secretary and get permissions on these, because this is a very large subject? If we dilute this, then there is no Government. We know that Government is beyond everyone.

सरकार से बड़ा कोई नहीं होता है, वह चाहे लोकपाल हो, चाहे स्टेट गवर्नमेंट हो। From security point of view, telephone tapping is a very sensitive subject. I also agree with your requirement. So, for this purpose, you can keep a nodal officer who can directly interact with the Home Secretary. And, we cannot challenge the Home Secretary. This is what I feel.

श्री अरविंद केजरीवाल : इसमें मैं आपसे एक गुजारिश करना चाहूँगा कि क्या आपको यह नहीं लगता कि चूँकि होम सेक्रेटरी at the end of the day सरकार का एक ऑफिसर है, अगर उनको यह permission देनी होगी, तो वहाँ से यह information leak हो सकती है।

श्री परिमल नथवानी : मैं आपको एक बात बताना चाहता हूँ, आप भी सरकारी सेवा में रहे हैं, कि होम सेक्रेटरी select होकर इतनी top post पर आता है। So, we should respect him; we have to trust him. इसमें leak होने की बात नहीं है, क्योंकि जो nodal officer रहेगा, वह उनके साथ direct interaction करेगा। And, there is no file or anything in between. मेरे ख्याल से आप अच्छा cover कर पाएँगे।

श्री शान्ति भूषण : आप इसे लोकपाल की बेंच की discretion पर छोड़ दीजिए। लोकपाल को तो इतनी बड़ी कमेटी छाँटेगी, इसलिए इसे उनकी discretion पर छोड़ दीजिए। ऐसा भी कर सकते हैं कि Chairperson of the Lokpal की authority के बगैर phone tapping नहीं होगी। वह उसकी discretion पर छोड़ दीजिए।

SHRI D.B. CHANDRE GOWDA: Mr. Chairman, I have a few pointed questions. Much earlier to that, I would like to add one thing here. The Lokpal is an accepted concept by the Constitution of India. Lokpal is an accepted concept by the people of India. Lokpal is a concept accepted by the democratic institutions, not only in India but elsewhere.

My question is: What is Lokpal? It is only to make enquiries about certain corruptions, basically, and report. It means, it just report; it cannot act on its own and come to judgment. It is only a recommendatory body. That is accepted by both Lokpal and the Jan Lokpal. But, the accepted fact is, Lokpal is a must. It is not just because the Administrative Reforms Commission in 1966 recommended, but it is because the country has gone through the mill of corruption for a number of years. It wanted somebody to come out and take position. That way, I congratulate Anna and his team for having taken it and the people are very happy and expressed their views. That is the reason why the Parliament has taken note of it, the Bill is placed before the House and we are debating on the Bill. So, first of all, I congratulate them for having taken the cause of the people which we have forgotten for the last so many decades. The first point is: what should be the credible system? I know what happened in Karnataka on the Lokayukta Act. I raised a basic question. When the Bill was passed, I was the Speaker of the Assembly. I know Shanti Bhushanji. You have also interpreted it. The question arose on two things. The sanctity of the Bill and the credibility of the system is important. What is sanctity? Sanctity is, whatever transpires within the framework of law should be kept confidential. It is not only to save the system but also the credibility of the individual has to be saved. Wild allegations made against Chief Minister and if he submits his resignation on the basis of those allegations, because the enquiry system revealed his name, what will happen? So, he has to resign.

The second one is, where is the accountability for the Lokayukta or the Lokpal? Who will ask you? Whether the Lokpal or Lokayukta investigate and order for prosecution or itself

take into his hands the transmission of both investigation and the final judgment. So, what will happen?

The third one is, to whom they are accountable? For example, any law made in this country or anywhere else requires much more respect to the general provisions of public accountable system. In the sense, he should be given an opportunity. If a person is not given an opportunity, what will happen to the whole situation? Natural justice fails. What is the answer for that?

The fourth point is, who is a public servant. You have to exhaustively explain as to who is the public servant. In this country, public servant means and includes everybody for that matter, but exclusively you have to explain as to who is the public servant. More so, I have come across the issue of phone tapping which we were discussing. I was the Speaker of the Assembly when Mr. Hegde was the Chief Minister. A phone tapping case came. What happened ultimately? We compared it with the phone tapping of the USA which actually made the President of America to resign.

अध्यक्ष : आप क्वेश्चन पूछिए, क्योंकि समय कम है।

SHRI D.B. CHANDRE GOWDA: Of course, I know. When the subject comes on the right side, the issue of time-frame comes in.

CHAIRMAN: You ask pointed questions.

SHRI D.B. CHANDRE GOWDA: Today, police is an enquiry agency, whether it is general police or whether it is in the form of CBI or CVC. Police is the authority. Do you suggest that Lokpal should have its own agency to investigate by not involving the well-tested either the CBI or the CVC?

SHRI D.B. CHANDRE GOWDA (CONTD.): But if it wants to have a separate agency, how do you work it out? What is the expenditure involved? What is the law laid down? We have seen the debates of the Constitutional Assembly. These are in five volumes. We know how much time they had taken for each article to frame the Constitution of the country. It is accepted and tried for the last 65 years. Now, the question is whether this Lokpal should work within the framework of our Constitution or it should work above the Constitution.

Thirdly, most importantly, who has to pass the law? It is, again, the Parliament. How do you convince the Parliament to pass the law? Here comes the question of Prime Minister. Who said the Prime Minister is not answerable? He is answerable to the House. If the Opposition is vigilant enough, the Prime Minister is already involved. And, to make the people of India understand, that this is the situation prevailing in the country and, therefore, we have added the Prime Minister to satisfy all of you. Be with us and we will see that the basic question of corruption is properly answered by enacting a law that was not there till today. A time has come when we should all sit together, instead of dividing ourselves in questions and answers, and formulate a law that is acceptable to the people of India.

SHRI PINAKI MISRA: Chairman, Sir, there are a number of Members from smaller parties as well. So, I would request that Members should get, at least, one chance to speak.

CHAIRMAN: I am quite happy to hear your suggestion. But let me tell you that any procedure, which we follow, will fail unless Members realize time constraint. I would request each Member to search his own conscience and decide for himself because time constraint is there.

SHRI D.B. CHANDRE GOWDA: Sir, I would appeal to you that this is not a question of timeframe. You are re-writing the Constitution of India.

CHAIRMAN: I am quite happy to sit tomorrow also.

SHRI D.B. CHANDRE GOWDA: Sir, even if it takes another one month, let us sit here. We would do it before the coming Session. But let us not put a time-limit on discussion.

CHAIRMAN: Okay. I am going to set out the sequence. Let Mr. Paswan ask, then, Mr. Shailendra Kumar, then Mr. Lalu Prasad, then Mr. Pinaki Misra. Let these four put their queries first.

श्री रामविलास पासवान: सर, इनसे मेरा पहला आग्रह यह है कि आप इसमें टोटल करप्शन को रखिए। वह चाहे किसी भी डिपार्टमेंट का करप्शन हो, किसी भी टाइप का करप्शन हो, सरकारी हो, गैर-सरकारी हो, कॉरपोरेट हाउस का हो या मीडिया का हो। यदि हम करप्शन को मिटाना चाहते हैं, तो हमें टोटल करप्शन को मिटाने का संकल्प लेना चाहिए। यह piece way में नहीं होना चाहिए, जिस तरीके से ये कह रहे हैं कि सरकार piece way में कानून बनाती है। हम भी piece way में कानून बनाने की बात नहीं सोचें, बल्कि हमें यह सोचना चाहिए कि टोटल करप्शन कैसे खत्म हो।

मेरी दूसरी बात यह है कि इन्होंने जितनी भी कमेटीज़ की बात कही है, तो अन्ना हजारे साहब और केजरीवाल साहब को मालूम है कि इस देश में एक social composition है। You can change religion; you can change Government; you can change everything every thing. But, you cannot change your caste. हमारा जो social composition है और उसमें जो सबसे ज्यादा victims हैं, वे सबसे नीचे तबके के लोग हैं, शैड्यूल्ड ट्राइब्स के लोग हैं। शैड्यूल्ड ट्राइब्स के एरियाज़ में जाकर देखिए कि वहाँ करप्शन किस तरीके से है। वहाँ पर माइंस हैं और अन्य सारी चीज़ें हैं, लेकिन उन सब के बावजूद उनकी हालत आज क्या है? ऐसा इसलिए है, क्योंकि उनके पीछे करप्शन है। हमारे देश में शैड्यूल्ड कास्ट्स के लोग हैं, ओ.बी.सी. के लोग हैं और माइनॉरिटीज़ के लोग हैं। जब हम करप्शन की बात करते हैं, तो करप्शन की डिफिनिशन में यह भी आना चाहिए कि शैड्यूल्ड कास्ट्स के लिए कितना पैसा जाता है, Special Component Plan के लिए कितना पैसा जाता है और वह पैसा कितना खत्म हो जाता है। जब तक वे sections, जिनके प्रति या जिनके ऊपर करप्शन हो रहा है, उनकी भागीदारी उसमें नहीं होगी, उनको आप उसमें include नहीं कीजिएगा, तब तक करप्शन दूर कैसे होगा? मुझे जानना है कि आपकी जो भी कमेटी हो, जैसे सेलेक्शन कमेटी, सर्च कमेटी या लोकपाल, जो भी set up आप बनाना चाहते हैं, उसमें पाँच जज, former Election Commissioner और former Comptroller General कहते हैं। तो उसमें आप उनको पाँच के बदले दो रखिए और उसी कैटेगरी के लोगों को आप शैड्यूल्ड कास्ट्स, शैड्यूल्ड ट्राइब्स, ओ.बी.सी. और माइनॉरिटीज़ में से रखिए। इस देश का जो social composition है, उसमें क्यों नहीं लोकपाल से लेकर सर्च कमेटी या हरेक कमेटी में weaker sections, Scheduled Casts,

Scheduled Tribes, O.B.C. and Minorities के लोगों के लिए भी रिजर्वेशन होना चाहिए? इस पर आपकी क्या राय है?

मैं एक और बात पूछना चाहता हूँ। मुझे यह बतलाइए कि आप लोकपाल के पास कहाँ से ताकत लाएँगे? लोकपाल का जो infrastructure है, उसके बारे में आपने कुछ बनाया है कि लोकपाल के अर्न्तर्गत कितने investigating officers की नियुक्ति होगी और उनकी नियुक्ति कहाँ से होगी? उसके set up के बारे में आप कह रहे हैं कि वह आप सी.बी.आई. से लेंगे। अगर आप इसे सी.बी.आई. से लेंगे और आप एक independent body बनाना चाहते हैं, तो क्यों नहीं आप सी.बी.आई. को ही एक independent body बना देते हैं?

श्री रामविलास पासवान (क्रमागत): उसको गवर्नमेंट के क्लच से बाहर कर दीजिए। सीबीआई आज से नहीं है, वह 70 सालों से एक लाइन पर चल रही है। उसमें भी ऑफिसर्स हैं। आपके चार्जज ये हैं कि जिसकी गवर्नमेंट बनती है, सीबीआई उसके इशारे पर काम करती है। जिस समय आप उसको independent कर देंगे, तो वह उसी तरीके से बन जाएगा जिस तरीके से लोकपाल बनता है। यह कहने की बजाय कि सीबीआई को लोकपाल के अंतर्गत रखिए, आप इस बात को क्यों नहीं कहते कि सीबीआई को एक independent body बना दो, वह investigation करेगा? यदि वह investigation नहीं कर सकता है, तो लोकपाल के पास कौन-सी मशीनरी है? आप लोगों को कहाँ से लाएँगे? क्या आप भगवान या खुदा के यहाँ से लोगों को लाएँगे? उन्हें आपको यहीं से लेना पड़ेगा। एक बीडीओ जो चोरी करता है, अगर उसे आप लोकपाल का Investigating Officer बना देंगे, तो फिर वह करप्शन का एक लेयर नहीं हो जाएगा? हमें यह मानना चाहिए कि पानी ऊपर से नीचे की ओर चलता है और उसी तरीके से हर आदमी के मन में कमाने की प्रवृत्ति होती है। हमें यह सोचना चाहिए कि उस कमाने की प्रवृत्ति को हम कैसे रोकें। उसके लिए जो इंफ्रास्ट्रक्चर होगा, उसमें कितना खर्च लगेगा तथा ऑफिसर्स कहाँ से आएँगे, यह देखना जरूरी है। सरकारी कर्मचारी 40 लाख हैं और पब्लिक अंडरटेकिंग्स के कर्मचारी करीब 50-60 लाख हैं, तो इतने कर्मचारियों के ऊपर आप जो नयी नियुक्ति करने वाले हैं और जो वह नया सेटअप होगा, उसके लिए ऑफिस अलग रहेगा या यही ऑफिस रहेगा? उसके लिए जो कर्मचारी होंगे, उन्हें आप इसी में से लेंगे या अलग से लेंगे? ये सारी चीज़ें हैं।

एक होता है एक्ट, एक होता है फैक्ट और एक होता है टैक्ट। आप जो बात कह रहे हैं वह एक्ट की बात कह रहे हैं, जो फैक्ट है वह बिल्कुल डिफरेंट है और इसको टैक्टफुली कैसे करना है, यह आपकी और सरकार की जवाबदेही है। हमारा सिर्फ इतना ही कहना है कि आप इंफ्रास्ट्रक्चर को देखिए, आप सोशल सेक्टर को देखिए और आप टोटल करप्शन के अबोलिशन की बात कहिए, नहीं तो यह उंगली हमेशा उठती रहेगी कि साहब, ये लोग सरकार को घेर लेते हैं और इन्हें कारपोरेट हाउस मदद करते हैं तथा ये कारपोरेट हाउस के खिलाफ कुछ नहीं बोलते हैं। मैं समझता हूँ कि आपके आन्दोलन के लिए भी यह स्वस्थ परम्परा

नहीं है। इसलिए टोटल करप्शन, इंफ्रास्ट्रक्चर, शेड्यूल्ड कास्ट्स, शेड्यूल्ड ट्राइब्स, बैंकवर्ड, विमेन एंड माइनॉरिटी must be there. इस पर हम आपकी राय जानना चाहते हैं।

अध्यक्ष: पासवान जी, आपके तीन बिन्दु हो गये। पहले ये इनके जवाब दे दें। इनका पहला बिन्दु रिजर्वेशन/कोटे के संबंध में है, दूसरा लॉजिस्टिक और इंफ्रास्ट्रक्चर से संबंधित है और तीसरा करप्शन के बाकी जो आयाम हैं, उनके बारे में है।

श्री शांति भूषण: आपका पहला प्रश्न है कि करप्शन के अंतर्गत और चीजों को क्यों नहीं लाते हैं? करप्शन प्रिवेंशन ऑफ करप्शन एक्ट में डिफाइंड है। आपकी यह कमिटी, जो कि मिनी पार्लियामेंट है, यह करप्शन की definition को जितना चाहे expand कर दे, उस पर हमें कोई ऐतराज नहीं है। आप इसी कानून से, इसी एक्ट से, इसी बिल से प्रिवेंशन ऑफ करप्शन एक्ट की करप्शन की definition को expand कर दीजिए। उसमें आप जो चीज लाना चाहें, ले आइये, हमें कोई ऐतराज नहीं है।

दूसरे, आपने शेड्यूल्ड कास्ट्स की रिजर्वेशन की बात कही। उसमें सरकार या संसद की जो भी नीति हो, उसमें वे जो भी करना चाहें, उस पर भी हमें कोई ऐतराज नहीं है। संसद या आप लोग नीति के हिसाब से जो भी तय करें, उस पर भी हमें कोई ऐतराज नहीं है, हमें सब के ऊपर faith है। जब वे independent हो जाएंगे, तो छाँटे जाएंगे।

जहाँ तक आपने सर्च कमिटी की बात कही, तो उस बारे में हमने यही कहा है कि सेलेक्शन कमिटी आठ लोगों की होगी। उसके बारे में यह कहा गया कि उसमें जजेज को क्यों रखा गया है? देखिए, उसमें हमने जिन चार जजों को रखा है, अगर उनको सुप्रीम कोर्ट के 25-30 जज मिल कर छाँटेंगे, तो ऐसा नहीं हो सकता कि वे किसी भ्रष्ट जज या हाई कोर्ट के किसी भ्रष्ट चीफ जस्टिस को छाँटेंगे। आज मैं कहना चाहूँगा कि सुप्रीम कोर्ट on the whole बहुत अच्छा है और सुप्रीम कोर्ट को हाई कोर्ट के चीफ जस्टिस को छाँटने का काम दिया जा रहा है। सेलेक्शन कमिटी में आठ लोग हैं, जिनमें प्राइम मिनिस्टर, लीडर ऑफ दि ओपोजिशन, दो चीफ जस्टिसेज, दो सुप्रीम कोर्ट के जजेज, चीफ इलेक्शन कमिश्नर और कंट्रोलर एंड ऑडिटर जनरल हैं।

श्री रामविलास पासवान: आप जजेज की बात कहते हैं, जबकि आपने ही जजेज के खिलाफ कोर्ट में यह दायर किया था कि सुप्रीम कोर्ट में कितने चीफ जस्टिस हैं और उनमें से कितने दागी लोग हैं? जब जजेज की नियुक्ति ही गलत आधार पर है कि कोई दस साल की प्रैक्टिस कर ले और बाप की जगह पर बेटा आ जाए या भतीजा आ जाए। जब जजेज की नियुक्ति ही गलत है, तो उसके लिए आप यह क्यों नहीं कहते हैं कि वहाँ भी करप्शन को दूर करने के लिए इंडियन जुडिशल सर्विस बनाओ।

श्री शांति भूषण: यह अलग प्रश्न है। देखिए, सुप्रीम कोर्ट के जो 26 जज हैं, उनके बारे में आप यह नहीं कह सकते कि वे 26 के 26 जज भ्रष्ट हैं। मान लीजिए उनमें से अगर एक-दो

हों भी, लेकिन जब 26 बैठ कर किसी को छाँटेंगे, तो वे सही आदमी को छाँटेंगे। सर्च कमिटी के लिए हमने यह कहा है कि उनमें से पाँच को तो सेलेक्शन कमिटी छाँटेगी और सेलेक्शन कमिटी ही सिविल सोसायटी के मैम्बर्स को भी छाँटेगी। वह पावर हमने सेलेक्शन कमिटी को ही दिए हैं। इसमें दूसरा और कोई नहीं छाँटेगा।

एक बात आपने सीबीआई के बारे में कही है। पूरी सीबीआई अगर लोकपाल के अंदर आ जाए, तो हमें कोई ऐतराज नहीं है। हमने सुना है कि सीबीआई का यह कहना है कि bifurcation नहीं होना चाहिए, हमारा administrative control independent हो जाना चाहिए, तो उन्होंने शायद यह suggest किया है कि सीबीआई का जो हेड हो, वह ex-officio member लोकपाल का हो।

श्री रामविलास पासवान: नहीं, नहीं। हम लोग यहाँ confidential हैं। हम लोगों की पूरी की पूरी राय है कि सीबीआई का 70 साल का अनुभव है और वह इस 70 साल के अनुभव पर बहुत दूरी तक पहुँची है। आप सीबीआई को totally independent कर दीजिए, आप उसे financially independent कर दीजिए, यह उनका कहना है।

श्री शांति भूषण: सवाल यह है कि independent करके administrative control किसको देंगे? आज तो यह सरकार के पास है, इसीलिए हम कह रहे हैं कि यह लोकपाल, जो कि बड़ी ऊँची संस्था बनेगी, उसको administrative control दीजिए।

श्री रामविलास पासवान: देखिए, administrative control तो हमेशा गवर्नमेंट के पास रहेगा। Appointment तो प्रेजिडेंट के नाम से होगी, वह कोई लोकपाल के नाम पर तो होगी नहीं।

अध्यक्ष: पासवान जी, अगर केवल आप प्रश्न पूछेंगे, तो फिर और कोई प्रश्न नहीं पूछ पाएगा।

श्री रामविलास पासवान: इंफ्रास्ट्रक्चर के संबंध में जवाब नहीं आया है।

श्री शांति भूषण: आपने कहा कि यह बहुत बड़ी संस्था हो जाएगी। देखिए, पूरे देश का यह मानना है कि आज करप्शन बहुत बढ़ गया है, लेकिन हमारा यह कहना है कि यह लोकपाल और देशों में independent authority की तरह देखा गया है। जब वहाँ independent Ombudsman बना, तो वहाँ करप्शन का स्तर गिरता चला गया। इससे जाँच जल्दी खत्म होगी और वह जाँच निष्पक्ष होगी। इस तरह से केस भी जल्दी से तय होगा और जब जेल जाना शुरू होगा, तो उसके बाद अपने आप भ्रष्टाचार का स्तर गिरता जाएगा। जैसे, मैं कहता हूँ कि दो ऊँचे-ऊँचे लोग जिस दिन जेल चले जाएँगे, अगर मैं कहूँ कि दो हाई कोर्ट्स जज जिस दिन जेल चले जाएँगे, आप देखिए कि कितनी तेजी से जुडिशरी में भ्रष्टाचार का स्तर गिरता है। चूँकि लोगों को जल्दी सज़ा नहीं हो रही है और उनका investigation निष्पक्ष तरीके से जल्दी नहीं हो रहा है, इसलिए समस्या बढ़ती गयी।

श्री शैलेन्द्र कुमार: थैंक्यू चेयरमैन साहब कि आपने मुझे मौका दिया और खास कर मैं पिनाकी मिश्रा जी को धन्यवाद देना चाहूँगा कि आपके बोलने से यह असर हुआ कि मुझे बोलने का मौका मिला।

अध्यक्ष: इस बार समय थोड़ा ज्यादा लग रहा है, लेकिन मैं आपको याद दिला दूँ कि समिति की यह शक्ति है कि हम पार्टी लाइंस पर काम नहीं करते हैं। प्रश्नोत्तर में हम ऐसा कर रहे हैं, वह ठीक है, लेकिन वास्तव में हमें हर मुद्दे पर पार्टी की लाइन से ऊपर उठ कर निर्णय करना है। आप यह समझ लीजिए कि यह मामला केवल procedure के लिए है, नहीं तो आप सब इस समिति के मैम्बर्स हैं, किसी पार्टी को belong नहीं करते हैं।

श्री शैलेन्द्र कुमार : Thank you, Chairman Sir. अभी इस कमेटी के सम्मानित सदस्यों ने प्रश्न पूछे और मेरे ख्याल से सभी बिंदुओं पर चर्चा हो चुकी है। सब से पहले तो मैं अन्ना जी और उन की टीम के लोगों का स्वागत करता हूँ।

अभी बहुत देर से प्रश्न पूछे जा रहे हैं और जवाब भी आ रहे हैं। मेरे ख्याल से सिविल सोसायटी के जो सम्मानित सदस्य बैठे हैं, वह केवल सरकार के विरुद्ध हिट कर रहे हैं, ऐसा मुझे प्रतीत हो रहा है। अगर ऐसा नहीं है तो मुझे बताने का कष्ट करें। दूसरी बात, सभी माननीय सदस्यों ने कहा कि करप्सन से सब से ज्यादा त्रस्त weaker section के लोग हैं। जो गरीब आदमी है और खासकर खेतिहर मजदूर, बीपीओएल के लोग सब से ज्यादा त्रस्त हैं। हम लोग अपने-अपने क्षेत्र में भी इस बात को देखते हैं और इस में जवाबदेही हमारी और सभी की है। एक और बात आप ने उत्तर प्रदेश के बारे में कही। मैं धन्यवाद देना चाहूँगा कि उत्तर प्रदेश को आप ने touch किया और मेरे निर्वाचन क्षेत्र में आप ने सब से पहले जनमत संग्रह कराया। एक और बात यह कि इस में तो पूरे देश में करप्सन की बात हो रही है, लोकपाल बिल बनाने की बात हो रही है। लेकिन अन्ना जी हम ने इस के लिए बहुत पहले संघर्ष किया है, जेल तक गए हैं, मुकदमे भी झेले हैं और तमाम लोगों ने लाठियां भी खायी हैं। ऐसी बात नहीं है कि हम ने करप्सन और महंगाई के खिलाफ हम ने संघर्ष नहीं किया या लड़ायी नहीं लड़ी। आदरणीय शांति भूषण जी मेरे स्वर्गीय पिता श्री धर्मवीर जी को आप ने सुना होगा, अच्छी तरह से जानते होंगे। मैं उन का सुपुत्र हूँ। आप ने माननीय मुलायम सिंह जी का नाम लिया और vote for note की भी बात की है। उस में मैं ज्यादा नहीं जाना चाहूँगा क्योंकि सीबीआई की इन्क्वायरी केवल मुलायम सिंह जी के ऊपर नहीं थी बल्कि लालू जी के खिलाफ भी थी, आडवाणी जी के खिलाफ थी, मायावती के खिलाफ थी, अमर सिंह जी - उस में जितने भी लोग हैं, मैं नाम नहीं लेना चाहूँगा, लेकिन आप ने मुलायम सिंह जी का नाम दो-तीन बार लिया है। आप ने vote for note की भी बात आप ने कही। आप को याद होगा कि जिस वक्त परमाणु करार पर सरकार को बचाने की बात आ रही थी, आप ने उसे एक नजरिए से देख लिया कि मुलायम सिंह जी, उन की पार्टी व अमर सिंह की बात आप ने की, लेकिन दूसरे पक्ष एनडीए पर आप नहीं गए कि जो वह कर रहे थे,

वही वह भी कर रहे थे। ऐसी बात नहीं है। उस के भुक्तभोगी हम हैं, लेकिन मैं उस बात को विस्तार से नहीं बताना चाहूंगा। अभी सी0बी0आई0 की स्वायत्तता, निष्पक्षता व कार्य-प्रणाली के बारे में भी समय-समय पर बात आयी है। आप को विश्वास नहीं होगा कि हम ने लगातार तीन-चार सेशन में सी0बी0आई0 की कार्य-प्रणाली पर रूल 193 में पूरे दिन की चर्चा मांग की थी, लेकिन दुर्भाग्य है कि वह विषय चर्चा के लिए नहीं आ पाया और सरकार कहती है कि हम चर्चा कराना चाहते हैं। तो मेरा ख्याल है कि सी0बी0आई0 को और अधिक पावर्स दिए जाएं। उस की स्वायत्तता बनी रहे ताकि वह कार्य कर सके। अब यह एक सवालिया निशान होता है कि सरकार जो कहेगी, सी0बी0आई0 वही करेगी, सरकार सी0बी0आई0 का दुरुपयोग करती है, इस्तेमाल अपने विरोधियों के लिए करती है। इस से यह एक प्रश्न-चिह्न जो लगता है, वह खत्म हो जाएगा। यह मेरा सुझाव है। एक और बात हमारे तमाम साथियों ने और पासवान जी ने भी कॉर्पोरेट सेक्टर की बात कही। हम लोग तो वीकर सेक्शन के हैं और संघर्ष कर के यहां तक पहुंचे हैं। हम लोग एम0एल0सी0 या राज्य सभा से नहीं आए हैं। हमारे तमाम साथी हैं जो कि विधान सभा के भी सदस्य रहे हैं और लोक सभा के भी सदस्य रहे। मैं भी लगातार तीन बार चुनकर आया हूं और हम लोगों का संघर्ष हमेशा गरीबों के लिए रहा है। सामाजिक न्याय अधिकारिता मंत्रालय है, लेकिन अभी एक बात कॉमन वैल्यू गेम्स में भ्रष्टाचार की बात उठी थी। Special Component के अंतर्गत अनुसूचित जाति, अनुसूचित जनजाति की तमाम बातें थी, लेकिन कॉमन वैल्यू गेम्स में जो बजट ट्रांसफर हुआ, उस पर प्रश्न भी उठा और बहस भी हुई थी कि उस में Scheduled caste के लिए Special Component का भी पैसा गया। यह diversion of fund है और अगर एक तरीके से कॉमन वैल्यू गेम्स में करप्शन है तो वह करप्शन में गया। इस तरह ये तमाम सारे मुद्दे हैं जिन्हें हम को देखना है। अब सरकारी और गैर सरकारी भ्रष्टाचार को हमें मिटाना है, तो इस में सरकारी व गैर सरकारी सभी को लेना है और एन0जी0ओज0 को भी शामिल कीजिए। चूंकि अगर सरकार की बात है तो फिर चाहे न्यायपालिका हो, कार्यपालिका हो, मीडिया हो, सभी को लीजिए। आप लोकतंत्र के चारों खम्भों को लीजिए। उस में हमें किसी को भी दूर नहीं करना है। Judiciary के बारे में कहा गया। उस के लिए एक National Judicial Academy बना दीजिए और उन की accountability तय कीजिए। उस में भ्रष्ट लोगों को punishment मिले। हम ने सेन का, भल्ला जी का केस देखा और तमाम मुद्दे यहां उठे, लेकिन हम लोगों को भी तकलीफ हुई। हम लोगों ने उन से क्वेश्चंस पूछे और उन्होंने सफाई में जवाब दिया। वह अच्छा वातावरण नहीं था। उस की एक अलग से Independent body बन जाए तो वह करप्शन को विस्तार से देख सकती है।

मैं सिर्फ इतना ही कहना चाहूंगा कि जो कमेटी या कोई बॉडी इस के लिए बने, उस में Scheduled castes, Scheduled tribes और जो वीकर सेक्शंस हैं, ओ0बी0सी0 है, मायनॉरिटी है, महिलाएं हैं और मैं तो कहूंगा कि जो विकलांग हैं, उन को भी महत्व दिया जाए ताकि वे लोग भी अपने को समाज की मुख्य धारा से अलग न समझें। यही मेरे कुछ सुझाव थे।

अध्यक्ष : अब लालू जी संक्षेप में बोलेंगे। उन के बाद पिनाकी जी और उन के बाद नाथवानी जी।

श्री लालू प्रसाद : राम विलास जी ने जिन मुद्दों को उठाया, मैं उन का समर्थन करता हूं। Social justice हमारी बुनियाद में है। इस पर राय भी आयी है। आदरणीय शांति भूषण जी ने आश्वस्त किया है कि इस पर हम लोगों को कोई objection नहीं है। अन्ना जी ने पहले भी कहा था। पहले भी मैं ने इन का बयान पढ़ा था। अन्ना जी का भी इस मामले में कोई विरोध नहीं है। इसे हर लेवल पर, जहां भी इस के लिए बॉडीज बनेंगी, उस में करना है। "भ्रष्टाचार मिटाना है, नया देश बनाना है" इस के लिए टोटल रिवॉल्यूशन का नारा लोक नायक जयप्रकाश जी ने दिया था। यह उन के लिए है जो कि हर तरह से वंचित हैं, back benchers हैं, उन्हें mainstream में लाना है। यही राय, यही मत मैं अन्ना जी के विचारों में देखता हूं। अभी रामविलास जी ने कहा कि भ्रष्टाचार देश के अंदर नश-नश में है, हर जगह है। इसे कैसे खत्म करना है, इस पर हम सब लोगों को बैठकर विचार करना होगा। अभी बात की जा रही है कि politicians, मंत्री, प्राइम मिनिस्टर और, फलां-फलां चोर है। यह कहा जा रहा है। शैलेन्द्र, हमारे ऊपर भी केस हुआ था, लेकिन acquittal सुप्रीम कोर्ट तक हुआ। सी0बी0आई0 failed to prove the evidence against me. इन बातों को समझ लीजिए। तो शांति भूषण जी ने उदाहरण दिया कि वह चीज क्या है। सी0बी0आई0 क्या है? CBI is composition of all police forces officers of the country. हर राज्य के पुलिस ऑफिसर्स को लाकर रखा जाता है। सी0बी0आई0 में बहाली नहीं होती है। क्लर्क वगैरह हो सकते हैं। वहां ये ऑफिसर्स deputation पर आते हैं। यहां एक ही पदवी डायरेक्टर की होती है। उस में डायरेक्टर के appointment में सरकार का involvement है। वह independent रहे, इन चीजों में न जाए। हम चाहते हैं कि सी0बी0आई0 को independent रहने देना चाहिए। उसे खंड-खंड नहीं करना चाहिए।

आदरणीय अन्ना जी से भी मैं पूछना चाहूंगा। मैं किसी दूसरी भावना से नहीं पूछ रहा हूं कि जब आप हमारे यहां आए थे तो आप के साथ केजरीवाल जी थे, किरण बेदी जी थीं, आप पार्टी दू पार्टी मिल रहे थे और कह रहे थे कि आप इसे देखिए, विचार कीजिए और समर्थन करिए। तो हम ने आप से पूछा था कि क्या इस से देश का भ्रष्टाचार मिट जाएगा? यहां राम लीला मैदान में जो लोग जुटे या जहां भी आप जाते थे वहां एक तरह से धूम मचाकर जो बातें चलती थीं। वहां साधु समाज के और निपुण लोग पहुंचते होंगे, ईमानदार लोग पहुंचते होंगे। मैं वह नहीं जानता हूं।

श्री लालू प्रसाद (क्रमागत): आप भी नहीं पहचान पाइएगा। किरण बेदी जी ने बहुत फटकार लगाई कि यहां दारू-फारू मत पिओ। बोटल पीकर वे सब नीचे फेंक देते थे। आप कैसे रोकिएगा? मूवमेंट होता है, तो हर तरह के एलीमेंट घुस जाते हैं। जब भ्रष्टाचार मिटाना है, तो डेमोक्रेसी है, प्रजातंत्र है, आप सब लोग इन सब चीजों को कबूल करते हैं, मानते हैं। मैं

आपसे यह जानना चाहता हूँ कि हम लोग चाहे जो भी इंतजाम कर लें, जो भी कानून बना लें, मगर हर तरह का बचाव है, अगर मुझे पैसा लेना है तो दूसरा आदमी बात करेगा और थर्ड जगह पैसा जमा करेगा, कहीं कोई कागज वगैरह का पता नहीं होगा।

श्री विजय बहादुर सिंह: हवाला से जैसे होता है।

श्री लालू प्रसाद: हवाला को आप छोड़िए। रख देगा किसी सेठ के यहां, कि रखे रहो और बाद में वह गच्चा दे देगा कि आपका पैसा हमारे यहां कहां है? वह तो हमारे यहां पुलिस आई और उसे ऐसे ही फेंकना पड़ा। हर तरह का उपाय इस तरह की चीजों में रहेगा। मेरा सुझाव यह है कि राजनेता, समाज के हर वर्ग के लोग जो गाली देते हैं एक-दूसरे को, कि यह चोर है, चोर है, खा गया, खा गया, खा गया, जो पकड़ा गया वह खा गया, बाकी सब लोग बाहर रहते हैं। आप लोगों के माध्यम से, हम पार्लियामेंट मैम्बरों के माध्यम से, रामदेव जी के माध्यम से अभी यह स्विस् बैंक, स्विस् बैंक, काला धन, काला धन, इस तरह की बात देश के हर बच्चे-बच्चे में बताई गई। हमने प्रणब बाबू से पूछा था। उत्तर प्रदेश के, एक पार्टी के विद्वान आदमी ने एक पर्चा बनाया और उसमें कांग्रेस पार्टी सहित हमको, सबको उसमें लिख दिया। उसे लगाया और फिर गायब हो गया। उसमें लिखा कि लालू यादव का 30,000 करोड़ रुपया है, मेरा भी नाम उसमें लिखा। हमको बर्दाश्त नहीं हुआ, सेंट्रल हाल में हम थे। हमने अपने तीन-चार एम.पीज़. को उठाया और कहा कि देखो, अमुक एम.पी. है या नहीं? आज उसे पीटा जाय। मतलब जितना पिटाई हो, हम पीटेंगे चलकर, आखिर कब तक हम लोग बर्दाश्त करेंगे? तो वह आदमी सरेण्डर करता है इस तरह से कि नहीं, नहीं, ऐसा नहीं है। हम वह कागज लेकर प्रणब बाबू के यहां गए कि इसको जांच करके आप बताइए कि जो रुपया हमने जमा नहीं किया, यह कैसे इसमें इधर आ गया है? यह बड़े गजब का फैशन चल गया है कि हर जगह किसी का नाम ले लो। हम आपका मत जानना चाहते हैं, कोई जोर जबर्दस्ती नहीं है, आप हम लोगों के लिए आदरणीय हैं, गांधीयन विचारों से ओतप्रोत हैं, एक-दूसरे के प्रति टीका-टिप्पणी होती रहती है, जिसको हम लाइक नहीं करते हैं, किसी मैम्बर को कोई एब्यूज करता है तो उसको भी हमने कंडम किया है कि नहीं, this is bad, लेकिन हम लोग ऐसा इंतजाम क्यों न करें कि चाहे काला धन हो, या उजला धन हो, या चोरी हो, फार्म-हाउस हो, लैंड हो, ज्यादा जमीन हो, या जितने ये अपार्टमेंट्स बन रहे हैं, एक-एक आदमी दस-दस फ्लैट लेकर रखे हुए है, खरीद रहा है, बिल्डर कोई अपना घर नहीं बना रहा है, उसके माध्यम से लोग खरीद रहे हैं, इससे आखिर गरीबों को देश में फायदा कहां से होगा? अगर हमें सबके सब चोरों को पकड़ना है, चाहे ब्यूरोक्रेसी में हों, या और लोग हों, तो क्यों नहीं आपके नेतृत्व में यह आंदोलन छेड़ा जाए। आप आंदोलन छेड़िए, हम आपको समर्थन देने के लिए तैयार हैं, कि सारी प्रोपर्टीज को सरकार टेकओवर करे, नेशनलाइज करे, और सर्वे करके पूछे कि तू यह बिल्डिंग कहां से लाया, तू किसका बेटा है, कब से नौकरी में आया, कहां से इसके लिए पैसा लाया? हम उसे छीने नहीं, उसके पास

रहने दें, उसके भी बाल-बच्चे हैं, उस पर भी ध्यान रहे, लेकिन बाकी संपत्ति का पुनर्वितरण देश में नहीं करेंगे, तो कहां से गरीबों के पास पहुंचेगा? कहां से समानता आएगी? कैसे समता-मूलक समाज बनेगा? किसके लिए हम सिटीजन चार्टर बनाकर काम करेंगे? इतना ह्यूज मनी जा रहा है, भारत सरकार से भारत निर्माण के लिए इतना पैसा पंप हो रहा है, मनेरेगा है, सर्व शिक्षा अभियान है, पावर है, राष्ट्रीय स्वास्थ्य योजना है, ..

अध्यक्ष: लालू जी।

श्री लालू प्रसाद: सर, जो काम की बात है, वह होने दीजिए, नहीं तो सीधे बिल्कुल यहां से लेकर पार्लियामेंट तक हम लोग उपद्रव मचा देंगे। यह कोई मामूली बात थोड़े ही है कि जो कागज होगा, उस पर बात हो। तो मैं यह जानना चाहता हूँ कि इस पर आपका क्या मत है? हमने पार्लियामेंट में भी कहा है कि धन और धरती बंटना चाहिए। यह धन और धरती बंट कर रहेगी। अपना-अपना, यह इस देश में नहीं चलेगा। यह मूवमेंट होगा और इसे छोड़ा जाएगा, इसलिए आपसे आग्रह है कि आप त्यागी पुरुष हैं, आप बताइए कि इस पर आपकी क्या राय है? आप इस चीज को दरकिनारा कीजिए कि यह बन रहा है, या नहीं बन रहा है, क्या बन रहा है। मैं तो चाहूंगा कि यह मूवमेंट छोड़ी जाए, इस पर सरकार कानून बनाए और इस चीज को हम आगे बढ़ाएं। इलेक्शन कमीशन तो क्या-क्या करता रहता है, राइट टू रीकॉल, राइट टू रीकॉल का इंड्रेंट माथे पर लेकर कैसे चल रहे हैं? इलेक्शन कमीशन कैसे फेल है? अरबों-अरबों की मशीन खरीदी जा रही हैं, एक बार उसका यूस हुआ और उसको खत्म कर दिया, फेंक दिया। यह देश का पैसा इस तरह चला जा रहा है, सारी चीज वेस्ट हो रही है। अभी इंफोरमेशन कमीशन का जिनको चेयरमैन बनाया गया, उनको इतनी पावर मिली कि सुना है कि उन्होंने भी कुछ ऐसा काम देश में कर दिया कि किसी के खिलाफ कोई कुछ भी बोल रहा है। आरटीआई वाले भी कुछ बोल दिया। आप लड़कर इतनी पावर दिलाना चाहते हैं लोकपाल जी को, लोकपाल जी जिस दिन सनक गए, तो वह आपके और हमारे किसी के कंट्रोल में नहीं रहेंगे। वह न शांति भूषण जी को पूछेंगे और न किसी और को पूछेंगे। इसलिए देश की सारी संपत्तियों को, यह समय है, फैसला हो जाए एक बार, सारे लोग पकड़ में आ जाएं, नेशनलाइज करिए और रिडिस्ट्रिब्यूशन करिए संपत्ति को। आप देखिए अगर इसमें हम आपसे कहीं पीछे रहते हों, तो बताइए। हम लोगों में भी ताकत है, हम लोग इसमें आगे आते हैं या नहीं आते हैं, आप देखिए और तभी जाकर सबको मुनासिब हक मिलेगा, गरीबों को फायदा होगा, लोग जय-जयकार करेंगे। आप ऐसा एक कानून बनवाई। इस पर आप अपनी राय दीजिए।

अध्यक्ष जी, आपको धन्यवाद, आपने हमें दुबारा मौका दिया।

SHRI PINAKI MISRA: Firstly, let me just, as a preface, clarify for the record that my Party, the Biju Janata Dal, has mandated me to tell this hon. Committee as well as the panel that we are completely and absolutely committed for a powerful Lokpal at the Centre. Indeed, we have got a powerful Lokayukta at the State level, where we have a retired High Court

Judge who is at present the Lokayukta, subject to a couple of caveats. One is that the federal structure of the Indian polity must not be tinkered with. And, therefore, the State employees, according to us, should remain with the Lokayukta. This is, I think, now part of the Jan Lokpal Committee recommendations as well. Earlier, there was some misgiving that the State employees would also be part of the Central Lokpal. That has now been done away with. So, what was one caveat.

The other thing is that we are committed to involving the Prime Minister as part of the Lokpal. In Orissa, the Chief Minister is part of the Lokayukta. Therefore, the Prime Minister should be made part of the Lokpal. There could be hedged in a caveat. For instance, the NCPRI has come up with the suggestion, which is a valuable suggestion which can be looked into, subject to how the civil society members here feel, that “no investigation would be launched against the sitting Prime Minister unless a reference has been made by a full bench of the Lokpal to the Chief Justice of India and that the Chief Justice of India has constituted a full bench of the Supreme Court which has examined the complaint and the relevant grounds and evidence and come to the conclusion that such an investigation is warranted, provided further that...” This has been well-documented. It appeared to all of us, when they had appeared before the Committee, to be a very sane suggestion. So, I believe that while the Prime Minister, as a serving Prime Minister, should definitely be under the Lokpal, perhaps on issues such as national security, foreign policy, defence, etc., if he is able to convince this particular screening, scrutinizing or filtering committee that he should be kept out, then he could be kept out. That is as things stand.

Now, I need a couple of pointed clarifications. Shri Anna Hazare today held a Press Conference at noon which I watched. Even yesterday, all the members of the committee who appeared before us told us that they now consider the Uttarakhand Bill as the model Bill, and Shri Anna Hazare clearly said that he would be very happy if Parliament passed that Bill.

SHRI PINAKI MISRA (CONTD.): Anna Hazareji clearly said that he would be very happy if the Parliament passes that Bill. Unfortunately, we still don't have a copy of the Uttarakhand Bill. We tried to go on the website and download a copy, but it is still not available on the website. We have absolutely no idea what this magical Uttarakhand Bill is. My pointed questions are: Does the Uttarakhand Bill, for instance, give the power to tap telephones? Does the Uttarakhand Bill give the power to offer incentives for informers? Essentially what this Jan Lokpal Bill seeks to do is to transform India into an erstwhile USSR or present-day North Korea where every neighbour is watching over every neighbour, every family member is watching over every family member and is acting as a whistle-blower and there is an incentive attached to it. So, do you want that kind of society which becomes practically a police State? In fact, all members here of civil society have been champions of democracy and of a non-police State. Is this now the only remedy available as to convert India into a police State to eliminate corruption? That is a significant query that I have. Is this power to tap telephones and offer these kinds of incentives available in the Uttarakhand Bill? What are the provisions of that Bill that Annaji and his team found so attractive? We would like to know that because we still don't have a copy of that Bill. Secondly, it was made clear that Team Anna wants CVC to be wound up. The reason CBI constituted was to look into corruption cases. All these cases of murders, communal riots and other issues have come up much later. Delhi Police Establishment Act is actually for corruption. The reason we are having this debate is because the CBI has not been made independent as per the Vineet Narain Judgement. If that had happened, there would be no clamour against corruption and there would be clamour for Lokpal. The thrust that the CBI should be made completely independent, I think, merits very very valuable consideration. But it will not just be the part of the CBI which will be hived off, you would also have to take away part of the Income Tax

Investigating Wing because it is after all the Income Tax Investigating Wing which gives out these incentives. So, there can't be two parallel systems of incentives being given out. So, you will have to hive off the Income Tax Investigating Wing; you will have to hive off NTRRO. NTRRO is the only organization today which spend thousands of crores on importing equipment which can tap telephones. Essentially, what we are looking at here is that almost a large section of Government will be hived off and formed a part of the Lokpal. Lokpal will really become a super Government. All these various wings from these various authorities are hived off and put under the Lokpal. Then there is nothing left for these Government organizations to do. That is what Kiran Bediji just said today that if somebody has problem with corruption, he doesn't go to the Police Station; he will go straight to the Lokpal. Therefore, the Police in that sense become otiose as far as corruption is concerned. We have talked about amendment and talked about benches. So far we have heard about Supreme Court, High Court Benches and other Tribunal Benches. If there are going to be Lokpal Benches all over which is practically parallel jurisdiction with these courts -- and once these benches find somebody guilty, and the amendments don't just suggest recommendatory action but they suggest direct punitive action -- where is the role of other authorities such as judiciary, etc? What Paswanji said is very important that Lokpal essentially seeks to import people from the CBI which has enough persons of dubious integrity. We know that some of the worst offenders in Government have been from the CBI, from the Police and from the Enforcement Directorate. They have become enforcers; they have become hatchet man settling one party's issue against the other and, in fact, engaging in acts of blackmail and acts of economic terrorism. Therefore, where is the Lokpal going to arm itself with people? If it is going to come from the CBI, if it is going to come from the Enforcement Directorate, then isn't it better to make all these bodies independent as was envisaged by the Supreme Court in Vineet Narain case and to give them the requisite teeth? They have all come here before us and said you give us requisite teeth and we have as much authority and power to do what you would like us to do. As Lalulji said, is it wise to create such a powerful body today without really any fetters and checks and balances? Is it wise to create a requisite police State in our country, particularly from champions of democracy such as yourselves? Thank you.

श्री अरविंद केजरीवाल : सर, बार-बार CBI की independence की जो बात उठ रही है, जैसा मैंने पहले बताया था कि हम लोग कोई नया crime define नहीं कर रहे हैं, It is PC Act. उस PC Act को enforce करने के लिए अभी तक CBI थी। CBI की प्रॉब्लम यह थी कि CBI independent नहीं थी। हम केवल इतना ही कह रहे हैं कि CBI को independent कर दो और उसको rename करके लोकपाल कर दो। लोकपाल कोई नयी चीज नहीं है। Make CBI independent and rename it as Lokpal. That is what Lokpal is. It is nothing else. आप सब लोग इस बात से सहमत हैं कि CBI को independent करना चाहिए, हम लोग भी यही कह रहे हैं कि CBI को independent कर दो, उसको लोकपाल नाम दे दो, and then there is minor tinkering here and there.

श्री वीजय बहादुर सिंह : कैसे होगा?

श्री प्रशांत भूषण : उसका concept समझ लीजिए। जैसे हम लोग सरकार से कह रहे हैं कि CBI को independent कर दो। अब आप CBI को independent कैसे करेंगे? Independence का क्या मतलब है? Independence का मतलब यह है कि पहले तो आप उनको पूरी functional autonomy दे दीजिए कि उन्हें सरकार से कुछ नहीं पूछना होगा, चाहे phone tapping के लिए,

चाहे prosecution के लिए, चाहे investigation के लिए। वह हमने कर दिया। फिर दूसरा है financial autonomy कि अगर उनको अपने और अफसर लगाने हैं, अगर investigation के लिए अफसर कम पड़ रहे हैं, तो वे लगा सकते हैं। सरकार की सहमति की जरूरत उसमें नहीं होगी। हमने वह भी कर दिया। तीसरा प्वाइंट है कि नियुक्ति कौन करेगा? नियुक्ति सरकार करेगी या नियुक्ति कोई और करेगा? हम लोगों ने उसकी independence preserve करने के लिए एक multi-member selection committee कर दी, जिसमें सरकार की ओर से सिर्फ प्रधान मंत्री हैं, Leader of Opposition हैं, बाकी 6 या 9 independent Constitutional Authorities हैं। फिर सवाल उठता है कि आप पूरे स्ट्रक्चर को एक डायरेक्टर के हाथ में छोड़ देंगे, सिर्फ एक आदमी उसको कंट्रोल करेगा या कोई मल्टी मेंबर सिस्टम होगा? अगर इतनी सशक्त बॉडी होगी, तो सिर्फ एक डायरेक्टर उसको कंट्रोल करेगा या मल्टी मेंबर कंट्रोल होगा? हम लोगों ने उसके लिए एक मल्टी मेंबर कंट्रोल बना दिया कि 11 मेंबर होंगे, वे कंट्रोल करेंगे, बजाय एक मेंबर के। अगर आप इसको ठीक से देखें, तो कायदे से हमने यही किया है कि CBI को बिल्कुल independent बना दिया, उसका नाम चाहे आप लोकपाल कर दें और सिर्फ एक डायरेक्टर के कंट्रोल के बजाय उसके ऊपर 11 लोगों का कंट्रोल कर दिया। अब सवाल यह उठता है कि किसी भी संस्था को आप इतना independent नहीं बना सकते कि उसकी जवाबदेही ही न हो।

श्री प्रशांत भूषण : इंडिपेंडेंस तो ठीक है, सरकार से स्वतंत्रता जरूरी है लेकिन जवाबदेही इसलिए जरूरी है कि अगर उसमें करप्शन हो जाए, कोई misconduct होने लगे, तो किसी के तहत तो जवाबदेह हों। अब सवाल यह उठा कि अच्छा, अब लोकपाल को किसके तहत जवाबदेह बनाएं? एक मॉडल यह था कि हम उसके लिए इम्पीचमेंट का procedure प्रोवाइड कर दें, जो आज जजों के लिए है, लेकिन हम देख चुके हैं कि जजों के लिए वह इम्पीचमेंट का procedure कामयाब नहीं है। उसमें कई तरह की प्रॉब्लम्स हैं, वह प्रैक्टिकल नहीं है, इसलिए हम लोगों ने यह सोचा कि उसका best तरीका यह है कि सुप्रीम कोर्ट के तहत उसको जवाबदेह बना दो। कोई भी व्यक्ति अगर कंप्लेंट करना चाहे, तो कोई भी citizen सुप्रीम कोर्ट को कंप्लेंट कर सकता है। सुप्रीम कोर्ट उसकी एक बेंच nominate करके, जैसे Judges Inquiry Act में उसकी inquiry होती है, वैसे ही inquiry करेगा और अगर उसने यह पाया कि किसी मैम्बर ने misconduct किया है, तो उसको बरखास्त करने की पावर उसको दे दो। दूसरी जवाबदेही हम उसमें यह ले आए कि आज तो सी.बी.आई. को Right to Information Act से भी exempt करने की बात की जा रही है। हम लोगों ने उसमें यह कहा कि लोकपाल के हर investigation का हर detail, investigation के बाद, पब्लिक वेबसाइट पर डाला जाएगा। उसके अलावा हमने यह कहा कि उस पूरी संस्था का हर साल सी.ए.जी. ऑडिट करेगा, फाइनेंशियल और परफॉरमेंस ऑडिट करेगा और उसकी रिपोर्ट पी.ए.सी. को जाएगी। उसके अलावा यह तो खैर होता ही है कि हाई कोर्ट और सुप्रीम कोर्ट को इनके आदेश के ऊपर writ jurisdiction होगा, वह तो संविधान में ही लिखा है।

श्री पिनाकी मिश्रा : उत्तराखंड के बिल में अन्ना जी को इतना क्या attractive लगा? उसमें क्या power of tapping telephones है?

श्री प्रशांत भूषण : सब कुछ है। उसमें फर्क सिर्फ यह है

श्री पिनाकी मिश्रा : तो वहां फोन टैप कौन करेगा?

श्री शांति भूषण : नहीं, नहीं, फोन टैपिंग की पावर क्योंकि State Legislature या तो State Lists के सब्जेक्ट्स में enlist कर सकता है या Concurrent List में। Union इसको नहीं कर सकती, जो पार्लियामेंट कर सकती है। Indian Telegraph Act को वह नहीं कर सकती, इसलिए टैपिंग का उसमें नहीं रखा, इसीलिए हमने लोकपाल बिल में यह कहा है, जिसके अंदर लोकायुक्त भी बनाए जाएंगे, उनको टैपिंग की पावर पार्लियामेंट दे सकती है और पार्लियामेंट देगी। वहां पर उसमें provision नहीं रख सके, क्योंकि State Legislature....

श्री पिनाकी मिश्रा : और क्या attractive features हैं?

श्री शांति भूषण : बाकी सब जो हैं, जो जनलोकपाल बिल में पेश....

अध्यक्ष : मिश्रा जी, कल इन्होंने आपको बता ही दिया था। Basically, in a nutshell, I believe, it is available also. But, it is basically a replica of Jan Lokpal Bill with some *mutatis mutandis* changes.

श्री परिमल नथवानी : कल केजरीवाल साहब ने बताया था कि CVC is not required and it should be closed because they have only 233 personnel and they are not effective. Others also said that CBI should be given independence and it should be merged in the Lokpal. I think, CVC is not only the investigative agency; it is a Commission of inquiry also. Do you feel that all the work of the Government will be taken over by the Lokpal? How far it is true and fair? Secondly, CBI is an independent body for last many years like other organisations worldwide. If you feel that CBI is not independent, you can appoint one person who can be reported like an ex-officio person who will work as a nodal agency for CBI with the Lokpal. Then, what is the difficulty? They will be answerable to Lokpal. One Director rank officer can be given to Lokpal. So, they can also work in co-ordination with Lokpal. CBI is not only running anti-corruption wing; they are doing multifarious functions. Suppose there is a big fraud like the Harshad Mehta case. In such cases, the CBI and many other anti-corruption agencies will have to examine jointly. So, I think the position of CBI and CVC should remain intact. But, yes, in corruption cases of CVC, I suggest that Lokpal can look into the vigilance, administrative and disciplinary part of it.

I would also like to know the expenditure that you expect will be incurred on the entire Lokpal in the country. Recently, Annaji or somebody was talking about the expenditure being incurred on Government administration. So, what is the total expenditure that you expect for infrastructure as well as day-to-day running of Lokpal?

श्री अरविंद केजरीवाल : सर, मोटे-मोटे तौर पर, it is likely to be three to four times the size of CBI which exists today. सी.बी.आई. में आज टोटल चार हजार की staff strength है और हम लोगों ने जो rough calculations किए हैं, वह शायद लगभग 15,000 से 20,000 है, तो

आज जो सी.बी.आई. का बजट है, उसी को अगर आप तीन से चार गुणा कर लें, तो that is the rough calculation of the amount which will be required.

SHRI BALAVANT *alias* BAL APTE: The memorandum, which you gave us yesterday, suggests that now, you believe in a Constitutional structure of this country. So, the Bill, which is presented to the Parliament and which has come to this Committee, you suggested amendments to it, instead of replacing it. So, you believe in the structure under which we are living. In the same manner, we have a system here; we have an entire Government machinery. The approach, otherwise, seems to be that everybody in the Government is dishonest and one dishonest person controls another dishonest person. Therefore, you had the fear about the Home Secretary being the person giving sanction. Home Secretary is not the Government. Home Secretary takes his decision not by taking directions from the Cabinet, and an honest Home Secretary works. Therefore, presuming every Government employee to be dishonest is not the way of eradicating corruption. So, you will have to rely on Government servants who are not corrupt and I would say that their presence in the Government is not very small. Your entire approach is of disbelief and distrust. You will have to leave that approach. And, therefore, where there is a system, it has to be worked properly. Therefore, start with believing people. Otherwise, how are you going to appoint 15,000 people that you assume are not corrupt? Because of this disbelief, you are empowering the Lokayukta in such a manner that you are almost creating a new despot. Where is the check? So, a Lokayukta, who is all powerful, will be as dangerous as an all-powerful Prime Minister. Please, consider this that therefore, there are limits on the powers even of the Lokayukta. You mentioned appeal, and there is no appeal. You can go under 226, but the High Court should not stay. So, you want to control the High Court's powers. The approach is basically unconstitutional.

You have now proposed a grievance redressal structure, Citizens' Charter. How can a Lokayukta, or, a Lokpal look into the grievances all over the country? There has to be independent machinery as, for example, Madhya Pradesh Government has passed a law for public grievances against the administrative machinery not acting.

SHRI BALAVANT ALIAS BAL APTE (CONTD.): This different approach will have to be taken, otherwise, *Lokayukta*, will be having files and files, and, no possibility of any solution. So, this 'grievances' part has to be removed from the powers of the *Lokayukta*.

Coming to the issue of Members of Parliament, I would say that the Members of Parliament have certain guarantees under the Constitution. You want to change that also. The behaviour of Members of Parliament within the House is the privilege of the House and is under the control of the Speaker. If you permit the *Lokayukta* to interfere with that, it is an invitation to chaos. I believe that these things will have to be looked into. This disbelief of everybody in the Government can not happen, and, a *Lokayukta*, who disbelieves everybody in the Government, will be another despot. So, let there be limits on powers of everybody and let there be a structure of checks and balances, which is our Constitutional structure. Thank you.

CHAIRMAN: Very focused comments. Thank you, Apte ji. I am glad that we made you wait.

SHRI HARIN PATHAK: I will be very brief and I will not repeat. अन्ना जी यहां बैठे हैं, इसलिए मैं आज हिन्दी में बोलूंगा। अध्यक्ष महोदय, आपका बहुत-बहुत धन्यवाद। जो बातें कही गयी हैं, उनको मैं रिपीट नहीं करूंगा। पहले तो मैं अन्ना जी का अभिवादन करना

चाहता हूँ। काफी लोग यहां ऐसे बैठे हैं, जिनका एक लम्बा राजनैतिक सफर रहा है। अरविन्द जी की तरह मैं भी 18 साल की उम्र से जेल जाते-जाते, व्यक्तिगत रूप से कोई गुनाह नहीं किया, सात बार लोक सभा, चार बार कारपोरेशन - इस प्रकार 37 सालों से चुनाव जीतता आया हूँ। यहां पर काफी लोग ऐसे बैठे हुए हैं। मुझे आपका अभिवादन करना है कि जो आन्दोलन हम व्यक्तिगत तौर पर करते थे, उसे आपने जन-आंदोलन बनाया। आप इस पर आगे बढ़िए। जहां तक लोकपाल बिल का सवाल है, उसके संबंध में मेरे दो क्लैरीफिकेशंस हैं। मैं चाहूंगा कि उन पर आप अपना मत दे। जैसा अभी मेरे वरिष्ठ श्री बाल आपटे जी ने कहा कि एक कॉन्सेप्ट आप निकाल दीजिए। मैं भी बड़ी विनम्रता के यह बात कहना चाहता हूँ, क्योंकि हमें बहुत तकलीफ होती है। जब कहीं पर आप पांचों में से किसी पर भी छोटा सा आरोप लगता है तो आपको भी तकलीफ होती होगी। इसी प्रकार यहां पर जो सांसद बने हैं या जो सरकारी कर्मचारी हैं, उनका भी परिवार है, उनकी फैमिली है, sometimes, they are hurt by the utterances by people who are using your *manch*. I don't blame that उन लोगों ने किया है, लेकिन कोई भी आकर मंच पर कुछ भी बोले - जिंदगी में 45 साल सेवा करने के बाद कोई चोर, उचक्का या डाकू कहे - तो वह दुखदायी होता ही है। वह हरेक के लिए होगा, आपका भी होता होगा, हम सबको होता है, परिवार को होता है, बच्चे घर में रोते हैं और कहते हैं कि पापा आप चोर हैं, आप बेईमान हैं, आपने तो कुछ किया नहीं है, फिर ऐसा क्यों कहा जा रहा है कि सारे सांसद चोर हैं? इसलिए हम सबकी यह भावना है कि आप कृपया इस बात को देखें। जैसा गौड़ा जी ने भी कहा, मिश्रा जी ने भी कहा कि we are all together. Let us together have a team of elected people and the civil society. हम मिलकर, जैसा आप भी चाहते हैं, एक सशक्त लोकपाल बिल बनाएं। अब मैं बिल के संबंध में क्लैरीफिकेशंस चाहूंगा। पहला, मैं अमेंडमेंट 14 में क्लैरीफिकेशन चाहूंगा। वैसे तो आपने लिखा है कि "anything made punishable under Chapter IX of the Indian Penal Code or under the Prevention of Corruption Act, 1988, which would also include any offence committed by an elected Member of a House of Legislature even in respect of his speech or vote inside the House."

इसमें तकलीफ क्या होती है? अगर हमारी स्पीच पर नियंत्रण लग गया तो फाइनेंस मिनिस्टर बजट बना नहीं पाएंगे। बजट के बाद कई लोग हमें मिलते हैं। मैं एक उदाहरण देना चाहता हूँ। मान लीजिए, रूमाल पर इन्होंने टैक्स लगा दिया। अब लाखों-करोड़ों महिलाएं इसे अपने घर में बनाती हैं, उस पर एक्साइज ड्यूटी लगा दी। लोग मुझे इस संबंध में मिलेंगे, संसद में मैं बोलूंगा कि इसको हटा दो। कल को मेरे कोई मेरे खिलाफ कह देगा कि आपने गारमेंट वालों की दलाली की है। अब अगर इस संबंध में मैं नहीं बोलूंगा तो संसद में गरीबों के लिए कौन बोलेगा? आपने क्यों डाला है? 1999 में डाला गया, मैंने निकलवाया। मैंने मिल-मजदूरों के लिए लड़ाई की और उनको हक दिलवाया। इस प्रकार संसद में जो हम बोलेंगे, उस पर भी अगर रोक लगेगी तो कैसे काम चलेगा? हमारी राजनीति धर्म, जाति और राजनैतिक दलों से जुड़ी हुई है। मैं किसी एक दल में हूँ और मैं सात बार जीत चुका हूँ,

किसी को यह बात पसंद नहीं आती है। मेरे खिलाफ कम्प्लेंट करने के लिए एक लाख रुपए जुर्माना है, किन्तु वह कर दी जाएगी, यह सोचकर कि हरिन जी तो कभी हारते ही नहीं हैं, इनको कैसे भी करके हरा दो। वह एक लाख रुपया तो राजनैतिक दल वाला मेरे खिलाफ कम्प्लेंट करने के लिए दे देगा। महोदय, सांसदों को संसद में अपना कर्तव्य निभाना है। फ्रीडम ऑफ स्पीच तो आपके यहां भी है। मेरा मत अलग हो सकता है। अगर सरकार कुछ गलत करती है तो प्रतिपक्ष की जिम्मेदारी है कि वह बोले। सरकार में भी लोग बोलते हैं कि यह एक्साइज इयूटी ज्यादा लगायी गयी है। इस प्रकार वित्त मंत्री एक बार बजट स्पीच करेंगे, फिर सभी sections of the society meet the Finance Minister. वे उनसे मिलते हैं और जहां पर भी उनको लगता है कि हमें फाइनेंस बिल में सुधार करना है - प्रशांत भूषण जी इस बारे में जानते हैं, आप भी मंत्री रह चुके हैं, तब मैं भी उस जेल में था, सब मिलकर उन्हें आग्रह कर सकते हैं कि एक्साइज कम करो या वह कम करो। इस प्रकार कॉर्पोरेट सेक्टर हो या बड़ा सेक्टर हो, इन छोटे-छोटे लोगों के लिए अगर हम संसद में बोलेंगे और हमारा प्रतिपक्ष वाला एक अर्जी डाल देगा तो तुरंत मीडिया ट्रायल हो जाएगा। जैसे आप सबका हो रहा है, हमारा भी हो रहा है, छोटी सी बात को वे पकड़ लेते हैं। वे तो इंतजार भी नहीं करते कि हरिन पाठक के खिलाफ या प्रशांत जी के खिलाफ या किरण जी के खिलाफ ऐप्लीकेशन सही है या गलत है, बस तुरंत मीडिया ट्रायल शुरू हो जाता है। इसलिए मेरी यही प्रार्थना है कि संसद में हमें बोलने की आज़ादी दी जाए। ..(व्यवधान)..

श्री बलवंत उर्फ बाल आपटे : वह आज़ादी है, इन्होंने निकालने का प्रयास किया है।

श्री हरिन पाठक : निकालने का प्रयास किया है इसलिए मैंने इतना समय ले लिया। मैं कहना चाहता हूं कि हम बोलेंगे तो समाज के लिए बोलेंगे, उस पर अगर लोकायुक्त आ गया तो लोकायुक्त पर तो मुझे ऐतराज नहीं है। हमारे विरोधी दल वाले जो लोग हैं, वे तुरंत कम्प्लेंट कर देंगे कि हमने किसी का पक्ष लेकर किसी व्यक्ति को फायदा पहुंचाया, किसी इंडस्ट्री को फायदा पहुंचाया, किसी छोटे-मोटे मिल मज़दूर को फायदा पहुंचाया।

अध्यक्ष : इसमें एक वाक्य जोड़ दें कि वाणी की स्वतंत्रता कई संस्थाओं में विशेष रूप से दी जाती है, 105 आपको यह स्वतंत्रता देता है, कोर्ट कचहरी में हम लोग जाते हैं, वहां पर भी वाणी की स्वतंत्रता है। वहां पर बहस या दलील करने में कोई मानहानि की याचिका नहीं कर सकता है। मैं शांति भूषण जी से आग्रह करूंगा कि आप इसका जवाब दें।

श्री अन्ना हजारे : मैं एक बात रखना चाहता हूं। दो-तीन मैंबर्स ने कहा कि हम लोग सांसदों के लिए चोर शब्द आदि का प्रयोग करते हैं। अभी तक हम लोगों ने कभी चोर शब्द का प्रयोग नहीं किया है।

श्री हरिन पाठक : आपके मंच से हुआ। कोई सिनेमा के ऐक्टर आए थे।

श्री अन्ना हजारे : हम लोगों ने इस बात को नहीं रखा। हम लोग यह मानते हैं कि पार्लियामेंट में आप जो बैठे हैं, आप और हम लोग, दोनों मिलकर हम इस देश को आगे बढ़ाएंगे।

श्री हरिन पाठक : जी, यही हमारा कहना है। ..(व्यवधान)..

SHRIMATI KIRAN BEDI: I have never used these words. I only said, “some of you have many faces” और वह शक्लें सभी की हैं।

श्री बलवंत उर्फ बाल आपटे : किरन जी, आपको लोगों ने देखा है। ..(व्यवधान)..

SHRIMATI KIRAN BEDI: I am sorry I never used any word of the kind you are alleging. I said, ‘some of you have many faces’. That’s what I said, which is true. Sometimes you have one presentation in one way and sometimes you say something different according to situation. That’s what I said.

SHRI BALAVANT ALIAS BAL APTE: Are you defending what you did on the stage?

SHRIMATI KIRAN BEDI: I am not going back. I am only clarifying what I said.

SHRI BALAVANT ALIAS BAL APTE: If you want to defend, defend. We will see what you are doing.

SHRIMATI KIRAN BEDI: Sir, we are not talking on this issue. I was only clarifying what was being alleged. I did not say anything of that kind.

SHRI S. SEMMALAI: The manner in which you have clarified your point is not acceptable.

SHRIMATI KIRAN BEDI: I cannot walk away with a false allegation.

CHAIRMAN: Semmalaiji, that falls under the jurisdiction of another brotherly Committee of the Parliament. Leave it there.

SHRI SHASHI BHUSHAN: Sir, what I was saying was that this 14th amendment does not put any restriction on the freedom of speech or on the freedom of vote. It only says that, because Prevention of Corruption Act includes an MP and says, for instance, if an MP takes a bribe to cast a vote or if an MP takes a bribe to make a particular speech and if he is investigated, reported and convicted for that offence, there is no interference with his freedom of speech. Therefore, this clarification makes it clear that if he is taking a bribe even in respect of making a speech or casting a vote, it will not cease to come under the jurisdiction, investigation by the Lokpal or conviction under the Prevent of Corruption Act.

SHRI PRASHANT BHUSHAN: In order to take care of this fear of people making false allegation that for giving a speech, this person has taken a bribe, etc., we have kept that safeguard that seven-member bench of the Lokpal will first examine that allegation, see whether there is any prima facie evidence or not, and only if there is prima facie evidence, will they give permission for investigation. In any case, nothing will happen until the investigation is really completed.

श्री हरिन पाठक : जैसे बड़े लोग होते हैं, जैसा उनका नाम बड़ा है, बड़े हैं नहीं, तुरन्त मीडिया में हो जाता है।

श्री प्रशांत भूषण : वह तो आज भी हो सकता है, उसको कोई रोक ही नहीं सकता।

श्री शांति भूषण : मान लीजिए एक फलाने सांसद ने खून किया है। इस चीज का तो करप्शन से कोई ताल्लुक नहीं है, लोकपाल से कोई ताल्लुक नहीं। यह कर सकते हैं, अगर किसी ने ऐसे ही झूठा कह दिया, आप डिफेमेशन की प्रोसीडिंग्स उसके खिलाफ ले सकते हैं। अगर कोई झूठा चार्ज लगाता है तो उसको क्रिमिनल और सिविल दोनों डिफेमेशन प्रोसीडिंग्स हो सकती हैं।

SHRI D.B. CHANDRE GOUDA: What is the stand of the Jan Lokpal or civil society on the whistle blowers? You are the whistle blower now to the country.

CHAIRMAN: There is a whole chapter in their representation on whistle blowers.

SHRI D.B. CHANDRE GOUDA: The other point is, what do you do with the media?

श्री वीजय बहादुर सिंह : मैं अन्ना जी और टीम का स्वागत करता हूँ। इसमें कोई दो राय नहीं कि पूरा देश इंकलुडिंग पार्लियामेंट, मेंबर ऑफ पार्लियामेंट करप्शन इश्यु में बिल्कुल साथ हैं। इसलिए कोई दो राय नहीं है तथा कोई भी ऐसा आदमी यह नहीं चाहता कि करप्शन न हटे। हमारा जो इंप्रेशन आज देश में है, जैसा मूवमेंट आपने स्टार्ट किया, आपने कुछ प्रिजम्पशंस मान लिए हैं। जैसे प्रिजम्पशन है कि politicians are corrupt, Members of Parliament are not performing their duties, CBI is useless or CBI is paralysed. लेकिन हमारा कहना दूसरा है, इस एंगिल से आप देख लें। आप शांति भूषण जी हैं, प्रशांत भूषण जी हैं, यह बिल्कुल क्लियर है, सुप्रीम कोर्ट ने कई केसेज में केशवानन्द भारती से लेकर आज तक कह दिया कि भारतवर्ष में Constitution is supreme. कोई भी ऐसा मकेनिज्म न आए कि कांस्टीट्यूशन की सुप्रीमेसी में क्लाउड आए। सुप्रीम कोर्ट की कांस्टीट्यूशन बेंच ने यह भी कहा कि जो कांस्टीट्यूशन है यह एक लिविंग आर्गन है, जिन्दा बाँड़ी का पार्ट है, जो डवलप होता है, पिछलता है, जलता है, जैसे-जैसे सोसाइटी की आवश्यकताएं होती हैं, रिफ्लेक्शन होता है। नवीन जिंदल के केस में कहा, शुरू में केशवानन्द भारती के केस में कहा। आप जानते हैं। हमारा कहना यह है कि जैसे 40-45 साल से सी0बी0आई0 चल रही है, अगर सी0बी0आई के फंक्शनिंग में कोई डिफेक्ट है तो उसको ठीक किया जाए या सिवाए उसको एबॉलिश कर दिया जाए। उदाहरण के लिए, मान लीजिए कोई ऑपरेशन थियेटर है जिसमें 25 साल से बीसियों ऑपरेशन हो रहे हैं, बाद में उसमें कोई वॉयरस आ गया तो एक तरीका तो यह है कि उसको डायनामाइट कर दो और दूसरा ऑपरेशन थियेटर बनाओ या फिर उसके वॉयरस को ही ठीक करो। क्योंकि यह एक चीज है। दूसरे जो हम लोगों को अनुभव हुआ कि इतना प्रेशर में यह सब काम हो रहा है, इतना बड़ा मुद्दा करप्शन का साठ साल से सारा ग्लोबल इश्यु है, हम देखते हैं कि ईविन जापान के प्रधान मंत्री वगैरह कई लोग करप्शन में हटाए गए तथा इस्तीफा दे रहे हैं, ऐसा बहुत जगह हो रहा है। इसमें आपने इतना जल्दी टाइम फ्रेम कर दिया कि अगर हड़बड़ी में सब काम हुआ तो इसका रिजल्ट भी आप समझ लें। तीसरी बात, हमारा कहना यह है, अब रहा हम लोगों का कंडक्ट। इसके पहले वाली 14वीं लोक सभा में कम से कम 13 मेंबर ऑफ पार्लियामेंट टर्मिनेट कर दिए गए दो-दो हजार,

पांच-पांच हजार रुपए की थोड़ी सी शिकायत में। उस समय लोक सभा के स्पीकर श्री सोमनाथ चटर्जी थे, जो बहुत स्ट्रिक्ट थे। तो हम लोग भी करप्शन को खत्म कर देना चाहते हैं न कि करप्शन को पनपाना चाहते हैं। मैं चाहता हूं अन्ना जी का ऐसा जो आंदोलन है इसका मैं स्वागत करता हूं लेकिन आप एक ऐसा रास्ता निकालें जिससे कि जो ऑलरेडि हमारे इंस्टीट्यूशंस हैं, अब जैसे आप होम सैक्रेटरी की बात कर रहे हैं, जो फोन टेपिंग की बात है। अगर चार जगह फोन टेपिंग होगी तो यह एक-दो बार ठीक है लेकिन ऐसी ब्यूरोक्रेसी नहीं है कि सब करप्ट हैं। हमने भी ऐसा देखा है, शांति भूषण जी हैं, कई ऐसे जजेज हैं जो ऑनेस्टी की पराकाष्ठा में रहे हैं और उन्हीं से इंस्टीट्यूशन चलता है। तो अभी जैसे सी0वी0सी0 का अपोइंटमेंट हुआ, सुप्रीमकोर्ट ने उनको हटा दिया, फिर दूसरे सज्जन आ गए। मेरा कहना यह है कि जो ऑलरेडि institutions have stood the test of the time उनको इम्प्रूवमेंट करने की मुहिम उसको लाइन कराइए, अन्यथा यह इतना विकराल ऐक्ट बनेगा कि इसके इम्प्लीमेंटेशन में वही समस्या आएंगी जैसे पहले हो रही है। जैसे जुडिशियरी की बात है। तो जुडिशियरी की एन्ट्री को ठीक कर दीजिए। जैसे आई0ए0एस0 की सर्विसेज है, यहां आई0पी0एस0 मैडम बैठी हैं, आज तक 50 साल से किसी ने सलेक्शन प्रोसस में अंगुली नहीं उठाई। जो क्रीम ऑफ दि कन्ट्री है, जो पढ़े-लिखे बच्चे हैं, वही सलेक्ट हो रहे हैं। सलेक्शन के बाद में वे क्या कर रहे हैं वह डिफ्रेंट इश्यु है। आप उसी तरह जुडिशियरी की एन्ट्री ठीक कर दीजिए, उसके सलेक्शन को ठीक कर दीजिए, डिस्क्रिप्शन को एकदम एलिमिनेट कर दीजिए। अदरवाइज क्या होगा कि न हम इधर के रह पाएंगे, न उधर के रह पाएंगे। आपसे मैं एक और नम्र निवेदन करना चाहता हूं कि आपने कई ऐसे ड्राफ्ट दिए हैं, जैसे आपने कहा कि minimum six months imprisonment. यह बहुत ज्यादा रिगरस है। यह डिस्क्रिप्शन छोड़ दीजिए, फाइन और इम्प्रेजनमेंट अगर थोड़ा सा भी हुआ, अगर किसी से कोई गलती हो गई तो उसमें मिनिमम सिक्स मंथ नहीं, मैं एक एक्जांपिल दे रहा हूं। ऐसा कुछ ग्रे एरिया उस कोड को उस लोकपाल को या उसको भी छोड़िए कि वह अपने विवेक से करे। हम आपका पुनः स्वागत करते हैं। नेपोलियन की बॉओग्राफी में है.....

SHRI VIJAY BAHADUR SINGH (CONTD.): No negotiation under fear; but never fear to negotiate. आप नेगोसिएट करिए, इतना नहीं कि अगर आप नहीं करेंगे तो election में हरा देंगे। मैं मोहबा से आता हूं। मैं इलाहाबाद में एक मुकदमें में बहस कर रहा था, तो मेरे पास टेलीफोन आया कि अन्ना हजारे जी की टीम आ रही है। मैं वहां से तुरंत आया और लगातार 6 घंटे तक गाड़ी चलाकर यहां पहुंचा। इसलिए ऐसा मत करिए कि कहीं लोकपाल भस्मासुर की तरह हो जाए। आपने वेबसाइट की बात बताई। हमारे जिले हमीरपुर, मोहबा में पचास या साठ टेलीविजन ही हैं। वहां पर तो अखबार ही मुश्किल से हजार या पांच सौ ही मिलते हैं। जो इस तरह का Metropolitan फोकस है, वह available नहीं है। किरन बेदी जी, बार-बार कहती हैं कि अगर क्राइम होता है तो FIR लिखी जाए, लेकिन करप्शन कहां लिखा जाए?

आप यह मकैनिज्म करिए, लेकिन उसको इतना ओवर डोज मत करिए कि एनटी बाइटिक रिएक्ट कर जाए और यह ह्यूमन बॉडी फेल हो जाए।

श्री कीर्ति आजाद : मैं अपने क्षेत्र में गया था और वहां के सभ्य समाज के लोगों के साथ बैठा था, जिसको आपने अंग्रेजी में civil society लिखा हुआ है। उनके मन में कई ऐसी दुविधाएं थीं, जो उन्होंने मुझसे कही थीं। मैं अपने क्षेत्र में महीने में पन्द्रह से बीस दिन तक रहता हूं। वहां पर मेरा लोगों के साथ विचारों का आदान-प्रदान होता रहता है। कल किरन जी ने यहां पर टाउन हॉल कॉन्फ्रेंस की बात की थी। हम लोग तो हर रोज जनता से मिलते हैं तो पन्द्रह-बीस दिनों के बाद एक बार मिलने की बात, मुझे समझ में नहीं आई। मैं तो सबसे पहले आप सभी को आमंत्रित करता हूं कि आप कृपया मेरे क्षेत्र में आइए। मेरे लिए यह बड़ी प्रसन्नता की बात होगी और आप भी लोगों से आमने-सामने बैठकर बात करें। उन लोगों के मन में भी काफी ऐसे प्रश्न हैं, जो वे आप से व्यक्तिगत रूप से पूछना चाहते हैं। उन्होंने मुझे आप से कुछ जानकारी लेने के लिए कहा था। उन्होंने कहा था कि उन्होंने एक बार अन्ना हजारे जी का किसी टेलीविजन पर interview देखा, जिसमें उन्होंने कहा था कि जनलोकपाल बिल जब आएगा तो उससे लगभग पचास से साठ प्रतिशत भ्रष्टाचार दूर हो जाएगा। वे लोग यह जानना चाहते थे कि क्या अन्ना जी व उनकी टीम के पास क्या ऐसा कोई बाण नहीं है, जिससे सौ प्रतिशत भ्रष्टाचार दूर हो जाए। जब इस लोकपाल के बारे में 1968 परिकल्पना की गई थी, उस समय एक रुपए में से 90 पैसे सरकार के पास थे और दस पैसे निजी क्षेत्र में थे। आज की परिस्थिति में वह बिल्कुल विपरीत है। आज 33 पैसे सरकार के पास हैं और 68 पैसे कॉर्पोरेट सेक्टर में हैं। आज जिस भ्रष्टाचार को लेकर चिंता हो रही है, चाहे 2जी को लेकर है, चाहे कॉमनवेल्थ गेम्स को लेकर है, उसके अंदर आप देखेंगे तो निजी क्षेत्र के लोगों ने किस प्रकार से कम दामों पर लिया और ज्यादा दामों पर दे दिया। यह विषय अभी लोगों के बीच है और इस पर लोगों के विचारों का आदान-प्रदान हो रहा है। इसको देखकर भी लोगों के मन में चिंता थी। हमारे क्षेत्र के लोगों ने कहा कि अगर अन्ना जी कहते हैं कि पचास से साठ प्रतिशत भ्रष्टाचार दूर होगा, तो 33 पैसे का 60 प्रतिशत लगभग सत्रह या अठारह पैसे होगा। चलिए, हम उसको बीस पैसे तक मान लेते हैं, तो क्या इस लोकपाल बिल के आने पर एक रुपए में इस जनलोकपाल बिल से केवल बीस पैसे के ऊपर नियंत्रण कर सकेंगे, बाकी के अस्सी पैसे पर भ्रष्टाचार होता रहेगा?

आपने देखा कि हमारी पार्टी ने इसका समर्थन किया है और उत्तराखंड में भी इसको लागू किया गया है। मैं इस समय सभी की तरफ से जानना चाहता हूं कि क्या आपके पास ऐसा कोई राम बाण नहीं है, जिससे पूरे देश को इस पूरे भ्रष्टाचार से निजात दिला सकें? अभी किरन जी बता रही थी कि FIR नहीं होती है, लेकिन वे जानती हैं, मैं दिल्ली की बात करता हूं। मैं यहां से विधायक भी रहा हूं, आप जिस क्षेत्र में बैठे हैं, वहां से रहा हूं। यहां ऐसे नौ या दस पुलिस थाने हैं, जिनमें पोस्टिंग के लिए SHO चालीस से पचास लाख रुपए तक

देते हैं। आप उस भ्रष्टाचार को कैसे रोकेंगे, क्योंकि SHO अपनी पोस्टिंग के लिए जाएगा, लेकिन वह तो बताएगा नहीं, आप उसको कैसे रोकेंगे? ऐसी बहुत सारी बातें थीं, जो मेरे क्षेत्र के लोग जानना चाहते थे। उन्होंने कहा कि अन्ना हजारे जी के पास ऐसा क्या है कि लोग उनके पास जा रहे हैं और बात कर रहे हैं, तो फिर उनके पास ऐसा बाण क्यों नहीं निकल सकता?

मैं जानता हूँ कि एक मछली पूरे तालाब को गंदा कर देती है, इसका यह मतलब नहीं कि तालाब में सारी मछलियां गंदी होती हैं। मैं भी एक स्वतंत्रता सेनानी का पुत्र हूँ। मेरे पिता जी भी 6 बार संसद के सदस्य रहे हैं और मुख्य मंत्री भी रहे हैं तथा केन्द्र में मंत्री भी रहे हैं। उनका पिछले तीन महीने के अंदर ही देहान्त हुआ है। लोगों ने उनको बड़ा सम्मान दिया है। मैं उसी परिवार से आता हूँ। आप अपनी बात कहें जरूर, लेकिन इस प्रकार से कहना उचित नहीं लगता है। मैंने अपने देश का नाम रौशन किया है, वर्ल्ड कप जीता है। मैं देश की आन-बान-शान और मान मर्यादा के लिए खेला हूँ। मुझे आज तक किसी पुलिस थाने या CBI में जाने का अनुभव नहीं हुआ है। भगवान न करे कभी ऐसा हो, जिस दिन ऐसा होगा, उस दिन जरूर आप इन सब चीजों को लेकर कह सकते हैं। मेरा केवल इतना ही अनुरोध है कि आप मुझे यह बताएं कि इस लोकपाल से आप केवल बीस पैसे ही भ्रष्टाचार से बचा पाएंगे तो बाकी 80 पैसे का क्या होगा?

श्री शांति भूषण: करप्शन में पैसे की बात नहीं है। करप्शन में यह है कि सरकारी काम करने के लिए जो रिश्तत मांगी जाती है, वह Prevention of Corruption Act में corruption है। उस पर रोक लगाने की बात थी कि काम करने के लिए रिश्तत न ले। आज जैसा कि जनता का मानना है कि अगर आप बिल्डिंग प्लान को सैंक्शन कराने के लिए जाएं, बगैर पैसे के काम नहीं होगा, बिजली का कनेक्शन लेने के लिए जाएं तो वह भी बिना पैसे के नहीं मिलेगा। सरकारी विभागों में कोई-कोई अपवाद हो सकते हैं, लेकिन ईमानदार आफिसर्स भी हैं। ऐसा नहीं है कि सब बेईमान हैं, ईमानदार आफिसर्स भी हैं। आपने बताया कि थाने में auction है कि कनॉट प्लेस में किसको स्टेशन ऑफिसर बनाया जाए। पचास लाख रुपए ऊपर जाते हैं, तो ये पचास लाख रुपए किसके पास जाते हैं? आज तक तो कभी इसकी जांच हुई नहीं। हमें उम्मीद है कि जब लोकपाल बिल बन जाएगा तो इसकी जांच होगी। इसकी जड़ में जाकर जांच की जाएगी और फिर पता चलेगा कि कौन ऑफिसर्स हैं, जो पचास लाख रुपए उस थाने के लिए लेते हैं। जिस दिन उनमें से किसी एक को सजा होगी तो वह जेल चला जाएगा। कुछ मामलों में आज बड़े-बड़े लोग जेल में हैं। जो कोई बड़ा ऑफिसर थानेदार की पोस्टिंग करने के लिए पचास लाख रुपए लेता है, जब कोई एक भी ऑफिसर जेल में जाएगा, तो इस पर बड़ी भारी रोक लगेगी और उसके बाद किसी की भी हिम्मत नहीं होगी।

श्री कीर्ति आजाद : सर, आप मेरे पिता तुल्य हैं, मैं धृष्टता कर रहा हूँ कि आपको बीच में टोक रहा हूँ। यदि मुझे फलां जगह जाना है और पचास लाख रुपए दूंगा, तो मुझे यह भी

मालूम है कि वहां से एक करोड़ रुपए भी कमाऊंगा। फिर मुझे पचास लाख रुपए देने में और उनको लेने में क्या समस्या है? मैं जानना चाहता हूँ कि वह कैसे पकड़ा जाएगा?

श्री शांति भूषण: इसीलिए हम कह रहे हैं कि टेलीफोन टैपिंग आवश्यक है। वह जाएगा, पता लगाएगा कि उसकी सम्पत्ति कितनी है। उस ऑफिसर की कितनी सम्पत्ति बढ़ी है। यही सब तो Prevention of Corruption Act में है। जब उसकी जांच होगी कि उसकी सम्पत्ति कैसे बढ़ी और कहां से बढ़ी तब पता चलेगा, लेकिन आज उसकी कोई जांच नहीं होती है। आप देखिए हांगकांग में भी यही बात थी। जब हांगकांग में यह ombudsman का बिल बना, तो जनता सड़कों पर आ गई थी। जनता ने गवर्नमेंट को इंडिपेंडेंट अथॉरिटी बनाने के लिए फोर्स किया। आज हांगकांग में रिश्त का कोई नाम नहीं है। जब लोग जेल जाना शुरू करेंगे, तब एकदम से इस पर रोक लगेगी। आज तो कोई जा ही नहीं रहा है। आज सुप्रीम कोर्ट जरूर कुछ लोगों को जेल भेज रही है। जहां सुप्रीम कोर्ट मॉनिटरिंग करती है, वहां तो CBI को कुछ ठीक-ठाक करना पड़ता है। लेकिन otherwise नहीं होता है। इसीलिए विश्व में यूएन कन्वेंशन बनी थी कि रिश्त के लिए इन्वेस्टिगेशन की इंडिपेंडेंट संस्था बने। हमने उसी स्तर से यूएन कन्वेंशन को फॉलो करके, कॉपी करके यह बिल बनाया है। यदि आप लोगों की इस बिल को पास करने की मंजूरी मिलेगी तो आप इसका नतीजा देखेंगे।

श्रीमती किरन बेदी : Sir, I have to add only two things. कीर्ति जी, दो चीजें एकदम फर्क डालेंगी। एक तो *suo motu* का क्लॉज है। *Suo motu* से इतना साफ-साफ एविडेंस आ रहा है कि कहां भ्रष्टाचार हो रहा है। *Suo motu* अभी हमारी कई इन्वेस्टिगेशन एजेंसीज़ नहीं करती हैं अगर करती भी हैं, तो वे करने से पहले इजाजत मांगती हैं। 2005 से जब से राइट टू इन्फॉर्मेशन से आया है, हमारी इन्वेस्टिगेशन एजेंसीज़ आजाद हुई हैं, अब एविडेंस public domain में आने लग गया।

श्रीमती किरण बेदी (क्रमागत) : लेकिन हमारी investigating agencies constrained हैं और वे suo motu action नहीं लेतीं। मैं आपको इसका उदाहरण देती हूँ। CWG की corruption, 2G की corruption कितनी ज्यादा public domain में थी, लेकिन क्या सीबीआई ने suo motu action लिया या तब लिया, जब सुप्रीम कोर्ट ने intervene किया। यह इस बात को साबित करती है। *Suo motu* इसे dramatically change करेगा। अन्ना जी कह रहे हैं कि भ्रष्टाचार 60 परसेंट कम होगा, मैं कहती हूँ कि इससे भी ज्यादा होगा, क्योंकि डर एकदम बढ़ जाएगा। इस वक्त डर बहुत कम है। The chances of gain are higher, the fear is low, the risk is low. Then, risk will be higher and the gain will be low, क्योंकि उसे डर लगेगा कि मेरा सम्मान, मेरा पैसा वापस चला जाएगा।

दूसरी चीज मैं whistle blower के बारे में कहना चाहती हूँ। मान लीजिए कि मैं दिल्ली पुलिस में हूँ। मुझे पता है कि मेरा हेडक्वार्टर भ्रष्टाचार कर रहा है। क्या अभी तक मेरे पास कोई protection है कि मैं किसी जगह लोकपाल में जाऊँ और अगर मेरी complaint सच्ची हो,

तो वह confidential हो और फिर मेरी promotion, मेरा transfer और मेरी security की कोई रक्षा करेगा? ऐसा नहीं है, सर। अभी तक whistle blower की protection नहीं है, इसलिए आपको departmental information मिलती ही नहीं है। अगर whistle blower की protection होगी, तो मैं आपको गारंटी देती हूँ कि जिस SHO को अच्छी posting से deprive किया जा रहा है, वह whistle blow करेगा। वह लोकपाल के पास जाएगा और information बताएगा। अगर उसकी information सच निकलेगी, तो वह protect हो जाएगा और इससे corruption रुकेगा। मैंने सिर्फ दो provisions लिए हैं। एक-एक provision इस corruption के ग्राफ़ को गिराएगा। ये दोनों मेरे लिए बहुत valid हैं – एक, suo motu और दूसरा, whistle blower.

SHRI KIRTI AZAD: I agree to what you say. The things are between you and me, जो सिर्फ मेरे और आपके बीच में है, मान लीजिए कि मैं SHO हूँ, मैंने आपकी जेब गरम कर दी और आपने मुझे post कर दिया। संभवतः ऐसा हो सकता है कि कोई दूसरा आदमी आकर कहे कि ऐसा किया है। अगर वह हो गया, तो कोई तीसरा आदमी आकर frivolous complaint कर देगा कि वह गलत है।

श्रीमती किरण बेदी : ‘Frivolous’ का तो clause है।

SHRI KIRTI AZAD: You and I have studied together in the college.

श्रीमती किरण बेदी : उत्तराखंड ने तो बहुत अच्छा provision बना दिया है। उसमें reward money भी है।

श्री कीर्ति आजाद : मैं सिर्फ यह कह रहा हूँ कि जो बात केवल आपके और मेरे बीच हुई है, वह whistle blower कहाँ से बता पाएगा।

श्री अरविंद केजरीवाल : सर, मैं बताता हूँ। वह जो पैसा लेगा, उसे कहीं-न-कहीं invest करेगा और वह Disproportionate Asset का केस बनेगा।

श्री कीर्ति आजाद : लोग सेठों के पास पैसा रख जाते हैं, तो आपको कैसे पता लगेगा कि उसने कहाँ invest किया है?

श्री अरविंद केजरीवाल : सर, कई तरह के सबूत इकट्ठे होते हैं। एक तो यह कि वह Disproportionate Asset का केस बनेगा। मैं आयकर विभाग में था। वहाँ हमने 1998-99 में कई मल्टीनेशनल कंपनीज़ के ऊपर raid किया। उन मल्टीनेशनल कंपनीज़ के जो top executives होते थे, they were all foreigners. वे अपनी तन्ख्वाह का एक portion अपनी home country में लेते थे, दूसरा portion इंडिया में लेते थे और तीसरा एक अन्य देश में लेते थे। अब यह arrangement तो केवल उनके और कंपनी के बीच है, इसके बारे में किसी को तो पता चलना नहीं चाहिए, लेकिन जब हम raid करते थे और उनके सूटकेस और drawers खोलते थे, तो उनके बैंक की statements मिल जाती थीं। उसमें उनकी third country की स्टेटमेंट और उनकी home country की स्टेटमेंट मिल जाती थी। Legally, अगर आपने यहाँ 180 दिन से ज्यादा

काम किया है, तो आपको सारे पैसे पर टैक्स जमा करना पड़ेगा। हम उनको रंगे हाथों पकड़ते थे और एक साल में हम 500 करोड़ रुपये लेकर आए थे। इस प्रकार बहुत तरह के सबूत मिलते हैं। अभी यहाँ पर बताना बड़ा मुश्किल है, अलग-अलग जगहों पर आपको अलग-अलग किस्म के सबूत मिलेंगे।

श्री वीजय बहादुर सिंह : आपको उस डिपार्टमेंट में रहना चाहिए था।

श्री अरविंद केजरीवाल : सर, आपको नहीं लगता कि यहाँ पर ज्यादा अच्छा काम हो रहा है। वहाँ पर तो लोग काम कर ही रहे हैं।

श्रीमती मीनाक्षी नटराजन : अध्यक्ष जी, मैं आपके माध्यम से कुछ प्रश्न इनके सामने रखना चाहती हूँ। सबसे पहले मैं आप सबका बहुत-बहुत स्वागत करती हूँ। मैं आपका धन्यवाद भी करती हूँ कि हमारी कमेटी में आकर आपने अपने views बताए।

मेरी सबसे पहली बात यह है कि आपने कहा कि ऊपर से लेकर नीचे तक Lower Bureaucracy को लोकपाल के दायरे में लाना चाहिए। इसके लिए आपने सुझाव दिया है कि सीबीआई की जो वर्तमान strength है, उसे करीब-करीब तीन गुना कर दिया जाए। फिर इस तरह जाँच होगी और ऊपर से लेकर नीचे तक सभी लोग उसमें cover होंगे। मैं यह कहना चाहती हूँ कि हमारा संविधान तीन खंभों पर आधारित है - एक तरफ विधायिका, दूसरी तरफ प्रशासन और तीसरी तरफ न्यायपालिका है। इन तीनों के बीच जो अंदरूनी रिश्ता है, उसके बीच एक महीन सा balance है। अगर इन तीनों में से किसी एक को अधिक बल मिलता है, तो वह balance टूटता है। आम तौर पर ऐसा देखने में आया है कि जब से पंचायती राज व्यवस्था शुरू हुई, सबसे पहले लोग comment करते हैं कि वह सरपंच भ्रष्ट निकला। बात यह है कि वह सरपंच फिर भी पाँच साल बाद चुनाव लड़ेगा, लेकिन जो अधिकारी वर्ग है, आप उसे यहाँ से हटा कर अंडमान निकोबार भेज दीजिए, तब भी कई मौकों पर वह नौकरी में रहता है। मेरा आपसे पहला प्रश्न है कि लोगों के द्वारा जो प्रतिनिधि चुन कर आते हैं, यानी विधायिका, न्यायपालिका और प्रशासन के बीच हम कैसे balance बरकरार रखेंगे?

दूसरी बात यह है कि आपने अपने प्रस्तुतीकरण में यहाँ कहा कि Prevention of Corruption Act के अन्तर्गत corruption की जो परिभाषा है और उसमें जो public officials परिभाषित हैं, उसी परिभाषा को लेते हुए उन पर नियंत्रण करने के लिए लोकपाल लाया जा रहा है। इसमें मेरा अनुरोध है कि 1988 में Prevention of Corruption Act बना। उस के बाद उदारीकरण का दौर आया और corruption के मामले भी बढ़ गए। कई मामलों में सरकारों ने अपनी जिम्मेदारियों से अपने हाथ पीछे कर लिए, कई चीजों में प्राइवेट लोगों को partner बना लिया और PPP mode शुरू हुआ। इस तरह कई चीजें शुरू हुईं। ऐसे में आप Prevention of Corruption Act में amendment लाने के लिए क्या सुझाव देना चाहेंगे, ताकि हम बदली हुई परिस्थितियों में corruption को रोक सकें?

मेरी तीसरी बात यह है कि अभी UK ने एक Bribery Act बनाया है, जो बेहद अच्छा है। मैं अध्यक्ष जी से भी अनुरोध करूँगी कि उसकी कॉपी हम सबको उपलब्ध कराएँ। क्या आपने उसका अध्ययन करके उसकी कुछ best practices को लेने का प्रयास किया है?

मेरी चौथी बात यह है कि USA में एक Windfall Profit Tax Act है। जैसे 2G का मामला है, उसमें एक particular कंपनी को बहुत ज्यादा लाभ पहुँचाया गया। कई बार यह जान-बूझ कर होगा, लेकिन कई बार अनजाने में भी हो सकता है, जहाँ पर bidding हुई है। वहाँ उस profit पर आप कैसे टैक्स लगाएँगे, इसके बारे में आप अपने विचार बताएँ?

हमारे सब साथियों ने अलग-अलग समय पर कारपोरेट जगत के बारे में कहा। मैं उसमें यह जोड़ना चाहती हूँ कि मेरा प्रदेश उसका भुक्तभोगी है। मध्य प्रदेश में भोपाल गैस ट्रेजडी के victims आज भी न्याय पाने के लिए भटक रहे हैं। है तो यह कारपोरेट जगत द्वारा किया गया अपराध, लेकिन सीधे-सीधे corruption की आज की परिभाषा में नहीं आता, यह दूसरे अपराध में आता है। उन्होंने उचित बचाव नहीं रखा, यह उस अपराध में आता है, लेकिन यह भी corruption के दायरे में है, क्योंकि कहीं-न-कहीं उन्होंने नियमों का सही-सही पालन नहीं किया, उनके लिए नियमों को शिथिल किया गया, इसीलिए वहाँ हजारों लोगों ने अपनी जानें गँवाई और आज भी वहाँ प्रदूषण फैला है। ऐसे में कारपोरेट जगत को control करने के लिए हम क्या करना चाहते हैं?

मेरी आखिरी बात यह है कि सांसदों और विधायकों के बारे में आपने कहा कि उन्हें वाणी की स्वतंत्रता होनी चाहिए। मैं अपने सभी वरिष्ठ साथियों से सहमत हूँ कि उन्हें हाउस के भीतर अपनी राय रखने के लिए वाणी की संपूर्ण स्वतंत्रता होनी चाहिए। कई बार बहस के दौरान हम अपने दल को भी नहीं देखते। वोटिंग के समय हम दल की बात सुनते हैं, लेकिन बहस के समय हम अपने views रखते हैं और अपने संसदीय क्षेत्र का प्रतिनिधित्व करते हैं। वहाँ उन्हें पूरी privilege मिलनी चाहिए। मैं बिहार का उदाहरण देना चाहूँगी और उसकी तारीफ़ भी करती हूँ कि उसने विधायक निधि पर रोक लगाई। सांसदों और विधायकों का काम नीति निर्धारण करना है, कानून बनाना है। लेकिन अब इसके साथ सांसद निधि और विधायक निधि भी डाल दी गई है, जिसकी सही-सही monitoring नहीं हो पाती है। इसके ऊपर आपके क्या सुझाव और क्या विचार हैं, यह मैं आपसे जानना चाहती हूँ?

श्रीमती मीनाक्षी नटराजन: आपने कहा कि स्पीकर सरकार बनाती है, लेकिन हमारे यहाँ के संसदीय लोकतंत्र की परम्परा यह रही है कि सभी दलों के लोग मिल कर स्पीकर को मनोनित करते हैं। मनोनयन के बाद जब तक वह स्पीकर के तौर पर पदासीन है, तब तक वह दलगत राजनीति से ऊपर उठकर काम करता है। वह एक संस्थान है। हम उसे एक संस्थान के तौर पर देखते हैं और उसका उस दृष्टि से सम्मान करते हैं।

एक बात और कहनी है। आज यहाँ एक बात हुई कि छोटे दलों के सदस्यों को भी बोलने देना चाहिए, लेकिन यहाँ दलगत राजनीति की तो कोई बात नहीं है। यहाँ हममें से किसी पर व्हिप भी नहीं है। यहाँ हमारी पार्टी की जो मुख्य लाइन है, वह अलग भी होगी तो भी हम यहाँ स्वतंत्र सदस्यों के तौर पर बोलते हैं। मैं यह बात रिकॉर्ड में लाना चाहती हूँ कि इस कमेटी में हम सब सदस्य हैं और अपने-अपने संसदीय क्षेत्रों का प्रतिनिधित्व करते हैं। पार्टी हमें सिखा-पढ़ा कर या घर से किताब देकर नहीं भेजती कि आप इस पर वहाँ यह राय देकर आइए। यहाँ हम अपने स्वतंत्र मत प्रस्तुत करते हैं।

मैं यह भी कहना चाहती हूँ कि मैं किसी राजनीतिक परिवार से नहीं हूँ। मैंने चुनाव लड़ा और जीता। यह मेरा पहला चुनाव था। किसी भी तरह से मैं न तो उद्योगपतियों के खानदान से हूँ और न ही किसी राजनीतिक परिवार से हूँ। मैं यह भी on record कहना चाहती हूँ कि मेरे सामने जिस व्यक्ति ने चुनाव लड़ा, वे बी.जे.पी. से आठ बार के सांसद थे। वे बेहद ईमानदार व्यक्ति हैं। मैंने भी पूरे चुनाव में पूरे सम्मान से उनका नाम लिया और उनके पैर छूकर ही मैंने अपना चुनाव अभियान शुरू किया। उनको चुनाव में हरा दिया, लेकिन इसके बावजूद जब भी वे हमसे मिलते हैं तो व्यक्तिगत तौर पर हम दोनों में एक दूसरे के प्रति सम्मान में कोई कमी नहीं आई है। भारतीय राजनीति में ऐसे अनेक उदाहरण हैं। मेरे संसदीय क्षेत्र में श्यामसुन्दर पाटिदार जी कांग्रेस के बहुत बड़े नेता थे। वे एक गांधीवादी नेता थे। जब भोपाल गैस ट्रेजडी हुई, तो उसी पल उन्होंने इस्तीफा दिया, जबकि वे केवल श्रम मंत्री थे और उस वक्त वह उनकी जिम्मेदारी भी नहीं थी। मैं केवल आपके सामने प्रश्न रखना चाहती हूँ। मैं आदरणीय बाल आप्टे जी से सहमति व्यक्त करना चाहती हूँ कि हम एक-दूसरे के प्रति अविश्वास के साथ नहीं, बल्कि विश्वास के साथ इस काम को आगे बढ़ाएँ। धन्यवाद।

श्री अरविंद केजरीवाल: सर, इन्होंने दो-तीन बातें कहीं। इनमें से कई तो सुझाव थे। कॉर्पोरेट को लेकर जो बात बार-बार उठ रही है, उसमें मैं यह क्लियर कर दूँ कि यह कॉर्पोरेट दो तरह की गड़बड़ करता है। एक गड़बड़ तो वह है, जिसके बारे में मुझे पक्का यकीन है कि उसी के बारे में लोग सबसे ज्यादा बात कर रहे हैं, कि उसने माइन्स लेने के लिए रिश्त दे दी या उसने जमीन लेने के लिए रिश्त दे दी। इस किस्म का जो भ्रष्टाचार largely है, वह सारा भ्रष्टाचार इस एक्ट में covered है। वह तो Prevention of Corruption Act में already included है। जब लोकपाल उसको implement करेगा तब वह उसके दायरे में आएगा। गलत mining लेना, गलत lease लेना, गलत contract लेना, आदि सारा कुछ उसमें आएगा। Public-Private Partnerships भी उसमें आ जाएँगे। इस तरह वह सारा उसमें already आएगा, इसलिए हम यह न सोचें कि कॉर्पोरेट्स इसके दायरे में नहीं आ रहे हैं। लेकिन, मान लीजिए, रिलायंस ने एअरटेल से 1000 टेलिफोन्स खरीदे और रिलायंस का एक ऑफिसर एअरटेल के ऑफिसर से रिश्त ले लेता है, तो वह इसके दायरे में नहीं है। वह मामला पुलिस

में जाएगा। पुलिस में जाकर रिलायंस वाले कहेंगे कि एअरटेल वाले ने मुझसे रिश्तत ली। वह इसमें नहीं है।

श्री प्रशांत भूषण: अगर पुलिस को रिलायंस वाले bribe दे देते हैं तब वह इसमें आएगा।

श्री अरविंद केजरीवाल: इस तरह कॉरपोरेट्स की रिश्ततखोरी इसके दायरे में है। कई hon. Members of Parliament ने इस मुद्दे को उठाया है। कॉरपोरेट्स की रिश्ततखोरी है। उसमें हमने थोड़ा-सा बदलाव और किया है। हमने उसके offence के मामले में Prevention of Corruption Act के punishment को थोड़ा-सा और बढ़ाने की कोशिश की है। हमने यह लिखा है कि Prevention of Corruption Act में एक गड़बड़ थी। अगर किसी ने भ्रष्टाचार किया तो उसको जेल भेजने का प्रावधान तो है, लेकिन भ्रष्टाचार की वजह से उसने सरकार को जो नुकसान पहुँचाया, उसकी रिकवरी का कहीं कोई प्रावधान नहीं था। अब हमने इसको किया है। इसके साथ-साथ हमने यह भी लिखा है कि अगर उसमें कोई corporate entity involved है, तो वह recovery five times होनी चाहिए। दूसरा, हमने यह लिखा कि अगर किसी corporate entity के ऊपर भ्रष्टाचार का conviction साबित हो जाता है तो उसको future में कभी गवर्नमेंट का कोई ठेका नहीं मिलना चाहिए। यह प्रावधान हमने उसके अन्दर किया है। इसके साथ ही, ऐसा नहीं हो कि उसके प्रमोटर्स यह कम्पनी बन्द कर के दूसरी कोई नई कम्पनी बना लें।

श्री वीजय बहादुर सिंह: केजरीवाल साहब, रिलायंस और एअरटेल वाला भी इसमें रख दीजिए। जब आपने इतना कुछ रखा है तो इतने से को इसमें रखने में क्या दिक्कत है? देखिए, मैं आपको साफ-साफ बता देता हूँ। Whatever be the reason, लोगों में यह डिस्कशन हो रहा है कि आपमें कुछ softness है। यह बात सुनने में आ रही है।

अन्ना जी, आप भी यह सुनिए। लोगों ने ये बातें बतायी हैं, हालाँकि मैं इसका विश्वास नहीं कर सकता, क्योंकि अन्ना जी movement कर रहे हैं.. ...(व्यवधान)... मैं यह कह रहा हूँ कि अगर आप करप्शन के canvass को पूरा all pervasive cover कर रहे हैं तब ये छोटे-छोटे मुद्दे, जो ज्यादा insignificant हैं, उनको रखने में ऐसा तो नहीं हो जाएगा कि overloading हो जाएगी और आप सम्भाल नहीं पाएँगे। मेरा कहना यह है कि कम-से-कम यह विचार न आए कि चूँकि कोई एन.जी.ओ. आपको फंड कर रहा है और वह एन.जी.ओ. बिल्कुल foreigner है तथा गवर्नमेंट से पैसा नहीं ले रहा है, इसलिए आप उस एन.जी.ओ. के लिए कुछ soft हैं या ऐसी कोई बात है, तो इसको करने में क्या नुकसान है?

श्री अरविंद केजरीवाल: सर, आप कुछ भी कर दीजिए, वह हमें मंजूर है।

श्री शांति भूषण: Prevention of Corruption Act में 'offence' की definition में जो और डालना चाहें, उसमें हमें कोई ऐतराज नहीं है। आप उसमें जो चाहे डालिए।

श्री वीजय बहादुर सिंह: यह बात रिकॉर्ड में आ जाए कि अन्ना जी की टीम को हर प्रकार के एन.जी.ओ. को उसमें रखने में कोई ऐतराज नहीं है।

श्री अरविंद केजरीवाल: सर, मैं केवल यह कहना चाह रहा हूँ कि चूँकि हमारे ऊपर कुछ allegations लग रहे हैं और अगर उनसे बचने के लिए हम कानूनी ढाँचा गड़बड़ बना लें, तो ऐसा भी नहीं होना चाहिए। वे allegations लग रहे हैं तो लगने दीजिए। अन्ना जी बार-बार यह कहते हैं कि अपमान पीने की शक्ति होनी चाहिए, तो हम लोगों की वह शक्ति धीरे-धीरे बढ़ती जा रही है। मेरा यह कहना है कि एन.जी.ओज़. का भ्रष्टाचार Trust Act, Societies Act and Police Act में, IPC, में डील होगा। मैं इस मामले में आपके साथ बैठने को तैयार हूँ। हम बैठ कर उसको करते हैं। उसमें आज जो सजाएँ हैं, उनको आप दोगुना या तिगुना कर दीजिए। अगर रिलायंस या अन्य कोई X, Y, Z कम्पनी शेयर्स में घोटाला करती है तो उसे सेबी देखेगा। हम दोनों मिल कर सेबी के एक्ट को और सख्त बनाते हैं। कोई कम्पनी अगर कुछ गड़बड़ करती है तो Registrar of Companies, Corporate Affairs and Serious Frauds Investigation Wing उसको देखेंगे। अगर उन सबों का काम हम लोकपाल के दायरे में ले आएँगे तो फिर मुझे लगता है कि कानूनी ढाँचा थोड़ा-सा गड़बड़ हो जाएगा। आप वह भी कर देंगे तो हमें उसमें कोई दिक्कत नहीं है।

श्री वीजय बहादुर सिंह: जब आपने 80 परसेंट कर लिया है तब यह तो 10 परसेंट ही है।

श्री अरविंद केजरीवाल: इसके साथ ही, मीडिया का जो भ्रष्टाचार है, उसके लिए हमें प्रेस काउंसिल को strengthen करना पड़ेगा। मीडिया का भ्रष्टाचार इसके दायरे में नहीं आ सकता।

श्री वीजय बहादुर सिंह: मैं अपनी बात एक मिनट में बता देता हूँ। मैं बुंदेलखंड में तीन जिलों का Member of Parliament हूँ। जब मैं एम.पी. बन कर वहाँ गया तो मैंने चार जगह advertisement दी कि बुंदेलखंड में जितने एन.जी.ओज़. हैं, वे आएँ, मैं उनसे बात करना चाहता हूँ और उनको सहयोग देना चाहता हूँ। You will be surprised to know that not even five turned up. इसके बाद जब मैंने यहाँ उनकी लिस्ट मँगाई तो उसके अनुसार वहाँ 280 एन.जी.ओज़. काम कर रहे हैं। सबके ज़ोरबाग में दफ्तर हैं और वहाँ पर सबके बढ़िया-बढ़िया Chartered Accountants हैं। कोई women empowerment के नाम पर स्वीडन से लोन ले रहा है। मैंने बुंदेलखंड में 60 हजार किलोमीटर गाड़ी चलाई, लेकिन वहाँ मुझे एक एन.जी.ओ. भी दिखाई नहीं पड़ा। एक एन.जी.ओ. ने तो वहाँ का एड्रेस दे दिया, जहाँ मेरा फॉर्म हाउस पनवाड़ी है। मैंने वहाँ का चप्पा-चप्पा खोजा, लेकिन वहाँ मुझे कोई एन.जी.ओ. नहीं मिला। मैं यह कहना चाहता हूँ कि रामचंद्र जी ने भी सीता जी का टेस्ट लिया था। अगर यह तोहमत आप पर आ रही है कि कुछ एन.जी.ओज़. के प्रति अन्ना जी की टीम की ज्यादा softness है और जब आप इतना बड़ा लोड ले रहे हैं तो इनको भी उसमें रखने में क्या दिक्कत है?

श्री अरविंद केजरीवाल: सर, आप इसमें उनको डाल दीजिए।

श्री वीजय बहादुर सिंह: हाँ, यह ठीक है।

CHAIRMAN: Now, we will have the Kerala round -- Mr. Thomas, Mr. Chitthan and Mr. Semmalai.

ADV. P. T. THOMAS: Mr. Chairman, with all respects to Annaji, I would like to ask some simple questions to Annaji and his hon. team. Are you believing in the parliamentary system and the supremacy of Parliament? This is a very simple question. If it is so, why aren't you going to contest elections and participate in the election process? Are you considering that the Lokpal is answerable to the Parliament?

My second point is this. Now you have started propagating or blackmailing or threatening the Members of the Standing Committee that you have asked the Anna team to go and take sample polls in the constituencies of those who are Members of the Standing Committee. In my parliamentary constituency such a news item appeared in the newspapers and in the media. Are you trying to threaten the Committee by making such a sample poll?

My third and the main question is this. Yesterday, Shanti Bhushanji had mentioned that they are ready to make a constitutional body. But after that you had mentioned that you are not agreeing with the ratification by 50 per cent of the State Governments. It is totally against the concept and basic principle of the Constitution. What is your stand? An elaborate answer is needed.

My fourth question is that in your amendment No.23 you have mentioned about article 226 of the Constitution regarding the High Court's authority. Now you are telling us that you are trying to make some kind of a Laxman Rekha for a constitutional body like the High Court by saying that it will have to decide the case within two months, else the stay would be deemed to have been vacated after two months and no further stay in that case could be granted. It is something like a Laxman Rekha which you would like to make.

My fifth question is, as my colleagues, Shrimati Meenakshi Natarajan and others, have asked, about the corporate bodies, NGOs and the media. Every time you are silent on all these things.

My last question is, if I am remembering correctly, that many years ago Shanti Bhushanji propagated "restricted democracy". Is this movement a short-cut for that "restricted democracy"? Are you still propagating "restricted democracy"?

SHRI SHANTI BHUSHAN: You have raised a very important question. The ratification by 50 per cent of the State Legislatures should not be there. Article 368 which gives the power of constitutional amendment is in two parts. Some constitutional amendments don't need to go for ratification by the States. There are some constitutional amendments which need to go for ratification by the States. What I had stated was that for enacting the Jan Lokpal Bill, which could be a constitutional amendment, would not require ratification by the States unless there is a provision which was proposed by Shri T.N. Sheshan interfering with the legislative list. So, I had said that it was not required, that the Bill should be drafted in a form which wouldn't require ratification by the States and that it could be easily done. If anybody is willing to have my help, I am willing to give that help.

The second thing which I have said is that it should not merely be a skeleton Bill authorising the Parliament or the State Legislature to enact the Lokpal Bill and the Lokayukta Bill. I have said that that very Constitutional Amendment Bill should be complete in itself. It should provide for what body will be constituted and in what way, what will be the powers, what will be its functions, etc. Everything which is in the Jan Lokpal Bill could be put in the Constitutional Amendment Bill so that no further legislation is necessary. Then we have no objection. If you are giving a higher status to the Lokpal Members, we have no objection at

all. But we have made it clear that for passing an effective Jan Lokpal Bill you don't require a constitutional amendment. It can be done without a constitutional amendment. But if the ruling party, the Government, is certain and confident that there will be no problem, that there will be enough support and that they will be able to muster two-thirds majority -- of course, we know that the UPA has a clear majority; they can pass an ordinary Bill on its own without depending on any other Members of the opposition parties -- it is welcome. But let it be drafted in a manner so that it doesn't have to go for ratification. Secondly, it should not merely be a skeleton Bill. It should be a complete Bill operative on its own.

SHRI N. S. V. CHITTHAN: Since my colleagues have raised all relevant points I restrict myself only to two or three questions. Our Committee is committed to send our Report to the Parliament as quickly as possible so that the Bill will be passed soon. I learnt that Annaji has given an ultimatum that the Bill should be passed in the ensuing winter session itself. May I know what the urgency and necessity to fix an ultimatum to pass the Bill is? You know that our Constitution was framed by our founding fathers after so many days of studies, considerations, comparisons, etc. Even after the Constitution was passed, it has been amended more than 120 times. My view is, let us pass the Bill as quickly as possible. But we want to know what the necessity to put an ultimatum is.

My second question is that you are often talking about the civilians. What are the qualifications of civilians to be inducted as members from the Civil Society?

My third question is directly to Annaji. With due respect to you, Annaji, I would like to know whether you have contested any public election, whether it is to the local body or to the Assembly or to the Parliament. If it is so, what are the results?

My fourth question is this. In your amendment No.2, you have mentioned that the Search Committee shall consist of ten members. You have also stated that five of its members shall be selected by the Selection Committee from amongst the retired Chief Justices of India, etc. Another five members shall be from the Civil Society. What is your grievance against the elected representatives? What are your views? Where is the room for the elected representatives? These are my four questions.

श्री अन्ना हजारे: रामलीला मैदान में जब मेरा अनशन हुआ था, तो उसको खत्म कराने के लिए सरकार की तरफ से कुछ आश्वासन दिये गये थे। उसके बाद भी सरकार के कई लोगों ने कहा कि हम इसको शीतकालीन अधिवेशन में लाएँगे। यह आश्वासन मिलने के बाद हमारा उद्देश्य केवल इतना ही है कि आपने जो आश्वासन दिया, उसको पूरा कीजिए। यह एक बात हुई।

दूसरा, सरकार में कई लोग हमारे लोगों के ऊपर कीचड़ फैलाने की बात करते हैं। तो, वे ऐसी कीचड़फेंक में उस आश्वासन को न भूलें। इसलिए यादगारी के लिए हमने ऐसा रखा कि शीतकालीन अधिवेशन को उन्हें भूलना नहीं चाहिए। यह हमारा मकसद है।

SHRI N.S.V. CHITTHAN: Annaji, I am happy to say that I am the son of a freedom fighter.

SHRI N.S.V. CHITTHAN (contd.): My father-in-law was also a freedom fighter. They were in jail with Mr. Kamraj in 1930.

I would also like to say that I have contested, so far, in 12 General Elections from the same constituency. With this background, I ask you whether you have contested any election.

श्री अन्ना हजारे : आज के प्राइम मिनिस्टर ने कहा चुनाव लड़ा है?

SHRI N.S.V. CHITTHAN: No, Annaji. I am asking about you.

श्री अन्ना हजारे : मैं ने मेरे जीवन में तय किया कि कोई भी इलैक्शन नहीं लड़ना। मैं ग्राम पंचायत के मेंबर का इलैक्शन भी नहीं लड़ा। मुझे वह पसंद नहीं है। मैं समाज सेवा को प्रायोरिटी देता हूं। जन सेवा में जितना आनंद है, वह और सेवा में नहीं मिलेगा। "कर्मण्य वाधिकारस्ते, मा फलेसु कदाचन।" मैं "निष्काम भाव से कर्म करते रहना" के सिद्धांत को मानता हूं। उस के लिए मैं इलैक्शन में नहीं जाना चाहता हूं।

SHRI N.S.V. CHITTHAN: Annaji, if you had contested any election, you would have understood it better.

CHAIRMAN: Mr. Chitthan, you have made your point. Let him answer the other five questions.

श्री शांति भूषण : अन्ना जी ऊंची हस्ती हैं। मैं अपने बारे में बता दूं। मैंने तो सन् 1977 में भी चुनाव नहीं लड़ा था और कभी नहीं लड़ा, लेकिन जब मोरारजी ने मुझे मंत्री बना दिया तो मुझे bye-election में राज्य सभा में तीन साल के लिए जाना पड़ा। उस के पहले न उस के बाद, न मैंने राज्य सभा का, न लोक सभा का और न बार एसोसिएशन के किसी Executive का कोई चुनाव नहीं लड़ा।

श्री हरिन पाठक : चुनाव अच्छे लोग भी लड़ते हैं।

श्री शांति भूषण : बहुत अच्छे लोग लड़ते हैं और बहुत काबिल व ईमानदार लोग भी लड़ते हैं। ऐसा हम लोगों ने कभी नहीं कहा कि सारे राजनीतिक नेता भ्रष्ट हैं। यह कभी नहीं कहा?

श्री वीजय बहादुर सिंह : अब पार्लियामेंट ने assure कर दिया है कि बिल रखेंगे। आप को मालूम है, ऐसे यू०पी० जमींदारी एक्ट हुआ। पंत जी मुख्य मंत्री थे और उन्होंने कहा कि इसे जल्दी बना दो। वह जब बन गया तो 22 क्लॉजेज का था, लेकिन अमेंडमेंट 180 हो गए। तो यह ऐसा न हो जाए कि यह जन लोकपाल बिल beyond management हो जाए। देखिए, हम लोग पूरा समय दे रहे हैं। आज 8-8, 10-10 घंटे मीटिंग्स किसी कमेटी की नहीं हो रही हैं, लेकिन हम लोग समझ रहे हैं कि इसे काफी ठोक-बजाकर तैयार किया जाए ताकि किसी time constraint की वजह से कोई गड़बड़ हो जाए और आप का जो करप्सन का मुद्दा है, वहां दूसरा एक करप्सन शुरू हो जाए।

श्री शांति भूषण : अभी आप ने कहा कि Constituent Assembly में संविधान बहुत सोच-समझकर बनाया गया था। उस में आज तक 100 से ज्यादा संशोधन हो चुके हैं।

श्री वीजय बहादुर सिंह : देखिए, उस में तो 80 परसेंट संशोधन ऐसे हैं कि उड़ीसा का ओडिशा कर दिया, कलकत्ता का कोलकत्ता कर दिया। फिर जजेज की तनख्वाह, प्रेसीडेंट की pay, तो ऐसे 80 परसेंट संशोधन तो technical हैं।

अध्यक्ष : चितन जी का यह दूसरा प्रश्न था और बाकी qualifications वगैरह आपने कवर कर लिए। अब श्री सेम्मलई जी।

SHRI S. SEMMALAI: Chairman, Sir, I have high regard for Annaji. I respect all the members of civil society. Since you have now proposed amendments to the Government's Lokpal Bill, may we presume that you are not going to insist on legislating your version, the Jan Lokpal Bill? The aim and objective of the Lokpal, either through the Government's Lokpal Bill or the Jan Lokpal Bill, is to eliminate corruption from the society. There is no doubt about that. Erring officers, found responsible for indulging in corruption, have to be punished. There is no doubt. But there are certain honest officers also there in the public service. Such officers should be encouraged and protected. But in your Jan Lokpal Bill, you have not proposed any provision regarding this aspect. So, I want to put a specific question to you. What is your suggestion to create firewalls to protect and encourage such type of honest officers in the Government?

Then, regarding phone tapping, my colleagues have mentioned it in details. It is a very sensitive issue. You said that the Lokpal should be given the power to tap the phone conversations for limited purpose, only in relation to offences of corruption. My question is: how can the power be used to single out offences of corruption? It involves official secrecy and an individual's privacy also. How will it be possible? Would you suggest any other means in this regard? Then, you have also suggested that the Lokpal has to decide the transfer, suspension, removal etc. of officers. If the Lokpal is vested with this power, I feel certain that it will lead to dual control, the administrative authority on the one side and the Lokpal on the other. Why should not the power to transfer, to suspend, etc. a public servant vest in the appropriate authority? Even in cases under trial, the Supreme Court and the High Courts often give only directions to the competent authority for taking any appropriate action. So, please think about it. Is it necessary to take away the powers of the concerned administrative departments?

श्री अन्ना हजारे : आप लोग स्टैंडिंग कमेटी में इतना समय देकर इतनी मेहनत कर रहे हैं। कई बार आप इतनी मेहनत कर के पार्लियामेंट को सुझाव देते हैं और वह उसे नहीं स्वीकारती तो उस समय पर क्या हो सकता है? ऐसी बातें हुई हैं कि पार्लियामेंट ने आप के सुझाव स्वीकार नहीं किए। यह एक बात है। दूसरे, जो तीन सुझाव थे - एक लोक आयुक्त, जनता की सनद और नीचे से ऊपर तक के ऑफिसर्स । इन्हें पार्लियामेंट में रखा गया, यह पास हो गया और उस के ऊपर अब दोबारा दूसरा कानून बन रहा है। तो यह क्या है? जनता की सनद पर अभी दूसरे कानून का ड्राफ्ट बन रहा है। तो यह बात बराबर नहीं है।

श्री अरविन्द केजरीवाल : क्या Sense of the House के जो तीन पॉइंट्स थे, वे लोकपाल बिल में आएंगे?

श्री अन्ना हजारे : पार्लियामेंट में वह रखा है।

अध्यक्ष : हम आप का पॉइंट समझ गए हैं। यह आप का सुझाव है। आप कह रहे हैं कि आने चाहिए, लेकिन यह तो अभी समिति भी नहीं जानती कि वे आएंगे कि नहीं।

श्री शांति भूषण : मेरे ख्याल से यह तो हाउस की कमेटी है और अगर हाउस ने एक sense कहा है, तो मुझे लगता है कि हाउस की कमेटी उस से bound है। ऐसा मुझे लगता है।

CHAIRMAN: We will be deciding that. Not to worry!

श्री बलवंत उर्फ बाल आपटे : एक ही कानून में करेंगे, ऐसा उस consensus में नहीं है। So, there can be two enactments.

अध्यक्ष : यह एक मत है, बिल्कुल।

श्री अरविंद केजरीवाल : प्राइम मिनिस्टर ने जो चिट्ठी भेजी है, उस चिट्ठी में लिखा है कि लोकपाल बिल के अंदर ये तीनों बातें लायी जाएंगी।

CHAIRMAN: Anyway. Is there any other point, Semmaliji?

SHRI S. SEMMALAI: No, no.

SHRIMATI DEEPA DASHMUNSI: Almost all points have been taken up, I feel. There is nothing to say more. I have only one thing. मेरा यह कहना था कि सी0बी0आई0 में जो ऑफिसर्स आते हैं, वे पुलिस सर्विस से deputation पर आते हैं और आप ने कहा है कि सी0बी0आई0 में कम-से-कम तीन गुना लोग और चाहिए जबकि मैं बंगाल से आती हूं, बंगाल में अभी भी sufficient police officers नहीं हैं। गांव में जो थाना है वहां sufficient police officers नहीं हैं। अगर बंगाल से लोगों को यहां ले आएंगे और लोक आयुक्त के अंदर इसे लाया जाए तो पुलिस ऑफिसर्स की बहुत कमी हो जाएगी। अगर इस बारे में आप का कोई सुझाव हो तो बताएं? बाकी जो बातें लोगों ने कही हैं, उन से मैं सहमत हूं। मैं यह भी कहना चाहती हूं कि आप सिविल सोसायटी के नाम से यहां आए हैं। आप बड़े सम्माननीय लोग हैं, लेकिन आप के अलावा भी सिविल सोसायटी से और भी बहुत लोग हैं जो कुछ आप से सहमत हैं और कुछ आप से सहमत नहीं भी हैं।

श्रीमती दीपा दासमुंशी (क्रमागत): तो सबसे सलाह करके जो सुझाव आएंगे, उनको ध्यान में रखकर हम सब मिलकर इस पर काम करेंगे। आपने आज इसमें बड़े अच्छे ढंग से कहा है, मैं आप सबका बहुत स्वागत करती हूँ। धन्यवाद।

श्री अरुण यादव: अध्यक्ष जी, मैं अन्ना टीम का यहां समिति के समक्ष स्वागत करता हूँ। सभी मैम्बर्स ने अपनी-अपनी राय यहां पर रखी है, बहुत महत्वपूर्ण राय यहां पर रखी गई हैं, कीर्ति आजाद जी, हरिन पाठक जी, विजय बहादुर सिंह जी, मीनाक्षी नटराजन जी और अन्य सदस्यों ने बहुत महत्वपूर्ण सुझाव यहां पर दिए हैं। पिछले तीन-चार माह से प्रेस मीडिया में, टेलीविजन पर मीडिया के लोगों ने पार्लियामेंट के महत्वपूर्ण अधिवेशन को छोड़कर पूरे देश में लोकपाल का माहौल बनाने की कोशिश की है। मेरा आपसे बहुत सीधा-सीधा और सिम्पल सा प्रश्न यह है, मैं अपने आपको विजय बहादुर सिंह जी से संबद्ध करने जा रहा हूँ, कि जिस तरह से लोकपाल के दायरे में एनजीओ को नहीं लिया गया है, तो वह क्यों नहीं लिया गया है? दूसरा क्वेश्चन यह है कि कॉर्पोरेट को क्यों छोड़ा गया है? तीसरा

महत्वपूर्ण सवाल में आपसे यह जानना चाहता हूँ, आज सबसे ज्यादा करप्शन अगर देश में कहीं हो रहा है, तो वह मीडिया के माध्यम से हो रहा है, एक खबर लगाने के लिए, सभी मैम्बर्स ऑफ पार्लियामेंट मेरी इस बात से सहमत होंगे, कि एक खबर, अच्छी खबर लगाने के लिए वहां लोकल प्रेस वाले हमसे पैसे की मांग करते हैं, सभी लोगों से करते होंगे, सब लोग मेरी इस बात से सहमत भी होंगे, विज्ञापन मांगते हैं, सबसे ज्यादा करप्शन अगर कहीं हो रहा है, शांति भूषण जी, किरण जी, अन्ना जी, तो वह मीडिया के माध्यम से हो रहा है, जिस तरह से मीडिया ने लोकपाल को हाइलाइट किया, आप लोगों को जिस तरह से पूरा महत्व दिया गया, उसके पीछे क्या कारण था, मैं उसकी गहराई में नहीं जाना चाहता, लेकिन मीडिया को कंट्रोल करने के लिए लोकपाल में कोई सजेशन, कोई सुझाव क्यों नहीं आया? मैं आपसे यह पूछना चाहता हूँ। मीडिया को कंट्रोल करने के लिए क्या आपकी तरफ से कोई सुझाव है? जिस तरह आप कह रहे हैं कि प्रिंट मीडिया के लिए, प्रेस के लिए कोई नया संशोधन आना चाहिए, उस बारे में आप क्या करने वाले हैं? लास्टली, मैं पूरी कमेटी की तरफ से आपसे कहना चाहता हूँ, आदरणीय अन्ना जी से, कि यह कमेटी बहुत सिन्सियरली लगभग पिछले दो माह से इस पर काम कर रही है और हम लोग एक सशक्त लोकपाल को जल्दी से जल्दी पार्लियामेंट में लाने का प्रयास कर रहे हैं। आज मीडिया में जिस तरह से खबरें आईं कि अगर विंटर सेशन में यह नहीं हुआ तो ऐसा कर दिया जाएगा, वैसा हो जाएगा, हम लोग यह करेंगे, हम लोग वह करेंगे, मेरा आपसे, आदरणीय अन्ना जी से पुनः निवेदन है, बाकी लोगों से मैं निवेदन नहीं करूंगा, लेकिन अन्ना जी से विशेष निवेदन है कि इस लोकपाल को, सशक्त लोकपाल को पार्लियामेंट में लाने के लिए यह पूरी कमेटी बहुत कटिबद्ध, बहुत प्रतिबद्ध है। आज जो स्टेटमेंट आया है, उससे पूरी कमेटी को आघात पहुंचा है, उससे हम लोगों को दुख पहुंचा है और जिस तरह से आपकी पूरी टीम ने मैम्बर्स ऑफ पार्लियामेंट को चोर बताया, डकैत बताया, डाकू बताया, जिस तरह से हमारे घरों में जाकर आपके लोगों ने, आपकी टीम के लोगों ने धरने दिए, मेरे घर पर तो नहीं आए, I was lucky, मेरे घर तो नहीं आए, लेकिन बाकी हमारे कई सांसद लोगों के घरों में आए, हमारे नेता राहुल गांधी जी के यहां गए, मैं भी उस दिन वहां पर था, प्रधानमंत्री जी के घर पर मैं था, जिस दिन अन्ना जी की टीम के लोग वहां पहुंचे थे, इस तरह का माहौल देश में कभी नहीं हुआ। विगत 60 साल में कई आंदोलन देश में चले, लेकिन इस तरह से डेमोक्रेसी में, पार्लियामेंट जो इस देश का सबसे बड़ा मंदिर है, उसके स्तंभों के बारे में जिस तरह से, आपने नहीं बल्कि आपकी टीम के लोगों ने जो कहा, उससे पूरे संसद, पूरे पार्लियामेंटरी सिस्टम को आघात पहुंचा है। मेरा निवेदन है कि आगे से इस प्रकार की कोई प्रवृत्ति न हो। लोकपाल बनेगा, अन्ना जी, सशक्त लोकपाल आएगा, हम सब लोग इस पर कार्य कर रहे हैं, लेकिन थोड़ा सा समय लग सकता है, आप इसको बहुत जल्दी कराने का न करें, क्योंकि बहुत सारी चीजें हमें इसमें देखना हैं। बहुत-बहुत धन्यवाद।

अध्यक्ष: मैं प्रभा जी को बोलने को कहूंगा, उससे पहले मैं एक बात कह दूँ। अन्ना जी, बाकी सब बातें तो मैम्बरान साहबान ने कह दीं, लेकिन एक निजी बात मैं कहता हूँ, आप लोग दो बार यहां पर आ गए, इस बार दूसरी बार आए हैं, पहले भी आए हैं, मैं समझता हूँ कि आपका यह कहना कि अगर यह नहीं हुआ तो यह होगा, अगर शीतकालीन सत्र में नहीं हुआ तो यह होगा, उसका एक ही उद्देश्य हो सकता है कि शीतकालीन सत्र से हम इसको अवॉयड करना चाहते हैं, या विलंब करना चाहते हैं। मैं आपसे एक प्रश्न पूछना चाहता हूँ, क्या कोई भी अपने हृदय पर हाथ रखकर कह सकता है कि समिति में दो बार आने के बाद इस समिति में कहीं भी सामूहिक रूप से या निजी रूप से किसी का यह उद्देश्य हो सकता है कि हम पास ही न करें, बात ही न करें, रिपोर्ट ही न दें? यह जरूर हो सकता है कि तारीख “ए” हो सकती है, या “बी” हो सकती है, लेकिन आपको क्या सच्चाई लगती है? यह बाहर बोलने वाली बात नहीं है, अंदर बोलने वाली बात है, क्या किसी को यह लगता है कि इस समिति का उद्देश्य है बिना वजह विलंब करना?

श्री अन्ना हजारे: ऐसा नहीं है। मैंने जो कहा था, समिति का दृष्टिकोण बड़ा अच्छा है, लेकिन आगे जाने के बाद पार्लियामेंट में भी यही दृष्टिकोण होना चाहिए।

SHRI N.S.V. CHITTHAN: This is mini Parliament.

श्री अरुण यादव: अध्यक्ष जी, मेरा एक निवेदन है। अन्ना जी, मेरा यह कहना है कि जो डिसकशन यहां होता है, जैसा अभी आपने कहा कि समिति जो कर रही है उससे हम लोग सहमत हैं। तो मेहरबानी करके जो यहां कहा जाए, वही चीज बाहर भी कही जाए।

श्री अन्ना हजारे: दूसरी बात, जो इन्होंने कहा कि घर पर धरना वगैरह दिया। एक बात तो माननी पड़ेगी कि इतना बड़ा आंदोलन हुआ, कहीं पर भी हमारे धरने हुए, घर के सामने भी हुए, लेकिन किसी को गाली नहीं दी, भगवान के नाम पर भजन सुनवाए, कहीं पर पत्थर नहीं उठाया। हमारी जो परंपरा है, उसको भी हमने संभाला है, ऐसा नहीं कि किसी के विरुद्ध हम अलग से कुछ कर रहे हैं।

श्री अरविन्द केजरीवाल: मैं एक और बात कहना चाहूंगा कि क्षेत्र के लोग अपने सांसद से मिलने जायं, इसमें कोई दोष तो नहीं है।

DR. BHALCHANDRA MUNGEKAR: It was not a courtesy call.

SHRI ARUN YADAV: Mr. Kejriwal, you have to correct yourself. जिस तरह से सांसदों के घरों पर जाकर ...

अध्यक्ष: केजरीवाल जी, यह तो जरा ज्यादा ingenuous हो गया, आप जो कारण दे रहे हैं, यह कारण तो पहले कभी नहीं दिया गया। आपने तो घोषणा की थी कि वहां जाकर प्रेसर लगाओ, कैंडल लाइट जलाओ।

ADV. P.T. THOMAS: Kejriwalji, you people tried to pressurize the Standing Committee's Members. Even you advised the people to *gherao* the Members of the Standing Committee, boycott the Members of the Standing Committee and conduct some kind of a sample poll in their constituencies.

अध्यक्ष: छोड़िए, वह तो बात पुरानी हो गई, पीछे की बात है, अब आगे की बात करें।

श्री अन्ना हजारे: उसमें किसी का कोई व्यक्तिगत लाभ नहीं था। समाज और देश के लिए ऐसा प्रेसर लाया, तो बुरा क्या किया? संविधान ने सभी नागरिकों को यह हक दिया है।

श्री विजय बहादुर सिंह: ज्यादा प्रेसर न हो जाए कि टायर ब्रस्ट हो जाए।

अध्यक्ष: प्रभा जी, जरा जल्दी बोल लीजिएगा, क्योंकि एंड में चेयरमैन के भी छोटे से दो क्वेश्चन हैं। तो प्रभा जी के बाद मैं भी इंतजार कर रहा हूँ।

डा० प्रभा किशोर तविआड: अध्यक्ष जी, मैं अन्ना जी का बहुत सम्मान करती हूँ। अभी-अभी जो बात हुई, मेरे पास मेरे क्षेत्र से कोई नहीं आया, मगर मुझे अहमदाबाद से बार-बार फोन आता है कि आप लिखकर दे दो कि हम वहां जाकर जन लोकपाल को सपोर्ट करेंगे। मैंने उनसे कहा कि हमने लोकपाल लाना है, तो हम जरूर लाएंगे और सशक्त लोकपाल लाएंगे। वह कहते हैं कि नहीं, तुम लिखकर दे दो। तो यह बात सही है, स्टैंडिंग कमेटी के सभी सदस्यों को फोन आते होंगे। मेरे पास तो एक अमरीका से भी फोन आया। यह बात अच्छी नहीं है, मेरी कंस्टीट्यून्सी से कोई नहीं आया, I am responsible to my constituency. मैं अब दू द पाइंट आऊंगी। आपने जो कमेटी बनाई है, उसमें सभी जजेज, हाईकोर्ट जजेज, सबको रखा है, मगर इसमें आपको क्या आपत्ति है, जो एक्चुअल बिल बना है, उसमें 4(डी), लीडर ऑफ अपोजीशन ऑफ द कौंसिल ऑफ द स्टेट है, उसको आपने निकाल दिया?

डॉ. प्रभा किशोर तविआड (क्रमागत): यह बैलेंसिंग होना चाहिए। बाद में सेलेक्शन कमेटी में retired Chief Justice, retired Election Officer, everything, even the previous Lokpal, all of them are very honest and we the elected Members are dishonest. How can it be? मैं यह बताना चाहती हूँ कि there are so many officers and Government servants who are honest. We should respect them. There are also leaders who are honest. I am a tribal lady. मैंने 28 साल तक as a Gynecologist प्रैक्टिस की है। मेरे husband भी डॉक्टर थे। वे भी डॉक्टरी प्रैक्टिस छोड़ कर पॉलिटिक्स में आए थे। वे इसमें एक ही बात पर आए थे। बहुत सारे लोग हमसे कहते थे कि ट्राइबल इलाके में इतने पढ़े-लिखे लोग हैं, वे अगर पॉलिटिक्स में नहीं आएंगे तो उसमें करप्ट और दूसरी तरह से बदनाम लोग ही आएंगे। With that word only my husband and I joined politics. वे पॉलिटिक्स में 22 साल पहले आए थे, लेकिन मैं अभी आई हूँ। जब आपने ऐलान किया कि पूरे संसद का घेराव करो तब मेरी territory वालों में से कोई भी मेरे पास नहीं आया। Because they are having faith in me, इसीलिए वे नहीं आए।

मुझे आपको एक और बात एन.जी.ओ. के मामले में बतानी है। अन्ना जी, जब मैं अपनी territory में canvassing के लिए जाती थी, तब देखती थी कि गाँव में चौराहे पर total sanitation के लिए कुछ सामान जैसे, ईट, पाइप्स तथा शौचालय बनाने के सामान, आदि पड़े थे। जब मैंने enquire किया तो पता चला कि वहाँ एक एन.जी.ओ. वाले आए थे और उन्होंने ऐसे थोड़े-थोड़े सामान हर गाँव में डाल गए थे। हम उसके लिए अभी तक लड़ रहे हैं। On paper हमारे सभी बी.पी.एल. लाभार्थियों के घरों में toilets बताते हैं and we are not having anything. इस तरह से एन.जी.ओ. काम करते हैं। वे ऐसा करते हैं कि इतना-इतना सामान वहाँ डाल दिया और चेक लेकर पूरा पैसा ले लिया।

टीम अन्ना के dais पर से जो बोला जाता है, वह मैंने खुद सुना है। Every citizen is beyond Parliament. How can it be possible? हम 12 लाख लोगों द्वारा चुन कर यहाँ आते हैं। मैं जब लोगों के बीच जाती थी तब एक ही बात उनसे कहती थी कि आप मुझे वोट दीजिए मैं वहाँ आपकी आवाज़ बनूँगी। हमने केजरीवाल जी को यह कहते सुना कि सिटिजंस, आप उनको वोट देते हैं, आप उनको चुनते हैं, तो आप उनसे ऊपर हैं। इसका मतलब यह है कि you are not having faith in Parliament, you are not having faith in 543 elected Members of Parliament. हम तो उन लोगों की आवाज़ हैं। बस मैं इतना ही कहना चाहती हूँ।

ADV. P.T. THOMAS: It is an important question which they have never answered.

डॉ. प्रभा किशोर तविआड: किसी जज को remove करने के लिए Parliament is having impeachment power, तो लोकपाल के सम्बन्ध में भी ऐसा ही कुछ होना चाहिए।

अध्यक्ष: इन्होंने एक alternative कहा है, इनका मॉडल भिन्न है।

ADV. P.T. THOMAS: Annaji, we want to have a reply from your side regarding the supremacy of Parliament.

श्री अन्ना हजारे: आप लोगों की आवाज़ बनकर काम कर रहे हैं। इसके साथ-साथ हमें इस बात को भी देखना है कि इस देश में हमने 26 जनवरी, 1950 को प्रजासत्तात्मक दिन मनाया, उस दिन से हर वोटर इस देश का मालिक हो गया। 26 जनवरी, 1950 से प्रजा इस देश की मालिक है। संविधान के मुताबिक हमने प्रतिनिधिक लोकशाही को स्वीकार किया। जनता ने हमें विधायक और सांसद चुन कर दिए। उसने क्या बनाकर दिया- सेवक। जनता ने कहा कि अब हम मालिक बन गए और आप सेवक बन कर जाइए और आप दो काम करिए। पहला, हमारी तिजोरी की सही प्लानिंग कीजिए और दूसरा, यह देश कानून के आधार पर चला हुआ देश है, इसलिए यहाँ अच्छे-अच्छे कानून बनाइए। जब आप यह नहीं बनाते हैं, तब पूछना मालिक का हक बनता है। हमें इस बात को भी याद रखना है कि वह तो मालिक है और हमें उसकी आवाज़ बन कर ये काम करने हैं। लेकिन, इसके साथ-साथ इस बात को भी हमें हमेशा ध्यान में रखना चाहिए कि हम सेवक हैं और मालिक ने हमें ऐसा करने के लिए भेजा है।

श्री मनीष सिसोदिया: सर, मैं आधा मिनट का समय लेना चाहूँगा।

अध्यक्ष: ठीक है, बोलिए।

श्री मनीष सिसोदिया: सर, हम यह कभी नहीं कहते कि सारे सांसद चोर हैं या सारे सांसद बेईमान हैं। हमेशा यही बात रखी गई है कि कुछ हैं। कुछ अच्छे भी हैं, यह बात बार-बार दोहराई गई है। लेकिन, दुर्भाग्य की बात है कि ईमानदार सांसद, ईमानदार मंत्री और ईमानदार ऑफिसर्स होने के बावजूद करप्शन का ग्राफ बढ़ता ही जा रहा है। That is why.. Let me complete, Sir. इस मीटिंग में एक बात कही गई है, I think I have the right to record the protest for that. इस पूरे करप्शन से अगर हमें निजात पानी है तो इस डेमोक्रेसी में protest करना हमारा right है और उसको हम आगे भी exercise करते रहेंगे। यहाँ हम लोग अपने suggestions देने आए थे, यह नसीहत देने नहीं कि we would not protest.

अध्यक्ष: यह कोई कह ही नहीं सकता।

श्रीमती मीनाक्षी नटराजन: प्रोटेस्ट करने का लोकतांत्रिक अधिकार सिर्फ आपका ही नहीं है, हमारा भी है। हम उससे इनकार नहीं करते।

श्री शैलेन्द्र कुमार: मेरा अन्ना जी से निवेदन है कि अभी आपने भ्रष्टाचार के विरुद्ध आन्दोलन छेड़ रखा है, तो दूसरा आन्दोलन आप पॉपुलेशन कंट्रोल के लिए छेड़ दीजिए। समझिए, इससे सारी समस्याएँ दूर हो जाएँगी।

अध्यक्ष: मेरे दो महत्वपूर्ण प्रश्न रह गए हैं, जो मेरी जिज्ञासा के हैं। इनमें से एक विषय लोकायुक्त के बारे में है। लोकायुक्त के प्रावधान क्या हों, वह कैसा हो, वह एक अलग मुद्दा है, उस पर मैं प्रश्न नहीं पूछ रहा हूँ। अगर यह मान लें कि लोकायुक्त के सभी प्रावधान केन्द्रीय लोकपाल बिल के अन्दर ही डाले जाएँ-- मैं इसे मान नहीं रहा हूँ सिर्फ यँ ही पूछ रहा हूँ-- उस पर अगर कोई संवैधानिक प्रश्नचिह्न लगाता है, तो आप उसको कैसे डिफेंड करेंगे कि वह संवैधानिक है या नहीं? समिति कोई ऐसी रिपोर्ट देना नहीं चाहती, लेकिन अगर वह दे तो? यह पहला प्रश्न हुआ।

दूसरा क्वेश्चन भी मैं hypothetical रूप से पूछ रहा हूँ। आपका इस पर क्या मत है कि अगर prosecution पूरी तरह से स्वतंत्र और निष्पक्ष रूप से लोकपाल के साथ रहे तथा इन्वेस्टिगेशन के लिए लोकपाल सी.बी.आई. को रेफर करे - जैसा कि निश्चित रूप से अभी भी यह होता है कि उच्चतम न्यायालय की जो मॉनिटरिंग होती है, उसमें मेरिट्स पर उच्चतम न्यायालय भी सी.बी.आई. के साथ कोई दखलंदाजी नहीं करती - तो अगर लोकपाल सी.बी.आई. से इन्वेस्टिगेशन करवाए और prosecution लोकपाल के द्वारा हो, तो इस देश में आप ही लोगों ने कई बार माँग की है कि prosecution और तहकीकात अलग होनी चाहिए, दोनों में एक दूरी रहनी चाहिए, इससे एक प्रकार की निष्पक्षता आती है। यदि इस प्रकार से इसका विभाजन किया जाए, तो उस पर आपकी क्या टिप्पणी है?

श्री शान्ति भूषण: आपने पहले constitutional question उठाया। मेरा एक आर्टिकल 'द हिन्दू' में छपा था, जिसमें मैंने साफ किया था कि पार्लियामेंट को Union List के सारे सब्जेक्ट्स पर कानून बनाने का अधिकार है। उसको Concurrent List पर कानून बनाने का ओवरराइटिंग अधिकार है। Union List में Residuary Entry can be asked... कि अगर कोई सब्जेक्ट किसी भी लिस्ट में नहीं आता, तो उस पर भी संसद को कानून बनाने का अधिकार है। इसका मतलब यह हुआ कि अगर आप कानून का Pith and substance बना रहे हैं और अगर उसका Pith and substance squarely किसी State Entry में fall करता है, तभी वह अधिकार पार्लियामेंट के beyond जाएगा, otherwise हर कानून संसद बना सकती है। मैंने State की हरेक Entry पढ़ी है। उसे पढ़ने के बाद यह देखा है कि कोई भी अदालत इस कानून के बारे में यह नहीं कह सकता कि इसका Pith and substance is covered by any single Entry in the State List. इसलिए, इसमें कोई doubt नहीं हो सकता कि केन्द्र कानून बना सकती है।

श्री शान्ति भूषण (क्रमागत) : लोकायुक्त के लिए आपने जो एक्ट बनाया और आपने जो और भी एक्ट्स बनाए हैं, सबमें आपने स्टेट के लिए भी provide किया है, क्योंकि basically यह Concurrent List का सब्जेक्ट है। हम लोगों का जो ड्राफ्ट है, उसमें investigating agencies को independent किया जा रहा है। पार्लियामेंट को यह power है कि वह investigating agencies को independent बना दे और independent स्वरूप देकर उसको कहे कि तुम investigate करोगे। आज ऐसा होता है कि अगर Prevention of Corruption Act में कोई चार्जशीट फ़ाइल होती है, तो गवर्नमेंट साथ-साथ यह चार्जशीट भी लगा देती है कि यह prosecution जब तक चलेगा, चलेगा, लेकिन हम इन्हें departmental proceeding drop करके क्यों रहने दें। उसके बाद पूरी opportunity देकर या तो वह उसे dismiss कर देती है या remove कर देती है, जैसा वह उचित समझती है। उसके लिए भी हमने यह provision रखा है कि जब चार्जशीट फ़ाइल हो जाए, सारे सबूत आ गए, क्योंकि ऐसा experience हुआ कि चूँकि वह डिपार्टमेंट का ही आदमी है और डिपार्टमेंट ऐसा नहीं करती है, इसलिए independent authority बनाने का rationale ही यही था कि उसमें जहाँ उचित हो। खास तौर पर जब वह independent authority 11 सदस्यों की हो। उसे कौन बना रहा है? प्रधान मंत्री की chairmanship में आठ लोगों की एक कमेटी है, जिसमें सभी Constitutional Authorities हैं। वे इसे बना रहे हैं, तो क्या उनके ऊपर यह विश्वास नहीं किया जा सकता है कि वे ऊलजलूल आदमी को उसमें select नहीं करेंगे। उसमें सब उतने ही जिम्मेदार होंगे, जैसे सुप्रीम कोर्ट के जजेज हैं या हाई कोर्ट के चीफ जस्टिस हैं। इसलिए हमारी यह अपेक्षा है कि ये आठ Constitutional Authorities, जो Selection Authorities हैं, चुन-चुन कर ऐसे लोगों को भेजेंगी, जो गैर जिम्मेदारी से अपना काम नहीं करेंगे। उसके बाद भी हमने यह provision रखा है कि जाँच शुरू करने से पहले, अगर यह किसी एम.पी. के खिलाफ़ या किसी मिनिस्टर के खिलाफ़ या किसी जज के खिलाफ़ है, तो जब तक 11 लोगों में से, जिसे प्राइम मिनिस्टर की कमेटी ने नियुक्त किया है, उनमें से 7 मैम्बर्स की बेंच अपना clearance नहीं देगी, तब तक इनके खिलाफ़ जाँच भी शुरू नहीं की

जाएगी। जाँच खत्म होने के बाद भी केस अदालत में भेजा जाए या नहीं, फिर से यह 7 मैम्बर्स की बेंच को जाएगा। जब तक सात मैम्बर्स की बेंच इसे देखने के बाद इजाजत नहीं देगी, तब तक यह अदालत में नहीं जाएगा। हमने यह भी provision रखा है कि लोकायुक्त का हर फैसला, चाहे वह किसी भी लेवल का हो, उसको आर्टिकल 226 में Writ Petition में judicial review का अधिकार होगा।

अध्यक्ष : वह एक अलग मुद्दा है। अगर केंद्र वाले बिल में स्टेट लोकायुक्त के बारे में ऐसा प्रावधान या स्वरूप होगा, तो साथ-साथ उसी केन्द्र वाले बिल में यह प्रावधान ही रखना पड़ेगा कि हिन्दुस्तान में जितने भी 12-13 लोकायुक्त एक्ट्स हैं, वे सब साथ-साथ repeal हो रहे हैं।

श्री शान्ति भूषण : वे सब अपने आप repeal हो जाएँगे।

अध्यक्ष : क्या आप सहमत हैं कि यह संवैधानिक है?

श्री शान्ति भूषण : जी हाँ। जो subsequent Act है, it will supersede.

अध्यक्ष : 'दि हिन्दू' में आपका जो आर्टिकल छपा है, उसे आप हमारे पास भिजवा दें। साथ ही अगर आप चाहें, तो इसके ऊपर हमें कुछ और लिख कर भिजवा दें।

श्री शान्ति भूषण : Basically, यह Concurrent List का सब्जेक्ट है। इसमें दो चीजें हैं। Concurrent List में एक entry है – 'Criminal Law'. इसमें आपने IPC, Prevention of Corruption Act सारे देश के लिए बनाया है। उसमें State employees भी आएँगे, Central Government employees भी आएँगे, जजेज़ भी आएँगे। दूसरा है – 'Criminal Procedure'. यह भी Concurrent List की entry है। इसका मतलब है कि Criminal कानून बनाना और Procedural कानून बनाना, दोनों Concurrent List में आते हैं। Basically, हम लोग यही कर रहे हैं और बाकी incidental चीजें हैं। जब सारी investigation के बाद evidence आ गया, उसके बाद आप देखेंगे कि इसमें यह साबित हो रहा है और अब trial में दो-तीन साल टाइम लगेगा, तब तक यह आदमी क्यों अपने position पर बना रहे, तो डिपार्टमेंट चार्जशीट लगाती है। सुप्रीम कोर्ट ने यहाँ तक कहा है कि अगर चार्जशीट लगा कर उसको remove कर दिया गया है और बाद में वह trial में acquit भी हो जाता है, तो भी उसका removal रहता है, क्योंकि वे कहते हैं कि दोनों के evidence की yardstick different है। Criminal case में 'prove beyond reasonable doubt' है, जबकि चार्जशीट लगाने में 'principle of preponderance' लगाया जाता है। इसलिए दोनों authorities हैं। अगर बहुत छोटा मामला है, तो आप सोचते हैं कि इसमें prosecution की जरूरत नहीं है, इसे हम departmentally कर लेंगे।

SHRI PRASHANT BHUSHAN: You said, "Why should the investigation not be left with the CBI and only the prosecution wing be brought under the Lokpal?" The reason is very simple. Investigation is the most important thing, and that has to be done by an independent agency, by an agency which is independent of the control of the same authority or the

Government against whom the investigation is being done. Therefore, it is absolutely essential that whoever does the investigation must be completely independent of the Government. Now, we have said that the prosecution agency should also be under the Lokpal, but that will be under a different wing of the Lokpal. There will be two Wings of the Lokpal -- the Investigation Wing and the Prosecution Wing, and there will be a third Wing also dealing with that grievance redressal, about violations of the Citizens Charter. So, these will be different Wings, though administratively under the Lokpal.

CHAIRMAN: Thank you very much.

डा. भालचन्द्र मुणगेकर : मैं बहुत संक्षेप में अपनी बात कहूँगा। मैं सब लोगों की तरफ़ से अन्ना जी से एक request करना चाहता हूँ about the logistics that अन्ना जी, आप कहते हैं कि Winter Session में एक सशक्त लोकपाल बिल पास होने की आवश्यकता है और यदि ऐसा नहीं हुआ तो हम फिर से आंदोलन करेंगे। मैं आपसे कहना चाहता हूँ कि यह Winter Session एक महीने का होगा। अगर उसमें Saturdays and Sundays को छोड़ दें, तो यह सेशन 22 दिन का होगा। हम लोग अपनी रिपोर्ट तो देंगे और यह introduce भी हो जाएगा, लेकिन पार्लियामेंट क्या करेगी, that is not within the control of the Committee. We shall try our level best. My only point is, if we want a *sashakt* Lokpal Bill, definitely the whole country is committed under your leadership; the whole country is obliged to you, but in order to get a really competent, effective *sashakt* Bill, it will take some time. Please bear with us. आपने कहा कि हमारे जो लोग picketing कर रहे थे, उन्होंने अभी तक पत्थर तक नहीं उठाया। That should not be the next stage if it does not happen in the Winter Session.

CHAIRMAN: Thank you very much.

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**(The witnesses withdrew and the Committee then
adjourned at 8.38 p.m.)**
