Suggested Improvements in the Lokpal Bill, 2011

(Bill No. 39 of 2011)

Submission to

Department Related Parliamentary Standing

Committee on Personnel, Public Grievances, Law and Justice

By

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1 INTRODUCTION

There is a broad agreement in the country that our services are stunted, resources are squandered and economic growth is stymied by corruption at various levels in public life. The public opinion and broad consensus across the political spectrum today favor a strong, independent, accountable, effective anti-corruption institutional framework at all levels - national, state and local.

Clearly, strong and effective punitive measures are not the sole measures required to curb corruption. Increasing competition and choice brought down corruption in many services, notably in the case of telephones. Technology and transparency have both improved the quality of services and reduced corruption. Computerization of railway reservations is a good illustration. Nonpartisan, effective and accountable enforcement of law disregarding wealth, position, rank or influence will ensure swift and sure punishment to the corrupt, and reduce corruption by increasing risks of corrupt behavior. Empowering local governments with adequate accountability would enable citizen participation in fighting corruption by making them understand the stakes involved in a much more transparent and proximate way.

Citizens can be empowered in the fight against corruption by creating incentives and opportunities. For instance, the False Claims Act in the United States imposes liability on persons and companies that defraud the public exchequer, and provides a mechanism and incentives for citizens to directly assist the government agencies in the fight against corruption. Similarly, Citizen's Charters, mandated by law, providing for time limits for service delivery and penalties against errant public servants for delays, and compensation to

citizens, help combat corruption by enforcing accountability and empowering citizens.

Clearly there is no single silver bullet that will address all the challenges in the fight against corruption. Each of the strategies required is necessary, but not sufficient to curb corruption. Nevertheless, a strong and independent Ombudsman institution with the requisite resources at its command and wide-ranging powers can make a significant impact on the all-round fight against corruption. Clearly such a measure should be accompanied by strengthening the anti-corruption law, creating an independent and accountable investigative force, strong and effective prosecution, adequate number of special courts to facilitate speedy trials and speedier and simpler procedures for concluding disciplinary actions against erring officials. The suggestions made in this submission take into account the Bill introduced by the government in the Parliament which is now under the consideration of the Department Related Standing Committee on Personnel, Public Grievances, Law & Justice.

Four civil society organizations – Foundation for Democratic Reforms, Lok Satta, Transparency International (India) and Center for Media Studies – organized a National Round Table on Lokpal on April 24th 2011 in New Delhi. Many eminent and distinguished citizens with rich and varied experience in judiciary, administration, investigative agencies, constitutional authorities, governance reform and advocacy movements, the legal profession and the media have participated. Some of the prominent participants include Justice M N Venkatachaliah, Justice J S Verma, Justice Santosh Hedge, Justice Rajindar Sachar, Sri N Gopalaswami, Sri T S Krishnamurthy, Sri Pratyush Sinha, Shri Kuldip Nayar, Sri Shanti Bhushan, Sri Soli Sorabjee, Admiral RH Tahiliani, Sri PS Ramamohana Rao and Sri C Anjaneya Reddy. Civil Society activists who participated includes Ms Kiran Bedi, Shri Prashant Bhushan, Sri Arvind Kejriwal, Sri Swami Agnivesh, Sri Nikhil Dey, Ms Maja

Daruwala, Sri T R Raghunandan and Sri Venkatesh Nayak. Several other prominent citizens who could not attend the round-table personally like Sri P Shankar, Sri T S R Subramanian, Sri Ram Jethmalani, Sri Fali S Nariman, Sri JF Rebeiro, Sri Satish Sahwney and others have either sent their submissions to the Round Table or endorsed the initiative. The list of eminent citizens who participated is enclosed. The summary of the views of the Round Table, as approved by two eminent jurists, former Chief Justice MN Venkatachaliah and former Chief Justice J S Verma, who co-chaired the roundtable are enclosed. These views summarize the consensus of the Round-table.

This submission is informed by the following approaches:

1. The consensus views of a broad cross-section of highly distinguished and experienced citizens with deep insights into the Constitution and the working of the government.
2. The recognition that the basic structure of the Constitution and the institutional checks and balances, which are inherent in our parliamentary democracy, should not be undermined.
3. There must be a fair reconciliation of the potentially conflicting objectives of strong and effective action against the corrupt, the principles of natural justice and the liberties of citizens on the one hand; and the imperatives of creating a strong Ombudsman institution with the necessity to preserve the dignity, integrity and effectiveness of the organs of the state, namely the executive, the legislature and the judiciary on the other hand.
4. The recognition that government and institutions are a continuum and we have to strengthen the existing institutions, even as new institutions are created and there should be effective mechanisms for coordination between various authorities and agencies in the common objective of fighting corruption.
5. While there are several desirable goals in combating corruption and improving the quality

of governance, no single law is adequate to create institutions and mechanisms to address all issues; and no single authority, however powerful, can be overburdened with jurisdiction over too many people or with responsibilities in too many areas.

In this submission, in line with the broad approaches outlined above, three major issues have been primarily addressed along with several other attendant issues. The first is the need to enact a law of Parliament applicable to the union government, the state governments and the local governments. No single authority can be burdened with fighting corruption at all levels. But the legal framework should be similar at all levels. With the ratification of the United Nations Convention Against Corruption (UNCAC), the Parliament has the power and the responsibility to make laws related to institutional mechanisms to fight corruption applicable at all levels – Union and the State.

Second, the independence and accountability of the investigative agencies dealing with corruption, Central Bureau of Investigation at the central level and the Anti-Corruption Bureau at the state level should be integral to any viable and effective mechanism to fight corruption. By law or organizational culture or strong tradition by decades of practice, many established democracies have insulated crime investigation, in particular investigation and prosecution of matters related to corruption, abuse of office and obstruction of justice from the vagaries of partisan politics or undue political and administrative control.

Three, the Central Vigilance Commission functioning under the Act of Parliament made in 2003, but pre-existing since 1964, has an important role to play in preventive vigilance, departmental enquiries, investigation of offences related to corruption, advising government and superintendence of the Central Bureau of Investigation. Prudence and

wisdom require that such an institution should be effectively and seamlessly linked to the new institution being created. Its experience and institutional strength should be fully utilized and duplication of work be avoided. In states, a vigilance commission exists since mid 1960s, but merely by executive orders without any statutory backing. Therefore, in states the vigilance commissions could be merged with the new institutions, which are sought to be created.

2 SELECTION PANEL OF THE LOKPAL

Regarding the qualifications for choosing the members of Lokpal and the process of selection, there could be infinite number of models. However, what is important is a mechanism that satisfies three criteria:

1. Eminence, credibility and integrity
2. Experience, record of service and insights in fight against corruption
3. Impartiality and nonpartisan selection

Examined by these criteria, the composition and the selection procedure contemplated by section 4 of the Bill seem to be reasonable. However, its desirable that the two nominees under section 4 (1)(h) and section 4(1)(i) – one eminent jurist, and one person of eminence in public life – are chosen by the other seven members collectively, and not by the central government.

3 JURISDICTION OF LOKPAL

3.1 Prime Minister

Under section 17(1)(a), Lokpal will have jurisdiction into matters involving any allegation of corruption against a Prime Minister, after he has demitted the office of the Prime

Minister. The Fourth Report of the Second Administrative Reforms Commission (SARC) as well as the National Commission to Review of the Working of the Constitution (NCRWC) recommended the exclusion of Prime Minister from the jurisdiction of Lokpal. The broad argument of the two august bodies is 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 Lokpal exonerates the Prime Minister fully after an enquiry, the damage done to the country would be considerable and irreversible. However, sections of people strongly feel that the Prime Minister must be within the ambit of the Lokpal. They felt that the 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.

In this vital matter, there is need to reconcile the imperatives of national security and political stability particularly in the absence of a provision of President's rule at the Union level in the Constitution on the one hand; and strong public opinion and the principle of democratic accountability on the other hand. There are two possible ways of addressing this. The first is retaining the provisions related to the Prime Minister as they are in the present bill before the Parliament. The Prime Minister is in any case is subject to the jurisdiction of Lokpal for his/her actions while out of office. In addition in a parliamentary democracy, the Parliament is entrusted with the responsibility of exercising oversight functions over the Prime Minister. If indeed there are credible allegations of corruption directly leveled against the Prime Minister and if *prima facie* evidence does exist, it is reasonable to expect in a robust and fiercely competitive political system like ours that the Lok Sabha will act decisively to hold the Prime Minister to account and force his resignation. While the Prime

Minister's party/coalition might command a majority in Lok Sabha, the party/parties forming government will act with their best political interests in mind at all times and will not ordinarily allow a government headed by a corrupt Prime Minister to survive in office.

The second way to resolve this issue would be to bring a serving Prime Minister under the jurisdiction of Lokpal with specific caveats. There could be two safeguards that could be incorporated as provisos under section 17(1)(a). These provisos could ensure that Lokpal may enquire into allegations against a serving Prime Minister, if two-thirds of the members of Lokpal make a reference on the basis of material before them to a Parliamentary Committee comprising Vice President, Speaker and the Leader of Opposition of the Lok Sabha; and if such a Committee sanctions an enquiry into the conduct of the Prime Minister. Then Lokpal will proceed to enquire into the allegations against the Prime Minister. In such a case, the second safeguard should be that no allegation against the Prime Minister on a matter relating to the sovereignty and integrity of India, the security of the state, friendly relations with foreign states and public order be entertained by the Lokpal or the parliamentary committee. Therefore, the following shall be inserted under the proviso 17(1)(a) of the Lokpal Bill:

> *Provided that specific allegations backed by prima facie evidence against the serving Prime Minister may be enquired into by the Lokpal, if on a reference by Lokpal with a majority of not less than two-thirds of total membership of Lokpal refers the matter to a sanctioning committee comprising the Vice President, the Speaker of Lok Sabha and the Leader of Opposition of Lok Sabha and if that sanctioning committee on the basis of material available sanctions the enquiry of the Lokpal.*

Provided further that no such sanction of enquiry be sought or given against the serving Prime Minister in respect of allegations on matters relating to the sovereignty and integrity of India, the security of the State, friendly relations with Foreign States and public order.

3.2 Conduct of MPs in Parliament

Article 105 (2) of the Constitution provides immunity to Members of Parliament from any proceedings in any court in respect of their conduct in Parliament or any of its committees as follows:

No Member of Parliament shall be liable for any proceedings in any court in respect of anything said or any vote given by him in Parliament or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings.

The scope of this immunity is a matter for judicial interpretation. The Supreme Court in its majority judgment in the criminal appellate case between PV Narasimha Rao vs. State (CBI/SPE) held as follows:

a. When members of Parliament or State Legislature are charged with substantive offences under criminal laws of the land, no prior sanction is required in respect of the charges, and the trial on all charges against them has to proceed.
b. Article 105(2) did not provide that what was otherwise an offence was not an offence when committed by an MP and had a connection with his speech or vote therein. An MP was not answerable in a court of law for something that had a nexus in his speech

or vote in Parliament. If an MP had, by his speech or vote in Parliament, committed an offence, he enjoyed, by reason of Article 105(2), immunity from prosecution there for.

c. The alleged bribe takers (who took money to vote in a certain manner in Parliament) were not answerable in a Court of law for the alleged conspiracy and agreement. The charges against them had to fail.
d. Those who had conspired with the MP in the commission of an offence in relation to his vote in Parliament have no immunity, and they could, therefore, be prosecuted.

This judgment of 1998 thus makes members of legislatures liable for prosecution for any offence they may have committed, except when there is a nexus with a vote or speech in Parliament. The bribe-taker, if he is a legislator, is immune from prosecution in such case, but the bribe-giver is liable under the law. There is widespread criticism of this judgment in certain respects. Many jurists hold the view that the immunity granted to members of Parliament or State Legislature are to give them unfettered freedom of speech and Parliamentary Vote (subject to provisions of the Tenth Schedule).

However, such immunity cannot be granted for an act of receiving a bribe to vote or speak in a certain manner. In other words, the legislator's right to speak and vote as he pleases (subject to Tenth Schedule) is absolute; but if he receives a bribe in order to speak or vote in a certain manner, immunity cannot be extended to such an act of corruption.

The speech or vote in Parliament is not an offence; but the acceptance of a bribe is an offence. The immunity under Article 105(2) cannot be extended to the corrupt act, but must be limited to the freedom to speak or vote in the House. A court or an investigative agency

cannot question why or how a member of Legislature voted or spoke in a certain manner. But the Court can certainly question why or how a bribe has been received as a consideration for acting in a certain manner in the House.

In fact, the minority opinion of the Supreme Court Bench held as follows:

> *An interpretation of the provisions of Article 105(2), which would enable a Member of Parliament to claim immunity from prosecution for an offence of bribery in connection with anything said or vote given by him in Parliament and thereby placing such Members above the law, would not only be repugnant to the healthy functioning of parliamentary democracy, but also will be subversive of the rule of law, which is also an essential part of the basic structure of the Constitution.*
>
> *The criminal liability incurred by a Member of Parliament who has accepted bribe for speaking or giving his vote in Parliament in a particular manner thus arises independently of the making of the speech or giving of vote by the Member and the said liability cannot, therefore, be regarded as a liability in respect of anything said or any vote given in Parliament.*

If we are to uphold the dignity and enhance the credibility of the Parliament and State Legislatures, the Supreme Court judgment needs to be revisited and a more balanced interpretation of Article 105(2) needs to prevail reconciling the imperatives of protecting the freedom of members to act according to their conscience and best judgment with the need to uphold probity in public life and protect the image and credibility of Parliament and State Legislatures. Meanwhile, the judgment of the Supreme Court is the law of the land for all

Courts.

Under the circumstances, Section 17(2) of the Lokpal Bill, 2011 is redundant. The Constitution already provides for immunity to members of legislatures from any proceedings in any court in respect of anything said or any vote given by them in the legislature. No law or authority can violate such an immunity. Bribe-taking for speaking or voting in a certain manner may, in future, be liable for prosecution once the Supreme Court reviews its judgment on the subject. In such an event, providing immunity to members for an act of corruption would be both unethical and undermining the dignity of Parliament. Such a provision will needlessly erode the credibility of legislatures, and besmirch the fair name and reputation the vast majority of the members of Parliament and State Legislatures who labour tirelessly to promote public interest and protect Constitutional values. **Therefore we are of the firm view that Section 17(2) of the Lokpal Bill should be deleted.**

4 ACCOUNTABILITY IN JUDICIARY

Regarding Judiciary, there is a broad consensus in the country that the accountability and probity of higher judiciary should be ensured through a separate and powerful mechanism of National Judicial Commission along with the accountability framework as provided by the *Judicial Accountability and Standards Bill, 2010*. The *Judicial Standards and Accountability Bill, 2010* now before Parliament gives legal status to the code of conduct of judges, provides for a permanent body to investigate complaints against serving judges of higher courts, imposition of minor penalties, and recommendation of proceedings for removal of judges, if the findings of enquiry warrant it.

A panel of three eminent jurists – Justice Venkatachaliah, Justice J S Verma and

Justice Krishna Iyer – has prepared a viable model of National Judicial Commission (NJC) after detailed examination of issues and extensive deliberation. The National Judicial Commission should be the body of functionaries of great eminence headed by the Vice President, which should make the final binding recommendation to the President on the appointment of judges of higher courts and the removal of judges after an enquiry finds them guilty of proved misbehavior or incapacity. We understand that the government is processing the proposal to constitute a seven member National Judicial Commission with the Vice President, the Prime Minister, the Speaker of Lok Sabha, the Law Minister, the Leaders of Opposition in Lok Sabha and Rajya Sabha and the Chief Justice of the Supreme Court. In case of high court judges, the Commission would include the chief minister and the chief justice of the concerned state. Such a National Judicial Commission would require amendment of article 124(2) and 124(5) of the Constitution. Given these circumstances it would be best to leave the judiciary out of the Lokpal's jurisdiction for the following reasons:

1. It is important to protect the dignity, institutional prestige and credibility of the higher judiciary
2. The higher judiciary is the most trusted institution in the country today. Bringing it under the fledging institution of Lokpal would be inappropriate.
3. The Lokpal bill in the Parliament envisages removal of Lokpal members by the President on the grounds of misbehavior after the Supreme Court has on an enquiry held, reported that the Lokpal Chairperson or member ought to be removed. In such a case, it would be inappropriate for the same Supreme Court judges to come under the jurisdiction of Lokpal.
4. If the enquiry into the conduct of judges in the Supreme Court and High Courts is brought under the purview of Lokpal, there is a realistic probability that the Supreme Court will

hold it as violative of the basic features of Constitution. Such a course of events will create a clash between the Parliament and the Supreme Court, which is wholly avoidable.

The arguments and advice of highly respected and eminent jurists, Justice Venkatachaliah, Justice J S Verma and Justice Krishna Iyer are invaluable in creating a National Judicial Commission in a harmonious manner.

5 INCLUSION OF CHIEF MINISTERS UNDER LOKPAL

We are of the opinion that the Chief Ministers of the states should be brought under the jurisdiction of Lokpal. The Lokpal Round Table on April 24th 2011 New Delhi is of the unanimous view that the Chief Minister should be brought under the jurisdiction of Lokpal at the national level. It is necessary to bring the Chief Ministers under Lokpal on the following grounds:

1. On May 1st 2011, the government ratified UNCAC and therefore, under Article 253 read with items 13 and 14 of List I of Seventh Schedule of the Constitution, the Parliament is vested with the power to make any law for the whole of part of India for implementing UNCAC. This article 253 read with Article 51(c) of the directive principles of state policy gives the Parliament the power to make laws on any subject covered by an international treaty or convention, even if it is covered under List II of Seventh Schedule of the Constitution. Therefore, the Chief Minister should be under the jurisdiction of the Lokpal under the national level.
2. The arguments that can be advanced against the Prime Minister are not applicable in the case of Chief Minister. First, there is much less risk of a government getting paralyzed in the Chief Minister is investigated. Second, if there is a crisis situation and the governance

in the state cannot be carried with the provisions of Constitution, Article 356 could be invoked. 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.

6 LOKAYUKTAS IN STATES

For the same reasons (ratification of UNCAC and Article 253) outlined above, it is imperative that the Lokpal legislation by the Parliament should incorporate a separate chapter on Lokayukta in each state and local ombudsman in each city/district under the Lokayukta. Over the past twenty years, much of the economic power and discretionary authority have shifted from the centre to the states. Land allotments, mining leases, new ports, exclusive coastal zones, SEZs and any other decisions giving scope for massive abusive of power and corruption are increasingly in state's control. Therefore, we strongly feel a separate chapter should be incorporated in the Bill providing for Lokayukta and local Ombudsman.

In the Parliamentary debate on August 27, 2011, several eminent members suggested that Article 252 provides a way out, enabling Parliament to make framework legislation in respect of States, leaving it to individual states to adopt such a law. Article 252 reads as follows:

> ***252:*** *Power of Parliament to legislate for two or more States by consent and adoption of such legislation by any other State.*
>
> *(1) If it appears to the Legislatures of two or more States to be desirable that any of the matters with respect to which Parliament has no power to make laws for the States except as provided in articles 249 and 250 should be regulated in such*

States by Parliament by law, and if resolutions to that effect are passed by all the Houses of the Legislatures of those States, it shall be lawful for Parliament to pass an Act for regulating that matter accordingly, and any Act so passed shall apply to such States and to any other State by which it is adopted afterwards by resolution passed in that behalf by the House or, where there are two Houses, by each of the Houses of the Legislature of that State.

(2) Any Act so passed by Parliament may be amended or repealed by an Act of Parliament passed or adopted in like manner but shall not, as respects any State to which it applies, be amended or repealed by an Act of the Legislature of that State.

Invoking Article 252 clearly would be the appropriate mechanism for Parliament while legislating on state subjects. However, when Parliament is clearly and unambiguously empowered to enact laws in respect of states by other provisions of the Constitution, it would be unnecessary to resort to Article 252. Invoking Article 252 has the following constraints:

1. Two or more State Legislatures have to pass resolutions to the effect that Parliament should make a law in respect of states on matters relating to curbing corruption and creating a strong and independent anti-corruption authority.
2. Such a law, when enacted by Parliament, has application only to those States, which requested Parliament to legislate, and to any other State by which such a law is adopted afterwards by resolution passed in that behalf by the State Legislature.
3. Such a process is cumbersome and entails delays in a matter as urgent and vital as fighting corruption. The National consensus and the Parliament's expressed intent demand that an urgent and effective legislation is in place uniformly applicable to Union, Sates and Local governments as expeditiously as possible.

Once the UNCAC has been ratified by the Union government with effect from May 1, 2011, Parliament, under Article 253, has the power to legislate on matters relating to corruption in respect of States. Article 253 reads as follows:

253: Legislation for giving effect to international agreements.

Notwithstanding anything in the foregoing provisions of this Chapter, 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, association or other body.

This power of Parliament under Article 253 is clear and unambiguous. It should be kept in mind that Parliament enacted the Prevention of Money Laundering Act, 2002, in which paragraph 5 of Part B includes the offences of corruption. This legislation provides for confiscation of all *benami* properties acquired from proceeds of any crime, including corruption, and held by any person. This law was expressly enacted to apply to all citizens and public servants, whether in union service or in states and local governments. The preamble of this law (Act 15 of 2003) expressly states that it was enacted in pursuance of the Political Declaration and Global Programme of action, annexed to the resolution S-17/2 of the General Assembly of the United Nationals adopted at its seventeenth special session on February 23, 1990. This specifically provides for the Union government appointing Adjudicating authorities to exercise jurisdiction, powers and authority conferred by or under the Act. In effect, the law provides for executive power to be directly exercised by the Union in respect of corrupt public servants in States.

This precedent is directly related to matters of money laundering and corruption. Therefore, clearly, on matters relating to corruption, Parliament, under article 253 has the power to make legislation creating a strong, independent authority to curb corruption in States in pursuance of the United Nations Convention Against Corruption. Moreover, unlike in the case of Prevention of Money Laundering Act, 2002, what we are advocating in the present case is a mandatory provision by which States will appoint Lokayuktas and Local Ombudsmen in order to curb corruption in public services in their jurisdiction. In effect, Parliament will only have to make a law applicable to all States; but the executive power of the actual appointment of Lokayukta and all other related matters will remain with the State. Therefore, a law of Parliament invoking Article 253 is both feasible and necessary to act effectively in pursuance of the United Nations Convention Against Corruption. Such a law will have the advantages of effective action all over the nation to curb corruption, uniform procedures and systems across the nation, and integration and simultaneous application of other relevant laws, especially the Prevention of Money-Laundering Act, 2002, and the Benami Transactions (Prohibition) Act, 1988, which is now being replaced by a more comprehensive legislation introduced in Lok Sabha in 2011.

For all these substantive and weighty reasons, it is necessary to enact the legislation on Lokpal and Lokayuktas in Parliament, applicable to the Union and all States and local governments; however, it is better to retain the executive authority with the States in terms of the actual implementation of the law. A monolithic Lokpal applicable to the whole country would be unwieldy, cumbersome and counter-productive. Therefore, the law should make provision for Lokpal at the Union level, and Lokayuktas in an identical manner in States, with powers to appoint local ombudsmen under their control and supervision. **The Bill may be renamed as The Lokpal and Lokayuktas Bill, 2011.**

For reasons of convenience, in Section 2 of the Lokpal Bill 2011, under definitions, *references to Lokpal may include Lokpal or Lokayukta*, *as required* and *references to central government may be substituted by the appropriate government, central or state.*

The separate chapter on Lokayukta may provide for the following:

1. Number of members: the law may provide for a Lokayukta in each state for a chairman and two members and a maximum of four members, of whom half shall be judicial members.
2. The selection committee of Lokayukta will be comprised of the Chief Minister, the Speaker of Legislative Assembly, the Leader of Opposition in Legislative Assembly and the Chief Justice of the High Court.
3. The law may provide for every state having Anti-Corruption Bureau, designated as a Police Station.
4. The law may provide for ACB to be under the supervision and guidance of Lokayukta. A committee comprising the chairperson and members of Lokayukta and the Chief Secretary of the state shall appoint the Director and officers of ACB. This committee in consultation with the Director of the ACB shall appoint the officers of ACB. ACB shall function under the direct supervision of the Lokayukta. But the Lokayukta will not interfere in the day-to-day investigation.
5. Lokayukta will have direct jurisdiction over Chief Minister (if not brought under the Lokpal), the ministers at the State level, the members of the state legislative assembly and council, all the chairpersons and members of the public sector undertakings at the State level and other bodies and all officials including officials of all-India Services and all other officers of the rank of Group A officer and above.
6. Lokayukta will be the appointing authority of the heads of all the vigilance authorities in

the state and have supervision over all the vigilance agencies in the state.

7. These functions will include preventive vigilance, supervision of vigilance and supervision of anti-corruption functions.
8. The law should provide for appointment of local ombudsman for each district and for each municipal corporation by the Lokayukta and functioning under the supervision of Lokayukta and with the same functions as the Lokayukta with respect to local governments and lower bureaucracy.
9. The title of the Bill may be appropriately amended as the **Lokpal and Lokayukta Bill, 2011**.

7 AMENDMENTS TO PREVENTION OF CORRUPTION ACT AND OTHER RELATED LAWS

Amendments to Prevention of Corruption Act, 1988, and other related laws should be made as follows:

1. The definition of the corruption should be enlarged as per the recommendations of the Fourth Report of the Second ARC and should include
    (a) Abuse of office and authority (even if no direct pecuniary gain to the public official)
    (b) Obstruction of justice
    (c) Squandering public money/wasteful public expenditure
    (d) Gross perversion of Constitution/democratic institutions
    (e) 'Collusive Bribery' causing loss to state, public or public interest to be made a special offence
2. The increase in punishment for such offences, including collusive bribery, should be on the lines of the recommendations of the 4th Report of 2nd ARC. In addition, the penalty in

criminal class, the Prevention of Corruption Act, 1988, should be amended to ensure civil liability of public servants (liability for loss and damages, both).

3. 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/CVC in the case of central governments and Lokayuktas in case of state government. 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.
4. Section 6A of the *Delhi Special Police Establishment Act, 1946*, which prohibits CBI from any inquiry or investigation into allegations against senior officials should be repealed under the proposed Lokpal/Lokayukta Act. In respect of allegation of offences directly investigated by Lokpal, section 27 of the Lokpal Bill provides that no sanction for enquiry or investigation or prosecution shall be needed. The anti-corruption investigation wing of CBI and ACB in states are to be autonomous and function under the superintendence of the Lokpal/Lokayukta. Then there is no place for section 6A of the Delhi Special Police Establishment Act, 1946.
5. Similarly section 197 (1) of the CrPC should be amended as follows:

   If a public servant is to be prosecuted, the previous sanction is to be that of the CVC in case of Central Government and the Lokayukta in case of the state Govt.

6. In respect of appointment of prosecutors in anti-corruption special cases, the power to appoint all such prosecutors should vest with the Lokpal in case of Union Government

and the Lokayukta in case of State Government. Already under section 15 of Lokpal Bill, 2011, the Lokpal is empowered to appoint Prosecutors for cases pending before it. All prosecutors with respect to anti-corruption cases will be under the Lokpal/Lokayukta.

7. **Confiscation of properties of corrupt public servants**: At present, the legal provisions for attachment and confiscation of properties of corrupt public servants, or properties acquired partly or fully from corruption proceeds are very weak, inadequate and ineffective. Even now, the only legal provision that exists is contained in the Criminal Law Amendment Ordinance 38 of 1944. This law provides for a cumbersome process to attach only the properties or money derived from corruption, and has largely proved ineffective.

The Supreme Court in Delhi Development Authority vs. Skipper Construction Co (Pvt) Ltd (1996 – AIR 1996 SC 2005) observed that an effective law is necessary to attach and confiscate properties of a corrupt public servant, his spouse, children, other relatives and associates. The Court also suggested that the burden of proof in such cases should lie on the accused or the holder of the property, similar to the provisions in the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act-1976 (SAFEMA). SAFEMA was enacted in 1976, and it applies to those convicted or detained under preventive detention laws. The law has an inclusive definition of "illegally acquired property", and has been very effective. This definition is as follows:

i. *any property acquired by such person, whether before or after the commencement of this Act, wholly or partly out of or by means of any income, earnings or assets derived or obtained from or attributable to any activity prohibited by or under any law for the time being in force relating to any matter in respect of which*

Parliament has power to make laws; or

ii. *any property acquired by such person, whether before or after the commencement of this Act, wholly or partly out of or by means of any income, earnings or assets in respect of which any such law has been contravened; or*

iii. *any property acquired by such person, whether before or after the commencement of this Act, wholly or partly out of or by means of any income, earnings or assets the source of which cannot be proved and which cannot be shown to be attributable to any act or thing done in respect of any matter in relation to which Parliament has no power to make laws; or*

iv. *any property acquired by such person, whether before or after the commencement of this Act, for a consideration, or by any means, wholly or partly traceable to any property referred to in sub-clauses (i) to (iii) or the income or earnings from such property; and includes—*

(A) any property held by such person which would have been, in relation to any previous holder thereof, illegally acquired property under this clause if such previous holder had not ceased to hold it, unless such person or any other person who held the property at any time after such previous holder or, where there are two or more such previous holders, the last of such previous holders is or was a transferee in good faith for adequate consideration;

(B) any property acquired by such person, whether before or after the commencement of this Act, for a consideration, or by any means, wholly or partly traceable to any property falling under item (A), or the income or earnings there from;

When the validity of SAFEMA was challenged before the Supreme Court, a nine-judge Bench unanimously upheld the law in Attorney General for India Vs. Amratlal Prajivandas. (1994) 5 SCC 54. The Court held that "*the idea is to reach the properties of convict or detune, or properties traceable to him, wherever they are*". The law provides for appointment of competent authority by the Union government for attaching and confiscating properties.

The Law Commission of India, in its 166th report released in February 1999 recommended the enactment of such a law, and submitted a draft of "The Corrupt Public Servants (Forfeiture of property) Bill. The world over, it is generally acknowledged that swift, stiff and sure prison terms accompanied by confiscation of all or most properties of a corrupt public servant (and family and associated) would be an effective deterrent against corruption. The Law Commission's draft Bill is largely patterned after SAFEMA, because the Supreme Court has already upheld its constitutional validity. The draft bill proposes the CVC as the competent Authority for the Union under the law. The Lokayukta may be the suitable competent authority for States. A law on the lines of the Corrupt Public Servants (Forfeiture of property) Bill drafted by the Law Commission needs to be enacted at the earliest, to be applicable at both Union and State levels.

8. **Benami Transactions (Prohibition) Bill, 2011**: The Parliament enacted the Benami Transactions (Prohibition) Act in 1988. However the law never came into force, and rules were never framed. A new Bill to replace the 1988 law has been introduced in the current session of Parliament to rectify three specific defects in the earlier law. The current Bill thus provides for vesting the confiscated property with Government

of India, makes an appellate provision, and gives powers of civil courts to the authorities enforcing the law. This law needs to be enacted swiftly to ensure effective action against corrupt public servants.

9. **The Prevention of Money Laundering Act, 2002:** As stated earlier, Parliament enacted Act 15 of 2003 in pursuance of the UN Political Declaration in 1998 calling upon Member States to adopt national money laundering legislation and programme. The Act, *inter alia*, provides for attachment and confiscation of properties relating to proceeds of crime, commission of scheduled offences (including corruption in paragraph 5 of part B), and such proceeds are likely to be transferred or concealed. The law also provides for wide ranging powers to the officials, adjudicating authorities, and the appellate tribunal. The Appellate Tribunal under this law is now proposed as the appellate authority under the Benami Transactions (Prohibition) Bill, 2011.

Therefore, effective coordination and seamless integration of the application of these laws and agencies, together with Lokpal and Lokayukta and CVC, CBI and ACBs are vital for successful offensive against corruption.

8 LOWER BUREAUCRACY

In the 'Sense of the House' resolution in Parliament, the lower bureaucracy has been sought to be included in Lokpal/Lokayukta jurisdiction. Clearly, every public servant should be held to account, and corruption everywhere should be eradicated. However, there cannot be one single authority or agency that will be able to address all corruption everywhere. Such an approach will create a log-jam. The world over, the apex anti-corruption agencies have

been able to deal with about 500 – 1000 cases effectively every year. India has over **two crore** public servants. About 40 lakh public servants function at the Union level outside the armed forces. In major states there are 10-15 lakh employees in big states.

Burdening one Lokpal at the Union level and one Lokayukta in each state with all cases against all public servants will be a recipe for disaster, and will prove counter productive. As a perceptive scholar observed, such an omnibus Lokpal/Lokayukta will dilute authority, delay justice and deflect accountability.

Our vision should be that a hundred worst culprits in high positions at the national level, and 50 to 100 each in each major state should be exemplarily punished after due process each year. If senior officials and influential politicians are seen to be punished for jail terms, and even more important, all or most of their properties and assets are confiscated, then the vicious cycle of corruption will be broken over a short span of time. The most effective anti-corruption agencies in the world have been those that focused on the big fish, and evolved strategies and coordinated well with other agencies to ensure a strong and viable anti-corruption climate in which the risks and rewards are altered, and corrupt behavior will be seen to be fraught with grave risks and punishment. Therefore a well-coordinated, practical, mature approach is needed while making lower bureaucracy accountable. The following approach would be productive:

1. At the national level, it would be best if Lokpal's direct jurisdiction is limited to those that are listed in the present Bill – covering all elected politicians, and officials of, say the rank of Joint Secretary and above, and all class I officers.
2. By strengthening CVC, making it part of Lokpal, but with specific jurisdiction, CVC can deal with all officials below Joint Secretary rank, but above a certain rank. In

addition CVC will exercise jurisdiction over CBI, Enforcement Directorate and all Vigilance Organizations.

3. The Vigilance Organizations in each agency will deal directly with allegations at the third level, but above the ministerial staff, or above a certain volume of corruption, or certain classes of corruption.
4. The superior officers and appointing authorities will deal with corruption against others, but with reporting and accountability to vigilance hierarchy and CVC.
5. Similarly, in States there should be a tiered approach on the same lines, with a multi-member Lokayukta, Local Ombudsman functioning under Lokayukta's control with delegated powers and jurisdiction over each district or city, vigilance wings of departments, and appointing authorities and officials forming a continuous unbroken chain of accountability.

The law should provide and facilitate such a graded approach, and all temptation to overburden and centralize the functioning of Lokpal and Lokayuktas should be firmly resisted.

9 REMOVAL OF PUBLIC SERVANTS

The Lokpal Round Table on 24th April evolved a consensus in which 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.

Article 311(1) of the Constitution provides that no person in public service shall be dismissed or removed by an authority subordinate to that by which he was appointed. Article 311 (2) provides that no person shall be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

Therefore, if the Lokpal/Lokayukta, in the course of an enquiry or investigation is of the view that the gravity of charges and the findings of enquiry and the culpability on account of acts of commission or omission warrant dismissal or removal or reduction in rank of public official, there should be an institutional mechanism to make such a report to the appointing authority. As Lokpal/Lokayukta is envisaged to be a high Ombudsman with independence, great authority and wide jurisdiction, it would be pointless to conduct any further enquiry in respect of such a public servant. Therefore, if the Lokpal and Lokayukta Act provides for an enquiry in such cases to conform to the requirements of Article 311(1) and 311(2), then a recommendation of Lokpal/Lokayukta should be binding on the appointing authority. In addition, the proviso 311(2)(b) enables the appointing authority to dismiss or remove the public servant or reduce the rank, if he is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold an enquiry. Therefore, in extreme cases of corruption and when a further enquiry is not reasonably practicable, a summary dismissal is possible by recording the reasons for such a decision.

Considering these circumstances, we strongly recommend that a proviso incorporated under Section 28 of the Bill on the same lines as provided in Section 34 (4).

The proviso under Section 28 may read as follows:

Provided that the Lokpal/Lokayukta may make a recommendation to the appointing authority/competent authority to impose a punishment of dismissal or removal or reduction in rank on a public servant if he is satisfied that the evidence warrants such an action on grounds of commission of an offence or misconduct, or willful omission to perform a duty or gross incompetence in preventing an offence or misconduct.

Provided further that no such recommendation shall be made without giving such public servant a reasonable opportunity of being heard provided further that such a recommendation of Lokpal/Lokayukta shall be binding on the appointing authority, and such a public servant shall be awarded the punishment forthwith without further enquiry.

10 INTEGRATION OF CVC

The Central Vigilance Commission (CVC) is a three-member body functioning under CVC Act, 2003. Its functions include exercising superintendence over the CBI in the investigation of offences under Prevention of Corruption Act (PCA) 1988, Code of Criminal Procedure (CrPC) 1973 and relevant provisions, review of sanction of prosecution under Prevention of Corruption Act by the competent authorities, advice to central government and its agencies, and superintendence over vigilance administration of central government and its agencies. The CVC and Vigilance Commissioners also play a crucial role in recommending officers for appointment namely Directorate of Enforcement in the Ministry of Finance, Director of Central Bureau of Investigation (the Delhi Special Police Establishment). These

are all functions of great importance in the fight against corruption and therefore cannot be insulated from the future Lokpal.

It is necessary to seamlessly integrate the functions of Lokpal as contemplated under the Bill and the functions of the Central Vigilance Commission, as per the provisions of the CVC Act, 2003. Abolition of the CVC and transferring of the functions to Lokpal would not be wise, since the Lokpal institution will have to start the process of institution building *ab-initio*. It would be more appropriate to ensure full autonomy to the Central Vigilance Commission and make the members, ex-officio members of Lokpal. Such a linkage should ensure that eventually the members of the Vigilance Commission are appointed in the same manner as that of the Lokpal. The members of the CVC should be endowed with the same powers and protection of the Lokpal. The existing institutional arrangements of CVC should be further strengthened. The three members of CVC would be a part of Lokpal and will simultaneously exercise the functions under the CVC Act, with appropriate changes. All the allegations of corruption against *Class I* officers will be referred to the Lokpal for action. The members of the CVC will be part of decision-making process in all these cases in Lokpal. In respect of corruption allegations against officials of lower rank, the CVC will have exclusive jurisdiction without over-burdening the Lokpal institution.

All other advisory functions and superintendence of CBI, appointments of directors of CBI and Enforcement Directorate will continue to be vested in CVC, as per the provisions of section 25 and section 26 of the CVC Act. The members of CVC appointed before the enactment of Lokpal will continue until the expiry of their term under the CVC Act. However, future members will be appointed by the same selection committee as that of Lokpal and in the same manner. In effect, Section 4 of the CVC Act will be substituted by

Section 4 of the Lokpal Act. However, the criteria for selection of CVC members, who will be ex-officio members of Lokpal, will be as per section 3 of CVC Act, and these members even after enactment of Lokpal Act will be appointed as members of the Central Vigilance Commission and ex-officio members of Lokpal. The Lokpal Bill 2011 should therefore make the following provisions:

2. Section 3(2)(c) should be inserted – "*The central vigilance commissioner and two vigilance commissioners will function as ex-officio members of Lokpal*".
3. Section 3(3)(c) should be inserted – "*as central vigilance commissioner and vigilance commissioners eligible to be appointed as per the provisions of the sections 3(3) of the CVC Act*".
4. Through the Lokpal Act, section 3(4) of the CVC Act should be amended to provide for appointment of the secretary to the CVC by the CVC itself. Therefore section 3(4) of the CVC Act, as amended should read as follows:

   The Central Vigilance Commission shall appoint a secretary to the Commission on such terms and conditions as it deems fit to exercise such powers and discharge such duties as the Commission may by regulations specify in this behalf.

The CBI should be split into two organizations – one dealing exclusively with corruption offences, and other dealing with other crimes. Anti-Corruption CBI should be fully under CVC supervision and guidance. These arrangements in respect of CVC will achieve the following goals:

- Seamless integration of CVC and Lokpal
- Retaining the institutional strength and expertise of CVC
- Independence with accountability of CBI and Enforcement Directorate
- Effective handling of corruption against lower bureaucracy within the ambit of

the broader policy of Lokpal, but without over burdening the Lokpal institution, diluting its authority or delaying justice.

11 INDEPENDENCE AND EFFECTIVENESS OF INVESTIGATIVE AGENCIES AND RULE OF LAW

The principle of rule of law demands that all citizens are subjected to the same law, save as provided by law in specific cases, and there shall be equal treatment of all citizens. Rule of law is particularly critical in matters of investigation of corruption offences. Often, the allegations against senior officials and powerful functionaries are investigated by officials of lower rank who may be subjected to undue influence or pressure. Fair and effective investigation would be impossible unless anti-corruption agencies are insulated from the control of partisan politics or high officials. In all major democracies, anti-corruption agencies are independent of executive control and any obstruction or interference in their functioning is severely dealt with as a serious criminal offence.

In the Lokpal Bill, 2011, strong provisions exist to protect the independence of Lokpal as well as its investigative wing, prosecution wing and officers and staff of Lokpal (Sections 11, 12,13,14,15 and 16). Similarly, in respect of an enquiry taken up by Lokpal, no prior permission of any other authority is needed (Section 27) for making enquiry or investigation, for launching prosecution (Section 27). These provisions ensure independence and effectiveness in all cases taken up by Lokpal.

However, Lokpal and its investigative or prosecution wing can directly investigate and prosecute only a limited number of cases. In most of the cases of corruption, investigation and prosecution will have to be taken up by the CBI or ACB in the Union and

States respectively, and the prosecutors are appointed by the government. Even more important, the directors and officials of ACB are all posted and transferred by the State governments. In respect of CBI, the CVC Act gives a measure of autonomy to CBI. But this autonomy has not been effective because the CVC is not envisaged to be as strong and independent as Lokpal now being envisaged, and CBI investigates a large number of offences other than those under prevention of corruption Act, and those investigations are directly under government control.

Given these circumstances, the following statutory provisions are necessary in the Lokpal/Lokayukta Bill to protect the autonomy of investigative agencies and to ensure fair treatment of all.

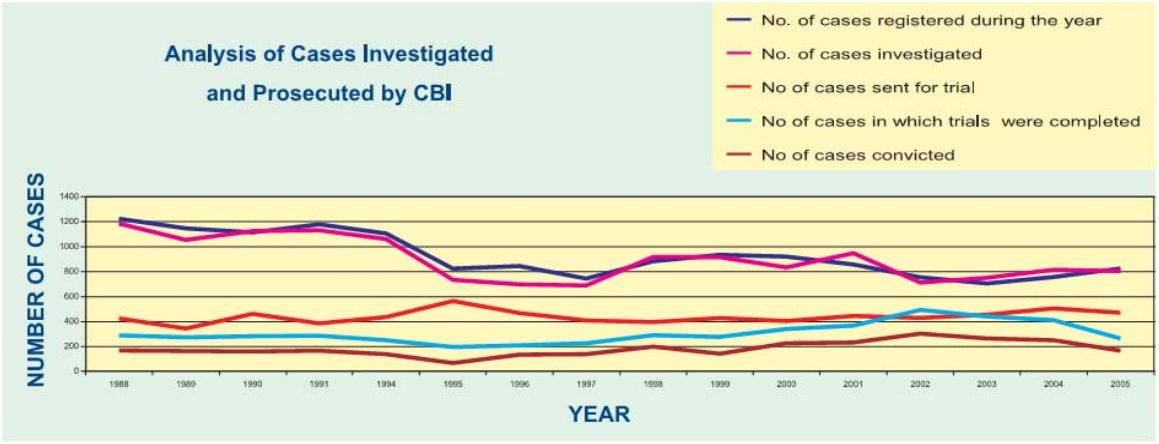
1. The CVC chairman and members, as explained in Section 10 should be made ex-officio members of Lokpal, and they should be appointed and removed in the same manner as member of Lokpal as and when new members of CVC are appointed.
2. CBI should be split into two separate agencies. The agency dealing with corruption cases, money laundering and *benami* properties should be accountable only to the CVC and should function under its overall superintendence and guidance
3. Section 6A of Delhi Special Police Establishment Act should be repealed.
4. Section 197 of the code of criminal procedure, 1973 and Section 19 of the Prevention of Corruption Act, 1988 should be amended by the Lokpal and Lokayukta Act to provide for ordering of Prosecution by the CVC and Lokayukta respectively, and not the respective governments.
5. The Enforcement Directorate should be under the superintendence and guidance of the CVC.

6. In respect of States, the law should provide that ACB should function under the supervision and guidance of the Lokayukta. All appointments in ACB should be made by a committee comprising of Lokayukta and Chief Secretary of the State. Prosecution shall be ordered by Lokayukta.
7. Lokpal/Lokayukta shall appoint independent prosecutors to prosecute all corruption, money laundering and *benami* properties cases, and the prosecutors shall function under their overall supervision and guidance.

Now that strong, independent and credible Lokpal and Lokayuktas are being created, it provides a priceless opportunity to make all investigation and prosecution of corruption and other related offences independent and effective. The above measures enacted through the Lokpal and Lokayuktas Act will create a robust, durable, seamless, integrated mechanism for such independent and effective investigation and prosecution.

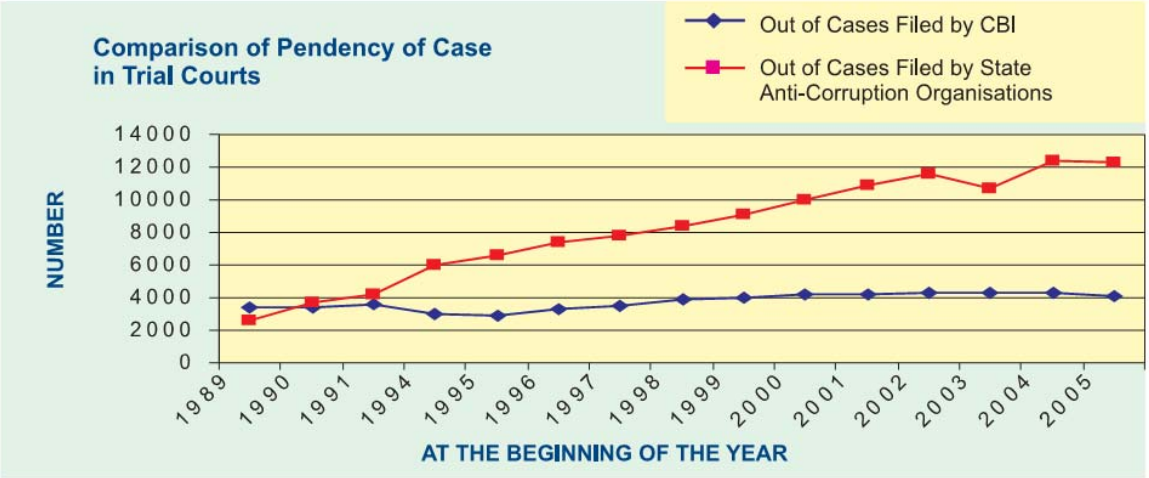
12 STRENGTHENING OF ANTI CORRUPTION AGENCIES

The working of many of the anti-corruption bodies in India leaves much to be desired. In order to analyse the functioning of the anti-corruption laws and the agencies involved in their enforcement, we need to study the details of the cases investigated, tried, and convicted in the past three decades, based on annual statistics published by the National Crime Records Bureau. This analysis is summarized in the figures below:


Analysis of Cases Investigated
and Prosecuted by CBI
No. of cases registered during the year
No. of cases investigated
No of cases sent for trial
No of cases in which trials were completed
No of cases convicted
NUMBER OF CASES
1400
1200
1000
800
600
400
200
0
1988
1989
1990
1991
1994
1995
1996
1997
1998
1999
2000
2001
2002
2003
2004
2005
YEAR


Analysis of Cases Investigated and Prosecuted
by State Anti-Corruption Wings
No. of cases for investigation
No. of cases investigated
No. of cases in which chargesheets filed
No of cases convicted
NUMBER
9000
8000
7000
6000
5000
4000
3000
2000
1000
0
1977
1978
1979
1980
1981
1982
1983
1984
1985
1986
1987
1988
1989
1990
1991
1994
1995
1996
1997
1998
1999
2000
2001
2002
2003
2004
2005
YEAR


Comparison of Conviction Rates of
CBI and States
Cases investigated by CBI
Cases investigated by State Anti Corruption
Organisations
PERCENTAGE
80
70
60
50
40
30
20
10
0
1988
1989
1990
1991
1994
1995
1996
1997
1998
1999
2000
2001
2002
2003
2004
2005
YEAR



Source: Second Administrative Reforms Commission. (2007). *Ethics in Governance.* Fourth Report, New Delhi.

From an analysis of the above figures, the following broad conclusions may be drawn:

1. The conviction rate in cases by CBI is low compared to the cases registered, which nevertheless is double that of the State Anti Corruption organizations. The number of cases of the CBI pending for trial at the beginning of the year 2005 was 4130 and 471 more cases were added during the year. But only 265 cases could be disposed of during the year. Similarly, in the States there were 12285 cases pending at the beginning of 2005, and 2111 cases were added during the year. But only 2005 cases were disposed of during the year. If one were to assume that no cases are filed from now onwards, it would take about six years to clear the backlog in the states.
2. There has been rapid increase in the number of cases registered and investigated by the State Anti-Corruption organizations after 1988.
3. The number of cases pending for investigation before the State Anti Corruption organizations has been increasing.
4. The number of cases disposed of in trials each year is much less than the number of

cases filed, indicating that the backlog of cases in trial courts is increasing.

An international comparison of the conviction rate for the offence of bribery, as indicated in the Table below, reveals that most countries have a much higher rate of conviction than India.

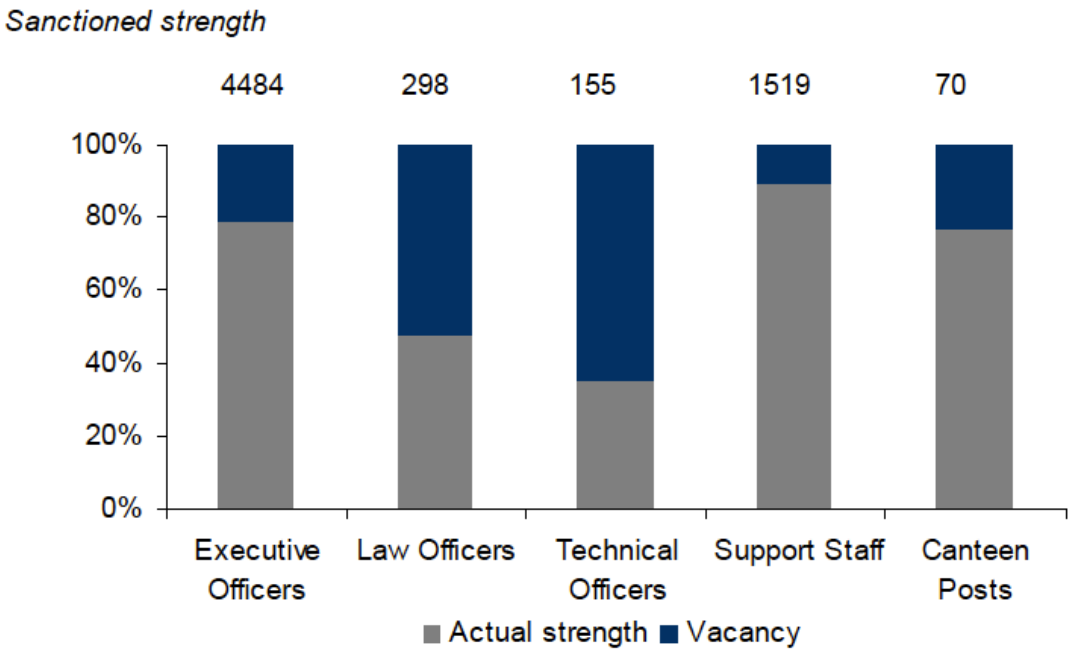
Table 1: International Comparison of Persons Convicted for Bribery

	Year			Rate per 100,000 inhabitants		
Country	**1998**	**1999**	**2000**	**1998**	**1999**	**2000**
Albania			1			0.03
Armenia	13	12	28	0.34	0.32	0.74
Azerbaijan	45	45	45	0.57	0.56	0.56
Belarus	246	224	220	2.44	2.24	2.2
Bulgaria	32	26	38	0.39	0.32	0.47
Chile	5	8	7	0.03	0.05	0.05
China	8,770	8,568	9,729	0.71	0.69	0.77
Costa Rica	10	4	4	0.27	0.11	0.1
Croatia	31	55	44	0.71	1.26	1
Cyprus	1	1	-	0.13	0.13	-
Czech Republic	111	110	118	1.08	1.07	1.15
Egypt	-	528	1,225	-	0.84	1.92
Estonia	28	20	43	1.99	1.44	3.14
Finland	5	3	3	0.1	0.06	0.06
France				0.33	0.54	0.47
Georgia	11	2	18	0.2	0.04	0.36
Germany	427	395	-	0.52	0.48	-
Guatemala	380	369	600	3.52	3.32	5.26
HongKong, China (SAR)	130	74	107	1.96	1.1	1.57
Hungary	278	297	294	2.75	2.94	2.94
India	**654**	**684**	**-**	**0.07**	**0.07**	**-**
Indonesia	136	391	232	0.07	0.19	0.11
Italy	963	723	717	1.67	1.26	1.24
Japan	187	153	119	0.15	0.12	0.09
Korea, Republic of	803	1,466	960	1.73	3.13	2.03
Latvia	17	32	10	0.69	1.33	0.42
Lithuania	44	43	51	1.19	1.16	1.38
Macedonia, FYR	11	23	19	0.55	1.14	0.94
Malaysia	230	641	800	1.04	2.82	3.43
Mexico	49	239	247	0.05	0.25	0.25

Source: Second Administrative Reforms Commission. (2007). *Ethics in Governance.* Fourth Report, New Delhi.

While the data for conviction rates in India are not encouraging, an analysis of the CBI's vacancies and its staff to population ratios shows disturbing trends:

Figure 1: Vacancies in CBI (as on 31st December, 2010)



Source: PRS Legislative Research, "Corruption Cases Against Government Officials," Vital Stats (New Delhi, 2011).

An Asian comparison of anti corruption agencies shows that although the seven anti corruption agencies under consideration have similar responsibilities, CBI stands at the bottom of the list when it comes to staff-population ratios.

Table 2: Staff Population Ratios of Seven Asian Anti Corruption Agencies in 2005

ACA	Functions	Personnel	Population	Staff-Population Ratio	Rank
Commission Against Corruption (CCAC), Macao SAR, China	Anti-corruption and ombudsman	112	488,100	1:4,358	1
Independent Commission Against Corruption (ICAC), Hong Kong SAR, China	Investigation, prevention and education	1,194	7,000,000	1:5,863	2
Corrupt Practices Investigation Bureau (CPIB), Singapore	Investigation, prevention and education	82	4, 300, 000	1:53,086	3
National Counter Corruption Commission (NCCC), Thailand	Inspection of assets of public officials, investigation, prevention and education	924	64,200,000	1:69,481	4
Ombudsman Philippines	Anti-corruption, ombudsman, prosecution, discipline, and public assistance	957	81,400,000	1:85,057	5
Central Bureau of Investigation (CBI), India	**Anti-corruption, economic crimes and special crimes (organised crime and terrorism)**	**4,711**	**1,081,200,000**	**1:229,505**	6
Korea Independent Commission Against Corruption (KICAC)	Anti-corruption, ombudsman and administrative appeals	205	47,800,000	1:233,171	7

Source: Jon S T Quah, "Benchmarking for Excellence: A Comparative Analysis of Seven Asian Anti-Corruption Agencies," *The Asia Pacific Journal of Public Administration* 31, no. 2 (December 2009): 171-195.

This data clearly shows that our anti-corruption agencies are very ineffective in handling the cases of corruption. This relative failure is caused by two factors. Firstly, the law

is weak and inadequate, and the investigative and prosecuting agencies are not adequately empowered. Secondly, these anti-corruption agencies are under-staffed, under-trained and under-equipped.

The large number of institutional and legal mechanisms incorporated in the Lokpal Bill, and the many improvements suggested in this submission will address most of the legal and empowerment issues. These will however leave the issue of strengthening the CBI and ACBs in terms of manpower, infrastructure, equipment, training and morale, which depends on political will and resources. In today's climate, the resources required to strengthen these agencies can be easily provided by the State within reasonable limits.

Now that a law is being enacted to create powerful and effective Lokpal and Lokayuktas, it would be practical and effective if Lokpal and Lokayuktas are obligated by law to submit to Parliament and State Legislatures respectively an annual report on the functioning of the anti-corruption agencies and their infrastructure and man-power, particularly taking into account the international best practices. Such a report and recommendations could the basis for the Parliament / State Legislature and the appropriate government for taking steps to strengthen the manpower and infrastructure of anti-corruption agencies in a time-bound manner.

13 MEASURES TO EMPOWER CITIZENS

13.1 Citizen's Charters

Well-designed citizen's charters in respect of those services for which there is no supply constraint, and clear, non-discretionary processes are possible and necessary will be

very effective in curbing corruption and improving delivery. In Andhra Pradesh in 2001, such citizen's charters with penalty of Rs.50 for every day's delay and compensation to citizens were implemented in respect of five services in municipalities at Lok Satta's urging. Hundred of citizens claimed and obtained compensation for delay. More important, quality of services has improved measurably. But in time, as there was no statutory backing, the citizen's charters were in disuse. Similarly, a charter for panchayat services was designed with a smaller penalty of Rs.10 per day, but was not really implemented. In Bihar and Madhya Pradesh, Public Service Guarantee Act has been enacted recently providing for citizen's charters in services notified by state government from time to time, including tatkal services where higher fee is involved. Time limit for service, and penalty as imposed by an appellate authority with civil court power, and a second appeal to reviewing authority are provided.

A similar law applicable to listed and notified services at the Union as well as State levels should be made by Parliament. Such a law can be either part of Lokpal and Lokayuktas Act or a separate legislation. But the law should be flexible and practical, so that the purpose is served with progressive enforcement in all services that can be measured, where there is no supply constraint, and no discretion is involved. The CVC at national level, and Lokayukta at State level could be the monitoring agencies for citizen's charters.

13.2 False Claims Act

In the US, an innovative law has been in operation for long. In its modern from, the False Claims Act is a federal law that empowers any citizen or whistle-blower to file a suit in a federal court for any loss sustained by the government in any public procurement or contract or service delivery. The loss could be in terms of price even if the price was determined by competitive bidding (for instance, the bid price being higher than that offered

to the best customer by the company or supplier), or quality, or environmental or social damage.

Such a *qui-tam* litigation by those who are not affiliated with the government to file suits on behalf of the government can be pursued by the Attorney General, or the litigator himself. The Court is empowered in a summary civil procedure to compute the loss suffered by the exchequer or the public, and has the authority to impose a penalty of three times the loss suffered. The *qui-tam* litigator receives a portion (usually 15 – 25 percent) of any recovered damages. Claims under the law have typically involved healthcare, military, or other government spending programmes. The government has recovered nearly $ 22 billion under the False Claims Act between 1987 (after significant 1986 amendments) and 2008. Hundreds of citizens and organizations are thus empowered and incentivized to fight against corruption. Such a law should be considered for enactment in India with appropriate institutional mechanisms to make the law operational.

13.3 Windfall Profits Tax Act

In the UK, when North Sea oil was privatized, there was a windfall profit to the private company because of unexpected rise in global oil prices. Though the transaction was transparent and not tainted by corruption, a law was enacted to recover windfall profits from monopoly and use of natural resources, which are the nation's asset. A similar law could be enacted to recover windfall profits on account of monopoly like mines and minerals, or scarce and irreplaceable spectrum. In such a law, the citizens could be empowered to file *qui-tam* suits as in case of False Claims Act. Such a legal provision, along with mandatory competitive bidding for allocation of scarce national resources will significantly curb corruption.

14 CONCLUSION

All these together will constitute a set of integrated, well-coordinated, time-tested measures, which will have a profound impact on the level of corruption, and public perception of government and politics at all levels. Experience shows that corruption can be significantly brought down, and quality of politics and governance will improve by these well-coordinated, well-designed steps.

However, these are vital initial steps. The durable and final steps in building a corruption free system would involve in addition introduction of competition and choice, and technology and transparency, dramatic decentralization of power with clear lines of authority fused with accountability, and political reform to alter the nature of politics and reduce and eventually eliminate dependence on illegitimate and unaccounted money power for inducing people to vote in a certain manner. Once robust, practical, strong and independent anti-corruption agencies are in place, other systemic reforms can be institutionalized through national consensus.

* * *