

27th June, 2011

Dr. Manmohan Singh
The Prime Minister of India
Room No. 148 B,
South Block, Raisina Hill
New Delhi – 110 001

Esteemed Prime Minister Dr Manmohan Singh ji,

Sub: Lokpal Bill – Reg.

Kindly recall our letter dated 11th May 2011 to you and leaders of major political parties, conveying the views of the Round Table of eminent citizens on Lokpal Institution conducted on April 24, 2011 in New Delhi. I am enclosing for your ready reference my earlier letter along with the views of the Round Table, and the background reference documents and a comparative statement of views and recommendations of various expert bodies.

Subsequent to that, the government substantially revised the official draft Lokpal Bill. Many significant provisions incorporated in the draft Bill make Lokpal a robust, effective and independent anti-corruption institution. For instance, the appointment by a collegium (section 4), and the provision for Search Committee if considered necessary, ensure appointment of persons of high standing and credibility. Protection of conditions of service (section 7), and the procedure for removal only on the recommendation of the Supreme Court ensure the independence of the high institution of Lokpal. Power to appointment Director of Prosecutions and guide the prosecution process (section 15) strengthens a vital weak link in the chain of action against corruption. Charging the expenditure of the Lokpal to the Consolidated Fund of India (section 16), while it is largely symbolic, preserves the prestige and dignity of the high office of Lokpal. Section 18 gives Lokpal powers to investigate even those allegations which are pending before any court or committee. The power to constitute benches (section 19) facilitates effective functioning of the institution. Lokpal would not need any sanction or permission to investigate, and complaints filed by Lokpal shall be taken cognizance by the Special Court (section 26), giving Lokpal teeth in combating corruption. Section 28 empowers Lokpal to file a case in a Special Court. Section 32 and 33 provide for attachment of properties by Lokpal, and

confirmation by special courts, and confiscation on conviction. Section 38 provides for constitution of Special Courts as recommended by Lokpal.

All these are extremely salutary provisions which go a long way in creating a strong, independent, robust anti-corruption institution. While a lot more needs to be done to curb corruption, this legislation will certainly mark a new beginning in our quest for clean and good governance. We sincerely hope that all the political parties will transcend their differences and come together to make the enactment in Parliament swift and unanimous, so that a strong signal can be sent to the nation and the global community.

There are however, four specific issues which merit serious consideration while creating a strong anti-corruption institution. The Round Table on Lokpal in which eminent and credible citizens, many of whom with rich and varied experience in high office including in higher judiciary and constitutional authorities, made unanimous recommendations after extensive deliberations on these issues. I therefore feel it is my duty to bring to your notice the views of the Round Table on these four issues, and urge you to give these due consideration and incorporate them in the draft Bill. The four issues are as follows:

1. A Single Legislation by Parliament applicable to the Union and States:

On May 1, 2011 India has ratified the United Nations Convention Against Corruption (UNCAC). Once this convention is ratified, Article 253 automatically empowers Parliament to make laws for the whole nation in order to implement any international treaty, agreement or convention. Therefore the Parliament has the power and duty to make laws applicable to the Union, States and local governments in respect of anti-corruption institutions and other related matters in pursuance of the UNCAC. The problem of corruption is not limited to the Union government. By common admission, corruption is as wide-spread in our states and local governments.

Therefore it is vital that the draft Bill provides for a Lokayukta in each state, and local ombudsmen in each district or group of districts and local governments very similar to Lokpal in composition, powers, functions and institutional mechanisms. In respect of the Right to Information Act, the Parliament made a law applicable to all states and local authorities in a similar manner. The priceless opportunity available to us to address corruption across the board should be seized with alacrity.

The Round Table on Lokpal unanimously recommended that a single, effective legislation should be made by the Parliament applicable for the entire country – Lokpal for the Union, Lokayukta for

States, and Local Ombudsmen for local governments – with each institution having identical functions and powers within their respective jurisdictions.

That some states are less than eager to have such a law cannot be a sound argument for Parliament not creating the anti-corruption institutions in states. We hope the political parties, the Union Cabinet, and the Parliament will act in the national interest.

2. Seamless Integration of CVC with Lokpal:

The draft Bill provides for an eleven-member Lokpal. The jurisdiction of the Lokpal (Section 17) extends to Ministers, Members of Parliament, Group A officers and senior functionaries of public sector undertakings. Such a well-defined jurisdiction limited to senior officials and elected officials ensures that Lokpal is a high ombudsman effective in curbing corruption in the top echelons of government. Under the Central Vigilance Commission Act, 2003, a three-member CVC is constituted with jurisdiction over all public servants and vigilance wings of various departments and agencies.

The Lokpal Round Table unanimously recommended that the CVC should be retained and strengthened; the appointment of CVC should be in a like manner as Lokpal; and CVC should be made ex-officio members of Lokpal. CVC's participation in Lokpal would facilitate harmonious integration and minimize duplication of efforts. When new institution is created, effective coordination and integration with existing institutions is vital. As Lokpal is contemplated with a chairman and ten members, it would be appropriate if three of the ten members are chairman and members of CVC in ex-officio capacity. The CVC chairman and members could be appointed in the same manner as the Lokpal. That would ensure seamless integration of CVC with Lokpal, while fully utilizing the institutional strength and experience of CVC.

3. Chief Ministers to be brought under Lokpal jurisdiction:

The draft Bill on Lokpal rightly excludes the Prime Minister from the purview of Lokpal. The Second Administrative Reforms Commission, the National Commission to Review the Working of the Constitution, and several eminent experts who held high Constitutional office have argued that Prime Minister occupies a pivotal position in our Parliamentary democracy. They recommended that the Prime Minister should be accountable only to Parliament and not to any extra-Parliamentary institution in order to protect the stability of the country and preserve the authority of Parliament.

Similar arguments can be advanced in respect of Chief Ministers in States vis-à-vis Lokayukta. Therefore the Lokpal Round Table recommended that the Chief Ministers of the States should be brought under the jurisdiction of Lokpal at the national level. This will preserve the stature of Chief Ministers while at the same time ensuring probity and integrity in state governments.

4. Anti-Corruption Wings of CBI and ACBs to be brought under Lokpal's protective umbrella:

The heart of rule of law is independent and impartial crime investigation. Normatively independent investigation of corruption offences is accepted in our country. However, it is widely believed that the professionalism and efficacy of CBI and ACBs are compromised by undue interference in their investigations. The Supreme Court, in its Hawala case judgment in 1997 directed certain measures to protect autonomy of CBI. Later, the CVC Act in 2003 gave effect to the Supreme Court judgment. However, it is vital that the anti-corruption wing of CBI and ACBs are taken out of partisan control, and their autonomy and professionalism are protected. If the anti-corruption wing of CBI is separated, and brought under the broad supervision of Lokpal, it will serve the purpose. In states, the Anti Corruption Bureaus (ACBs) should be similarly brought under the supervision of Lokayukta. The Lokpal Round Table unanimously recommended that the anti-corruption wing of the CBI should be separated. It should report to the Lokpal which would exercise broad superintendence. Accountability mechanisms should be evolved through a committee of Lokpal, CAG and CVC. Similar provisions should be made in states in respect of ACB and Lokayukta.

These four specific recommendations of the Round Table on Lokpal are well-reasoned, well-researched, and are based on the considered views of eminent citizens, especially experienced Constitutional functionaries. Therefore, we urge you to give due consideration to these views and ensure that draft legislation incorporates them in the larger public interest. The nation cannot have a better opportunity than today in creating a robust, effective anticorruption institutional mechanism within the framework of democratic accountability and constitutional checks and balances. We are confident that you will utilize your good offices to ensure a robust legislation with bipartisan consensus in Parliament.

With warm personal regards,

Yours sincerely,

Jayaprakash Narayan