

Minutes of the Second Meeting of the Joint Drafting Committee (JDC) for drafting the Lok Pal Bill held on 2.5.2011 (Monday) at 11:00 hrs. in Room No.41, North Block.

The following were present:

<u>Ministers</u>		<u>Representatives of Civil Society</u>
(i) Shri Pranab Mukherjee, Minister of Finance Chairperson	-	(i) Shri Shanti Bhushan, Senior Advocate - Co- Chairperson
(ii) Shri P. Chidambaram, Minister of Home Affairs		(ii) Shri Anna Hazare
(iii) Dr. M. Veerappa Moily, Minister of Law & Justice - Convener		(iii) Justice Shri N. Santosh Hegde
(iv) Shri Kapil Sibal, Minister of Human Resource Development and Minister of Communication and Information Technology.		(iv) Shri Prashant Bhushan
(v) Shri Salman Khursheed, Minister of Water Resources and Minister of Minority Affairs.		(v) Shri Arvind Kejriwal

2. The Chairman while welcoming the Members of the Committee and the officers present, recalled the two decisions taken during the first meeting of the JDC held on 16-04-2011, namely:

- a. Circulation of the documents received by the Government containing suggestions received from stakeholders on Lokpal Bill, earlier Lokpal Bills formulated since 1968 till 2001, and recommendations of the three Parliamentary Standing Committees in 1996, 1998 and 2001.

- b. Determining the underlying Principles for the proposed Lokpal Bill and firming up of the Statements of Objects and Reasons for the said draft Bill.

2.1 The Chairman stated that copies of earlier Bills and Reports referred to at 'a' above have already been circulated to all members of the Committee on 26th April, 2011, along with copies of all suggestions received in respect of the new bill. The Chairman also sought confirmation of the minutes of the first meeting of the Joint Drafting Committee.

3. The Co-Chairman and all other members confirmed the minutes of the first meeting. These were then taken as accepted.

3.1 Shri Anna Hazare and Shri Arvind Kejriwal further raised the issue of video graphing of the deliberations of the Meeting, suggesting that the same may replace the current audio recording to facilitate identification of the speaker. It was also proposed that the video recordings, as in the case of audio recordings would remain in the custody of the Government till conclusion of the entire exercise. The Chairman in his response, stated that the matter had been deliberated at length in the previous meeting, whereafter the Committee had agreed upon an audio recording instead of a video recording. He, however, assured that the issue could be revisited once the Committee has progressed in its deliberations. He reaffirmed the earlier decision of releasing a periodic status of the progress of the Committee.

4. The Chairman then listed out a calendar for the subsequent meetings of the Committee in the month of May, 2011 and proposed that four such meetings including the present meeting could be scheduled. He suggested 7th May, 2011 (commencing at 4:30 p.m), 23rd May, 2011 (at 11am) and 30th May, 2011 (at 11am). These were accepted by all members. It was also decided that if need be, more meetings could be scheduled in the second half of May, 2011.

5. The Chairman requested the Group representing the Civil Society to present their views on the broad principles on which the draft legislation was proposed to be formulated.

6. Shri Arvind Kejriwal referring to the ^{1968 version of the Lokpal Bill} proposed a comprehensive legislation covering both the Centre and the States and providing for a Lokpal at the Centre and Lokayuktas at the State level. He suggested that the Lokpal should be completely independent of the Government, in matters of functioning and administration and its expenditure should be charged to the Consolidated Fund of India/Consolidated Funds of respective State Governments. The Budget should be determined each year by the Prime Minister in consultation with the Chairperson of the Lokpal.

6.1 Shri Kejriwal spelt out that the Lokpal should have absolute control over their employees as regard their number, recruitment or mode of recruitment. The Chairman and Members should have a single tenure of 5 years and be ineligible for any other appointment under the Government; they should also not be eligible to contest any elections. Selection of Chairman and Members of the Lokpal should be transparent and participatory with a very broad based Selection Committee which may consist of constitutional authorities, including representation from judiciary, bureaucracy and politicians. This Committee may be assisted by a Search Committee.

6.2 Shri Kejriwal suggested that the Lokpal should cover judiciary, bureaucracy and political executives, viz. Prime Minister, all Ministers and all members of legislatures. The Lokpal's jurisdiction should cover receiving and investigating complaints in respect of corruption by all categories of public servants and in respect of civil servants (bureaucrats), it should also cover cases of misconduct. It

was proposed that the conduct of elected representatives of the people within the legislature would be subject to final decision of the respective legislative bodies though Lokpal could make recommendations in respect of such action to the Speaker/ Chairman of the respective House of Legislatutre. In respect of the Prime Minister/Ministers, and judges of the Supreme Court, it was proposed that a full bench of the Lokpal would make a recommendation for a preliminary enquiry and such bench would include a substantial number of judicial member(s).

6.3 During discussions, an issue came up on the coverage of such politicians who are not elected representatives but hold posts within the party framework. It was clarified by Shri Shanti Bhushan, Co-chairperson that the proposed legislation would take into consideration the definition of public servant as in the PC Act for the purpose of inclusion of persons covered in its ambit and all constitutional posts where immunity is provided by law would be excluded.

6.4 Shri Kejriwal stated that in respect of all other public servants no permission should be required for prosecution where the Lokpal had recommended prosecution. An issue was raised in respect of Government servants serving in the subordinate judiciary where sanction for prosecution was required to be accorded by the Chief Justice of the High Court in terms of of Article 235 of the Constitution and where the Apex Court had also given an important ruling (in the Veeraswamy judgement). After deliberation, it was decided that the issue of covering various classes of public servants under the ambit of the Lokpal Bill may be flagged for further reflection and clarification.

6.5 In so far as matters of misconduct on the part of public servants who are proposed to be brought under the ambit of Lokpal Bill are concerned, it was suggested that a clear demarcation needed to be brought out so as to avoid further confusion. This issue was also proposed to be flagged for further consideration.

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6.6 Shri Arvind Kejriwal suggested that the Lokpal should have full powers to initiate investigation and take the case up to the stage of filing of chargesheet before the Court of competent jurisdiction without seeking any sanction/permission from the Government. Thus amendments would have to be made in the Prevention of Corruption Act, 1988, the Delhi Special Police Establishment Act, 1946 and the Criminal Procedure Code. It was added that the Lokpal would have powers of search and seizure, issuing summons as a civil court, issuing contempt notices, imposing financial penalty, permitting tapping telephones under the Indian Telegraph Act and also have powers of Police Officers in terms of the provisions of section 36 of the Criminal Procedure Code.

6.7 Shri Kejriwal further proposed that the Lokpal should have powers for sanctioning of additional Courts so as to ensure a final decision in all cases being reached within one year. On the administrative side, it was proposed that Immoveable and Moveable Property Returns of all public servants be placed in the public domain, subject to scrutiny and affecting recovery there from if found in possession of disproportionate assets. The burden of proof would lie on the public servant concerned. The Lokpal would have powers to order for transfer of officers, prevent destruction of record, delegate powers to benches, and order staying of any activity suspected to have a corruption angle.

6.8 The Minister of Home Affairs sought clarification as regards constitutional provisions of Article 226 against decisions of the Lokpal. Shri Shanti Bhushan confirmed that provisions of Articles 226 and 32 of the Constitution would continue to provide such remedial recourse unless the Law Minister's proposal in the ARC Report of setting up of Lokpal as a constitutional authority were to be accepted. This issue was also flagged for further discussion, particularly where policy matters were involved.

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6.9 As regards the internal functioning of the Lokpal, Shri Kejriwal stated that the draft proposed absolute transparency, compulsory disposal of complaints with all data being put into the public domain once a complaint is disposed off. With regard to complaints against employees of the Lokpal, summary dismissal was proposed if mal-practices were established.

6.10 Shri Kejriwal also proposed adoption of complete transparency even during the course of investigation of a case. In view of reservations expressed by the Home Minister and other Members, it was agreed that such transparency needed to be re-looked at. Shri Shanti Bhushan suggested that disclosure of on-going investigations which was likely to damage the reputation of a person and where issues of internal security were involved could be exceptions. The Home Minister pointed out that such decisions could not be taken on case to case basis and the rules and legislation had to be ex ante. The Chairman flagged this aspect of absolute transparency for further reflection.

6.11 Shri Arvind Kejriwal proposed that losses caused must be recovered from the accused and that the minimum punishment in case of corruption may be one year's rigorous imprisonment and may extend to imprisonment for life. The quantum of punishment should be regulated by the status of the accused, i.e. higher the rank, higher the punishment. He clarified that normally the actual loss is proposed to be recovered but in case of business entities such recovery may extend to five times the loss.

6.12 Another aspect highlighted was formulation of a citizen's charter by administrative authority/Department to identify deliverables to be regulated by strict time lines. It was proposed by Shri Kejriwal that in the event of any shortfall or failure, a designated Public Grievance Officer would address the grievance within



30 days, failing which the concerned officer and Head of Department would be personally accountable for which disciplinary action could be suggested by the Lokpal. Recommendation of the Lokpal should be binding as a corruption angle may always be presumed. This issue was also proposed to be flagged for discussions as all actions could not be coloured and viewed from corruption angle. It was also suggested that discussions were required for structuring provisions for segregation of corruption related issues and disciplinary action emanating from administrative complacency, inefficiency etc.

6.13 Shri Kejriwal suggested that the Lokpal may be envisaged as a single umbrella organization which would cover the Anti Corruption wing of CBI, the CVC and vigilance set up in the Ministries/Organisations. Justice N. Santosh Hegde referred to the setting up of the Karnataka Lok Ayukta where two agencies were merged to be brought under its control. The Home Minister pointed out that CBI also investigates matters other than those relating to corruption and as such investigations being carried out by the CBI where complaints were not routed through the Lokpal would have to be looked at separately. The members of the Civil Society were of the view that such cases would automatically be taken under the umbrella of the Lokpal but in view of reservations expressed by the Minister of Home Affairs and the Minister of Human Resource Development, this issue was flagged for discussions so that nature of the control of Lokpal is clearly defined.

6.14 Shri Kejriwal also referred to a provision which allowed the Lokpal to approach the Supreme Court where its recommendations were not accepted by the concerned authority for discontinuance of an activity or where it had recommendatory powers. To safeguard the Lokpal against frivolous complaints it was suggested that the Supreme Court may be empowered to sentence such complainants.

7. Shri Prashant Bhushan drew an analogy with the recommendations on Police Reforms which suggested setting up of a mechanism for a Complaints authority. He reiterated his suggestion for regional consultations and creation of a website for public information and for eliciting suggestions. The Chairman stated that after certain progress these steps could be considered.

8. The Chairman invited the Civil Society Members to submit their views on the Statements of Objects and Reasons. Shri Shanti Bhushan read out the proposed SORs. He referred to a report of the N.N. Vohra Committee of 1993 relating to nexus between criminals, police, bureaucracy and politicians which the existing system had failed to counter, as the basis for the proposed SORs. As in the first meeting he referred to the foreword of the UNCAC and its various provisions namely Articles 6(2), 7(4), 8(2), 8(5), 8(6), 12, 13 and 34, for being incorporated as SoRs. He also suggested that the code of conduct may be spelt out through a citizen's charter while also indicating the primary powers of the Lokpal relating to confiscation of property, cancelling of contracts, etc. The transparency and accountability may also be reflected. He stressed that judicial review would continue to be available under Article 32, 136 and 226 to ensure accountability of the Lokpal.

9. The Minister of Water Resources raised the issue of a conflict of law, particularly with respect to commissions of inquiry set up under different statutes and their status vis-a-vis the Lokpal. This issue was flagged for further discussion though the representatives of the Civil Society were of the view that such Commissions would have to function under the supervision of the Lokpal if a corruption angle is involved.

10. Summing up the deliberations, the Chairman observed that the basic principles with necessary ingredients have been submitted by the civil society, and the Government side has also provided the members with copies of previous draft legislations and suggestions. He suggested that the intervening period till the next

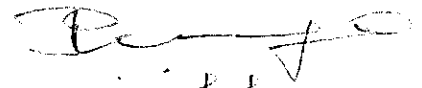


meeting may be devoted to a reflection on various observations made so far so that such issues could be discussed in greater detail in the next meeting. This would help determine the underlying principles of the legislation on which the draftsmen could then take further action.

10.1 The Chairman also referred to the confidentiality aspect of the deliberations which was supported by Shri Arvind Kejriwal who suggested that it may be ensured that the views of the Civil Society may also be kept confidential and not allowed to be leaked.

10.2 Following the practice of the previous meeting, the Chairman suggested a Joint Press briefing by Minister of HRD and Shri Prashant Bhushan to convey to the Press that the documents and suggestions have been exchanged on SoR and underlying principles which would be discussed in the next meeting after due reflection. It was decided that details and contents as they are yet to be firmed up will not be disclosed to the Media. The members of the civil society agreed to the same but suggested that the Media may be briefed individually by their representatives.

The meeting ended with vote of thanks.


5/5/2011