**Minutes of Meeting Of the Governing Council Of Common Cause Society held On August 4, 2011**

**Venue:** AIHDA, India Habitat Centre, LodiRoad, New Delhi

**Participants**

Mr. Vikram Lal                               President

Maj. Gen. (Retd.) J. P. Gupta           Vice President

Dr. B.P. Mathur

Mr. Lalit Nirula

Mr. Prashant Bhushan

Mr. Paranjoy Guha Thakurta

Ms. Madhu Kishwar

Mr. Prakash Singh

Mr. Kamal Kant Jaswal Director

Mr. Sarvesh Sharma Special Invitee

Mr. N. S. Chawla Special Invitee

Mr. Surjit K. Das Special Invitee

**1. Confirmation of the minutes.**

Minutes of the Governing Council meeting held on March 15, 2011 were confirmed.

**2. Presentation of the Society’s activities**

The Director recapitulated the progress made since the last meeting in regard to the thrust areas of the Society’s activities. It was felt that the momentum gained in the efforts to reform the Delhi Police Act should not be allowed to dissipate.

The Council endorsed the efforts being made to set up an RTI portal and bring the rules governing the citizen’s access to information held by the Supreme Court and the High Courts in accord with the spirit of the RTI Act. The Council also noted with satisfaction the fact that the Society was making effective use of this instrument to extract information required to support its various initiatives.

**3. Stance of Common Cause in the campaign for a strong Lokpal**

The Council noted that the campaign had imparted an urgency to the long standing demand for establishment of a strong and effective integrity institution and mobilized unprecedented popular support for immediate enactment of a central legislation in this regard. It had also compelled the government to involve civil society in the process of law making and exploded the myth that in a representative democracy the elected representatives alone have the right to articulate the popular will.

The Council observed that while the Lokpal Bill introduced by the government in Parliament was in certain respects better than the draft Bill formulated by the Law Ministry in January 2011, it suffered from numerous conceptual and structural defects. Leaving aside the emotive issue of exclusion of the judiciary and the office of Prime Minister from the purview of the Lokpal, the proposed law had a number of design defects, which would greatly impair the credibility and the effectiveness of the institution to be created. The following were some of the more serious deficiencies and inconsistencies.

The selection committee envisaged in the Bill for the appointment of the chairperson and the members of Lokpal did not inspire confidence, since it had a preponderance of the executive and its nominees and was not obliged to follow a transparent process for arriving at its recommendations. The power of the executive to suspend the chairman or a member of Lokpal once the matter was referred to the Supreme Court for an inquiry into an allegation of misbehavior further eroded the independence of the institution.

The functioning of the Lokpal would be hamstrung by an absence of delegation within the organization. Overlapping jurisdictions of the investigative wings of the Lokpal and the CBI, as envisaged in the Bill, were bound to lead to confusion and conflict.

The Lokpal was required to give multiple opportunities to a public servant being investigated for corruption of being heard and accessing the evidence against him. This bias in favour of a public servant suspected of corruption was also reflected in the asymmetry of punishments for a corrupt public servant and a complainant found guilty of making a frivolous complaint. While the minimum punishment for the former was six months imprisonment, the latter was liable to be imprisoned for a minimum of two years.

The Bill excluded the lower bureaucracy from the purview of the Lokpal, ostensibly to enable it to focus on grand corruption involving politicians and senior bureaucrats. However, it brought within the inquiry jurisdiction of the Lokpal millions of functionaries of all civil society organizations in receipt of donations from the public. This was obviously a way of settling scores with inconvenient civil society figures.

The Bill made no provision for addressing public grievances arising from denial of service with a view to extracting illicit consideration. Likewise, it did not concern itself with the situation in the states, where the absence of a credible integrity institution, or the continuance of disparate and largely ineffectual Lokayuktas, would perpetuate the present dysfunction of the government-citizen interface.

The Council urged that these deficiencies should forcefully be highlighted. At the same time, the Council believed that there were certain areas of concern in the Jan Lokpal Bill, which warranted a wider and more in-depth debate than the limited exchange that was possible in the charged atmosphere and compressed time-frame of the Joint Drafting Committee. The main concerns related to the reach and size of the institution of Lokpal and the difficulties arising from inclusion of the judiciary in its remit.

An overarching integrity institution of the kind envisaged in the Jan Lokpal Bill would need a huge workforce, which would tend to imbibe the ethos and work culture of government departments and succumb to the usual temptations of authority and discretionary power. The alternative arrangement of a lean Lokpal institution, having primary jurisdiction over the top rungs of government, but exercising effective superintendence over the functioning of suitably strengthened and empowered vigilance organisations in the government and its instrumentalities should be considered with an open mind.

It was also imperative to address the concern that inclusion of the judiciary in the remit of the Lokpal might lead to a deleterious institutional conflict. If the Supreme Court was to adjudicate the complaints against the Lokpal, the objective of ensuring the probity of the higher judiciary could be better served by an independent judicial commission. This body could also deal with the selection, promotion and disciplinary issues of the higher judiciary, functions which were currently being handled by an opaque and unaccountable in-house mechanism. As an alternative to the Judicial Standards and Accountability Bill, which is already in Parliament, the campaign should formulate a bill that provided for an independent, broad-based and effective regulatory body to ensure that the judiciary followed the highest standards of independence and probity.

The Council felt that the movement should avoid giving the impression that it was determined to impose its draft on Parliament and lacked the flexibility, which was essential to arrive at a political consensus. It needed to display the same openness of mind that was in evidence during the development of Jan Lokpal Bill through countless rounds of consultations and iterations. The divergences to be narrowed down were very wide and the process of evolving a consensus was bound to be time-consuming.

The Lokpal Bill having been introduced in Parliament, the campaign had a precious opportunity of influencing its evolution through a continuing engagement with opinion leaders, political parties and members of Parliament, while keeping the core issues in focus by a sustained, finely calibrated popular mobilisation.

In this context, the Council felt that there was a need to review the plan for an indefinite fast by Anna Hazare with effect from August 16, 2011. There was also an apprehension that in the event of the arrest of the leadership of the campaign, the countrywide agitation might go out of hand due to infiltration by lumpen or disruptive elements. Such a development would discredit the movement and do a disservice to the cause. The Council, therefore, made a strong plea for a reprise of negotiations with all the stakeholders.

(Vikram Lal)

President