

Dr. Jayaprakash Narayan's Transcript from the Parliamentary Standing Committee's presentation.

(extracted from the Standing Committee's report on Lokpal)

CITIZENS' CHARTER AND GRIEVANCE REDRESSAL MECHANISM

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....."

THE PRIME MINISTER: FULL EXCLUSION VERSUS DEGREES OF INCLUSION

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,....."

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

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....."

LOKPAL AND STATE LOKAYUKTAS: SINGLE ENACTMENT AND UNIFORM STANDARDS

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."

LOWER BUREAUCRACY: DEGREES OF INCLUSION

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..."

THE JUDICIARY: TO INCLUDE OR EXCLUDE

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....."

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

".....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....."

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

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 nongovernmental 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"