To

Sh Anand Sharma

Chairperson

The Parliamentary Standing Committee on

Personnel, Public Grievances, Law and Justice.

Subject: Representation of VANI on Lokpal & Lokayuktas Act, 2013

Dear sir,

On behalf of members of VANI, we would like to thank you for opportunity given to us to submit our representation for the consideration on Lokpal & Lokayukta Act, 2013.

Being an apex body of Voluntary Development Organisations, VANI represents 12,000 voluntary organisations from all over India. These organisations are engaged in developmental initiatives, like, health, education, water & sanitation, old age care, child and women development. We along with our members pride ourselves in contributing the growth and development of India.

VANI has a very longstanding relationship with government and parliament in not only representing Voluntary sector but also providing necessary input and support as and when required.

VANI and its members have always stood for highest level of accountability and transparency of the voluntary sector. We have not only supported all such initiatives of the government but also run series of capacity building interventions with our members to keep their compliance at highest levels.

In the case of Lokpal and Lokayukta also, VANI supports the Act and spirit under which it is framed. VANI and its members have contributed in articulating and framing it. We consider this as the path-breaking initiative which will strengthen our democracy further as it covers highest level of governance in the country.

However, we have certain concerns, which we would humbly like to share with you:

1. In 2013, in pursuit of India's ratification of the "United Nations Convention Against Corruption", the Lokayuktas and Lokpal Act was enacted. It was clearly stated that through the domestic law, an effective mechanism be created to receive complaints related to allegations of corruption against public servants including ministers, MPs, CMs, members of legislative assemblies, to enquire into them and to take follow up actions. In the preamble to the Act of 2013, the purpose mentioned was to enquire into the allegations of corruption against certain public functionaries", to show government's commitment to clean and responsive governance. Section 1(3) of the Act clearly says that it shall apply "public servants in and outside India", thereby making it clear that it is only applicable to 'public servants'. A

bare reading of the object and reasons, preamble to the act and application of the Act shows that the Act was only meant for the public functionaries, those who are covered by the definition of the 'public servant'. The private bodies/persons are not public servants and therefore, do not fall within the expression of 'public functionaries 'or 'public servants'. The said Act, therefore, cannot have any application to the private persons.

2. In section 14 (1)(f), any person who is or has been a chairperson or member or officer or employee in any body or board or corporation or authority or company or society or trust or autonomous body (by whatever name called) established by an Act of Parliament or wholly or partly financed by the Central Government or controlled by it:

Provided that in respect of such officers referred to in clause (d) who have served in connection with the affairs of the Union or in any body or Board or corporation or authority or company or society or trust or autonomous body referred to in clause (e) but are working in connection with the affairs of the state or in any body or Board or Corporation or authority or company or society or trust or autonomous body (by whatever name called) established by an Act of the State Legislature or wholly or partly financed by the state government or controlled by it, the Lokpal and officers of its Inquiry Wing or Prosecution Wing shall have jurisdiction under this Act in respect of such officers only after obtaining the consent of the concerned State Government;

Clause (g) any person who is or has been a director, manager, secretary or other officer of every other society or association of persons or trust (whether registered under any law for the time being in force or not), by whatever name called, wholly or partly financed by the Government and the annual income of which exceeds such amount as the Central Government may, by notification, specify;

Clause (h) any person who is or has been a director, manager, secretary or other officer of every other society or association of persons or trust (whether registered under any law for the time being in force or not), in receipt of any donation from any foreign source under the Foreign Contribution (Regulation) Act, 2010 in excess of ten lakh rupees in a year or such higher amount as the Central Government may, by notification, specify.

"Provided that any person referred to in this clause shall deemed to be public servant under clause (c) of section 2 of the Prevention of Corruption Act, 1988 and the provisions of that Act shall apply accordingly".

Neither the definition under the Lokpal Act, nor the definition under Prevention of Corruption Act actually stipulates the criteria or prerequisite to determine how an individual qualifies as a public servant.

There are two pre-requisites for classifying a person as a public servant:

a). He should be holding a post or a person;

b). He should be discharging public duty;

The term public duty has not been defined in the Lokpal and Lokayukta Act. The said expression has been defined in the Prevention of Corruption Act as follows:

"clause 2(c) public duty" means a duty in the discharge of which the State, the public or the community at large has an interest;"

From the above, it is clear that in the absence of any definition of public servant, the general definition will apply, according to which, by enumeration, a director, manager, secretary or other officer of the society/trust/ association of persons, under Section 14 (1) (h) cannot be included within the ambit of 'public servant' merely because such society/ trust/ association of persons receive foreign donations. As submitted hereinabove, neither the element of holding public office, nor position or discharge of public duty applies in this situation. By incorporating certain categories in section 2(o) and calling them as 'public servants', if a private person is called as a public servant, such an interpretation will be absurd and illogical. It will be unreasonable and arbitrary and therefore, violative of Article 14 of the constitution. Further, it is not advisable to put persons not similarly situated in the same category. A private person cannot be put in the same category of those who fulfil the requirements of 'public servants'. Such action is discriminatory and infringes upon Article 14.

3. A private body getting foreign donations, in one sense is equal to a private body getting private body getting private donations, except to the extent that the money which is received is foreign money. In order to make a person accountable for receiving the foreign money and to oversee in which situations the foreign money can be received and by whom, the Foreign Contribution (Regulation) Act, 2010 already exists. Under the said Act and its rules, detailed provisions are given to make a person accountable to give all declarations. The private bodies have no difficulty if the declarations made by them are put in public domain. However, Section 14(1)(h) makes the persons who are office bearers of the society/trust/association of persons responsible for declaring not only their assets but also the assets of their spouse and dependent children. It is not understood how a person who is working in a private body can be treated as public servant merely because foreign money is received by such private body. There is no public element in the foreign money which is received. It is important to point out that Section 14(1)(h) only covers only those entities which receive foreign funds under FCRA. On the other hand, foreign funds received from other sources (like FDI, etc.) such under FEMA, 1999 are exempted from such obligations. If the foreign money is spent for a particular purpose, the private body is responsible to the donor and the competent authorities under the FCRA Act, 2010. But in no situation can office bearers can be made liable and equated with the public servant. For example, if an NGO is getting foreign donation for education the rural woman, the details of money which is spent by the NGO is provided to the donor. The money is not from the public exchequer or any public source. However, NGO, in addition, is also responsible to complete details and accounts which are provided under are given complete details and accounts which provided under FCRA, 2010. It the details are not given or if there is any misleading or incorrect information, the consequences ensue under the FCRA. But, the office bearers/ board members of a private body handling private money cannot be brought within the parameters of public servant by the deeming fiction and be made liable to furnish details of not only his/her assets, but also of the spouse and dependent children under the Act. The provision is therefore unjust, illegal, arbitrary and violative of Article 14 of the Constitution.

4. Section 44 of the Act makes declaration of the assets by the office bearers of such private bodies' mandatory that too in the forms provided, by a given date. There is a presumption as to acquisition of assets by corrupt means under Section 45, if there is default or the declaration is misleading. It is incomprehensible that a person who for some reason is not able to declare his assets, or some reason is not able to declare his assets, or some information is found to be misleading, that, it will presumed that he acquired the amount through corrupt means. This will create a situation where even eminent and respectable persons who are holding positions of office bearers/trustees in the private bodies, will suffer indignation and disruptive.

6. A person who joins government service is subject to the service laws and rules framed under Article 309 of the Constitution as well as protection under protection under Article 311 of the Constitution. If the government servant gets any right, he also subjected to certain duties and restrictions. Whereas a private person enjoys fundamental rights subject to the restriction provided therein and is also governed by different laws pertaining to income tax, criminal law, etc. but a private person or a private body cannot be equated with the public servant who is discharging public duty.

7. **Humble Submission**:

Sir, based on the above submissions, we would humbly urge the Parliamentary Standing Committee to consider following changes in the Act:

a). Deletion of Section 14(1) (h)

b). The already existing Acts, like FCRA and Income Tax, etc, cover the VOs of the country and efforts should be done to strengthen the build the capacity of VOs to comply with the Act and remove the dead wood. Further transparency could be introduced to enhance mutual accountability and self-regulation.

c). Modification of section 14(1) (g) to state that only those individuals who have a managerial or an executive role in the organisations that have received substantial financial contribution from the government of India are required to make declarations under the section 44 of the Act.

d). Similar changes may be considered for section 14(1)(f)

In the end, we would like to reiterate our commitment for highest level of transparency and accountability for the Voluntary sector as well as in public life. We are hopeful that our humble suggestions will receive positive consideration.

We look forward to seek opportunity to make a presentation to the Hon'ble members of the committee.

Thank you