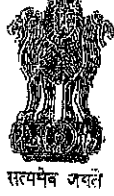


ARUN JAITLEY
Member of Parliament
Leader of Opposition
(Rajya Sabha)



43, Parliament House,
New Delhi-110 001
Tel. : 23016707, 23034883
Fax : 23793433

December 10, 2013

Respected *Anna Ji.*

I have received your letter dated 30th November, 2013 in relation to the Lokpal. My party and I am fully committed to the highest norms of public accountability and therefore believe that the Lokpal should be brought into force immediately.

I am writing to you to remove any possibility of misunderstanding on this issue which is indicated in your letter. The Bill which was approved by the Lok Sabha on 27th December 2011 was neither the Jan Lokpal nor had it measured up to our expectations. The Government used its majority in the Lok Sabha to pass this Bill which would have created the Lokpal not as an independent institution but as a Government controlled entity. Surely, creation of a 'Sarkari' Lokpal could not be your objective or ours. The Bill in this regard was taken up in the Rajya Sabha on 29/12/2011. The entire Opposition rallied against the provisions contained in the Bill as passed by the Lok Sabha which sought to create the 'Sarkari Lokpal'. Since we were committed to passing the legislation of the Lokpal, instead of same being rejected, we suggested major amendments which would have created the Lokpal as a credible institution. We had numbers on our side if those amendments would have been carried out. The amended Bill then could have been referred back to the Lok Sabha for reconsideration. The brief of points made by me in the Rajya Sabha are enclosed to this letter. However, the Chairman of the Rajya Sabha chose to adjourn the House sine die thus denying the country an opportunity where one House passed the Bill for creation of credible Lokpal institution.

Thereafter, the Bill was referred to a Select Committee of the Rajya Sabha. I was one of the Members of the Select Committee. My party made a presentation through its members Shri Rajiv Pratap

Rudi, Shri Bhupender Yadav and myself with regard to our proposals before the Select Committee. A copy of those proposals which constitutes the commitment of my party is annexed to this letter. The Select Committee accepted a large number of our proposals but did not accept some of them. The Select Committee report is to be placed before the Parliament. It is only the Parliament which is entitled to amend/accept the same. However, the Government has erroneously chosen to place the report before the Cabinet on 31st January 2013 and further diluted the recommendations. I have taken a public position against this policy which is contained in my Article dated 1st February 2013. I raised this issue in the Rajya Sabha on the 6th March 2013.

Even then this diluted Bill is not being listed on the agenda for discussion. It appears that the Government is not sincere in getting it placed on the said agenda. I can assure you in view of the public position my party has adopted that we will be second to none in pursuing this issue. I am sending this detailed response to your letter so that the position my party and I have taken becomes clear.

With regards,

Yours sincerely,


(ARUN JAITLEY)

To
Shri K.B. alias Anna Hazare,
Ralegan Siddhi, Tal. Parner,
Dist. Ahmednagar (Maharashtra).

Encl. As stated above.

BHARATIYA JANATA PARTY
11 Ashok Road, New Delhi.

December 29, 2011.

Brief Talking points made by Shri Arun Jaitley, Leader of Opposition (Rajya Sabha) while speaking on the Lokpal and Lokayukata Bill, 2011 on 29.12.2011.

History has today provided us an opportunity to legislate a strong and effective legal mechanism for investigation and punishment of the corrupt. We can squander this opportunity by legislating a weak and phony mechanism and then create a smoke screen that we have performed our task. Alternatively, if we are sincere in our effort to combat corruption we owe it to our country to legislate effectively.

The present situation

Admittedly, we live in a society where people are losing faith in the integrity of governance. Political funding in the world's largest democracy is not transparent. Discretions available to those in governance at various stages are being misused. Land, mining, liquor, municipalities, natural resources, revenue departments etc. are hotbeds of corruption.

Obviously, today's mechanism to fight corruption is inadequate. The investigative mechanism can be influenced by the State. The legal processes are slow and time consuming. Fatigue sets in and the public revulsion against the corrupt is lost.

The silver lining appears to be a popular mood against corruption. There is both anger and revulsion in public. We, politicians and legislators, are being accused of wanting not to create an effective mechanism to fight corruption. The magnitude of corruption in certain recent transactions has aggravated public anger. The fact that the present government has been compelled to bring this half-hearted legislation is the first success of this anti-corruption mood. We are all going to be judged at the end of the day as to where we stand in this crusade against corruption. Do we support a phony and weak bill or do we want to ensure a strong and effective law against corruption. Not only the government, its allies and every political party in this House will be judged. Those who are willing to proclaim but unwilling to strike will be considered supporters of a phony and a weak bill.

Was the Constitution Amendment necessary ?

The Constitution amendment which was defeated in the Lok Sabha will not give any special status to the Lok Pal or the Lok Ayukatas. It merely provided that there shall be a Lokpal at the Centre and the Lok Ayukatas in the States. An effective Lokpal can be possible through an ordinary legislation as through a Constitution amendment. A smoke screen was created by the Champions of the Constitutional

41 of List-II. The power to take departmental proceedings (Clause 81(3)(b) is exclusively in the State domain.

Article 253 of the Constitution provides for enforcing India's international commitments. Why should the Government of India not prepare a model law and expect the States to follow it. Article 252 gives an adequate flexibility to the Parliament to make such a model law. There is no international commitment of India which deals with reservation on the basis of caste and religion in any international convention. If the Central government believes that it has power to make State Lok Ayuktas Act then the State powers will be eclipsed and all existing State Lok Ayuktas Acts would be invalid. The provision of clause 64(5) would be redundant. If the Centre had the exclusive jurisdiction to frame such a law then transition to State law would not be required. Constitutionally the correct course would be to frame a law under Article 252 after obtaining resolution of two States.

On Reservation

Whereas I support the affirmative action which the Constitution provides for reservation, this Bill provides for reservation on the basis of religion which is outside the Constitution. Additionally, the words 'not less than' provides for at least 50% of the Members of the Lokpal which in the present case would be five out of nine. It would exceed the 50% ceiling laid down by the Supreme Court. Why does the government want to kill the Lokpal even before it comes into existence.

Sense of the House

The sense of the House provided for a Citizen Charter and all civil servants to come under the Lokpal. Somehow, the government has proposed a separate legislation for Citizen Charter. We should be seen as honouring the sense of the House. The C and D category employees should be treated at par with A & B category employees. An additional facility can be given to the Lokpal to frame its own rules under which some of the functions can be delegated or some performed by the Lokpal or its delegatee.

Sir, Institution building is a challenging task. We are today attempting to create an integrity institution in India. Let us not subvert the institution even before it is formed. We need to create a powerful and independent Lokpal. Let us not create a subservient Lokpal. An effective Lokpal needs an independent CBI. We must not provide for a pliable and weak Lokpal. The Prime Minister has made it appear as though there is a conflict between fighting corruption and federalism. Both can coexist. We are in the process of creating history; if we create bad history, the generations to come will not pardon us. They will be compelled to correct the error into which we are falling.

(Ram Kripal Sinha)
Secretary, BJP Parliamentary Party

Bill by claiming that they wanted to give constitutional status to the Lokpal. A mere status gives no power or authority. It is the Lokpal Bill which gives the power and authority. Giving a constitutional status and providing for a hollow and weak Lokpal was a fraud on power. Even without a constitution amendment, a simple law would be adequate. But this law was being enacted only to please somebody who had assumed a status without authority to the Lokpal would be a game changer.

It is no part of Parliament's job to legislate a superfluous constitution amendment. In any case, the proposed Constitution amendment unless it clarified that it was the exercise of parliamentary jurisdiction under article 252, it would have amounted to usurpation of the State authority.

What are the Issues?

I rise to support the very idea of a strong Lokpal. I equally rise to oppose a weak and fragile Lokpal. How do I judge this law? I will elaborate three different criteria.

1) Content of the Bill

The appointment process (clause 4) is controlled by the Government of the day. Three out of 5 nominees of the government are on the selection panel. The criteria for being a member of the Search Committee is not specified. The removal process (clause 37) is again controlled by the government. If a citizen is aggrieved against the Lokpal, he can only petition through the government which will decide whether to move the Supreme Court or not. If the government finds a particular Lokpal to be inconvenient, it has the authority to suspend him. Why should it be the government instead of the Supreme Court which should have the power to suspend a Lokpal. Does the Government want a sword of Damocles to hang over the Lokpal so that should he fall out of line, the government is entitled to suspend him. The staff of the Lokpal (section 10) will be appointed by a panel submitted by the government.

The procedure of inquiry and investigation.

The procedure of inquiry and investigation is absurd. The Lok Pal has no power to act suo moto. The Lokpal can act only on a complaint. When he receives a complaint he will first decide whether to proceed in a case and if it decides to proceed further, it can make a *prima facie* inquiry. He will then conduct a preliminary inquiry through its inquiry wing to decide whether there is a prima facie case or refer it to the CVC who will conduct a preliminary inquiry. In the case of category A & B officials, the CVC will refer the matter back to the Lokpal who will now take a view whether the matter should be referred to the CBI or any other agency or not. While referring the matter to the Lokpal he will hear the delinquent officer and disclose the line of

investigation to him. When the CBI investigates the matter it will send the final report back to the Lokpal who will now become the prosecuting agency.

Nowhere in the world the prosecution and investigation come under different agencies. They maintain an arm's length distance. The Directorate of Prosecution has to be professional but it does not have to go outside the CBI. It should not go outside the CBI. Additionally, the power given to the Lokpal to tinker with the CBI's investigation is against all known canons of investigation.

The position of CBI

We believe that the appointment of the Director of CBI should be made by an independent procedure. The collegium which appoints him must also appoint the Director of Prosecution. No one should be allowed to interfere in the CBI investigation—neither the Government nor the Lokpal. It is a well settled principle of the criminal jurisprudence that it is the power of the investigating authority to decide as to how to investigate and whom to prosecute. Section 25 of the Bill needs to be amended where the power of administrative and financial control, superintendence and direction over the CBI should be given to the Lokpal. Similar amendment should be made in the Delhi Special Police Establishment Act.

Non Government organizations

The power under clause 14(1)(h) given to the Lokpal to investigate persons who are not public servants but are officials of societies, trusts and NGOs is *improper*. It is a revenge on civil society that such a provision is sought to be enacted.

Clause 55 of the Bill needs to be amended. It is no business of the Lokpal to start funding and providing legal aid to corrupt officials.

It is my case that the Lokpal will substantially be a government appointee through the collegium. The Government control over the Lokpal will intrude into private societies and Trusts. The CBI-Lokpal relationship needs to be well defined. Without autonomous and independent CBI the Lokpal will be a crippled institution. The present procedure of investigation which is like a round robin needs to be amended and corrected. The protection given to the Prime Minister to hold his inquiry in camera lacks appearance of justice.

2. The government has brought a constitutionally vulnerable Bill.

a. Lack of legislative confidence

The State Lok Ayukata has two functions to perform. -- The power to prosecute for criminal offences and the power to hold departmental inquiries against State employees. The power of criminal prosecution is available in the Concurrent List i.e. Entry 1, 2, 11A in List-III. However, the power of taking departmental action against civil servants of the State is a power exclusively in the State domain i.e. Entry

Extracts from the debate on March 6, 2013 in the Rajya Sabha
(3 pages)

You have Ministers who started arrogantly but are now sulking and saying, "Let the Supreme Court start auctioning the spectrum. What can I do?" So, the arrogance has become a sulk. And this is bound to happen. When the going is good, you are at your best. And when the going is not so good, I, recently, read about a very condemnable incident that instead of bouquets, people are giving them flower pots. And this happens when you lose credibility. The Commonwealth Games was a great occasion to showcase India, its sports and its tourism. We built a great infrastructure for sports. Today we don't remember that infrastructure. We remember them because of the cases of corruption.

(Continued by SSS/3B)

SSS-GS/3.10/3B

SHRI ARUN JAITLEY (CONTD.): I just want to outline the 2G spectrum once again. It made the entire success story of telecom very bitter. I have mentioned coal and you have not learnt the lesson as yet. In the VVIP helicopter deal, instead of finding out who received the kickbacks and the bribes, your policy is, 'We will constitute a group of MPs in the JPC, they will find out.' The MPs can't go and find out who deposited money in foreign accounts. MPs have no coercive powers in a JPC. MPs can't send Letter

Rogatories to foreign Governments. आपने अभी तक उसका सबक नहीं सीखा। भ्रष्टाचार के खिलाफ इतना बड़ा विरोध इस देश के अंदर हुआ। आपने लोक सभा में पारित कर दिया, राज्य सभा में आपको लगा कि पारित नहीं होगा, तो Select Committee को भेजा और आज भी Select Committee ने, चतुर्वेदी जी यहां नहीं हैं, वे उसके अध्यक्ष थे, कुछ विषयों पर हमारा मतभेद हो सकता है, लेकिन प्रायः उनकी समिति ने अच्छा काम किया। अब उसने जो कहा, उसे भी बदल दो। जो सुझाव सर्वसम्मति से Select Committee के आये, जिसमें Congress Party भी सम्मिलित है और आपके अध्यक्ष थे। मैं आपको उदाहरण देता हूँ कि आप करना क्या चाहते हो? कई बार इतनी ज्यादा भ्रष्टाचार के खिलाफ नरमी हो जाये कि किसी अधिकारी के खिलाफ भ्रष्टाचार का आरोप आयेगा और लोकपाल के पास जायेगा, तो लोकपाल पहले उसको बुलायेगा, उसको सब कागज देगा और उसकी सुनवाई करेगा। Select Committee ने कहा कि ऐसा मत कीजिए। वह रिश्तत ले रहा है, तो उसको पकड़ना है। अगर उसके पास कहीं अवैध धन पड़ा है, तो उसको छापा मारकर बरामद करना है। पहले उसको नोटिस देंगे कि हम ऐसा क्यों न करें। वह सारी की सारी ऐविडेंस को गायब कर देगा। This is what your Cabinet has now passed and over-turned the unanimous recommendation of the Select Committee.

हमने कहा कि investigating officers अगर CBI के हैं, हमने कई recommendations दी हैं, कई स्वीकार भी की हैं। उनको ट्रांसफर करना है, केस के दौरान, He is an inconvenient officer. Take the permission of

the Lokpal. The Government should not do it. Now the Government will have the power to transfer it. आपके खिलाफ जांच हो रही है, आप उसी अधिकारी को ट्रांसफर कर दो।

उपसभापति महोदय, मेरा आग्रह है कि आज भी बहुत विलम्ब नहीं हुआ है, सरकार के पास फिर से अपनी विश्वसनीयता बनाने का एक अंतिम अवसर है और उसको बनाने का प्रयास सरकार करे, तो शायद स्थिति बेहतर हो सकती है।

उपसभापति महोदय, हैदराबाद का जिक्र किया गया। उसके अतिरिक्त कई और विषय भी हैं और ये वे विषय हैं जिसमें देश को एक स्वर में बोलना आवश्यक है। कश्मीर का विषय है, इसमें कोई दो राय नहीं कि वह इस देश का अटूट अंग है। अलगाववादियों के साथ कोई समझौता न हो और जम्मू-कश्मीर की जनता के प्रति नरमी और उनके विकास के लिए, उनके अधिकारों के लिए हम लोग सहानुभूति से देखें। वहां के अपने राजनैतिक मित्रों को भी यह कहें कि अच्छा प्रशासन दीजिए, ताकि वहां की जनता भी आपके नजदीक आये। मुझे कई बार वहां जाने का मौका मिला है और जिस शब्द का आप बार-बार प्रयोग कर रही थीं, वह सही शब्द है। There is an aspirational India. जम्मू-कश्मीर में भी एक aspirational class है। वे हिंसा को पसंद नहीं करते, वे अलगाववाद को पसंद नहीं करते, इस देश की मुख्यधारा के साथ जुड़ना चाहते हैं और जो आर्थिक दृष्टि से मुख्यधारा है, उसमें शामिल होना चाहते हैं। So we adopt a pro-people, anti-separatist approach. We have no difficulty. लेकिन हमारे वहां के

To
The Hon'ble Chairman,
Select Committee on Lokpal and Lokayukta Bill 2012 (Rajya Sabha)
New Delhi.

Sir,

We are in receipt of the communication from the Secretariat asking us to place on record suggestions, if any, in relation to the subject of "The Lokpal and Lokayukta Bill 2012" under discussion, to the Bill as approved by the Lok Sabha and having regard to certain amendments - Amendment No148 to 164 placed by the Government, we have the following suggestions to offer :-

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

India is a union of States. Federalism is a part of the basic structure of our Constitution. A Lokayukta constituted by the States will deal with penal action against public servants as also the departmental proceedings. Whereas the power to initiate penal proceedings is the subject of on the Concurrent List, the power to deal with services of the State is entirely a State subject (Entry 41 of List-II of VIIth Scheduled of Constitution, "State Public Services; State Public Service Commission). Thus, a Lokayukta constituted by a Central legislation would be wholly ultra vires the legislative competence of the Central Parliament. Lokayuktas are to be

constituted by the States, it is a settled proposition that Legislative and Executive jurisdictions co-exist. It is, thus, only a State which can provide for a Lokayukta in the State.

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

- (a) Federalism is a basic part of the Constitution. Post 1973. In the Keshvanand Bharati case 1973 (4) SCC 225, the Hon'ble Supreme Court has held that:- the basic structure of the Constitution cannot be amended either by legislation or even a Constitutional amendment. The Constitutional provisions cannot be altered in the garb of making legislation for giving effect to international agreements. The basic structure of the Constitution in the pre-1973 law in this regard is highly doubtful in view of the basic structure doctrine.
- (b) Even otherwise the UN Convention against Corruption categorically states that a legislation will be enacted by all signatory States with regard to their domestic laws. The domestic laws of India will encompass the federal polity of India wherein a law dealing with the services of the States will only be acted upon by the States.

(c) No where does the UN Convention against Corruption state that the law so enacted could breach domestic legal provisions.

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

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

II. Appointment of Lokpal

We believe that clause 4 of the draft Bill needs to be amended. The Selection Committee for appointment of the Lokpal is loaded in favour of the government of the day. Thus category

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

III. Removal of the Lokpal

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

IV. Staff and other officers of the Lokpal

The draft Bill provides for Director of Enquiry, Director of Prosecution and other staff members to be appointed in the Lokpal from a panel of names suggested by the Government of India. The

Lokpal should be empowered to call for certain specific officials if he so desires.

V. Jurisdiction of the Lokpal

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

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

- (a) In clause 14(1)(g) the word 'or aided' in the 4th line should be deleted.
- (b) In clause 14(1)(h) from third to fifth line the words "or the public and the annual income of which exceeds such amount as the central government may by notification specify or" be deleted. The object of this amendment would be that such NGOs which are funded by the Government or funded by International Agencies will only be covered under the Lokpal.

VI. Procedure for Investigation

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

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

or may direct its own Prosecution Wing to prosecute the public servant.

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

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

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

VIII. Position of CBI as an investigative agency

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

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

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

"The Bill in the present form does not deal with this part. Look at it from the other way round. Suppose the CBI, in its report, says that it has to be closed and the Lokpal says that they would like him to be prosecuted. A person may argue that when he was dealt with only by the CBI then, he would have faced closure but, he has been

exposed to a discriminatory procedure where there is another report by the Lokpal which says that there is a case for prosecution. These are the grey areas which should be ironed out so that there is no scope for challenge. There is another part where there can be a challenge. This does not pertain to the challenge to the Bill. This relates to a person who has been prosecuted or investigated by the CBI without reference to the Lokpal. He does not get the benefit of any hearing on the preliminary enquiry. CBI has a preliminary enquiry and then, it decides to register a case. At that time, he is not heard. Such a person could tell us to look at the provisions of the Lokpal Act. A person who is proceeded under this Act gets a right to be heard. He may say, "I am similarly situated but, I have no right to be heard because I am being investigated by the CBI and there is no question of the CBI hearing me until the matter actually reaches the court." So, these are areas where there could possibly be a challenge under Article 14. But, we will have to wait for such cases, I would suggest that all these areas may be looked at a little carefully, I have spoken to the Law Minister on this".

Shri A.P. Singh Director, CBI: "Sir, my purpose in making this presentation here today is to convince the Select Committee that CBI is the most important cog in this whole anti-corruption structure and without the CBI the Lokpal is a non-starter right from the beginning. You cannot have the Lokpal without the CBI or with a

truncated CBI or a split CBI or a divided CBI. If Lokpal comes, it can only be successful if CBI is an integral part. The basic investigating machinery of the Lokpal can only be the CBI. That is what I wanted to emphasise. Any attempt to dilute the role of CBI or tamper with the present structure would have serious consequences to the anti-corruption machinery in the country. Moreover, Sir, this would also be an opportunity for the Select Committee to consider means of strengthening this Agency and institutionalize its autonomy, both financial and administration".

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

of investigation, the levels of the bureaucracy which should be under the jurisdiction of the Lokpal and the inadequacies associated with the functioning of the CBI in high profile cases involving politicians accused of corruption”.

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

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

under the Lokpal. We feel that it is dangerous for bodies of police because they do not have any answerability. It can lead to difficult situation. We are not personally in favour of that".

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

- The CBI will have two wings. Director CBI will head the entire organization. Under him a separate Directorate of Prosecution should function.
- The Investigative Wing and Prosecution Wing of the CBI should act independently.
- The Director of CBI and Director of Prosecution should be appointed by a collegium comprising the Prime Minister, Leader of Opposition, Lok Sabha and Chairman of Lokpal.
- Both the Director CBI and Director of Prosecution must have a fixed term.

- Both Director CBI and Director Prosecution shall not be considered for re-employment in government
- The power of superintendence and direction of the CBI in relation to Lokpal referred cases must vest with the Lokpal.
- If an officer investigating a case is sought to be transferred for any reason whatsoever, the prior approval of Lokpal should be required.
- The panel of Advocates who appear for and advise the CBI should be independent of the Govt. Advocates. They can be appointed by the Director Prosecution after obtaining prior approval of the Lokpal.

Arun Jaitley

Rajiv Pratap Rudy

Bhupender Yadav

(Members of Select Committee on Lokpal and Lokayukta Bill 2012, Rajya Sabha)

Why Dilute the Lokpal Bill Again ? 01 Feb, 2013

From the desk of Arun Jaitley

354 views, 6 agree

For over four and a half decades the Lokpal Bill has been a subject matter of public debate. A legitimate impression has gone around that the political class of this country is not interested in seriously pursuing an effective and independent Lokpal. The debate was recently revived on account of the anti-corruption movement led by Shri Anna Hazare. The final Government draft was a flawed one. The appointment of the Lokpal was substantially controlled by the Government. The investigative agency at the disposal of the Lokpal was completely Government controlled. The investigation procedure was loaded so as to render any independent investigation nearly impossible. The debate in the Rajya Sabha on December 29, 2011 demonstrated that the entire Opposition spoke in one voice against the Government's Bill. The Bill was then referred to a Select Committee of 15 Members presided by a senior Congress member, Shri Satyavrat Chaturvedi. The Committee has submitted its report to the Rajya Sabha. On most issues the Committee report has been unanimous. As Member of the Select Committee there were at least two issues on which some of us had reservations. The Government has now proposed certain amendments to the report of the Select Committee. The Minister in charge of the Department of Personnel, Shri V. Narayansamy has stated that two recommendations of the Select Committee have not been accepted by the Government. The report of the Select Committee is the property of the House. Under the Rules of Procedure for Conduct of Business in the Rajya Sabha, once a report is presented to the House by a Select Committee, the Government has no authority to amend the report. When the report is

taken up for consideration any Member can propose amendments to the said Bill. Similarly, the Government can propose final amendments to the Bill as passed by the Lok Sabha accepting several suggestions of the Select Committee and declining to accept the two important suggestions. As a Member of the select Committee I had a different view on at least two of the suggestions made by the Select Committee. Additionally, I disagreed with both the changes and deletions made by the Council of Ministers to the report of the Standing Committee. I shall briefly outline these four issues.

1 Notice to be given to a public servant by the Lokpal before he embarks upon consideration of the complaint against the public servant The Select Committee had consciously deleted the provisions with regard to the Lokpal granting an opportunity of hearing to a public servant while deciding whether to embark upon an enquiry against the public servant or not. Such an enquiry, though ostensibly appears to be in compliance of the principles of natural justice, would be destructive of any effective probe against a delinquent public servant. Let us assume a complaint is received against a public servant that he demanding illegal gratification. A search and raid would be necessary. No prior notice should ever be given to a public servant. Alternatively, if a complaint of disproportionate assets is received against a public servant any prior notice to him by the Lokpal would enable him to remove the entire evidence of disproportionate assets. Suddenness and surprise are the essence of an investigation. A public servant is interrogated and investigated in a criminal probe. He cannot be given material collected against him during the investigation or prior to investigation. Any representation by a public servant can be considered by the Lokpal at the stage if granting sanction for prosecution. The right of the public servant to be heard is only at the stage of trial and not otherwise.

2 Change of Investigating Officer without the approval of

Lokpal The officers of CBI must function without fear or favour. An investigating officer may prove inconvenient for the powers that be. Removing him and replacing him with a pliable officer cannot be the discretion of the Government. If during the investigation an officer investigating a case is sought to be moved out, ostensibly on the ground of administrative exigencies, prior approval of the Lokpal should be necessary. There is no plausible reason why the Government has chosen to reject this recommendation of the Select Committee which would have strengthened the institution of Lokpal.

3 Re-employment of retiring CBI Director within the Government Along with some other colleagues I had suggested that an outgoing CBI Director should not be offered a job in the Government. He should not be eligible for any such employment. The desire of a future favour can influence the CBI Director while conducting himself in the CBI. Unfortunately, this suggestion did not find favour with some other colleagues in the Committee. There is a strong rationale for acceptance of this suggestion that a CBI Director should not be eligible for re-employment in the Government. This is based on the principle that during his tenure as Director he must function without fear or favour. The desire of a future favour can be destructive of his independence.

4 Reservation based on Religion The Select Committee did not favour our suggestion that reservations should not be based on religion. Only such reservations are permissible which are constitutionally provided for and are permissible. Any form of reservation which uses the word 'not less than' is capable of being understood to include 100 percent reservation. Such a reservation shall be constitutionally ultra vires. Any form of reservation which is outside the constitutional scheme is vulnerable. The provision for reservation on basis of religion thus needs to be re-looked.
