

# Citizens for Public Accountability



**FDR**



## Views of The Round Table on Lokpal Institution

*Held on 24<sup>th</sup> April, 2011*

*India International Center, New Delhi*

## LIST OF ATTENDEES

(Round Table on Lokpal on 24<sup>th</sup> April at IIC Delhi)

1. Justice MN Venkatachaliah, Former Chief Justice of India
2. Justice JS Verma, Former Chief Justice of India
3. Justice Santosh Hegde, Former Supreme Court Judge & Karnataka Lokayukta
4. Justice Rajindar Sachar, Former Chief Justice – High Court of Delhi
5. Sri N Gopaldaswami, Former Chief Election Commissioner of India
6. Sri TS Krishnamurthy, Former Chief Election Commissioner of India
7. Sri Pratyush Sinha, former Chief Vigilance Commissioner
8. Sri PS Ramamohan Rao, Former Governor Tamil Nadu
9. Sri C Anjaneya Reddy, Former DGP Andhra Pradesh
10. Sri Ashok Arora, Advocate & former Secretary Supreme Court Bar Association
11. Sri Ashwin Mahesh, an innovator, professor at IIM Bangalore, Urban Strategy advisor for Govt. of Karnataka
12. Shri Aravind Kejariwal, Social Activist, Parivartan
13. Sri P.S. Bawa, Chairman, Transparency International India
14. Dr Bhaskar Rao, Chairman, Centre for Media Studies
15. Dr. R. Balasubramaniam, Founder, Swami Vivekananda Youth Movement
16. Smt Devaki Jain, formerly professor at the Delhi University
17. Sri K.N. Govindacharya, Thinker and Ideologue
18. Dr Jayaprakash Narayan, , General Secretary, Foundation for Democratic Reforms & Founder of Lok Satta
19. Dr Kamal Kumar, former Director, National Police Academy
20. Sri Karthik Chandra, Research Coordinator, FDR
21. Smt Kiran Bedi, Social Activist & Former Police Officer
22. Sri Kuldip Nayar, Noted Journalist
23. Sri BR Lal, Former DGP Haryana and Jt. Director CBI

24. Ms Maja Daruwala, Director, Commonwealth Human Rights Initiative
25. Ms Madhu Kishwar, a leading feminist, and editor of Manushi (a journal devoted to human rights and women's rights issues)
26. Sri Mazer Hussain, Director COVA, Hyderabad
27. Sri Manish Sisodia, RTI Activist, Parivartan
28. Sri Nikhil Dey, Social Activist, Mazdoor Kisan Shakti Sangathan, Rajasthan
29. Sri Prakash Singh, Formerly Director General BSF, DGP UP and Assam,
30. Ms Padma Bhupathiraju, People for Lok Satta (USA)
31. Sri Prashant Bhushan, Supreme Court Advocate
32. Sri Parth J. Shah, President, Centre for Civil Society
33. Sri P S Ramamohan Rao, Former Governor Tamil Nadu
34. Sri R Ramaswamy Iyer, former Secretary, Water Resources, Govt of India
35. Prof. Rajani Ranjan Jha, Prof. Political Science, Banaras Hindu University
36. Sri TR Raghunandan, former Secretary, Govt of Karnataka
37. Dr. Trinath Mishra, Former Director, CBI
38. Sri Soli Sorabjee, Former Attorney General of India
39. Shri Shanti Bhushan, Former Union Law Minister and well known Supreme Court Advocate
40. Sri Sanjay Parikh, Supreme Court Advocate
41. Sri Subhash C Kashyap, Member of the National Commission to Review the Working of the Constitution and Chairman of its Drafting and Editorial Committee.
42. Sri Sudesh Agarwal, President of Smast Bhartiya Party
43. Sri K C Sivaramakrishnan, Former Secretary to Government of India
44. Sri Surendra Srivastava, Board Member, Foundation for Democratic Reforms & Founder of Lok Satta and Lok Satta Party in Maharashtra an In charge of promoting Lok Satta Aandolan/ Party across India
45. Sri R Sreenivasan, Former Chief Secretary of Punjab
46. Sri Swami Agnivesh, Social reformer
47. Sri Shanmughan, social activist

48. Admiral RH Tahiliani, Former Chief of the Naval Staff, Mentor, Transparency International India.
49. Smt. Vineeta Rai, Member Secretary, 2<sup>nd</sup> Administration Reforms Commission
50. Sri Venkatesh Nayak, Programme Coordinator, CHRI
51. Maj Gen Vinod Saighal, Convenor, Movement for Restoration of Good Government
52. Sri Vijay Anand, Mentor, 5<sup>th</sup> Pillar

**The following invitees could not participate in the Round Table, but they gave their written views:**

1. Sri P Shankar, former CVC
2. Sri J.F. Ribeiro, former Ambassador to Romania
3. Sri TSR Subramanian, former Cabinet Secretary
4. Sri Satish Sahney, former Police Officer
5. Sri D.S.Ranga Rao
6. Sri Sadanand Date
7. Sri Deven Bharti, Addl. Commissioner of Police (Crime), Mumbai
8. Sri DR Kaarthikeyan, former Director CBI

**The following invitees could not participate in the Round Table on account of their scheduling conflicts. However, they have fully supported and endorsed the initiative**

1. Sri Ram Jethmalani, Former Law Minister of India a senior advocate
2. Sri Fali S Nariman, distinguished Indian Constitutional jurist, and senior advocate to the Supreme Court of India to the Supreme Court of India
3. Sri Wajahat Habibullah, Chairman , National Commission for Minorities,
4. Dr R.K.Raghavan,, Former Director, CBI
5. Prof Yogendra Yadav, social scientist

6. Sri B.G.Vergheese, former Editor, Indian Express and Hindustan Times
7. Sri Naresh Chandra, Former Cabinet secretary
8. Sri B B Tandon, Former Chief Election Commissioner of India
9. Sri VA Pai Panandiker, Academy of International Education
10. Smt Indu Jain, Chairperson, Times Foundation
11. Anil B Divan, Sr. Advocate Supreme, Court of India

## **Views of the Round table on**

### ***Issue 1: How many members in Lokpal***

### ***Issue 2: Selection criteria for the Chairperson and members***

- The Participants agreed that Lokpal should be a multi-member body, whose number should be based on its functions.
- The participants were of the opinion that the Lokpal – functioning as an Ombudsman against corruption – should consist of 3-5 members, with a Chairperson. The number should be small enough to make the functioning of Lokpal cohesive and practicable. However, if the Lokpal is to address grievances as well, then the consensus among the participants was for a larger number of members.
- Generally, it was felt, the Chairperson must be a member from the judiciary.
- The CVC and the CAG can be made either ex-officio members or permanent invitees to Lokpal.
- Due consideration needs to be given to seniority and experience; an upper age limit of 75 years was suggested by the participants.
- Due weightage to inclusiveness and equity must be given during the constitution of Lokpal; this could be achieved through conscious efforts rather than by statutory prescription.

### **Selection Criteria**

- The participants broadly agreed that it would be desirable for the Collegium/Selection Committee to have wider consultations with other eminent citizens, public servants and jurists and should conduct a wide search to identify the pool of eligible candidates. The list identifying the pool of eligible candidates should be publicly displayed to elicit comments, if any, regarding their antecedents or to facilitate suggestion of any other suitable names. Wide publicity to the process of identification of suitable candidates and the views of experts as well as lay persons can be solicited in this manner without addition of another body whose composition maybe problematic. This whole process of wider consultation should be faithfully documented.

- In particular, the recommendation of names to Lokpal should be based on the principle of unanimity and consensus. In other words, even if one or two members express any valid reservations about the suitability of a candidate, then such a candidate should not be considered for appointment. Only persons with unimpeachable integrity, unblemished record and unquestioned competence should be recommended for appointment.

## **Views of the Round table on**

### ***Issue 3: Composition of the collegium for selection of Lokpal***

- The participants were of the opinion that the collegium/selection committee should consist of
  - Vice President
  - Prime Minister
  - Leader of Opposition
  - Speaker
  - Two Senior-most judges of the Supreme Court (i.e. Chief Justice and a Justice next in seniority), provided they are not being considered for the membership of Lokpal
  - Two eminent citizens co-opted unanimously by the above members



## Views of the Round table on

### ***Issue 4: Jurisdiction of Lokpal***

- The Lokpal should have jurisdiction over:
  - All current and former MPs of both Houses.
  - All Union Ministers, except the Prime Minister
  - Officers and functionaries in Prime Minister's Office (PMO)
  - All regulatory authorities (other than Constitutional authorities)
  - All civil servants in high offices (i.e. Joint Secretary and above)
  - Any other official, if found to be involved in corruption, during the course of enquiry (Lokpal to decide which cases to pursue)
- Broadly, the participants felt that there should be no bar on jurisdiction of Lokpal but the focus should be on corruption in higher levels.
- Lokayukta in the states will have corresponding jurisdiction. Chief Minister can be brought under Lokpal's jurisdiction.

### **Judiciary**

- There was a broad consensus that the accountability and probity in higher judiciary should be ensured, but through a separate and powerful mechanism of National Judicial Commission (NJC) along with the accountability framework as provided by the *Judicial Standards and Accountability Bill (2010)*. It was explained to the participants that a panel of eminent jurists comprising of Sri Justice MN Venkatachaliah, Sri Justice JS Verma and Sri Justice VR Krishna Iyer has already prepared a viable model of National Judicial Commission after detailed examination of the issue and extensive deliberations. This proposal covers all issues of accountability of higher judiciary and would shortly forwarded to the leaders of the Government, Opposition, and political parties.
- As far as lower judiciary is concerned, the High Court is empowered to enforce accountability, integrity and probity as per the provisions of Art. 235 of the Constitution.

### **Prime Minister**

- The participants expressed strong views both in favour of and against, the inclusion of the Prime Minister. No consensus was reached.
- Those participants having a rich public service experience at the highest levels cited the findings of the 4<sup>th</sup> Report of the 2<sup>nd</sup> Administrative Reforms Commission (ARC) and the National Commission for the Review of Working of Constitution (NCRWC) and recommended the exclusion of Prime Minister from the jurisdiction of Lokpal. It was specially pointed out that the Prime Minister in the Westminster system occupies a pivotal position, and his / 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 an enquiry by Lokpal, the damage done to the country would be considerable and irreversible.
- However, several other participants strongly felt that the Prime Minister must be within the ambit of the Lokpal. They felt that public confidence in our political process has been eroded significantly, and it may be necessary to bring the Prime Minister within the purview of the Lokpal in order to restore public trust.
- The Round Table was of the opinion that, on the balance, this issue should best be left to the wisdom of the Parliament. However, the Round Table is of the unanimous view that all other ministers and senior officials, including those directly associated with the Prime Minister's Office should be brought within the purview of Lokpal's jurisdiction.
- But Chief Ministers should be brought under the jurisdiction of Lokpal at the national level, because in States there is much less risk of a government being paralyzed if a Chief Minister is under investigation / enquiry. In a crisis situation in a state, if the government cannot be carried in accordance with the provisions of the Constitution, the President may invoke the provisions of Article 356. Therefore, the balance of convenience lies in bringing the Chief Ministers within the purview of an independent anti-corruption authority, but at the national level (Lokpal).

## Views of the Round table on

### **Issue 5: Powers of Lokpal in respect of suo motu, complaints, investigations, search and seizures**

- Lokpal should have suo motu powers to investigate any corruption related offence.
- Section 6 (A) of the *Delhi Special Police Establishment Act, 1946*, should be repealed.
- Lokpal should have adequate powers for search and seizure; its powers could be modeled on the relevant provisions of the SAFEMA Act.
- Lokpal should have 2 wings, each headed by a Director General: Enquiry wing and Prosecution wing.
- Since Lokpal is envisaged to be a quasi-judicial body, the participants felt that it should not have the powers of a police station.
- It must be ensured that the statements made before Lokpal and its officials are admissible before Courts of Law. Keeping this in mind, the Lokpal Act must be in harmony with the existing Criminal and Evidence laws.

## **Views of the Round table on**

***Issue 6: Nature of complaints to be entertained***

***Issue 7: Recommendations of a General Nature and Monitoring e.g. Citizen's Charter***

***Issue 8: Relationship with CVC and coordination***

- Lokpal should essentially entertain complaints that are punishable under the Prevention of Corruption Act, 1988 and those related to serious abuse of authority.
- If the PM is to be kept out of Lokpal's jurisdiction, the Chief Ministers can be brought under Lokpal in a single law that can be made applicable for the entire country:
  - Union Government – Lokpal
  - State(s) – Lokayukta
  - Local Governments – Local Ombudsmen
- There was a broad consensus among the participants that Lokpal should not be burdened with too many matters such as grievances as this may lead to reduction of its effectiveness against serious corruption.
- There was a consensus among the participants that the CVC should be retained and strengthened.
- The appointment of the CVC should be in a like manner as Lokpal.
- CVC and CAG could be made either ex-officio members or permanent invitees to the Lokpal institution. Their participation would facilitate harmonious integration and minimize duplication of efforts.
- CVC should be brought within the overall superintendence of the Lokpal, but no supervisory role for Lokpal in individual cases

## Views of the Round table on

### ***Issue 9: Role of CBI***

### ***Issue 10: Should Lokpal have its own investigative machinery?***

### ***Issue 14: Changes in Executive Orders (e.g. Single Directive of CBI)***

- The participants were of the unanimous opinion that the present dispensation with respect to investigation/enquiries in matters related to corruption has not functioned satisfactorily.
- Therefore, Lokpal should have its own machinery for enquiries. It should also be empowered to obtain the services of any official upon deputation towards carrying out such enquiries.
- Participants were also of the opinion that the CBI has the requisite competence and would function more effectively if it is adequately strengthened and simultaneously made independent of the political executive. Therefore, the anti-corruption wing of the CBI should be separated and be made completely autonomous, and totally independent of the political executive.
- This anti-corruption investigative institution will report to the Lokpal which would exercise broad superintendence. Accountability mechanisms can be evolved through a committee of Lokpal, CAG and CVC.
- Section 6(A) of the *Delhi Special Police Establishment Act, 1946* needs to be repealed.
- The CBI should not be forced to draw from the government legal functionaries; it should have its own prosecution wing.
- The participants emphasized that the most important steps to be taken to ensure the autonomy of the CBI are:
  - Appointment of Director and key officials by an independent mechanism headed by Lokpal, CAG and CVC.
  - The repeal of Section 6(A) of the *Delhi Special Police Establishment Act, 1946*
  - Independence in functioning coupled with autonomy in sanctioning prosecutions and appeals.
- CBI should not be stifled by the government through denial of resources or personnel. There is a strong case for enlarging the staff strength of CBI from the existing 4,000 (approx.) to 10,000 (est. required). Sanction of staff and appointment of key functionaries could be by the committee of Lokpal, CAG and CVC; they could also ensure the provision of additional material resources through a suitable mechanism.

- Section 19 of the Prevention of Corruption Act should be amended to vest the power of sanction of prosecution of officials in the Lokpal / Lokayukta. However the government should be given an opportunity to state objections, if any, and in writing, within a fixed time period (say 30 days). The Lokpal / Lokayukta would take into consideration these written objections submitted by the government, and the Lokpal Institution may provide a mechanism for reexamination of its decision in the light of the special points made by the government, wherever necessary. Lokpal / Lokayukta's final orders regarding prosecution will be made in the form of a speaking order, given in writing, citing the circumstances and reasons for the decision.

## **Views of the Round table on**

***Issue 11: Powers for removal of Civil Servants***

***Issue 12: Is a Constitutional Amendment needed as it might affect part XIV of the Constitution.***

- The members were of the opinion that if Lokpal/Lokayukta holds a public servant guilty of corruption, a further departmental enquiry and a further procedure for removing that public servant and/or imposing a penalty is unnecessary.
- It is for the Lokpal institution to ensure that the principles of natural justice are followed before awarding punishments; such a punishment should be implemented without delay.
- There was broad consensus that all cases warranting a major punishment (including removal) based on the findings of Lokpal/Lokayukta should be included under Article 311(2)(b) or (c) of the Constitution. Further enquiry should not be made a requirement.

## Views of the Round table on

### *Issue 13: Amendments required in Prevention of Corruption Act, 1988, regarding enlarging the definition of corruption*

- There was a broad consensus among participants that enlargement of definition of corruption should be as per the recommendations of the 4<sup>th</sup> Report of 2<sup>nd</sup> ARC and should include:
  - Abuse of office and authority (even if no direct pecuniary gain to the public official)
  - Obstruction of justice
  - Squandering public money/ wasteful public expenditure
  - Gross perversion of Constitution/democratic institutions
  - 'Collusive Bribery' causing loss to state, public or public interest to be made a special offence
- The increase in punishment for such offences, including collusive bribery, should be on the lines of the recommendations of the 4<sup>th</sup> Report of 2<sup>nd</sup> ARC. In addition, the penalty in criminal class, the PCA, 1988, should be amended to ensure civil liability of public servants (liability for loss and damages, both)
- Confiscation of properties, illegally acquired, should be achieved by enacting The Corrupt Public Servants (Forfeiture of Property) Bill, suggested by Law Commission.
- Section 19 of the Prevention of Corruption Act should be amended, and the power of sanction of prosecution of officials should be in the hands of Lokpal.
- However the government should be given an opportunity to state objections, if any, and in writing, within a fixed time period (say 30 days). The Lokpal / Lokayukta would take into consideration these written objections submitted by the government, and the Lokpal Institution may provide a mechanism for reexamination of its decision in the light of the special points made by the government, wherever necessary. Lokpal / Lokayukta's final orders regarding prosecution will be made in the form of a speaking order, given in writing, citing the circumstances and reasons for the decision.



## Views of the Round table on

*Issue 15: Appointments of independent and effective prosecutors in anti-corruption cases*

*Issue 16: Speedy disposal of cases by Lokpal and anti-corruption courts - should timelines be imposed?*

- The participants were of the opinion that Lokpal should have the power to appoint prosecutors in PCA cases.
- Lokpal should have the power to recommend the constitution of special courts to try corruption cases. The government should ordinarily accept such recommendations.
- There was a broad consensus among the participants that a fixed time frame for completion of trial is not warranted. However, proceedings are to be held on a day-to-day basis with no deviations.
- The independence of the prosecutors from the political executive was considered to be vital.
- The participants agreed with the recommendations of ARC that the Supreme Court and High Courts could lay down additional guidelines necessary for speedy trials.

## Views of the Round table on

### *Issue 17: Removal of members of Lokpal*

- The participants agreed with the provision in the government's draft The Lokpal Bill, 2010:  
*"The Chairperson or a Member of Lokpal cannot not be removed from his office except by an order made by the President on the ground of proved misbehavior or incapacity after an inquiry made by a Committee consisting of the Chief Justice of India and two other Judges of the Supreme Court next to the Chief Justice in seniority, in which the Chairperson or the Member had been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges."*

This mechanism ensures independence of Lokpal while enforcing accountability. Corresponding provisions should be made for Lokayuktas and local Ombudsmen.

## Views of the Round table on

### ***Issue 18: Can a single law provide for identical Lokayuktas in states (similar to RTI Act)***

- The participants were of the opinion that ordinarily tackling corruption in states does not fall within the subject matter of laws to be made by the Parliament.
- However, in the case of Right to Information (RTI) the Supreme Court had ruled that RTI is a fundamental right (integral to Article 19) thereby enabling the Parliament to pass a single law for the entire country.
- The participants recognized the fact that India is a signatory to the UN Convention Against Corruption (UNCAC) and the Gol has expressed its commitment to implement the same. Under items/matters 13 and 14 of List I – Union List (Seventh Schedule of the Constitution), the implementation of the provisions of UNCAC, to which India is a signatory, falls squarely within the jurisdiction of the Parliament. Article 253 clearly states: “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, or association or other body.” This provision, read with Article 51(C) of the Directive Principles of State Policy gives Parliament power to make laws on any subject covered by an international treaty, even if it is covered in the List II of the Seventh Schedule. The UN Convention Against Corruption (UNCAC) has already been signed by India, and it is soon to be ratified. This specifically attracts the provision of Article 253. The Bangalore Principles require interpretation of the domestic law in consonance with the International Law, and this principle has been further elaborated by the Supreme Court to provide for the canon of construction of even filling the gaps in the domestic law in addition to elaborating the content thereof, with the aid of international law, except to the extent of inconsistency between them. In this case there would be no inconsistency between the domestic law and the UNCAC. The obligation of India to enact a domestic law in consonance with UN convention will be met if Parliament makes a law for the whole nation, applicable to the Union, States and Local Governments.
- The participants therefore recommended that a single, effective legislation should be made by the Parliament, applicable for the entire country:
  - Union – Lokpal
  - States – Lokayukta
  - Local Governments – Local Ombudsmenwith each institution having identical functions and powers within their respective jurisdictions.

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