



PARLIAMENT OF INDIA

Compendium on Parliamentary Enactments

**THE LOKPAL  
AND  
LOKAYUKTAS ACT 2013**



RAJYA SABHA SECRETARIAT  
NEW DELHI  
2015

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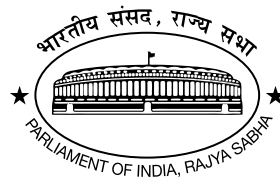
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# **THE LOKPAL AND LOKAYUKTAS ACT 2013**



**RAJYA SABHA SECRETARIAT  
NEW DELHI-110 001**

**JULY, 2015**

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## PREFACE

This publication is second in the series of compendium on parliamentary enactments proposed to be brought out on important Bills passed by both Houses for the benefit of Members of Parliament, researchers, legal fraternity as also the public at large.

This compendium on the Lokpal and Lokayuktas Act, 2013 contains all primary documents such as the Bill as introduced, the Reports of the Department-related Standing Committee on Personnel, Public Grievances, Law and Justice and the Select Committee of the Rajya Sabha. The synopsis of debates of both Houses of Parliament and the Bill as passed by both Houses with a comprehensive executive summary have been included. A select reading list is also enclosed.

I acknowledge with thanks the services rendered by the officers of the Library, Reference, Research, Documentation & Information Service (LARRDIS) who were entrusted with the task of compiling this Compendium. I also appreciate the work done by the Printing and Publications Service.

It is hoped that this publication will be useful and we welcome suggestions for improvement.

NEW DELHI;  
*June, 2015*

**Shumsher K. Sheriff**  
*Secretary-General*



## **ABBREVIATIONS**

ARC	Administrative Reforms Commission
NCRWC	National Commission to Review the Working of the Constitution
JC	Joint Committee
DRSC	Department Related Standing Committee
SC	Scheduled Caste
ST	Scheduled Tribe
OBC	Other Backward Caste
LS	Lok Sabha
RS	Rajya Sabha
CJI	Chief Justice of India
FCRA	Foreign Contribution (Regulation) Act
CBI	Central Bureau of Investigation
CVC	Central Vigilance Commission



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## The Lokpal and Lokayuktas Act, 2013

The Lokpal and Lokayuktas Act, 2013 has had a long chequered history. It took almost forty-five years to enact this important piece of legislation. The institution of Lokpal was first contemplated way back in early 1960s with the aim to rooting out corruption in public offices. For the first time the Bill was introduced in the Fourth Lok Sabha as the Lokpal and Lokayuktas Bill, 1968. Since then the Bill has been introduced nine times in 1971, 1977, 1985, 1989, 1996, 1998, 2001 and twice in 2011. In view of the repeated postponement to enact this legislation, a campaign was launched by civil society organisations in 2011. They brought out their own version of the Bill titled 'The Jan Lokpal Bill'. The Government subsequently introduced a new Lokpal Bill on 4 August 2011, which was referred to the Department-related Parliamentary Standing Committee for examination on 8 August 2011. On the basis of the recommendations contained in the Committee Report, presented on 9 December 2011, the Lokpal Bill, 2011, was withdrawn and a revised Bill titled 'The Lokpal and Lokayuktas Bill, 2011' was again introduced in the Lok Sabha on 22 December 2011.

On 27 December 2011, the Bill was discussed and passed by the Lok Sabha with certain amendments. The Bill as passed by the Lok Sabha came up for discussion in the Rajya Sabha on 29 December 2011, but remained inconclusive. On 21 May 2012, the Rajya Sabha referred the Bill as passed by the Lok Sabha to the Select Committee of the Rajya Sabha. The Committee presented its Report to the Rajya Sabha on 23 November 2012. The Government accepted 14 of the 16 recommendations made by the Select Committee and accordingly amended the Lokpal and Lokayuktas Bill, 2011. The amended Bill was brought for consideration in the Rajya Sabha on 13 December 2013. However, as the House was adjourned that day the Bill could be taken up for discussion only on 17 December 2013. The Bill as passed by the Rajya Sabha with certain amendments on 17 December 2012 was sent back to the Lok Sabha for further approval. The Bill as passed by the Rajya Sabha with amendments was taken up for consideration by the Lok Sabha on 18 December 2013. The Lok Sabha agreed to the amendments made by the Rajya Sabha and passed the Bill on the same day. The Bill as passed by both Houses received the President's assent on 1 January 2014 and became Act No. 1 of 2014.

## Background

The word 'Lokpal' etymologically means 'protector of people'. The term was coined as an Indian variant of the concept of '*Ombudsman*', which has Scandinavian origin and refers to an official who is appointed to investigate complaints of citizens against the administration. The genesis of the concept in India can be dated back to the 1960s. On 3rd April 1963, Late Dr. L.M. Singhvi while participating in the discussion of Demands for Grants of the Ministry of Law and Justice, in the Lok Sabha, stressed the need for setting up of a Parliamentary Commission on the pattern of *Ombudsman* for tackling corruption and redressal of public grievances. The terms *Lokpal* and *Lokayukta* were also coined by him. In 1966, the first Administrative Reforms Commission (ARC) recommended a two tier machinery to redress the grievances of public *i.e.* Lokpal and Lokayukta. The Lokpal would deal with complaints against Ministers and Secretaries of Central Government as well as in the states. The Lokayukta, one for the Centre and one in each State, would attend complaints against rest of the bureaucracy. Apart from the first ARC and the Parliamentary Committees, second ARC and the National Commission to Review the Working of the Constitution, 2002 (NCRWC) have recommended on the various aspects of the institution of Lokpal. Since 1968, Bills relating to Lokpal and Lokayuktas have been introduced in the Lok Sabha nine times. The long and arduous legislative journey of Lokpal can be gauged from the following Table:

Sl. No.	Title of the Bill	Date of introduction/ House in which introduced	Committee Referred to	Status
1.	The Lokpal & Lokayuktas Bill, 1968	09.05.1968 Lok Sabha	Select Committee	Passed in the LS on 20.08.1969, but before RS could deliberate, Fourth LS dissolved and the Bill lapsed.
2.	The Lokpal & Lokayuktas Bill, 1971	11.08.1971 Lok Sabha	No	Bill lapsed due to the dissolution of the Fifth LS.
3.	The Lokpal Bill, 1977	28.07.1977 Lok Sabha	Joint Committee	Before JC recommendations were considered, the sixth LS dissolved and the Bill lapsed.

Sl. No.	Title of the Bill	Date of introduction/ House in which introduced	Committee Referred to	Status
4.	The Lokpal Bill, 1985	26.08.1985 Lok Sabha	Joint Committee	Bill withdrawn.
5.	The Lokpal Bill, 1989	29.12.1989 Lok Sabha	No	Bill lapsed due to the dissolution of the Ninth LS.
6.	The Lokpal Bill, 1996	13.09.1996 Lok Sabha	DRSC on Home Affairs	Committee presented its Report on 09.05.1997. Before the Government could consider the amendments proposed by the Committee, the Eleventh LS dissolved and the Bill lapsed.
7.	The Lokpal Bill, 1998	03.08.1998 Lok Sabha	DRSC on Home Affairs	Committee presented its Report on 25.02.1999. Before the Government could consider the recommendations of the Committee, the Twelfth LS dissolved and the Bill lapsed.
8.	The Lokpal Bill, 2001	14.08.2001 Lok Sabha	DRSC on Home Affairs	Committee presented its Report on 07.03.2002. Before the Government could reconsider the Bill, the Thirteenth LS dissolved and the Bill lapsed.

#### Civil Society Demand and Jan Lokpal Bill

- Following the wide-spread agitation, the Government constituted a Joint Drafting Committee in April 2011, comprising Government representatives and those from civil society to draft the Lokpal Bill.
- Due to lack of consensus on key points between two groups, separate drafts of the Bill were prepared. The draft prepared by the representatives from civil society came to be known as the Jan Lokpal Bill<sup>1</sup>.

<sup>1</sup> Details of the Jan Lokpal Bill can be accessed at <http://www.prsindia.org/administrator/uploads/media/Lokpal/DraftJanLokpalBill.pdf>

## **Lokpal and Lokayuktas Bill, 2011**

- The Lokpal Bill, 2011 was introduced in the Lok Sabha on 04.08.2011. It was referred to the Department-related Standing Committee on Personnel, Public Grievances, Law and Justice on 08.08.2011.
- The then Leader of the Lok Sabha and the Finance Minister, Shri Pranab Mukherjee, made a statement in both the Houses on 27.08.2011 clarifying the Government's position and detailed discussion followed (Annexures I & II). The proceedings of both Houses<sup>2</sup> containing the sense of the Parliament were conveyed to the Parliamentary Standing Committee for appropriate consideration. The Committee presented its report<sup>3</sup> (Annexure III) to both Houses on 09.12.2011.
- The Lokpal Bill, 2011 was withdrawn on 22.12.2011 and the Lokpal and the Lokayuktas Bill, 2011 (Annexure IV) incorporating the recommendations of the Standing Committee was again introduced in Lok Sabha the same day.
- The Lok Sabha took up the consideration of the Bill on 27.12.2011<sup>4</sup> (Annexure V) and passed the same with some amendments (Annexure VI). The Bill as passed by the Lok Sabha was taken up by the Rajya Sabha for consideration on 29.12.2011<sup>5</sup> (Annexure VII), but it remained inconclusive as the House was adjourned in the midnight.

## **Select Committee on Lokpal**

- On 21.05.2012<sup>6</sup>, Rajya Sabha adopted a motion that the Bill as passed by the Lok Sabha be referred to a Select Committee of the Rajya Sabha comprising 15 Members of the House for examination of the Bill and present report thereon (Annexure VIII). The Committee headed by Shri Satyavrat Chaturvedi (INC), presented its Report to the Rajya Sabha on 23.11.2012<sup>7</sup> (Annexure IX).

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<sup>2</sup> <http://164.100.47.132/newdebate/15/8/27082011/Fullday.pdf> and [http://rsdebtttate.nic.in/bitstream/123456789/596397/2/PD\\_223\\_27082011\\_p8\\_p134\\_10.pdf](http://rsdebtttate.nic.in/bitstream/123456789/596397/2/PD_223_27082011_p8_p134_10.pdf)

<sup>3</sup> For details, please see [http://rajyasabha.nic.in/rsnew/48th\\_lokpal\\_report.pdf](http://rajyasabha.nic.in/rsnew/48th_lokpal_report.pdf)

<sup>4</sup> <http://164.100.47.132/newdebate/15/9/27122011/Fullday.pdf>

<sup>5</sup> [http://rsdebate.nic.in/bitstream/123456789/596885/2/PD\\_224\\_29122011\\_p7\\_p211\\_13.pdf](http://rsdebate.nic.in/bitstream/123456789/596885/2/PD_224_29122011_p7_p211_13.pdf)

<sup>6</sup> <http://164.100.47.5/newdebate/225/21052012/17.00pmTo18.00pm.pdf> and <http://164.100.47.5/newdebate/225/21052012/18.00pmTo19.00pm.pdf>

<sup>7</sup> <http://164.100.47.5/newcommittee/reports/EnglishCommittees/Select%20Committee%20on%20the%20lokpal%20and%20Lokayuktas%20Bill,%202011/1.pdf>

## **Major Recommendations of the Select Committee of the Rajya Sabha<sup>8</sup>**

**Creation of Lokayuktas in the States:** Each State to set up the institution of Lokayukta within a year of the Act coming into force; the contours of the Lokayuktas should be decided by the States.

**Jurisdiction of Lokpal:** The Committee recommended that only those bodies, organizations, societies, trusts, etc. should be under the jurisdiction of Lokpal, which receive support from the Government directly in the form of funds and indirectly in other forms. The Committee further recommended that only such entities should be brought under the jurisdiction of Lokpal that are (i) wholly or partially financed by Government or controlled by it, (ii) working in connection with the affairs of the State, or (iii) receiving donations above specified limit from foreign source under Foreign Contribution (Regulation) Act (FCRA), 2010.

**Procedure of inquiry and investigation:** The Committee recommended the Lokpal to directly order a preliminary inquiry against any public servant to ascertain whether there exists a *prima facie* case for proceeding in the matter or may order investigation by any agency where there exists a *prima facie* case. The Committee was against the public servant being given an opportunity of being heard at this stage.

**Power to grant sanction:** The Committee recommended that Lokpal be empowered to grant sanction to file charge sheet/closure Report before the Special Court after obtaining comments of public servant as well as competent authority. Lokpal may alternatively recommend disciplinary action against the public servant.

**Reforms of CBI:** The Committee made several recommendations for strengthening the CBI. They, *inter alia*, include: (i) The CBI shall have a separate Directorate of Prosecution under a Director, who shall function under Director of CBI. The Director of CBI shall be the head of the entire Organisation; (ii) Director of CBI will be appointed by a collegium comprising the Prime Minister, Leader of Opposition in Lok Sabha and Chief Justice of India; (iii) Director of Prosecution will be appointed on the recommendation of the CVC; (iv) The power of superintendence over and direction to CBI in relation to Lokpal referred cases must vest in Lokpal; and (v) Officers of CBI investigating cases referred by Lokpal will be transferred with the approval of Lokpal.

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<sup>8</sup> <http://164.100.47.5/newcommittee/reports/EnglishCommittees/Select%20Committee%20on%20the%20Lokpal%20and%20Lokayuktas%20Bill,%202011/1.pdf>

**Eligibility of Lokpal member:** The Bill laid down that any person ‘connected’ with any political party was ineligible to hold the post of Chairperson/Member of the Lokpal. The Committee recommended that the term ‘connected’ be replaced by ‘affiliated’.

**Composition of the Selection Committee:** The Committee suggested that the fifth member (an eminent jurist) of the Selection Committee for appointment of the Lokpal be nominated by the President on the recommendation of the panel members.

**Suspension of Chairman/Member of Lokpal:** The Bill laid down that the Chairperson or any Member of the Lokpal shall be removed from his office by order of the President on grounds of misbehaviour after the Supreme Court, on a reference being made to it— (i) by the President; or (ii) by the President on a petition being signed by at least one hundred Members of Parliament; or (iii) by the President on receipt of a petition made by a citizen of India and where the President is satisfied that the petition should be referred, has, on an inquiry held in accordance with the procedure prescribed in that behalf, reported that the Chairperson or such Member, as the case may be, ought to be removed on such ground. The Committee recommended that these three options be replaced by only one option, viz.,—on a reference being made to it by the President on a petition signed by atleast 100 Members of Parliament.

Complaints made in ‘good faith’ to be protected from imposition of penalty.

- The Union Cabinet had accepted 14 of the 16 recommendations made by the Rajya Sabha Select Committee.
- On 31 January 2013, the Government accordingly amended the Lokpal and Lokayuktas Bill, 2011.
- The amended Bill was brought for consideration in the Rajya Sabha on 13 December 2013. However, the Bill could not be taken up for consideration as the House was adjourned for the day due to disruptions.
- On 17 December 2013, the Question Hour was suspended in the Rajya Sabha to take up the Bill for discussion and passage (Annexure X). The Bill was discussed and passed by the Rajya Sabha with certain amendments.
- The Bill, as passed by Rajya Sabha on 17 December 2013, with amendments was again transmitted to the Lok Sabha for approval, the same day.

- The Bill as passed by the Rajya Sabha with amendments was taken up for consideration by the Lok Sabha on 18 December 2013. The Lok Sabha agreed to the amendments made by the Rajya Sabha and passed the Bill on the same day.
- The Bill as passed by both Houses received President's assent on 1 January 2014 and became Act no. 1 of 2014 (Annexure XI).

#### **Salient features of the Lokpal and Lokayuktas Act, 2013**

- Lokpal at the Centre and Lokayukta at the level of the states.
- A mandate for setting up of the institution of Lokayukta through enactment of a law by the State Legislature within a period of 365 days from the date of commencement of the Act.
- Lokpal will consist of a chairperson and a maximum of eight members, of which 50 per cent shall be judicial members.
- 50 per cent of members of Lokpal shall be from SC/ST/OBCs, minorities and women.
- The selection of chairperson and members of Lokpal shall be through a Selection Committee consisting of the Prime Minister, the Speaker, Lok Sabha, Leader of Opposition in the Lok Sabha, Chief Justice of India (CJI) or a sitting Supreme Court judge nominated by CJI, eminent jurist to be nominated by the President of India on the basis of recommendations of the first four members of the Selection Committee.
- The Prime Minister has been brought under the purview of the Lokpal.
- Lokpal's jurisdiction will cover all categories of public servants.
- All entities receiving donations from foreign source in the context of the Foreign Contribution Regulation Act (FCRA) in excess of Rs. 10 lakh per year are brought under the jurisdiction of Lokpal.
- Provides adequate protection for honest and upright public servants.
- Lokpal will have power of superintendence and direction over any investigative agency including CBI for cases referred to them by Lokpal.
- A high powered committee chaired by the Prime Minister will recommend selection of the Director, CBI.
- Directorate of Prosecution headed by a Director of Prosecution under the overall control of Director, CBI.



- The Director of Prosecution, CBI will be appointed by the Central Government on the recommendation of the CVC for a period of not less than two years.
- Transfer of officers of CBI investigating cases referred by Lokpal can be effected with the approval of Lokpal.
- The Bill also incorporates provisions for attachment and confiscation of property acquired by corrupt means, even while prosecution is pending.
- The Bill lays down clear time lines for preliminary enquiry and investigation and trial and towards this end, the Bill provides for setting up of special courts.

#### **Lokayuktas in States**

- Though the institution of Lokpal is yet to become a reality at the Union level, similar institutions of Lokayuktas have, in fact, been set-up and are functioning for many years in several States. At present, Lokayuktas are in place in 17 States and one Union Territory. However, due to the difference in structure, scope and jurisdiction, the effectiveness of the State Lokayuktas vary from State to State.

#### **International experience**

- Sweden is the first country to have the institution of *Ombudsman*, established in 1809. Other countries followed the Swedish model almost after a century. Finland (1919), Denmark (1953), Norway and New Zealand (1962), Britain (1967), Israel, Zambia, Portugal, Spain, South Africa in 1970s, Iceland, Ireland, Netherlands and Poland in 1980s, Slovenia (1993), Burkina Faso (1994), Belgium (1995) are some of the countries which have the institution of *Ombudsman*.

#### **Conclusion**

On 27 December 2011 three Government Bills namely, the Lokpal and Lokayuktas Bill, 2011; the Constitution (One Hundred and Sixteenth Amendment) Bill, 2011 (Insertion of new Part XIV B); and the Public Interest Disclosure and Protection to Persons Making the Disclosures Bill, 2010 were moved for consideration together in the Lok Sabha. Total time allotted for the combined discussion of the three Bills was 8 hours but the actual time taken for discussing these three Bills was 11 hours 58 minutes. Forty Members participated in the discussion, including the Minister in-charge of the Bill, Shri V. Narayanasamy. Shri Pranab Mukherjee, then the Minister

of Finance, replied on behalf of Shri V. Narayanasamy to the combined debate. The Bill was passed by Lok Sabha same day. Subsequently, on 18 December, 2013 Lok Sabha agreed to the amendments made by Rajya Sabha to the Lokpal and Lokayuktas Bill, 2011.

In Rajya Sabha, Shri V. Narayanasamy, Minister of State in the Ministry of Personnel, Public Grievances and Pensions moved the Lokpal and Lokayuktas Bill, 2011 as passed by Lok Sabha, for consideration of the House on 29 December 2011. Thirty nine members participated in the discussion but the Minister in-charge of the Bill could not complete his speech while replying to the debate as the House adjourned *sine die*. Subsequently, on 21 May 2012, the Bill, as passed by Lok Sabha was referred to a Select Committee by the Rajya Sabha. The Lokpal and Lokayuktas Bill, 2011 as reported by the Select Committee was moved for consideration in Rajya Sabha on 13 December 2013 by Shri V. Narayanasamy, Minister of State in the Ministry of Personnel, Public Grievances and Pensions. However, his speech remained inconclusive as the House was adjourned for the day. On 17 December 2013 the Question Hour was suspended in the Rajya Sabha and the Bill was taken up for discussion and passage. Total time allotted for discussion was 6 hours while the actual time taken for discussing the same was 4 hours 51 minutes. 26 Members participated in the discussion including Shri Kapil Sibal, the Minister of Communications and Information Technology and the Minister of Law and Justice, who moved the Bill and replied to the debate.



## **Annexure-I**

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**Synopsis of the Debate in the Lok Sabha on  
27 August 2011 on the Statement made  
by the Minister of Finance regarding  
issues relating to setting up of a  
Lokpal, conveying the sense of  
the Parliament to the DRSC**

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**LOK SABHA**  
**SYNOPSIS OF DEBATES\***

27 August 2011

**STATEMENT BY MINISTER**

*Re: Issues relating to setting up of a Lokpal*

**THE MINISTER OF FINANCE (SHRI PRANAB MUKHERJEE):** At the outset, I will like to, once again, request Shri Anna Hazare to end his fast in view of the appeal made by the Prime Minister in his statement and the sentiments expressed by the Leader of the Opposition, and the Hon'ble Speaker of this august House on 25 August 2011.

I seek your indulgence to recount the sequence of events which has brought us to where we are today.

On 5 April 2011, Shri Anna Hazare went on an indefinite fast. On 8 April 2011, Government constituted a Joint Drafting Committee (JDC) consisting of five nominees of Shri Anna Hazare including himself and five nominee Ministers of Government to prepare a draft of the Lokpal Bill. Shri Hazare ended his fast on 9 April 2011.

The JDC met nine times during April-June 2011. In the first meeting of JDC on 16 April 2011, preliminary discussions were held to draft the legislation for the Lokpal. During the second meeting of the Committee, 40 Basic Principles and the Statement of Objects and Reasons were circulated by Shri Hazare's team which formed the basis of discussions in subsequent meetings of the Committee. There were extensive deliberations on the 'basic principles' wherein the scope and vision of the proposed Lokpal were discussed. There was some divergence of views between the representatives of the Government and the representatives of the Civil Society on the vision and scope of the Lokpal. The six major areas of divergent views were:

- Should one single Act be provided for both the Lokpal in the Centre and Lokayukta in the State? Would the State Governments be willing to accept a draft provision for the Lokayukta on the same lines as that of the Lokpal?

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\* This Synopsis is not an authoritative record of the proceedings of the Lok Sabha. For the complete version of the debate refer <http://164.100.47.132/debatetext/15/VIII/2708-B.pdf>

- Should the Prime Minister be brought within the purview of the Lokpal? If the answer is in the affirmative, should there be a qualified inclusion?
- Should judges of the Supreme Court/High Court be brought within the purview of the Lokpal?
- Should the conduct of Members of Parliament inside Parliament (speaking on voting in the House) be brought within the purview of the Lokpal? (Presently such actions are covered under Article 105(2) of the Constitution).
- Whether Articles 311 and 320(3)(c) of the Constitution notwithstanding members of a civil service of the Union or an all India service or a civil service of a State or a person holding a civil post under the Union or State, be subject to enquiry and disciplinary action including dismissal/removal by the Lokpal/Lokayukta, as the case may be.
- What should be the definition of the Lokpal, and should it itself exercise quasi-judicial powers also or delegate these powers to its subordinate officers?

On 31 May 2011, I wrote to the Presidents of various political parties and the Chief Ministers of States soliciting their views on the six contentious issues. Responses were received from 25 Chief Ministers and six Party Presidents/Leaders. I would like to quote from some of the replies that we received:

- BJP President, in his letter dated 2 June 2011 stated and I quote, "Expecting political parties to give their views to a drafting committee comprising of Civil Society representatives for acceptance or otherwise would be upsetting the constitutional propriety where parties, parliamentarians and the Parliament have the last word. They are the decision makers and not suggestion givers..."
- The General Secretary, CPI stated that "as a political party, they will most certainly state their views and suggestions during the discussion on the Bill within the Parliament."
- The BSP President expressed her inability to respond to the issues raised as no BSP representative had been included in the discussion of the JDC. She also stated that in parliamentary democracy, the Bill has to be examined by the Parliament and the Standing Committee where detailed discussions are held.
- The National General Secretary, Samajwadi Party, in his letter stated that Government was holding a direct discussion with

the so called representatives of the civil society in the JDC. On the other hand the leaders of the political parties have been sent a questionnaire. This was not acceptable to the Samajwadi Party and hence they will not send any reply.

The JDC concluded its deliberations on 21 June 2011 and both sides exchanged their drafts for the Lokpal Bill. Both these drafts were forwarded to the Government for further action.

To solicit the views of various political parties, an all party meeting was convened on 3 July 2011. During the discussions, the representatives of various political parties emphasized that:

- The supremacy of the Constitution of India has to be maintained. Institutions of democracy cannot be undermined and the checks and balances visualized in the Constitution cannot be adversely affected.
- Laws have to be made by the Parliamentarians who are elected representatives of the country. Few nominated members of the Drafting Committee cannot have precedence over elected members of the Parliament.

On the conclusion of this meeting, it was unanimously resolved that “Government should bring before the next session of Parliament a strong and effective Lokpal Bill, following the established procedures”.

This meeting was followed by a round of informal consultations with some leaders of the political parties and some of the suggestions received from these leaders were incorporated in the draft Lokpal Bill. In pursuance of the directions of the All Party Meeting, the Government worked on the draft Lokpal Bill prepared by the Joint Drafting Committee and after following the formal process of inter-ministerial consultations and Cabinet approval, the Bill was introduced in Parliament on 4 August 2011.

Even before the Bill could be introduced in the Parliament, Shri Anna Hazare’s representatives restarted the agitation by burning copies of the draft Lokpal Bill. Shri Hazare also declared that if the Jan Lokpal Bill is not passed by the Parliament by 15 August 2011, he would proceed on indefinite fast with effect from 16 August 2011.

The Prime Minister through his Independence Day address on 15 August, again implored Shri Hazare to abstain from the fast. This appeal was ignored.

On 16 August 2011, Shri Anna Hazare has again proceeded on fast. In view of his deteriorating health and Government’s increasing concern for Annaji’s condition, Prime Minister wrote a letter to him on 23 August 2011, making a fervent appeal for ending the fast.



To carry the negotiations forward, the Prime Minister directed me and Shri Salman Khursheed to hold discussions with the representatives of Shri Anna Hazare. A meeting was held on 23 August 2011 and it was clarified to Shri Anna Hazare's representatives that:

- Lokpal Bill is now before the Standing Committee. All options are open before the Standing Committee to consider not only the Bill introduced by the Government but the Jan Lokpal Bill as well as other versions sent by eminent members of civil society.
- In deference to the wish expressed by Annaji, the Government is prepared to request the Speaker Lok Sabha to formally refer the Jan Lokpal Bill to the Standing Committee for their consideration along with everything else.
- About time and speed, the Government can formally request the Standing Committee to try, subject to its discretion, fast tracking their deliberations to the extent feasible.
- I explained to Annaji's representatives that Lokpal Bill alone cannot root out corruption. We need multi-layered laws to deal with corruption at various levels. In addition to the Lokpal Bill, we are willing to strengthen the Judicial Accountability Bill and the Whistle Blowers Bill. We are also working on a Grievance Redressal Bill to tackle corruption at local level.

I again asked Annaji's representatives to convey our earnest request to him to end the fast and give us the space to proceed in the matter.

At this stage Annaji's representatives made the following demands, and I quote:

*"If the Government can agree to introduce Jan Lokpal Bill (after removing those items on which we have differences) after cleaning by the Law Ministry within four days and also provide a commitment that the Bill will not be referred to the Standing Committee and will be discussed and passed (with minor amendments adopted by Parliament) during this session of the Parliament (even if it is extended), we can then hopefully persuade Annaji to stop this fast. (Above to be a written commitment with timelines)."*

Annaji's representatives also insisted upon the inclusion of following substantive issues as part of the Jan Lokpal Bill:

- Public Grievances and Citizens' Charter;
- Lokayukta; and
- Lower bureaucracy.

At the conclusion of the meeting, Annaji's representatives were informed that the matter will be discussed with the Prime Minister. The same evening, discussions on this subject were held in CCPA meeting and it was decided to place it before the All Party Meeting scheduled for the next day.

At the conclusion of All Party Meeting held on 24 August 2011, the following unanimous resolution was passed:

*"This meeting of all political parties in Parliament requests Shri Anna Hazare to end his fast. The meeting was also of the view that due consideration should be given to the Jan Lokpal Bill so that the Final Draft of the Lokpal Bill provides for a strong and effective Lokpal which is supported by a broad national consensus".*

In a late evening meeting held with Annaji's representatives on 24 August 2011, I conveyed the inability of the Government to accept the conditions put forward by them on 23 August 2011 and referred to by me earlier.

The Prime Minister made a statement in this House on 25 August 2011 reiterating our Government's commitment to the passage of a strong Lokpal Bill. Prime Minister also stated that he would welcome the Members of this House to discuss the Lokpal Bill before the Standing Committee, the Jan Lokpal Bill as well as other draft Bills and views of members of civil society which have been brought to the attention of the Government. I believe that the entire House is committed to the eradication of corruption at all levels.

Our Government is committed, therefore, to bring appropriate legislation as well as put in place mechanisms that will reduce discretion and bring transparency in the functioning of public offices as well as take strong measures against those who indulge in corruption. Apart from other issues, the three issues that we need to discuss are:

- Whether the jurisdiction of the Lokpal should cover all employees of the Central Government?
- Whether it will be applicable through the institution of the Lokayukta in all States?
- Whether the Lokpal should have the power to punish all those who violate the 'grievance redressal mechanism' to be put in place?

The specific issues raised by Shri Anna Hazare are important. They deserve our serious consideration. In case a consensus emerges at the end of the discussions, the Standing Committee will, in the course of their

deliberations, take into account their practicability, implementability and constitutionality. For everything that we do, must be consistent with the principles enshrined within our Constitutional framework.

I believe that the Government has amply demonstrated that it is sensitive to the common man's concern about corruption. It has also requested Shri Anna Hazare ji to give up his fast by assuring him that all issues raised by him will be duly discussed by the Standing Committee when finalizing the Lokpal Bill.

I am sure that Members of this House will seize this moment and demonstrate the commitment of the House in dealing with corruption which is gnawing at the vitals of our polity.

### DISCUSSION UNDER RULE 193

*Re: The statement made by the Finance Minister on the issues relating to setting up of a Lokpal*

**SHRIMATI SUSHMA SWARAJ** initiating the discussion said: Today a historical discussion is going on in the House. The Lokpal Bill introduced in the House by the Government on 4 August, 2011 is not the first Lokpal Bill. The Lokpal Bill has been introduced in the House for the 9th time. For the last 43 years this Bill has been kept in abeyance. This Bill has been introduced for the first time during the seven year's long tenure of the UPA. For the first time, Anna Hazare ji has taken this Bill to the people in the shape of a Jan Lokpal Bill movement. It has turned into a public movement and it is not that this public movement does not have any rhyme and reason. The reason behind this movement is the corruption cases which came to light during the last two years. The people are agitated as on one hand they find it difficult to make ends meet while on the other persons holding high posts and positions are amassing wealth. The Government, under which the corruption is going on, claim to wipe out corruption. So, let them show that commitment and bring such a Bill which can fight corruption. Is the Government really committed to root out corruption? Today, the fast of Anna ji has entered 12th day. The 74 years old man is struggling and people are supporting him. The situation is abnormal. To find a way out, the hon. Prime Minister called on an all party meeting at his residence. There should have been a solution emerging out from the all party meeting but things turned turtle. Later on, the hon. Prime Minister took on initiative and applauded the efforts of Anna ji and assured him that an effective and strong Lokpal Bill would be introduced. The next day the Government was supposed to bring forth some Motion or Resolution. However, I fail to understand why the Government backtracked? In fact, the Government was trying to find out such which does not make

it commit anything and on a notice under Rule 193 given by some hon. Member, the discussion could be conducted, thus performing mere rituals. But the General Secretary of the Congress Party washed out the statesmanship shown by the hon. Prime Minister in this House a day before. I am happy that the hon. Prime Minister has taken the reins once again in his hands. The hon. Leader of the House in his statement today has put forth all the three issues before this House and has asked to find out some solution within the Constitutional and parliamentary framework.

For the last many days, we have been demanding that an effective and independent Lokpal Bill should be introduced. But what would be its outlines? The first issue to make it effective is whether the Prime Minister would be under its purview or not? The Prime Minister should be brought under the purview of the Lokpal with two exceptions – The national security and public order. These are the two issues on which the Prime Minister has to do a lot of things and which cannot be brought under public domain in the public interest. Secondly, whether the Judiciary should be brought under the Lokpal or not? The judge sitting in the seat of judgement is like the God but if he becomes corrupt then what should be done? Bringing the judges under the Lokpal is not the solution to the problem. Instead of bringing the Judiciary under the Lokpal, a National Judicial Commission should be setup which has to formulate the modalities of appointment and retirement of judges and there should be such a Judiciary in the country on which no question can be raised. Third, issue relates to the CBI. As per the Jan Lokpal Bill, the anti-corruption wing of the CBI should be brought under the Lokpal. We have been urging for long that the CBI should be an autonomous institution.

The CBI should be an independent body and if the Jan Lokpal wants that its anti-corruption wing should come under it, we are agreed to that. Article 105 of the Constitution provides certain immunities to the Members for their conduct inside the House. That immunity should be maintained. As far as our conduct outside the House is concerned, we are ordinary citizens of the country. So, if our conduct outside the House comes within the purview of Lokpal, we don't have any objection. As far as constitution of Lokpal is concerned, it should have less Members from Government side and more from outside. Only then it can become an independent and impartial body. So, it needs to be kept in mind a balance should be struck at the time of its constitution. The Leader of the House has raised three points in his statement. The first is whether it is possible to constitute a Lokpal and Lokayukta under one Act. Article 252 of the Constitution gives this power to us that through an enabling provision Lok Sabha can frame such a law with the consent of two or more states which can be adopted by other states later on. Thus we can constitute Lokpal and Lokayukta

through a single bill. As for Grievance Redressal Mechanism, many states have enacted effective Public Service Guarantee Act. The Central Government and all other State Governments could enact such Act on the same lines. Besides, Citizens' Charter should also be put in place in all the Government Departments. The third point relates to the lower bureaucracy. The common man is not so much bothered about the corruption at high places because it does not have a direct bearing on him but he does feel a strong sense of anger against it. The common man is harassed by the officer at lower level. Therefore, he feels that the present Jan Lokpal Bill will arm him against such officers. That is why our party feels that lower judiciary should also be brought under the Jan Lokpal Bill. Hence, I hereby register the consent of my party on all the three points raised by the hon. Leader of the House. Today is a historical day. Our generation has suffered a lot because of corruption but we do not want that our future generation should also suffer the same. So, the history has given us a chance today and we cannot afford to miss it. Today the entire country is agitating on the issue of corruption and is looking forward to us. Therefore, we should ensure that this Bill also does not meet the same fate which the earlier eight Bills had met. So, a strong message should reach the Government today through this august House that an effective and a strong and independent Lokpal should be constituted to root out the widespread corruption prevailing in the country.

**SHRI SANDEEP DIKSHIT:** I would like to put forth two-three points on the Lokpal Bill. Lokpal Bill has been introduced in the House six-seven times also but it could not be passed. The debate on the Lokpal Bill started only after the National Advisory Committee first discussed its draft. The first draft of the Jan Lokpal Bill was prepared long back. Team Anna and Anna ji himself were not fully agreed with all the provisions of the Bill and they themselves redrafted the Bill 10-12 times. The sense of the entire country as of now is that no other Bill except the one drafted by the team Anna should be passed. We are of the view that they should listen to us too. The opinion of the House, constitutional expert and public at large should also be taken into account in order to constitute a strong Lokpal. Therefore, everybody concerned should sit together and chalk out a strong and effective Lokpal Bill. As for the constitution of the Lokpal, the questions such as how many members should be there from the Government and outside, their selection process etc. could be solved through a dialogue. The Members of Parliament have been given certain immunities under the Article 105. These immunities have been given to us so that we could put forth our views before the House freely. These immunities of the Members should be safeguarded. The Prevention of Corruption Act applies to the Members outside Parliament in the same manner it applies to a common man. So, there is no difficulty in that.

As regards the appointment of Lokayuktas in the States, we can incorporate an enabling provision in the Lokpal Bill for the purpose as has been referred to by some Members. If this is not possible, the Government should enact a model Bill simultaneously for appointments of Lokayuktas in the States. The Government is in the process of putting in place a grievance redressal system and a legislation is in formulation stage in this regard. A Citizens' Charter will be prepared for all Government programmes under this legislation. But, if this grievance redressal system is to be brought under the jurisdiction of the Lokpal, a model will have to be developed in this regard, lest Lokpal should be overburdened with it. Another important issue pertains to lower bureaucracy. Common man generally have to deal with the lower bureaucracy. In my opinion, it is not in public interest to keep the lower bureaucracy out of the ambit of such a system. Anna ji is also of the view that lower bureaucracy should not be allowed to be unbridled and in my opinion, we all agree with him. To bring them under the ambit of Lokpal is perhaps one of the most effective steps to contain corruption. As far as Judiciary is concerned, I think most of us are of the view that it should not be brought within the purview of Lokpal and a strong and effective Judicial Accountability Bill should be brought for this purpose. Suggestions of Team of Shri Anna Hazare and other people should also be incorporated in that Bill. Independence of Judiciary should not be curtailed. Corruption in the corporate sector should also be taken into account. In NGO sector, there are organizations which are engaged in service of the nation and contributing in its development but some NGOs are bringing a bad name to this sector. If NGO sector is not regulated, it will become unbridled. Here I have to submit whether it would be proper to bring NGOs under the purview of Lokpal which are being financed neither by the Union Government nor the State Governments. Anna ji has shown a direction to the country and made a request to the Parliament and respecting his wishes we are moving towards setting up a strong and effective Lokpal. We should make every effort to fulfill the dreams of our countrymen.

**SHRI REWATI RAMAN SINGH:** The decisions of the Government and its dilly-dallying attitude are responsible for the present abnormal situation prevailing in the country. Perhaps this situation would not have arisen, had the Government taken this House into confidence. Today, the Members of Parliament are being insulted in various ways. This Parliament has its own dignity and this dignity is there only because of its Members. Socialists have their own history of fighting against corruption. Great socialist leaders like Dr. Lohia and Shri Jai Prakash Narain fought against corruption. There is no denial that the Jan Lokpal Bill do have a number of good provisions. There is a provision to bring the Prime Minister within the purview of Lokpal in the Jan Lokpal Bill and it should be accepted with some exceptions.

Article 105 of the Constitution provides for immunities to Members of Parliament which should be kept intact. The Jan Lokpal Bill seeks to provide that the speeches made by the Members of Parliament inside the House should be brought within the ambit of Lokpal. In my opinion, it should not be accepted. Minorities, *dalits* and backward classes should be given representation in the Lokpal in proportion to their population. A provision has been made about scrutiny of affidavits of public representatives by the Lokpal in this Bill. This provision should be deleted because a provision to scrutinize these documents by the Election Commission and the Income Tax Department already exist there. Common man comes into direct contact with the lower bureaucracy. They should be made accountable and responsible to the common man. They should be penalized, if they fail to redress grievances of common man within 15 days. Pharmaceutical companies, fertilizer companies, private companies, traders dealing in food items, industrial houses, electronic and print media should also come within the purview of Lokpal. Along with this, NGOs should also be brought within the ambit of Lokpal. There should be transparency in the selection of Lokpal. A Selection Committee comprising of the Prime Minister as its Chairman and Leaders of Opposition in Rajya Sabha and Lok Sabha, Leaders of the House other than the House whose Leader is the Prime Minister, Chief Election Commissioner of India, and the Comptroller and Auditor General of India should select the Lokpal. As far as Judiciary is concerned, an independent Judicial Commission should be constituted which should be entrusted with the responsibility of appointment of judges and monitoring of their functions. This House has accepted the demands of Anna ji, in principle. Therefore, he should end his fast.

**SHRI DARA SINGH CHAUHAN:** We come to the Parliament after taking oath of our Constitution. We, the representatives of the people, are working honestly and trying to bring into focus the issues of welfare and development of our constituencies. But now, our honesty is being questioned. I feel that some people want to raise a question mark even on the Constitution which is a fountainhead of this Parliament. But the Constitution of this country is an exhaustive document in itself. The movement which is going on in the country has been trying to write a new history today. People are raising their voices against the economic corruption. But there is corruption not just in economic form but in social form also in our country. But there is no one who is ready to speak on this aspect of corruption. There are some sections of our society who gained political awareness just 10 or 15 years ago and now they are getting opportunity to reach the State Legislatures and the Lok Sabha. Previously, they had no opportunity to represent themselves in these law making bodies. Those people have only one demand that whatever Bill, the Government introduce here, that should be within the ambit of Constitution. No one is above the Parliament

which is a supreme body. The media has lent a helping hand to the agitation which we are witnessing in Ramlila Maidan. There may be the greed of TRP also. I would like to say one thing that it is the intention which is important. You may have the best policy but if your intention is doubtful, the people of this country will not get justice. So, I wish to say that in whatever form you may bring the Bill of Lokpal, it will not be able to deliver justice unless it takes care of the poor, *dalits*, backward and the minorities. Now, there is a discussion with regard to the setting up of Lokayukta in states but this issue comes within the jurisdiction of states. So they must be consulted as to what they desire in this regard. The state to which I belong has already set up Lokayukta. As far as the Citizens' Charter is concerned, Uttar Pradesh has already adopted it. With regard to the inclusion of the Prime Minister and the Judiciary under Lokpal, we would like to say that if the Parliament unanimously takes a positive decision in this regard, we will certainly support it. But the participation of the Scheduled Castes and the Backward Classes of the society should be ensured in it.

**SHRI SHARAD YADAV:** Whatever has been going on in the country, is good. We salute it. I do not wish to repeat those three points which have been already agreed upon here in the House. All the Government employees should come under Lokpal. It will be good if Lokayukta and Lokpal are set up in one go. But the redressal mechanism should be meticulous, flawless and effective. I stand here to take cudgels in behalf of this House. No doubt there is a darker side to this House but it has a brighter side also. There was an incident when 11 MPs from Lok Sabha and Rajya Sabha had taken money. They lost their membership and were tried in the courts. Likewise, there occurred Hawala Scam. A person came to me and he gave me five lakh rupees. I did not know who he was. We take donations at the time of elections. I resigned from my membership of Lok Sabha. I also resigned when the emergency was imposed. I also stood in this House and spoke in favour of Shri Anna ji. We all sympathise with him. But see, what is going on there. Whether the people who are running that agitation has any sense of responsibility? I had resigned from the membership of Lok Sabha three times and have spent four and half years in prison. I did not do that to further my personal interest but to fight for the poor and helpless people of this country. This Parliament has sent 27 of its members to jail and the persons who are running this agitation are speaking so unfavourably to us. I agree that this Parliament has also committed some wrongful acts. There was a sort of horse-trading in this House. But in this very House there was an incident when a Government was voted out of power for want of a single vote. I would, therefore, make an humble request to those sitting in the Ramlila Ground that if we here in this House are adhering to the parameters of decency then they too have to follow



the same. We have been humble in our reactions right from the beginning and have not reacted angrily to anything. Therefore, those agitating there ought to maintain the decency & decorum of dialogue. We have high regard for the agitators and for Shri Anna Hazare and also towards the spirit behind this whole agitation. But, the agitators *gherao* this House and also come out to seize the Houses of MPs. An MP, who is the member of this august House was pushed out of a train, he was trying to embark on. But one thing should be clear that anything does not move for long one way and those sitting in Ramlila Ground have to observe decency and decorum in their reactions and statements. Some individuals are making veiled attacks under veil and at times, they are lampooning us. If we resort to the same tactics then, we have a sharper and longer tongue. In fact, we have surrendered to the western culture and are emulating their values, dialect, language, dress etc. Martin Luther King was shot down 40 years ago owing to apartheid. The white people have named their President's House as the White House. Today, a black resides in that White House. They have got a big heart. Here we are going to enact the Lokpal Bill and the representatives of backwards, poor and minorities should also be there. In my city, there is a contingent of 20-50 persons who are permanent revolutionaries and they become the part of any procession which is taken out in the city. I completely subscribe to the three points as mentioned by Pranab da and Sushma ji and I strongly feel that these should be accepted without wasting any time so that these screaming channels come to a halt. All the channels are covering this agitation only and are forgetting completely as to what is happening to a tribal, as to where the floods have struck and as to where the devastation has occurred. But, these channels have no time for these events. I, therefore, again reiterate that the Government and this House should immediately accept these three demands. Shri Anna Hazare ji has been on the fast for last 11-12 days. Shri Arjun Sen Gupta had stated that 80 percent people of this country sustain on rupees 20 per day. They have to more often than not remain empty stomach. They are never sure whether or not they would have their meal in the evening or morning. Most of these people are downtrodden, poor, backward and farmers. The martyrdom of Martin Luther King ushered in a phenomenal change in that country. But, thousands of years have passed here but no change occurs. I would, therefore, suggest that if we take all these people along and bring about the necessary change then no country can match us and new era would begin then only. We respect this agitation as this agitation has brought out a large number of youth out of their houses but this movement has not even for once mentioned about the issue of social disparities. How far off is the native village of Shri Anna Hazare from Pune? They remember the name of Shivaji and I myself a great fan of Shivaji but they have not mentioned even for once the guru of

Shri Babasaheb Ambedkar, Mahatma Phule. Even Babasaheb Ambedkar has not been remembered on a single occasion. In the end, I associate myself with the proposal containing three points, moved by Shrimati Sushma Swaraj and I also support these points. I would finally request that this issue should be resolved at the earliest.

**SHRI HARIN PATHAK:** With the fasting of Anna ji and the countrywide movement started by him a revolution is taking place in the country. I support all the three points, that are, Lokayukta should be set up in states, Citizens' Charter should be prepared and employees of all categories should be brought within the ambit of Lokpal or Lokayukta. This motion should be passed unanimously and the government Lokpal bill should be withdrawn and Jan Lokpal should be immediately introduced in the Parliament.

**THE MINISTER OF STATE IN THE MINISTRY OF HEALTH AND FAMILY WELFARE (SHRI SUDIP BANDYOPADHYAY):** I stand here to announce the stand which will be taken by my party Trinamool Congress on this issue. The political party which I represent the Trinamool Congress, has from the very beginning fought against corruption. The Resolution adopted in the all party meeting is a direction that some steps are to be taken immediately by which Shri Anna Hazare withdraws his fast. I must say that what Shri Rahul Gandhi delivered yesterday during 'Zero Hour' was certainly a new idea: the Government of India should look into this thought-provoking idea and try to implement it in reality. It is a very positive idea. I hope that this Bill after getting the opinion from all the sides will go to the Standing Committee. But there should be a time-limit. We should see that it does not lapse again as had happened during the last eight times. The Standing Committee should come back to the House within 90 days from today after which we can take a positive decision on the issue. There are three major points which has still kept Shri Anna Hazare on fasting. We very categorically want to say our opinion. The first is whether the jurisdiction of the Lokpal Bill should cover all the employees of the Central Government. This can be incorporated into the proposed Bill and can be sent to the Standing Committee for consideration. The second is whether it will be applicable to the institution of Lokayukta in all the States. We are in favour of Lokayukta. But let the State Governments have their own discretion to set up their own Lokayuktas. In principle, Lokayukta is a positive proposal. We have no hesitation to a Lokpal having the power to punish all those who violate the law and also putting in place a grievance redressal mechanism. We believe that the Government's response to three major issues, which Anna Hazare and his team had placed before the Government is given today itself so that we see Anna Hazare ending his fast. Besides this Lokpal Bill, there are other important issues. I hope that

one more Anna Hazare has to come up to tackle other few important issues like Price Rise and Unemployment. There is no denying that we Parliamentarians have enough power and our supremacy should be given all priority, but the problem is we discuss a number of issues inside the Parliament which actually do not produce any result. People have started becoming frustrated over the functioning of the Parliamentarians. The way people are *gheraoing* the MPs or abusing the MPs in different manners are not the proper ways to tackle any issue. People should restrain themselves. I think the Government is very cautiously tackling this issue. It is all in the right direction. We fully believe that the Government of India should not hesitate any further and see that this problem is sorted out. We want to see the end of Anna Hazare's fast and the Lokpal Bill to be brought before the House after being routed through the Select Committee and is finally accepted within 90 days from today. That should be the time-limit.

**SHRI T.K.S. ELANGO VAN:** My first request to Shri Anna Hazare is to stop his fast. Time and again, there were agitations in various parts of the country to which the Government had responded. Shri Anna Hazare's demand was accepted by this Government. When Shri Anna Hazare was on fast, in the month of April, 2011, the Government had discussed the issue with his team and prepared a Lokpal Bill which was introduced in this House and sent to the Standing Committee. Now, the question is that there are three more issues which the Civil Society is raising. The media turned it as a fight against the Ruling Party and a fight against the Constitution of India. It is the work of the media. The Parliament has its own supremacy and inherent powers. We are here to enact laws in this country. There may be demands but it is for the Parliament to decide whether these demands are right or otherwise. It is because the Members of this House have to go to the people to seek their votes. It is the responsibility of not only the Ruling Party but also of the opposition parties. In a democracy, the people are the judges and not the media. This Government is willing to legislate the Lokpal Bill. There are a few differences on three substantive issues. They are public grievances and Citizens' Charter, Lokayukta and lower bureaucracy.

On Lokayukta, I do not want this House to do anything against the autonomy of the States. This is for the States to decide whether to have Lokayukta or not because there are many laws and many institutions to punish people for corruption. As regards lower bureaucracy, there is a system and it has stages. So, these people should be made to act against any wrong doings. If this power is taken by Lokpal, it will become another adjudicator where cases are piling. But the Lokpal could have the powers to instruct the officers to look into the issues. Coming to public grievances and Citizens' Charter, the Lokpal should have the power to punish but

before that they should investigate into the issue. I do not understand as to why the Civil Society members cannot go before the Standing Committee and present their views. Sending the Bill to the Standing Committee will definitely do good to the Bill. We are against demeaning the powers of Parliament in any way. The DMK has already raised this issue that the office of the Prime Minister should also be included within the purview of the Lokpal. We are for including all political offices within the purview of the Lokpal Bill.

**SHRI BASU DEB ACHARIA:** This is a rare and a historic occasion because for the first time during the last 42 years when the first Lokpal Bill was introduced in this House in the year 1966, this House is getting an opportunity to discuss about the setting up of a Lokpal. Today, we are discussing this subject as the entire country is agitating. Whatever is happening outside the House is a reflection of the anger of the people. Corruption in India has grown to alarming proportions because of the policies formulated and pursued by successive Governments and lack of an institutional mechanism or an institution to investigate and prosecute. During this period of liberalization and privatization, thousands of acres of land have been leased out to the corporate houses. Our natural resources are being looted by these people. Even forest and tribal land has been leased out. Tribal people have been evicted out, displaced and dispossessed. Shri Anna Hazare sat on fast on 5 April, 2011. The Government agreed to form a Joint Drafting Committee with five representatives from the Team Anna and five representatives from the Government. When there was no agreement, a meeting of all the political parties was called. We made various suggestions in it. When the Bill was introduced, we found that none of the suggestions made in the meeting of the leaders of political parties was incorporated in the Bill. All we wanted was an effective, strong and credible Lokpal. The Bill introduced by the Government is useless. It will not be an independent institution. This will be like any other investigating agency. If the selection procedure is not broad-based then it will not have any independent role. Today, multi-pronged measures are required to be taken to curb corruption. And it is most important to have a credible, strong, functional and independent Lokpal. A source of corruption is the money power in elections. In the recent past, the expenditure in elections has increased enormously. There is a need for electoral reforms and for that, there is a need for State funding of elections. Giving donations to the political parties by companies has been legalized. It should be stopped. Another point is corruption in Judiciary. There is a need for a Judicial Commission. There is a need to break the nexus between the corporate houses, corrupt politicians and bureaucrats. There is a need to review our tax system because of rampant tax evasion. In order to unearth the black money, certain measures have to be taken. The demand

is for an effective, credible and strong Lokpal. Now, the Prime Minister has not been included. What is the rationale behind keeping Prime Minister out of the purview of the Lokpal? The definition of corruption should also be expanded so that the Lokpal can be more effective. The National Judicial Commission should be constituted. The Bill regarding Judicial Accountability is not sufficient. It should cover the setting up of the National Judicial Commission to enquire into the allegation of corruption in higher Judiciary. That should not be under the Lokpal. If Members of Parliament indulge in corrupt practices within their functioning in the House, then they should come within the purview of Lokpal. For this, a suitable amendment can be made in Article 105 of the Constitution. There is a provision in the Jan Lokpal which is not there in the official Lokpal Bill. I suggest that there should be a provision in the Bill for the Lokpal to take steps against companies and business houses which indulge in corrupt practices with public servants. There is a provision in the Jan Lokpal where if found they are adopting or indulging in corrupt practices, they will be blacklisted and if found they are beneficiary of this, then also, there is a provision to impose fine on such business houses and companies for indulging in corrupt practices. This should be included in the official Bill. We have a federal structure in our Constitution. This federal structure should not be disturbed. One legislation for the Lokpal as well as the Lokayukta will disturb the basic structure of the Constitution and the federal structure of the Constitution. We can have a model Act that can be adopted by all the States on the same lines. There should be an effective Lokpal at the Centre. Similarly, on the same lines, an effective Lokayukta should also be there in the States. Let the lower bureaucracy be under the vigilance machinery but the power of supervision should be with the Lokpal or the Lokayukta – the Lokpal at the Centre and the Lokayukta at the States. In regard to the Citizens' Charter, my suggestion is that there should be a separate law.

**SHRI JOSE K. MANI:** A host of changes and amendments are needed in our system of governance. Prime Minister as the Head of Cabinet oversees the day to day governance and there cannot be any vacuum in his existence or interregnum. Inclusion of PM in the ambit of Lokpal Bill will therefore lead to Constitutional crises. Already there is a consensus and joint efforts to enact a legislation to enforce judicial accountability in higher Judiciary under proposed Judicial Standards and Accountability Act. Therefore including the higher Judiciary within Lokpal ambit will be redundant. Regarding Lokayukta the role of Centre should be confined only in drafting a model legislation which should then be enacted and implemented by each state. State's prerogatives should not in any case be infringed upon by the Centre. Under the existing RTI Act this concept of Citizen's Charter is working very well by mandating each government department/institution/

organization/undertaking to make the public aware of their rights to call for any information as per laid procedure. For effective and transparent governance, it is necessary that the lower level employees should also be included under this Bill. Some workable mechanism have to be evolved to monitor the functions of lower level employees for meeting the overall objectives envisaged in creation of Lokpal. MPs conduct in their personal and individual capacity outside could only be probed by the Lokpal. A strong resolve should be taken to abandon the path of confrontation and to fight jointly the menace of corruption.

**SHRI DEVJI M. PATEL:** Corruption in India has increased to a large extent during the last 63 years. In some states in the country, only one fourth BPL families or in some other states only 44 per cent families have been able to avail the facilities that too through middlemen. India needs an effective Lokpal. The citizens are lacking effective measures to protect themselves from corruption. Despite the provisions and amendments of Prevention of Corruption Act, 1947, the corruption could not be checked.

Jan Lokpal, government Lokpal or any such stringent act should be enacted. The wealth accumulated by means of corruption should be declared as national property.

**SHRIMATI POONAM VELJIBHAI JAT:** Lokpal Bill should be passed now. The definition of corruption should be defined first like in the Jan Lokpal Bill. The committee that will nominate Lokpal should also have some representations from the SC and ST communities. There is a need to bring NGOs and the Media under the Lokpal. The 3-point demand should be accepted and Shri Anna ji should put an end to his fast. We should work together to bring a strong and good Lokpal Bill for the benefit of people and free the people from the agony of years of suffering under corruption from influential people.

**SK. SAIDUL HAQUE:** The immediate aim of the Bill should be to persuade Anna Hazare to end his fast. The Government must give the assurance that the Bill that it had introduced in the Parliament will be withdrawn and a new Bill incorporating the suggestions from the Jan Lokpal Bill and other quarters will be brought before the Parliament. The mechanism for drafting this new Bill must be worked out by Government and the Government must immediately bring strong and effective new Bill. The CPI(M) measures are required to be simultaneously undertaken. Prevention of Corruption Act, 1988 needs to be amended to widen the definition of corruption. The inclusion of Prime Minister in its ambit should be done with adequate safeguards. Complaints about corruption against the judges of the Supreme Court and the High Courts should be handled by a separate body, the National Judicial Commission. The Commission should take care of the

appointments in the higher Judiciary and oversee their conduct and enquire into the complaints of corruption. Article 105 of the Constitution should be amended. Alternatively, there can be legislation that if any Member of Parliament indulges in any act of corruption that motivates his or her action in Parliament (voting, speaking etc.), then this act falls within the purview of the Prevention of Corruption Act and the IPC. Whistleblowers must be protected in order to combat corruption. Monitoring and ensuring protection of whistleblowers needs a comprehensive statutory backing. The provisions of the Public Interest Disclosure (Protection of Information) Bill, 2010 needs to be strengthened and the Bill enacted expeditiously. Following suggestions need to be implemented. Setting up of a National Judicial Commission to bring the conduct of Judiciary under its purview; Law to protect Citizens' Charter for redressal of public grievances; Amendment of Article 105 of the Constitution to bring MPs under anti-corruption security; Electoral reforms to check money power and role of criminals in elections; Setting up of Lokayuktas in the states to cover public servants at state level and steps to unearth black money and confiscate the funds illegally stashed away in tax havens.

**SHRI BHARTRUHARI MAHTAB:** The Lokpal Bill has a long history and it has been moved several times in the past. This is the House of the People. The people are represented in this House. Anybody can create a crowd on the street, but you do not make a law on the street, you make the law here, in this House. Therefore, I would appeal to Shri Anna Hazare to end his fast. I have respect for him. By his fast, he has already made his point. He has already shaken all of us from slumber to fight against corruption. Enactment of Lokpal Bill is one weapon to fight against corruption, there is a need for many more weapons and Anna can guide the younger generations to achieve that. We are in favour of a strong and effective Lokpal institution. Anna Hazare's movement against corruption has brought those who want to see the system change for better, but disdain for Parliament will have tremendous repercussions. We are in favour of bringing the Prime Minister within the ambit of Lokpal; excluding the incumbent Prime Minister is a mistake. He as a Minister is as liable to scrutiny as his peers. On Judiciary, our view is that it should not come under the purview of Lokpal. The Judicial Standards and Accountability Bill should be expedited. I would, therefore, urge upon the Government to bring the Judicial Accountability Bill at the earliest opportunity. Including the Members of Parliament in the Lokpal is another issue which needs to be deliberated here. The exclusion of Members of Parliament from the Lokpal Bill is a necessity keeping the constitutional provisions in view under Article 105 of the Constitution which clearly narrates the necessity for having such provisions. Whatever an hon. Member says or votes in Parliament or any Committees thereof shall not be liable nor can be prosecuted in any court

of law. His conduct inside the House is the prerogative of the Parliament. Any action outside the House, if criminal in nature, is bound to attract criminal procedure and Lokpal can go into some such matters. But no interference be allowed by the Lokpal relating to the conduct of any hon. Member inside the House or in other respective Committees.

India's federal structure needs to be protected at any cost. India is a Union of States. States should have separate laws for creating Lokayuktas. Our Party would like a strong institution of Lokayukta. We would be prepared to emulate a Central model but the actual Lokayuktas, men or women, should be chosen by the State laws. Lokayukta for a State should not be chosen by the Central Lokpal. The Government should keep in mind that Central Government employees should come under the Central Government Lokpal and State Government employees should be under the purview of the State Lokayuktas. The other point relates to the Citizens' Charter. Citizens' Charter is the call of the day. It is a necessity to make the executive Government machinery accountable. Right to Service must be enforced. Corporate sector funding or donations should be allowed for funding elections. The institutions of Lokpal should not be given power to punish as it will have power to investigate and prosecute. It is the House of the People which should be vested with this power.

**DR. KIRIT PREMJBHAI SOLANKI:** A new strong and effective Bill should be enacted making Annaji's "Jan Lokpal Bill" Central base. Here are some major points. The Bill should be proceeded forward giving the Constitution the top most importance keep Parliament and parliamentary traditions high while proceeding; there shall be 10 Members and one chairperson in the institution under Jan Lokpal Bill; all sections of the society should be represented in this institution; there should be solid provisions for representation of dalits, forest dwellers, farmers and labourers; transferring the funds allocated for backward classes and dalits should be considered as corruption; Jan Lokpal should be an autonomous body and funds, employees and officers should be provided for its administrations; the privilege of Members of Parliament to raise the issue of public interest should remain intact; NGO, media (electronic and print), retired IAS, IPS officers should be brought within the ambit of Jan Lokpal; a separate judicial system should be created for the corruption cases against the persons *prima facie* found guilty in inquiry by Jan Lokpal; a system with solid and transparent provisions should be in place to keep an eye on Jan Lokpal.

**SHRI S.S. RAMASUBBU:** A powerful Lokpal Bill is expected by all the people in order to put an end to the corruption through all walks of life—all the Government machinery, corporate bodies, NGOs, Judiciary, political



representatives and media groups. The Prime Minister should not come under the purview of Lokpal. If the Prime Minister and the Members of Parliament are brought under the purview of Lokpal, how is it possible to control and enact an effective law? We are enacting a law to control all the machinery of the Government. The Judiciary follows only the Act of Parliament. The Lokpal can be established to monitor all the sectors of Government machinery and public representatives to do their function properly. The Lokpal can discuss and find out the fault of anybody. If there is any fault, then action can be taken against him. Such power can be provided to the Lokpal.

**SHRI RAM SINGH KASWAN:** People of the country have been awaiting a Lokpal for 42 years. This time this Bill has been introduced on 9th time in the House. The recent incidents of corruption have shattered the faith of people in the anti-corruption system. The public support being given to Anna's movement shows that the people are fed up with this corruption. Today public have same view for every politician but there are also politicians who are honest, they prefer to lead a honest life and do good to people. We should bring in such a Lokpal Bill for our future generations who shows our concern regarding fighting the corruption and we can prepare such a Bill which can receive wide support in the country. In fight against corruption I am with Anna. I demand that Prime Minister be included under Lokpal. A National Judicial Commission may be constituted for Judiciary, C.B.I may be made an autonomous body, so that it cannot be misused, the behaviour of Member of Parliament outside may be included in this Bill. Lokayukta in states may be appointed through this Lokpal Bill. At present Lokayukta in states are appointed under the state-laws, but how effective it is, we all know this. Each and every government servant should come under it, as people are mostly harassed by these officials. For each department a code of citizen's right—Citizens' Charter—may be prepared. People have to face corruption at lower level daily, how it can be brought under Lokpal in practice, should be considered. Every Government department should be responsible to the people and a time limit for every service should be fixed. Making the legislative, executive and judiciary responsible to democracy, an effective and strong Lokpal should be made in the country.

**DR. KIRODI LAL MEENA:** Corruption is more related to morality. According to Gandhiji we have to wake up the good 'hidden' in human being. System is the main factor in the root of corruption and we cannot fight corruption without making changes in this system. This is the call of Anna, which is a welcome step. Lokpal must be appointed and it should be made effective. Lokpal should be given powers so that he can control the corrupt people. Corruption should be ended so far it is possible, but

what will be the powers of Lokpal, to whom Lokpal will be responsible, it must be kept in mind while preparing the Bill. He should be given powers in limit while giving him unlimited powers so that he can not transgress the line of democratic set-up. There should be provisions so that he cannot become a dictator. Due to faulty election and political systems people of criminal background and millionaire are elected to Parliament. So, the first requirement is that election system and system of political parties may be changed so that honest, competent and a person having faith in public interest be elected to Parliament. There are some such clauses of Jan Lokpal Bill which in present form can create problems while going to the process of passing in Parliament. If Anna's Jan Lokpal Bill is passed in present form, it can cause clash with original set up of our Constitution. There should be provision in this Bill which ensure discipline between officers and staff and control of administration may not be vitiated. The provision of Citizens' Charter must be made at any cost. This will ensure activeness in administration and people's grievances will be redressed in time. Consensus should be given supremacy over voting while selecting Lokpal. There should be provision of impeachment for removing him. An effective Lokpal may be passed but it should be kept in mind that it cannot have clash with federal set up. Bringing under the purview of this Bill, the religious leaders having property of crores of rupees, various trusts, lawyers, corporate houses, agencies carrying out sting operations and selling taps for money, persons who illegally occupy natural resources, mining, social disparities may be made a corruption free India.

**SHRI ANTO ANTONY:** The Government once again proved its commitment to uproot corruption from our society and ensure transparency in governance. Corruption has become one of the disturbing issue in the country. As per the recent report, more than half of the Indians have had bitter experience of paying bribes to our public offices for various reasons. Corruption is deep-rooted in almost all the sections in our country. All public offices and civil society institutions should come under the ambit of the proposed Lokpal. The Lokpal Bill envisages to establish a vigilant watch dog against corruption. We have to sustain the very spirit of democracy in its letter and spirit. I would like to express my concern about the dreadful consequences of the proposed Jan Lokpal. Jan Lokpal tries to set forth a supreme body, comprises of the bureaucrats in the country. It is not responsible to anyone in this country. If all the powers are vested in the hands of a few, then it may turn into a autocratic and most corrupted institution. Democracy should not be sacrificed at the pretext of eliminating corruption. I request the Government to proceed with the Bill that is abiding by the basic tenets of democracy.

**SHRI PREM DAS RAI:** There are three issues that have become the bone of contention between the Anna Team and the Parliament. My party is in favour of the enactment of a very strong and robust Lokpal Bill. All the good points of all the proposed bills that have come before the Government should be incorporated in this strong Bill. The lower bureaucracy within its ambit is important and we fully agree to it. The officials of the Central Government can be brought under the Lokpal. The state of Sikkim has already enacted a Lokayukta.

**SHRI RAVINDRA KUMAR PANDEY:** The work of a common man in all Government departments should be executed within a prescribed time period and there should be a provision to impose financial penalties on officers who do not work or delay work. The law is applicable to all Members of Parliament outside the House as applicable to a citizen of the country. Therefore, Members right to speak and vote in the Parliament should not be compromised. I am in favour of Judicial Accountability Commission and support it as it will check corruption in the Judiciary. The Prime Minister could be brought under the ambit of Lokpal Bill with some exceptions. Similarly, there is no controversy to bring all officers under the ambit of Lokpal and lower bureaucracy could also be brought under the purview of Lokpal after making another provision therein. The Committee so appointed for the appointment of Lokpal should consist of Members from both sides on equal proportion so that nobody could question the sanctity of the Committee and an impartial and honest Lokpal could be appointed. I, therefore, urge upon the Government to bring a strong and effective Lokpal Bill as per the wishes and aspirations of the people of this country as well as the views expressed by the House and the Members of civil society.

**SHRI ANANT GANGARAM GEETE:** The corruption in the country is at its climax at present. It has not spared any class. Whether it is getting BPL card or getting admission in a school or a college, bribe is the only way to get it. Lot many cases of corruption such as 2G Spectrum Scam, Commonwealth Games Scam, Adarsh Society Scam in Maharashtra have come into light recently. A kind of awareness and awakening has been seen against corruption under the leadership of Anna Hazare ji. Shiv Sena supremo Shri Balasaheb Thackeray ji has shown his concern for the health of Anna Hazare ji in a letter written to him. Shri Aditya Thackeray, son of Shri Uddhav Thackeray also came to Delhi and met Shri Anna Hazare at Ramlila Maidan. Through this House, I would like to request Anna Hazare ji to end his fast. There is need to constitute a powerful Lokpal considering all the suggestions whether it is the Lokpal Bill presented by the Government before the House, or it is the Jan Lokpal Bill by Shri Anna Hazare or the suggestions given by Jayaprakash Narayan Trust or by Aruna Roy or the

different suggestions given by the hon. members during discussion. But when we are upto making a super power center in the form of Lokpal, we need not to be in hurry, we should constitute Lokpal maintaining dignity of our institutions, our Parliament and our polity which we have adopted. As far as Anna's movement is concerned, today situation is that it seems to be going against Parliament. If people loose trust in us in and the Parliament, the democracy could be in danger. We have to think over it seriously. Not only Government or its Minister, but big business houses have also been found involved in 2G Spectrum Scam, that is why it is a matter of more serious concern. Media is also being discussed extensively in the House. A court case is already going on against a former Chief Minister of Maharashtra regarding paid news. The paid news is also a kind of corruption. I agree with Sushmaji and support the three demands by Annaji – public grievances and Citizens' Charter, Lokayukta and lower bureaucracy may be kept under the purview of Lokpal. Prime Minister should also be brought under its purview with some riders. The privileges of the Members of Parliament for which they are entitled under Section 105(2) should not be infringed upon. Lokpal is a need of hour, but there should be no hurry in this regard.

**SHRI VIRENDRA KUMAR:** Appointment of Lokayukta in the States, Citizens' Charter and lower bureaucracy should be brought within the ambit of Lokpal Bill. In the last two years, corruption worth crores of rupees have come to light and the people have stood against it with full force. The Prime Minister should be brought under the ambit of Lokpal Bill. The rights of Lokayukta in the States should be similar to the rights of Lokpal. Parliament has supremacy in a democratic system and it has its own dignity. Everybody should have respect for it and keeping in view the parliamentary decorum, a strong and effective Lokpal Bill should be brought.

**SHRI HANSRAJ G. AHIR:** The Lokpal Bill brought by the Government is not sufficient to eliminate corruption, hence the whole country is emphasizing the need to include the provisions of Jan Lokpal Bill initiated by Shri Anna Hazare for enacting a strong Lokpal Bill. We should not show disrespect to the sentiments of public in this regard. Though the Government has expressed its concern over the health of Shri Anna Hazare but ambiguity regarding the opinion of the Government on the issues raised by Shri Anna Hazare is creating obstruction in ending his fast. The House should pass a unanimous resolution to create an independent and strong mechanism to eliminate corruption. Anna ji has given three suggestions – strong Lokayuktas in States, Citizens' Charter and bringing lower bureaucracy in the ambit of Lokpal. All the parties agree to it in principle. Earlier also, all the political parties have expressed their concern over the issue of rampant corruption in the country and suggested remedial measures. So it is not good to create confusion over this issue now.

**DR. SANJEEV GANESH NAIK:** I support the need for a strong law to eliminate corruption in the country and a Citizens' Charter so that citizens' requirements are addressed in a time-bound manner by the government machinery. Central and the State Government employees should be made accountable to the citizens of the country. Government has taken many initiatives to ensure that public servants are made more accountable like the enactment of the Right to Information Act is one such example. While supporting the need for a strong Lokpal we must also ensure an equally strong Lokayukta in the States. We need to take a massive awareness campaign against corruption against bribe-taking as well as bribe-giving. It is harsh fact that today the common man is being harassed in getting a ration card, distribution of foodgrains, land records, driving licence, etc. by the lower bureaucracy. We must ensure a foolproof system to address the issue of corruption at this level. Electoral reforms are also essential, the current system of conducting elections in the country is also one of the reasons for corruption. Today, the entire country is talking about the need for a strong Lokpal in the States. I appreciate Shri Anna Hazare for creating a massive awareness about the issue of corruption in public life and we also need to work hard to bring back faith in the parliamentary system.

**SHRI VIRENDER KASHYAP:** Jan Lokpal Bill presented by Annaji and civil society, Government's Lokpal Bill and other such versions of Lokpal Bill, prepared by different people have been given to the people for open discussion. Today, corruption has spread like cancer in every sector of our society. Corruption spreads due to not strict implementation of the legislations. I would like to say that at the time of constitution of Lokpal, it should be kept in view that the people having good conduct should only be selected for this office. Dalits, backward and deprived people should also be included in Lokpal. I would like to suggest that strong Lokpal bill should be brought.

**DR. M. THAMBIDURAI:** Hon. Chief Minister of Tamil Nadu, Dr. J. Jayalalithaa, is not against the Lokpal Bill. Corruption is prevailing in all walks of life. Shri Anna Hazare went on an indefinite fast and the problem started to become bigger. They do not know how to solve it now. This tense situation is created by the UPA Government and not by others. One person cannot dictate terms. We could not fully support Shri Anna Hazare's movement, and cannot accept his demand of passage of the Bill, by by-passing the established Parliamentary procedures. We can take certain facts from all that he is suggesting. The Parliament is supreme. We all made an attempt to bring a National Judicial Commission Bill. They know how the judicial authorities have been appointing the Judges. OBCs do not have sufficient representation in the judicial system. Let the States have

their own Lokayukta, if they want. We have to respect the federal structure. On the issue of inclusion of the Prime Minister, I have made it very clear that this name need not be included in that because it is of no use when you are putting some riders.

**SHRI MAHENDRASINH P. CHAUHAN:** Respected Annaji is sitting on fast with demand of enacting 'Jan Lokpal' for uprooting corruption. The entire country is standing in his support. Today, the common man is becoming the victim of bribe and corruption from morning to evening. His stamina to tolerate has crossed the limit. Anna has become the voice of such victimized and distressed people. 'Parliament is Supreme'. We are servant of people and people are our masters. I support the three conditions laid by Annaji alongwith the Jan Lokpal Bill.

**SHRI RADHA MOHAN SINGH:** The movement launched by Anna Hazare is unprecedented. The Government of the country has institutionalized corruption in two years. The corruption prevailing in the offices of the Government of India and State Governments has made life difficult for the common man. When the common man who is hit by the price rise, listen about the depositing of black money earned by looting of people, in foreign bank accounts by the people of country, he visualize the faces of corrupt politicians, corrupt bureaucrats and corrupt professional as Mughals and Britishers. Parliament is a supreme institute of people's representation. We are with the sentiments of Jan Lokpal. On behest of ruling party the people who were misleading the people by adopting various means such as calling this movement as anti-Islamist, Rashtriya Swayam Sewak Sangh and BJP sponsored are also now getting embarrassed. Almost all the parties have given their consent on issue of public complaint and Citizens' Charter, Lokayukta and lower bureaucracy. Please implement it and save the life of Anna, who is the voice of crores of people of the country.

**SHRI A.T. NANA PATIL:** People belonging to BPL and middle class of our country would benefit fully if the low-grade officials are covered under this Bill. Today there is a lot of corruption in D.M. Office, ration shop, passport office, Government hospital, police station and the temple of Justice. The common people bear the brunt of corruption. There is a need to take a strong effective step for putting an end to corruption which has spread like cancer throughout the Government of India. So many scams, one after another are coming to light during the tenure of this UPA Government. This Parliament should take a decision in enacting a strong Lokpal. A separate commission should be constituted to root out corruption from Judiciary. CBI today has become Congress Bachao Institution. It should be brought under the jurisdiction of Lokpal.

**SHRI NIMMALA KRISTAPPA:** The serious ailment, which is affecting our country today is corruption. After 64 years of independence, corruption has only increased. Who are responsible for this corruption? What can be done by us collectively? We should ponder over these questions. Some individuals or companies, fund election expenditure of political parties. In return, those political parties, when they come to power, give away our National wealth to these individuals or companies. We should root out corruption by bringing an effective Lokpal Bill. I demand on behalf of Telugu Desam Party, to bring an effective Lokpal Bill by including three points suggested by Shri Anna Hazare.

**SHRI BHASKARRAO BAPURAO PATIL KHATGAONKAR:** An effective legislation should also include corruption afflicting that poor man whose daily wages range from Rs. 20 to 30. The poor man in the village is left out and the name of the rich gets incorporated while preparing the BPL list. The essential commodities do not reach the poor under the Public Distribution System. There is high corruption in PDS. That is why, through you, I request the Government to discuss these points at the time of taking up Lokpal Bill. There should be effective redressal even of corruption affecting the daily life of the poor.

**SHRI JAYANT CHAUDHARY:** Corruption is adversely affecting all the schemes being formulated in our country for fostering growth and development in our democracy, poverty alleviation and regional development programmes. Corruption is a major issue. Today, land mafia is thriving owing to a nexus amongst the Government, bureaucracy, politicians and corporates which paves way for large-scale land acquisition. This is also an issue associated with corruption. There are several other issues. Lokpal Act should be enacted at the earliest. Now the question arises as to what should it cover under its purview. There is Prevention of Corruption Act. Some experts believe that certain sections of IPC should also be included in it. I would like to say that the Money Laundering Act, benami transactions and all the laws concerning corruption should be brought under the purview of Lokpal. There should be monitoring, transparency, reporting and accountability.

They are saying that lower bureaucracy should not be brought under the purview of Lokpal. This would not be in consistency with it. What about state ombudsman. It may either be done through an enabling provision or as a Model Act. There should not be any problem in bringing the Prime Minister under the purview of Lokpal.

**SHRI RAMSINGH RATHWA:** The people of the country want to breathe in a corruption free society. Trying to find a solution of deep rooted corruption merely through legal measures would be misleading. A message

has been sent across the country that the people who do not support this Bill are not together in the war against corruption. This is not correct. To look for a solution of corruption merely in Lokpal or Jan Lokpal would be a knee jerk reaction. At the root of corruption is inflation, unemployment and increasing population.

Corruption is a social crime. MNREGA is also not free of corruption. Corruption in Commonwealth Games came to light even before the games started. Corruption is not affecting only India but the entire world is facing the scourge of corruption. A fresh wave of renaissance can be witnessed across the world. There is a need to make efforts in the direction of building a socially harmonious corruption free country rather than trying to suppress the growing discontentment among the exploited and the deprived section of society.

**DR. NIRMAL KHATRI:** Lokpal should be appointed both at the Centre and in the States and should be constitutionally empowered to rein in corruption. Lower bureaucracy and employees should definitely be brought under the purview of Lokpal. It should comprise of competent, committed and impartial members of the poor, downtrodden and backward community as well.

**SHRI GURUDAS DASGUPTA:** There are millions of people who are not in Ramlila Maidan but who have identified themselves with the slogan and crusade against corruption. It has been able to rouse the conscience of the masses to some extent. The Governments one after another played with the issue of corruption, had failed to bring about any law and had not taken the message of the people deep into their heart. The country is so agitated because of the Government's inaction. Let us adopt an effective Lokpal Bill. Today, from this Parliament, let us give the message that the Parliament is not oblivious of its responsibilities. Let us give the message that enactment of the Lokpal is the beginning and not the end of the step. I want accountability. Without accountability there cannot be democracy—accountability of the Prime Minister; accountability of the Ministers; accountability of the Members of Parliament; accountability of the public servants and also accountability of the Judiciary. Lokpal should be for the people in high place. There should be total freedom granted to the investigating agencies, but there should not be any political vendetta. Model law should be prepared for the appointment of Lokayuktas for the States. The rights of the States should be respected in a federal structure. There should be special mechanism for the lower level bureaucracy.

**SHRIMATI JYOTI DHURVE:** Billions of rupees of our country have been stashed in foreign banks. That will have to be brought back into the country so that it can be used for the development of the country. We will



have to constitute Lokayukta in every state of the country so that we can curb corruption throughout the country. Today, we will have to weed out all kinds of corruption taking place during the elections. Three issues which should be given priority are:

1. National Judicial Commission
2. Lokayukta
3. Lower bureaucracy

I support this Lokpal Bill with the affirmation in the Supremacy of the Parliament.

**SHRI HARIBHAU JAWALE:** I support a strong Lokpal (Jan Lokpal) which covers the three important demands Annaji has made. With the help of this strong Lokpal only, corruption going on across the country can be curbed and corrupt bureaucrats can be reined in. I would like to make an humble submission to hon'ble Anna Hazareji to break his fast.

**SHRI PRALHAD JOSHI:** I support the stand taken by my party by in principle acceptance of those three important aspects of proposed Lokpal Bill as expressed by Team Anna Hazare. There is not an iota of doubt that we need a strong independent Lokpal to fight corruption in the country. Element of corruption is inherent in the society and it is not a only kind of mechanism developed out of mere political set up as is the case being made out by 'Team Anna' now agitating. I like to express my deep anguish over some derogatory remarks made by some members of the agitation. I would like to record in this house my strong protest against such unparliamentary remarks and also urge upon these members of agitation not to resort to such filthy remarks against parliament members. Acceptance of the three issues should be subject to the following:

- (1) The supremacy of the Constitution of India has to be maintained. Institutions of democracy cannot be undermined and the checks and balances visualized in the Constitution cannot be adversely affected.
- (2) Laws have to be made by the Parliamentarians who are elected representatives of the country. Few nominated members of the Drafting Committee cannot have precedence over elected Members of the Parliament.

**SHRIMATI MEENA SINGH:** All the development that has taken place in this country, has been undertaken within the purview of this House and the Parliament without lowering the dignity of the constitution. We should enact such a strong and effective Lokpal so that the country may again have faith on us, the dignity of our Parliament could be restored and the supremacy of the Constitution remains intact. I would like to request

hon'ble Anna Saheb to break his fast and have faith on the Members of Parliament for a strong Lokpal.

**SHRI SHIVARAMA GOUDA:** The corruption is increasing day by day that is the reason today Shri Anna Hazareji is sitting on fast. I urge the Government to bring the strong Lokpal Bill. Even during the last 43 years this Bill has been brought eight times before this House but unfortunately it was not passed. Now, the Lokpal Bill has been brought again under the leadership of Annaji. Lokpal should be strong independent and autonomous body, and Prime Minister should come under the Lokpal, and it should not be against constitutional provisions, section of Indian penal code and also provision of Anti-Corruption Act. For Judiciary, Judicial Commission should be set up. CBI should also come under the ambit of this Bill as autonomous institutions not covered therein by the Government. Constitution has given immunities to the MPs, that is to be protected. Governors of the state should be covered under the Lokayukta and media should come under this Lokpal Bill.

**PROF. RAMSHANKAR:** I associate myself with Smt. Sushma Swaraj in respect of the three points which have been raised by Annaji. I do support all the three points. The movement of Annaji which is against the corruption gives the right to common man to fight for his fundamental rights. The Lokpal Bill which has been moved by the Government is totally incapable to fight against corruption. Jan Lokpal is far away from the issue like National Security so it should be reconsider in the interest of the country so that a strong and effective Bill could be passed. The Committee on Lokpal Bill should consist of the representatives of those sections of the society which is backward and neglected. Today, question is being raised about the number of persons of SC and ST are there in the Judiciary. Why the vacancies reserved for these persons are not being filled. Who is responsible for this. So, I demand that in the interest of the people of the country a strong and effective Lokpal should be made.

**SHRI RAJENDRA AGGARWAL:** There seems to be unanimity on the outcome of discussion on three issues which have been raised by Shri Anna Hazare pertaining to Lokpal Bill including various other issues. I do hope that this country will have a strong and effective Lokpal out of this historic discussion, which will equip us to fight with the corruption in the country. This objective could have been achieved much earlier but it seems that this Government is suffering from a sense of guilt so far the issue of corruption is concerned. There seems to be a trust deficit in this Government and today questions are being raised on the entire political mechanism. There is no denying that today everybody is completely fed up with the corruption. Therefore, there is an urgent need to get redressal with this

problem otherwise the very edifice of our democracy will be at stake. It is an established fact that our Parliament is a supreme body. Nobody deny this but this is equally the responsibility of this Parliament to adhere the inner voice of the people of the country and act according to their wishes. It is, therefore, necessary to have a strong and effective Lokpal Bill in this country at the earliest.

**SHRI C.R. PATIL:** The people from all over the country have supported the anti-corruption movement of Shri Anna Hazare as they are fed up with corruption. A few days ago, Baba Ramdev had also started fast in Delhi to bring blackmoney back in the country but situation changed dramatically and law enforcement agencies forcefully took away Baba Ramdev. The Government should know that they cannot suppress any such movement with the help of brute force. I am agreed to Shri Anna Hazare's Jan Lokpal Bill. I am also of the opinion that the Governor of the States along with officials should also be brought under the ambit of Lokpal and Lokayukta Bill.

**SHRI HUKMADEO NARAYAN YADAV:** The genesis of corruption must be brought to an end. The greatest factor of corruption is caste system. Caste-affiliation supports corruption. In order to put an end to this evil, inter-caste marriage should be made compulsory for those aspiring for Govt. jobs and seeking Govt. facilities. This will stamp out caste system and a new society will emerge which will be Indian. There are reports that persons working as IAS officers, make partisan decision just to favour particular shade of politics during their service period. They do so in the hope of getting any office of profit after their retirement.

The trend of appointing a retired person in a Govt. or private organization should be done away with. Retired judges also should not be appointed in any Government Commission, Board, Organisation or in any private sector. Big houses run private TV channels. Black money is invested in it. People running such TV channels, advertise the products of their companies just to evade income tax. Sometimes they carry out sting operations and are involved in character assassination of Members of Parliament belonging to backward, downtrodden and weaker section of the society. Sometimes they exploit administrative officers through intimidation. The country has received foreign money to the tune of Rs. 28879 crores through Voluntary Organisation during the year 2005-2006, 2006-2007 and 2007- 2008. The foreign money has its impact in our society. The mechanism of foreign money, foreign culture and foreign intelligence has been very frightening for our country. Foreign agencies such as the ISI have their network in India and they have spread terrorism here. The Government should issue white paper in this regard. People

belonging to weaker sections of the society such as dalits and minorities should be given equal opportunity in every field of work. If this section constituting 85 percent of the people is uplifted, the nation would be strong and corruption would melt away.

**SHRIMATI YASHODHARA RAJE SCINDIA:** It is third time after 'Satyagrah Movement' and J.P. Movement of 1975 that the common men came out in crores to join Anna Hazare's Movement against the widespread corruption in India. It is not just the corruption of money but also a corruption of mind. We have to bring 100% literacy into this country – only then we can tackle corruption of mind and corruption of society. There is necessity to bring the lower government officer under the purview of the Lokpal or Lokayukta. If the government had taken the necessary steps early enough, all this pressure to eradicate corruption would not have come about. The government has to be humble enough to realize its grave mistake, to consult with Parliament and opposition and to take suggestions from Members. We are all for a corruption free country but we must take steps keeping in mind the Constitution of our country. There are no two ways on the issue of making a strong Lokpal Bill.

**DR. SANJAY JAISWAL:** In the wake of successive scams unfolding over past few years, finger is being pointed to the Prime Minister Office. The Prime Minister should be kept under the purview of Lokpal. Moreover, on the lines of Lokpal, Lokayukta should be set up in States. Today people suffer most due to corruption on lower level. Lower bureaucracy also should come under the purview of Lokpal. They should be entrusted with finishing their task in a stipulated timetable. A separate judicial reform Bill needs to be brought for making Judiciary corruption free. Sir, I also want that all NGOs, corporate agencies and media should be covered under Lokpal. Now the question arises what will happen if Lokpal himself turns corrupt. It must be mentioned in the Lokpal Bill as to from which agency his corruption charges would be examined. Provisions of doubly stringent punishment should be made for a corrupt Lokpal. I request the Government to include the three provisions in Lokpal Bill as suggested by Shri Pranab Mukherjee.

**SHRI BAL KUMAR PATEL:** The day to day life of common people of our country has become miserable because of corruption. We all people involved in politics and government are responsible for this and also the citizens of this country are equally responsible for ongoing corruption. Hence, we all with a positive attitude can get rid of this menace. We are discussing a conflicting issue in the House. Whether to include the three important issues in the Lokpal Bill put forth by Anna Hazare's team before the Government and every party is having their own opinion on this issue. But whatever action we take it must be within the framework of our Constitution

and the Bill should be passed by the Parliament by following the parliamentary procedures. Otherwise, there will be anarchy in the country and the responsibility to stop this anarchy is on us. A strong and effective Lokpal Bill should be introduced in the Parliament and keeping in view the diverse opinions of Anna's team and other social organizations let us make efforts collectively to eradicate this menace of corruption from our country.

**SHRIMATI HARSIMRAT KAUR BADAL:** Corrupt Government, corrupt politicians not serious about weeding out corruption and lacking in political will are the common refrains on the lips of every Indian today. I believe that, first of all, we need to remember that we have been sent here for the people. If those millions are making a demand, let their demand be right or wrong, then why should we not voice their demand in this House and then use our Parliamentary right to legislate such a law that will achieve the desired results of their demand? But, unfortunately, instead of doing that, what have we done in the last so many weeks? We have tried to use secrecy, deceit, mishandling, and misconceptions have reigned supreme in the last few weeks to the extent that our people have totally lost faith that any politician here is even interested in weeding out corruption. I urge everybody here that instead of just doing lip service, let our action speak louder than our words today. In a time bound manner, with a time limit and date set, let us come out with a strong commitment for a strong, precise and a decisive Lokpal Bill which will root out this cancer of corruption and restore the credibility for which this Parliament actually works honestly to deliver the promises to the people and their demands. I salute Shri Anna Hazare and fervently appeal to him to end his fast. We all stand committed to what he is trying to eradicate. While I fully support the spirit of his Jan Lokpal Bill, I hope that a clear and decisive mandate will emerge from this Lok Sabha today. The Jan Lokpal Bill will work effectively to punish the corrupt and in a way deter corruption, but it will come into being only after a complaint or a corruption is done. What is necessary today—and it is equally important—is to not only give timely and just punishment to the people who are doing corruption but also address those areas and put in place an important system that weeds out corruption. Today the billion plus people of our country are not affected by the top level corruption. What affects them in their daily lives is when they have to get their daily needs, like the ration card or a gas connection or a water connection or get admission in the school or electricity connection, they have to grease somebody's palms, pay a bribe to get these things. That is what harasses them. The corrupt get richer using their ill-gotten wealth, tweak the justice system, get judgements in their favour, get favourable Government contracts, get admissions, get their jobs done. They murder the entire system at the cost of the country. Only

if there is a strong political will to change the systems that breed corruption will there be a comprehensive way to end corruption. If the Government is committed to rooting out corruption, it must first pinpoint all these grey areas and then take serious action in eradicating these interfaces which lead to corruption. Why did the 2G scam or the CWG scam take Place? It took place because the Ministers and the bureaucrats have certain discretionary powers. They use these discretionary powers to tweak the things in such a way that a favoured few could get favours from them. This led to momentous corruption. What needs to be done is that powers of these Ministers and bureaucrats must be taken away so that these powers are not there which give rise to corruption. I would be happy to let you know that in my State of Punjab, we have removed and eliminated all these processes where Ministers and bureaucrats have the power to make these decisions. On 15 August of this year, the State Government of Punjab has implemented a Right to Service Act, 2011 which makes the civil servants and the police accountable to the citizens of Punjab. Thus making the officers, the bureaucracy, accountable to the *aam aadmi* and making the *aam aadmi* the king of his rights and giving him the rights as a citizen. The point that I am trying to make is that we need to identify the areas that breed this corruption. Then, we need to remove the interfaces that create this corruption and after that we need to bring in a very strong Lokpal Bill which punishes the corrupt. I welcome the Jan Lokpal Bill and the three points of the Citizens' Charter and the public grievances and including the lower level bureaucracy is already a part of our Right to Services Act which has already been implemented in Punjab. We already have the Lokayukta Act. I also suggest that if Lokpal or their officers are held guilty of any misconduct or dishonest investigations receive severe punishments because with the powers that they are wielding, they are like super policemen, super bureaucrat and super Prime Minister all rolled into one. If they have such powers, then their standards of conduct must also reflect these powers and misuse must be severely dealt with. Without the necessary checks and balances, they might end up in just another Frankenstein that they cannot control and then we will need a *Maha* Lokpal to control this Jan Lokpal. So, these checks and balances are very important. I also say that a journey of a thousand miles begins with a single step. This Jan Lokpal Bill may not address the problem hundred percent, but it is that single step for that long journey of eradicating this cancer. Let us take this step and do a great deed to start the end of this rampant corruption.

**SHRI P.T. THOMAS:** After the introduction of the Lokpal Bill in Parliament the Bill came for the consideration of the Standing Committee. In the first Committee itself Anna Hazare and his teams told to the Media people that "We have hope in Standing Committee". But after two three days Anna

Hazare and his teams declared that they have no faith in Parliament as well as the Standing Committee. With out any hesitation I would like to point out that Anna Hazare and his team is trying to sabotage the basic structure of our Constitution. I fully agree with that day by day the corruption is increasing in our country. A strong mechanism is the need of the hour. Anna Hazare and his team is claming that they are fighting against corruption; but they are not agreeing to include the so called NGOs in the preview of this Lokpal. Why not Anna Hazare and his team is not utilizing the Parliamentary democracy. Are they totally rejecting the systems? Are they not believing the Parliamentary democracy. These are the important questions in which Anna Hazare and his team to Address to the people of India. I am requesting all the respected political leaders not to support such kind of agitations today or tomorrow. I am requesting to all that the supremacy of the Constitution of India has to be maintained. Institutions of democracy cannot be undermined and the checks and balances visualized in the Constitution cannot be adversely affected. Laws have to be made by the Parliamentarians who are elected representatives of the country. Few nominated members of the drafting Committee cannot have precedence over elected Members of the Parliament.

**SHRI GANESH SINGH:** Today corruption is on its peak. Social reformer Shri Anna Hazare is sitting on his fast unto death on this issue and the people of this country have come on the roads. I request him to end his fast now because all the Members of this House are in favour of introducing an effective Lokpal Bill. The present Government is involved in punishing or suppressing the advocates of this movement launched to eradicate corruption. India stands at 87 in the list of 187 corrupt countries. The entire country is concerned about the rising corruption. Now, the people think that they have the right to take bribe. Our party is agreed on most of the issues included in the Jan Lokpal Bill. Central Government employees at lower rungs and CBI can be covered under the Lokpal Bill. Except under some special circumstances, Prime Minister should also be brought under the Lokpal. To abolish corruption among Judiciary, an independent National Judicial Commission should also be set up. We have set a good trend by covering the day today problems the common man faces in Madhya Pradesh under the Public Service Guarantee Act which provide for a penalty upto five thousand rupees out of the salary of the employees found responsible for dereliction of duty within the stipulated time. BJP is in favour of implementing the Citizens' Charter. An empowered, independent and effective Lokpal is the need of the hour and the Government is backtracking on it. The weaker sections of the society should also be given representation in the Lokpal. There are several people in the present times also who are

having a very clean image in their public life. When public machinery came under scanner for the laxity in the implementation of Government schemes, NGOs were handed over the task and now they are also following the same footprints. Media, which is considered the fourth pillar of the democracy, is also found involved in paid-news scam and working against an individual or any agency with the intention of taking revenge. Now, it should also be brought under Lokpal. Black money is being deposited in the foreign banks whereas our country is facing the problem of skyrocketing prices. Central Government is reluctant to take prompt action against the corrupt people. But now, the Lokpal Bill which is going to be shaped into an act with the pressure being mounted by the House and the political parties will certainly prove an effective tool in controlling corruption.

**SHRI LALU PRASAD:** This fight against corruption is not new. We had also gone to jail under MISA. All the Members of Parliament are united against corruption. We will maintain and protect the supremacy of Parliament as well as Constitution of India. The Members of Parliament, even Ex-MPs are also being brought under the ambit of this Bill. It is wrong. Today's debate is also against the provisions of the Constitution. But you have relaxed the norms this time. But do not repeat it in future, otherwise the history will forgive neither you nor us. The backwards, Dalits, minorities and women are nowhere associated with this movement. I request the media also to give correct suggestion. All of us will bring a Bill with national consensus. Then the Parliament will consider it and decide upon it. I am against any check on Judiciary. We appeal to the Government as well as the House to forward all the proceedings to the Standing Committee.

**SHRI O.S. MANIAN\*:** I am happy to put forth my views on behalf of my party AIADMK about the setting up of a Lokpal. Our leader, the Chief Minister of Tamil Nadu has clearly stated that Prime Minister must be spared from Lokpal. In the recent times the issues of corruption have greatly affected the minds of our countrymen. Corruption has crept into Judiciary and this is the biggest threat to our democratic body polity. So the Judiciary must also come under the ambit of Lokpal. Parliament alone can legislate. People outside the Parliament can only make appeal for legislation. Though we can take some action against corruption with the existing mechanism available in the form of IPC and Vigilance Commission and the anti-corruption wing of CBI, they are all found to be inadequate. The people of our country feel that we must take strong and stringent and right actions. AIADMK is of the view that the Lokpal Bill that is to be passed accordingly must be a strong one.

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\* Spoke in Tamil



**SHRI SHIVKUMAR UDASI:** The Union Government has asked the Parliament to consider Mr. Anna Hazare's three key demands *i.e.* inclusion of the Prime Minister, Citizens' Charter, Lokayuktas in all States with Lokpal Powers and inclusion of lowest bureaucracy under the ambit of the Bill within the Constitutional framework and by preserving Parliament's supremacy. I also demand that the NGOs, media groups and corporate houses should be brought under the purview of the Lokpal. If the Lokpal Institution indulges in corrupt practices, where the complaints should be lodged to investigate and prosecute wrongdoers. Lokpal Bill should take into account the above concerns, while passing the Lokpal Bill.

**SHRI H.D. DEVEGOWDA:** Every Member of this House including the Leader of the Opposition has appreciated and accepted the points raised by the hon. Prime Minister in his statement. Out of 40 issues, 7 issues were controversial and lastly there are three issues which we need to discuss. They are: (i) whether the jurisdiction of the Lokpal should cover all employees of the Central Government, (ii) whether it will be applicable through Lokayukta in all states, and (iii) whether Lokpal should have the power to punish all those who violate the grievance redressal mechanism to be put in place. Karnataka Lokayukta Bill is a model legislation which was brought by Janta Party Government in Karnataka in 1984. After the economic reforms of 1991 corruption has increased simultaneously with the GDP growth. I must say that today the corporate houses are one of the breeding centers for corruption. The black money which has been deposited outside India should be brought back. We have no objection. During our period we brought the issue of voluntary disclosure of assets. I am only mentioning that I was not responsible for the amount of black money which was generated at that time. My colleague was mentioning that it was 60 lakh crore while according to Wanchoo Committee, it was 7,000 crore. There is no need for me to deliberate on all those details. I appeal to the entire House to find a solution to see that Anna Hazare ji breaks his indefinite hunger strike and pass a resolution so that the whole atmosphere be brought down to normalcy.

**SHRI CHANDU LAL SAHU:** The large-scale corruption rampant in the country today is the result of nexus among bureaucracy, politics and criminals. Simultaneously, among all other reasons, election procedures, increasing election expenditure, criminalization of politics and widespread illiteracy are also important factors in this regard. Lakhs of people are with Annaji and we respect their sentiments. Several corruption cases have been exposed, but no action has been taken and the common man is looking to the Parliament. Corruption cannot be rooted out just by formulating a law. It requires awareness and strong will. Corruption has given way to black money as a result prices are soaring and the common

man is suffering. So it is the need of the hour to make a powerful, effective and comprehensive law so that people should think of result of corruption before they indulge in any corrupt practice and our country could regain its pristine glory and dignity by being a corruption free country.

**SHRI ASHOK ARGAL:** We have to think over it, as to what is there in the social activists like Annaji or Baba Ramdev have got such as huge following all of a sudden. Only then we could be able to find out a way. The present Government has crossed all the limits of corruption. If all the black money deposited in foreign banks would be brought back, a new India can be build. People have started hating corrupt leaders, officers and the system. In such adverse circumstances, the whole of the country stood in support of Annaji. I would like to suggest that crores of our youth today are connected through internet. To get suggestion of these youth, we should create a new official website with the name of Jan Sansad so that any common citizen could convey his opinion or suggestion or information to his MP. And on this very website, the MPs will have to reveal as to where they spent the whole day and what they did for the people of the country. The people are expecting us to be more responsible. So we should now take a step forward in the direction of a powerful and effective Lokpal.

**SHRIMATI SUSHILA SAROJ:** I salute the great personality who with his struggle and movement has brought the country under one roof. Corruption has emerged as the issue of the common man. But it is surprising as to why the Government is still not understanding it. The Government would have to give a guarantee to consider certain principles in the Bill and Team Anna would have to agree upon deleting the provisions which are being considered as too stringent. All the agencies which have been entrusted the task of dealing with corruption and financial crimes should be released from the control of the Government and the Executive. These agencies should be under a 7 or 11 member committee. And the member found guilty should be dismissed by the committee under the chairmanship of the Vice President. No discrimination should be made on the basis of one's post while taking action against corruption. Everybody from peon to the Prime Minister should be treated as equal. Similarly, there should be no discrimination between a Joint Secretary and the lower level officers. The provision of seeking permission to investigate under Section 26 and to prosecute under Section 18 of the Central Vigilance Commission Act should be scrapped. But Judiciary should not be brought under the ambit of Lokpal. A separate machinery National Judicial Commission should be set up to fix the accountability of the Judiciary. Our Constitution has provided for the decentralization of power while it is proposed to give powers of investigation, planning, monitoring and administration powers to one

institution in the proposed Jan Lokpal. At present, the Government holds most of the powers and for this reason, the Government has become corrupt and uncontrolled. Directorate of Enforcement should be merged with CBI and all investigations should be entrusted to them. CVC should be replaced by an independent Jan Lokpal. Legislation regarding corruption and black money need to be made very strict. The complainant should be protected by the law. I also suggest to provide representation to women as well alongwith the people from scheduled castes/tribes, backward classes and minority communities in the strong Lokpal Bill.

**SHRI RAMEN DEKA:** Today, corruption is a major issue and it should be addressed in totality. To root out this evil factor, we need a strong and powerful Act which can perish the corrupt at all levels. Corruption in the highest level should be dealt with strong hand. The lower bureaucracy which deals with common people is more corrupt and pollutes the society. In view of this, the lower bureaucracy should be in the ambit of Lokpal. A strong, vibrant and powerful Lokpal Bill will only be able to solve the problem of corruption. I appeal to the Government to expedite the process to bring the Lokpal Bill.

**SHRI BISHNU PADA RAY:** Earlier the Congress government had introduced the Lokpal and the Lokayukta Bill in the Lok Sabha. However, this Bill could not be passed. Hon. Pranab Babu while supporting the Lokpal Bill in 2001 had suggested that the Prime Minister be brought under the ambit of the Lokpal. Atal Bihari Vajpayeeji himself had included the office of the Prime Minister in the purview of the Lokpal while he was Prime Minister. But the head of the UPA today does not have the will power to take this step. The Supreme Court has recently censured the corruption in CVC's appointment, 2G scam etc. The funds for tsunami relief were looted. The MPLADS funds were used to buy computers, cell phones, fax machines etc. and the Andaman administration turned a blind eye to it. Some Union Territories have Lieutenant Governors, some have administrators. They should also be brought under the ambit of the Lokpal or the Lokayukta. Annaji has sought to bring the Prime Minister under the ambit of the Lokpal. I also support this proposal. The government version of the Bill has been framed to protect the corrupt. While the government's version has no provision to recover money from scamsters the Jan Lokpal has this provision. The CVC and the CBI should be brought under the purview of the Lokpal. I support the three demands of Annaji viz Citizens' Charter, bringing the entire bureaucracy under the Lokpal and bringing the Prime Minister, the CVC and the CBI under its purview.

**SHRI KABINDRA PURKAYASTHA:** Today is a memorable day in the political history of our country. This Jan Lokpal Bill drafted by the civil society has several salient features such as whether a single act be provided

for both the Centre and the State? So far as I understand Constitution allows cover up both in a single Act. This may be done in the public interest. Prime Minister needs to be brought within the purview of the Lokpal otherwise importance of the Act will definitely be less. The activities of the Members of Parliament outside the Parliament be brought within the purview of the Act. The lower bureaucracy should also be brought within the jurisdiction of the Bill. That should be applicable in the State also through the Lokayukta. In the present day of corruption a very strong and effective Lokpal Act should be enacted and brought into force. This will definitely help the Nation to be free from corruption.

**SHRI GHANSHYAM ANURAGI:** The demand for the institution of the Lokpal is being raised since the sixties. We are also committed to bring this Bill because it is in the interests of the nation. Some other provisions can also be incorporated in the Lokpal Bill. The big industrial houses, big capitalists and those involved in the management of the media and those who indulge in dubious activities in the garb of the media should also be brought under the ambit of the Lokpal. NGOs should also be covered under the Lokpal Bill. There should be a judicial commission for the judges. The participation of Scheduled Castes, Scheduled Tribes, Other Backward Classes and minority communities in proportion to their population should also be ensured at the time of constitution of the institution of Lokpal. Provision for periodical reviews of the Lokpal mechanism should also be included in the Bill. Besides Jan Lokpal Bill there are three other Bills. A discussion on all these Bills should also be held together. The Members of Parliament are being vilified all over the country today. This is very disappointing. The socialists have a history of fighting against corruption. Jaiprakash Narayanji had led the biggest movement in the country and in the same way our leaders too are carrying forward this struggle for the welfare of the poor. As far as Annaji's fast is concerned, the sense of the House should be conveyed to him and he should be persuaded to end his fast.

**SHRI KAMLESH PASWAN:** Corruption is eating in to the vitals of our society. The people are severely affected by corruption. My party has always been against corruption. I thank Shri Anna Hazare ji for uniting the people of the country on this menace of corruption. The people of the country have come on one platform against corruption and the entire society is demanding a stringent law against corruption. The Lokpal Bill introduced by the Government is so weak that it will not be able to check corruption. In order to fight corruption, a strong Lokpal Bill will have to be created. Our party is of the view that the office of the Prime Minister and the entire bureaucracy should be under the ambit of the Lokpal so that the common man could get relief from corruption. We should learn

a lesson from our past mistakes and pass the Lokpal Bill. Besides, we should also keep it in mind that there should be transparency in the appointment of Lokpal. Only an honest and sincere person should be appointed as Lokpal. I on my own behalf and on behalf of my party request Shri Anna Hazare ji to call off his fast as the country needs the great people like him.

**SHRI SAMEER BHUJBAL:** I support a strong law to end corruption in the country. We also need a Citizens' Charter to provide services to the people in a fixed time frame. I support a strong Lokpal and a strong Lokayukta in the States. Citizens face corruption in all works of life. We should not forget thousands of officials work honestly and sincerely day and night to meet the aspirations of the people. We should ensure to provide safeguards for such officials, so that they can give their best to the country. The present election system is also one of the reasons for prevailing corruption.

**SHRI ARJUN RAM MEGHWAL:** Keeping in view the public sentiments we need a strong and effective Lokpal. The Prime Minister should be included in the Lokpal, but matters related to national security and law and order should not be within the purview of Lokpal. Corrupt judges should also be included. However, judge of Supreme Court and High Courts should not come within the Lokpal. Judicial Accountability Bill should address corruption in higher Judiciary. Appointment of judges should be according to the original spirit of the Constitution. All India Judicial Service should be constituted. Corruption should also be rooted out from corporate sector, NGOs, Print and Electronic media. Proposed Lokpal should be constituted within the Constitutional framework. Scheduled Castes, Scheduled Tribes and OBC should also be appointed as Lokpal and Members of Lokpal. The Government should get intelligence reports on all Members of Parliament and it should be shared with the Parliament.

**THE MINISTER OF COMMERCE AND INDUSTRY AND THE MINISTER OF TEXTILES (SHRI ANAND SHARMA):** Today, this House has taken up discussion on an issue which is of concern to the entire nation. There are no two opinions about the seriousness of the topics raised. The Parliament of India is awake, aware and sensitive. It keeps a close eye on the prevalent conditions, lends an ear to the voices of the citizens and then takes a decision. This is the basic rule and ideology of democracy. The House was unanimous in saying that a strong Lokpal is the need of the hour. Our Constitution is supreme. As far as sovereignty is concerned, the people of India are sovereign. This sovereignty is an integral part of the Parliament. Our strength lies in our diversity. The Parliament reflects this diversity. There are many challenges before our country. Corruption is a cancer

which needs to be rooted out but we have to think out the proper way to do so. The common man has to struggle a lot in life and has to face lots of difficulties. He attributes these difficulties to the political leadership and is aggrieved about the corruption. Our Constitution has assured us, through its institutions, that our fundamental rights are protected. There is a Judiciary, an executive and an independent media to ensure that our fundamental rights are not violated. There is a question mark over the credibility of some institutions today. It is necessary to remember and to remind everyone to refrain from making such statements, doing such things or from taking part in a struggle which would cause an irreparable loss of esteem to the institutions of the country. Many major issues, besides corruption, are yet to be tackled in the country. India has still to grapple with issues such as poverty, unemployment, female infanticide, casteism, and oppression of dalits. Sushmaji correctly said that the level of debates should be high. Debates should be conducted keeping aside political affiliations and keeping the interests of the country in mind. I regret to say that first the House was reassured and glad but this resolve was soon forgotten and the discussion, instead of being sublime, lost its way completely. The House should stand unanimous on all issues of national concern in the interest of the nation. Lokpal and Lokayukta, both, should be appointed but it is for the Standing Committee to decide on the best course of action on the basis of the Constitution. In my view, the Judiciary, the executive, any organization in the country, NGOs, large corporate houses, media, all these professions whose basic function is to strengthen the fabric of the nation and serve the nation and society, should be strictly monitored. It is a serious issue, hence I request the House to take a unanimous decision so that the country could be able to deal with this crisis. But there is excitement and frenzy in the country. Let's not take any hurried step which may have far reaching consequences.

**SHRIMATI JAYSHREEBEN PATEL:** Lokpal is essential and necessary for strengthening the foundations of democracy. The Government has failed to check corruption. The Prime Minister should come within the Lokpal except on matters related to national security and law and order. Judicial Accountability Bill should be passed at the earliest. Under UPA Government corruption has become rampant all over the country and it has become institutionalized. CBI has become Congress Bureau of Investigation. Its autonomy should be ensured. A Citizens' Charter should be framed. People are fed up with corruption in lower and upper bureaucracy. It should be rooted out. We must put an end to corruption in corporate sector and NGOs.

**SHRI PREMDAS:** There is rampant corruption in our country. Common people are suffering, poor are becoming poorer and rich are getting richer. It needs to be checked. People are looking at politicians with suspicion.

The Lokpal Bill should be brought keeping in view the dignity of the Constitution and the Parliament. Corruption is not only prevalent in the Government institutions but in Non-Government institutions as well. Hence, they should also be brought within its purview. There is a need for Citizens' Charter as well. Media should also be brought within its purview. Stringent action should be taken against those uttering insulting words towards Members of Parliament. All upper and lower class bureaucrats and employees should be kept within its purview except the Prime Minister and the Chief Justice.

**SHRI SHAILENDRA KUMAR:** I would like to give few suggestions on the issue of setting up the office of Lokpal. The Lokpal Bill presented for the 9<sup>th</sup> time here has been lying pending for the last 43 years. I want that this Bill should be drafted within the Constitutional framework. The Prime Minister should be brought under the purview of this Lokpal Bill. A National Judicial Commission should be constituted for the courts. The SCs, STs, OBCs, Minorities and women should also be included as the members of the Lokpal Committee. We should not overlook the Standing Committee. The Bill should be passed after having a final discussion in this Committee. We cannot curb corruption immediately through Lokpal. We shall have to improve administrative, police and judicial structure. Besides, media, corporate houses, NGOs should also be covered under this. The Lokayukta should be appointed on the basis of Lokpal only. There should be a provision to appeal in the High Court or the Supreme Court against the decision of the Lokpal. The cases concerning the Union Government should be brought under the jurisdiction of Lokpal and the cases which relate to the states, should be kept within the purview of the Lokayukta.

**SHRI R. THAMARAISELVAN:** The Lokpal Bill is an effort to rein in the pervasive corruption in public life. It was first mooted in the late 60s, however, it failed to become law despite successive attempts. For the last few weeks the country has been witnessing a strong wave in favour of a strong Lokpal Bill. From the very beginning we made it very clear that the Lokpal Bill should cover the Prime Minister. While debating on this issue in this august House today, Shri Pranab Mukherjee, made it clear about the need to discuss (i) whether the jurisdiction of the Lokpal should cover all employees of the Central Government, (ii) whether it will be applicable through the institution of the Lokayukta in all States, and (iii) whether the Lokpal should have the power to punish all those who violate the 'grievance redressal mechanism'. Our stand is very clear that the jurisdiction of the Lokpal should also cover all employees of the Central Government. Lokpal will be applicable through the institution of the Lokayukta in all states. Lokpal should not encroach upon the states power. We are all in agreement with the Anna Hazare. But we are disagree on this point that no Bill or an

Act or Rules can be generated outside the Parliament. The Standing Committee has the provision to obtain more views on the Lokpal Bill from the common man and other experts. The entire country should be provided with an opportunity to air their views on Lokpal and frame a more meaningful Lokpal Bill.

**SHRI BALIRAM JADHAV:** The Lokpal Bill has been presented several times in this House. Corruption which has taken place during the last two years is really alarming. Common people are against corruption. The people are not concerned whether Lokpal or Jan Lokpal Bill is passed, however they are much concerned as to how corruption could be curbed. There is a need to enact a stringent law for this purpose. Though there is CAG, CBI, Police, JPC etc. in the country to check corruption however all these have become ineffective. I support the three demands made by Shri Anna Hazare *i.e.* appointment of Lokayukta in the states, establishing a Citizens' Charter and bringing all employees under the jurisdiction of the Lokpal. It is necessary to enact a strong Lokpal Bill to curb corruption. I demand that this Lokpal should be given the status of a constitutional institution similar to the Election Commission.

**SHRI OM PRAKASH YADAV:** Shri Anna Hazare and his team has been agitating for a long period for the establishment of Jan Lokpal institution and make it an effective tool. I would like to request Shri Anna Hazare to withdraw his fast. We should have to find a way out within the constitutional limitations by following democratic process. There are only two three issues on which Shri Anna Hazare and the Government have differences. Actually, the common man is mostly affected by the corruption on the lower level of bureaucracy. He has to give the bribe to get trivial things done. Corruption has decentralized with the policy of the Government to give funds directly to the Panchayats. I support the demand of Shri Anna Hazare to bring the lower bureaucracy under the ambit of Lokpal then only it will benefit the common man.

**SHRI SANJAY DINA PATIL:** Today on this historic occasion when Parliament is to consider the Gandhian's three key demands on Lokpal Bill, I strongly feel that whatever be the outcome of the debate, be it within the Constitutional framework and by preserving Parliament's supremacy. Shri Anna Hazareji has put forth three points that are: (i) whether the jurisdiction of the Lokpal should cover all employees of the Central Government, (ii) whether it will be applicable through the institution of the Lokayukta in all states and (iii) whether the Lokpal should have the power to punish all those who violate the 'grievance redressal mechanism' to be put in place. Our party in fact is strongly in favour of having a strong anti-corruption law and therefore I would strongly urge the Government to



bring Bill for a strong Lokpal. Regarding the second issue of whether it is practicable to have Lokayukta in all States, I would only urge the Government to cautiously tread on this path as many of the States have already raised serious doubts of infringement of 'Centre State Relations' but at the same time I support the idea very much because at the end of the day it is the common people or 'Aam Aadmi' who suffers the most through corruption. Further on the issue of whether the Lokpal should have the power to punish all those who violate the 'grievance redressal mechanism' to be put in place, it would be pertinent to mention that many of the States have already put such a mechanism in place and we may adopt the same with necessary checks and balances. I would like to associate myself in supporting the above three issues raised and likely to be considered by the Standing Committee while drafting the Lokpal Bill.

**SHRI DANVE RAOSAHEB PATIL:** Corruption and black money in the country are being discussed whereas this Government has been a failure in putting reins on corruption, that is why every individual is supporting this movement of Anna Hazare. This movement has become everybody's movement. Annaji has launched this movement against corruption and given the call for Lokpal. I support this demand. I would urge the Government to pay attention to Annaji and introduce strong Lokpal Bill to address the problem of corruption rampant in this country.

**SHRIMATI KAMLA DEVI PATLE:** There is an urgent need to rein in corruption. A strong and effective Lokpal Bill is the need of the hour so that corruption could be checked, the economy of the country could be properly run, democratic spirit could be protected and dignity and prestige of the Members could be upheld. A strong Lokpal Bill should address the problem of red tapeism in all offices, incorporate enabling provision for the office of Ombudsman in states and bring all the employees within the ambit of Lokpal besides bringing the office of Prime Minister and CBI under its purview.

**SHRIMATI SEEMA UPADHYAY:** While discussing all the important points under Lokpal Bill, proper representation should be given particularly to all the persons belonging to the Scheduled Castes/Scheduled Tribes and other backward classes and minority communities. Before passing this Bill it should be fully ensured that this Bill is fully effective in weeding out corruption and all its provisions are absolutely clear so that its benefits accrue to the common man. As far as bringing the office of Prime Minister and Judiciary under the ambit of Lokpal Bill is concerned, our party would fully support the decision taken with general consensus of the House.

**SHRI BHISMA SHANKAR ALIAS KUSHAL TIWARI:** Annaji and his supporters, it seems to me, want to change the entire system which has been created by the Constitution of India and the Constitution which has created the three organs of the state—the legislature, the judiciary and the executive. Our entire system is democratic and a system of proper checks and balances also exist here. In such a condition, if a new institution is created having the powers of police, investigation and decision-making vested into it, there is no guarantee that that institution could not assume the role of a super legislature, executive and judiciary. This would be unnecessary tampering with the basic structure of the Constitution. It cannot be said that if a Jan Lokpal Bill is passed, it would be able to tackle all the emerging situations in future and could weed out corruption from our country. A strong Lokpal Bill may be introduced, but the Parliament should remain sovereign and in whichever form it is passed, it should be respected. The State Governments should also be advised to take necessary action in this regard.

**SHRI VARUN GANDHI:** The people's rights in our democracy cannot be extinguished after casting of vote once every five years. It is the people that must govern. At the end of the day, it is our duty to reflect public opinion. If there is a scam involving Rs. 1,000 crore, there are a thousand villages that will go without electrification, there are a thousand schools or inter-colleges that will not get built. The fact remains that in our country today the education system, the health system, the systems of infrastructure are lacking. The reason why they are lacking is, there is no money. Shri Anna Hazare is asking for an independent Ombudsman. Anna Hazare's movement has been an entirely spontaneous one that has erupted from almost all of our individual constituencies. The BJP is proud of its association in supporting this movement.

**SHRI MAHESHWAR HAZARI:** The House is debating the serious issue of Lokpal today. The society at large needs to be made aware on the issue of corruption prevailing in the country. There is a urgent need of a stringent law against corruption. I feel that electronic and print media should also be brought under its ambit. Together with it, NGOs and industrialists should also be under its jurisdictions. I, through you, would make a request to the Government that SCs/STs, OBCs and most OBCs should be given due representation in the formation of Lokpal. It is my personal view that the Prime Minister and Parliament should be kept out of it. I, therefore, request to the Government of India to make all out efforts to break the fast of Anna Hazare ji as his life is precious for the nation.

**DR. MIRZA MEHBOOB BEG:** Country is facing credibility crisis. Huge trust deficit does exist between all sections of the society. While putting an effective Bill in place, so that the monster called corruption is put

under control, nothing should be done to demolish an existing vibrant parliamentary system and players, elected by them are not reduced to ridicule. If we want to put Judiciary system under the vigil why leave other sections of the society out of the vigilance net. Why leave out NGOs, leave out Media? One can agree to make improvement and plug loopholes rather than making new institutions and demolishing the older, established one, as that will be a tragedy in the long run. It seems there is a constant campaign and conspiracy against the well defined and established Parliamentary Democratic System. It has to be preserved at all cost.

**SHRIMATI RAMA DEVI:** The public support being received by Annaji makes one thing clear that the public is fed up with corruption prevailing at the lower and higher posts. It is my suggestion that for the states there should be a model of effective and strong Lokpal for the officers/officials of panchayat, block and district level. The Prime Minister should be in the ambit of the Lokpal. The CBI should be brought under the Lokpal to prevent its misuse. An effective and strong national commission be constituted at the national level to curb corruption in Judiciary. NGOs and industrial households be brought under the purview of the Lokpal to weed out corruption prevailing in them. Private educational institutions should also be in the ambit of Lokpal. The black money stashed in foreign countries should also be in the purview of Lokpal. The public wants a strong and effective Lokpal Bill. A strong and effective Lokpal Bill should be formulated and alongwith the Bill awareness among the public may also be created. Then only the country could be freed from corruption. I appeal to Anna Hazare to end his fast keeping in view the sense of the House.

**SHRI NARAHARI MAHATO:** Corruption has become a major public concern in the wake of successive scams over the past few years. The establishment of an effective Lokpal institution is one measure to check it. The Lokpal should essentially be a fact-finding body that receives complaints, enquiries, investigates and forwards cases to special courts. It should oversee the entire machinery related to the corruption cases at the Central level. There must be a separate mechanism for grievance redressal. A citizen grievance redressal machinery should address all grievances regarding delivery of basic services and entailments of the citizens. The Lokayukta set-up on the lines of Lokpal should bring all State Government employees, local bodies and State Corporations under their purview. Prime Minister should be kept under the purview of Lokpal. The Judiciary and all the Government officials should be brought under Lokpal. There should not be any difference between Grade A, B, C or D. If, anybody is indulged in corruption, it is corruption. We strongly support that a Citizens' Charter should be made in the Lokpal Bill, detailing the responsibilities of

Government Department and also to impose penalty, if those responsibilities are not fulfilled. At last, I request Shri Anna Hazare to call off his fast, as his health condition is deteriorating day-by-day.

**SHRI A. SAMPATH:** It is a primary duty of Government of India to bring a comprehensive Lokpal Bill to fight corruption. Corruption breeds black-money, and that leads to a parallel economy. A parallel economy is swallowing the real economy of India. Constitution of our Sovereign, Socialist, Secular Democratic Republic is supreme. Only a small number of people have benefited from the neo-liberal policies. Those nations which have opted for the neo-liberal policies have already reversed their policies of denationalization and privatization. But in India politics is being converted into business and business is conducted through politics. The unholy nexus of large corporate houses and the ruling political class have worsen the situation. Many of the central agencies, including the CBI, have been used with malafide intentions to hunt the political opponents. Ours is a federal structure but the tendency of the Union Government is always to take away the powers and the sources of revenue from the State Government. It is not fair. Why strong action is not taken against those persons and private companies who have looted the public money and stashed away illegal money abroad in tax havens? The RTI Act should be made applicable to all those enterprises which enter into any type of contract with any governmental institutions and PSUs. We are the largest multi-party democracy in the world and fundamental rights of the citizens should be protected.

**SHRI JITENDRA SINGH BUNDELA:** The three main points regarding Jan Lokpal Bill are being discussed in the House *i.e.* appointment of Lokayuktas in all states, Citizens' Charter and inclusion of government employees under the Lokpal Bill. Big people are affected by big scams but a common man deals with Patwari, Tehsildar, SDM, doctor and inspector. These people do not work without taking bribe due to which a common man suffers. That's why demand to make an effective Lokpal bill is gaining momentum. In many states in the country, Lokayuktas are working so demand to appoint Lokayuktas in rest of the states is rational. Many states have implemented Lok Seva Guarantee Parity Act which provides delivery of time bound services to the public and if the concerned officer or employee fails to provide the service in time, he will have to pay fine. Therefore, Citizens' Charter should be included in the Lokpal Bill. The amount in thousands and crores of the country is deposited in foreign banks due to which our economic situation has been deteriorating. The Government should bring back that deposits. The enlightened people have become fed up with corruption and they want change. So, a strong Lokpal Bill should be enacted.

**SHRI K.D. DESHMUKH:** The entire country is in favour of abolishing corruption. I am of the view that Prime Minister and Members of Parliament should bring under the purview of Lokpal Bill. It is necessary to bring CBI within the ambit of Lokpal Bill. Judiciary should be brought under National Judicial Commission. Lower level of bureaucracy should also be included in the Lokpal Bill and a Citizens' Charter should be made. Corruption has spread like cancer. According to the demand of Shri Anna Hazare ji strong Jan Lokpal Bill should be passed in the House.

**SHRI DILIPKUMAR MANSUKHLAL GANDHI:** Anna ji is from village Ralegaon Sidhi from where I am the Member of Parliament and has seen Anna ji a person of pristine image and a social worker. He has dedicated his entire life for the social cause soon after he retired from the military. From that time onward, he is waging a war against corruption. My party *i.e.*, BJP, has also supported Anna ji. I, therefore, feel honored to support him. I request the entire Members of this House to pass the resolution brought in the House and inform Anna ji in this regard at the earliest so that he breaks his fast. Anna ji is a symbol of hope for all of us and to protect him is our bounden duty.

**SHRIMATI DARSHANA JARDOSH:** The common man wants that Lokpal should be made. People have no faith in the Government. They still have doubt whether this Government will make a strong Lokpal Bill or not. Now, it is the responsibility of the Government as well as of this Parliament to regain the faith of the people. There are three main points in this Bill. First, lower bureaucracy should be included in the Lokpal, second to appoint Lokayukta in the states and third is to make Citizens' Charter. I feel that all these points must be included in the Lokpal.

**SHRI DATTA MEGHE:** Corruption has become a canker sore of the society. It cannot be eliminated by bringing a Bill but there is urgent need of creating awareness among people against this menace. Every section of the society is adversely affected of it. I am in favour of bringing a strong Lokpal Bill to fulfill the aspirations of the people. There are three main provisions in the Lokpal Bill initiated by Shri Anna Hazare – appointment of Lokayuktas in the States by Lokpal, Citizens' Charter and bringing all the sections of bureaucracy under the ambit of Lokpal. We have to take measures to fight corruption while maintaining economic progress. I am in agreement with these points that in place of voting there should be unanimity in appointment of Lokpal, there should be impeachment for removing Lokpal, initiatives should be taken for electoral reforms and it is necessary to bring a strong Lokpal Bill to make India corruption free but there should be no compromise on autonomy and jurisdiction of our democracy.

**SHRI S. SEMMALAI:** Fight against corruption is a long drawn process and the nation must be prepared with a determination to fight it out. I would like to mention here that no interference will be allowed to the States power by the Lokpal Bill. Everyone in our country is against corruption. We want to root out corruption. But when one wants to get things done he does not hesitate to bribe. To corrupt or to get corrupted are both dangerous. Right from 1966 light attempts have been made in the Parliament to create a mechanism against corruption. But all the measures have failed. In Democracy Parliament is supreme and its power to legislate cannot be delegated to any other organisation or institution. Prime Minister should not be brought under the purview of the Lokpal Bill. Our country is built up with federal set up. States have to be given more powers by the Centre. In this sense, all political parties should try to bring an independent credible and workable Lokpal before the Parliament. The States are also entitled to tender their views and opinions on this issue. Let us wait for the report from the Standing Committee and arrive at a decision in the Parliament after a detailed discussion.

**SHRI KAMESHWAR BAITHA:** This bill is being brought in to control and to root out the corruption from India. The whole country and the world are watching us and waiting for outcome. Not only the corruption of money but of land grabbing must also be brought under the ambit of the act. If we want to wipe out the corruption, opinions and concerns of the common man have to be included in Jan Lokpal Bill. People of feudal mind do not let the poor to sit beside them. The poor have to toil from morning to evening, yet go to bed with empty belly. The reservation has been provided by the Constitution. If there had been no reservation, I would not have been elected from Palamu reserved constituency. We should respect reservation policies, liberty of the people as well as prestige of the House. The decisions and laws should be made as per the constitutional provisions.

**SHRI MOHAN JENA:** After independence corruption has become a gigantic monster before the nation. I would like to convey my regard to the great leader Anna Hazare for his historic endeavour to create massive awareness throughout the nation. The issue of 'Jan Lokpal' Bill has been discussed by this august house at length. The Government version of the Bill is also in the domain of the Standing Committee. My suggestion is to reach at a consensus as early as possible to pass the Lokpal Bill. The entire nation wants the inclusion of PM within the ambit of Lokpal and I too support this stand. But on the question of national security & public order Prime Minister should be excluded. Secondly, on the question of Judiciary we should not dilute the constitutional spirit & provision of separation of power theory. There is a demand from different segments of society to formulate National Judicial Commission. I think it will be an appropriate

step for transparency in appointment and promotion. The states should have autonomy and choice to constitute their own Lokayuktas. State Government employees should be covered under State Lokayuktas and Central Government employees including PSUs should come under the jurisdiction of National Lokpal. Every citizen should get justice in due time and every official starting from gram panchayat level to central government secretariat must be legally bound and constitutionally responsible to discharge their duties within a time bound manner. Hence Citizens' Charter is a very sensible and appropriate demand. Officers, however, big or small they may be, will be punished if they violate the Citizens' Charter. Parliament is the supreme institution of our system. Hence, Lokpal should not be a body above Parliament directly or indirectly. The conduct of members inside the Parliament should not be brought within the purview of the Lokpal as Article 105(2) of the Constitution covers this issue. The NGO, both Print and Electronic Media and Corporate House, Industry should come under the purview of the Lokpal.

**SHRI DUSHYANT SINGH:** There is need to make a strong and robust Lokpal Bill by taking into account the features of the Bill presented in Parliament and the one moved by the Civil Society. The Prime Minister should be brought within the ambit of the Lokpal Bill, but the matters related to the National Security should be kept out of it. Lokayukta must be brought within the ambit of Lokpal Bill so that the corruption is removed from the states also and the common man gets corruption-free system. The lower bureaucracy should be covered in this Bill. Judiciary should also come under the purview of Lokpal Bill, but the Government should set up a National Judicial Commission at the earliest through which the matter related to appointment of judges, the tenure of judges, etc. could be considered and decided. If any judge is found involved in corruption he should be tried under the purview of National Judicial Commission. Further, CBI and NGO should also be brought under the Lokpal Bill.

**SHRIMATI ANNU TANDON:** Corruption-free India is our sole moto and a harbinger of wonderful future. Today's discussion in the House cannot be confined to the suggestions and advice but is a step towards formulating a strong and effective law. In view of that, I totally associate myself on the three issues along with the other issues which are the points of discussion in the House. I am of the opinion that the Standing Committee, to which this Bill has been referred to, must be provided more teeth and also confabulate as to how a constitutional status may be given to it so that it can be used as an ultimate weapon to fight against corruption. The Standing Committee will also have to ponder as to whether this institute in itself or they themselves can take action on it or they will have to constitute an Investigation Agency of its own or to give this power to law

enforcing authorities. I would also like the Government to apprise me as to whether the staff needed for this purpose will be taken from the existing bureaucracy or will be formed from a separate cadre with the help of UPSC. I would also like to know as to what would be the composition of Chairman or Committee who will run this institute. There is unanimity among the Members of Parliament about the right which has been provided to them under the Article 105 of the Constitution. I hope and pray to the Almighty that this supremacy of the Parliament and its decorum be maintained.

**SHRI P. K. BIJU:** I feel that the PM should be under the provisions of the Bill, as proposed by the civil society activists. Judiciary should be monitored by a Judicial Accountability Committee. I am of the view to bring Media, NGOs and corporate sector under the orbit of the Bill. It is obvious that corruption is a byproduct of neoliberalism. The corporate put aside even 15% of their investment for bribing the bureaucrats for the smooth functioning of the business. The neoliberal reforms are creeping in to welfare sectors such as education, health etc. making it inaccessible to the common man.

**SHRI G. V. HARSHA KUMAR:** Shri Anna Hazare's fight against corruption has created sensation in the country. The common man is thinking that corruption has spread to all levels of society. The aam admi problem of corruption is quite different from what the Anna Hazare's fight against corruption. People are facing corruption at lower levels like Police Station, Hospital, Tehsil office, etc., and this problem is hitting directly, particularly the down-trodden people. Anna is fighting against corruption at higher levels, that too, leaving out Non Governmental Organisations (NGOs). Are NGOs not committing frauds by taking funds from government meant for public welfare. My demand is that government should constitute a new Drafting Committee consisting Members of the previous Drafting Committee and civil society groups in addition to the representatives of the political parties, wider civil society organizations, including representatives from SC, ST, OBC, Religious Minority communities and women and then the revised draft, adopted by the new Drafting Committee, shall be placed before the Parliament; and the Parliament can refer the revised Bill to a new Parliamentary Standing Committee for wider consultations with various groups and communities, political parties within specified time, there should be due representation of SCs, STs, BCs. Above all, we urge Shri Anna Hazare to end his fast.

**SHRIMATI BIJOYA CHAKRAVARTY:** Ours is the greatest democracy in the world. Presently it is in peril. Corruption which was unknown in the country raised its ugly head since 1950 and 1960. All legal provisions then



made were not effective. Corruption creeps in political, economic, social, education and medical spheres, as a result, people face acute hardship. They pay bribe for every service. Agri-land snatched. Land of poor people forcibly taken away. Due to corruption, there is rise in prices of every essential. People feel depressed and want a way for redressal of the genuine grievances. That is why people spontaneously joined Annaji's movement and asks for Jan Lokpal Bill to be passed. Rampant corruption makes people helpless. People lost their lives due to floods but corrupt officials never care for all these. A strong Bill is necessary. I support the Leader of the Opposition Shrimati Sushma Swarajji's view for a strong Jan Lokpal.

**SHRI S. D. SHARIQ:** This is not a question about the type of a bill. There are a number of bills and a number of laws in the country. If the law is not followed, there is no use of framing laws. Bribery, corruption and dishonesty prevail everywhere. Why has our integrity now eroded and why has our moral character become too fallible to restrain ourselves to get ill-money? I also request the Standing Committee to come with recommendations for stringent and rigorous laws. But the basic question is whether we want to implement the law. If we don't implement the law, trust in politicians will be lost. We have lost our credibility in the country. People get annoyed with us. What have we done? It may be possible that some of the politicians may be corrupt. But there are many honest, dependable and trustworthy politicians. Neither the civil society nor any member of the civil society has right to raise question on our character. It will be disrespect of the nation if the question of character be raised against the politicians who have spent their lives to serve the people. I request the masses that we are the representatives of India and representatives of Indian people. It is the duty of the nation to respect the elected politicians, to show regards to them, to maintain their honour and to uphold the dignity of this august House and the Constitution. We should be thankful to Shri Anna Hazare for raising voice against corruption. He has shown a direction and led the country on the path on which this august House and the representatives of the country are deliberating.

**SHRI AJAY KUMAR:** As I come from Jharkhand, I have experienced the pernicious practice of corruption day in and day out. The people of Jharkhand not only need an effective Lokpal Bill here but they also want an effective Lokayukta there. We may be critical of the parliamentary process, the democratic process or the parliamentary process is the best process that we have. That process should be respected. The day we lose it, the nation loses and that is something fundamental and very important for everybody to understand. That should not happen. I want the people outside to hear from this House that a majority of the people in public

service and political sphere are people who fight for the poor day in and day out. We must realize that a large percentage of Members have served three to four terms and have been actually working for the interests of the people. It is easier to be a civil servant than to be a public representative. So, I request the civil society members not to reduce the respect of the House. I think, we all have a historic chance to prove to the civil society members outside that we will come with a Bill which is better than this, which is more transparent, more practical, and more effective.

**SHRI GORAKHNATH PANDEY:** Shri Anna Hazare ji and his team want debate on three issues, three proposals, in the House and Lokpal Bill be passed on that very basis. The first point is to bring the Prime Minister under the purview of Lokpal. Keeping in view the integrity of the nation, foreign policy, and internal policy he should be kept independent and out of its purview. On other issues he may be brought under this purview. The conduct and action of MPs should be kept under Lokpal. Today integrity of the Constitution should not be questioned. Parliament is to legislate laws and this power of Parliament should be kept intact. There should a monitoring committee to monitor the Judges. The call of the time is that public should get justice. The check on corruption has become a must. Today officers have become autocrat and they are indulged in corruption. They should be brought under its purview. If higher officers will be brought under its purview lower staff will automatically come under it. Keeping in mind the sovereignty of Constitution an effective Lokpal may be made. It is the need of the hour. That it should be passed in Parliament. Corporate houses and media also should be brought under its purview. The poor are in pain in rural areas, their hard-earned money has gone to scams like 2G spectrum, Commonwealth and Adarash society. The prices are rising in the country and the Government is helpless. It should also come under the purview of corruption. Every section of society is agitated. Therefore, it should be checked strictly. We should rise above the political inclination and a powerful Lokpal may be made. In Uttar Pradesh Lokayukta and public security laws are already in existence. Governance is being run under the policy of happiness to all, goodness to all. To end corruption in the country a strict and strong Lokpal is necessary. The Constitution drafted by Baba Saheb Dr. Bhimrao Ambedkar may not be dishonoured. The integrity of Parliament should not be marred, development of scheduled castes, scheduled tribes, backward classes, the poor and helpless should not be hampered. Proper care should be given to them. Keeping in mind the sentiments of the people a powerful, strong and acceptable to all Lokpal may be passed.

**SHRI PRAVEEN SINGH ARON:** I am putting my views before this House. I support these views except the provisions under which the behaviour of the Members of Parliament in the House was proposed to be brought under

Jan Lokpal. To my opinion there are many sections of the society whose views and stand should be heard before enacting any law. These include minorities, farmers, labourers, agricultural labourers, lawyers, doctors, teachers and intellectuals. Media and NGOs should also be included. The rampant corruption in corporate sector may be included. If there is corruption in religious institutions it should also be included. The three proposals brought before the House which are included under Jan Lokpal Bill are very important and effective proposals. Such an effective law should be made that people suffering from demon of corruption in villages, mohallas, towns, cities and metropolis may be freed and they get relief. I would like to put point-wise my views as follows: We the MPs are affected by corruption in villages, gali mohalla to metropolis. I want a comprehensive debate on all provisions of Jan Lokpal Bill. The opinion of the Parliament may be sent to related Parliamentary Committee so that they can give their opinion on all the three Bills to the house. I oppose all such proposals which are against Constitution. The proposals of Bills put by Aruna Roy and Jayaprakash Narayan may be sent to the Standing Committee on Law and Justice. I protest the defamatory languages used by Anna team for Members and politicians. I protest the unethical use of politics. The Legislature, Executive and public information system (media) may also be included in it. The NGOs should also be controlled through Lokpal or any effective institution. The behaviour of Members of Parliament should be kept out of it. Prime Minister should be included but issues related to defence, security of the nation should be kept totally out of its purview.

**SHRIMATI J. SHANTHA:** A strong and effective Lokpal Bill should be brought to check corruption in the country so that at least 75 per cent corruption could be reduced and the economy of the country could run smoothly, democracy is protected and dignity and esteem of the Parliament is maintained. A strong Lokpal should contain provisions for completion of the work within the prescribed time limit in all the offices to make laws for Lokayukta in the states alongwith the Lokpal and to bring all employees in its ambit. Additionally, Prime Minister and CBI should be in its ambit. NGOs, Doordarshan, media as well as the lawyers should also be brought in its ambit.

**THE MINISTER OF STATE IN THE MINISTRY OF COMMERCE AND INDUSTRY (SHRI JYOTIRADITYA M. SCINDIA):** Each and everyone is affected by the issue of corruption—be it backward class or dalit class. Today, the whole country is looking at the Parliament with a hope and trust. The Parliament has to give them trust—a kind of trust which shows consensus, not differences. It has been said in this House that the Prime Minister was ready to come into the purview of Lokpal but we did not allow for it. But I would like to ask when NDA Prime Minister Shri Atal Bihari Vajpayee was

ready to come in its purview, why was Lokpal Bill not passed during NDA rule? So, there should not be any difference between our words and deeds. NDA Government had proposed it in the year 2001 that we should pass an Act on the lines of Right to Information. It was presented in the Parliament, but where and when it disappeared is not known. Right to Information Bill was passed during the first term of UPA Government and when it was passed, the whole of the NDA people had boycotted it and had left the House. Today, Team Anna and social institutions are demanding that they should be given their rights and if anybody has given them this right to raise their voice, it is certainly UPA Government. In the history of this country, if an engagement of civil society was done, it was done under the leadership of Sonia Gandhiji during first term of UPA Government in the form of National Advisory Committee. If Lokpal is to be strengthened, it is to be done within the constitutional framework. This is Rahul Gandhiji's line of thinking and opinion. Rahulji is resolved to uproot corruption. We do not want cheap publicity. We have to prove that we are united. We need surgery, not antibiotic for our system. We will definitely have to deal with land mafia as Rahulji has said. We will have to look into issues of tax reforms, electoral funding. If it is not done, the antibiotic treatment would be temporary and no surgery of corruption would be possible in the country.

**SHRI BADRI RAM JAKHAR:** All the categories of officials from higher category to lower category should be included in the sphere of Jan Lokpal. The Parliament is supreme and Jan Lokpal Bill alone cannot end corruption. The procedure of the Parliament has to be followed for passing of any Bill.

**SHRI LALIT MOHAN SUKLABAIDYA:** Corruption exists in large scale in our system. Enactment of Lokpal Bill is necessary to make India corruption free. Lower bureaucracy, which is in touch with nearly 80% of the population should be taken in the ambit of Lokpal. There should be Lokayukta in the States. Citizens' Charter will include Government employees' responsibilities, failure of which is to be penalized, and also the attempt to bribe should be included as corruption and people involved should be penalized. A strong Lokpal Bill passed by the Parliament will make the people understand their responsibilities. For prevention of corruption we have to make slight reform in our education policy. Our syllabus should include value education that imbibe in a child's mind the value of honesty, patriotism, integrity, loyalty from pre and primary level.

**SHRI RAKESH SACHAN:** A comprehensive discussion on Government Lokpal Bill, Jan Lokpal Bill and Lokpal Bill prepared by the organization of Smt. Aruna Rai should be undertaken in the House. Thereafter any draft should be sent to the Standing Committee of Parliament. The sub-section E-1 of

Section 2 of Jan Lokpal Bill should be rejected. The field of section 3 is vast. Any section or sections cannot violate any Article of the Constitution. By making amendments in sub-section 5 of Section 4, minimum 6 members should have to be from the sitting or retired justice/Chief Justice of Supreme Court/High Court. The Prime Minister will be the Chairman of Selection Committee. The Chief Justices of two major High Courts in the country, the Chief Election Commissioner of India and Comptroller and Auditor General of India will be the Members. The sub-Section 8 of Section 4 of the Bill should be amended. The authority to select all the 10 members of Search Committee should be of Selection Committee. Following sentences should be included in sub-section 17 of section 4, *i.e.* the condition is that persons to be selected for Lokpal should include the persons belonging to minorities, dalit and backward classes in proportionate to their population. The 'dismissal' and 'removal' word should be deleted from the sub section C of Section 6. The sub-section 5 and 8 of Section 7 of Jan Lokpal Bill should be deleted. The sub Section 2 of Section 23 of Bill should be deleted. On the lines of Lokpal, Lokayukta should be set up in the states. Besides the public servants, all the Non-Governmental Organisations, all pharmaceutical companies, fertilizer manufacturing government and private companies, all the traders engaged in the business of food products, electronic and print media should also be brought within the ambit of Lokpal. All the lower grade employees of Union and state governments should also be brought within the ambit of Lokayukta and Lokpal.

**SHRIMATI SUMITRA MAHAJAN:** The question is not of Lokpal Bill only. It is not of fast as well. The time has come when it has become imperative to strengthen the democracy by giving direction to the sentiment of the entire country and creating confidence in the people and the responsibility of ruling party in this regard is above all. We all agree with the suggestion of keeping Prime Minister in the ambit of Lokpal as suggested by hon. Sushmaji. As far as judiciary is concerned, strengthening of National Judicial Commission has become necessary. Under the Constitution, we have envisaged the relations between the Centre and the States where the rights of the States are safe. Why the media should not be brought within the ambit of the Lokpal. There is Press Council for media but that is ineffective. Election reforms are to be pondered upon actively. It would be much better if the Centre enacts necessary Bills immediately.

**SHRI HASSAN KHAN:** Sir in Lokpal Bill, Prime Minister Office should also come under Lokpal. Judiciary must have a separate effective accountability law. All public servants, NGOs getting government assistance must come under Lokpal. Fast track courts must be set up to deal within time bound period. Due representation must be given to ST/SC in Lokpal.

**SHRI P.L. PUNIA:** Within the purview of the Constitution, effective Lokpal should be provided to check and eliminate corruption. The law should be strictly implemented. Social resolution is the need of the hour that they will not take bribe nor they will give bribe. Merely enacting legislation will not serve the purpose. The schemes prepared for dalits, backward classes, minorities and the women and children of these categories are not being implemented properly, therefore, they should also be included in this scheme. Poverty is increasing instead of decreasing. It should be solved and it should be brought under the purview of the Lokpal.

**SHRI THOL THIRUMAAVALAVAN\*:** The immediate task before us all is to save the life of Shri Anna Hazare. I urge upon all the concerned to take urgent appropriate action in this regard. Whether this legislation against corruption can eradicate the evil at all levels is a big question mark. But at the same time, it can definitely be misused to take revenge on people especially the poor. Lokpal Bill may be used against socially backward people belonging to the depressed sections of the society like Scheduled Castes and Scheduled Tribes and minorities like Muslims and Christians and above all, women belonging to the lower strata of the society. Hence, I would like to impress upon that the representatives of dalits, minorities and women are appointed at all levels in all the Lokpal mechanisms wherever they are established. Whenever certain complaints made against dalits are to be taken up, enough of opportunities must be given and approval from SC/ST Commission should be obtained. With the existing laws, the people who are wronged in both the Government and public sector are from the dalit and minority communities. Without bringing about change of heart no looting can be stalled. Hence, I urge upon the Government to legislate taking care to see that there is no scope for misuse of this law by unscrupulous, vengeful, jealous minds.

**SHRI M.B. RAJESH:** It is the unprecedented public concern about growing corruption that has compelled the Government to address the issue of Lokpal. While coming to the topic of Lokpal, at the outset I would like to stress the need for enlarging the definition of corruption. The “Corruption” as defined in the Prevention of Corruption Act—PCA—should be widened so as to include not only actions of Commission but also those of omissions. The Lokpal should essentially be a fact-finding body that receives complaints, enquiries, investigates and forwards cases to special courts where *prima facie* to recommend an enquiry and investigation *suo motu*. The Constitution of Lokpal should conform to the principle of separation of powers. The functions of grievance redressal must be separate. The grievances of citizens about Citizens’ Charter should be brought under the

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\* Spoke in Tamil.

set up. In the Lokpal there should not be any member drawn from commerce or industry just as there can be no politician. The office of the Prime Minister must fall within the purview of the Lokpal. Judiciary too needs to be made more accountable in the current context of increasing prevalence of corruption within judiciary. So, a National Judicial Commission should be set up to take care of the appointments in the higher Judiciary and enquire into the complaints of corruption. The Judicial Standards and Accountability Bill, 2010 is grossly inadequate to meet this objective and hence a new legislation has to be brought in. The protection and freedom guaranteed to MPs under Article 105 of the Constitution should not be made applicable to acts of corruption. Lokpal should have powers to investigate cases which involve business entities to recommend cancellation of licences, contracts etc. if it was obtained by corrupt means. The Lokpal should also have the power to recommend blacklisting companies from getting Government contracts and licenses. Lokpal should be given powers to recommend steps to recover the loss caused to public exchequer. Lokayuktas must be set up in States on the model of Central Lokpal. The Government should do away with Double Taxation Avoidance Agreements with countries like Mauritius. The Government should also show firm political will to unearth black money and confiscate the funds illegally stashed away in tax heavens. Another important area of fighting corruption is bringing far-reaching electoral reforms. What is needed today is a set of comprehensive reforms. All institutions of our democracy must be reformed and made more accountable to the people. Corruption is fundamentally a political issue and it cannot be fought on an apolitical platform and agenda. The fight against policies of liberalization, corruption and the fight to strengthen our democratic institutions must form part of a common struggle. The setting up of a strong and effective Lokpal will indeed be a significant step in our longer struggle against corruption.

**SHRI HARSH VARDHAN:** Today, agitation on the issue of corruption is going on in seven countries. People aggrieved by corruption have given strength to this movement. Today, we would have to find a solution for the evil of corruption by cutting across political affiliations. Bringing Lokpal or Jan Lokpal is not a solution of the problem. It will be solved when people of lower strata will get the full benefits of welfare schemes without commission and report of aggrieved party will get registered without paying bribe and common man will not remain helpless for want of money. The people challenging the supremacy of the Parliament are not influenced with any ideology or policy but they are expert in exploiting the emotions of people. Anna's fast has certainly highlighted the issue of common man. But, I feel that some people are trying to further their own interest. We are concerned about Annaji's life. Therefore, keeping in view, the meaningful discussion in Parliament on the three issues on which Annaji

want to have assurance, he should end his fast. Efforts of Annaji would be helpful in passing the strong Lokpal Bill in this 15th Lok Sabha, but only future would tell as to what extent Lokpal Bill will curb the corruption. Only politics and politicians can curb the corruption effectively because ultimate responsibility in democracy rests with elected representatives and bureaucracy is only means.

**SHRI BHAKTA CHARAN DAS:** Panchayat, Zila Parishad, Nagar Palika and Nagar Nigam must be included in the Lokpal. The quota must be fixed for Dalit, Tribal, OBC, women and minority section in the formation of the Lokpal. Recovery by the Lokpal should directly go to Government exchequer; not to Lokpal. Whistleblowers should be protected.

**SHRI JITENDER SINGH MALIK:** All government employees should be brought under the ambit of Lokpal. A Citizens' Charter should be made. Lokayuktas should be appointed in all the States.

**DR. TARUN MANDAL:** Parliamentary democracy does honour legitimate demands of democratic movements and meet it with all sincere efforts. Nothing can be superior to conscious and organized people's power and will, which history has proved time and again. Even, Parliament and Constitution are not sacrosanct and unchangeable. People's power does alter the composition of Parliament, complexion of Governments and amend or add to the Constitution. I am in favour of a strong and effective Lokpal Bill to fight corruption and that ought to be instituted at the earliest possible time under exercise of essential procedures with the strong will and active initiatives of the Government. I advocate also, inclusion of corporate, private companies, NGOs and Media Mughals to bring into the ambit of Lokpal with necessary addition of tooth and nail into the Bill. To include all Government employee, to frame Citizens' Charter for redressal of public grievances and formation of Lokayukta in State with Lokpal at the Centre will be genuine and practical measures and effective lively organs of Lokpal. Let the House support them unequivocally.

**SHRI PRASANTA KUMAR MAJUMDAR:** The havoc wave of Anna Hazare issue is getting its strength. It seems to me that the present UPA Government has surpassed all previous records of corruption. The arrest of Anna Hazare and subsequent handling of the issue is blame worthy. Our party RSP does not support this way of handling the whole matter. Even the profitable public sector enterprises like mine, petroleum product, raw materials and many natural resources are sold to private and multinational firms. The Judiciary is also under question mark. The Swiss Bank money controversy is very much fresh in our memory. The public opinion should not be ignored. Even the Prime Minister and all government officials should be under the purview of Lokpal. A state level Lokayukta Bill should be passed. There is



also an urgent need to reform the election procedure to check a halt of the infiltration of money power. The Government should constitute an independent prosecution commission. Anna is fighting against corruption in right direction so we appeal to the Government to accept his demands and also appeal to Anna Hazare to end his fast.

**DR. ARVIND KUMAR SHARMA:** Strict and effective steps should be taken to end corruption in public life. All the poor, unemployed, women, dalits and farmers should get complete benefit and their rights under all the public welfare schemes being run under the leadership of UPA Chairperson Shrimati Sonia Gandhi and Prime Minister in a time bound manner. All the three major provisions in Shri Anna Hazare's Lokpal Bill namely creation of Citizens' Charter, bringing employees of every level under the purview of Lokpal and creation of Lokayuktas in all the States on the line of Centre's Lokpal should be extensively discussed. The House should take effective steps before the public anger transform this present movement into a political movement. Initiative should be taken to end the fast (*Anshan*) of Anna ji and a strong Lokpal should be constituted.

**SHRIMATI PUTUL KUMARI:** Today the entire nation is united against corruption. Ending corruption seems to be the only way out to overcome unemployment, poverty, inflation and other problems of the people. But can merely discussing and incorporating these three points to the Lokpal Bill stop corruption? Has the concern of the 70% middle class and poor people been addressed in it? I think lower Judiciary, media, NGOs, private sector and lower bureaucracy should be brought under the purview of Lokpal. Then this Lokpal Bill would be strong. Today people are losing faith in their elected representatives. We have to perform better and bring transparency in our work. Only then we can win their confidence. We often devote our time in hearing the problems of our electorate. We hardly manage to spare some time for ourselves. All of a sudden an agitation is launched and we are termed corrupt, thieves etc. due to handful of corrupt persons we all have been defamed. I request those blaming us to strain their language and not to lower the dignity of Anna Hazare. I support a balanced-strong Lokpal Bill which meets the aspiration of the people and maintains the supremacy and dignity of Parliament.

**SHRI DHARMENDRA YADAV:** I would like to express my opinion about the Jan Lokpal Bill. The sub-clause e(1) of the clause 2 of the Jan Lokpal Bill should be amended deleting the line dealing with delivering speech and voting in Parliament. It should be clearly mentioned in the Section 3 of the Jan Lokpal Bill that no clause or clauses can violate any Article or Articles of the Constitution. The sub-clause 5 of the clause 4 of the

Jan Lokpal Bill should be amended and it should be mentioned there that out of 11 members of Lokpal at least 6 members would be from sitting/retired judges of Supreme Court/High Courts. The sub-clause 6 of the Clause 4 should be amended and it should be mentioned therein that other members of the Selection Committee headed by the Prime Minister would be Leaders of Opposition from Lok Saba and Rajya Sabha, two judges of Supreme Court, Chief Justices of the two different High Courts of the Country, Chief Election Commissioner of India and Comptroller and Auditor General of India. Amending sub-clause 8 of the clause 4 of the Jan Lokpal Bill, the Selection Committee should be empowered to select all 10 members of the Search Committee. The following sentence be added to the sub-clause 17 of clause 4 of the Jan Lokpal. Provided, the persons constituting Lokpal should have proper representation of persons belonging to minority, dalits and backward class in proportion to their population. The words 'dismissal' and 'removal' should be deleted from the sub-clause 'C' of the clause 6 of Jan Lokpal Bill. Sub-clauses 5 and 7 of Clause 7 be deleted, sub-clause 2 of the Clause 23 of the Jan Lokpal be deleted. On the Lokpal set-up, Lokayuktas should be set up in States.

**SHRI KAMAL KISHOR 'COMMANDO':** With regard to the Lokpal/Jan Lokpal Bill, I have only to say that this Bill should not be detrimental to the interests of the poor, women, dalits, Muslims, backward castes and tribals. What I mean to say that there should not be any fiddling with the Constitution.

**SHRI RAJARAM PAL:** Mass protest against the rampant corruption is a national concern, but merely passing Lokpal Bill could not root out this corruption. Social disparity is widening. We passed the Land Ceiling Act to control the land holdings, but there is no legislation for economic ceiling. Growing indifference attitude of public to democracy is causing continuous decline in voting percentage. It is merely 25 to 30% in urban areas and nearly 40 to 50% in rural areas. The voting percentage can not be increased merely by passing a legislation. Only making people accountable to democracy can raise voting percentage. Common sentiment is that people and the government are two different things. The people, for the first time, feel that it is public, not the system, which is supreme. We failed to bring the benefits of poverty eradication schemes to people. I suggest to close these schemes. Every voter of the age of 18 years or above should be made to open a bank account and his share in national prosperity must be deposited directly in his account. More than 90% of funds being provided to various poverty alleviation programmes is not going to the persons for whom it is meant but being drained off by corruption.

**SHRI DHANANJAY SINGH:** Various scams are taking place because of the policies of the present central government. But the government failed to take timely action against these scams. The pessimistic outlook prevailed

against the corruption has transformed into public resentment. Some social organizations have misconception of having public support with them and to make country free of corruption. I suggest Shri Anna Hazare and the members of his team to restrain in their speeches and do some social services and to go on a nation-wide tour for making public aware of their rights and duties. A democratic system also has participatory democracy with electoral democracy. Shri Anna Hazare and his team are playing the role of participatory democracy. I oppose the emerging trend where few thousands people demonstrate and force their obstinate and egoistic views on government. If we make our existing institutions strong, transparent and independent, we will be able to root out corruption. After a very long time, the public resentment on any issue has transformed into a national phenomena. I personally will be happy if this resentment turns in mass movement. It should not be end in celebration. We must give signal that we will make better law than that of civil society. Committees should be constituted in each district to bring the lower bureaucracy under Lokpal. Lokpal must ensure public participation in every Government department. Prime Minister should be given protection in the areas of defence, internal security and foreign policy. A mechanism to educate poor, labourers and uneducated people should be set up. So, they could be able to understand the proposed Citizens' Charter. It should be noted that the institution set up on high moral grounds are not going to be misused with the passing of time. The public sector, media, religious trusts, NGOs should be covered in Lokpal.

**SHRI THANGSO BAITE:** The supremacy of Parliament is the spirit of parliamentary form of Government. To bring Prime Minister, MPs and judiciary under the purview of Lokpal, pertains to change of the forms of Government as the basic Constitution is being changed. Lokpal in case is accepted and is passed by the Government that will be the end of democracy because the elected people of body would be acceptable to an appointment of nominated body. Corruption is no doubt a chronic ill of the society, but it is an entity of our social phenomena can be dealt with by other entities agencies by giving more powers.

**DR. THOKCHOM MEINYA:** Today is really a historic day. Almost all of us cutting across party lines join together for enacting a strong and effective Lokpal Bill in the country. We stand for the supremacy of the Parliament for legislation. The separation of power between Legislature, Judiciary and Executive as enshrined in the Constitution of India cannot be undermined. The three issues as raised in the statement of the hon. Leader of the House are: (1) whether the jurisdiction of the Lokpal should cover all employees of the Central Government; (2) whether it will be applicable through the institution of the Lokayukta in all States; and

(3) whether the Lokpal should have the power to punish all those who violate the “grievance redressal mechanism” to be put in place? These are important and require serious consideration keeping in view the supremacy of the Parliament and the Constitution of India. Hence, the first issue is quite OK. The second issue should be taken into consideration the federal form of the Union where the federating States should be given the power to legislate as per the provisions of the Constitution. The third issue is very delicate, where the rule of law and jurisprudence shall have to be followed. I suggest that today’s proceedings in the House may please be sent to the Standing Committee for the consideration of the Committee.

**SHRI PAKAURI LAL:** I support the strong Jan Lokpal Bill. I wish that Lekhpal, Qanungo, Tehsildar, SDM, Rural Development Officers, CDO, BDO, teachers, doctors and police should be brought under the ambit of Lokpal. Land mafia and the corporate world should also be brought under Lokpal.

**SHRI JAGDAMBIKA PAL:** Lokpal Bill is pending in the House for the last 42 years. The House has not passed the Lokpal Bill according to the sentiments of the people earlier as a result of which people are agitating. In day to day life of common people they are suffering at every stage due to corruption. Therefore people are agitating in the leadership of Shri Anna Hazareji for the passing of Lokpal Bill by the House. Hon. Prime Minister has said that we will bring a strong Lokpal Bill and Shri Rahul Gandhi has said that Lokpal should have constitutional validity. The Jan Lokpal Bill is having sufficient contents from United Nations Convention against corruption. Congress and UPA Government has taken an initiative and signed the international treaty of United Nations Convention against corruption, which shows its commitment in engaging itself actively with the mission against corruption. Therefore NGOs and private sector is also covered under Lokpal Bill while Jan Lokpal is not covering Corporate Houses, Media and NGOs in its ambit. Today the House is discussing three main issues put forth by Shri Anna Hazareji and showing respect for the sentiments of the people. A large number of Members of Parliament are in favour of strong Lokpal Bill. Shri Anna Hazareji is demanding inclusion of three main issues *i.e.* appointment of Lokayuktas in the States, Citizens’ Charter and inclusion of lower level employees and officers under the purview of Lokpal Bill. Today the Government is in favour of strong Lokpal as a result of which consensus has been achieved on the 34 points out of the 40 important points presented by them in the continuous meetings of GOM with the five members of civil society. Shri Anna himself and his team acknowledged that the Union Government has accepted their major viewpoints in respect of Jan Lokpal Bill. It is a fact that difference of opinion was there on the three points then on those three points the House is having discussion today and the Government will send these

points to the Standing Committee by including all the view points of the House. In Democracy the voice of the people is supreme and this august House legislates as per the ambitions of the people. I would like to urge Shri Anna Hazareji to end his fast and reiterate the commitment of the House and Government against the corruption.

**DR. PRASANNA KUMAR PATASANI:** We support a strong Lokpal Bill, which will remain within the frame-work of Constitution. We support Anna's demand to bring lower bureaucracy under the purview of Lokpal. We also support to have uniform Lokayukta laws at State level. There should be a tool to remove Lokpal, if found guilty and corrupt. Parliament should be empowered to impeach the Lokpal. We support Anna's method in selection of Lokpal. But there should be a provision by which a common man can seek redressal against the verdict of Lokpal/Lokayukta. A time frame should be decided for the investigation an enquiry of complaint filed by a citizen. Legal assistance should be made available to a poor complainant. Behaviour and voting of MPs/MLAs should be kept out of the ambit of Lokpal. CBI and Judiciary should remain out of Lokpal and should come under separate bodies on the lines of Election Commission. A special session should be called in October for consideration of the Bill.

**THE MINISTER OF FINANCE (SHRI PRANAB MUKHERJEE)** while giving his reply said: that the issues which we are discussing today is not merely an academic exercise or theorization. This debate has assumed a larger dimension. None of us sitting in this Chamber can say that the issue on which Shri Anna Hazare was agitating is not important. But in this context, immediately the Prime Minister decided to suggest the representatives of Shri Anna Hazare that what can address his concern and what mechanism we could evolve and the mechanism was suggested. But we have been criticized, there is no doubt about it. Normally, legislation is drafted by the Ministry through the help of the civil servants. After that with inter-ministerial consultation it gets the approval of the Cabinet. Then it is brought to the House and after that it is sent to the Standing Committee. But we admit this fact that this Bill has been introduced several times but it could not get through in the last 40 years. It is unfortunate that we could not agree on all points. Out of 40 basic principles on as many as 34 there were agreements and on six there were differences. Whatever was incorporated in the Bill would be subjected to the scrutiny of the Standing Committee and this House and thereafter with the approval of this House it would be passed. If you want to include Prime Minister or delete any provision or bring an amendment to strengthen it, you are free to do so. But there should be a distinction between mobocracy and democracy. In democracy, individuals should have the right to express their views and also their dissent. In this Bill which we have placed for consideration,

a substantial number of principles, basic ideas and values of the Jan Lokpal Bill have been incorporated in our language. But unfortunately thereafter the line of communication was snapped and we were threatened with the agitation that this Bill was to be passed by 15 August, which I found that the Session starting from 1st August, it might be difficult. However powerful and effective legislation it may be, will it completely eradicate corruption? There is a need for the change in the system and we are doing so. Through taking the IT platform and net banking from April onwards we have been able to ensure the refund to the extent of more than 37 percent. By October 20 crore people of this country will have Unique Identity Number and Mr. Nilekani is assuring us that he would be in a position in the next two to three years to provide the Number to not merely the citizens but to all the residents of India. We have introduced the PAN card in the area of taxation and it could be used for all sorts of taxes. Strong, powerful institution to supervise the effective implementation of the legislation is needed. This agitation is being carried by a very respectable leader having very broad support. But at the same time, we shall abide by the Constitution. Major changes are coming in the horizon of Indian politics. Therefore, it is our responsibility to abide by the Constitution to ensure that there is no conflict with the desire of the people. Our democracy is powerful enough to accommodate various viewpoints. The House discussed various issues relating to setting up of a strong and effective Lokpal. This House agrees in principle on the Citizens' Charter, Lower Bureaucracy to be brought under Lokpal through appropriate mechanism and establishment of Lokayuktas in the States. I will request you to transmit the proceedings to the Department-related Standing Committee for its perusal while formulating its recommendations for a Lokpal Bill.

*The discussion was concluded.*



## **Annexure-II**

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**Synopsis of the Debate in the Rajya Sabha on  
27 August 2011 on the Statement made by  
the Minister of Finance regarding issues  
relating to setting up of a Lokpal,  
conveying the sense of the  
Parliament to the DRSC**

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**RAJYA SABHA**  
**SYNOPSIS OF DEBATE\***

27 August 2011

**STATEMENT BY MINISTER**

*Re: Issues relating to setting up of a Lokpal*

**THE MINISTER OF FINANCE (SHRI PRANAB MUKHERJEE):** I rise to make a statement on issues relating to Lokpal on which a vigorous debate has been going on both inside and outside the Parliament.

At the outset, I will like to once again request Shri Anna Hazare to end his fast in view of the appeal made by the Prime Minister in his statement on 25 August, 2011.

I seek your indulgence to recount the sequence of events which has brought us to where we are today.

On the 5 of April, Shri Anna Hazare went on fast. On 8th of April, we appointed the Joint Drafting Committee, consisting of ten members— five nominated by Shri Hazare, including himself; and five nominated by the Prime Minister, with me as the Chairman and Shri Shanti Bhushan as the co-Chairman. The Government representatives were all Ministers. Shri Hazare ended his fast on 9 April, 2011.

The Joint Drafting Committee met nine times from 16 of April to 21 of June. In the first meeting of the Joint Drafting Committee on 16 April, 2011, preliminary discussions were held to draft the legislation for the Lokpal. During the second meeting of the Committee, 40 basic principles and the Statement of Objects and Reasons were circulated by Shri Anna Hazare's team, which formed the basis of discussions in the subsequent meetings. There were extensive deliberations on the basic principles wherein the scope and vision of the proposed Lokpal were discussed. The six major areas of divergence of views were:

- (i) Should one single Act be provided for both the Lokpal in the Centre and Lokayukta in the State? Would the State Governments

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\* This Synopsis is not an authoritative record of the proceedings of the Rajya Sabha. For the complete version of the debate refer <http://rsdebate.nic.in/handle/123456789/596397>

- be willing to accept a draft provision for the Lokayukta on the same lines as that of the Lokpal?
- (II) Should the Prime Minister be brought within the purview of the Lokpal? If the answer is in affirmative, should there be a qualified inclusion?
  - (III) Should Judges of the Supreme Court and High Courts be brought within the purview of the Lokpal?
  - (IV) Should the conduct of Members of Parliament inside Parliament, their right to speak and right to vote in the House, be brought within the purview of the Lokpal? Presently such actions of the Members of Parliament are covered by Article 105(2) of the Constitution.
  - (V) Whether Articles 311 and 320(3)(c) of the Constitution notwithstanding members of a civil service of the Union or an All India Service or a Civil Service of a State or a person holding a civil post under the Union or State, be subject to enquiry and disciplinary action including dismissal and removal by the Lokpal and Lokayukta, as the case may be.
  - (VI) What should be the definition of the Lokpal, and should it itself exercise *quasi-judicial* powers also or delegate these powers to its subordinate officers?

On 31 May, 2011, I wrote to the Presidents of various political parties and the Chief Ministers of States soliciting their views on six contentious issues. Responses were received from 25 Chief Ministers and six Party President and Leaders. I would quote from some of the replies that we received.

BJP President Shri Nitin Gadkari, in his letter dated 2 June 2011 stated and I quote, “Expecting political parties to give their views to a drafting committee comprising of civil society representatives for acceptance or otherwise would be upsetting the constitutional propriety where parties, parliamentarians and the Parliament have the last word. They are the decision makers and not suggestion givers ... ”

Shri A.B. Bardhan, General Secretary, CPI stated that “as a political party, they will most certainly state their views and suggestions during the discussion on the Bill within the Parliament.”

Ms. Mayavati, BSP President, expressed her inability to respond to the issues raised as no BSP representative had been included in the discussion of the JDC. She also stated that in parliamentary democracy, the Bill has to be examined by the Parliament and the Standing Committee where detailed discussions are held.

Prof. Ram Gopal Yadav, National General Secretary, Samajwadi Party, in his letter stated that Government was holding a direct discussion with the so called representatives of the civil society in the JDC. On the other hand the leaders of the political parties have been sent a questionnaire. This was not acceptable to the Samajwadi Party and hence they will not send any reply.

The JDC concluded its deliberations on 21 June 2011 and both sides exchanged their drafts for the Lokpal Bill. Both these drafts were forwarded to the Government for further action.

To solicit the views of various political parties, after this meeting, a meeting of all political party meeting was convened on 3 July 2011. During the discussions, the representatives of various political parties emphasized that:

- The supremacy of the Constitution of India has to be maintained, Institutions of democracy cannot be undermined and the checks and balances visualized in the Constitution cannot be adversely affected,
- Laws have to be made by the Parliamentarians who are elected representatives of the country. Few nominated members of the Drafting Committee cannot have precedence over elected Members of the Parliament.

On the conclusion of this meeting, it was unanimously resolved and I quote *“Government should bring before the next session of Parliament a strong and effective Lokpal Bill, following the established procedures”*.

This meeting was followed by an informal discussion by some of our colleagues along with some of the leaders of some political parties and their informal suggestions were also incorporated in the Bill.

In pursuance of the directions of the All Party Meeting, the Government worked on the draft Lokpal Bill prepared by the Joint Drafting Committee and after following the formal process of inter-ministerial consultations and Cabinet approval, the Bill was introduced in Parliament on 4 August 2011.

Even before the Bill could be introduced in the Parliament, Shri Anna Hazare’s representatives restarted the agitation by burning copies of the draft Lokpal Bill. Shri Hazare also declared that if the Jan Lokpal Bill is not passed by the Parliament by 15 August 2011, he would proceed on indefinite fast with effect from 16 August 2011.

The Prime Minister, through his Independence Day Address, on 15 August, again implored Shri Hazare to abstain from the fast. This appeal was ignored.

On 16 August 2011, Shri Anna Hazare has again proceeded on fast. In view of his deteriorating health and Government's increasing concern for Annaji's condition, hon. Prime Minister wrote a letter to him on 23 August 2011, making a fervent appeal for ending the fast.

To carry the negotiations forward, the Prime Minister directed me and Shri Salman Khursheed to hold discussions with the representatives of Shri Anna Hazare. We did so. A meeting was held on 23 August, 2011, and it was clarified to Shri Anna Hazare's representatives that:

- Lokpal Bill is now before the Standing Committee. All options are open before the Standing Committee to consider not only the Bill introduced by the Government but the Jan Lokpal Bill as well as other versions sent by eminent members of Civil Society.
- In deference to the wish expressed by Annaji, the Government is prepared to request the Speaker Lok Sabha – since the Bill originated from there – to formally refer the Jan Lokpal Bill to the Standing Committee for its consideration along with everything else.
- About time and speed, the Government can formally request the Standing Committee to try, subject to its discretion, fast tracking their deliberations to the extent feasible.
- I explained to Annaji's representatives that Lokpal Bill alone cannot root out corruption. We need multi-layered laws to deal with corruption at various levels. In addition to the Lokpal Bill, we are willing to strengthen the Judicial Accountability Bill and the Whistle Blowers Bill. We are also working on a Grievance Redressal Bill to tackle corruption at local level.

I again asked Annaji's representatives to convey our earnest request to him to end the fast and give us the space required to proceed in the matter.

At this stage, Anna ji's representatives made the following demands, and I quote:

*"If the Government can agree to introduce Jan Lokpal Bill (after removing those items on which we have differences) after clearing by the Ministry of Law within four days and also provide a commitment that the Bill will not be referred to the Standing Committee and will be discussed and passed (with minor amendments adopted by Parliament) during this session of Parliament (even if it is extended), we can then hopefully persuade Annaji to stop this fast."*

(Above to be a written commitment with time lines). “Annaji’s representatives also insisted upon the inclusion of following substantive issues, as a part of the Jan Lokpal bill:

Public Grievances and Citizens’ Charter;  
Lokayukta; and  
the Lower bureaucracy.

At the conclusion of the meeting, Annaji’s representatives were informed, that the matter will be discussed with the Prime Minister. The same evening, discussions on this subject were held in CCPA meeting and it was decided to place it before the All Party Meeting scheduled for the next day.

At the conclusion of All Party Meeting held on 24 August 2011, the following unanimous resolution was passed:

*“This meeting of all political parties in Parliament requests Shri Anna Hazare to end his fast. The meeting was also of the view that due consideration should be given to the Jan Lokpal Bill so that the Final Draft of the Lokpal Bill provides for a strong and effective Lokpal which is supported by a broad national consensus.”*

In a late evening meeting held with Annaji’s representatives on 24 August 2011, I conveyed the inability of the Government to accept the conditions put forward by them on 23 August 2011 and as referred to by me earlier.

The Prime Minister made a statement in the other House on 25 August 2011 reiterating our Government’s commitment to the passage of a strong Lokpal Bill. The Prime Minister also stated that he would welcome the Members of the House to discuss the Lokpal Bill before the Standing Committee, the Jan Lokpal Bill as well as other draft Bills and views of members of civil society which have been brought to the attention of the Government. I believe that the entire House is committed to the eradication of corruption at all levels.

Our Government is committed, therefore, to bring an appropriate legislation as well as put in place mechanisms that will reduce discretion and bring transparency in the functioning of public offices as well as take strong measures against those who indulge in corruption. Apart from other issues, the three issues that we need to discuss are:

- (i) Whether the jurisdiction of the Lokpal should cover all employees of the Central Government?
- (ii) Whether it will be applicable through the institution of the Lokayukta in all States?

- (iii) Whether the Lokpal should have the power to punish all those who violate the 'grievance redressal mechanism' to be put in place?

The specific issues raised by Shri Anna Hazare are important. They deserve our serious consideration. In case a consensus emerges at the end of the discussions, the Standing Committee will, in the course of their deliberations, take into account their practicability, implement ability and constitutionality. For everything that we do, must be consistent with the principles enshrined in our Constitutional framework.

I believe that the Government has amply demonstrated that it is sensitive to the Shri Hazare's Movement; common man's concern about corruption. It has also requested Shri Anna Hazare ji to give up his fast by assuring him that all these issues raised by him will be discussed by the Standing Committee. In the House, when finalizing the Lokpal Bill.

I am sure that Members of this House will seize this moment and demonstrate the commitment of the House in dealing with corruption which is gnawing at the vitals of our polity.

**THE LEADER OF OPPOSITION (SHRI ARUN JAITLEY):** We have just heard a detailed statement from Finance Minister on the entire background of the negotiations. We have also just witnessed a great amount of enthusiasm to participate in this debate. On events arising out of Shri Anna Hazare's fast, this is third debate. The first one was on the day when Shri Anna Hazare was arrested by the Government. In the second debate we debated as to how to deal with this larger problem of corruption. The maturity of all of us and our democracy is on trial. A popular agitation across the country has sent to us a message that people of this country are no longer willing to accept the present *status quo* of corruption which in many areas has almost become a way of life. People in higher positions have a tendency to get away. We have also heard some not-so-complimentary statements made about Parliament and MPs. How we respond to them will be the best response of Indian democracy to all these statements which are made.

Today, we are only deciding the basic parameters of what should be the kind of Lokpal. We are also deciding about the areas which must come within its scope and which should be kept outside. Routine structures have not succeeded till date. We don't go for solutions which are not consistent with our constitutional scheme. Administrative Reforms Commission in 1966 had recommended the establishment of a Lokpal and Lokayuktas for the first time. Citizens' Charter or public grievances is not a new concept. Public grievances and the concept of Lokayukta in the States was also a

part of the 1968 Bill. It is not something which has now been taken out of the hat and suddenly we are confronted with it. 'Ombudsman' was a Scandinavian concept. Dr. L. M. Singhvi translated this word into Hindi as Lokpal. It is a coincidence that his very distinguished son, Dr. Abhishek Manu Singhvi, now has to prepare the final draft of this Bill. I am sure, he will keep in mind the great heritage. In fact, Dr. L. M. Singhvi had defined the term Lokpal or Lokayukta in such a way that the Indian model of Ombudsman for the redressal of public grievances. It is having the answer that what should be the duties of Lokpal. Lok Sabha had passed the Lokpal Bill in 1969 but because of the split in the Indian National Congress then, the Lok Sabha was dissolved and the Rajya Sabha could not pass this Bill. Otherwise, this country would have had a Lokpal way back in 1969-70. We must not legislate in haste. We worked on nine different drafts of this Bill since 1968. Democracy can not be so lethargic that it takes 42 years to really develop a consensus as to what a Bill should be. The time has now come when this concept of Lokpal at the Centre and Lokayukta in the States should become a hard reality.

We have to respond to each one of these questions which have been raised, not merely by the civil society but by the people at large today. There are two basic principles that we have to keep in mind when we legislate. In any developing and mature society, there will be a role for civil society. Some of them may take positions which may not be implementable. But then we must realize their role as flag-bearer on several issues. We have the option of agreeing or not to agreeing with them. Even when pressure groups build up pressures in the society, we must concede to them the right to build up pressures but not be provoked by them. We must legislate keeping in mind the basic principles and values of Indian society and our constitutional values. We must still keep all rationality in mind and legislate accordingly as far as these principles are concerned. I first come to the original six questions that he had raised. Should a single act provide for a Lokpal in the Centre and Lokayuktas in the States? The appointment of Lokayukta in States will not be made by the Centre. As far as the States are concerned that mechanism must be a State mechanism. What is a Lokpal or a Lokayukta supposed to do? When a complaint comes that some public servant has indulged in a misconduct. He has to examine the evidence. This requires assessment of evidence. Assessment of this evidence can be done by people who have a fair mind. Anybody whose appointment is brought in with a motive or anybody who is not well-versed in the art of assessing evidence, whose investigative or judicial or *quasi-judicial* abilities are a suspect will not be able to do that. We need higher standards of probity.



But while trying to achieve that, do we compromise with the federal structure? That is the conflict. I share this concern with the Finance Minister. One possible option is that you can legislate on areas where the Central Legislature has jurisdiction. Where you find that the Central Legislature has no jurisdiction, you have two options – either you leave that part to the States or under Article 252, with the consent of two States, the Central Legislature can bring an enabling law. Both options are available to you. The second question you have raised before the political parties was whether the Prime Minister should be brought within the purview of the Lokpal. We have heard sufficiently both the arguments. The Prime Minister must be kept out of the Lokpal purview because the Prime Minister will be only accountable to the Parliament and the Parliament is always entitled to remove the Prime Minister. Indian Penal Code and all other penal laws apply to the Prime Minister as much as they apply to any citizen of India. When you are creating a special procedural mechanism of a Lokpal, you want to suspend the operation of the substantive law, by saying that this procedure will not apply to the Prime Minister.

The Government's draft must be seriously reconsidered. I don't think that the world's largest democracy can afford an experimentation of this kind and therefore, a more rational approach on which a larger consensus is emerging today is that hold the Prime Minister within the purview of this law. Today it will be very difficult to sustain an argument that the Prime Minister must only be held responsible after he ceases to be the Prime Minister. I see that as a popular sense of the House there is a need to create a National Judicial Commission to deal with grievances and complaints and also to deal with matters of appointments. We have to bear in mind one basic principle that the executive must not interfere in the independence of Judiciary.

On the conduct of Members of Parliament, on the one hand there is need to check graft and corruption, on the other hand, you cannot interfere with the privacy of the House. There is no presumption that the House, when it comes to the probity in relation to the in-house conduct, does not take action. As far as any impropriety outside the House is concerned, surely, no Member of Parliament can claim any immunity under Article 105. Any Lokpal Bill must necessarily be compatible with Constitutional values. Our first object has to be that India must get a strong and effective Lokpal and the second is that the current political impasse must get over and Shri Anna Hazare should be requested to give up his fast.

The fact is that all employees and all public servants must be accountable. Now what will be that accountability mechanism? Various options are there. We have said that please bring them within the Lokpal.

As far as the option of Lokayukta institution in the States is concerned, I have already said that if you find that some areas are not within the domain of the Central Legislature, you can have an enabling law and leave the option with the States.

The last question is: Do we need a grievance redressal mechanism? We certainly do need a grievance redressal mechanism. I agree that state after state are making such law. Therefore, if Centre also consider on this, it would be a good administrative step. It will be a good step that every department of the Government has a charter. It is a step towards good governance and we must really come out with a procedure which is fair and which appears to be effective.

They want whistleblowers to be given protection under the Lokayukta or the Lokpal. I don't think there can be any difficulty in principle. There is a suggestion that the authority will be entitled to keep tapping phones of these people if it receives a complaint. This power should be exercised with great caution. I think there is considerable merit in including the entire bureaucracy and going ahead with establishment of Lokayukta in the States. There is also considerable merit in having a grievance charter or a mechanism as far as the country is concerned. I am sure that today would be a very important day for us when we show and display that sense of resilience and are able to resolve the issues which are confronting us.

**THE MINISTER OF STATE IN THE MINISTRY OF PLANNING, THE MINISTER OF STATE IN THE MINISTRY OF SCIENCE AND TECHNOLOGY AND THE MINISTER OF STATE IN THE MINISTRY OF EARTH SCIENCES (SHRI ASHWANI KUMAR):** This is indeed a historic day for more reason than one. This is also historic because we are eventually going to test the endurance of our Constitutional law. The genius of this House today is to find that middle ground where we will protect the first principle of our Republic. The issue is what are the processes that we adopt? Will those processes become precedents of the future? If so, will these be healthy precedents? Parliamentary democracy today stands as an integral component of the basic structure of the Constitution. Nobody disputes that the sovereignty of the people of India vests in their hands which they exercise after every five years. There is one issue on which there is complete unanimity. That issue is that law making is the exclusive domain of both the Houses of Parliament. The Leader of the Opposition has laid the foundation of further negotiations and consideration of the various aspects with a view to finding a common ground.

The federal structure has already been determined by the Supreme Court to be the part of the basic structure of the Constitution and it is completely inalienable. Therefore, as far as the integrity of our federal

system is concerned, no attempts should be made which would raise doubts about our intentions. Therefore, there is no doubt that we need Lokpal for the Central Government employees and we also need Lokayukta in the States. Here, I am eager to know as to who will legislate with respect to the employees of the State Government. My next point is concerned with the Prime Minister who is within the ambit of the Lokpal. We all know that the Prime Minister is the keystone of the Cabinet arch. We should not subject him to vexatious, frivolous and *mala fide* inquiries at a time when he might be exercising international treaty or when he might be busy in waging war to defend our borders. Besides, should the officers of the Prime Minister's office be prosecuted? We should reflect on what should be done with his office. The suggestion does not appeal to me at all that the Prime Minister can be excluded or included at any time. In such a situation, he will be disabled in his defence and this will be applicable to all the Prime Ministers. The House must consider this point. As far as the conduct of the Members of Parliament is concerned, it is wellknown that we have very effective mechanism under Constitution which has proved to be effective. I do not think that we should have a contrarian or supplementary legislative in the Lokpal Bill on this issue.

Articles 311 and 320(3) of the Constitution relate to the Central Government employees. We know that wild allegations can be made against the civil servants. They must have protection. We should ponder seriously whether the Lokpal Bill can effectively achieve its purpose. I have grave doubts about the functionality, efficacy and purpose of bringing almost every one under this regime. We must understand the limits of our own jurisdiction. Parliament is supreme in law making. But it is subject to the fetters of the basic doctrine imposed by the court in this respect. This power of Parliament is circumscribed by the parameters of the Constitution. I have a question how can a Lokpal, exercising judicial functions, have the authority to delegate powers to administrative subordinates? In respect of bringing the junior-most employees of the Government and also the high post of Prime Minister under the purview of the Lokpal Bill, we should ponder seriously. After deliberations in this House, the Standing Committee will look into the matter, and thereafter it will again come to this House. Thereafter, we can finalize it. As far as the Clause 8 of the Jan Lokpal Bill is concerned, how can Lokpal be an appointing authority and how can he be a disciplinary authority. I do not think that we should tinker with the integrity of the established structures. The provisions of the Jan Lokpal Bill and the official draft of the Lokpal Bill need to be reconsidered before its finalization. Legal principles and constitutionalism are intended to survive for centuries and to guide the succeeding generations. The Constitution is also the mode and way of life. It embodies the relationship of free citizens in a free State for the fulfillment of their fundamental needs. With this

conception, I appeal to the House to have strong and effective Lokpal. I am distressed about the plight on the Ramlila Maidan. Anna Hazareji is a crusader in the cause of corruption. It is a national cause.

**SHRI SATISH CHANDRA MISRA:** Bahujan Samaj Party's view is that corruption must be removed. Today we are talking about Jan Lokpal and Lokpal which is for Centre. So far as State is concerned, there is Lokayukta in existence. For Jan Lokpal and Lokpal we should not make such provisions which will be against the basic principles of the Constitution. There are various versions of Lokpal Bill coming before us. While setting up of Lokpal there should be representation of SC/ST/minorities and other backward classes. So that their interests can be protected. There is a provision in the Constitution for reservation in employment. Appointments are being made on contract basis to abolish this reservation. Reservation for these categories is not being implemented in the appointments for Judiciary. When atrocities are made on poor SC/ST people they take weapons in their hands. At that time you call them naxalites.

If we accept the provisions made in the version of Jan Lokpal Bill which is before us for discussion then it will be *ultra vires* of the Constitution. The Leader of Opposition had consultations with the persons who have prepared the Jan Lokpal Bill. They have also realized that there are several provisions in this Bill which can't be accepted. They have also agreed on Judiciary and other things. If that is so, then why is not there a third version or the last version of this Bill which should have come today. There should be a latest version of the Lokpal Bill before us and that may be forwarded to the Standing Committee. We feel that all employees should not be brought under Lokpal. The civil society people have agreed that there are so many discrepancies in their Bill. So, therefore, first let there be a Lokpal Bill for the Centre and then think about the other things.

So far as powers to punish those who violate the Grievances Redressal Mechanism is concerned, these should be with the Lokpal. This mechanism is already working in the state of Uttar Pradesh in the form of "Janhit Guarantee Kanoon". The persons who have drafted the Jan Lokpal Bill, should reconsider it and come out with a new version of the Bill. Then it should be sent to the Standing Committee, for clause-by-clause consideration. If the procedure laid down in the Constitution is not followed in passing the Bill, tomorrow it may be declared as *ultra vires*. The civil society people should also reconsider that they should not ignore SC/ST/minorities and other backward classes.

**SHRI SITARAM YECHURY:** Today we are discussing a serious issue. Shri Anna Hazare is on hunger strike for the 12th day. It demands us that

this august House rise to the occasion to seriously address this issue and to resolve the impasse that is there in the country today. Representatives of Team Anna came and met us. They made three points. But there are two issues that actually concern us here. One is the question of the Lokpal itself and second is the three conditions that they have put. Let us not divide our society in terms of civility and un-civility. We are all parts of civil society.

In 1968, late Shri Morarji Desai headed the Administrative Reforms Committee made the recommendation of the 'Lokpal' and the 'Lokayukta'. The first Bill was also brought in this regard. But this was lapsed because the Lok Sabha was dissolved. I would like to convey to the entire country that this august House and the Indian Parliament have consistently been advocating for a Lokpal.

The Left has been consistently supporting this Lokpal. Scam after scam is coming up and the entire political class is being blamed. Whenever these issues came up, the Parliament did not intervene. You have created this sort of feeling among people that Parliament is not serious. On the Jan Lokpal, I have around nine points to make. The selection process for the Lokpal has to be broad-based. Second, the Prime Minister has to be brought under the purview of the Lokpal with the required safeguards. Third, the definition of corruption will have to be widened. It is not only the acts of commission, but the acts of omission should also be brought into this ambit. As far as the Judiciary is concerned, National Judicial Commission should be established. As far the question of Members of Parliament inside the House is concerned, if there are charges of corruption inside the House, we are ready to discuss it. If necessary, we are willing to discuss provisions of Article 105. That Section can be strengthened.

Sixth Point relates to Lokayuktas at State level. A model Bill should be sent to the States for their consideration and let them institute the Lokayuktas. Lokayuktas has to be mandatory. That is the privilege of the State Legislatures. For the protection of whistle blowers, the existing Public Interest Disclosure Bill and Protection of Information Bill need to be strengthened and passed expeditiously. I come to the question of Citizens' Charter. There are Right to Service Act that have been passed by five States in our country already. In public domain, there is a Bill of 2011 called Electronic Services Delivery Bill. That already have a mechanism that you have proposed. There has to be some provision in the Lokpal Bill to take steps against corporate companies and business houses which indulge in corrupt practices. A reference to a separate law for Citizens' Charter and redressal of grievances can be made under the provisions of the Lokpal. Lower bureaucracy, at all levels, must be under the Lokpal. The

existing vigilance machinery can be brought under the supervision of the Lokpal. If that is not delivering, then the Lokpal can be approached. You cannot bring everybody under one institution. The State Government and the Legislative Assemblies can effect amendments on the basis of model Act formulated by the Centre but every State has to accept it.

As far as Government Servants are concerned, appeal can be made to Lokpal after denial of justice from vigilance mechanism. Legislation formulated by the Government can be incorporated as far as Citizens' Charter is concerned. These three issues are controversial ones. But these issues have to be implemented under the Constitution. The Supreme Court has given a verdict that Fundamental features of our Constitution can not be violated. We will have to convey this assurance to Shri Anna Hazare that all the three points that he has raised will be incorporated in the Lokpal within the framework of our Constitution. We should enact an effective Lokpal incorporating all good points and make a new law.

**SHRI SHIVANAND TIWARI:** This time Lokpal Bill will surely be passed. We waited for 65 years, not 42 years. We waited for normalcy. If somebody dies of hunger in this country, the Government does not worry about him. The Government did not anticipate that the issues raised by Anna Hazare had been agitating the public of this country. Why was Lokpal Bill not passed by now? Whether, corruption was not prevalent in this country earlier? Why was Lokpal not created then? Today abnormal situation is prevailing. It is said, what type of people have been elected to Parliament. The people of upper castes were dominating Parliament of this country from the year 1952 to 1977. The Parliamentary democracy has created ripples in our society.

There has been detailed discussion on the technical aspect of the Lokpal. I am of the belief that the present situation would have been quite different, had the Lokpal been established after getting the independence. Infact, the persons who have so far not apprehended, are preaching against the corruption honestly. Thus, we have to introspect ourselves.

I would like to caution now. There is another issue in the country which would create abnormal situation in the days to come. The issue is related with the prevalence of hunger and inequality in the country. Our about 46 per cent children are mal-nourished. Our farmers are committing suicides. You must eradicate poverty and abolish inequality. You cannot escape just by talking about inclusive growth.

I hail from Bihar. The State Government of Bihar had implemented the Right to Service Act and one could see its results within ten days of its implementation. The Chief Minister of Bihar had provided 20 per cent reservation to the most backward people in Panchayat. We had also set-up Commission for Mahadalit.

**SHRI TIRUCHI SIVA:** The Finance Minister had said that out of 70 issues, 64 issues were resolved with the Anna Hazare team and only 6 are still prevalent. The accusation against the Government that it is not accommodative is baseless. The view of the DMK party is that the Prime Minister could be brought under the purview of the Lokpal with adequate safeguards. There is no dispute about that.

As far as Judiciary is concerned, Judiciary has to be more accountable. I would suggest that the Judicial Standards and Accountability Bill, 2010 can be strengthened. By that way, Judiciary will also come under scrutiny. Whether lower bureaucracy could be brought under the Lokpal is still to be discussed. It cannot be resolved in one day within a small group. The Anna Hazare team emphasise that the Citizens' Charter must be implemented without fail.

Parliament is supreme. The Standing Committee is nothing more than a mini-Parliament. Government is for a strong Lokpal Bill. The public views have been taken cognizance of. Let them wait till the Standing Committee submits its recommendations. It is a procedure which we cannot change. We assure on behalf of the UPA that the Lokpal Bill which is going to be enacted in the Parliament will be the strongest.

**SHRI TARIQ ANWAR:** All of us have assembled here for a historical debate today. We should normalize the situation created after the Fast unto Death of Shri Anna Hazare. We all want that corruption must be eradicated and for achieving that we would make efforts to find out the measures.

The Government has said that if a group wants to present its views, it can do so. But, we cannot ignore the Parliamentary procedure and a decision cannot be taken in a hurry. All the Members have said that if we have to be a democracy, if we have to keep the democracy strong, then the supremacy of the Constitution is necessary. We will have to follow the path under the Constitution. We all believe that if we want to bring a Lokpal Bill, it will have to be sent to the Standing Committee. We have a procedure of the Standing Committee. A Bill is sent to the Standing Committee to ascertain the views of all the people. The Committee gives its suggestions after gathering all the information. Therefore, we cannot ignore the Standing Committee in any way. It is an important part of our system, our parliamentary system. Today, all the parties are almost in agreement that an effective Lokpal Bill should be brought through which we could check the corruption.

**SHRI BAISHNAB PARIDA:** This is a historic occasion in our Parliament democracy when the entire world is watching how we are going to curb

the menace of corruption and black money in the largest democracy of the world. The people of this country are aroused to fight corruption and black money in order to save hard earned independence, democracy and to eradicate poverty and unevenness in the society.

Our party supports the objectives and concerns of Shri Anna Hazare to curb the alarming growth of corruption and black money pervading all spheres of life. As per our party's view, the Prime Minister of India must be included under the purview of Lokpal, with exception to his functions related to internal security and public order. Judiciary should not be brought under the ambit of Lokpal. It will upset the basic structure of the Constitution and will go against the balance of power. As regards Members of Parliament, the conduct of Members inside Parliament should not be questioned by any external authority. My party welcomes the demand for framing Citizens' Charter and passing the Right to Service legislation to root out corruption at the grassroot level. As regards covering all the employees of the Central Government under the Lokpal, the Lokpal should have jurisdiction over all the Central Government employees and the State Lokayuktas should have jurisdiction over all State Government employees. We have a federal structure and the spirit of federalism should not be tampered with in any manner. It is essential that the State Lokayuktas are independent from the Centre. We want a strong and effective Lokpal and Lokayuktas to be formed to deal with serious problems confronting our country.

**SHRI SUKHENDU SEKHAR ROY, making his maiden speech, said:** We are seriously concerned on the issue of corruption. We definitely need an Ombudsman who will address the grievances of the citizens and force the Government to act within a definite timeframe but not an Ombudsman who acts as a super Government or a super Parliament or a super Judiciary. The proposed Lokpal should be within the framework of the Constitution. Any changes that are considered to be necessary to keep a balance between our Constitutional framework and the popular demand may be effected, but not under duress. Since the Prime Minister is the leader of the nation, the office of the Prime Minister should not come under the purview of Lokpal, while he is in office. Tomorrow, there will be a demand to bring the President also, and there will be no end of it. Democracy means the will of the people. The representatives of the people who have been voted to power, their role cannot be negated.

Don't make Lokpal super Parliament, super Government and super Judiciary. This Lokpal is designed as a body in which police and courts are rolled into one. This is contradictory. It is not possible. Independence of Judiciary and independence of judicial review cannot be curtailed. Lokpal



is required but it should be within the scope of our Constitution. What will you do if the Lokpal become corrupt? Unless we come out of our greed no Lokpal can change the scenario. Whether the jurisdiction of the Lokpal should cover all the employees of the Central Government? Whatever amendment Parliament wants to do, that should be done within the framework of the Constitution. Lokayukta is a State institution. It should be enacted by the State legislatures only to maintain our federal structure. We have to see whether the Lokpal should have the power to punish all those who violate the Grievance Redressal Mechanism.

**PROF. RAM GOPAL YADAV:** Constitution of India is the best constitution in the world. There are some sections in the Jan Lokpal which would increase the corruption. In these sections there is a provision of property seizure, preventive detention, suspension and removal. There are so many sections in this Lokpal to which our party is not agreed. In this Bill, it has been mentioned about the Member of Parliament that whatever speech they would make in the House or vote it would be in the purview of Lokpal. It is the clear violation of Section 105(2) of the Indian Constitution. In the present situation it has been necessary that in the institution of Lokpal Bill there would be 11 Members and the representation of minorities, SCs, STs and OBCs should be there. Otherwise, nobody can stop the exploitation of people of this category. Parliament represent the collective will of the country. Don't commit another mistake in haste to correct your previous mistake. Don't take any decision under any pressure. The entire House unanimously made an appeal to Anna Hazare that Jan Lokpal Bill would be considered seriously and weightage would be given to it, you break your fast but he is adamant. It should not be happened.

NGOs should be included in this, whether they received any assistance from Government or not. Management of Medical College, Engineering College and Management College should be included in this. Electronic and Print Media and all the corporate houses should also be included in the purview of Lokpal. We have no objection on Citizens' Charter. Accept their valid demands and formulate a new strong Lokpal Bill. To raise public problems and interests of State and to participate in the process of making Bill and Law is our duty. We can't transfer or appoint anybody and we can't give license and quota permit to anybody. When we don't have any executive power then why should we be kept in the purview of Lokpal? We oppose this and it should be corrected.

**SHRI D. RAJA:** Our country has been passing through a very turbulent period in its political life and we all, collectively, will have to address certain basic issues. India, which started as a welfare state, has gradually, been emerging as a neoliberal state. We find enormous growth of corporate

houses. Corporate houses dictate the policies of the Government and are also influencing and manipulating them and resorting to all corrupt practices. It is the entire nation's cause to fight corruption.

An all-party meeting was held on 24 August, 2011 in which unanimously we made an appeal to Mr. Anna Hazare to end his fast and we said, that the present Bill is very weak and inadequate; we need a strong Lokpal and the Government will have to work on a strong Lokpal. In the new Bill, the Government can take inputs from various quarters. The Prime Minister, can also be brought within the ambit of Lokpal. What is wrong in it? Judicial Accountability is a must today and we need a corruption-free independent Judiciary.

With regard to Lokayuktas, we are federal country and we function on the basis of federal principles and one should not think of imposing certain things on States. In composition of the Lokpal, I think it has to reflect the social inclusiveness there and it has to have representation from SCs/STs, backward classes, women and minorities. Only then, people will have some confidence in the institution of Lokpal. People will look at it as an institution which can deliver fair justice to every section of the society. I think, diversion of funds is also corruption.

The Government can negotiate directly with Shri Anna Hazare on the three questions raised by Shri Anna Hazare and his team. We claim that Standing Committees are mini-Parliaments but the Standing Committees' opinions are just recommendatory. We need to discuss the question of functioning of Standing Committees also. How does our law function in our country? We will have to keep this in mind. In India, it is a kind of anarchy that is emerging and such a situation is very bad and political parties will have to apply their minds together in order to overcome this crisis. We should carry on this fight against corruption.

**SHRI PAUL MANOJ PANDIAN:** In the backdrop of 2G scam and the various scams which were detected very recently, it has now become the need of the hour to discuss about a Bill like the Lokpal Bill. Regarding the establishment of an organisation like the Lokpal, we have to see how it has to be in consonance with the legal provisions of various Acts, and mostly, with the provisions of the Constitution. In the proposed Bill, it says that matters pending before any Court, Committee or authority for inquiry before Lokpal are not to be affected.

Can there be two simultaneous prosecutions? It is the violation of Constitution under Article 20. It has to be taken note of by the Standing Committee. The AIADMK is of the firm view that the Prime Minister should be out of the purview of the Lokpal. My view is that the Prime Minister

who is under the purview of the Prevention of Corruption Act, need not be brought under the purview of the Lokpal. Appointment of Lokayukta is a State subject, so it must be left to the State. Inclusion of lower bureaucracy within the purview of Lokpal, would only be counter productive. Does the Bill give the powers to remand before the Lokpal? This lacuna with regard to the arrest has to be addressed. If a complaint is given by the Lokpal, it has to be through the Director of Prosecution. There is no mention about the Central Vigilance Commission in the proposed Lokpal Bill. Standing Committee must take note of the fact that for initiating any criminal action against a Judge, permission of the Chief Justice is necessary. We cannot pass a Bill which is struck down as unconstitutional. Therefore, I appeal to this august House to take note of all legal issues while framing this comprehensive Bill with regard to the Lokpal.

**SHRIMATI SHOBHANA BHARTIA:** I think that there is a National Consensus against corruption. The need of the hour is that Parliament bring in a strong Bill to tackle this menace. I have no hesitation in saying that we need to weed out corruption at each and every level. I am sure that the constitution of a strong Lokpal with proper safeguards will be a beginning in the right direction. I think the office of the Prime Minister needs to be brought under the ambit of Lokpal. Keeping the Prime Minister out may send a wrong signal. I think the areas of National Security, foreign policy and defence need to be kept firmly out of the purview of any investigation by the Lokpal. As far as Judiciary is concerned, it should not be under the Lokpal. I think, we should move towards a National Judicial Commission. I think while the higher bureaucracy should be kept under the ambit of the Lokpal, the lower bureaucracy should be overseen by the CVC.

As far as Citizens' Charter is concerned, inefficient delivery of services can be because of corruption but may not necessarily be only because of corruption. I believe that there should be a separate legislation which should take care of inefficient delivery of services and this should not form part of the current proposed draft Lokpal Bill. As far as CBI is concerned, I certainly believe that the CBI should be made independent. If we want to have credibility in the actions, our investigative agencies must be independent. We believe in the principle that there should be a strong Lokpal at the Centre and Lokayukta at the State. We should discuss and debate every clause of Lokpal Bill and make sure that the new Lokpal Bill that will come out of the Standing Committee is a Bill that will serve us for centuries to come.

**SHRI BIRENDRA PRASAD BAISHYA:** Public opinion is in favour of having the strongest Lokpal. My party, Asom Gana Parishad is supporting the movement led by Annaji and his Jan Lokpal Bill. Asom Gana Parishad is

also in favour of having a strong Lokpal in the Centre and a strong Lokayukta in the State. My party is in favour of having a Judicial Commission. Our opinion is that all corruption-related issues of Members of Parliament should be brought under the purview of the Lokpal. As regards Public Grievances and Citizens' Charter, we are in favour of this demand. We also support this demand that the lower bureaucracy should also be brought under the purview of the Lokpal.

**SHRI SHANTA KUMAR:** Today poverty, hunger, rise in prices and injustice are on rise in our country and the main reason behind it, is corruption. Crimes take place due to economic imbalance and corruption. These are the causes for growing naxalism. People are losing faith in political system. We have to restore this faith of the people.

The Government took six years to ratify the treaty signed between UNO and 192 countries in regard to black money deposited in foreign banks. Today people of the country are out on the street. Anna Hazare has done a historical work. This is a different situation. I urge upon him to break his fast. Our credibility in the society is being eroded. We have to restore it by passing this Lokpal Bill.

**SHRI SATYAVRAT CHATURVEDI:** To check corruption, strong law is needed. The Constitution of India is supreme and the Parliament of the country is a highest body to make law. To establish crime-free, corruption-free, injustice-free and caste-free society is our ideal. Whether the Lokpal Bill of the Government is correct or the Jan Lokpal Bill designed by Team Anna is correct, this is controversial. I respect the constitutional rights of Anna Hazare. But our Constitution does not allow anyone to violate the basic principles established by it. All the six controversial issues must be debated. But we should not make a law in haste or under pressure. The Prime Minister is the Chief Executive of the country. I don't say that the Prime Minister should be kept beyond any control. The Prime Minister is already under control of the Constitution, the Parliament and the anti-corruption law. A law must be framed for Judiciary. If the Members of Parliament are brought under the purview of the Lokpal, I don't have any objection. As we made a central model law in regard to Panchayati Raj and handed over to States, we must do something in the same manner. We would have to amend the Article 311 of the Constitution to bring lower bureaucracy in its purview, but the political environment is not favourable. Secondly, its procedure takes too much time. We have to make coordination. Our last motto is to have an effective law.

**SHRI MOHAMMED ADEEB:** Today, third debate is being held on this issue. I don't understand why this debate is being held. Shri Annaji has been told to break his fast, but he is stubborn. The prestige of the

Parliament is being mocked at. It is said that Prime Minister will be included in this Bill. How will he run the Government? The issue is not of corruption, some other conspiracy is behind this agitation. It is said that they are social people. Somebody has become social activist and he will run the country. The Members of Parliament have been ridiculed. I want to say that all the three issues have been debated. How will infrastructure be developed for Lokayukta? Annaji should leave his stubbornness. Today you will pass a Resolution and thereafter if he does not agree, what will happen? I will request this House that those people who defamed the Parliament, should be told that you have got no right to defame the Parliament. The vigilance department should be made more stringent. Black money of crores of rupees is generated daily. Whether Lokpal can stop this? This country progressed, money started increasing and people's character started deteriorating. Strict action should be taken against those people who have violated traffic rules.

**SHRI M.V. MYSURA REDDY:** With the acquaintance of Anna Hazare group, I had also introduced the Jan Lokpal Bill in this very House. I appeal Shri Anna Hazare, to end his fast. The Prime Minister should also be brought within the purview of the Lokpal with limited safeguards. Our party feels that there should not be any majority for the Government in the selection process of Lokpal. Our party is in conformity with the Judicial Commission and also the Judicial Accountability Bill. There is no need that the conduct of Members within the House is brought under the purview of the Lokpal. The Lokpal Bill, with an enabling provision, can become a model Bill which States can adopt. If a public servant is guilty of an allegation, the Lokpal and Lokayukta can report to the appropriate Government. The Government concerned can impose such punishments as prescribed by laws and the Action Taken Report can be sent to the Lokpal/ Lokayukta. If the Government wants to bring Redressal Bill, there should be an enabling provision for the States to adopt such type of Citizens' Charter and redressal mechanism. Our party is of the opinion that Lokpal alone cannot root out corruption. The other legislations can also be brought in simultaneously. The corporate sector can also be brought within the ambit of Lokpal.

**DR. BHARATKUMAR RAUT:** I appeal Hon'ble Anna Hazare to withdraw his fast immediately. We support a strong Lokpal Bill, which will remain within the framework of the Constitution. We also support the demand to bring the lower bureaucracy under the purview of Lokpal. We also support uniform Lokayukta laws at the State level. All babus should come under that. There should be a provision in the Bill, by which the Parliament should be able to impeach a guilty Lokpal. There should be a special desk under the Chief Justice of India where common man's complaint against

Lokpal or Lokayukta can be lodged. There should be a time frame for investigating into a complaint filed by a citizen. Poor man should be provided financial assistance for legal battle.

The CBI and the Judiciary should also be kept out of the purview of the Lokpal Bill. But, there should be a separate mechanism on the lines of CVC to control the CBI and the Judiciary. I think that the National Judicial Commission or something like that should be there. This Bill should not be passed in a hurry. It should not be passed under any pressure. We should have a positive discussion. We can have a separate special Session for a week, after the Monsoon Session or before the Winter Session to pass only the Lokpal Bill. The Government should pass a resolution so that we can honestly appeal to Shri Anna Hazare to withdraw his hunger strike.

**SHRI RAVI SHANKAR PRASAD:** Parliament is the sentry of democracy. It is the biggest Panchayat of the country. Here we have freedom of expression. The voice of Parliament was gagged only in 1975-76 and its outcome was very bad. Now, we should accept what Shri Anna Hazareji is doing on the Ramlila Maidan. We have committed some mistakes on account of which the nation puts question to us. A lot of money is deposited in the foreign banks and there is the short of sugar, vegetables and many such things in the country. Now, this is the high time that we should improve ourselves. Lakhs of youths have made demonstration in Mumbai. We should realize the agony of their heart. I think that the Prime Minister should be included in the Lokpal Bill. The country respects the post of Prime Minister. He will never be implicated falsely. When a poor man goes to take old-age pension, income tax certificate or domicile certificate, he suffers much hardship. Therefore, all categories of employees should be included in it. We should honour the Citizens' Charter. I fully support the three demands made on the part of Annaji. Today, the country has awakened. As representatives of the people, we should feel the pain of those who are wandering, wearing the Anna's cap. I also appeal to the media to discontinue 'paid news'. Media has really played an important role to expose corruption in the country. As a sentry of democracy, the media should strengthen its freedom. Though the NGOs have done very hard work, corruption is also prevalent therein. As they get a lot of fund from India and abroad, they should be made accountable. The same is the plight of the corporate sector. Many persons of the corporate sector are now in prison. Today, the dignity of politicians has declined. We have to restore that dignity. I want to tell the supporters of Annaji that the country will run by means of democracy.

**DR. PRABHA THAKUR:** We are all aware of the fact that Annaji is a patriot and his intention is noble. He is well known as a social worker.

He is a simple and noble person. But, I have doubts in respect of his team. The persons belonging to his team are misleading the entire country saying that they are the members of a civil society. I want to know to which civil society they belong. Are they the representatives of people elected from that civil society? By making such statements, they are insulting Parliament and the people who have elected us as their representatives. They are saying that the official bill will not be accepted. Then, which regime are they talking about, under which the laws will be passed? I want to know from the team of Anna from which source they are meeting the expenses for feeding people who are living in the tents. Misleading statements have perturbed us. Anarchy is prevalent in Delhi and children are unable to go to their schools. They call Members of Parliament thieves and plunderers. I ask Kejriwal Saheb why he does not accompany Annaji in his fast. There is no difference in Lokpal Bill and Jan Lokpal Bill. The words 'Jan' and 'Lok' means the same thing. Why was there resentment when Rahul Gandhiji was speaking here as a Member of Parliament?

My submission is that by merely setting up the Lokpal would not curb the corruption. Who would become the Lokpal? On what ground they would repose faith in Lokpal when they do not have confidence in the Judiciary, Prime Minister and Parliament? Nobody can cast aspersions on the integrity of the Prime Minister. As Parliament, Judiciary, Bureaucracy and Media being four pillars of the democracy, the reasons for excluding Media from it. They should include all the four pillars in it.

**SHRI RAM VILAS PASWAN:** I am unable to understand the main objective of the present fasting of Shri Anna Hazare. Does not the death of a poor person from hunger come under corruption? Do not the atrocities committed on the people belonging to the Scheduled Caste and backward class come under corruption? The maximum representation of the people belonging to the under privileged sections, other backward class and minority community is in the third class and fourth class services. Now a conspiracy is being hatched to bring them under the ambit of the Lokpal. There is Legislature only where a very large number of people belonging to the under privileged sections, Adivasis, other backward class and minority community is getting representation. I would also like to state that some persons sitting over there are shouting slogans against the reservation. According to the Lokpal Bill there will be no representation of Members of Parliament in the Selection Committee of the Lokpal. There will be no member from Scheduled Caste, Scheduled Tribe, other backward class and minority community in it. These people are by-passing Parliament. I am also of the belief that Prime Minister should be excluded from the purview of the Lokpal. The entire agitation is against the Scheduled Caste and the backward class. When we have 50 percent reservation for Scheduled Caste, Scheduled

Tribe and other backward class, I, therefore, demand that women and people belonging to the minority communities should also be included in it.

**SHRI JESUDASU SEELAM:** We have been discussing the importance of a strong and a very well thought over institution to weed out corruption from this country. It is not that there are no systems in place to curb the corruption. Because of its ineffectiveness, I think, we have to seriously determine to bring a strong Lokpal. We discussed this issue. We have given it the shape of a Bill called Samajik Nyay Lokpal Bill. We would request that this Bill should also be considered along with the other Bills. It is basically touching three-four issues. The Government's Bill is silent on definition. But the Jan Lokpal Bill does mention some sort of a definition. We would like to further expand the definition to include various kinds of denials. I would like to emphasize that discrimination is also a form of corruption. We also would like to urge the Standing Committee through you that the definition scope should also be enhanced to cover the corporate malpractices and malpractices of media. We are also concerned with the qualification part. Yesterday, my leader mentioned in the other House that they should give a Constitutional status to this institution. Appropriate action should be taken to make it a constitutional body. Apart from the qualifications of judicial members, disqualification or appointment of Chairpersons and other members, age limit was nowhere mentioned in the three versions of the Bill. I suggest that it should be around 60. There should be proportional representation to the Scheduled Castes, the Scheduled Tribes, OBCs and the minorities in the composition of the Committee. We should have a strong redressal of citizens' grievances mechanism at the District level. Each Department should notify the redressal officer. We should have reforms not only in the distribution of natural resources but we should also bring about reforms in the other sectors. I hope you are not going to bring the Office of the Prime Minister under the ambit of the Lokpal. In case for some reasons, you want to bring him, bring him with some safeguards. We want a strong system of electoral reforms. We must address the roots of corruption only then the Lokpal can function effectively.

**SHRI NARESH GUJRAL:** As responsible parliamentarians, it is our duty to live up to our people's expectations and to enact effective laws with the Constitutional framework. People are expecting instant relief. Let us ensure that they are not disappointed. My party Shiromani Akali Dal believes that the Bill will improve the governance and accountability which unfortunately has taken a back seat in recent years. We will now go with the sense of the House, provided the Prime Minister is included for acts other than relating to the national security and public order. We feel that the Judiciary should be kept outside the purview of the Lokpal by creating



a National Judicial Commission. Misconduct of the Members outside the House could come under the purview of the Lokpal. Inclusion of the lower bureaucracy within the Lokpal's ambit is not a matter of objection. We must ensure that the Lokpal is strengthened. Regional parties are apprehensive that the office of the Lokayuktas may be misused to destabilize Opposition Governments in the States. We fully support the Citizens' Charter. We have recently enacted the Punjab Right to Service Act, 2011. Herein, we shortlisted 67 basic services relating to various public dealings. What we need today is a total systemic revamp. We can only succeed in this endeavour if we reduce the discretionary powers, at all levels.

**SHRI RAM KRIPAL YADAV:** Today, Annaji's agitation is being discussed in the whole country. I agree that corruption is a major problem. I also agree that Annaji's thinking is very good. But the manner in which Annaji's team wants to act, I believe that, somewhere, the democratic system of the country is being hit. This team is misguiding Annaji to achieve the success. This is, definitely, not a good omen for the democratic system. If somebody says that we do not believe in Parliament, the Standing Committee, then what will happen to the democratic system of this country? We all are concerned that a strong Lokpal Bill should be brought so that the corruption could be controlled. Several members have said that voluntary organizations should not be covered under the Lokpal Bill. Today all the works related to the health, education and social welfare are being carried out through the NGOs. Whether there will not be any control on them? Similarly, why there should not be any control on the corporate sector? Whether they are not involved in corruption? Today, after gathering a few people, it is being tried to overpower the Parliament and the Government. If you want the laws to be enacted as per your will, then you should come to the Parliament. If you want to enact the law using the force and by ignoring the Parliament, the Standing Committee, the democratic system, it is not correct.

**PROF. SAIF-UD-DIN SOZ:** I saw a situation, after a long time, in this august House, that hon. Pranab Mukherjee and hon. Arun Jaitley both were lustily cheered by the whole House. It was a heartening situation, and I hope, after sometime, we shall reach a consensus. We showed that when it is needed, we are together. One of the Annaji's supporters said that we should look to Tripoli to see the strength of the people's power. It was, wholly, unacceptable to me. India has not wasted 64 years of independence and our achievements are reflection of that. Now you can see to what extent they can go denigrating Parliament, refusing to accept the fact that both these Houses were chosen as representatives of the crores of people of this country. There was a feeling in my mind that things were going the wrong way in this Andolan. Such people have,

through their speeches and statements, denigrated Parliament. They have refused to believe that we are a vibrant democracy, we have a strong secular base and we serve as a model of democracy and pluralism to the world. We must have a strong Lokpal, but we must keep the federal structure of the Constitution in mind. And as far as the Lokayukta is concerned, it must be left to the State Legislature. We are a federation of States, we must show respect to our States, and State Legislatures. Then, we must have an institution, a mechanism for redressal of the grievances. We must have a Judicial Commission. Justice Khare and Justice Verma lamented the fact that they didn't have any mechanism in the Judiciary to punish erring Judges. We have to take steps in this direction. This togetherness of the house is exemplary. This is historic movement. Anna ji has created awareness. He should now leave it to Parliament. I am fully confident that Parliament will do its duty to the nation.

**THE MINISTER OF FINANCE (SHRI PRANAB MUKHERJEE), replying to the discussion, said:** I would like to express my deep appreciation for all the 26 members who have made their contribution in this important historic discussion as described by the leader of opposition. In my introductory observations, I did not discuss the merits and demerits of Lokpal bill. I particularly concentrated on the event of Anna ji's fast and government's response thereto since April 5th of this year. And, this time we made an exception because the situation is grave. For the 40 years the debate is going on that what should be the structure of Lokpal. I am not passing any blame to anybody for this long period of 42 years.

Therefore, an agitation is taking place by a Gandhian and receiving massive support from the people on the issue of constitution of Lokpal. Unfortunately, despite our efforts and nine meetings with civil society, we could not have 100 percent agreement. Out of 40 basic principles, we had agreement on 34 issues and all those have been incorporated in the Lokpal Bill which is under consideration with the Standing Committee. Criticism has been made that it is a weak Bill. It does not reflect the desire of political parties. The member of political parties represented in the Parliamentary Standing Committee can move amendments to strengthen the Bill. There is no reason that the Bill be withdrawn. What is the justification of this demand? What is the logic of burning the copies of the Bill in Public? In democracy, there will be disagreements.

Do we seriously believe that with the passage of Bill all corruption will be eradicated? One piece of legislation may be complete or fool-proof. But my respectful submission is that many more efforts have to be made. Many of you have made good suggestions. Question of independence of Lokpal

has arisen. Yes, we have provided full independence. We are attempting to change the system. We have introduced taking the advantage of modern technology as we have done in case of e-filing of income tax returns. We are going to have various social sector programmes. In couple of years, we are going to provide identity number to each and every resident of the country. If you look at from 1991 onwards, between our government and their government, you will find how much they have reduced the discretionary powers of Ministers. Today, there are regulators and these regulators are empowered with statutory powers. And I must appreciate that NDA government had also followed it. We are trying to address the problem. But sometimes, we cannot go beyond a point. Legislation is domain of legislature and Parliament. Suggestions and recommendations can be given but these are required to be approved by the Parliament in case of central laws. We have tried our best to arrive a national consensus to tackle the problem and to avoid the so called apparent conflict between civil society and political establishment. If we want to get back the confidence of people then we shall have to ensure that these premier institutions function as per the rules. We are in the unique position that we regulate our own functioning. If we do that, I think, many of the issues will be corrected automatically.

Taking the sense of the observations, I would like to place for consideration of the House that the House discussed various issues relating to setting up of a strong and effective Lokpal. This House agrees, in principal, on Citizens' Charter, lower bureaucracy to be under the Lokpal through appropriate mechanism and establishment of Lokayuktas in the States and further resolves to transmit the proceedings of this House of today to Department-related Parliamentary Standing Committee for its perusal while formulating its recommendations on the Lokpal Bill which is under their consideration. We request Shri Anna Hazare to end his fast and let there be no so-called conflict between the civil society and Parliament.

*Discussion concluded.*

## **Annexure-III**

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**Report of the Department-Related Parliamentary  
Standing Committee on Personnel, Public  
Grievances, Law and Justice on  
The Lokpal Bill, 2011**

**(Presented to the Rajya Sabha on 9 December 2011)**

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PARLIAMENT OF INDIA  
RAJYA SABHA

DEPARTMENT-RELATED PARLIAMENTARY STANDING  
COMMITTEE ON PERSONNEL, PUBLIC GRIEVANCES,  
LAW AND JUSTICE

FORTY EIGHTH REPORT  
ON  
THE LOKPAL BILL, 2011

(PRESENTED TO THE RAJYA SABHA ON 9th DECEMBER, 2011)  
(LAID ON THE TABLE OF THE LOK SABHA ON 9th DECEMBER, 2011)



RAJYA SABHA SECRETARIAT  
NEW DELHI

DECEMBER, 2011/AGRAHAYANA, 1933 (SAKA)



COMPOSITION OF THE COMMITTEE  
(31<sup>st</sup> August, 2010 – 30<sup>th</sup> August, 2011)

- \*1. Dr. Abhishek Manu Singhvi – *Chairman*

**RAJYA SABHA**

2. Shri Balavant *alias* Bal Apte
3. Shri Ram Jethmalani
4. Shri Parimal Nathwani
5. Shri Amar Singh
6. Shri Ram Vilas Paswan
7. Shri O.T. Lepcha
- ^8. Vacant
- @9. Vacant
- &10. Vacant

**LOK SABHA**

11. Shri N.S.V. Chitthan
12. Shrimati Deepa Dasmunsi
13. Shrimati Jyoti Dhurve
14. Shri D.B. Chandre Gowda
15. Dr. Monazir Hassan
16. Shri Shailendra Kumar
17. Shrimati Chandresh Kumari
18. Dr. Kirodi Lal Meena
19. Ms. Meenakshi Natarajan
20. Shri Devji M. Patel
21. Shri Harin Pathak
22. Shri Lalu Prasad
23. Shri S. Semmalai

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\* Nominated as Chairman of the Committee w.e.f. 26<sup>th</sup> July, 2011

^ Due to passing away of Shri M. Rajasekara Murthy w.e.f. 7<sup>th</sup> December, 2010

@ Due to induction of Shrimati Jayanthi Natarajan in the Council of Ministers w.e.f. 12<sup>th</sup> July, 2011

& Due to retirement of Shri Shantaram Naik w.e.f. 28<sup>th</sup> July, 2011



- 24. Shri Vijay Bahadur Singh
- 25. Dr. Prabha Kishor Taviad
- 26. Shri Manish Tewari
- 27. Shri R. Thamaraiselvan
- 28. Adv. P.T. Thomas (Idukki)
- #29. Vacant
- \$30. Vacant
- %31. Vacant

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# Due to resignation of Shri Arjun Munda from Lok Sabha w.e.f. 26<sup>th</sup> February, 2011

\$ Due to passing away of Shri Bhajan Lal w.e.f. 3<sup>rd</sup> June, 2011

% Existing since the constitution of the Committee on 31<sup>st</sup> August, 2010

COMPOSITION OF THE COMMITTEE  
(Constituted on 31 August 2011)

1. Dr. Abhishek Manu Singhvi – *Chairman*

**RAJYA SABHA**

2. Shri Shantaram Laxman Naik
3. Dr. Bhalchandra Munekar
4. Shri Balavant *alias* Bal Apte
5. Shri Ram Jethmalani
6. Shri Sukhendu Sekhar Roy
7. Shri Ram Vilas Paswan
8. Shri O.T. Lepcha
9. Shri Parimal Nathwani
10. Shri Amar Singh

**LOK SABHA**

11. Shri Kirti Azad
12. Shri N.S.V. Chitthan
13. Shrimati Deepa Dasmunsi
14. Shri D.B. Chandre Gowda
15. Shri Shailendra Kumar
16. Shrimati Chandresh Kumari
17. Shri Prasanta Kumar Majumdar
18. Shri Arjun Ram Meghwal
19. Shri Pinaki Misra
20. Kumari Meenakshi Natarajan
21. Shri Harin Pathak
22. Shri Lalu Prasad
23. Adv. A. Sampath
24. Shri S. Semmalai
25. Shri Vijay Bahadur Singh
26. Dr. Prabha Kishor Taviad

27. Shri Manish Tewari
28. Adv. P.T. Thomas (Idukki)
29. Shri Arun Subhash Chandra Yadav
30. Shri Madhusudan Yadav
- \*31. Vacant

#### SECRETARIAT

- |                               |   |                           |
|-------------------------------|---|---------------------------|
| 1. Shri Deepak Goyal          | — | <i>Joint Secretary</i>    |
| 2. Shri K.P. Singh            | — | <i>Director</i>           |
| 3. Shri K.N. Earendra Kumar   | — | <i>Joint Director</i>     |
| 4. Shrimati Niangkhanem Guite | — | <i>Assistant Director</i> |
| 5. Shrimati Catherine John L. | — | <i>Committee Officer</i>  |

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\* Existing since the constitution of the Committee on 31<sup>st</sup> August, 2011

## PREFACE BY CHAIRMAN

I consider it a singular privilege and a great pleasure to present the Forty-Eighth Report of this Committee on the Lokpal Bill, 2011.

It is ironical and even somewhat paradoxical, that corruption, an issue as old as mankind\* can generate so much contemporary debate, ignite large volumes of both light and heat. The fact that corruption, which has spread like a virulent epidemic in the very genetic code of society, has been brought to the forefront of our collective consciousness in recent times, is both a compliment to all those who have crusaded for strong anti-corruption measures as also a reflection of the public's growing angst, revulsion and disgust at the proportions acquired by this disease.

But no one can afford to, and no one should, ignore the basic truth that no magic wand or special button has been conceived or invented, the activation of which can eliminate or even significantly reduce this scourge within a short time. Nor can anyone be oblivious to the reality that corruption can suffer significant and tangible reduction only by a holistic and multi-pronged approach and that no single initiative in this regard can be even significantly, much less conclusively, efficacious. To ignore the fact that the Lokpal Bill operates only within the limited zone of *ex-post facto*, punitive or deterrent measures would be to ignore reality itself. Such punitive measures cannot be a substitute for other significant prophylactic initiatives. Corruption flourishes in the interstices of structures, mechanisms, rules, regulations and practices, which not only facilitate it but promote its multiplication like an uncontrollable hydra headed monster. It is those facilitative structures and practices which have to be attacked, if punitive and deterrent measures like the Lokpal Bill are to have any lasting impact. In a nutshell, law has to seek not only to make corruption painful and hurtful after the event, but to make corruption unnecessary, undesirable and difficult to embark upon at the inception. Indeed many of such prophylactic measures do not need legal changes but intelligent, calibrated and targeted policy changes.

Similarly, even within the punitive and deterrent zone where the Lokpal initiative largely operates, support structures, ancillary provisions and

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\* In fact, Kautilya in Arthashastra, has given a detailed list, referring to not less than forty ways of embezzlement that the treasury officers in his time were used to practice. The most common of them were *pratibandha* or obstruction, *prayoga* or loan, *vyavahara* or trading, *avastara* or fabrication of accounts, *pariahapana* or causing less revenue and thereby affecting the treasury, *upabhoga* or embezzling funds for self enjoyment and *apahara* or defalcation

related initiatives are as much, if not more important, than the Lokpal itself. Some are discussed in Chapter 15. Many other vital ones, like initiatives necessary in respect of reducing black money (both domestic and foreign), alteration of rules and practices in the realm of realty transactions, elimination of discretionary powers department-wise, focusing upon and targeting state largesse in areas like mines, contracts and so on and so forth, are not the subject matter of this Report and hence not discussed here. In the ultimate analysis, it is only a synergical and cumulative aggregation of these diverse legal and policy initiatives which can effectively attack and reduce this malignant disease.

Though there are many creative initiatives and “firsts” in this Report, it is not possible to exhaustively list them. They include a specific recommendation to categorically have a statutory provision imparting genuine independence to the CBI by declaring, for the first time, that it shall not be subject, on the merits of any investigation, to either the administrative Ministry or the Lokpal. Secondly, it separates, for the first time, investigation from prosecution, thereby strengthening each and making each more professional and objective, apart from initiating for the first time, the creation of a premier prosecution department under the Lokpal. Thirdly, the Selection Committee, for the first time, includes a joint nominee of the three major constitutional post holders. Fourthly, Lokayuktas and the Lokpal are, for the first time, sought to be subsumed under a common enactment. Fifthly, Constitutional status is sought to be conferred, again for the first time, not only upon the Lokpal institution but also upon the proposed Grievances Redressal body. Sixthly, the Report recommends abolition of all sanctions, by whatever name called. Finally, the CVC is, for the first time, made responsible for the large chunk of class C employees, with a supra added reporting requirement to the Lokpal.

The journey of this Committee has been most exciting and enjoyable, irrespective of the destination, as reflected in the sense of the Committee in this Report or the dissents or the eventual outcome in Parliament. The Committee held fifteen meetings over less than two and a half months between the real commencement of its proceedings on September 23, 2011 and the submission of the actual report in the second week of December, 2011. In individual terms, it interacted with 140 witnesses and its deliberations spanned approximately 40 hours.

Given the contemporary context in which this Bill was referred to the Committee, as also the diverse and extremely large canvas involved, there is an understandable sense of satisfaction in having expeditiously reached the stage of submitting the Committee’s report. On an issue like this, which inevitably involves a somewhat uneasy melting pot of law,

technicalities, the scrutiny of the nation, pressing exigencies of speed and time, an inevitable dose of politics and an overarching desire to be true to ones' individual and collective consciousness, there is bound to be disagreement and dissension, sometimes even heated. But, personally, I am impressed, indeed astonished, at the high degree of convergence on a diverse number of issues which are addressed in this report and which aggregate over 25. Some may see the glass half full, in the sense of looking at the dissenting notes, but I see the glass well above half full, based on the significant and laudatory degree of convergence on diverse and contentious issues. Even where there were disagreements, only in the last couple of meetings prior to adoption (none before), they did not vitiate the extremely cordial, dignified and principled level of exchanges which have prevailed right from the inception through to the conclusion of the proceedings of this Committee.

I do not think that I am guilty of any error or exaggeration when I say that the members of this Committee started this journey as relative strangers, but finished as friends. Equally, I have no doubt that each member individually, and the Committee collectively, exemplified and symbolised the voltairian spirit that wherever they disagreed, they nevertheless upheld the right of the other person to disagree with them, even vehemently.

In the end, all I can say is that we have not tried to please anyone or everyone. We have tried to be true, individually to our respective consciences and collectively to Parliament and the nation. The Report is liable to be judged kindly or harshly by some or, indeed, to be ignored by others. All one can hope for is that the detailed collection and aggregation, not only of each conclusion but of every reason and argument in support of that conclusion, summarised in one chapter (Chapter 17) will be carefully perused before judgment, casual or considered, interim or final, is passed.

I would be failing in my duty if I did not express gratitude for the constructive cooperation which I have received from each member of the Committee, irrespective of convergence or chasm. The witnesses, many of them experts and very eminent, gave willingly and uncomplainingly of their time and effort and all of it, gratis. The response from the public was overwhelming as reflected in the written memoranda received. The Administrative Ministry (Ministry of Personnel) was most helpful and cooperative. Perhaps no Chairman has driven the Secretariat staff harder and longer. Both Saturdays and Sundays, especially when I dictated the Report, with long hours at the Annexe, were par for the course. Mr. Deepak Goyal, the head of my team, provided very able leadership to his entire team and toiled ceaselessly whenever I entrusted anything to

him. He was ably supported by Shri K.P. Singh, Shri K.N. Earendra Kumar, Ms. Niangkhanem Guite, Ms. Catherine John L., Shri D.D. Kukreti, Shri Yogendra Singh and Ms. Madhu Rajput and a whole relay chain of stenographers who willingly took eight hour dictations from me on more than three weekends. In a lighter vein, I had expressed the certainty of my belief that the Secretariat were praying and waiting for the day when I would demit office as Chairperson of this august Committee, since they had no other hope of getting respite! I would also like to place on record my deep appreciation for all the assistance and support received from everyone, not necessarily named herein, to complete this endeavour expeditiously.

In the ultimate analysis, the responsibility for all the errors rests with me, and, to a lesser extent, with the Committee which adopts the Report as reflective of the broad consensus in the Committee. The reasons for the conclusions flowing from the memoranda, depositions and internal deliberations have formed the Committee's recommendations and are set out in detail at the end of each Chapter. The last section of each Chapter tries to argue and states the persuasive details behind each conclusion. All these end sections from each Chapter have been aggregated and reproduced in the last Chapter, Chapter 17, providing a useful and elaborate summary. All dissent notes have been appended.

NEW DELHI;  
December 7, 2011

DR. ABHISHEK MANU SINGHVI  
*Chairman,  
Committee on Personnel,  
Public Grievances, Law and Justice*

## CHAPTER-1

### INTRODUCTION

- 1.1 The Lokpal Bill, 2011 was introduced\* in the Lok Sabha on 4 August, 2011. It was referred<sup>55</sup> by the Hon'ble Chairman, Rajya Sabha to the Department-Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice on the 8 August, 2011 for examination and report.
- 1.2 The Bill\*\* seeks to provide for the establishment of the institution of Lokpal to inquire into allegations of corruption against certain public functionaries and for matters connected therewith or incidental thereon.
- 1.3 The Statement of Objects and Reasons, appended to the Bill reads as under:

*“The need to have a strong and effective institution of Lokpal has been felt for quite sometime. The Administrative Reforms Commission, in its interim report on the ‘Problems of Redress of Citizens’ Grievances’ submitted in 1966, inter-alia recommended the setting up of an institution of Lokpal at the Centre in this regard. To give effect to this recommendation of the Administrative Reforms Commission, eight Bills on Lokpal were introduced in the Lok Sabha in the past, namely in the years 1968, 1971, 1977, 1985, 1989, 1996, 1998 and 2001. However, these Bills had lapsed consequent upon the dissolution of the respective Lok Sabha except in the case of 1985 Bill which was withdrawn after its introduction. A need has been felt to constitute a mechanism for dealing with complaints on corruption against public functionaries in high places. In this regard, the Central Government constituted a Joint Drafting Committee (JDC) on 8 April, 2011 to draft a Lokpal Bill.*

*Based on the deliberation and having regard to the need for establishing a strong and effective institution of Lokpal to inquire into allegation of corruption against certain public functionaries, it has been decided to enact a stand alone legislation, inter-alia to provide for the following matters, namely:*

- (i) *To establish an Institution of Lokpal with a Chairperson and eight Members of which fifty per cent shall be Judicial Members;*

\* Published in Gazette of India (Extraordinary) Part-II, Section 2 dated 4 August, 2011.

<sup>55</sup> Rajya Sabha Parliamentary Bulletin Part-II (No.1937) dated 9 August, 2011.

\*\* Appendix of the Report. For other appendices of the Report and minutes of the Meetings please see the Committee Report at. 164.100.47.5/newcommittee/reports/EnglishCommittees/Committee on Personnel, Public Grievances, Law and Justice/48.pdf.



- (ii) *To set up Lokpal's own Investigation Wing and Prosecution Wing with such officers and employees as felt by it to be necessary;*
- (iii) *The category of public functionaries against whom allegation of corruption are to be inquired into, namely:*
  - a. a Prime Minister, after he has demitted office;*
  - b. a Minister of the Union;*
  - c. a Member of Parliament;*
  - d. any Group "A" officer or equivalent;*
  - e. a Chairperson or member or officer equivalent to Group "A" in any body, Board, corporation, authority, company, society, trust, autonomous body established by an Act of Parliament or wholly or partly financed or controlled by the Central Government;*
  - f. any director, manager, secretary or other officer of a society or association of persons or trust wholly or partly financed or aided by the Government or in receipt of any donations from the public and whose annual income exceeds such amount as the Central Government may by notification specify but the organizations created for religious purposes and receiving public donations would be outside the purview of the Lokpal.*
- (iv) *To provide for a mechanism to ensure that no sanction or approval under section 197 of the Code of Criminal Procedure, 1973 or section 19 of the Prevention of Corruption Act, 1988, will be required in cases where prosecution is proposed by the Lokpal;*
- (v) *To confer on the Lokpal the power of search and seizures and certain powers of a Civil Court;*
- (vi) *To empower the Lokpal or any investigation officer authorized by it in this behalf to attach property which, prima facie, has been acquired by corrupt means;*
- (vii) *To lay down a period of limitation of seven years from the date of commission of alleged offence for filing the complaints before the Lokpal;*
- (viii) *To confer powers of police upon Lokpal which the police officers have in connection with investigation;*

- (ix) *To charge the expenses of Lokpal on the Consolidated Fund of India;*
- (x) *To utilize services of officers of Central or State Government with the consent of the State Government for the purpose of conducting inquiry;*
- (xi) *To recommend transfer or suspension of public servants connected with allegation of corruption;*
- (xii) *To constitute sufficient number of Special Courts as may be recommended by the Lokpal to hear and decide the cases arising out of the Prevention of Corruption Act, 1988 under the proposed enactment;*
- (xiii) *To make every public servant to declare his assets and liabilities, and in case of default or furnishing misleading information, to presume that the public servant has acquired such assets by corrupt means;*
- (xiv) *To provide for prosecution of persons who make false or frivolous or vexatious complaints.*

*The notes on clauses explain in detail the various provisions contained in the Bill.*

*The Bill seeks to achieve the above objects.”*

- 1.4 In slight deviation from the normal procedure followed by Standing Committees for examination of Bills, there was a detailed discussion on the statement of the Minister of Finance on the issues relating to the setting up of the Lokpal in both the Houses of Parliament on the 27 August, 2011. These proceedings were also transmitted to the Committee. The Rajya Sabha Secretariat communication dated the 30 August, 2011 in this behalf addressed to the Chairman, Standing Committee, reads as follows:

*“I am directed to inform you that the Chairman, Rajya Sabha, has desired that the proceedings of the Rajya Sabha and Lok Sabha dated the 27 August, 2011 pertaining to the discussion on the statement made by the Minister of Finance on issues relating to setting up of Lokpal may be transmitted to the Department-related Parliamentary Standing Committee on Personnel, Public Grievances, Law & Justice for its perusal while formulating its recommendations on the Lokpal Bill, 2011.*

*Accordingly, a copy each of the relevant proceedings of the Rajya Sabha and Lok Sabha is enclosed for your kind perusal.”*

- 1.5 The discussion in the two Houses of Parliament was in the backdrop of divergent views in the Joint Drafting Committee constituted by the Government for preparing a draft on the Lokpal Bill. The Committee consisted of five nominees of the civil society (led by Shri Anna Hazare) and five nominees of the Government. Initiating discussion in both the Houses, Hon'ble Finance Minister gave a background of the matter leading to holding of discussion in Parliament on the setting up of Lokpal. He enumerated the following six major areas of divergent views in the Joint Drafting Committee:
- (i) Should one single Act be provided for both the Lokpal in the Centre and Lokayukta in the State? Would the State Governments be willing to accept a draft provision for the Lokayukta on the same lines as that of the Lokpal?
  - (ii) Should the Prime Minister be brought within the purview of the Lokpal? If the answer is in affirmative, should there be a qualified inclusion?
  - (iii) Should Judges of the Supreme Court and High Courts be brought within the purview of the Lokpal?
  - (iv) Should the conduct of Members of Parliament inside Parliament, their right to speak and right to vote in the House, be brought within the purview of the Lokpal? Presently such actions of the Members of Parliament are covered by Article 105(2) of the Constitution?
  - (v) Whether Articles 311 and 320(3)(c) of the Constitution notwithstanding members of a civil service of the Union or an All India Service or a Civil Service of a State or a person holding a civil post under the Union or State, be subject to enquiry and disciplinary action including dismissal and removal by the Lokpal and Lokayukta, as the case may be?
  - (vi) What should be the definition of the Lokpal and should it itself exercise *quasi-judicial* powers also or delegate these powers to its subordinate officers?
- 1.6 Apart from other issues, the following three issues were discussed in both the Houses:
- (i) Whether the jurisdiction of the Lokpal should cover all employees of the Central Government?
  - (ii) Whether it will be applicable through the institution of the Lokayukta in all States?

(iii) Whether the Lokpal should have the power to punish all those who violate the 'grievance redressal mechanism' to be put in place?

1.7 During the discussion in Parliament, Members demonstrated serious commitment to evolve an effective mechanism to deal with the menace of corruption. The discussion covered several related issues as well, besides the three specific issues referred to above. Members discussed the need to bring all classes of bureaucracy within the fold of the Lokpal while expressing apprehensions about the overburdening of the institution. Similarly, Members were concerned about preservation of the federal spirit of our Constitution. The issue of bringing the grievance redressal mechanism under the Lokpal or having a separate law for this purpose was also discussed.

1.8 In his reply to the debate, the Minister of Finance concluded in both the Houses in these words:

*"This House agrees in principle on the Citizens' Charter, Lower Bureaucracy to be brought under Lokpal through appropriate mechanism and establishment of Lokayukta in the States. I will request you to transmit the proceedings to the Department-related Standing Committee for its perusal while formulating its recommendations for a Lokpal Bill."*

1.9 The deliberations in the two Houses of Parliament gave guidance to the Committee in the accomplishment of the task assigned to it. The Committee, however, also had before it vast inputs on the subject from various sources. Recommending an appropriate legislative architecture for the purpose was a complex task for the Committee as it was to propose a solution which harmonized and married the concerns of constitutional validity, operational efficacy and consensus amongst the diverse views reflected in the Committee's deliberations. The Members of the Committee, however, have put in their best possible efforts to deal with the essence of the opinions expressed by the House collectively. The diverse pool of knowledge of the Members, opinions of eminent experts and the suggestions received from a comprehensive and diverse cross-section of society helped the Committee to formulate solutions taking into account the aspects of functional feasibility and constitutional validity in addition to political consensus.

1.10 In order to have a broader view on the Bill, the Committee decided to invite views/suggestions on the issue from desirous individuals/organizations. Accordingly, a press release was issued inviting views/

suggestions. In response to the press release published in major English and Hindi dailies all over India on the 20 August, 2011, a number of representations/memoranda were received. The Committee received approximately 10,000 responses from different sections of society.

- 1.11 The Committee also forwarded 216 select memoranda from out of the ones received from the individuals/organizations to the Department of Personnel and Training for their comments thereon.

## CHAPTER-2

### COMMITTEE PROCEEDINGS AND TIMELINES

- 2.1 Though the Lokpal Bill, 2011 was referred to the Committee on 8 August, 2011, it was followed immediately by a demonstration by Team Anna, a large gathering at Ramlila Maidan and a fast by Shri Anna Hazare. These events occupied the space from 16 to 28 August, 2011.
- 2.2 On 27 August, 2011 both the Houses of Parliament discussed the issue and the proceedings were directed to be transmitted to the Standing Committee. This has been summarized in the preceding chapters read with the gist of debates annexed at Annexure B.
- 2.3 Barely four days thereafter, before any work could start, the Standing Committee's term lapsed. In effect, in law and in fact, no Standing Committee of Parliament existed from 31 August, 2011 till 16 September, 2011. The present Committee could, therefore, become operational only after re-constitution *w.e.f.* 23 September, 2011 when it held its second meeting. Hence, though the Committee had with great alacrity held its first meeting with Team Anna for over two hours on 10 August, 2011, a day after the Bill was referred to it, it could, in effect, commence its deliberations on the Lokpal Bill, 2011 only *w.e.f.* 23 September, 2011. The fact that the re-constitution of the Committee is always deemed to be retrospective *w.e.f.* the date of lapsing (31 August, 2011), does not, however, permit the actual meeting of the Committee during the period between the lapse and its actual reconstitution.
- 2.4 From 23 September, 2011 till 24 November, 2011, the Committee held 11 sittings spread over approximately 30 hours. During this period, 38 persons/organizations came before the Committee as witnesses to present their views. These included virtually every segment of society, including, lawyers and jurists, former Chief Justices of India, representative organizations like the Bar Council of India, the heads and office bearers of diverse chambers of commerce, the heads and office bearers of diverse print and visual media organizations, NGOs, members of Team Anna (on three occasions spread over approximately 8 hours), religious organizations, representative institutions from small and medium size towns across India, CBI, CVC, eminent writers, think tanks and so on and so forth.

In almost all cases the witnesses were accompanied by several associates and the Committee, therefore, in all, had the presence of 140 witnesses.

- 2.5 The Committee held the first of its internal meetings and deliberations on 14 November, 2011. It went on to meet on November 15, 24, 25, 30 and December 1 and finally met on 7 December, 2011 to finalise recommendations and to adopt the Report. The Committee is thus privileged to present this Report on 9 December, 2011.
- 2.6 In a nutshell, therefore, this Committee could become legally operational only *w.e.f.* 23 September, 2011 and has completed hearing witnesses on 4 November, 2011. It had its total deliberations including report adoption spread over 14 meetings, together aggregating 40 hours within the space of ten weeks commencing from 23 September, 2011 and ending 7 December, 2011.
- 2.7 Though not specific to this Committee, it is an established practice that all 24 Parliamentary Standing Committees automatically lapse on completion of their one year tenure and are freshly constituted thereafter. This results in a legal vacuum, each year, of approximately two to three weeks and occasionally, as in the present case, directly affects the urgent and ongoing business of the Committee. The Committee would respectfully request Parliament to reconsider the system of automatic lapsing. Instead, continuity in Committees but replacement of Members on party-wise basis would save time.

### CHAPTER-3

#### THE CONCEPT OF LOKPAL : EVOLUTION AND PARLIAMENTARY HISTORY

- 3.1 There can be no denial of the fact that corruption has always remained a significant and highly relevant issue to be dealt within our country. This stands corroborated from the findings of various International bodies like the World Bank, Transparency International and other organizations, which have consistently rated India quite low on this facet. Concerns have repeatedly arisen, in and out of Parliament, for putting in place appropriate mechanisms to curb corruption. But the Lokpal concept has had an interesting and chequered history in India.
- 3.2 The initial years following independence witnessed legislators conveying the people's concerns to the Government over the issue of corruption through raising of questions and debates in Parliament. At that time, the scope of the debates was contextually confined to seeking information from the Government about its anti-corruption measures and to discussions regarding the formation of anti-corruption committees/agencies and vigilance bodies to put a check on corruption, but it clearly reflected the seriousness on the issue of corruption in the minds of Members. Acknowledging the need for a thorough consideration of the issue, the Government set-up a Committee under the Chairmanship of Shri K. Santhanam to review the existing instruments for checking corruption in Central Government. The Committee *inter alia* recommended the creation of an apex body for exercising superintendence and control over the vigilance administration. In pursuance of the recommendations of the Santhanam Committee, the Government established the Central Vigilance Commission through a Resolution on 11 February, 1964. The Commission was concerned with alleged bureaucratic corruption and did not cover alleged ministerial corruption or grievances of citizens against mal-administration. While laying the report on the creation of the CVC on the Table of the House, the then Deputy Home Minister<sup>1</sup>, interestingly, recognized that the Commission would be overburdened if the responsibility to redress the citizens' grievances against corruption were to be placed upon it and the

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<sup>1</sup> Statement made by the then Deputy Minister in the Ministry of Home Affairs, Smt. Maragatham Chandrasekhar in the Rajya Sabha on 16 December, 1963, Rajya Sabha Debates, Vol. XLV, No. 21, P. 3572



Commission might, as a result, be less effective in dealing with the core problem of corruption.

- 3.3 While the country had been grappling with the problem of corruption at different levels including at the level of Parliament, there emerged globally, and especially in the Scandinavian countries, the concept of Ombudsman to tackle corruption and/or to redress public grievances. A proposal in this regard was first initiated in the Lok Sabha on 3 April, 1963 by the Late Dr. L.M. Singhvi, MP<sup>2</sup>. While replying to it, the then Law Minister observed that though the institution seemed full of possibilities, since it involved a matter of policy, it was for the Prime Minister to decide in that regard<sup>3</sup>. Dr. L.M. Singhvi then personally communicated this idea to the then Prime Minister, Pandit Jawaharlal Nehru who in turn, with some initial hesitation, acknowledged that it was a valuable idea which could be incorporated in our institutional framework. On 3 November, 1963, Hon'ble Prime Minister made a statement in respect of the possibilities of this institution and said that the system of Ombudsman fascinated him as the Ombudsman had an overall authority to deal with the charges of corruption, even against the Prime Minister, and commanded the respect and confidence of all<sup>4</sup>. Resolutions, in this behalf in April, 1964 and April, 1965 were again brought in the Lower House and on both occasions, during the course of discussions, the House witnessed near unanimous agreement about the viability, utility and desirability of such an institution<sup>5</sup>. However, in his resolution, the Member of Parliament (Dr. L.M. Singhvi) did not elaborate upon the functions/powers of the institution, but instead asked for the appointment of a Committee of Members of Parliament who would consider all the complex factors relating to this institution and would come forward with an acceptable and consensual solution.

<sup>2</sup> Lok Sabha Debates dated 3 April, 1963, Vol. XVI, P. 7556-7558

<sup>3</sup> *ibid.*, P.7590-92

<sup>4</sup> His initial hesitation to this idea was probably due to the Scandinavian origin of the nomenclature of the institution. In a lighter vein, he happened to ask Dr. L.M. Singhvi "To what zoo does this animal belong" and asked Shri Singhvi to indigenize the nomenclature of the institution. Dr. L.M. Singhvi then coined the term Lokpal/Lokayukta to modify the institution of Ombudsman to the Indian context (as related by Dr. L.M. Singhvi to the Chairman of this Committee). Also referred to by Mr. Arun Jaitley, M.P. during the Parliament Debate on 27 August, 2011. He started the debate in the Upper House thus:- "Now, 'Ombudsman' was a Scandinavian concept and, coincidentally, on 3 April, 1963, then an Independent young Member of the Lok Sabha, Dr. L.M. Singhvi, in the course of his participation in a debate for having an Ombudsman in India, attempted to find out what the Indian equivalent could be, and this word 'Lokpal' was added to our vocabulary, the Hindi vocabulary, by Dr. L.M. Singhvi who translated this word."

<sup>5</sup> Lok Sabha Debates dated 23 April, 1965, P. 10839-40

While making a statement in the House on 23 April, 1965, Dr. L.M. Singhvi elucidated the rationale of the institution as:

*“...An institution such as the Ombudsman must be brought into existence in our country. It is for the sake of securing justice and for cleansing the public life of the augean stable of corruption, real and imaginary, that such an institution must be brought into existence. It is in order to protect those in public life and those in administration itself that such an institution must be brought into existence. It is to provide an alternative to the cold and protracted formality of procedure in course of law that such an institution should be brought into existence. There is every conceivable reason today which impels to the consideration that such an institution is now overdue in our country..<sup>6</sup>”*

- 3.3A The word Lokpal etymologically, means the “protector of the people”. Adopting the famous Lincolnian phrase, it can also be seen as a protection/protector “of the people, by the people, for the people”. The word ‘Ombudsman’, on the other hand, is rooted in the Old Norse language, essentially meaning “representative”, *i.e.* an official charged with representing the interests of the public by investigating and addressing complaints reported by individual citizens. Roman Law has also had a similar counterpart *viz.* the “tribunition role” of a person/institution, whose role was to intercede in the political process on behalf of common citizens and in Roman times was fulfilled by elected officials.
- 3.4 These efforts set the stage for evolving an institution like Ombudsman in India and consequently, the idea of Lokpal surfaced in the national legislative agenda. Later, the Government appointed an Administrative Reforms Commission which in its recommendation suggested a scheme of appointing Lokpal at Centre and Lokayuktas in each State<sup>7</sup>.
- 3.5 Thereafter, to give effect to the recommendations of the First Administrative Reforms Commission, eight Bills were introduced in the Lok Sabha from time to time. However, all these Bills lapsed consequent upon the dissolution of the respective Lok Sabhas, except in the case of the 1985 Bill which was subsequently withdrawn after its introduction. A close analysis of the Bills reflects that there have been varying approaches and shifting foci in scope and jurisdiction in all these proposed legislations. The first two Bills *viz.* of 1968 and

<sup>6</sup> Lok Sabha Debates dated 23 April, 1965, P. 10844. It is ironic that something described as “overdue” in 1965 by the MP is being enacted in 2011

<sup>7</sup> *Problems of Redress of Citizen’ and Grievances*, Interim Report of the First Administrative Reforms Commission, 1966

of 1971 sought to cover the entire universe of bureaucrats, Ministers, public sector undertakings, Government controlled societies for acts and omissions relating to corruption, abuse of position, improper motives and mal-administration. The 1971 Bill, however, sought to exclude the Prime Minister from its coverage. The 1977 Bill, broadly retained the same coverage except that corruption was subsequently sought to be defined in terms of IPC and Prevention of Corruption Act. Additionally, the 1977 Bill did not cover mal-administration as a separate category, as also the definition of “public man” against whom complaints could be filed did not include bureaucrats in general. Thus, while the first two Bills sought to cover grievance redressal in respect of mal-administration in addition to corruption, the 1977 version did not seek to cover the former and restricted itself to abuse of office and corruption by Ministers and Members of Parliament. The 1977 Bill covered the Council of Ministers without specific exclusion of the Prime Minister.

The 1985 Bill was purely focused on corruption as defined in IPC and POCA and neither sought to subsume mal-administration or misconduct generally nor bureaucrats within its ambit. Moreover, the 1985 Bill, impliedly included the Prime Minister since it referred to the office of a Minister in its definition of “public functionary”.

The 1989 Bill, restricted itself only to corruption, but corruption only as specified in the POCA and did not mention IPC. It specifically sought to include the Prime Minister, both former and incumbent.

Lastly, the last three versions of the Bill in 1996, 1998 and 2001, all largely:

- (a) focused only on corruption;
- (b) defined corruption only in terms of POCA;
- (c) defined “public functionaries” to include Prime Minister, Ministers and MPs;
- (d) did not include bureaucrats within their ambit.

3.6 The Lokpal Bill, 2011 enables the Lokpal to inquire into allegations made in a complaint against a ‘public servant’. With the coining of this new term, the current Lokpal Bill, as proposed and as sent to this Committee, is distinct from the previous Bills mainly on the following counts:

- Its jurisdiction is comparatively wider as it has widened the scope of ‘public servant’ by including the bureaucracy as also

institutions and associations, wholly or partly financed or controlled by the Central Government or those who are in receipt of public money.

- It provides for separate investigation and prosecution wings of Lokpal.
- It makes the declaration of assets by all ‘public servants’ mandatory and failure to do so liable to the presumption that such assets have been acquired by corrupt means.
- It is far more detailed and more inclusive than earlier versions, with a large number of principal and ancillary provisions not found in earlier versions.

3.7 It is thus clear that the concept of the institution of Lokpal has undergone vital and important changes over time keeping in view the changing socio-economic conditions and varying nature, level and pervasiveness of corruption in society.

3.8 Though the institution of Lokpal is yet to become a reality at the Central level, similar institutions of Lokayuktas have in fact been setup and are functioning for many years in several States. In some of the States, the institution of Lokayuktas was set up as early as in 1970s, the first being Maharashtra in 1972. Thereafter, State enactments were enacted in the years 1981 (M.P.), 1983 (Andhra Pradesh and Himachal Pradesh), 1984 (Karnataka), 1985 (Assam), 1986 (Gujarat), 1995 (Delhi), 1999 (Kerala), 2001 (Jharkhand), 2002 (Chhattisgarh) and 2003 (Haryana). At present, Lokayuktas are in place in 17 States and one Union Territory. However, due to the difference in structure, scope and jurisdiction, the effectiveness of the State Lokayuktas vary from State to State. It is noteworthy that some States like Gujarat, Karnataka, Bihar, Rajasthan and Andhra Pradesh have made provisions in their respective State Lokayuktas Act for *suo motu* investigation by the Lokpal. In the State Lokayukta Acts of some States, the Lokayukta has been given the power for prosecution and also power to ensure compliance of its recommendations. However, there is a significant difference in the nature of provisions of State Acts and in powers from State to State. Approximately nine States in India have no Lokayukta at present. Of the States which have an enactment, four States have no actual appointee in place for periods varying from two months to eight years.

## CHAPTER-4

### CITIZENS' CHARTER AND GRIEVANCE REDRESSAL MECHANISM

#### I. INTRODUCTION AND BACKGROUND

- 4.1 There has been a consistent, universal and widespread demand for creating a Public Grievances Redressal Mechanism and mandating a Citizens' Charter for all Government departments and public services in the country. This is to address grievances of the public in their dealing with public offices for issues not related to corruption but including vital issues like procrastination, inactivity, unresponsiveness etc. on the part of public functionaries. Since the Lokpal Bill, 2011 drafted by the Government restricted itself to issues relating to corruption, the issue of Grievance Redressal was not included. The draft Jan Lokpal Bill presented by the team headed by Shri Anna Hazare includes the issue of grievances redressal/Citizens' Charter to be also addressed by the institution of Lokpal.

During the debate in Parliament on 27 August, 2011 on the issue of setting up of Lokpal the Citizens' Charter issue was one of the key items of the agenda. The Hon'ble Minister of Finance while summing up the deliberations stated that the House agreed in principle on, *inter-alia*, the Citizens' Charter to be brought under Lokpal through appropriate mechanism. Notably the United Nations Convention on Action Against Corruption (UNCAC) does not directly mention that each signatory State should have a Citizens' Charter<sup>1</sup>.

#### II. SUMMARY OF SUGGESTIONS/OBSERVATIONS RECEIVED THROUGH WRITTEN MEMORANDA

- 4.1A The memoranda received by the Committee carried the following suggestions/observations:-
- The concept of Citizens' Charter was first mooted in a White Paper entitled "The Citizens' Charter: raising the standard" presented before the British Parliament in July, 1991.
  - Basic elements of Citizens' Charter are: (i) transparency, (ii) accountability, (iii) availability of information, (iv) declared

<sup>1</sup> UNCAC was adopted by the United Nations General Assembly by Resolution 58/4 of 31 October, 2003 and opened up for signature at the high level political signing conference in Merida, Mexico from 9-11 December, 2003. The Convention entered into force on 14 December, 2005

standards of service, with a promise to improve upon it and  
(v) an effective and efficient Grievance Redressal machinery.

- Include Citizens' Charter, Public Grievances and Whistleblowers also in the Bill.
- Citizens' Charter indicating timeframe for each work should be introduced and responsibility of Government officer to be fixed; should have provisions for penalties for failure to do so.
- Blue Print of the proposed mechanism:
  - (i) Every citizen's letter should be acknowledged within a week.
  - (ii) Every citizen's letter should be replied within a month.
  - (iii) Every official who has public contact must wear a name badge.
- Grievance Redressal Mechanism must be separated from Lokpal/ Lokayuktas and be modeled on RTI Act, 2005.
- Slow progress of any citizen's work to be deemed as "corruption".
- A comprehensive legal framework should be provided under the Central Law by bringing in a separate legislation under Entry 8 of List-III of Seventh Schedule of the Constitution, for the purpose of putting in place an effective Grievance Redressal Mechanism, simultaneously with the Lokpal Bill.
- Needed, but in separate Bill for Central institutions and schemes, and separately for each of the States.
- Statutory back up is needed to provide a time limit; service and penalty as imposed by an appellate authority with Civil Court power; and a second appellate to reviewing authority be provided. The CVC should be the monitoring agency for Citizens' Charters.
- Enact public service delivery law and strong grievance redressal mechanism to effectively address petty corruption in delivery of services.
- United Nations Convention on Action Against Corruption (UNCAC) doesn't directly mention that each State party should have a "Citizens' Charter".

- There are many countries which included the principles of service orientation in their legislation in one or the other way.
- UNCAC does not mention about who the independent body or bodies should report to.

### III. SUMMARY OF DEPOSITIONS GIVEN BY WITNESSES

- 4.2 The Ministry of Personnel (DoPT) have, in their comments, observed as follows:

*“...For redressal of public grievances, the Government proposes to bring a separate legislation before the Parliament...”*

- 4.3 Dr. Jayaprakash Narayan, President, Loksatta, while tendering oral evidence before the Committee, stated thus:

*“...There is a case for Citizens’ Charter and laws governing that. But,...it must be applicable only to the notified agencies where there are no supply constraints. This is a very important consideration because an omnibus legislation saying that there will be a Citizens’ Charter for every service is, simply, not practicable...”*

- 4.4 He further stated:

*“...Then, as far as grievances are concerned, Mr. Chairman, as I mentioned before, there will be hundreds and thousands of grievances everyday. They must not come under Lokpal and Lokayukta. They must come under a separate grievance redressal authority...”*

- 4.5 Speaking on this issue, Shri Ashok Kumar Parija (Chairman, Bar Council of India) said:

*“...The third issue is regarding Citizens’ Charter and grievances redressal. The Anna Hazare Lokpal Bill provides that each Government Department will have a Citizens’ Charter. We are of the view that we could have a different law for Citizens’ Charter and not mix it with the Lokpal...”*

- 4.6 Shri Shekhar Singh (NCPRI) deposed before the Committee as under:

*“...We are not in favour of the grievance redress or Citizens’ Charter being under the Lokpal. But we have suggested that there ought to be a parallel institution like grievance redress commissions both at the Centre and State levels. My colleagues will give you more details on that...”*

- 4.7 Shrimati Anjali Bhardwaj (NCPRI), while placing their views before the Committee, stated:

*“...There should be a separate legislation which deals with grievance redressal, and that legislation should focus on setting up an*

*appropriate decentralized structure for dealing with issues of grievances. We feel that grievances और corruption के केसेज़ एक साथ में एक बॉडी न देखे। हमारे देश में 1.2 मिलियन लोग हैं और सभी के कुछ न कुछ grievances हैं। अगर एक साल में किसी बॉडी के पास एक मिलियन से ज्यादा grievances आ जायेंगे, it will collapse under its own weight, and it will not be effective. Therefore, we feel that a separate body needs to be set up to look into the issue of grievance redress. It needs to be a decentralized body because people often have very immediate nature of grievances...*

- 4.8 Shri Harish Salve, Sr. Advocate, Supreme Court of India, while clarifying his view on the topic, opined thus:

*“...I do not see, in my respectful submission to you, any specific Entry of the State which would apply to the framing of a Citizens’ Charter and which would then put it squarely within the power of the Union Parliament. If you do frame a Citizens’ Charter, then certainly as an incidental power, the Union Parliament can appoint an agency to enforce that Charter. And if that incidentally encroaches on the State’s field, that is permitted by our Constitution...”*

- 4.9 He further opined:

*“...What I suggest is, taking a leaf from the current Electricity Act, which we have, a structure should be created under the Union law in which States will appoint grievance redressal authorities. So, that also respects the principle of federalism. We have it already in the Electricity Act where State Commissions are appointed. So, under the Union law, you can always leave it to the State Governments to appoint their own grievance redressal authorities. You can prescribe what the collegium will be and you can prescribe as to how that collegium will appoint the grievance redressal authority but it must be left to the States...”*

#### IV. ANALYSIS AND DISCUSSION

- 4.10 At this juncture, the Committee also takes note of its earlier recommendations as contained in its 29th Report on the subject “Public Grievances Redressal Mechanism” wherein the Committee had observed:

*“...In support of its foregoing recommendations/observations, the Committee strongly recommends that the Public Grievance Redressal Mechanism should be envisaged in a statutory form on the line of the Right to Information Act, 2005 which would make it mandatory*



*on all State Governments/UTs/Ministries/Departments/Organisations to pursue the grievance till their final disposal. The Committee also reiterates that like Right to Information Act in the PGRM system there should be a time limit of 30 days and provision of fine on delay should be there”.*

- 4.11 The wide cross-section of opinion available to the Committee through memoranda and depositions overwhelmingly suggested that there was a dire need for enacting a Public Service Delivery law. Opinion was divided on whether it should be separate and distinct from the Lokpal, *i.e.*, be resident in a separate legislation or be part of the Lokpal, though the preponderant view inclined towards the former.
- 4.12 One of the prime reasons for this separation, as cited by various witnesses, was that the institution of Lokpal would be severely burdened and become unworkable if it also included the jurisdiction of handling public grievances. Public Grievances Redressal, fortified through a Citizens’ Charter, would necessarily invite millions of complaints on a daily basis and it was, therefore, critical that a separate mechanism was set up more akin to the Right to Information structure.
- 4.13 The other major reason for keeping the Grievance Redressal Mechanism separate is that these are qualitatively different and easily severable from the issue of corruption in political and bureaucratic circles.
- 4.14 Citizens’ Charter would involve not only framing, but monitoring of a list of DOs and DON’Ts for the Central Government (and corresponding State Government departments) which may not at all be feasible for a single Lokpal or a single Lokayukta to handle.

## V. REASONS AND RECOMMENDATIONS

- 4.15 The Committee believes that while providing for a comprehensive Grievance Redressal Mechanism is absolutely critical, it is equally imperative that this mechanism be placed in a separate framework which ensures speed, efficiency and focus in dealing with citizens’ grievances as per a specified Citizens’ Charter. The humongous number of administrative complaints and grievance redressal requests would critically and possibly fatally jeopardize the very existence of a Lokpal supposed to battle corruption. At the least, it would severally impair its functioning and efficiency. Qualitatively, corruption and mal-administration fall into reasonably distinct watertight and largely non-overlapping, mutually exclusive compartments. The approach to tackling such two essentially

distinct issues must necessarily vary in content, manpower, logistics and structure. The fact that this Committee recommends that there must be a separate efficacious mechanism to deal with Grievance Redressal and Citizens' Charter in a comprehensive legislation other than the Lokpal Bill does not devalue or undermine the vital importance of that subject.

- 4.16 Consequently the Committee strongly recommends the creation of a separate comprehensive enactment on this subject and such a Bill, if moved through the Personnel/Law Ministry and if referred to this Standing Committee, would receive the urgent attention of this Committee. Indeed, this Committee, in its 29th Report on "Public Grievance Redressal Mechanism", presented to Parliament in October, 2008 had specifically recommended the enactment of such a mechanism.
- 4.17 To emphasize the importance of the subject of Citizens' Charter and to impart it the necessary weight and momentum, the Committee is of the considered opinion that any proposed legislation on the subject:
- (i) should be urgently undertaken and be comprehensive and all inclusive;
  - (ii) such enactment should, subject to constitutional validity, also be applicable for all States as well in one uniform legislation;
  - (iii) must provide for adequate facilities for proper guidance of the citizens on the procedural and other requirements while making requests;
  - (iv) must provide for acknowledgement of citizens' communications within a fixed time frame;
  - (v) must provide for response within stipulated time frame;
  - (vi) must provide for prevention of spurious or lame queries from the department concerned to illegally/unjustifiably prolong/extend the time limit for response;
  - (vii) must provide for clearly identifiable name tags for each employee of different Government departments;
  - (viii) must provide for all pending grievances to be categorized subject-wise and notified on a continually updated website for each department;

- (ix) must provide for a facilitative set of procedures and formats, both for complaints and for appeals on this subject along the lines of the Information Commissioners system set up under the RTI;
  - (x) must, in the event that the proposed Central law does not cover States, make strong recommendations to have similar enactments for Grievance Redressal/Citizens' Charter at each State level;
  - (xi) may provide for exclusionary or limited clauses in the legislation to the effect that Citizens' Charter should not include services involving constraints of supply e.g. power, water, etc. but should include subjects where there is no constraint involved e.g. birth certificates, decisions, assessment orders. These two are qualitatively different categories and reflect an important and reasonable distinction deserving recognition without which Government departments will be burdened with the legal obligation to perform and provide services or products in areas beyond their control and suffering from scarcity of supply.
- 4.18 The Committee strongly feels that the harmonious synchronization of the RTI Act and of the Citizens' Charter and Public Grievances Redressal Mechanism will ensure greater transparency and accountability in governance and enhance the responsiveness of the system to the citizens' needs/expectations/grievances.
- 4.19 Lastly, the Committee wishes to clarify that the conclusion of the Hon'ble Union Minister for Finance on the Floor of the House quoted in para 1.8 above of the Report does not intend to direct or mandate or bind or oblige this Committee to provide for a Citizens' Charter within the present Lokpal Bill alone. The Committee reads the quoted portion in para 1.8 above to mean and agree in principle to provide for a Citizen's Charter/Grievance Redressal system but not necessarily and inexorably in the same Lokpal Bill. Secondly, the reference to 'appropriate mechanism' in para 1.8 above further makes it clear that there must be a mechanism dealing with the subject but does not require it to be in the same Lokpal Bill alone. Thirdly, the reference in para 1.8 above to the phrase 'under Lokpal' is not read by the Committee to mean that such a mechanism must exist only within the present Lokpal Bill. The Committee reads this to mean that there should be an appropriate institution to deal with the subject of Citizens' Charter/Grievance redressal which would be akin to the Lokpal

and have its features of independence and efficacy, but not that it need not be the very same institution *i.e.* present Lokpal. Lastly, the Committee also takes note of the detailed debate and divergent views of those who spoke on the Floor of both Lok Sabha and Rajya Sabha on this issue and concludes that no binding consensus or resolution to the effect that the Grievances Redressal/ Citizens' Charter mechanism must be provided in the same institution in the present Lokpal Bill, has emerged.

- 4.20 Contextually, the issues and some of the suggestions in this Chapter may overlap with and should, therefore, be read in conjunction with Chapter 13 of this report. Though the Committee has already opined that the issue of grievance redressal should be dealt with in a separate legislation, the Committee hereby also strongly recommends that there should be a similar declaration either in the same Chapter of the Lokpal or in a separate Chapter proposed to be added in the Indian Constitution, giving the same Constitutional status to the citizens' grievances and redressal machinery.
- 4.21 This recommendation to provide the proposed Citizens' Charter and Grievances Redressal Machinery the same Constitutional status as the Lokpal also reflects the genuine and deep concern of this Committee about the need, urgency, status and importance of a Citizens' Charter/grievance machinery. The Committee believes that the giving of the aforesaid Constitutional status to this machinery would go a long way in enhancing its efficacy and in providing a healing touch to the common man. Conclusions and recommendations in this regard made in para 13.12(j) and (k) should be read in conjunction herein.
- 4.22 Furthermore, the Committee believes that this recommendation herein is also fully consistent with the letter and spirit of para 1.8 above *viz.* the conclusions of the Minister of Finance in the Lower House recorded in para 1.8 above.

## CHAPTER-5

### THE PRIME MINISTER : FULL EXCLUSION *VERSUS* DEGREES OF INCLUSION

#### I. INTRODUCTION AND BACKGROUND

- 5.1 The issue of inclusion or otherwise of PM has received disproportionate media attention. The Committee received diverse written and oral suggestions varying from complete exclusion to deferred inclusion to partial inclusion (with subject matter exclusion) to inclusion subject to significant safeguards/caveats and finally to total inclusion simpliciter. There was, however, one fascinating feature in the internal deliberations of the Committee. The intense debate and divergence during deliberations within the Committee was not over the Government *versus* the Jan Lokpal or some other draft but was between one group of Committee Members who strongly advocated the total, absolute and complete exclusion of PM and another group which argued for inclusion subject to a few substantive subject matter exclusions in addition to very significant and broad procedural safeguards (including a prior clearance from either a 11 member Lokpal or the full Bench of the Apex Court).

#### II. SUMMARY OF SUGGESTIONS/OBSERVATIONS RECEIVED THROUGH WRITTEN MEMORANDA

- 5.2 The memoranda received by the Committee carried the following suggestions/observations:
- Prime Minister cannot be subjected to Lokpal's jurisdiction in a cavalier manner.
  - The PM should be altogether kept out of the jurisdiction of Lokpal since Parliament is the best forum we can trust to enforce integrity in the office of the PM.
  - Include PM in Clause 2(1)(i) with certain caveats.
  - It is necessary to include PM within the purview of Lokpal otherwise, corrupt Ministers/Officers will get away by pleading that they had acted with the approval/knowledge of PM.
  - At present, any criminal investigation into allegations made against Prime Minister are required to be investigated by CBI. Therefore, there is no problem if Lokpal investigates, instead of CBI.

- Proceedings concerning Prime Minister to be in camera.
- Lokpal may investigate into complaints against PM signed by 50/75/100 MPs; similar method in States for CM.
- Prime Minister is *primus inter pares* or 'first among equals' in the Council of Ministers. Hence viewed from the Constitutional position, the Prime Minister gets the position of 'keystone of the Cabinet arc' only because he is the Head of the Council of Ministers and nothing else. There is nothing inherent in the position of Prime Minister because of which he should be given any special status, especially in matters relating to investigation of corruption.
- Some qualification like 'clearance from the Supreme Court' may be introduced in the Bill to put a wall to prevent black mailing of the Prime Minister.
- Proviso may be added to Clause 2(1)(i) of the Bill which may read: "Personnel of Prime Minister's Office, including Minister-in-charge shall be included within this clause."
- Any complaint against Prime Minister to be evaluated by a Full Bench of Lokpal for *prima facie* evidence. Once the Bench finds *prima facie* evidence in the complaint, it may be referred to Full Bench of the apex Court for their opinion. On positive opinion from the apex Court, Lokpal notifies the ruling dispensation of imminent inquiry proceedings with a notice of few days giving them time to re-elect a new Prime Minister.
- No special treatment is needed for Chief Minister since there is provision of President's rule at State Government level and no power vacuum is created if Chief Minister has to resign. Article 356 exists for the States, not for the Centre.
- Office of PM, including the PM should be under Lokpal. However, acts regarding national interest and public order should be excluded from the purview of Lokpal. Upon indictment, any reference for prosecution action against the PM can be taken only if the decision is endorsed by simple majority of Joint Session of Parliament.
- Bill should include in its ambit, the PM in office; but with certain safeguards like enquiry only after deliberations by the Full Bench of Lokpal, in consultation with the CJI.
- Complaints against PM – All such investigations shall be made in a confidential manner and in camera; if any information about material aspects is leaked out, the Investigation Officer shall be *prima facie* held responsible for such leakage.

- If the Lokpal finds a *prima facie* case against the PM in any complaint against him, he shall send a detailed report to the CJI, along with all material evidence, to seek appropriate directions in the matter, and shall not proceed further to file a charge sheet against the PM, until appropriate direction to do so is given to the Lokpal by the CJI, or until the expiry of six months from the date of submission of report by the Lokpal to the CJI, in case the Lokpal does not receive any appropriate direction from the CJI.
- Proviso to Clause 17(1)(a) may be added providing for inclusion of serving Prime Minister if two thirds of members of Lokpal make reference to a sanctioning Committee comprising of Vice-President, Speaker and the Leader of Opposition, Lok Sabha and if that Committee sanctions an inquiry into the conduct of the Prime Minister; and also that no such sanction of inquiry be sought or given against the Prime Minister in respect of allegations on matter to sovereignty and integrity of India and the security of the State.
- Definition of “Minister” should include “Personnel of PMO, including Minister-in-charge” — All important policy matters are laid before the PM for its approval; they pass through PMO with valuable views. Exclusion of PM may protect all those persons who are privy to such decision.
- The personal immunity of PM will cease after he demits office, but if inquiry/investigation into the facts is postponed till then, valuable evidence may be lost and immediate adverse impact on the nation may not be prevented.

#### Short Global Survey\*

- **Afghanistan**—The President heads the executive and his Office is not under the law on anti-corruption, nor is the judiciary;
- **Bhutan**—Every individual residing in Bhutan, including the Prime Minister, judges and lower bureaucracy, are within ACC Bhutan’s jurisdiction;
- **Indonesia**—All included;
- **USA**—President Clinton was issued a subpoena to testify before a grand jury that was investigating him for possible federal crimes; the Court ruled that President Nixon had to turn over the incriminating White House tapes, rejecting his claim of executive privilege;
- **UK**—Prime Minister is the head of Government, Prime Minister is

\* As extracted from written memoranda submitted by UNDP India to the Committee

subject to the law in the same manner as any member of the public; **Korea**—President is both the head of State & Head of Government, President is subject to the Anti-corruption Act, the Public Service Ethics Act & relevant corruption provisions under the Criminal Act. However, under the constitution, the President is entitled to criminal immunity during his tenure of office except for insurrection or; **Australia**—All MPs, judges, magistrates, holders of judicial office are public officials within the meaning of ICAC Act. It extends to public sector agencies also except Police Force—whose corruption is investigated by the Police Integrity Commission.

- Usually, the criminal investigations against Heads of Department/State would be closely linked to parliamentary investigations and legal procedures for impeachment of a sitting Head of State.

### III. SUMMARY OF DEPOSITIONS GIVEN BY WITNESSES

- 5.3 The written comments furnished by the Department of Personnel and Training on this issue are as follows:

*“...In the context of the Indian polity, the Prime Minister occupies a pivotal position in the Government’s set up. To ensure that Prime Minister is able to discharge his functions without any interference from any quarter, it is felt that the Prime Minister may be kept outside the purview of the Lokpal. However, after the Prime Minister has demitted the office, he will come within the purview of the Lokpal...”*

- 5.4 Justice M.N. Venkatachalaiah, while placing his considered views, before the Committee, on this subject matter, opined:

*“...I have made it clear in the Constitution Review Commission Report that the Prime Minister’s Office must be kept out of it. You have no idea of what the Prime Minister’s Office is in a parliamentary democracy...”*

- 5.5 Dr. Jayaprakash Narayan, while articulating his Party’s view on this topic, stated:

*“...The Prime Minister in our Westminster model is no longer merely first among equals; the Prime Minister of the country is the leader of the nation. A very large complex federal polity like India cannot afford to have the Prime Minister go before a non-parliamentary body and present himself or defend himself...It does not mean that*



*the Prime Minister should not be accountable. The Prime Minister should be accountable to the Lok Sabha. That is what the Constitution envisages. Certainly, if the Lok Sabha feels that there is something seriously wrong, even the parties in power will not allow the Prime Minister to continue because it is politically not feasible and, constitutionally, the Lok Sabha must be supreme in dealing with the accountability of the Government...it also will lead to a potential situation where there will be roving inquiries without any substance and even if subsequently it is proved that the Prime Minister's conduct is totally honourable, the damage will be done to the country because if the country is destabilized, if a Government is weakened, the damage is irreversible..."*

5.6 He further stated:

*"...To ensure that there are very, very strong safeguards and, in those safeguards, we do not believe that Judiciary should be the safeguard in protecting the Prime Minister's institution. We believe it must be a parliamentary body and, therefore, what we propose is that in case the Prime Minister is sought to be brought within the purview of the Lokpal's jurisdiction, then, after Lokpal, on the basis of the prima facie evidence or the material before it, at least, two-thirds majority asks a Parliamentary Committee to sanction permission to inquire. Our humble suggestion is that committee should be a three-member committee – we could actually have a variant of that – headed by the Vice-President of India with the Speaker of the Lok Sabha as a Member and the third member being the Leader of the Opposition. Nobody can accuse this body of partisanship because, after all, these are the two high Chairs of the two Houses of the Parliament. The Leader of the Opposition cannot be accused of being partisan in favour of the Government. If anything, the Leader of the Opposition would probably be harshly critical. Perhaps, we can trust these three members to protect the dignity of the Parliament and the nation's institutions and the privileges of the Executive branch. So, if, indeed, it is found necessary to include the Prime Minister under the jurisdiction of the Lokpal, a safeguard of that kind would probably be practical and would probably protect the interests of the country...the Prime Minister...is not merely first among equals, but he occupies a very pivotal position. There is no equivalent of Article 356 in the Government of India and the Prime Minister is not somebody who can be chosen just like that,..."*

5.7 The representative of NCPRI, while advocating their views on this issue, stated that:

*"...So, we have suggested three or four type of safeguards. Number one, we have said that only a full Bench of the Lokpal could*

*recommend investigation against the Prime Minister. Number two that Bench will have to refer the matter to a full Bench of the Supreme Court. This is like a mandatory appeal to the Supreme Court which will also examine if there is sufficient evidence. Number three, the Prime Minister cannot be investigated under vicarious responsibility what somebody else has done, but only what the Prime Minister allegedly himself or herself has done. Number four, that there are certain security and other issues which would be exempt from. This...”*

- 5.8 The views of the Bar Council of India, were expressed by its Chairman, in the following words:

*“...So we want the Prime Minister out of the Lokpal. Now what we suggest is, if the Prime Minister is required to be included and if there is an inquiry against the Prime Minister, let it be investigated in-camera by a bench of five-judges of the hon. Supreme Court presided by the hon. Chief Justice and five senior judges. These proceedings will be in-camera till a definite conclusion is arrived at...”*

- 5.9 The President, Centre for Policy Research while tendering oral evidence before the Committee, put forth his suggestions as under:

*“...The manner in which the Prime Minister should be brought under the Lokpal is of some importance. My own view is that I think the Lokpal Bill, as it currently stands, gets it mostly right. It asserts the principle that the Prime Minister is not above the law, therefore, he can be investigated after he demits office. But he makes due allowance for the fact that the Prime Minister is not just an expression of the sovereignty of the people, the risks of needless investigations, frivolous investigations against the Prime Minister as it were holding Government to ransom, keeping the country's interests are not inconsiderable and, therefore, the Prime Minister should be out of the purview of the Lokpal while he is in office...”*

- 5.10 During his deposition before the Committee, he further observed thus:

*“...Sir, I would submit, there are two models which you can look at. The UK has excessive exclusions, but it has list of exclusions. Foreign affairs and the affairs relating to the security of the State are two clear examples where, obviously, the Lokpal can have no look-in. The Hong Kong law is far narrower in its exclusions. One can debate individual items, whether they should or should not go; may be the functioning of the Prime Minister's Office in the economic Ministries*

*needs to be put under the Lokpal. But, outside the economic Ministries, I would suggest it would be hazardous to generally subject the Prime Minister to the jurisdiction of the Lokpal. We have to strike a balance somewhere and I think, that may be a good line to consider on which it can be divided...As far as the inclusion of the Prime Minister in the ambit of the Bill is concerned, my suggestion was on the balance in India. We must include the Prime Minister, at least, in the working of the PMO in the Economic Ministry and that include the Ministry of Finance, the Ministry of Mines, the Ministry of Telecommunications, the Ministry of Urban Development, the Ministry of all natural resources, wherever dealing with the taxpayers' money, wherever you are dealing with the finance must come within the purview of the Lokpal Bill..."*

- 5.11 The representative of CII, commented on this issue as follows:

*"...The first issue is the inclusion of the Prime Minister. We believe that the Prime Minister should be outside the purview of the Lokpal Bill. We also believe that he could be investigated after he demits office. The rationale for our saying this is that the Prime Minister is the head of the Government and he needs to run the Government on a day-to-day basis and anything that hampers his ability to run the Government is something which is not going to be good for the nation..."*

- 5.12 The advocates of the Jan Lokpal Bill, expressed their views on this matter as under:

*"...If any PM works for two consecutive terms, then his works for the first few years cannot be investigated because no case earlier than seven years could be investigated..."*

- 5.13 Shri Amod K. Kanth, while commenting on this issue, stated that:

*"...Anyone who has knowledge of our Constitution and Indian laws knows that the rule of law does not exclude the Prime Minister of India at all. Only the President and the Governors have the constitutional immunity. Even today the Prime Minister can be easily investigated. In fact, to make a special provision for the Prime Minister will be a wrong suggestion..."*

- 5.14 It is significant to note that the Second Administrative Reforms Commission, in its Fourth Report on "Ethics in Governance" had observed that:

*"The Prime Minister's unchallenged authority and leadership are critical to ensure cohesion and sense of purpose in government, and*

*to make our Constitutional scheme function in letter and spirit. The Prime Minister is accountable to the Parliament, and on his survival, depends the survival of the Government. If the Prime Minister's conduct is open to formal scrutiny by extra-Parliamentary authorities, then the Government's viability is eroded and Parliament's supremacy is in jeopardy...*

*A Prime Minister facing formal enquiry by a Lokpal would cripple the Government. One can argue that such an enquiry gives the opportunity to the incumbent to defend himself against baseless charges and clear his name. But the fact is, once there is a formal enquiry by a Lokpal on charges, however baseless they might be, the Prime Minister's authority is severely eroded, and the Government will be paralysed. Subsequent exoneration of the Prime Minister cannot undo the damage done to the country or to the office of the Prime Minister. If the Prime Minister is indeed guilty of serious indiscretions, Parliament should be the judge of the matter, and the Lok Sabha should remove the Prime Minister from office."*

- 5.15 During the deliberations of the Committee, one of the Members articulated his point of view as follows:

*"...प्राइम-मिनिस्टर की पूरी liability तो vicarious ही है। अगर मंत्रिमंडल में 20 मंत्री हैं, तो प्राइम-मिनिस्टर कोई विभाग डायरेक्टली नहीं देख रहे हैं। आप इसको व्यावहारिक तौर पर कैसे लाएंगे? अगर संचार मंत्रालय में कुछ गड़बड़ हुई, अगर पेट्रोल वाले मिनिस्टर से कुछ गड़बड़ हुई, तो आप यह जो vicarious की सील है, इसको कैसे implement करेंगे? दूसरा जब आप खुद कह रहे हैं कि Anti-corruption Act और Prevention of Corruption Act में वह covered है, तो क्या आप यह महसूस नहीं करते कि यह sufficient safeguard है?..."*

- 5.16 Another member of the Committee raised a pertinent concern on this topic in the following words:

*"...Second was the inclusion of the Prime Minister within the ambit of the Lokpal. There are a lot of serious issues which could be national security, public order, foreign policy, even there are Ministers, for instance, the Ministers of Defence or Foreign Affairs. What do we do about them? You have your nuclear installations. You have your scientists. You have important issues. What do we do about them? Do we have them in the ambit of the Lokpal? Wouldn't we be compromising on the security and integrity of the country?..."*

## V. ANALYSIS AND DISCUSSION

- 5.17 The issue of the Prime Minister's inclusion or exclusion or partial inclusion or partial exclusion has been the subject of much debate

in the Committee. Indeed, this has occupied the Committee's deliberations for at least three different meetings. Broadly, the models/options which emerged are as follows:

- (a) The Prime Minister should be altogether excluded, without exception and without qualification.
  - (b) The Prime Minister should altogether be included, without exception and without qualification (though this view appears to be that of only one or two Members).
  - (c) The Prime Minister should be fully included, with no exclusionary caveats but he should be liable to action/prosecution only after demitting office.
  - (d) The Prime Minister should be included, with subject matter exclusions like national security, foreign affairs, atomic energy and space. Some variants and additions suggested included the addition of "national interest" and "public order" to this list of subject matter exclusions.
  - (e) One learned Member also suggested that the Prime Minister be included but subject to the safeguard that the green signal for his prosecution must be first obtained from either both Houses of Parliament in a joint sitting or some variation thereof.
- 5.18 It may be added that so far as the deferred prosecution model is concerned, the view was that if that model is adopted, there should be additional provisions limiting such deferment to one term of the Prime Minister only and not giving the Prime Minister the same benefit of deferred prosecution in case the Prime Minister is re-elected.
- 5.19 In a nutshell, as far as the large number of the members of the Committee are concerned it was only three models above viz. as specified in paras (a), (c) and (d) in para 5.17 above which were seriously proposed.
- 5.20 Since the Committee finds that each of the views as specified in paras (a), (c) and (d) in para 5.17 above had reasonably broad and diverse support without going into the figures for or against or into the names of individual Members, the Committee believes that, in fairness, all these three options be transmitted by the Committee as options suggested by the Committee, leaving it to the good sense of Parliament to decide as to which option is to be adopted.
- 5.21 It would be, therefore, pointless in debating the diverse arguments in respect of each option or against each option. In fairness, each

of the above options has a reasonable zone of merit as also some areas of demerit. The Committee believes that the wisdom of Parliament in this respect should be deferred to and the Committee, therefore, so opines.

## VI. REASONS AND RECOMMENDATIONS

- 5.22 The issue of the Prime Minister's inclusion or exclusion or partial inclusion or partial exclusion has been the subject of much debate in the Committee. Indeed, this has occupied the Committee's deliberations for at least three different meetings. Broadly, the models/options which emerged are as follows:
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  - (e) One learned Member also suggested that the Prime Minister be included but subject to the safeguard that the green signal for his prosecution must be first obtained from either both Houses of Parliament in a joint sitting or some variation thereof.
- 5.23 It may be added that so far as the deferred prosecution model is concerned, the view was that if that model is adopted, there should be additional provisions limiting such deferment to one term of the Prime Minister only and not giving the Prime Minister the same benefit of deferred prosecution in case the Prime Minister is re-elected.
- 5.24 In a nutshell, as far as the overwhelming number of members of the Committee are concerned, it was only three models above viz. as specified in paras (a), (c) and (d) in para 5.17 above which were seriously proposed.

- 5.25 Since the Committee finds that each of the views as specified in paras (a), (c) and (d) in para 5.17 above had reasonably broad and diverse support without going into the figures for or against or into the names of individual Members, the Committee believes that, in fairness, all these three options be transmitted by the Committee as options suggested by the Committee, leaving it to the good sense of Parliament to decide as to which option is to be adopted.
- 5.26 It would be, therefore, pointless in debating the diverse arguments in respect of each option or against each option. In fairness, each of the above options has a reasonable zone of merit as also some areas of demerit. The Committee believes that the wisdom of Parliament in this respect should be deferred to and the Committee, therefore, so opines.

## CHAPTER-6

### MEMBERS OF PARLIAMENT : VOTE, SPEECH AND CONDUCT WITHIN THE HOUSE

#### I. INTRODUCTION AND BACKGROUND

- 6.1 Clause 17(1)(c) of the Lokpal Bill, 2011 enables the Lokpal to inquire into any matter involved in, or arising from, or connected with, any allegation of corruption made in a complaint in respect of any person who is or has been a Member of either House of Parliament. However, sub-clause (2) of this clause specifies that Lokpal shall not inquire into any matter involved in, or arising from, or connected with, any allegation of corruption, complaint against any Member of either House of Parliament in respect of anything said or vote given by him in Parliament or any Committee thereof covered under the provisions contained in Clause (2) of Article 105 of the Constitution. In other words, MPs and ex-MPs fall under the jurisdiction of the Lokpal for their acts of corruption, except that their acts like speech or voting in the House cannot be inquired into by the Lokpal to the extent they are covered under Article 105(2) of the Constitution. The Committee had received detailed inputs on the issue whether the conduct of MPs in the House (in the form of speech/vote or action) should also be brought under the jurisdiction of the Lokpal.

#### II. SUMMARY OF SUGGESTIONS/OBSERVATIONS RECEIVED THROUGH WRITTEN MEMORANDA

- 6.2 Any complaint against a Member of any House by Lokpal can be sent to the Presiding Officer of the House, who will, within a limited (well defined) time, either approve the inquiry to be conducted against the Member or if he wants to reject the inquiry, refer it to the Bench of SC/HC which should validate the reasons for such rejection.
- 6.3 To ensure independence of institutions created under the Constitution, only those acts of MPs in the House where there is a case of undue pecuniary benefit should fall under the purview of Lokpal. Moreover, for prosecution of MPs, the Lokpal Prosecution/Investigative Committee/Bench should for these specific cases co-opt additional members who are MPs nominated by the Speaker of Lok Sabha and the Chairman of Rajya Sabha.



- 6.4 Parliamentary privilege does not cover corrupt acts committed by MPs in connection with their duties in the House or otherwise. Hence, the Bill should include such corrupt practice of MPs, whether done in or outside the House.
- 6.5 The speech of an elected MP inside Parliament cannot be subject to the ideological prejudices of a Lokpal; the vote of an elected Member, if tainted by corruption, must be tackled by Parliament itself as per its rules and norms.
- 6.6 Clause 17(2) of the Bill should be deleted since there is already a decision of a Constitution bench of the Supreme Court supporting what the sub section says and hence it is not necessary to repeat it in the Bill.

### III. SUMMARY OF DEPOSITIONS GIVEN BY WITNESSES

- 6.7 The Ministry of Personnel (DoPT) in its comments furnished to Committee clarified the issue in the following terms:

*“...It is a matter for examination whether the inquiry by the Lokpal in respect of anything said or vote given by a Member of Parliament would fall under the category ‘proceedings before a court of law’. If so, the MPs would certainly have to be kept outside the purview of the Lokpal...”*

- 6.8 Chairman of Bar Council of India placed the views of the Bar Council over this issue before the Committee as follows:

*“....Now so far as conduct of MPs within the Parliament is concerned, our view is they should be excluded from the purview of the Lokpal. What we believe is that conduct of MPs within Parliament should be excluded from the purview of the Lokpal Bill considering the constitutional provisions in respect of privileges of Members in Parliament. However, in terms of Article 105(3) of the Constitution, the powers, privileges and immunities of each House of Parliament and of the Members and the Committees of each House should be defined by Parliament by a separate law dealing with the subject...”*

- 6.9 The President, Centre for Policy Research, while making a presentation before the Committee, emphasized that Constitutional protection given to MPs need not be changed. He put forward his views as:

*“...Now, about inclusion of Members of Parliament, my own view is that the protection provided to the Members of Parliament under Article 105(2)(iii) should be sacrosanct. I think for what you say on*

*the floor of the House and the votes and so forth, there is a reason for that constitutional protection and that should remain...”*

- 6.10 Shri Harish Salve while placing his considered views before the Committee, on this subject matter, opined as follows:

*“...Article 105 is extremely clear. The control over the Parliament must lie within the Parliament. As much as the control within the Courts lie with the Presiding Officers, as much as nobody from outside Court can tell me what to say in the Court, nobody from outside Parliament can tell any parliamentarian how to behave and what to say in the Parliament, and that is far too precious a virtue for us to sacrifice or compromise. But, Sir, do take this occasion to clear up one terrible aberration that has come into our law. Where Article 105 applies, there is complete immunity. But, Sir, please clarify that the immunity of Article 105 is not a half-way house; the bribe taker is protected and the bribe giver is subjected to scrutiny of the law. That judgment needs to be corrected. If it is established that somebody has taken a bribe to vote in Parliament in a particular way, with the sanction of the Speaker, because Supreme Court read that in, that can be put on a statutory basis, and if the Speaker of the House considers it appropriate, it is a matter which can be put within the domain of the Lokpal for the investigation. And, once the Speaker of the House, which means once the House, feels that it is a fit case for the Lokpal, then this artificial divide between the bribe giver and the bribe taker must go...”*

- 6.11 President of CII while apprising the Committee of his views/comments on the issue, observed as follows:

*“...The next issue is MPs action inside the Parliament. We believe that the existing arrangement should continue. The Privileges Committee should take care of the MPs’ action inside the Parliament. If there is any lacuna in the functioning of the Privileges Committee or if the Privileges Committee is lacking any teeth in the manner in which it can act, I believe that needs to be looked at and that needs to be strengthened...”*

- 6.12 Shri Shekhar Singh of NCPRI while tendering oral evidence before the Committee, put forth his suggestions as under:

*“...Let the matter stays as it is though we are not in agreement with what we understand to be the implications of the Supreme Court Order on this matter. We feel that that has gone beyond what the Constitution envisages. So, we would like a position which is strictly in keeping with the constitutional position. But we would*

*like the Parliament to consider whether it itself wants to review this position especially in the light of some of the past occurrences and, maybe, relax it in a way in which public feel that there is a greater answerability of the MPs even when they are in Parliament...*

- 6.13 Dr. Jayaprakash Narayan during his presentation before the Committee, elucidated upon the issue as follows:

*“As far as Members of Parliament are concerned, Article 105(2), the present Bill makes a specific provision of that; I think, it is Section 17(2), if I am not mistaken. Sir, protection of privileges of Members of Parliament for their conduct in the House, what they say, what they believe, and what documents they furnish, that is absolutely inviolable. That is sacrosanct, including their vote...Sir, until that is undone, for the lower courts of the country, the judgment of the Supreme Court is final and binding, and therefore there cannot be any prosecution of a Member of Parliament on grounds of corruption for an act committed in the House. Our view is that these two things must be delinked—the act committed in the House and the corruption, i.e., receiving illegal gratification in order to do a certain thing or not to do in Parliament, in the interest of the Parliament and its dignity. That has to happen only through the Supreme Court pronouncement because Supreme Court has already held; or, it can happen by a law.*

*Parliament and institutions of Constitution are increasingly under attack and now if the Parliament takes this stand, it will actually undermine parliamentary democracy and the Constitution. Therefore, very humbly, we submit that this must be delinked and Section 17(2) must be deleted...*

#### IV. ANALYSIS AND DISCUSSION

- 6.14 From the constitutional perspective, it is quite clear that irrespective of demands, personal preferences, opinions or public perception, it is not possible to prosecute MPs for corruption related acts or omissions so long as such conduct is relatable either to their vote in the House and/or to their speech in the House and/or to publication thereof. The bar of Article 105 is complete and absolute and unless there is a Constitutional amendment, the issue cannot be considered further.
- 6.15 As regards conduct of MPs, both sitting and former, in respect of allegations of corruption not related to their vote/speech/conduct in the House, the Lokpal Bill already mandates coverage under Section 17(1)(c).

- 6.16 There appears to be no consensus among the Committee Members or, indeed among political parties to the effect that Article 105 be deleted or substantially or marginally modified to erode or deprive MPs of this immunity. Such an enterprise would lead to avoidable confusion and certain and inordinate delay involving a constitutional amendment without even minimal consensus. Thus as far as Article 105 is concerned, there being united opposition regarding protecting the privilege of MPs and preservation of the essence of Article 105, it is recommended that the exception or clarification contained in Section 17(2) of the Lokpal Bill be retained.
- 6.17 There is a perception that conduct of MPs in the House is not subject to any monitoring or sanction. In this context, it is critical to underscore that Article 105 does not provide MPs immunity or protection from disciplinary proceedings or sanctions initiated and conducted by the Parliament itself. As an illustration the cash for questions scam in this year led to the expulsion of 11 Members from different political parties. Their appeal to the Supreme Court challenging their expulsion was also rejected by the Supreme Court<sup>1</sup>. There is a weighty body of opinion in our country which thinks that this is the way it should be and that for vote, speech or action within Parliament, accountability must be demanded from and owed to Parliament itself and not to external policing bodies like Lokpal.
- 6.18 Even the Jan Lokpal Bill as presented by the team headed by Shri Anna Hazare proposed that investigations into affairs of the Members of Parliament should be permissible, subject to Article 105 of the Constitution. They, however, contend that Article 105 of the Indian Constitution does not seek to immunize corrupt vote, corrupt speech and corrupt action within the House. Alternatively, they contend that if Article 105 is read to granting immunity to vote, speech or conduct involving corruption, then Article 105 must necessarily be amended.

## V. REASONS AND RECOMMENDATIONS

- 6.19 **The Committee strongly feels that constitutional safeguards given to MPs under Article 105 are sacrosanct and time-tested and in view of the near unanimity in the Committee and among political parties on their retention, there is no scope for interfering with these provisions of the Constitution. Vote, conduct or speech**

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<sup>1</sup> See the judgement of five judges constitutional bench headed by Chief Justice Y. K. Sabharwal in *Raja Rampal Vs. The Hon'ble Speaker, Lok Sabha and Ors.* dated 10 January, 2007

within the House is intended to promote independent thought and action, without fetters, within Parliament. Its origin, lineage and continuance is ancient and time-tested. Even an investigation as to whether vote, speech or conduct in a particular case involves or does not involve corrupt practices, would whittle such unfettered autonomy and independence within the Houses of Parliament down to vanishing point. Such immunity for vote, speech or conduct within the Houses of Parliament does not in any manner leave culpable MPs blameless or free from sanction. They are liable to and, have, in the recent past, suffered severe parliamentary punishment including expulsion from the Houses of Parliament, for alleged taking of bribes amounting to as little as Rs. 10,000/- for asking questions on the floor of the House. It is only external policing of speech, vote or conduct within the House that Article 105 frowns upon. It leaves such speech, vote and conduct not only subject to severe intra-parliamentary scrutiny and action, but also does not seek to affect corrupt practices or any other vote, speech or conduct outside Parliament. There is absolute clarity and continued unanimity on the necessity for this limited immunity to be retained. Hence, speculation on constitutional amendment in this regard is futile and engenders interminable delay.

- 6.20 Consequently, the existing structure, mechanism, text and context of Clauses 17(1)(c) and 17(2) in the Lokpal Bill, 2011 should be retained.

## CHAPTER-7

### **LOKPAL AND STATE LOKAYUKTAS : SINGLE ENACTMENT AND UNIFORM STANDARDS**

#### **I. INTRODUCTION AND BACKGROUND**

- 7.1 Keeping in mind the federal structure of our country and the need to cover all public functionaries, either at the Centre or at the States under a corruption watchdog, it has long been proposed that while there would be a Lokpal for the Centre, there must be Lokayuktas for each State. The difference in terminology is merely to demarcate the Centre-State distinction, albeit the roles performed by the Lokpal and Lokayukta in their respective jurisdictions would be similar. Over a period of time some States have enacted legislations creating the office of the Lokayukta. Their evolution at the State level has been briefly adverted to in para 3.8 above. While some of these States have institutions which developed roots in that State, other States have not succeeded in realizing their own legislative mandate. Still others do not still have Lokayuktas, either on account of absence of legislation<sup>2</sup> or due to unfulfilled vacancy<sup>3</sup>. Currently about 17 States and one Union Territory have Lokayukta enactments with huge variance in their jurisdiction, powers, scope, function and mandate. The standards applied to identifying offences, investigations, prosecution and penalties differ from State to State. Therefore, there has been a huge clamor for universal standards and an omnibus umbrella enactment to cover all States as also the Union. However, considering the federal structure of the Constitution and the split of powers between Centre and State, there has been a debate about the constitutional feasibility of such an omnibus enactment.

#### **II. SUMMARY OF SUGGESTIONS/OBSERVATIONS RECEIVED THROUGH WRITTEN MEMORANDA**

- 7.2 Lokayuktas needed in States.
- 7.3 This Bill should also incorporate a separate chapter on Lokayukta in each State and local Ombudsman in each city/district under the Lokayuktas. Lokayuktas may be empowered on the lines of Lokpal and CVC as in the case of Central Government.

<sup>2</sup> Nine States and six UTs do not have institution of Lokayukta

<sup>3</sup> Presently, post of Lokayukta is vacant in four States which have Lokayukta enactment

- 7.4 Set up strong Lokayuktas in the States within the framework of the Constitution.
- 7.5 Lokpal needs to be a Constitutional authority, like the ECI or CAG rather than a statutory body, so that it has higher levels of legitimacy.
- 7.6 The DoPT, in its written comments on the issue, has stated:  
*“...The Bill seeks to provide Lokpal at the Centre and it may constitute Benches which shall ordinarily sit at New Delhi [Clause 19]. At State level, the concerned State Government has to consider setting of Lokayuktas.”*
- 7.7 The proponents of the Jan Lokpal Bill, in their written submission, have opined thus:  
*“...Similar provisions for Lokayuktas in the States to deal with public servants of respective State will have to be incorporated in this Bill.*  
*18 States already have Lokayuktas. However, they are all very different from each other in terms of powers, jurisdictions etc. They have proved ineffective in checking corruption due to critical deficiencies in most of these legislations. Other States do not have any Lokayuktas. Therefore, it is urged that through the same Act, a uniform institution of Lokayukta should be set up in each State on the same lines as Lokpal at the Centre...”*

### III. SUMMARY OF DEPOSITIONS GIVEN BY WITNESSES

- 7.8 The representatives of NCPRI placed their views before the Committee as under:  
*“...The first comment is that we were disappointed that in the Government Lokpal Bill there was no mention that there will be corresponding Lokayuktas at the State level. It is our belief that the Parliament is competent to legislate despite the fact that there have been debates to the contrary on a Bill which includes both the Lokpal at the Centre and the Lokayukta at the State level. We have given our reasoning...”*
- 7.9 Dr. Jayaprakash Narayan, while voicing his opinion on this issue, stated:  
*“...I am going to argue that the Lokayukta must be mandatorily created and the law must be under Article 253.”*
- 7.10 The CVC, in its written submission to the Committee, observed that:  
*“At present, there are multiple agencies and bureaus in the States and the focus in addressing anti-corruption matter in the States*

*needs to be more organized. The Commission receives a large number of complaints relating to matters of State Governments and the Commission has no jurisdiction over the State mechanisms of Lokayuktas in the States on the lines of Lokpal should be established within the frame work of our Constitution.”*

- 7.11 Justice J.S. Verma came forward with the following opinion on the issue of going in for an omnibus federal legislation to set up Lokayuktas in the States. The opinion of Justice Verma which covers the aspect of the constitutionality of the proposed move also, reads as follows:

*“...Article 253 of the Constitution confers the legislative competence needed to implement the UN Convention, which has been signed and ratified by India. It is relevant to highlight that Article 6 of the Convention enshrines a specific obligation for member states to establish bodies that present corruption...The directive principle of State policy in Article 51 (c), as a principle fundamental in governance is available as an aid. There is, therefore, no need to look for any additional support for the legislative competence of the Parliament to legislate on the subject for the whole territory of India. In addition, it would not be out of place to mention that the failure to take effective steps with respect to the establishment of such institutions could lead to India being considered to be in breach of its obligations under international law, which must obviously be avoided at all costs...*

*...Similarly, for ‘combating corruption’ in a more effective manner a uniform legislation enacted by the Union Parliament by invoking Article 253 can provide for the Lokpal and the Lokayuktas...*

*...The parliamentary central enactment made by invoking Article 253 would be constitutionally valid, such legislative competence in the Union Parliament being expressly provided as a part of the constitutional scheme, consistent with the nature of federalism created by the Constitution...”*

- 7.12 Justice J.S. Verma, while placing his considered views before the Committee, stated:

*“...But we are trying to say not a single word except to provide a declaration that there could be a constitutional body and once this Constitution Amendment Bill is passed so that it becomes a part of the Constitution. Then, there are several other implications which have got to be taken note of. This is something which cannot be ordinarily amended like an ordinary statute by some simple majority. It would be difficult. Secondly, if it becomes a basic feature and,*



*therefore, a part of the basic structure which personally, I think, my friend agrees, ultimately it will become a part of the indestructible basic structure of the Constitution which any kind of change in the political equations or formulations, it would be beyond amending power even of Parliament.*

*Article 253 of the Constitution clearly provides that for the purpose of implementing an international treaty convention, etc., the Parliament is entitled to enact for the whole or any part of the territory. We have already a precedent. The Protection of Human Rights Act, 1993 was enacted by the Parliament. We deal with not only the Constitution and the National Human Rights Commission but also the State Human Rights Commission. It is for the whole.*

*My preference would be for a federal legislation because that is something which will ensure uniformity. The State would be involved only in making the appointment..."*

- 7.13 The deposition of Dr. Jayaparakash Narayan on this issue was as under:

*"...That is the reason why we believe that a Lokayukta institution is absolutely necessary under Article 253, not under Article 252 with due respect. And, the Chief Minister must be brought under the purview of Lokpal, but not under Lokayukta ideally..."*

- 7.14 The Committee takes note of the opinion of Shri Harish Salve in this regard:

*"...We cannot sacrifice federalism because a group of people do not have faith in the State Governments. If the law is to come in that form, then it cannot, in my respectful opinion, apply to the States. The States in Entry 41 List-II of the Constitution have the right to regulate their own services as any employer should. If the States have to govern themselves, it must be under their own law..."*

- 7.15 In its written memorandum submitted to the Committee, CHRI has opined:

*"...So a single law providing for both Lokpal and Lokayuktas can be enacted by Parliament under multiple fields mentioned in List-III. As the scheme of division of powers mentioned in Articles 246 and 254 of the Constitution gives preeminence to laws made by Parliament [except under certain circumstances spelt out in Article 254(2)] this law will prevail over all other existing laws relating to the working of Lokayuktas. A law made by Parliament will ensure uniformity in the systems established for combating corruption throughout the*

*country...The proposed Lokayukta will have the power to recommend dismissal or other penalties against corrupt officers of the State Public Services only in the context of a corruption-related matter brought before it. The proposed law does not seek to empower the Lokayukta to exercise such powers routinely in the manner of State Governments. Such incidental encroachment on any field contained in List-II is permissible under this rule of interpretation. As the central purpose of the proposed Lokpal/Lokayukta legislation is not the regulation of the State Public Services but combating corruption, the courts are not likely to strike it down on the ground of lack of legislative competence."*

- 7.16 On the issue whether the Bill would also be entitled to repeal the existing Lokayukta enactments, the considered view of Justice J.S. Verma was:

*"...Once the Union Parliament enacts the Central legislation by invoking Article 253 for the whole territory of India, the existing State legislations relating to the Lokayuktas being repugnant to it shall be void, by virtue of Article 254(1)..."*

- 7.17 The Ministry of Law (Department of Legal Affairs) expressed their views in the following terms, on the issue under examination:

*"It may be stated in this regard that while examining the draft note for the Cabinet regarding Lokpal Bill, 2011, this Department has already opined that the subject matter of the Draft Bill is relatable to Entry 1 and 2 of List-III i.e. Concurrent List of the Seventh Schedule to the Constitution. As such the Parliament as well as Legislative Assemblies have legislative competence over the subject. Further, as the proposed Bill would extend to the whole of India, the constitution of Investigation Wing having powers of Police for the purpose of investigation of offences punishable under the Prevention of Corruption Act, 1988 (Clauses 12 & 13 of the Draft Bill) and the establishment of Prosecution Wing (Clause 15 of the Draft Bill) may likely to affect the powers of the States, as "Police" and "Public Order" are the subjects which find place as Entry 1 and 2 respectively in the List-II i.e. State List of the Seventh Schedule to the Constitution. Therefore, an enactment by the Parliament on the subject to provide for State Lokayuktas in Lokpal Bill, 2011, may not only amount to encroachment upon the jurisdiction of the States but would also affect the federal structure of the Constitution.*

*Besides the aforesaid, under the proposed Bill, no sanction or approval would be required under Section 197 of the Code of Criminal*

*Procedure, 1973 or Section 19 of the Prevention of Corruption Act, 1988 where prosecution is proposed by Lokpal (Clause 26 of the Draft Bill). This may also be against the concept of the protection presently available to the public servants. Under Article 253 of the Constitution the Parliament can enact with respect to any subject (including State subjects) for the purpose of implementing any treaty or agreement or convention with any other country or countries or any decision made at any international conference or body. But the enactment by Parliament, if any, under Article 253 would also be within the ambit of the Constitution.*

*Regarding the constitutionality of including State Lokayuktas in the Lokpal Bill, 2011, the Parliament may consider to enact a model law for the States.”*

- 7.18 Shri Rajeev Dhawan, Sr. Advocate, Supreme Court of India while placing his views before the Committee, stated thus:

*“...Bringing Lokayuktas under the Bill may be unconstitutional. It is certainly anti-federal. Let the States decide what they want and how their Chief Ministers should be toppled...”*

#### IV. ANALYSIS AND DISCUSSION

- 7.19 There are many advantages to having the Lokayukta provisions in the same federal enactment. Uniformity is the most important, since there is no reason why a public servant in one State should be prosecutable on different standards than a public servant in an adjoining State with the federal Lokpal Act enunciating a possible third standard, all in the same country.
- 7.20 However, the main issue which arises is ensuring constitutional validity of such an omnibus federal enactment. This can be approached from two routes, both cumulative, and not in the alternative.
- 7.21 Firstly, Article 253 of the Constitution provides a strong constitutional basis for such an enactment, since the Lokpal Act is admittedly being included pursuant to the UN Convention on Corruption, now ratified by India. This view has been endorsed by some noted jurists and witnesses, whose opinion is with the Committee<sup>4</sup>. There is also a precedent in an earlier parliamentary enactment viz. the Protection of Human Rights Act, 1986 which was enacted under Article 253 power to implement the UN Convention for the Protection of Human

<sup>4</sup> See, *inter-alia*, opinion of former Chief Justice of India, Hon'ble Mr. Justice J.S. Verma dated 4 November, 2011

Rights. This Act provided for setting up of both the National Human Rights Commission and for establishment of State Human Rights Commissions.

- 7.22 Secondly, the Lokpal Act deals with criminal/penal action against public servants including application of the IPC and the CrPC, both of which are covered under List-III, entries 1 & 2. The Lokpal Bill also touches upon the issue of administration of justice specifically covered under Entry 11 A of List-III.
- 7.23 In view of the above, the Committee is of the view that Parliament is fully empowered under either Article 253 and/or Entries 1, 2 and 11A of List-III to enact an all India legislation providing for both Lokpal at the Centre and Lokayukta in each State.
- 7.24 As regards the status of existing State Lokayuktas Acts, Article 254 of the Constitution provides that State laws shall be void to the extent of repugnancy with Parliamentary law. States do have the option of over-riding Parliamentary supremacy in List-III by making State amendments with Presidential assent. The Committee, therefore, feels that there would be no constitutional hurdle in providing a comprehensive and single legislation for both the Lokpal and the Lokayuktas.
- 7.25 The Lokpal Bill will have to include additional chapters in order to prescribe provisions applicable for Lokayuktas in the States which will adopt the Lokpal provisions, *mutatis mutandis*, for the States.

## V. REASONS AND RECOMMENDATIONS

- 7.26 The Committee finds merit in the suggestion for a single comprehensive federal enactment dealing with Lokpal and State Lokayuktas. The availability of uniform standards across the country is desirable; the prosecution of public servants based upon widely divergent standards in neighboring States is an obvious anomaly. The Committee has given its earnest attention to the constitutional validity of a single enactment subsuming both the Lokpal and Lokayukta and concludes that such an enactment would be not only desirable but constitutionally valid, *inter-alia* because,
- (a) The legislation seeks to implement the UN Convention on Corruption ratified by India.
  - (b) Such implementing legislation is recognized by Article 253 and is treated as one in List-III of the 7th Schedule.
  - (c) It gets additional legislative competence, *inter-alia*, individually or jointly under Entries 1, 2 and 11A of List-III.

- (d) A direct example of provision for National Human Rights Commission and also for State Human Rights Commissions in the same Act is provided in the Protection of the Human Rights Act, 1986 seeking to implement the UN Convention for the Protection of Human Rights.
  - (e) Such Parliamentary legislation under Article 253, if enacted, can provide for repealing of State Lokayukta Acts; subject, however, to the power of any State to make State specific amendments to the federal enactments after securing Presidential assent for such State specific amendments.
- 7.27 Additionally, it is recommended that the content of the provisions dealing with State Lokayuktas in the proposed Central/federal enactment must be covered under a separate chapter in the Lokpal Bill. That may be included in one or more chapters possibly after Chapter II and before Chapter III as found in the Lokpal Bill, 2011. The entire Lokpal Bill, 2011 would have to incorporate necessary changes and additions, *mutatis mutandis*, in respect of the State Lokayukta institutions. To give one out of many examples, the Selection Committee would be comprised of the State Chief Minister, the Speaker of the Lower House of the State, the Leader of Opposition in the Lower House, the Chief Justice of the High Court and a joint nominee of the State Election Commissioner, the State Auditor General and State PSC Chairman or, where one or more of such institutions is absent in the State, a joint nominee of comparable institutions having statutory status within the State.
- 7.28 All these State enactments shall include the Chief Minister within their purview. The Committee believes that the position of the State Chief Minister is not identical to that of the Prime Minister. The arguments for preventing instability and those relating to national security or the image of the country do not apply in case of a Chief Minister. Finally, while Article 356 is available to prevent a vacuum for the post of Chief Minister, there is no counterpart Constitutional provision in respect of the federal Government.
- 7.29 Article 51(c) of the Directive Principles of State Policy enjoining the federation to “*foster respect for international law and treaty obligations...*” must also be kept in mind while dealing with implementing legislations pursuant to international treaties, thus providing an additional validating basis for a single enactment.
- 7.30 The Committee recommends that the Lokpal Bill, 2011 may be expanded to include several substantive provisions which would

be applicable for Lokayuktas in each State to deal with issues of corruption of functionaries under the State Government and employees of those organizations controlled by the State Government, but that, unlike the Lokpal, the State Lokayuktas would cover all classes of employees

- 7.31 The Committee recommends that if the above recommendation is implemented the Lokpal Bill, 2011 may be renamed as “Lokpal and Lokayuktas Bill, 2011.”
- 7.32 The Committee believes that the recommendations, made herein, are fully consistent with and implement, in letter and spirit, the conclusions of the Minister of Finance on the floor of the Houses in respect of establishment of Lokayuktas in the States, as quoted in para 1.8 above. The Committee is conscious of the fact that the few States which have responded to the Secretariat’s letter sent to each and every State seeking to elicit their views, have opposed a uniform Central federal Lokpal and Lokayukta Bill and, understandably and expectedly, have sought to retain their powers to enact State level Lokayukta Acts. The Committee repeats and reiterates the reasons given hereinabove, in support of the desirability of one uniform enactment for both Lokpal and Lokayuktas. The Committee also reminds itself that if such a uniform Central enactment is passed, it would not preclude States from making any number of State specific amendments, subject to prior Presidential assent, as provided in the Indian Constitution. The Committee, therefore, believes that it has rightly addressed the two issues which arise in this respect *viz.* the need and desirability for a uniform single enactment and, secondly, if the latter is answered in the affirmative, that such a uniform enactment is Constitutionally valid and permissible.
- 7.33 Since this report, and especially this chapter, recommends the creation of a uniform enactment for both Central and State Lokayuktas, it is reiterated that a whole separate chapter (or, indeed, more than one chapter) would have to be inserted in the Lokpal Bill of 2011 providing for State specific issues. Secondly, this would have to be coupled with *mutatis mutandis* changes in other parts of the Act to accommodate the fact that the same Act is addressing the requirement of both the federal institution and also the State level institution.
- 7.34 Furthermore, each and every chapter and set of recommendations in this report should also be made applicable, *mutatis mutandis*, by appropriate provisions in the Chapter dealing with State Lokayuktas.

- 7.35 Although it is not possible for this Committee to specifically list the particularised version of each and every amendment or adaptation required to the Lokpal Bill, 2011 to subsume State Lokayuktas within the same enactment, it gives below a representative non-exhaustive list of such amendments/adaptations, which the Government should suitably implement in the context of one uniform enactment for both Lokpal and Lokayuktas. These include:
- (a) Clause 1(2) should be retained even for the State Lokayukta provisions since State level officers could well be serving in parts of India other than the State concerned as also beyond the shores of India.
  - (b) The Chief Minister must be included within the State Lokayukta on the same basis as any other Minister of the Council of Ministers at the State level. Clause 2 of the 2011 Bill must be amended to include Government servants at the State level. The competent authority in each case would also accordingly change e.g. for a Minister of the Council of Minister, it would be the Chief Minister; for MLAs, it would be the presiding officer of the respective House and so on and so forth. The competent authority for the Chief Minister would be the Governor.
  - (c) As regards Clause 3, the only change would be in respect of the Chairperson, which should be as per the recommendation made for the Lokpal.
  - (d) As regards the Selection Committee, the issue at the Lokayukta level has already been addressed above.
  - (e) References in the Lokpal context to the President of India shall naturally have to be substituted at the Lokayukta level by references to the Governor of the State.
  - (f) The demarcation of the criminal justice process into five broad areas from the initiation of complaint till its adjudication, as provided in Chapter 12, should also apply at the State Lokayukta level. The investigative agency, like the CBI, shall be the anti-corruption unit of the State but crucially, it shall be statutorily made independent by similar declarations of independence as already elaborated in the discussion in Chapter 12. All other recommendations in Chapter 12 can and should be applied *mutatis mutandis* for the Lokayukta.

- (g) Similarly, all the recommendations in Chapter 12 in respect of departmental inquiry shall apply to the Lokayukta with changes made, *mutatis mutandis*, in respect of State bodies. The State Vigilance Commission/machinery would, in such cases, discharge the functions of the CVC. However, wherever wanting, similar provisions as found in the CVC Act buttressing the independence of the CVC shall be provided.
- (h) The recommendations made in respect of elimination of sanction as also the other recommendations, especially in Chapter 12, relating to Lokpal, can and should be applied *mutatis mutandis* in respect of Lokayukta.
- (i) Although no concrete fact situation exists in respect of a genuine multi-State or inter-State corruption issue, the Committee opines that in the rare and unusual case where the same person is sought to be prosecuted by two or more State machineries of two or more Lokayuktas, there should be a provision entitling the matter to be referred by either of the States or by the accused to the Lokpal at the federal level, to ensure uniformity and to eliminate turf wars between States or jurisdictional skirmishes by the accused.
- (j) As already stated above, the coverage of the State Lokayukta, unlike the Lokpal, would extend to all classes of employees, including employees of State owned or controlled entities.



## CHAPTER-8

### LOWER BUREAUCRACY : DEGREES OF INCLUSION

#### I. INTRODUCTION AND BACKGROUND

- 8.1 The current provisions of the Lokpal Bill, 2011 [Section 17(1)(d)] include, *inter-alia*, only Group A officers or equivalent, (serving or has served) from amongst the Public Servants defined in Section 2(c) of the Prevention of Corruption Act, 1988. The central bureaucracy is broadly classified into Groups A, B, C and D – such categories being drawn on the lines of decision making power and remuneration. While Group A includes almost all officers from the rank of Section Officer and above, Group C and D form the very lower rungs of the bureaucracy including posts of attendants, clerks, senior clerks, stenographers, peons, drivers *et al.* On a broad estimate, as of 2010, Group A officers comprise about 80,000 in number and Group B officers comprise about 1.75 Lakhs. Group C and D on the other hand are about 28 Lakhs in number. This classification and categorization may be different from State to State and will therefore have to be addressed separately in respect of the State bureaucracy. The debate revolved around the extent of inclusion of the bureaucracy within the ambit of the Lokpal particularly in the context of the humongous numbers which the Lokpal may have to handle as well as the speed, efficiency and workability of the Lokpal institution. It is important to emphasize at this stage that the aforesaid Group A and B numbers of approximately 2.56 lakhs excludes the substantial numbers of Group A and B or equivalent officers in all public sectors or all entities owned or controlled by the Central Government and, more significantly, the entire Railways and P&T departments, for which the figures are not readily available. However, all such categories are subsumed under the Lokpal.

#### II. SUMMARY OF SUGGESTIONS/OBSERVATIONS RECEIVED THROUGH WRITTEN MEMORANDA

- 8.2 The major points raised in the memoranda received by the Committee, on this topic are:
- Include lower level of public and private functionaries in the Bill.

- The word Group “A” service and equivalent needs wider definition.
  - (i) CVC to be strengthened;
  - (ii) CVC to cover Public Servants other than Group “A” Officers; and
  - (iii) State Vigilance Commissions to be created in each State.
- All the big cases of corruption involve various ranks simultaneously. So, dividing public servants into two categories will frustrate the investigations and help the corrupt.
- Single directive that protected JS and seniors have scuttled investigations.
- Lokpal’s direct jurisdiction be limited to those as provided in the present Bill.
- Strengthen CVC making it part of Lokpal with specific jurisdiction to deal with officials below Joint Secretary rank but above a certain rank.
- Vigilance Organisations in each agencies will deal with all the Ministerial staff.

### III. SUMMARY OF DEPOSITIONS GIVEN BY THE WITNESSES

8.3 The Chairman, Bar Council of India opined thus:

*“...One, confine the Lokpal to investigate into allegations of corruption against Central Ministers and higher officers in the Government, not below the rank of Joint Secretaries. Limit it at that so far as the Lokpal is concerned. In the alternative, have different benches to hear different kinds of cases...”*

8.4 One of the witnesses who appeared before the Committee, stated as under:

*“...My view is that the lower bureaucracy should not come under the ambit of the Lokpal, one for very practical reason which is that then the Lokpal itself will become a gigantic bureaucracy and a gigantic bureaucracy superintending another gigantic bureaucracy is not a recipe for efficiency. You need a separate mechanism for local bureaucracy...”*

8.5 Shri B. Muthuraman, while placing the views of CII before the Committee, stated:

*“...We believe that all bureaucracy should be included under the Lokpal, but we also think it may become an unworkable proposition from the point of view of numbers. So, if for the first few years,*

*let us say 3 to 5 years, Lokpal should restrict itself only to higher bureaucracy and after it settles down and starts functioning well, then you can add lower level bureaucracy...*

8.6 The DoPT, in its written comments, has stated:

*"...The provisions made in Clause 17 of the Bill appear to be adequate. If lower bureaucracy and other institutions suggested by the author are also brought within the purview of the Lokpal, it will over burden the Lokpal..."*

8.7 Shri Shekhar Singh (NCPRI) stated as follows:

*"...Therefore, we have argued that for 'B' and 'C' and 'D' officers complaints under the Prevention of Corruption Act must first be to the police or Anti-Corruption Bureaus which are under the elected Governments...So, it is a system similar to the High Court system where there is going to be territorial jurisdiction and any Central Government officer wherever he or she is posted a complaint will rest with the local police there. They would be prepared in keeping with, for example, the CBI manual, a protocol of investigation and if that protocol is violated, then, a complainant or anybody can move the Up-Lokayukta or the Up-Lokpal where the complainant is located and then they can examine it and take over the investigation. After they have accepted and taken over the investigation they are not only obliged to complete that investigation but they are also obliged to fix the responsibility and if need be take action against that Investigating Officer who did not perform his or her job and, therefore, the matter had to be taken over. So what we are thinking of is an interlocking responsibility so that pressure builds up on the State Governments to make sure that they do their job and everything does not come to this independent body.*

*...we were also disappointed that there were many categories of Public Servants who were left out from the Government Lokpal Bill. First of all, the Judges or higher judiciary was left out and we are of the view that whereas the higher judiciary should not be part of the Lokpal, but simultaneously there should be a strengthened Judicial Accountability Bill which covers this..."*

8.8 Shri P.S. Bawa, Transparency International India placed before the Committee, their views as:

*"...Our contention is that Grade 'A' is not defined in any law. It is a sort of a financial categorization of Grade 'A', 'B' and 'C' officers. This criterion, based on the salary, is not a correct criterion.*

*Therefore, this defies the equality clause in the Constitution where justice is to be delivered to everybody and everybody is equal before law. We feel that the Bill should cover all public servants irrespective of their being category a, b, c, or whatever it is...*

8.9 One of the members of the Committee, opined in this regard as:

*"...एक फोर्थ क्लास का कर्मचारी है, फोर्थ क्लास का तो करप्शन से कोई लेना-देना ही नहीं है। Who are the people covered under fourth class? It includes the Peon and the lady जो पानी पिलाने वाली बाई है या फिर सफाई कर्मचारी हैं, ऐसे लोग फोर्थ क्लास में आते हैं। What kind of scope he is getting in his life to get involved in corruption? लेकिन उसे भी लोकायुक्त में रखने के लिए कहा जा रहा है। मान लीजिए मेरी कालोनी में सफाई कर्मचारी सफाई करने नहीं आया, चूंकि मैं अपर क्लास का हूं, इसलिए मैंने एप्लीकेशन कर दी कि यह आदमी काम करने के लिए नहीं आया, इसलिए इसे निकाला जाए। इसमें दो-तीन बातें हैं, अपनी इज्जत बनाने में और ईमानदारी से काम करने में सरकारी कर्मचारियों को सालों लग जाते हैं।..."*

8.10 Dr. Jayaprakash Narayan, while speaking on this issue, stated thus:

*"We believe the Lokpal should not cover everybody; it must cover only the high functionaries, both political and bureaucratic. The CVC, directly or indirectly, takes charge of others. In fact, that addresses the problem of lower bureaucracy. There is no single body that can deal with 20 million employees in this country at the State and national levels. Even at the national level alone, there are about 6 million plus employees. If you include the Public Sector Undertakings, maybe it is actually a million more or so. You will have tens of thousands of petitions everyday..."*

8.11 The Central Vigilance Commissioner, while deposing before the Committee, stated thus:

*"...There is a basic difference. This is a question why disciplinary action has been taken against Government Servants. In my presentation, I tried to explain why all other people are covered only under the Prevention of Corruption Act whereas only Government Servants they are there. They are covered under the departmental disciplinary rules. Under the departmental disciplinary rules, under lower standards of proof also they get dismissed. So, basically the entire bureaucracy is handled under the departmental rules. It is only in selected cases that Prevention of Corruption Act is done. If you bring the entire people under the Prevention of Corruption Act, firstly, the courts will get clogged. There will be no action taken; and the standards of proof that would be required would be much*

*higher...if you follow an investigation which is there in the courts is not a desirable mechanism for this thing, because what is important for Civil Servants is if there is a corruption, action should be swift and fast and the outcome should be certain. That is only possible in disciplinary inquiries which finish between one or two years whereas if you put them under the PC Act, this will go on and on for years and the senior officers will escape the net..."*

#### IV. ANALYSIS AND DISCUSSION

- 8.12 Any Lokpal would be approximately a 7 or 9 or 11 member body and it would be virtually impossible for any such body to cover all the 30 lakh employees of Central Government spread over categories 'A' to 'D'. (excluding Railways, PSUs, P&T etc., also covered under Classes A and B.)
- 8.13 The object is to create a new body *i.e.* the Lokpal, which, unlike the pre-existing bodies, is far more efficacious and swift. That objective would obviously be defeated if humungous numbers are added to this coverage.
- 8.14 The impression that inclusion of Group 'A' plus 'B' involves exclusion of large sections of the bureaucracy must be dispelled. Though in terms of number, the aggregation of Groups 'C' and 'D' is an overwhelming percentage of total Central Government employees, Group 'A' and Group 'B' include the entire class above the supervisory level. Effectively this means that virtually all Central Government employees at the Section Officer level and above would be included. It is vital to emphasize that this demarcation has to be viewed in functional terms and status, since it gives such categories significant decision making power in contra-distinction to mere numbers and necessarily subsumes a major chunk of medium and big ticket corruption.
- 8.15 The current, contemporary context has been one of anger and dissatisfaction mainly with corruption in the higher echelons, whether of the bureaucracy or of the political class. A majority of Committee Members expressed the opinion that while inclusion of Class C and D would unnecessarily overburden the Lokpal as also create a mechanism and avenue for exploitation of economically weaker sections, inclusion of Group B would not do much damage or obstruction to the speed, efficiency and functioning of the Lokpal.
- 8.16 The Committee has, therefore, considered including Group B officers as well within the ambit of the Lokpal.

- 8.17 The Committee would like to clarify that Group C and D officers or government employees are already within the purview of the Prevention of Corruption Act and therefore not outside the ambit of investigation and prosecution. In the proposed recommended regime (as is being suggested by this Committee) the existing fetters of Section 19 of the Prevention of Corruption Act (prior sanction) would be removed for all classes. If this be so, there would be an equally robust mechanism for addressing complaints against Group C and D officers as well.

## V. REASONS AND RECOMMENDATIONS

- 8.18 The Committee, therefore, recommends:

- (a) That for the Lokpal at the federal level, the coverage should be expanded to include Group A and Group B officers but not to include Group C and Group D.
- (b) The provisions for the State Lokayuktas should contain similar counterpart reference, for purposes of coverage, of all similar categories at the State level which are the same or equivalent to Group A and Group B for the federal Lokpal. Though the Committee was tempted to provide only for enabling power for the States to include the State Lokayuktas to include the lower levels of bureaucracy like groups 'C' and 'D' at the State level, the Committee, on careful consideration, recommends that all the groups, including the lower bureaucracy at the State level and the groups equivalent with 'C' and 'D' at the State level should also be included within the jurisdiction of State Lokayuktas with no exclusion. Employees of State owned or controlled entities should also be covered.
- (c) The Committee is informed by the DoPT that after the Sixth Pay Commission Report, Group D has been/will be transposed and sub-merged fully in Group C. In other words, after the implementation of the Sixth Pay Commission Report, which is already under implementation, Group D will disappear and there will be only Group C as far as the Central Government employees are concerned.
  - (i) Consequently, Group C, which will shortly include the whole of Group D will comprise a total number of approximately 30 lakhs (3 million) employees. Though the figures are not fully updated, A+B classes

recommended for inclusion by this Committee would comprise just under 3 lakhs employees. With some degree of approximation, the number of Railway employees from group A to D inclusive can be pegged at about  $13\frac{1}{2}$  lakhs (as on March, 2010). If Central Government PSUs are added, personnel across all categories (Group A, B, C and D as existing) would be approximately an additional 15 lakhs employees. Post and Telegraph across all categories would further number approximately  $4\frac{1}{2}$  lakhs employees. Hence the total, on the aforesaid basis (which is undoubtedly an approximation and a 2010 figure) for Group A to D (soon, as explained above, to be only Group C) + Railways + Central PSUs + Post and Telegraph would be approximately 63 lakhs, or at 2011 estimates, let us assume 65 lakhs *i.e.* 6.5 million.

- (ii) On a conservative estimate of one policing officer per 200 employees (a ratio propounded by several witnesses including team Anna), approximately 35000 employees would be required in the Lokpal to police the aforesaid group of Central Government employees (including, as explained above, Railways, Central PSUs, P&T etc.). This policing is certainly not possible by the proposed nine member Lokpal. The Lokpal would have to spawn a bureaucracy of at least 35000 personnel who would, in turn, be recruited for a parallel Lokpal bureaucracy. Such a mammoth bureaucracy, till it is created, would render the Lokpal unworkable. Even after it is created, it may lead to a huge parallel bureaucracy which would set in train its own set of consequences, including arbitrariness, harassment and unfair and illegal action by the same bureaucracy which, in the ultimate analysis would be nothing but a set of similar employees cutting across the same A, B and C categories. As some of the Members of the Committee, in a lighter vein put it, one would then have to initiate a debate on creating a super Lokpal or a Dharampal for the policing of the new bureaucracy of the Lokpal institution itself.
- (iia) The Committee also notes that as far as the Lokpal institution is concerned; it is proposed as a new body and there is no such pre-existing Lokpal bureaucracy available. In this respect, there is a fundamental

difference between the Lokpal and Lokayuktas, the latter having functioned, in one form or the other in India for the last several decades, with a readily available structure and manpower in most parts of India.

- (iii) If, from the above approximate figure of 65 lakhs, we exclude C and D categories (as explained earlier, D will soon become part of C) from Central Government, Railways, PSUs, Post and Telegraph etc., the number of A and B categories employees in these departments would aggregate approximately 7.75 lakhs. In other words, the aggregate of C and D employees in these classes aggregate approximately 57 or 58 lakhs. The Committee believes that this figure of 7.75 or 8 lakhs would be a more manageable, workable and desirable figure for the Lokpal institution, at least to start with.
- (iv) The impression that inclusion of Group 'A' and 'B' alone involves exclusion of large sections of the bureaucracy, must be dispelled. Though in terms of number, the aggregation of Groups 'C' and 'D' is an overwhelming percentage of total Central Government employees, Groups 'A' and 'B' include the entire class above the supervisory level. Effectively, this means that virtually all Central Government employees at the Section Officer level and above would be included. It is vital to emphasize that this demarcation has to be viewed in functional terms, since it gives such categories significant decision making power in contra-distinction to mere numbers and necessarily subsumes a major chunk of medium and big ticket corruption.
- (v) Another misconception needs to be clarified. There is understandable and justifiable anger that inclusion of Group 'C' and 'D' would mean exclusion of a particular class which has tormented the common man in different ways over the years viz. Tehsildar, Patwari and similarly named or equivalent officers. Upon checking, the Secretariat has clarified that these posts are State Government posts under gazette notification notified by the State Government and hence the earlier recommendation of this Committee will enable their full inclusion.



- (vi) We further recommend that for the hybrid category of Union Territories, the same power be given as is recommended above in respect of State Lokayuktas. The Committee also believes that this is the appropriate approach since a top heavy approach should be avoided and the inclusionary ambit should be larger and higher at the State level rather than burdening the Lokpal with all classes of employees.
- (vii) As of now, prior to the coming into force of the Lokpal Act or any of the recommendations of this report, Group C & D officers are not dealt with by the CVC. Group C & D employees have to be proceeded against departmentally by the appropriate Department Head, who may either conduct a departmental enquiry or file a criminal corruption complaint against the relevant employee through the CBI and/or the normal Police forces. The Committee now recommends that the entire Group C & D, (later only Group C as explained above) shall be brought specifically under the jurisdiction of the CVC. In other words, the CVC, which is a high statutory body of repute and whose selection process includes the Leader of the Opposition, should be made to exercise powers identical to or at least largely analogous, in respect of these class C and class D employees as the Lokpal does for Group A and B employees. The ultimate Lokpal Bill/Act should thus become a model for the CVC, in so far as Group C & D employees are concerned. If that requires large scale changes in the CVC Act, the same should be carried out. This would considerably strengthen the existing regime of policing, both departmentally and in terms of anti-corruption criminal prosecutions, all Group C & D employees and would not in any manner leave them either unpoliced or subject to a lax or ineffective regime of policing.
- (viii) Furthermore, this Committee recommends that there would be broad supervisory fusion at the apex level by some appropriate changes in the CVC Act. The CVC should be made to file periodical reports, say every three months, to the Lokpal in respect of action taken for these class C & D categories. On these reports, the Lokpal shall be entitled to make comments and

suggestions for improvement and strengthening the functioning of CVC, which in turn, shall file, appropriate action taken reports with the Lokpal.

- (ix) Appropriate increase in the strength of the CVC manpower, in the light of the foregoing recommendations, would also have to be considered by the Government.
  - (x) The Committee also feels that this is the start of the Lokpal institution and it should not be dogmatic and inflexible on any of the issues. For a swift and efficient start, the Lokpal should be kept slim, trim, effective and swift. However, after sometime, once the Lokpal institution has stabilized and taken root, the issue of possible inclusion of Group C class also within the Lokpal may be considered. This phase-wise flexible and calibrated approach would, in the opinion of this Committee, be more desirable instead of any blanket inclusion of all classes at this stage.
  - (xi) Another consideration which the Committee has kept in mind is the fact that if all the classes of higher, middle and lower bureaucracy are included within the Lokpal at the first instance itself, in addition to all the aforesaid reasons, the CVC's role and functioning would virtually cease altogether, since the CVC would have no role in respect of any class of employee and would be reduced, at best, to a vigilance clearance authority. This would be undesirable in the very first phase of reforms, especially since the CVC is a high statutory authority in this country which has, over the last half century, acquired a certain institutional identity and stability along with conventions and practices which ought not to be uprooted in this manner.
- (d) All provisions for prior sanction/prior permission, whether under the CrPC or Prevention of Corruption Act or DSPE Act or related legislation must be repealed in respect of all categories of bureaucrats/government servants, whether covered by the Lokpal or not, and there should consequently be no requirement of sanction of any kind in respect of any class or category of officers at any level in any Lokpal and Lokayukta or, indeed, CVC proceedings (for non Lokpal covered categories). In other words, the requirement of

sanction must go not only for Lokpal covered personnel but also for non-Lokpal covered personnel *i.e.* class ‘C’ and ‘D’ (Class D, as explained elsewhere, will eventually be submerged into Class ‘C’). The sanction requirement, originating as a salutary safeguard against witch hunting has, over the years, as applied by the bureaucracy itself, degenerated into a refuge for the guilty, engendering either endless delay or obstructing all meaningful action. Moreover, the strong filtering mechanism at the stage of preliminary inquiry proposed in respect of the Lokpal, is a more than adequate safeguard, substituting effectively for the sanction requirement.

- (e) No doubt corruption at all levels is reprehensible and no doubt corruption at the lowest levels does affect the common man and inflicts pain and injury upon him but the Committee, on deep consideration and reconsideration of this issue, concluded that this new initiative is intended to send a clear and unequivocal message, first and foremost, in respect of medium and big ticket corruption. Secondly, this Committee is not oblivious to the fact that jurisdiction to cover the smallest Government functionary at the peon and driver level (class C largely covers peons, assistants, drivers, and so on, though it does also cover some other more “powerful” posts) may well provide an excuse and a pretext to divert the focus from combating medium and big ticket corruption to merely catching the smaller fry and building up an impressive array of statistical prosecutions and convictions without really being able to root out the true malaise of medium and big ticket corruption which has largely escaped scrutiny and punishment over the last 60 years.
- (f) The Committee also believes that the recommendations in respect of scope of coverage of the lower bureaucracy, made herein, are fully consistent with the conclusions of the Minister of Finance on the floor of the Houses, as quoted in para 1.8 above of this Report. Firstly, the lower bureaucracy has been, partly, brought within the coverage as per the recommendations above and is, thus, consistent with the essence of the conclusion contained in para 1.8 above. Secondly, the Committee does not read para 1.8 above to meet an inevitable and inexorable mandate to necessarily subsume each and every group of civil servant (like Group ‘C’ or Group ‘D’, etc.). Thirdly, the in-principle consensus

reflected in para 1.8 would be properly, and in true letter and spirit, be implemented in regard to the recommendations in the present Chapter for scope and coverage of Lokpal presently. Lastly, it must be kept in mind that several other recommendations in this Report have suggested substantial improvements and strengthening of the provisions relating to policing of other categories of personnel like C and D, *inter-alia*, by the CVC and/or to the extent relevant, to be dealt with as Citizens' Charter and Grievance Redressal issues.

## CHAPTER-9

### FALSE COMPLAINTS AND COMPLAINANTS : PUNITIVE MEASURES

#### I. INTRODUCTION AND BACKGROUND

- 9.1 There is a genuine fear that the institution of the Lokpal, while empowering the common citizen, would also create avenues for false and frivolous complaints by persons against those officials whose decisions are either not palatable or generate cases where complaints are actuated by animosity or external agenda and ulterior motives. It is for this reason that provisions relating to false complaints were provided in the Lokpal Bill, 2011 (Sections 49 and 50). The provision stipulates punishment for not less than 2 years and upto 5 years and a fine not less than Rs. 25,000/- and upto Rs. 2 Lakhs for false, frivolous or vexatious complainants. This was seen as overbearing and disproportionately high and it was felt that it may act as a huge deterrent and possibly a virtual *de facto* bar to people seeking to make complaints to the Lokpal. The debate therefore revolved around both defining the scope of the nature of complaints (false or frivolous or vexatious or malicious) which would be penalized as also the amount of fine or punishment.

#### II. SUMMARY OF SUGGESTIONS/OBSERVATIONS RECEIVED THROUGH WRITTEN MEMORANDA

- 9.2 The memoranda received by the Committee carried the following suggestions/observations:-
- Second Proviso to Clause (g) of 17(1) – that a free citizen of this nation would be subjected to ‘responsibility’ without any power of a Public Servant – ‘liability’, without ‘right’ – and to ‘culpability’ without an ‘overt’ act is simply preposterous.
  - Punishment in case of “*mala-fide* and false complaints with malicious intent” only.
  - Fine not less than Rs. 5000/-, but which may extend to Rs. 1 lakh.
  - In case of frivolous/vexatious complaint against an SC/ST functionary, relevant clauses under the SCs and STs (Prevention of Atrocities Act), 1989 also need to be invoked and needs mention in the Lokpal Bill.

- Monetary penalties to those who make frivolous complaints and such penalties to be deposited in the PM Relief Fund.

### III. SUMMARY OF DEPOSITIONS GIVEN BY THE WITNESSES

#### 9.3 Shri Shekhar Singh (NCPRI), while speaking on this issue, stated:

*“...we are very against, and this I think we have much debated, the ‘penalties’ clause that has been put into the Bill where somebody who files, what is called, a frivolous or a vexatious complaint, gets a higher level of punishment than somebody who is judged as being corrupt. Our problems are two. One is that it is very difficult to define what is ‘frivolous’ and ‘vexatious’. And secondly, that this sort of a punishment will deter even genuine complaint makers. We have suggested, drop ‘frivolous’ and ‘vexatious’; say ‘malicious’ or where you have a malign intent and reduce the punishment to a fine...”*

#### 9.4 One of the Members of the Committee, observed as follows:

*“...When a complaint is made, it is a frivolous complaint or a false complaint, immediately it will appear in the media. कोई गलत कंप्लेंट करता है, जैसे ही लोकायुक्त के सामने वह कंप्लेंट जाएगी, चाहे वे चुने हुए लोग हों या पीछे बैठे हुए लोग हों अथवा यहां के पहले पंक्ति वाले लोग हों, आप सब जानते हैं कि हमारा सार्वजनिक जीवन तीस-तीस, पैंतीस-पैंतीस साल का होता है। यहां जो लोग बैठे हैं, वे भी 40, 45 या 50 साल पुराने लोग हैं। मैं स्वयं 36 साल से लगातार चुनाव जीतता आया हूं, मेरी पब्लिक लाइफ को भी 45 साल हो गए। मान लीजिए हमने किसी कार्य के लिए बजट नहीं दिया, किसी ने पानी की टंकी के लिए बजट मांगा, हमने नहीं दिया, बस फिर क्या है, एक कंप्लेंट कर दो, पूरे मीडिया में हम छा जाएंगे, हमारी 40-45 साल की मेहनत बेकार हो जाएगी। लेकिन आप कहते हैं कि उस आदमी को कुछ सजा नहीं की जाए, सिर्फ 5000 रुपये फाइन करके छोड़ दिया जाए, यह कहां तक उचित होगा?...”*

#### 9.5 PRS Legislative Research, in its written memorandum, has opined:

False and Frivolous Complaint:

*“...Issue: Penalty may act as deterrent*

*[Clause 49(1)] Any person making false and frivolous or vexatious complaints shall be penalized with two to five years of jail and fine of Rs. 25,000 to Rs. 2 lakh.*

*The penalty amount may act a deterrent for people to complain against a public official. Other legislations have different penalties for similar offences. For example, in the Public Interest Disclosure*

*Bill, 2010 (now pending in Parliament), a false complaint carries a penalty of imprisonment upto 2 years and fine of upto Rs. 30,000. The Indian Penal Code states that any person who gives false information shall be punishable with a prison term of upto six months or a fine of upto Rs. 1,000 or both. The Judicial Standards and Accountability Bill, 2010 (pending in Parliament), on the other hand, prescribes a higher penalty for frivolous or vexatious complaints. A person making frivolous or vexatious complaints can be penalized by rigorous imprisonment of up to five years and fine of up to five lakh rupees. The Standing Committee, while examining that Bill, has recommended that the quantum of punishment should be diluted and “in any case, it should not exceed the punishment provided under the Contempt of Court Act” (which is six months imprisonment and a fine of Rs. 2,000).*

#### IV. ANALYSIS AND DISCUSSION

- 9.5A There is no doubt that the penalty for false and frivolous complaints should not be such a huge deterrent that it stops even genuine complainants from approaching the Lokpal. There has to be a harmonious balance which needs to be drawn out between prevention of false complaints and a consequent penalty and that of not prescribing a deterrent so great that it renders the institution and function of the Lokpal nugatory.
- 9.5B This Committee discussed in detail similar provisions while dealing with the Judicial Standards and Accountability Bill in its Report submitted on August 30, 2011. It deliberated upon the issue as to how to strike this balance and concluded that the punishment ought not to be more than what is prescribed in the Contempt of Courts Act. This is an apposite benchmark considering that the Lokpal also effectively deals with administration of justice.

#### V. REASONS AND RECOMMENDATIONS

- 9.6 It cannot be again said that after the enormous productive effort put in by the entire nation over the last few months for the creation of a new initiative like the Lokpal Bill, it would not and cannot be assumed to be anyone's intention to create a remedy virtually impossible to activate, or worse in consequence than the disease. The Committee, therefore, starts with the basic principle that it must harmoniously balance the legitimate but competing demands of prevention of false, frivolous complaints on the one hand as also the clear necessity of ensuring that no preclusive bar

arises which would act as a deterrent for genuine and *bona fide* complaints.

- 9.7 The Committee sees the existing provisions in this regard as disproportionate, to the point of being a deterrent.
- 9.8 The Committee finds a convenient analogous solution and therefore adopts the model which the same Committee has adopted in its recently submitted report on Judicial Standards and Accountability Bill, 2010 presented to the Rajya Sabha on August 30, 2011.
- 9.9 In para 18.8 of the aforesaid Report, the Committee, in the context of Judicial Standards and Accountability Bill, 2010 said: “The Committee endorses the rationale of making a provision for punishment for making frivolous or vexatious complaints. The Committee, however, expresses its reservation over the prescribed quantum of punishment both in terms of imprisonment which is up to 5 years and fine which is up to 5 lakh rupees. The severe punishment prescribed in the Bill may deter the prospective complainants from coming forward and defeat the very rationale of the Bill. In view of this, the Committee recommends that Government should substantially dilute the quantum of the punishment so as not to discourage people from taking initiatives against the misbehaviour of a judge. In any case, it should not exceed the punishment provided under the Contempt of Court Act. The Government may also consider specifically providing in the Bill a proviso to protect those complainants from punishment/penalty who for some genuine reasons fail to prove their complaints. The Committee, accordingly, recommends that the Bill should specifically provide for protection in case of complaints made ‘in good faith’ in line with the defence of good faith available under the Indian Penal Code.”
- 9.10 Consequently, in respect of the Lokpal Bill, the Committee recommends that, in respect of false and frivolous complaints:
  - (a) The punishment should include simple imprisonment not exceeding six months;
  - (b) The fine should not exceed Rs. 25000; and
  - (c) The Bill should specifically provide for protection in case of complaints made in good faith in line with the defence of good faith available under the Indian Penal Code under Section 52 IPC.



## CHAPTER-10

### THE JUDICIARY : TO INCLUDE OR EXCLUDE

#### I. INTRODUCTION AND BACKGROUND

- 10.1 There has been public clamor for laying down standards for the Judiciary and creating an efficient, workable and effective mechanism for ensuring accountability of Judiciary including, in particular, effective and efficient mechanisms for criminal prosecution for corruption practiced by judicial officers and the higher Judiciary. Currently the process of removal of any Judge of the Supreme Court or the High Court involves a tedious and virtually unimplementable procedure of impeachment as per the Constitution. This has been widely seen as being, by itself, an ineffective deterrent for capricious or corrupt conduct by any member of the Judiciary. The debate around this issue was centered on whether the Judiciary should be made accountable to an institution like the Lokpal or whether it should, as one of the three wings of the country enjoy virtual immunity in respect of criminal prosecution for corrupt practices.

#### II. SUMMARY OF SUGGESTIONS/OBSERVATIONS RECEIVED THROUGH WRITTEN MEMORANDA

- 10.2 Judges of higher Judiciary not to be under Lokpal jurisdiction.
- 10.3 The jurisdiction of Lokpal should be limited to cover only the following:
- (i) All MPs, including PM and Ministers;
  - (ii) All other Constitutional and top statutory office holders (excluding President, VP and those of Judiciary) under Gol;
  - (iii) Officers of the rank of JS and above in the Gol and its PSUs and other organisations; and
  - (iv) The existing institutions and laws should continue to deal with the corruption in Gol at other levels.
- 10.4 A National Judicial Commission headed by the Vice President, and with Prime Minister, Speaker, Law Minister, Leaders of Opposition in both Houses, and Chief Justice (Chief Minister and Chief Justice of concerned High Court in case of High Court judges) should be

constituted for judicial appointments and oversight; and the Judicial Standards and Accountability Bill should be enacted into law. Both together will address issues relating to higher Judiciary.

- 10.5 Subordinate Judiciary is under the control of the High Court under Article 235, and that should remain so.
- 10.6 Functional independence of Judiciary should be ensured; but criminal legislation, conflicts of interest regulations, income and asset disclosure laws and ethical codes should apply to the Judiciary as well as other public officials.
- 10.7 Amending the Judicial Accountability and Standards Bill, that is currently before the Parliament, to ensure that the Judiciary is also made effectively and appropriately accountable, without compromising its independence from the executive or the integrity of its functions.

### III. SUMMARY OF DEPOSITIONS GIVEN BY THE WITNESSES

- 10.8 Justice J.S. Verma, in his presentation before the Committee, very categorically expressed his views over the issue in the following words:

*“...That is my view for consideration. Now, so far as Judiciary is concerned, well, as I see it, the Constitution itself, as initially framed, treats the Judiciary separately and not only the higher Judiciary but even the subordinate Judiciary...”*

- 10.9 Shri Jayaprakash Narayan expressed his detailed views on all related aspects to the issue of inclusion of the Judiciary within the ambit of Lokpal. He put forward his views as:

*“...Firstly, we believe that Judiciary cannot be a part of Lokpal’s jurisdiction for a variety of reasons. Eminent jurist like you and many other members with deep experience and insights know too well the reasons. The Supreme Court and the High Courts not only have the constitutional authority but they are also held in high esteem in this country. Whenever there is a crisis in this country, we always depend on these High Courts. For instance, Babri Masjid demolition issue, or, the reservation issue, or, contentious issues like reservation, etc. which are fragmenting our country. We, ultimately, depend on the courts to bring some sense and some balance. And, if that court’s authority is in any way undermined, that will do immense damage to the country...”*

*...The Government's draft Bill which is now before the Parliament has envisaged that inquiry into misconduct or allegations against the members of the Lokpal will be entrusted to a Bench of the Supreme Court. If in turn, the Lokpal institution is to inquire into the misconduct, if any, or the corruption of the judges, it will certainly not be a very healthy thing. Of course, finally, already because of a variety of pronouncements in Judiciary, the Constitution, to some extent, has been diluted. The Constitution-makers never envisaged that Judiciary will be completely away from the purview of the Parliament and the Executive of the country. Unfortunately, after the judges' case judgment, the Judiciary has taken over more or less and, now, if you further dilute it and make an extra-Parliamentary statutory institution control the way the Judiciary functions, at least, to this extent, that will undermine the constitutional structure even further. It is not desirable at all...*

*...Now, it does not mean that Judiciary must be unaccountable. Judiciary must be held to account. Right now before the Parliament there is a Bill pending, the Judicial Standards and Accountability Bill which, as we all know, now creates a permanent mechanism for inquiry into judges' conduct, not an ad-hoc mechanism, and also codifies the judicial code of conduct and makes any violation of that a matter of an inquiry and, if that law is enacted and with that a National Judicial Commission comes into place amending Articles 124(2) and 124(5), in effect, it will be a constitutional amendment, then, together, they will take care of the problem of judicial accountability in the higher Judiciary because both appointments and removals as we envisage, if the Parliament approves, will be with the National Judicial Commission headed by the Vice-President of India, with the Prime Minister, with the Leader of the Opposition and the Judiciary..."*

- 10.10 Shri Jayaprakash Narayan also elaborated upon the issue of inclusion of subordinate judiciary within the ambit of the Lokpal. He refuted the idea and expressed his views as follows:

*"...About the lower Judiciary, Mr. Chairman, Article 235 is very clear; the High Court has complete authority and, time and again, in States like Maharashtra, and if I am not mistaken, Rajasthan, West Bengal, High Courts have exercised the jurisdiction very effectively, weeded out the corrupt lower Judiciary members and that must be retained as it is. Therefore, there is no case for an extra-judicial body, apart from the National Judicial Commission, to go into matters of judicial accountability..."*

- 10.11 The advocates of the Jan Lokpal Bill, while appearing before the Committee, expressed their views on this issue as follows:

*“...The Judiciary may be brought under the purview of anti-corruption system through a separate Bill to be introduced simultaneously, provided the Judicial Conduct Commission so set up is also independent of the Government as well as the Judiciary and has the power of investigating and prosecuting judges for corruption. The Judicial Standards and Accountability Bill of the Government does not deal with criminal investigation of judges, nor does it set up an independent committee...”*

- 10.12 Shri Harish Salve, Senior Advocate, in his presentation before the Committee, floated a unique idea to create a collegium which would deal with the appointment of the Members of the Lokpal along with the selection of judges in higher Judiciary. He made his point as follows:

*“...There is a crying need for accountability in the judiciary. They cannot be put under the Lokpal but, at the same time, there has to be some machinery. One very important area is the appointment of judges; and, I submit, Sir, this is a golden opportunity for this Committee to set up a collegium, which today may appoint a Lokpal but tomorrow can be extended to appointment of Judges. Why should we not have one collegium for appointment to these offices? You don't need separate collegium. Whether it has the Prime Minister—as it possibly must, whether it has the Leader of Opposition—as it possibly must, whether it has the Speaker of the House—may be or may not be; whether it has the Chief Justice—as it possibly must; you add these people, and, you add a few people and say how they are to be selected. If they are good people to appoint a Lokpal, tomorrow, you will have a strong case to say that they are good enough to appoint Supreme Court judges. So, I submit, Sir, when you are drafting this bit of the law, please have in mind that you are creating somebody as important or depending on the structure of the law more important than a Supreme Court judge. Please create a collegium, which is appropriate for that appointment, and, you would have killed two birds with one stone. You would have laid the foundation and solved half the problem of the judicial accountability...”*

- 10.13 Representatives of the Business Associations who appeared before the Committee also did not favour the idea to include the Judiciary under the purview of Lokpal. They put forward their views over the issue as under:

## 10.14 The President, CII said:

*"...We believe that Lokpal should not cover Judiciary. We believe that we should strengthen the existing Judicial Standards and Accountability Bill, 2010 in the Parliament. I understand that there is a Bill in the Parliament and we believe that that Bill needs to be re-looked and strengthened. We also believe that the Judiciary needs to be helped to perform better through setting up more courts, more infrastructure, more application of technology and also promote arbitration. The rationale for all this is that we believe that independence of the Judiciary should be maintained. The Judiciary needs to be kept separate because if there is a linkage between the Judiciary and the Lokpal, cases will be going there. If it covers the Judiciary, the Lokpal will become entirely unwieldy. We don't see any need for it..."*

## 10.15 The President, ASSOCHAM opined:

*"...Judiciary should be kept out of this Bill because the independence of Judiciary is very important and it is very important that this independence be maintained, and, today, सर हमारा जो संविधान है, कंस्टीट्यूशन है, it provides for checks and balances. So, I think, we have to ensure that those checks and balances remain..."*

## 10.16 The Vice-President, FICCI stated:

*"...Judicial Accountability Bill should be independent of the Lokpal Bill. We believe that the judiciary's independence should be undermined, but, at the same time, it is very necessary to have a Judicial Accountability Bill and we believe that it should be a parallel legislation to the Lokpal Bill and again I am going into a fundamental principal that justice delayed is justice denied. So, whenever we talk about judicial accountability, simultaneously we must also be talking about judicial reforms to ensure that the time aspect of handling cases is addressed....."*

## 10.17 Shri Jayaprakash Narayan, while making his presentation before the Committee, dwelt at length on this aspect. He stated as follows:

*"...as you know the 1973 judgment of the Supreme Court in the Kesavananda Bharati case held that the basic features of the Constitution are inviolable and the court has the ultimate power to decide what the basic features are. There is a real danger that the Supreme Court may hold that any inclusion of higher courts' judges in the jurisdiction of the Lokpal or Lokayukta is violative of the basic features of the Constitution. It may or may not be violative*

*but once the court says so, you know the implications, Mr. Chairman. I don't think India at this point of time should have a confrontation between the Parliament and the higher Judiciary. We as a country cannot afford that..."*

- 10.18 Likewise, Justice J.S. Verma while appearing before the Committee, opined that the issue of inclusion of Judiciary within the ambit of Lokpal needs to be examined in the light of the scheme of the Constitution. He was of the view that not only the higher Judiciary but even the subordinate Judiciary need not be brought under the Lokpal, the issue of accountability of these institutions should be determined in accordance with the spirit of the Constitution. He put forward his expert opinion thus:

*"...Article 50 clearly provides and mandates separation of Judiciary from the Executive. Article 235... But I am speaking from my own experience as a Judge and the former CJI. Article 235 gives control over subordinate Judiciary and also the High Courts, there is no one else. In the case of the higher Judiciary, the Parliament comes in as the ultimate authority. And according to the law which was made in 1968 or any other law, you will have a body but the final word would be of the Parliament, not of a few individuals as such. Then, you cannot discuss the conduct of any High Court or Supreme Court Judge, those are Articles 121 and 211 in the State Legislature or Parliament except on a motion for removal..."*

#### IV. ANALYSIS AND DISCUSSION

- 10.19 The opinions received by this Committee were almost unanimous in recommending that the Judiciary be kept out of the ambit of the Lokpal. However, it was equally strongly opined that the Judiciary must be regulated and made accountable by a separate mechanism.
- 10.20 Previously in this year, such a mechanism was mooted by the Government through the Judicial Standards and Accountability Bill, 2010 which was also referred to this very Committee. This Committee has already submitted a report on that Bill and suggested various modifications. However, it is a common ground that the said Judicial Accountability Bill does not seek to address judicial corruption at all and an independent mechanism for appointment of Judges also needs to be created. The Committee takes serious note and cognizance of these sentiments and wishes to place its recommendations as below.

## V. REASONS AND RECOMMENDATIONS

### 10.21 The Committee recommends:

- (i) The Judiciary, comprising 31 odd judges of the Apex Court, 800 odd judges of the High Courts, and 20,000 odd judges of the subordinate Judiciary are a part of a separate and distinct organ of the State. Such separation of judicial power is vitally necessary for an independent Judiciary in any system and has been recognized specifically in Article 50 of the Indian Constitution. It is interesting that while the British Parliamentary democratic system, which India adopted, has never followed the absolute separation of powers doctrine between the Legislature and the Executive, as, for example, found in the US system, India has specifically mandated under its Constitution itself that such separation must necessarily be maintained between the Executive and the Legislature on the one hand and the Judiciary on the other.
- (ii) Such separation, autonomy and necessary isolation is vital for ensuring an independent judicial system. India is justifiably proud of a vigorous (indeed sometimes over vigorous) adjudicatory judicial organ. Subjecting that organ to the normal process of criminal prosecution or punishment through the normal courts of the land would not be conducive to the preservation of judicial independence in the long run.
- (iii) If the Judiciary were included simpliciter as suggested in certain quarters, the end result would be the possible and potential direct prosecution of even an apex Court Judge before the relevant magistrate exercising the relevant jurisdiction. The same would apply to High Court Judges. This would lead to an extraordinarily piquant and an untenable situation and would undermine judicial independence at its very root.
- (iv) Not including the Judiciary under the present Lokpal dispensation does not in any manner mean that this organ should be left unpoliced in respect of corruption issues. This Committee has already proposed and recommended a comprehensive Judicial Standards and Accountability Bill which provides a complete in-house departmental mechanism, to deal with errant judicial behavior by way of censure, warning, suspension, recommendation or removal

and so on within the judicial fold itself. The Committee deprecates the criticism of the Judicial Standards and Accountability Bill as excluding issues of corruption for the simple reason that they were never intended to be addressed by that Bill and were consciously excluded.

- (v) As stated in para 21 of the report of this Committee on the Judicial Standards and Accountability Bill, the Committee again recommends, in the present context of the Lokpal Bill, that the entire appointment process of the higher judiciary needs to be revamped and reformed. The appointment process cannot be allowed and should not be allowed to continue in the hands of a self-appointed common law mechanism created by judicial order operating since the early 1990s. A National Judicial Commission must be set up to create a broad-based and comprehensive model for judicial appointments, including, if necessary, by way of amendment of Articles 124 and 217 of the Indian Constitution. Without such a fundamental revamp of the appointment process at source and at the inception, all other measures remain purely *ex-post facto* and curative. Preventive measures to ensure high quality judicial recruitment at the entrance point is vital.
- (vi) It is the same National Judicial Commission which has to be entrusted with powers of both transfer and criminal prosecution of judges for corruption. If desired, by amending the provisions of the Constitution as they stand today, such proposed National Judicial Commission may also be given the power of dismissal/removal. In any event, this mechanism of the National Judicial Commission is essential since it would obviate allegations and challenges to the validity of any enactment dealing with judges on the ground of erosion or impairment of judicial independence. Such judicial independence has been held to be part of the basic structure of the Indian Constitution and is therefore unamendable even by way of an amendment of the Indian Constitution. It is for this reason that while this Committee is very categorically and strongly of the view that there should be a comprehensive mechanism for dealing with the trinity of judicial appointments, judicial transfers and criminal prosecution of judges, it is resisting the temptation of including them in the present Lokpal Bill. The Committee, however, exhorts the appropriate departments, with all the



power at its command, to expeditiously bring a Constitutional Amendment Bill to address the aforesaid trinity of core issues directly impinging on the judicial system today *viz.* appointment of high quality and high caliber judges at the inception, non-discriminatory and effective transfers and fair and vigorous criminal prosecution of corrupt judges without impairing or affecting judicial independence.

- (vii) The Committee finds no reason to exclude from the conclusions on this subject, the burgeoning number of quasi-judicial authorities including tribunals as also other statutory and non-statutory bodies which, where not covered under category 'A' and 'B' bureaucrats, exercise *quasi-judicial* powers of any kind. Arbitrations and other modes of alternative dispute resolution should also be specifically covered in this proposed mechanism. They should be covered in any eventual legislation dealing with corruption in the higher judiciary. The Committee notes that a large mass of full judicial functions, especially from the High Courts has, for the last 30 to 40 years, been progressively hived off to diverse tribunals exercising diverse powers under diverse statutory enactments. The Committee also notes that apart from and in addition to such tribunals, a plethora of Government officials or other *persona designata* exercise *quasi-judicial* powers in diverse situations and diverse contexts. Whatever has been said in respect of the judiciary in this chapter should, in the considered opinion of this Committee, be made applicable, with appropriate modifications in respect of *quasi-judicial* bodies, tribunals and persons as well.

## CHAPTER-11

### THE LOKPAL : SEARCH AND SELECTION

#### I. INTRODUCTION AND BACKGROUND

- 11.1 The institution of the Lokpal is being mooted and created for ensuring that the scourge of corruption is punitively attacked and that honesty, transparency and probity imbue public and private life to the highest extent and degree possible. The selection of the Lokpal, therefore, has to be at the highest levels and has to achieve the selection of the best and the brightest at the entry point. Section 4(1) of the Lokpal Bill prescribes a Selection Committee while Section 4(3) provides that the Selection Committee may, if it considers necessary for the purpose of preparing a Panel to be considered for such appointment, constitute a Search Committee. There have been many permutations and combinations suggested by the witnesses for the Selection and/or the Search Committee.

#### II. SUMMARY OF SUGGESTIONS/OBSERVATIONS RECEIVED THROUGH WRITTEN MEMORANDA

- 11.2 The major points raised in the memoranda received by the Committee, on this topic are:
- Strength of Government in Lokpal should not exceed half the total strength.
  - Membership of Lokpal - 50% for women, 25% from SC/ST, 20% from minorities proposed.
  - Need for representation for women, minority community, SC/ST/OBC in Lokpal.
  - The representation of SC/ST/OBCs/DTs/NTs and religious minorities in Lokpal and Lokayuktas suggested.
  - Representation for SCs, STs, BCs including BCs of religious minorities need in Lokpal.
  - Need to avoid ex-politicians and MPs as members of Lokpal and specific exclusion to be added in Chapter-II Clause 4.
  - Need to add exclusions for individuals who have any charge-sheet or investigation pending against them or who have been prosecuted for any offence/malpractice.

- There should be a minimum age criterion for membership of Lokpal – 45 years.
- Selection should have at least four independent members from public life, but who are not serving any function of Government/ Judiciary but can be retired SC judges, Magsasay award winners, Directors or IIT, IIM, ISI, IIS or Bharat Ratna awardees. No need for MPLOP in the Selection Committee.
- Persons in active politics must not be appointed as Lokpal.
- Lokpal may be appointed as per norms applicable to HC judges and CVC.
- There is no justification for the provision which states that all previous Chairpersons of Lokpal will be members of the Selection Committee. Over time, this will give undue weightage to retired Lokpals and create an exclusive club of Lokpals accountable only to themselves. In no other constitutional office, is there provision to select the successor.
- Any person who has received an award, recognition/monetary purse from a foreign Government/institution/foundation, should not be appointed to Lokpal office.
- Any person who has been associated with an international body that interferes in the internal affairs of other nations, such as Amnesty International, Human Rights Watch etc. should not be appointed to Lokpal office.
- Any person/NGO that has received funds from a foreign organization/person to do advocacy in his/her home country, such as promoting GM seeds, should not be appointed to Lokpal office.
- NRIs should not be appointed to Lokpal Office.
- A person of Indian origin, who is no longer a citizen of India, should not be appointed to Lokpal office.
- Out of the Members as provided in Section 4, two nominees *i.e.* one prominent jurist and one person of prominence in public life may be chosen by the Members of Lokpal collectively and not by Central Government.
- Clause 3(2)(c) be inserted to provide the CVC and two Vigilance Commissioners to function as *Ex-officio* Members of the Lokpal.

- CVC Chairman and Members be made *Ex-officio* Members of Lokpal and they may be appointed or removed in the manner of Members of Lokpal.
- CVC should be made an *Ex-officio* Member of the Lokpal as recommended by second ARC.
- The concept of 'person of eminence in public life' is a vague and ambiguous expression which may lead to avoidable controversies.
- Those in the age group of 55-70/65 years should be considered for appointment as Chairpersons/Members of Lokpal in view of maturity and experience required.
- Lower age limit should be fixed as 60 years.
- Chairperson of Lokpal – male and female for alternate terms; Members – 50% women.
- Tenure – 6 years; 1/3rd to retire every two years.
- In order to provide stability to the institution of Lokpal, "no person who does not have less than two years to serve as Chairman or Member of Lokpal, shall be considered for appointment to the post of such Chairman/Member."
- Selection Committee should have representation from disadvantaged sections of the society – Chairperson of National Womens' Commission, Chairperson of SC/ST Commission and Chairperson of National Commission of Minorities.
- There must be a balance between the Government, the opposition and the judiciary in the Selection Committee.
- Selection process should be aired live.
- NRIs may also be made members of the Selection Committee.
- Has recommended public participation in appointment process.
- Undue weightage to Government in Selection Committee; Cabinet Minister and person of eminence can be done away with 'eminent jurist' at (h) may better be nominated by CJI. The remaining 7 Members should be enough to propose a suitable panel and governmental influence be reduced to minimum.
- There must be a Search Committee for recommending names of Chairperson and Members of Lokpal.

- Search Committee should be mandatory for appointment of Chairperson and Members of Lokpal.

### III. SUMMARY OF DEPOSITIONS GIVEN BY THE WITNESSES

#### 11.3 Shri Shekhar Singh (NCPRI) stated as follows:

*“...the selection process and selection committee of the Government Lokpal Bill. It prescribes 11 members in the selection committee. A majority of them are either from the Government or, from the ruling party, or, nominated by the Government. So, we feel that is not fair.*

*We are suggesting a very simple selection committee of three members the Prime Minister, the Leader of the Opposition in the Lok Sabha and a Judge of the Supreme Court nominated by the Chief Justice of India. Why a Judge and not the Chief Justices? This is being done so that there is no complication when an appeal or a writ petition goes to the Supreme Court. It could be another composition, but it must be a composition which is not biased towards either the Government or any other party, the ruling party etc. ...”*

He further stated:

*“...It is our experience that these high-powered Selection Committees of Prime Ministers and Leaders of Opposition do not have the time to actually go out and search who could be a good candidate. In effect, what happens in such situations, and we have seen it in other cases, which I will not mention, but you are familiar, is that the dealing Department of the Government actually decides who is going to become the Chief Lokpal, who is, going to become the Lokpal, by the names that they nominate. Therefore, we feel that the Search Committee is very critical and the Search Committee should be mandatory...”*

#### 11.4 Shri Harish Salve opined thus:

*“...I completely share the perception that unless there is perceptible inclusiveness, the institution will not enjoy the kind of public respect and public support which needs to enjoy and that is one of the major problems with our judiciary...”*

#### 11.5 Shri Udit Raj, while appearing before the Committee, said:

*“...In this context, we request that the representation of the SCs/ STs, backwards and minorities should be ensured not only at the*

*committee level but also at the level of the search and selection process. Of course, 'probable candidates will be selected by the search and selection committee. But whatever may be the final decision, eventually, out of those probable candidates there would be members and the Chairman of the Committee...'*

- 11.6 The DoPT, in its written comments, has stated:

*"...In the light of the duties and responsibilities of the Lokpal, it is felt that a person with judicial background would be more suitable to hold the position of Chairman of Lokpal..."*

#### IV. ANALYSIS AND DISCUSSION

- 11.7 The central principle which should dictate the composition of the Selection Committee is that the Committee should, in logistics and deliberations, be manageable; compact and representative without being unwieldy.
- 11.8 The Lokpal Bill, 2011 contemplates a *very large Selection Committee* which may or may not appoint a Search Committee. The Jan Lokpal Bill also contemplates a large Selection Committee and an even larger Search Committee.
- 11.9 *The Selection Committee* should be kept reasonably compact to enable swift functioning. It should also be representative. Consequently, a *Selection Committee comprising of* all the three organs of State viz. the Prime Minister (as head of the Executive), the Speaker of Lok Sabha (as Head of the Lower House) and the Chief Justice of India (as head of the Judiciary), as also the Leader of the Opposition in the Lower House would be a good starting point. The fifth Member of the Selection Committee should be an eminent Indian qualified by all adjectives in Clause 4(1)(i) of the Lokpal Bill, 2011 but should be a single nominee, collectively and conjointly, of the following/designated constitutional bodies, viz. CAG, CEC, UPSC Chairman with such nominee having a term of a maximum of five years. This would be a compact five-member body and would have inputs and representations from all relevant sections of the society and Government.
- 11.10 There should, however, be a proviso in Clause 4(3) to the effect that a Search Committee shall comprise at least seven Members and shall ensure representation 50 per cent to Members of SC's and/or STs and/or Other Backward Classes and/or Minorities and/or Women or any category or combination thereof. Though there is some merit

in the suggestion that the Search Committee should not be mandatory since, firstly, the Selection Committee may not need to conduct any search and secondly, since this gives a higher degree of flexibility and speed to the Selection Committee, the Committee, on deep consideration, finally opines that the Search Committee should be made mandatory. The Committee does so, in particular, in view of the high desirability of providing representation in the Search Committee as stated above which, this Committee believes, cannot be effectively ensured without the mandatory requirement to have a Search Committee. It should, however, be clarified that the person/s selected by the Search Committee shall not be binding on the Selection Committee and secondly, that, where the Selection Committee rejects the recommendations of the Search Committee in respect of any particular post, the Selection Committee shall not be obliged to go back to the Search Committee for the same post but would be entitled to proceed directly by itself.

- 11.11 Over the years, there has been growing concern in India that the entire mass of statutory *quasi judicial* and other similar tribunal bodies or entities have been operated by judicial personnel *i.e.* retired judges, mainly of the higher Judiciary *viz.* the High Courts and the Supreme Court.
- 11.12 There is no doubt that judicial training and experience imparts not only a certain objectivity but a certain technique of adjudication which, intrinsically and by training, is likely to lead to greater care and caution in preserving principles like fair play, natural justice, burden of proof and so on and so forth. Familiarity with case law and knowledge of sometimes intricate legal principles is naturally available in retired judicial personnel of the higher Judiciary.
- 11.13 However, when new and nascent structures are being contemplated it is necessary not to fetter or circumscribe the discretion of the appointing authority. The latter is certainly entitled to appoint judges, and specific exclusion of judges is neither contemplated nor being provided. However, to consider, as the Lokpal Bill, 2011 does, only former Chief Justices of India or former judges of the Supreme Court as the Chairperson of the Lokpal would be a totally uncalled for and unnecessary fetter. The Committee, therefore, recommends that Clause 3(2) be suitably modified not to restrict the Selection Committee to selecting only a sitting or former Chief Justice of India or judge of the Supreme Court as Chairperson of the Lokpal.
- 11.14 A similar change is not suggested in respect of Members of the Lokpal and the existing provision in Clause 3(2)(b) read with

Clause 19 may continue. Although the Committee does believe that it is time to consider tribunals staffed by outstanding and eminent Indians, not necessarily only from a pool of retired members of the higher Judiciary, the Committee feels hamstrung by the Apex Court decision in *L. Chandra Kumar Vs. Union of India* 1997 (3) SCC 261 which has held and has been interpreted to hold that statutory tribunals involving adjudicatory functions must not sit singly but must sit in benches of two and that at least one of the two members must be a judicial member. Hence, unless the aforesaid judgment of the Apex Court in *L. Chandra Kumar Vs. Union of India* is reconsidered, the Committee refrains from suggesting corresponding changes in, Clause 3(2)(b) read with Clause 19, though it has been tempted to do so.

- 11.15 There is merit in the suggestion that Clause 3(4) of the Lokpal 2011 be further amended to clarify that a person shall not be eligible to become Chairperson or Member of Lokpal if:
- (a) He/she is a person convicted of any offence involving moral turpitude;
  - (b) He/she is a person less than 45 years of age, on date of assuming office as Chairperson or Member of Lokpal;
  - (c) He/she has been in the service of any Central or State Government or any entity owned or controlled by the Central or State Government and has vacated office either by way of resignation, removal or retirement within the period of 12 months prior to the date of appointment as Chairperson or Member of Lokpal.
- 11.16 In Clause 9(2), the existing provision should be retained but it should be added at the end of that clause, for the purpose of clarification, that no one shall be eligible for re-appointment as Chairperson or Member of the Lokpal if he has already enjoyed a term of five years.
- 11.17 The Committee has already recommended in para 11.10 above appropriate representation on the Search Committee of certain sections of society who have been historically marginalized. The Committee also believes that although the institution of Lokpal is a relatively small body of nine members and specific reservation cannot and ought not to be provided in the Lokpal institution itself, there should be a provision added after Clause 4(5) to the effect that the selection committee and the search committee shall make every endeavour to reflect the diversity of India by including the representation, as far as practicable, of historically marginalized sections of the society on the Lokpal Bill like SCs/STs, OBCs/minorities and women.



## V. REASONS AND RECOMMENDATIONS

11.18 To ensure flexibility, speed and efficiency on the one hand and representation to all organs of State on the other, the Committee recommends a Selection Committee comprising:-

- (a) The Prime Minister of India—as Head of the Executive.
- (b) The Speaker Lok Sabha— as Head of the Legislature.
- (c) The Chief Justice of India—as Head of the Judiciary.
- (d) The Leader of the Opposition of the Lower House.
- (e) An eminent Indian, selected as elaborated in the next paragraph.

N.B.: functionaries like the Chairman and Leader of the Opposition of the Upper House have not been included in the interests of compactness and flexibility. The Prime Minister would preside over the Selection Committee.

11.19 The 5th Member of the Selection Committee in (e) above should be a joint nominee selected jointly by the three designated Constitutional bodies viz., the Comptroller and Auditor General of India, the Chief Election Commissioner and the UPSC Chairman. This ensures a reasonably wide and representative degree of inputs from eminent Constitutional bodies, without making the exercise too cumbersome. Since the other Members of the Selection Committee are all *ex-officio*, this 5th nominee of the aforesaid Constitutional bodies shall be nominated for a fixed term of five years. Additionally, it should be clarified that he should be an eminent Indian and all the diverse criteria, individually, jointly or severally, applicable as specified in Clause 4 (1) (i) of the Lokpal Bill, 2011 should be kept in mind by the aforesaid three designated Constitutional nominators.

11.20 There should, however, be a proviso in Clause 4(3) to the effect that a Search Committee shall comprise at least seven Members and shall ensure representation 50 per cent to Members of SC's and/or STs and/or Other Backward Classes and/or Minorities and/or Women or any category or combination thereof. Though there is some merit in the suggestion that the Search Committee should not be mandatory since, firstly, the Selection Committee may not need to conduct any search and secondly, since this gives a higher degree of flexibility and speed to the Selection Committee, the Committee, on deep

consideration, finally opines that the Search Committee should be made mandatory. The Committee does so, in particular, in view of the high desirability of providing representation in the Search Committee as stated above which, this Committee believes, cannot be effectively ensured without the mandatory requirement to have a Search Committee. It should, however, be clarified that the person/s selected by the Search Committee shall not be binding on the Selection Committee and secondly, that, where the Selection Committee rejects the recommendations of the Search Committee in respect of any particular post, the Selection Committee shall not be obliged to go back to the Search Committee for the same post but would be entitled to proceed directly by itself.

- 11.20(A) Over the years, there has been growing concern in India that the entire mass of statutory *quasi judicial* and other similar tribunals; bodies or entities have been operated by judicial personnel *i.e.* retired judges, mainly of the higher Judiciary *viz.* the High Courts and the Supreme Court.
- 11.20(B) There is no doubt that judicial training and experience imparts not only a certain objectivity but a certain technique of adjudication which, intrinsically and by training, is likely to lead to greater care and caution in preserving principles like fair play, natural justice, burden of proof and so on and so forth. Familiarity with case law and knowledge of intricate legal principles, is naturally available in retired judicial personnel of the higher judiciary.
- 11.20(C) However, when a new and nascent structure like Lokpal is being contemplated, it is necessary not to fetter or circumscribe the discretion of the appointing authority. The latter is certainly entitled to appoint judges to the Lokpal, and specific exclusion of judges is neither contemplated nor being provided. However, to consider, as the Lokpal Bill 2011 does, only former Chief Justices of India or former judges of the Supreme Court as the Chairperson of the Lokpal would be a totally uncalled for and unnecessary fetter. The Committee, therefore, recommends that Clause 3(2) be suitably modified not to restrict the Selection Committee to selecting only a sitting or former Chief Justice of India or judge of the Supreme Court as Chairperson of the Lokpal.
- 11.20(D) A similar change is not suggested in respect of Members of the, Lokpal and the existing provision in Clause 3(2)(b) read with Clause 19 may continue. Although the Committee does believe that it is time to consider tribunals staffed by

outstanding and eminent Indians, not necessarily only from a pool of retired members of the higher Judiciary, the Committee feels hamstrung by the Apex Court decision in *L. Chandra Kumar Vs. Union of India* 1997 (3) SCC 261 which has held and has been interpreted to hold that statutory tribunals involving adjudicatory functions must not sit singly but must sit in benches of two and that at least one of the two members must be a judicial member. Hence, unless the aforesaid judgment of the Apex Court in *L. Chandra Kumar Vs. Union of India* is reconsidered, the Committee refrains from suggesting corresponding changes in Clause 3(2)(b) read with Clause 19, though it has been tempted to do so.

- 11.20(E) There is merit in the suggestion that Clause 3(4) of the Lokpal 2011 be further amended to clarify that a person shall not be eligible to become Chairperson or Member of Lokpal if:
- (a) He/she is a person convicted of any offence involving moral turpitude;
  - (b) He/she is a person less than 45 years of age, on date of assuming office as Chairperson or Member of Lokpal;
  - (c) He/she has been in the service of any Central or State Government or any entity owned or controlled by the Central or State Government and has vacated office either by way of resignation, removal or retirement within the period of 12 months prior to the date of appointment as Chairperson or Member of Lokpal.
- 11.20(F) In Clause 9(2), the existing provision should be retained but it should be added at the end of that clause, for the purpose of clarification, that no one shall be eligible for re-appointment as Chairperson or Member of the Lokpal if he has already enjoyed a term of five years.
- 11.20(G) The Committee has already recommended appropriate representation on the Search Committee, to certain sections of society who have been historically marginalized. The Committee also believes that although the institution of Lokpal is a relatively small body of nine members and specific reservation cannot and ought not to be provided in the Lokpal institution itself, there should be a provision added after Clause 4(5) to the effect that the Selection Committee and the Search Committee shall make every endeavour to reflect, on the Lokpal institution, the diversity of India by including the representation, as far as practicable, of historically marginalized sections of the society like SCs/STs, OBCs, minorities and women.

## CHAPTER-12

### THE TRINITY OF THE LOKPAL, CBI AND CVC : IN SEARCH OF AN EQUILIBRIUM

#### I. INTRODUCTION AND BACKGROUND

- 12.1 The large body of opinion as available through the witnesses and the memoranda received, clearly suggested that existing institutions, including CBI and CVC should be strengthened. They also said that merely creating fresh ones without eradicating the ills which plagued existing structures, would not have the desired effect. The proposed concept of the Lokpal is, in essence, a monitoring body (with or without investigative/prosecuting powers, as the case may be) for offences under the Prevention of Corruption Act, 1988. The substantive law of POCA is largely not under change: what is desirable is a powerful and efficacious body to go after corruption. Therefore it is appropriate to reassess the roles played by the existing institutions *i.e.* CBI and CVC which already have investigative/prosecuting powers under the 1988 Act. The major thorn which seems to have created years of dissatisfaction with the system relates to the monitoring of the CBI by the government and the fetters imposed by Section 6A (single directive) of the DSPE Act and Section 19 of the POCA Act, in addition to Section 197 IPC. Their effect on independent and autonomous investigation and prosecution has been felt to be adverse and counter productive. Absent such and other weaknesses, there would perhaps be no objection to retaining these institutions and in fact strengthening them to a point where they work in tandem with the new Lokpal – creating a powerful Trinity, with mutual checks and balances to increase the quality and efficacy of both investigation and prosecution, while avoiding excessive fusion of power in one body alone. The opinions received relating to the roles of CBI and CVC, as well as the overall proposed structure of the Lokpal, are discussed below.

#### II. SUMMARY OF SUGGESTIONS/OBSERVATIONS RECEIVED THROUGH WRITTEN MEMORANDA

- 12.2 The major points raised in the memoranda received by the Committee, on this topic are:
- It would not be prudent to take over the entire anti-corruption division of CBI. Instead, the Lokpal should set up its own

Investigation and Prosecution Wing, taking senior officers on deputation basis to get rid of those who fail to deliver.

- Investigation and Prosecution Wing should consist of officers who have never faced any departmental enquiry or charged of any offence.
- I&P Wing should consist of persons representing communities of Muslim, Hindu, Christians and Dalits.
- Officers of I&P should declare their assets on joining and every year, till relinquishment of office and discrepancy ought to be dealt in accordance with law.
- Economic Offences Wing of CBI cannot be separated from the Anti-Corruption Wing as the two are inter woven. Therefore, they should not be split; rather, there is need to bring the Enforcement Directorate also under the same umbrella.
- It should be made binding on CBI to register and investigate a case if recommended by the Lokpal.
- With regard to placing of CBI and other investigating agencies under Lokpal, it is suggested that once the persons from such agencies are affiliated to Lokpal, they should not be posted back to their parent organizations as a measure to safeguard their service interests/career.
- Bring CVC and Anti-Corruption Wing of CBI under Lokpal.
- The personnel for the departmental anti-corruption/vigilance wings must be selected by Lokpal on inter-departmental basis and not intra-departmental basis. They must function under Lokpal only, with duty to report details to Lokpal monthly.
- The anti-corruption division should be merged as a administrative arm of Lokpal and suitable amendments should be made to exclude these from the direct control of the Government which has been the consistent criticism of the DSPE.
- Section 6A of DSPE Act, 1946 may be repealed.
- Appoint independent prosecutors to prosecute all corruption, money laundering and benami cases.
- Strengthening of anti-corruption agencies and their infrastructure and manpower, taking into account the best international practices.

- DSPE Act be so amended that no sanction for inquiry or investigation or prosecution is needed.
- Confer more administrative and functional autonomy to the CBI.
- Since the anti-corruption agencies oversee Government operations and provide oversight over the offences of corruption, there is an emerging consensus that the anti-corruption body/bodies should report to the Parliament (through parliamentary committees). However, experience also shows that to be effective, legislatures require such resources as a technically competent staff, strong committees, budgetary independence and significant bureaucratic oversight powers.
- There hardly exist any anti-corruption institutions in the world that report to the Supreme Court.
- Experiences show that it may not matter much whether an anti-corruption agency is reporting to the executive or Parliament or the SC so long as it's operational independence is guaranteed.
- Amend Section 197 of CrPC and Section 19 of PCA so as to provide for ordering of prosecution by CVC/Lokpal and not by the Government.
- CBI be split in two separate agencies; for cases relating to corruption, money laundering and Benami properties, CBI may be accountable to CVC only.
- Bring Enforcement Directorate under CVC.
- All prosecutors with respect to anti-corruption cases should be under the Lokpal.
- Regarding confiscation of properties of corrupt public servants, a law needs to be enacted at the earliest on the lines of Corrupt Public Servants (Forfeitures of Property) Bill drafted by the Law Commission.
- Benami Transactions (Prohibition) Bill, 2011 needs to be enacted/amended immediately to ensure action against corrupt public servants.

### III. SUMMARY OF DEPOSITIONS GIVEN BY THE WITNESSES

- 12.3 The Committee takes note of the submission made by Justice J.S. Verma, while tendering his considered advice before the Committee:

*“...When CBI and CVC are mentioned, they could be appointed by the same law as members of the body. You could consider the same*

*process for their appointment, '...it is over time you gain experience, If you are going to have a more effective procedure for appointment of Lokpal, then the same should apply also for the CBI Director and CVC. Why not consider them to be ex officio members of the Lokpal just as in the case of National Human Rights Commission you have Chairman and others as ex officio members. You could think of that system..."*

- 12.4 Dr. Jayaparakash Narayan, during his deposition before the Committee, stated:

*"...my humble appeal is, the Central Vigilance Commission and the CVC Act must be retained with certain modifications. One, the CVC members, including the Chairperson should be made, in addition to their functions under the CVC Act, ex officio members of the Lok Pal institution so that they have the institutional authority and there will be total seamless integration of functioning. But, in addition to being members of the Lok Pal, the CVC must function under the CVC Act, and exercise all the functions of the CVC Act. It has three advantages.*

*Therefore, the autonomy that we seek, the independence and the insulation of the crime investigation, particularly in respect of matters of corruption on economic offences from the political executive and partisan politics, that will be achieved by merely retaining that but strengthening and giving autonomy to the Vigilance Commission. Therefore, the autonomy that we seek, the independence and the insulation of the crime investigation, particularly in respect of matters of corruption on economic offences from the political executive and partisan politics, that will be achieved by merely retaining that but strengthening and giving autonomy to the Vigilance Commission. Therefore, destruction of the Vigilance Commission or blind merger or repeal of the CVC Act would be retrogressive steps because we have to achieve many more things, apart from merely creating an institution called Lokpal or Lokayukta.*

*Mr. Chairman, Sir, we must go all the way. We must ensure a real and full autonomy but with accountability to all anti-corruption investigative agencies in all matters of corruption. Even as we ensure that there is no need for a roving enquiry, there is no under-mining of the morale of those in the Government. That should be accomplished, if (a) Section 6(a) of the Delhi Special Police Establishment Act is repealed; (b) the executive orders, if any, in the States, in respect of the ACB, similar orders but by an executive*

order, they apply in State also, they all must go by a specific statutory provision; (c) that sanction of prosecution, probably, there is a case for prior vetting before prosecuting. In such a case, we urge two safeguards. One is, let the CVC be the sanctioning authority because that is envisaged to be an independent authority; that is an authority with deep administrative experience and institutional strength, we can trust that authority. However, before sanctioning prosecution against high officials, the CVC can be asked to write to the Government, indicating what they are going to do. In case the Government of the day, at the State level, in the case of the Lokayukta, and at the national level, in the case of the CVC, has very compelling reasons why a prosecution should not be sanctioned, sometimes, there may be national security considerations that the authorities may not be aware of; sometimes, there may be some other compelling national interest issues, in which case, the Government will have to then record the reasons in writing and communicate to the CVC, and the CVC will take a final decision on the basis of the Government's inputs...but there may be instances where the actions of an individual, even if they are seemed to be corrupt in the ordinary law of the land, they are, in a specific context of the national security, necessary and, therefore, the Government believes that the balance of convenience lies not in prosecuting but in denying prosecution. But the CVC must be the final authority. With such safeguards, if the CVC is given the power to sanction prosecution at the national level, in case of the States, the Lokayukta is given the power to sanction prosecution that will suffice. Lokpal or CVC must be empowered to appoint independent prosecutors because prosecution after all is really a quasi judicial function. It is not something to be trifled with through political interference or partisanship. Investigation, evidence gathering is really an independent thing of the politics of the day. It is entirely based on evidence. It has importance as judicial functioning...the Lokpal should have a team of investigators, that eventually can be decided but that must be more to go into some of the cases that Lokpal will directly go into because of the sensitivity and complexity of the cases or for a preliminary examination before CBI takes over investigation and prosecution in the large measure..."

- 12.5 The Chairman of the Bar Council of India, while placing their views before the Committee, said:

"...The Anti-corruption Wing of the CBI should be separated and made completely autonomous. Now, accountability mechanisms can be evolved through a Committee. Like the Lokpal, the CAG, the



*CVC and the CBI should have its own prosecution wing. The Director of CBI and other key officials should be appointed by a Committee, a broad Committee, similar to the one which almost appoints the Lokpal...*

- 12.6 Dr. Bhanu Pratap Mehta, while deposing before the Committee, said:

*“...What to matter for institutions is who writes your confidential report, who determines the structure of promotion and so forth by bringing it under the Lokpal, you actually change that entire culture which currently exists in the CBI. So, my own submission is that to peg the CBI to report to this. The CVC, as I said, the CVC Act could be amended to make it a kind of supervisory body for the lower bureaucracy...”*

- 12.7 The views of the representatives of CII were as follows:

*“...We also believe, as a recommendation, that the Director of the CBI and the Director of the CVC should be made members of the Lokpal in order to promote a collaborative behaviour in terms of ensuring that investigations are done quickly and one agency helps the other agency and so on...”*

- 12.8 Shri Amod K. Kanth, while placing his views before the Committee, said:

*“...according to our suggestion, the CBI will remain accountable only to Lokpal. The accountability of the CBI, so far as its anti-corruption wing is concerned, can remain only with the Lokpal. Accountability in other matters can remain with the Government also because there are different kinds of matters...”*

- 12.9 The views of NCPRI in this regard were that:

*“...We have said specifically, in the medium to long term, we would much prefer an independent prosecution body along the lines, for example, which is in the UK and it is keeping with a Supreme Court order to the effect. We would also much prefer in the long term, medium to long term not having both prosecution and investigation both in the same body...”*

- 12.10 The Central Vigilance Commissioner, while elucidating upon the role played by CVC, stated thus:

*“...We cannot build a society on distrust and fear alone सीवीसी यह काम करता है। पॉलिटिकल करप्शन के अंदर जो सिविल सर्वेंट्स उनके साथ लिफ्ट हैं, उनको*

देखने के लिए कोऑर्डिनेशन मैकेनिज्म होना चाहिए। उसमें अगर सीवीसी को आप हिस्सा बनाते हैं तो लोकपाल को एक्स ऑफिशियो कर दें। अगर नहीं भी बनना चाहते तो हमें कोई ऐतराज नहीं है। मैं समझता हूँ कि सिद्धांत रूप से सीबीआई को लोकपाल का सदस्य नहीं बनाना चाहिए।

*If you want a definitive recommendation, I would suggest that we should go by the recommendations of the Second Administrative Reforms Commission which says that CVC should be made an ex officio member of the Lokpal.*

*CVC is not an investigating agency. It is an integrity institution responsible for coordinating the superintendence of vigilance administration. It does not do investigation. So, this misperception that the CVC does the investigation itself is not there...”*

- 12.11 The Committee also takes into account the arguments put forth by the Director, CBI on this issue:-

*“...The Government Lokpal Bill says, give the Lokpal a fresh or a new anti-corruption investigating agency. Our thinking is that we are an anti-corruption body. We have always been an anti-corruption body right from its inception. The primary focus of the CBI has always been anti-corruption work. That is our forte and that is our expertise. So, why should the anti-corruption work be taken out of the CBI?...*

*...Sir, because it being an investigating agency, there has to be a proper command and control system.. And it can only be the Director; you cannot have ten members of the Lokpal giving directions...*

*...Sir, CVC also is general superintendence. Therefore, we are saying that if you have a Lokpal, the general superintendence can transfer to the Lokpal... You can't have so many bodies for superintendence. It is a choice...*

*...I would also like to point out that it is not so simple to create a separate agency. People say to create a separate agency. It is not so simple to create a separate agency. To create an agency it is going to, take you ten or fifteen years. What would happen then is that there would be nobody looking after anti-corruption. The CBI would be out of anti-corruption and you will be trying to set up a new agency which will be equally ineffective. So, your basic anti-corruption movement would be a non-starter unless you have the CBI in its complete present structure totally involved in whatever architecture you would be proposing...”*

- 12.12 The Committee notes that the opinion of Dr. Jayaprakash Narayan placed before the Committee on this matter, is quite similar:

*“...It cannot be a separate parallel body fully dealing with all cases of investigation. That simply is not possible. For 64 years we could not build a CBI which has more than 2000 investigative officers. To think that tomorrow overnight you can build an agency with some 50000 investigators, it is not realistic. We must utilize the existing strength and expand it and bring more expertise and more technology and more manpower, more resources to CBI and make it strong, effective and accountable rather than deplete existing institutions...So, some kind of a provision in the law also will be helpful subject to the caveat in States Lokayuktas but at the national level as we submitted earlier the CVC is fully capable of handling it with the changes that we proposed. But the CBI must be strengthened and Section 6A of the Delhi Police Establishment Act must go and the relaxation given to Lokpal institution in respect of prosecution must apply to all cases...”*

- 12.13 The considered view of Shri Harish Salve was that:

*“...I have, with great respect, strong views about subjecting the working of the CBI in its investigative area to any kind of interference. The Code of Criminal Procedure confers sole jurisdiction on the judicial system, principally the Magistracy, to oversee investigations and that is where, Sir, in my respectful submission, this power must continue to lie...*

*...As for the decision whether or not to prosecute, we must follow the system; we have two mistakes in our law. In America, as you know, it is the District Attorney's Office or the State Attorney General's office, or, at the federal level, it is the Attorney Level or the Solicitor General's office, which takes a final call on whether or not to press charges. In India, some judgements have taken the view that the police cannot even consult the Public Prosecutor which, according to me, is wrong. Many times, especially, in complex corporate crimes or in Prevention of Corruption crimes, you may end up filing charge sheets which fail because you got the law wrong. Now, the CBI must have a powerful Public Prosecutorial Wing...”*

- 12.14 The Chairman of the Committee, while voicing his opinion on this issue, stated:

*“...The CBI for all its faults has expertise in investigation. If you are going to give investigation to Lokpal without investigative wing,*

*so you will have to have existing wing. However the CBI without its anti-corruption wing is left with nothing and their stature goes...*

- 12.15 One of the Members of the Committee highlighted a problem area in this regard as:

*“...The problem arises when CVC wants sanction against higher bureaucracy but the sanction is not granted normally. Even when it is granted, the time taken is far too long as a result the accused bureaucrat continues to exercise the authority...”*

- 12.16 The Committee, while examining the crucial role played by CBI, gave serious thought and consideration to the written submission made by CBI that:

*“...Since the Government has introduced Lokpal Bill and has proposed creating a separate Investigation Wing for the Lokpal, CBI is of the view that rather than creating new Investigation Wing, CBI should be utilized for investigation of cases referred by Lokpal... However, the relationship between CBI and Lokpal should be similar to the superintendence over CBI presently exercised by the CVC in the manner as laid down under Section 8(1)(b) of the CVC Act... The CBI would like to work in close association with the Lokpal with Director CBI as ex officio member of Lokpal...CBI will continue to exercise the police powers to take final decision after completion of investigation of a case and file police report in the competent court and intimate Lokpal as well in the matters referred by it. The relationship between CBI and Lokpal should be similar to the superintendence over CBI presently exercised by the CVC in the manner as laid down under Section 8(1)(b) of the CVC Act...CBI is of the view that it is capable to take care of all the matters referred for investigation by the Lokpal and there is no need for a separate Investigation Wing of Lokpal. However, the manpower and other resources will need to be augmented to cater to this additional workload...CBI is of the view that it should not be bifurcated and should be granted full functional autonomy... Keeping in view the Lokpal Bill, already introduced by the Government in the Parliament, which inter-alia envisages creation of a separate Investigation Wing for looking into corruption cases, it was proposed by CBI that as investigation of Anti-corruption cases is the primary activity of CBI and CBI has evolved itself into a premier investigation agency of the country over 70 years of its existence, there is no need for creation of a new agency in Lokpal for investigation of anti-corruption cases. The CBI is capable of taking care of all the matters referred for investigation by the Lokpal, if it is created.*

*Looking into professional competence, credibility of CBI, it should be made an integral though independent component of any anti-corruption apparatus to fight corruption. To ensure full functional autonomy, it has been proposed to make Director CBI, an ex officio member of the Lokpal. However, the Lokpal may exercise general superintendence over CBI for PC Act cases referred by it through Director CBI as its ex officio member in a similar manner as being done by the CVC under the CVC Act...*

12.17 With regard to the Prosecution Wing, CBI has submitted that:

*“...A proposal for creation of 907 posts has been sent in 2008 to Department of Personnel Training to strengthen the Prosecution Wing of CBI...Director of Prosecution of CBI is the officer borne on the cadre of Ministry of Law, Justice & Legal Affairs. He is the head of Prosecution Wing of CBI. In addition to this, three Additional Legal Advisors who are also on the strength of department of Legal Affairs, Ministry of Law, Justice & Legal Affairs, work for CBI...LA of CBI does not have veto power. Director, CBI seeks his legal opinion in important cases. However, the same is not binding on the Director, CBI.”*

12.18 The Committee also took into account the opinion of CVC in this matter, the major points of which are as under:

- CVC should remain the Premier Integrity Institution to address the corruption and it should have jurisdiction over the higher bureaucracy.
- Lokpal and CVC should work in close cooperation. Mechanism need to be developed for effective coordination.
- Amend suitably Section 6(a) of DSPE Act for according prior approvals to CBI under PC Act.
- CVC should be empowered to grant sanction for prosecution in cases of Government Servants.
- CVC's advice should be binding on the appointing authorities in respect of cases of lower officials under PC Act.
- Adequate autonomy to CVC on the lines of UPSC and CAG.
- Amend CVC Act providing for the Government Departments to explain the reasons to the Parliament for non-acceptance of CVC advice.

- Lokpal should focus on political corruptions involving Ministers, MPs and Higher Civil Servants who have connived in the grand political corruption which is difficult to curb with existing mechanism.
- The existing structure of vigilance administration should not be disturbed.

12.19 The CVC has further stated that:

*“...The Committee while exercising its superintendence over DSPE (CBI) holds regular review monthly meetings with Director, CBI. The following matters are reviewed during the meetings:*

- *Complaints referred by Commission to CBI for investigation and reports.*
- *Review of cases of requests made for sanction of prosecution by CBI and pending with concerned administrative authorities.*
- *Matters relating to proposals of vigilance clearance referred to CBI for record check etc.*
- *Cases registered during the month under PC Act.*
- *Pendency of cases under investigation and trial under PC Act.*
- *Long delayed cases of PC Act under investigations.*
- *Administrative issues and manpower position and steps of address the same.*
- *Specific issues of concern, if any, in discharging its functions under DSPE Act.*

12.20 Besides above, the appointments, promotions, extension of tenure or otherwise, for posts of Superintendent of Police and above in CBI are recommended to the Government in the meeting of the Committee headed by the Central Vigilance Commissioner as and when required.

12.21 A separate chapter covering the superintendence over the functioning of the CBI is also included in the Commission's Annual report.

*“...Prima-facie complaints containing serious allegations received by the Commission are forwarded to concerned CVOs of the CBI for in depth investigation and submission of reports. In addition, the CVO of the various organizations also investigate allegations contained in complaints received at their end. CBI also registers*

*cases for investigation based on their source information. On receipt of investigation reports from the CVOs or the CBI recommending further course of action, the Commission examines the reports and thereafter tenders its first stage advice. As per information, around 60% of such investigation reports have ended in closure of the cases as the allegations were not found substantiated and also not found serious enough to proceed further for any departmental action. Further, there are cases where the allegations leveled turn out to be baseless, motivated and vexatious which may also be the reason for closure of cases after investigation. In a significant number of complaints relating to grievances, the issues get redressed.*

*As regards reasons for the rate of around 60% closure of the allegations at first stage advice it may be mentioned that evidence gathering of corruption issues generally being a post-mortem exercise is a difficult task. Once incidents of corrupt practice are committed, the investigations basically focus on the documents and files only..."*

#### IV. ANALYSIS AND DISCUSSION

- 12.22 The basic objective of a new Lokpal initiative is or at least should be to create an autonomous, independent investigative and prosecution wing for corruption in bureaucracy and the political class.
- 12.23 The basic elements of policing corruption are:
- Receiving and screening of complaints
  - Preliminary investigation of complaint
  - Full/final further investigation
  - Prosecution
  - Adjudication and punishment
  - Departmental action
- 12.24 Presently, all these functions and powers (except departmental action) are centered with the CBI subject to ministerial intervention at some levels. For States where there is no CBI the State police (frequently called Anti-corruption Bureau) does the job.
- 12.25 As far as departmental action is concerned, the CBI has no role and the CVC exercises full power but can only make non-binding recommendations for departmental action which is to be ultimately taken by the concerned department.

12.26 The aforesaid summary of the system shows an undesirable, inefficient and conflicted fusion of investigative and prosecutorial powers. It has also attenuated independence and autonomy in practice. If a new mechanism like the Lokpal is being created for a large part of bureaucratic and political class, the undesirable features of the existing system must be necessarily addressed.

12.27 The proposed solution:

- (i) Make Lokpal, for the subjects it covers, in-charge of receiving complaints and doing a detailed preliminary inquiry through its own internal inquiry wing.
- (ii) Referring to the CBI (a separate statutory body) for detailed investigation must remain, as today, if the preliminary inquiry stage has been crossed as per the Lokpal.
- (iii) Have the CBI be subjected only to the general superintendence of the Lokpal, similar to that to which it is subjected today under the CVC Act. During the actual detailed investigation by CBI, the merits of the investigation cannot be gone into by either the Lokpal or the administrative Ministry. The analogy here would be the same as applied to the present Court monitored criminal investigations (courts can also exercise only supervisory power but they cannot interfere in the contents or merits of the investigation).
- (iv) After investigation by the CBI for the Lokpal covered persons/offences is over, the matter would revert to a special prosecutorial wing of the Lokpal which would conduct the entire prosecution in an appropriate Court presently called the CBI Special Judge but could then be called the Lokpal Special Judge.
- (v) Adjudication, punishment and appellate recourse would continue to be covered by the normal existing law except that the numbers of the Special Judges would have to be increased dramatically to achieve quick results.
- (vi) For all the non-Lokpal covered persons/offences, the existing CBI controlled investigation and prosecution system would continue with logistical infrastructural strengthening.
- (vii) There can be no question of sanction for the Lokpal covered persons. In practice, the provisions of single directive and sanction have worked as a huge delaying tactic by vested interests over the years and have frustrated prosecutions.



- (viii) For the Lokpal covered persons/offences, the entire power of recommendation for departmental action would be taken away from the CVC and entrusted to the Lokpal whose recommendations shall be binding (the Lokpal Bill, 2011 already so provides). At worst, an alternative check can be provided by saying that the department is bound by the Lokpal recommendations unless, for reasons to be recorded in writing by a person of the rank of not less than Minister of State, the conclusions of the Lokpal are rejected.
  - (ix) For those persons not covered by the Lokpal, the CVC would retain jurisdiction (though this Committee does recommend that the CVC's recommendations should be binding unlike the present situation where very few departmental actions actually take place on the recommendations of the CVC).
- 12.28 The aforesaid would also obviate the current criticism of both the Lokpal Bill and the Jan Lokpal Bill which appear to fuse investigation, prosecution, superintendence and departmental recommendation into one body, though the Jan Lokpal Bill does it to a far higher and unacceptable degree than the Lokpal Bill.
- 12.29 Indeed, since India has been talking of an independent structure for a fairly long time, the proposed structure herein would commence a culture of Chinese wall demarcations between investigation and prosecution, the former with the CBI and the latter with the Lokpal in so far as the Lokpal covered persons are concerned. It is true that there would be teething problems for some time due to lack of coordination between investigative and prosecution wings. But this insulation of investigation and prosecution has been considered desirable for many years and we have frequently lamented the absence of this demarcation in India, as operationally present in the USA and UK. Over a short period of time, an independent Directorate of Public Prosecution (DPP) culture is hoped to emerge and considerably strengthen the quality of investigation and impart far greater objectivity to the prosecution process.
- 12.30 Lastly, the advantage of this model would be that:
- (i) *The CBI's apprehension, not entirely baseless, that it would then become a Hamlet without a Prince of Denmark if its Anti-Corruption Wing was hived off to the Lokpal would be taken care of.*
  - (ii) *It would be unnecessary to make CBI or CVC a Member of the Lokpal body itself.*

(iii) *The CBI would not be subordinate to the Lokpal nor its esprit de corps be adversely affected; it would only be subject to general superintendence of Lokpal. It must be kept in mind that the CBI is an over 60 year old body, which has developed a certain morale and esprit de corps, a particular culture and set of practices, which should be strengthened and improved, rather than merely subsumed within a new or nascent institution, which is yet to take roots. Equally, the CBI, while enhancing its autonomy and independence, cannot be left on auto pilot.*

(iv) *The CVC would retain a large part of its disciplinary and functional role for non Lokpal personnel and misconduct and would also not be subordinate to the Lokpal.*

- 12.31 Consequently, it is suggested that the aforesaid structure reasonably harmonizes and creates the necessary equilibrium for the independence and harmonised functioning of the so-called Trinity viz. Lokpal, CBI and CVC, with neither obliterating, superseding or weakening the other. It also advocates the strengthening of existing institutions, the creation of a new culture of professional investigation insulated from inception and a distinctly professional prosecution department.

## V. REASONS AND RECOMMENDATIONS

- 12.32 (A) Whatever is stated hereinafter in these recommendations is obviously applicable only to Lokpal and Lokayukta covered personnel and offences/misconduct, as already delineated in this report earlier, *inter-alia*, in Chapter 8 and elsewhere.

(B) For those outside (A) above, the existing law, except to the extent changed, would continue to apply.

- 12.33 This Chapter, in the opinion of the Committee, raises an important issue of the quality of both investigation and prosecution; the correct balance and an apposite equilibrium of 3 entities (viz. Lokpal, CBI and CVC) after creation of the new entity called Lokpal; harmonious functioning and real life operational efficacy of procedural and substantive safeguards; the correct balance between initiation of complaint, its preliminary screening/inquiry, its further investigation, prosecution, adjudication and punishment; and the correct harmonization of diverse provisions of law arising from the Delhi Special Police Establishment Act, the CVC Act, the proposed Lokpal Act, the IPC, CrPC and the Prevention of Corruption Act. It is, therefore, a somewhat delicate and technical task.

- 12.34 The stages of criminal prosecution of the Lokpal and Lokayukta covered persons and officers can be divided broadly into 5 stages, viz. (a) the stage of complaint, whether by a complainant or *suo motu*, (b) the preliminary screening of such a complaint, (c) the full investigation of the complaint and the report in that respect, (d) prosecution, if any, on the basis of the investigation and (e) adjudication, including punishment, if any.
- 12.35 The Committee recommends that the complaint should be allowed to be made either by any complainant or initiated *suo motu* by the Lokpal. Since, presently, the CBI also has full powers of *suo motu* initiation of investigation, a power which is frequently exercised, it is felt that the same power of *suo motu* proceedings should also be preserved for both the CBI and the Lokpal, subject, however, to overall supervisory jurisdiction of the Lokpal over the CBI, including simultaneous intimation and continued disclosure of progress of any inquiry or investigation by the CBI to the Lokpal, subject to what has been elaborated in the next paragraph.
- 12.36 Once the complaint, through any party or *suo motu* has arisen, it must be subject to a careful and comprehensive preliminary screening to rule out false, frivolous and vexatious complaints. This power of preliminary inquiry must necessarily vest in the Lokpal. However, in this respect, the recommendations of the Committee in para 12.36(I) should be read with this para. This is largely covered in Clause 23(I) of the Lokpal Bill, 2011. However, in this respect, the Lokpal would have to be provided, at the inception, with a sufficiently large internal inquiry machinery. The Lokpal Bill, 2011 has an existing set of provisions (Clauses 13 and 14 in Chapter III) which refers to a full-fledged investigation wing. In view of the structure proposed in this Chapter, there need not be such an investigation wing but an efficacious inquiry division for holding the preliminary inquiry in respect of the complaint at the threshold. Preliminary inquiry by the Lokpal also semantically distinguishes itself from the actual investigation by the CBI after it is referred by the Lokpal to the CBI. The pattern for provision of such an inquiry wing may be similar to the existing structure as provided in Chapter III of the Lokpal Bill, 2011 but with suitable changes made, *mutatis mutandis*, and possible merger of the provisions of Chapter VII with Chapter III.
- 12.36 (A) The Committee is concerned at the overlap of terminology used and procedures proposed, between preliminary inquiry by the Lokpal as opposed to investigation by the investigating agency,

presently provided in Clause 23 of the Lokpal Bill. The Committee, therefore, recommends:

- (a) that only two terms be used to demarcate and differentiate between the preliminary inquiry to be conducted by the Lokpal, *inter alia*, under Chapters VI and VII read with Clause 2(1)(e) as opposed to an investigation by the investigating agency which has been proposed to be the CBI in the present report. Appropriate changes should make it clear that the investigation (by the CBI as recommended in this report), shall have the same meaning as provided in Clause 2(h) of the CrPC whereas the terms “inquiry” or “preliminary investigation” should be eschewed and the only two terms used should be “preliminary inquiry” (by the Lokpal) on the one hand and “investigation” (by the CBI), on the other.
  - (b) the term preliminary inquiry should be used instead of the term inquiry in clause 2(1)(e) and it should be clarified therein that it refers to preliminary inquiry done by the Lokpal in terms of Chapters VI and VII of the Lokpal Bill, 2011 and does not mean or refer to the inquiry mentioned in Section 2(g) of the CrPC.
  - (c) the term “investigation” alone should be used while eschewing terms like “preliminary investigation” and a similar definitional provision may be inserted after Clause 2(1)(e) to state that the term investigation shall have the same meaning as defined in Clause 2(h) of the CrPC.
  - (d) Similar changes would have to be made in all other clauses in the Lokpal Bill, 2011, one example of which includes Clause 14.
- 12.36 (B) There are several parts of Clause 23 of the 2011 Bill, including Clauses 23(4), 23(5), 23(6), 23(9) and 23(11) which require an opportunity of being heard to be given to the public servant during the course of the preliminary inquiry *i.e.* the threshold proceedings before the Lokpal in the sense discussed above. After deep consideration, the Committee concludes that it is unknown to criminal law to provide for hearing to the accused at the stage of preliminary inquiry by the appropriate authority *i.e.* Lokpal or Lokayukta in this case. Secondly, the preliminary inquiry is the stage of verification of basic facts regarding the complaint, the process of filtering out false, frivolous, fictitious and vexatious complaints and the general process of seeing that

there is sufficient material to indicate the commission of cognizable offences to justify investigation by the appropriate investigating agency. If the material available in the complaint at the stage of its verification through the preliminary inquiry is fully disclosed to the accused, a large part of the entire preliminary inquiry, later investigation, prosecution and so on, may stand frustrated or irreversibly prejudiced at the threshold. Thirdly, and most importantly, the preliminary inquiry is being provided as a threshold filter in favour of the accused and is being entrusted to an extremely high authority like the Lokpal, created after a rigorous selection procedure. Other agencies like the CBI also presently conduct preliminary inquiries but do not hear or afford natural justice to the accused during that process. Consequently the Committee recommends that all references in Clause 23 or elsewhere in the Lokpal Bill, 2011 to hearing of the accused at the preliminary inquiry stage should be deleted.

- 12.36 (BB) Since the Committee has recommended abolition of the personal hearing process before the Lokpal during the preliminary inquiry, the Committee deems it fit and proper to provide for the additional safeguard that the decision of the Lokpal at the conclusion of the preliminary inquiry to refer the matter further for investigation to the CBI, shall be taken by a Bench of the Lokpal consisting of not less than 3 members which shall decide the issue regarding reference to investigation, by a majority out of these three.
- 12.36 (C) Naturally, it should also be made clear that the accused is entitled to a full hearing before charges are framed. Some stylistic additions like referring to the chargesheet “if any” (since there may or may not be a chargesheet) may also be added to Clause 23(6). Consequently, Clauses like 23(7) and other similar clauses contemplating proceedings open to public hearing must also be deleted.
- 12.36 (D) Clause 23(8) would have to be suitably modified to provide that the appropriate investigation period for the appropriate investigating agency *i.e.* CBI in the present case, should normally be within six months with only one extension of a further six months, for special reasons. Reference in Clause 23(8) to “inquiry” creates highly avoidable confusion and it should be specified that the meanings assigned to inquire and investigate should be as explained above.

- 12.36 (E) The Committee also believes that there may be several exigencies during the course of both preliminary inquiry and investigation which may lead to a violation of the 30 days or six months periods respectively specified in Clause 27(2) and 23(8). The Committee believes that it cannot be the intention of the law that where acts and omissions by the accused create an inordinate delay in the preliminary inquiry and/or other factors arise which are entirely beyond the control of the Lokpal, the accused should get the benefit or that the criminal trial should terminate. For that purpose it is necessary to insert a separate and distinct provision which states that Clauses 23(2), 23(8) or other similar time limit clauses elsewhere in the Lokpal Bill, 2011, shall not automatically give any benefit or undue advantage to the accused and shall not automatically thwart or terminate the trial.
- 12.36 (F) Clause 23(10) also needs to be modified. Presently, it states in general terms the discretion to hold or not to hold preliminary inquiry by the Lokpal for reasons to be recorded in writing. However, this may lead to allegations of pick and choose and of arbitrariness and selectivity. The Committee believes that Clause 23(10) should be amended to provide for only one definition viz., that preliminary inquiry may be dispensed with only in trap cases and must be held in all other cases. Even under the present established practice, the CBI dispenses with preliminary inquiry only in a trap case for the simple reason that the context of the trap case itself constitutes preliminary verification of the offence and no further preliminary inquiry is necessary. Indeed, for the trap cases, Section 6 A (ii) of the Delhi Special Police Establishment Act, 1946 also dispenses with the provision of preliminary inquiries. For all cases other than the trap cases, the preliminary inquiry by the Lokpal must be a non-dispensable necessity.
- 12.36 (G) Clause 23(11) also needs to be modified/deleted since, in this Report, it is proposed that it is the CBI which conducts the investigation which covers and includes the process of filing the chargesheet and closure report.
- 12.36 (H) Similarly, Clause 23(12)(b) would have to be deleted, in view of the conclusion hereinabove regarding the absence of any need to provide natural justice to the accused at the stage of preliminary inquiry. Clause 23(14) is also unusually widely worded. It does not indicate as to whom the Lokpal withhold records from. Consequently that cannot be a general blanket power given

to the Lokpal to withhold records from the accused or from the investigating agency. Indeed, that would be unfair, illegal and unconstitutional since it would permit selectivity as also suppress relevant information. The clause, therefore, needs to be amended.

- 12.36 (I) The case of the Lokpal initiating action *suo motu*, requires separate comment. In a sense, the preliminary inquiry in the case of a Lokpal *suo motu* action becomes superfluous since the same body (*i.e.* Lokpal) which initiates the complaint, is supposed to do a preliminary inquiry. This may, however, not be as anomalous as it sounds since even under the present structure, the CBI, or indeed the local police, does both activities *i.e.* *suo motu* action as also preliminary screening/inquiry. The Committee was tempted to provide for another body to do preliminary inquiry in cases where the Lokpal initiates *suo motu* action, but in fact no such body exists and it would create great multiplicity and logistical difficulty in creating and managing so many bodies. Hence the Committee concludes that in cases of *suo motu* action by Lokpal, a specific provision must provide that that part of the Lokpal which initiates the *suo motu* proposal, should be scrupulously kept insulated from any part of the preliminary inquiry process following upon such *suo motu* initiation. It must be further provided that the preliminary inquiry in cases of *suo motu* initiation must be done by a Lokpal Bench of not less than five Members and these should be unconnected with those who do the *suo motu* initiation.
- 12.37 These recommendations also prevent the Lokpal from becoming a single institution fusing into itself the functions of complainant, preliminary inquirer, full investigator and prosecutor. It increases objectivity and impartiality in the criminal investigative process and precludes the charge of creating an unmanageable behemoth like Lokpal, while diminishing the possibility of abuse of power by the Lokpal itself.
- 12.38 These recommendations also have the following advantages:
- (i) The CBI's apprehension, not entirely baseless, that it would become a Hamlet without a Prince of Denmark if its Anti-Corruption Wing was hived off to the Lokpal, would be taken care of.
  - (ii) It would be unnecessary to make CBI or CVC a Member of the Lokpal body itself.

- (iii) The CBI would not be subordinate to the Lokpal nor its *esprit de corps* be adversely affected; it would only be subject to general superintendence of Lokpal. It must be kept in mind that the CBI is an over 60 year old body, which has developed a certain morale and *esprit de corps*, a particular culture and set of practices, which should be strengthened and improved, rather than merely subsumed or submerged within a new or nascent institution, which is yet to take root. Equally, the CBI, while enhancing its autonomy and independence, cannot be left on auto pilot.
- (iv) The CVC would retain a large part of its disciplinary and functional role for non Lokpal personnel and regarding misconduct while not being subordinate to the Lokpal. However, for Lokpal covered personnel and issues, including the role of the CBI, the CVC would have no role.
- (v) *Mutatis mutandis* statutory changes in the Lokpal Bill, the CVC and the CBI Acts and in related legislation, is accordingly recommended.

12.39 After the Lokpal has cleared the stage for further investigation, the matter should proceed to the CBI. This stage of the investigation must operate with the following specific enumerated statutory principles and provisions:

- (A) On the merits of the investigation in any case, the CBI shall not be answerable or liable to be monitored either by the Administrative Ministry or by the Lokpal. This is also fully consistent with the established jurisprudence on the subject which makes it clear that the merits of the criminal investigation cannot be gone into or dealt with even by the superior courts. However, since in practice it has been observed in the breach, it needs to be unequivocally reiterated as a statutory provision, in the proposed Lokpal Act, a first in India.
- (B) The CBI shall, however, continue to be subject to the general supervisory superintendence of the Lokpal. This shall be done by adding a provision as exists today in the CVC Act which shall now apply to the Lokpal in respect of the CBI. Consequently, the whole of the Section 8(1) [not Section 8 (2)] of the CVC Act should be included in the Lokpal Bill to provide for the superintendence power of the Lokpal over the CBI.



- 12.40 Correspondingly, reference in Section 4 of the Delhi Special Police Establishment Act to the CVC would have to be altered to refer to the Lokpal.
- 12.41 At this stage, the powers of the CBI would further be strengthened and enhanced by clarifying explicitly in the Lokpal Bill that all types of prior sanctions/terms or authorizations, by whatever name called, shall not be applicable to Lokpal covered persons or prosecutions. Consequently, the provisions of Section 6(A) of the Delhi Special Police Establishment Act, Section 19 of the Prevention of Corruption Act and Section 197 of the IPC or any other provision of the law, wherever applicable, fully or partially, will stand repealed and rendered inoperative in respect of Lokpal and Lokayukta prosecutions, another first in India. Clause 27 of the Lokpal Bill, 2011 is largely consistent with this but the Committee recommends that it should further clarify that Section 6A of the DSPE Act shall also not apply in any manner to proceedings under the proposed Act. The sanction requirement, originating as a salutary safeguard against witch hunting has, over the years, as applied by the bureaucracy itself, degenerated into a refuge for the guilty, engendering either endless delay or obstructing all meaningful action. Moreover, the strong filtering mechanism at the stage of preliminary inquiry proposed in respect of the Lokpal, is a more than adequate safeguard, substituting effectively for the sanction requirement. Elsewhere, this report recommends that all sanction requirements should be eliminated even in respect of non Lokpal covered personnel.
- 12.42 The previous two paragraphs if implemented, would achieve genuine and declared statutory independence of investigation for the first time for the CBI.
- 12.43 The main investigation, discussed in the previous few paragraphs, to be conducted by the CBI, necessarily means the stage from which it is handed over to the CBI by the Lokpal, till the stage that the CBI files either a chargesheet or a closure report under Section 173 of the CrPC. However, one caveat needs to be added at this stage. The CBI's chargesheet or closure report must be filed after the approval by the Lokpal and, if necessary, suitable changes may have to be made in this regard to Section 173 CrPC and other related provisions.
- 12.44 The aforesaid independence of the CBI is reasonable and harmonizes well with the supervisory superintendence of the Lokpal in the proposed Lokpal Bill, which is now exercised by

CVC under Section 8(1) of the CVC Act. The Committee recommends the above provision, suitably adapted to be applicable in the relationship between the Lokpal and the CBI.

- 12.45 The next stage of the criminal process would go back to the Lokpal with full powers of prosecution on the basis of the investigation by the CBI. The following points in this respect are noteworthy:
- Clause 15 in Chapter IV of the Lokpal Bill, 2011 already contains adequate provisions in this regard and they can, with some modifications, be retained and applied.
  - The Committee's recommendations create, again for the first time, a fair demarcation between independent investigation and independent prosecution by two distinct bodies, which would considerably enhance impartiality, objectivity and the quality of the entire criminal process.
  - It creates, for the first time in India, an independent prosecution wing, under the general control and superintendence of the Lokpal, which, hopefully will eventually develop into a premium, independent autonomous Directorate of Public Prosecution with an independent prosecution service (under the Lokpal institution). The Committee also believes that this structure would not in any manner diminish or dilute the cooperative and harmonious interface between the investigation and prosecution processes since the former, though conducted by the CBI, comes under the supervisory jurisdiction of the Lokpal.
- 12.46 The next stage is that of adjudication and punishment, if any, which shall, as before, be done by a special Judge. The Committee considers that it would be desirable to use the nomenclature of 'Lokpal Judge' (or Lokayukta Judge in respect of States) under the new dispensation. However, this is largely a matter of nomenclature and existing provisions in the Lokpal Bill, 2011 in Chapter IX are adequate, though they need to be applied, with modifications.
- 12.47 The aforesaid integrates all the stages of a criminal prosecution for an offence of corruption but still leaves open the issue of departmental proceedings in respect of the same accused.
- 12.48 The Committee agrees that for the Lokpal covered personnel and issues, it would be counter-productive, superfluous and

unnecessary to have the CVC to play any role in departmental proceedings. Such a role would be needlessly duplicative and superfluous. For such matters, the Lokpal should be largely empowered to do all those things which the CVC presently does, but with some significant changes, elaborated below.

12.49 Clauses 28 and 29 of the Lokpal Bill are adequate in this regard but the following changes are recommended:

- (i) The Lokpal or Lokayukta would be the authority to recommend disciplinary proceedings for all Lokpal or Lokayukta covered persons.
- (ii) The CVC would exercise jurisdiction for all non-Lokpal covered persons in respect of disciplinary proceedings.
- (iii) The CBI would similarly continue to exercise its existing powers under the CVC's superintendence for all non-Lokpal personnel and proceedings.
- (iv) Departmental action must, as the law today stands, comply with the over arching mandate of Article 311 of the Indian Constitution. Dissatisfaction or objection to the practical operation of Article 311, fully understandable and indeed justifiable, does not permit or impel us to ignore the existence of Article 311, until altered. If there is consensus outside the Committee on amending Article 311, it must be amended as elaborated and recommended by the Committee in paragraph 12.49. However, absent such a consensus, the passage of the Lokpal Bill need not be held up on that account and hence the present report makes recommendations on the basis of the continuance of Article 311. If, however, it is amended as per paragraph 12.49, the proposed Lokpal Act can easily be modified to reflect such changes.
- (v) It may also be remembered that the Lokpal itself does not conduct the departmental proceedings. For the law to provide for Lokpal to conduct the entire departmental proceedings itself, would be to put a humongous and unworkable burden on the institution.
- (vi) Therefore, the power to take departmental action whether in the case of bureaucrats or in the case of Ministers as provided in Clauses 28 and 29 of the Lokpal Bill 2011, are largely appropriate.

- (vii) The Committee is informed that suspension of a delinquent officer during his criminal prosecution is virtually automatic in practice. However, the Committee feels the need to emphasize that a specific provision be added in Chapter VII making it clear that once any bureaucrat (*viz.* group A or group B officer) as covered in the proposed Lokpal Bill is under investigation and the Lokpal makes a recommendation that such a person be suspended, such suspension should mandatorily be carried out unless, for reasons to be recorded in writing by a majority out of a group of 3 persons not below the rank of Ministers of State belonging to the Ministries of Home Affairs, Personnel and the relevant administrative Ministry of the delinquent officer, opine to the contrary. Such suspension on Lokpal recommendation does not violate Article 311 in any manner. Refusal by the aforesaid Committee of three provides a check and balance *qua* possibly unreasonable Lokpal recommendations. The reference is to three high functionaries of three Ministries and not to the Administrative Ministry alone since it is frequently found in practice that the Administrative Ministry's responses alone may seek to preserve the *status quo* on account of vested interests arising from the presence of the delinquent officer in that Administrative Ministry.
- (viii) There cannot be a counterpart suspension provision in respect of MPs or Ministers or the like, but an explicit clause may be added to the existing Clause 29 that the Presiding Officer of the relevant House in the case of MPs and Prime Minister in the case of a Member of the Council of Ministers shall record a note in writing indicating the action being taken in regard to the Lokpal's recommendations or the reasons for not taking such action.
- (ix) Wherever otherwise applicable, in respect of the details of the departmental inquiry, the provisions of Article 311 would, unless altered and subject to paras D above and 12.49 below, continue to apply.
- 12.50 The Committee strongly pleads and recommends that the provisions of Article 311 require a close and careful re-look to ensure that reasonable protection is given to bureaucrats for the independent and fair discharge of their functions but that the enormous paraphernalia of procedural rules and regulations which have become a major obstacle in the taking of genuine and

legitimate departmental action against delinquent officers, be eliminated. The Committee notes with concern and with growing apprehension that serious and high level/big ticket corruption has increased exponentially since independence at all levels in the Lokpal proposed categories of personnel. In particular, bureaucratic corruption has been relatively ignored or underplayed in the context of the excessive media and civil society focus on political corruption, coupled with the doctrine of civil service anonymity, which this country imported from our former colonial masters. Hence, the substantial modification of Article 311 or, indeed, its replacement by a much lesser statutory (not constitutional counterpart) should be taken up and implemented at the earliest. It may be added that what requires to be looked into is not the mere text of Article 311 but the context which has grown around it, through an undesirably large number of statutory and non-statutory rules, procedures and regulations coupled with huge common law jurisprudence over the last 6 decades. It is universally believed that the aforesaid has, in practice, converted Article 311, from a reasonable and salutary safeguard to a haven for those indulging in mal administration and/corruption with no fear of consequences and the certainty of endless delay. The fact that Article 311 had been given constitutional and not mere statutory status is also responsible for its largely unchanged character over the last six plus decades.

- 12.51 Though not strictly within the purview of the Lokpal Bill, 2011 itself, the Committee also recommends that CVC's advice in respect of departmental action to be taken by the relevant department in case of non-Lokpal covered personnel must, by a suitable amendment to the CVC Act, be made binding to the extent that, unless for reasons to be recorded by a majority out of the same joint group as aforesaid, comprising 3 persons not below the rank of Ministers of State belonging respectively to the Ministries of Home Affairs, Personnel and the Administrative Ministry to which the delinquent officer belongs, states that CVC advice be not followed, such CVC advice shall be binding.
- 12.52 The Committee has deliberated long and hard on whether it can or should go to the extent of suggesting changes in the selection procedure of the CBI Chief. Presently, the CBI Chief is appointed by the Government on the recommendation of a Committee consisting of the CVC as Chairperson, Vigilance Commissioner, Secretary, Government of India in the Ministry of Home Affairs

and Secretary of the Administrative Ministry (in this case the Ministry of Personnel) [see Section 4A of the Delhi Special Police Establishment Act, 1946]. Section 8(2) of the 1946 Act further provides for a mandatory input in the selection of a new Director to be made by the outgoing Director and also enjoins upon the Committee, in Section 8(3), to make recommendations for a panel of officers on the basis of seniority, integrity and experience in the investigation of anti-corruption cases, necessarily belonging to the Indian Police Services.

- 12.53 Interestingly, Section 4C of the same 1946 Act provides for the same Committee to make recommendations for all appointments as also extension or curtailment of tenure of all officers above the level of Superintendent of Police in the CBI.
- 12.54 It is thus clear that it is not correct to suggest that the Central Government has absolute discretion in appointing the CBI Director. After the Vineet Narain vs. Union of India judgment\* by the Apex Court, significant changes were brought into the Delhi Special Police Establishment Act, 1946. In 2003 (by Act 45 of 2003) providing for the aforesaid independent and autonomous regime for selection and appointment of CBI Director. The Central Vigilance Commissioner who heads the selection and recommendation process is itself a high statutory authority under a separate enactment called the Central Vigilance Commission Act of 2003 which, in turn in Section 4, obliges the Government to appoint the CVC on the basis of a recommendation of a high powered Committee comprising the Prime Minister, the Home Minister and the Leader of Opposition in the Lok Sabha. It is, therefore, erroneous to brush aside the existing system as merely involving absolute power/discretion to select Government favourites as CBI Director.
- 12.55 Furthermore, the Committee believes that it would neither be proper nor desirable for the Committee to go into and suggest fundamental statutory alterations to the procedure for selection and appointment of CBI Director, which appears, nowhere, directly or indirectly, to be a subject referred for the consideration of this Committee. Collateral recommendations of this nature by a side wind should, in the opinion of this Committee, be avoided, especially since significant statutory changes have been brought in with respect to the appointment of the CBI Director less than 8 years ago.

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\* 1996(2) SCC 199.

## CHAPTER-13

## CONSTITUTIONAL STATUS : IF, HOW AND HOW MUCH

## I. INTRODUCTION AND BACKGROUND

- 13.1 On 26 August, 2011, Shri Rahul Gandhi, Member of Parliament, in the course of his speech in the Lok Sabha, strongly advocated constitutional status to the institution of Lokpal. He said:-

*“An effective Lokpal law is only one element in the legal framework to combat corruption. The Lokpal institution alone cannot be a substitute for a comprehensive anti-corruption code. A set of effective laws is required. Laws that address the following critical issues are necessary to stand alongside the Lokpal initiative: Government funding of elections and political parties; transparency in public procurement; proper regulation of sectors that fuel corruption like land and mining... We speak of a statutory Lokpal but our discussions cease at the point of its accountability to the people and the risk that it might itself become corrupt... Why not elevate the debate? Let us make it further and fortify the Lokpal Bill by making it a constitutional body like the Election Commission of India. I feel the time has come for us to seriously consider this idea... Laws and institutions are not enough. A representative, inclusive and accessible democracy is central to fighting corruption. Individuals have brought our country great gains. They have galvanized the people in the cause of freedom and development. However, we must not weaken the democratic process. This process is often lengthy and lumbering. But it is so in order to be inclusive and fair”.<sup>1</sup>*

- 13.2 The suggestion set off an intense debate on the subject. Many argued that the giving of constitutional status to the Lokpal would immensely enhance its stature. Doubts and questions were, however, raised about its feasibility and, more importantly, the possible inherent details involved in the process of giving constitutional status. The debate was carried on at several levels and fora including, within Parliament and in the Press, in this Parliamentary Committee and in diverse sections of civil society. The Committee also received specific inputs on the subject from diverse sources. This chapter discusses pros and cons and makes final recommendations in this regard.

<sup>1</sup> Statement made by Shri Rahul Gandhi in the Lok Sabha on 26<sup>th</sup> August, 2011.

## II. SUMMARY OF SUGGESTIONS/OBSERVATIONS RECEIVED THROUGH WRITTEN MEMORANDA

### 13.3 The major points raised in the memoranda received by the Committee are:

- Lokpal needs to be a constitutional authority, like the ECI or CAG rather than a statutory body, so that it has higher stature and increased legitimacy.
- As the ECI has powers to transfer officers which it deems would hinder the conduct of free and fair elections, the Lokpal should also have complete powers to transfer officers who would be prejudicial to the case and Government 'should' comply with the same. Hence, Lokpal should be a constitutional authority in these regards.

## III. SUMMARY OF DEPOSITIONS GIVEN BY WITNESSES

### 13.4 Justice J.S. Verma, while placing his considered views before the Committee, stated:

*"...But we are trying to say not a single word except to provide a declaration that there could be a constitutional body and once this Constitution Amendment Bill is passed so that it becomes a part of the Constitution. Then, there are several other implications which have got to be taken note of. This is something which cannot be ordinarily amended like an ordinary statute by some simple majority. It would be difficult. Secondly, if it becomes a basic feature and, therefore, a part of the basic structure which personally, I think, my friend agrees, ultimately it will become a part of the indestructable basic structure of the Constitution with any kind of change in the political equations or formulations, it would be beyond amending power even of Parliament.*

*Article 253 of the Constitution clearly provides that for the purpose of implementing an international treaty, convention, etc., the Parliament is entitled to enact for the whole or any part of the territory. We have already a precedent. The Protection of Human Rights Act, 1993 was enacted by the Parliament. We deal with not only the Constitution and the National Human Rights Commission but also the State Human Rights Commission. It is for the whole..."*

### 13.5 The Chairman, Bar Council of India, while speaking on this topic, observed:

*"...our view is this should be a constitutional body in line with the Election Commission. The structure, functions and jurisdictions may*



*be left to be provided by a parliamentary legislation like the one we have presently. Our first submission would be, please make it a Constitutional body...*

13.6 Shri Shanti Bhushan, while appearing before the Committee, said:-

*"...My first point is about the constitutional amendment. We have no objection in this regard. In fact, we would welcome a constitutional amendment to give a constitutional status to the Lokpal, subject to two conditions. One, Mr. Seshan had suggested a Bill which would have involved ratification by fifty per cent of the State Assemblies because it was altering the legislative list. It is not required in this case. No alteration in the legislative list is required. Therefore, it must be ensured -- if that is going to be constitutional amendment Bill -- that it will be passed by the Parliament itself without the requirement of being sent to the State Legislative Assemblies. Of course, it will have to be ensured, and I have no doubt, that two-third majority of those present and voting would be available, particularly after the Uttarakhand experiment. When Uttarakhand, where all the major parties are present, has already put their seal of approval on all these provisions, I don't see any difficulty with the political parties, here, at the Centre, also endorse all these suggestions. One thing more, it should not be a mere skeleton Bill. If it has to be a Constitutional Amendment Bill, it should not merely provide that State Legislatures and the Lok Sabha would be competent to enact a Bill. The Constitutional Amendment Bill must itself make all the provisions so that as soon as the Constitutional Amendment Bill is adopted all the provisions -- the powers of the Lokpal, the functions of the Lokpal, the authority of the Lokpal -- get passed by this Constitutional Amendment alone. There is no problem in doing it. It can be done and it should be done..."*

13.7 Justice M.N. Venkatachaliah and Justice J.S. Verma, in the memorandum submitted to the Committee, has enumerated the advantages of making the Lokpal as a constitutional body, as follows:

1. *"The demand is for a "strong" body against corruption. The strongest body that can be created by law is a body established under the Constitution. A purely statutory body will be weaker than a constitutional body for the following reasons.*
2. *The independence of the proposed anti-corruption body (on matters such as its mandate, powers, appointment and removal, functions and accountability), will be more secure and tamper*

*proof if entrenched in the Constitution than if placed in an ordinary legislation. A simple majority can amend ordinary laws. Constitutional provisions may be amended only by Constitutional amendment (2/3rd majority of those voting plus, in specified cases, approval of 50% of State legislatures).*

- 3. A constitutional body will be protected from challenges in a court of law that its mandate, powers and functions are in conflict with the Constitution or with any other statute—constitutional provisions establishing a constitutional body may be challenged only on the ground that it is in conflict with the “basic structure” of the Constitution.*
- 4. A Constitutional amendment will provide a basis for a unified and comprehensive national statutory framework for combating corruption at the national, State and local level. This would not be possible in an ordinary legislation because Parliament may generally enact ordinary legislation only on subjects within the Union and Concurrent Lists. However, when Parliament amends the Constitution it is not “making law”—it is exercising “constituent power”; exercise of constituent power is not restricted to the Union list or barred from matter in the State list.*

*In this particular case it may be possible for Parliament to make law on matters in the State list on the basis that it is doing so to implement India’s obligations under the UN Convention Against Corruption. This may, however, be subject to challenge and will require all provisions to be based on obligations under the UN Convention, directly or indirectly.*

- 5. As a matter of practical reality, experience shows that Constitutional bodies enjoy greater immunity from extraneous influences than statutory bodies. Courts are more vigilant in protecting the independence of these bodies.*
- 6. Again as a practical matter, Constitutional bodies enjoy higher status than bodies established under statutes. A proposal to establish a statute against corruption betrays a lack of the highest level of commitment to the issue.*
- 7. Constitutional provisions set out the most important normative concerns of society. By establishing a Constitutional body to fight corruption, this country will be establishing its civilizational commitment to uphold probity in public life.”*

13.8 The written note submitted by Justice J.S. Verma states as under:-

*"...a constitutional amendment would not attract the Proviso to sub-article (2) of Article 368 of the Constitution, and, therefore, it would not require ratification by the States...*

*As would be evident on a plain reading of Article 368(2), the only requirement is for it to be passed by the majority of total membership of each House and by a majority of not less than two-thirds of Members present and voting.*

*With the unanimous demand in the people supported by unanimity of all political parties in the Parliament to constitute a strong Lokpal/Lokayuktas, there can be no doubt of unanimous support for a constitutional body, which would obviously be the strongest visualized in the constitutional scheme. Once the Constitutional amendment is made, it would become a part of the indestructible 'basic structure', immune from any future attempt to erode its status. The exercise for the accompanying consequent legislation providing the details dealing with the contentious issues can continue simultaneously, since it must follow to complete the process.*

*There is no occasion to doubt the sincerity of the commitment and resolve of the people and the political will in this behalf. Therefore, there can be no risk of any delay in this method.*

*The directive principle of State policy in Article 51 (c), as a principle fundamental in governance is available as an aid (Article 51 states: "The State shall endeavour to... (c) foster respect for international law and treaty obligations in the dealings of organised peoples with one another..."). There is, therefore, no need to look for any additional support for the legislative competence of the Parliament to legislate on the subject for the whole territory of India."*

#### IV. ANALYSIS AND DISCUSSION

- 13.9 Two former Chief Justices of India gave detailed evidence and submitted drafts of the proposed constitutional amendments. The obvious advantage of giving constitutional status to the Lokpal institution would be, firstly, that its status would be immeasurably enhanced; secondly, existence or essence of the institution would not be liable to be tinkered with as a mere statutory enactment would be liable to be dealt with; thirdly, it would entrench certain basic principles and ideas and protect them from the vicissitudes of transient majorities, thereby making them more sacrosanct; and fourthly, the moral and legal effect of the Lokpal decisions would carry considerable enhanced legitimacy and moral and legal authority as a constitutional body.

- 13.10 The argument regarding possibility of delay was not real or, in, any case, not substantial. Those desirous of having an effective Lokpal institution could hardly complain that it was being given constitutional status. The constitutional amendment could be introduced not only in theory but in practice on the very same day as the Lokpal (Statutory Bill) is introduced in Parliament and there was no reason to suppose that the Constitutional Amendment Bill would not be passed on the same day and the same time as the statute. Indeed, it would be difficult to conceive of a situation as to any political party opposing the Constitutional amendment while supporting; in principle, the creation of Lokpal through a statute.
- 13.11 Shri Shanti Bhushan's suggestion that if there has to be constitutional amendment, virtually the entire Bill must be put within the Constitution, was felt both unnecessary and impracticable. The constitutional provisions are supposed to contain immutable principles or deal with basic principles not intended to be subject to frequent change. It will be self-defeating to transpose the entire Lokpal as a constitutional amendment to the Constitution itself, and that would considerably diminish its flexibility, apart from being impractical and totally unnecessary.

## **V. REASONS AND RECOMMENDATIONS**

### **13.12 The Committee, therefore, recommends:**

- (a) The institution of Lokpal must be given constitutional status by inserting into the Constitution by way of constitutional amendment certain basic principles about the Lokpal and leaving the details in the new proposed statute on which this Committee is opining.**
- (b) One practical, reasonable and legally valid model would be for the Government to consider the model and set of provisions asked for by the Committee and presented in the evidence to the Committee as a draft constitutional amendment by two former Chief Justices of India. That draft is enclosed herewith as Annexure 'F' and is self-explanatory.**
- (c) This constitutional amendment does not require ratification by not less than half of the State Legislatures since it does not seek to make any change in any of the provisions listed in the second proviso to Article 368(2) of the Indian Constitution.**

- (d) The constitutional amendment should, as reflected in the enclosed Annexure 'F' be a set of basic principles for the Lokpal as also provide for the basic set up of the Lokayuktas. Both these provisions, proposed in the enclosed draft, propose Part XV A and Articles 329(C) and 329(D), as enabling, empowering and permissive provisions and authorize and empower the appropriate legislature to make proper laws, *mutatis mutandis*, for Lokpal at the Centre and for Lokayuktas at the State.
- (e) Such a constitutional status would not only considerably enhance the stature, legal and moral authority of the Lokpal institution but would make interference and tinkering in these basic principles not subject to the vicissitudes of ordinary or transient majorities. Over a period of time, it is likely that these principles would develop into a set of immutable principles and, possibly, even become part of basic structure of the Constitution rendering the existence of the Lokpal and its basic features un-amendable even by a constitutional amendment.
- (f) Apprehensions regarding delay are misplaced. The Constitutional Amendment Bill would be much shorter than the Statutory Bill for the new proposed Lokpal and can be passed on the same day and at the same time as the latter, though by a different majority. It is inconceivable that while parties are in favour of the institution of Lokpal in principle, as a statutory body, parties would not agree with equal alacrity for the passage of a Constitutional Amendment Bill.
- (g) The suggestion that the entire Statutory Bill should be transposed as a constitutional amendment into the Constitution is untenable and impracticable. That would eliminate flexibility and would require a constitutional amendment for the smallest future change. Moreover, the Constitution does not and is not intended to provide for nitty gritty operational details. It should be and is intended to be a declaration of general and basic principles which, in turn, enable and empower formal Legislation, which in turn would take care of the details.
- (h) An easy or casual repeal or the entire Lokpal scheme would not be possible once it is constitutionally entrenched.
- (i) Similarly, there would be no option for the federal or State Legislatures not to have a Lokpal or a Lokayukta at all since the constitutional mandate would be to the contrary.

- (j) Contextually, the issues and some of the suggestions in this Chapter may overlap with and should, therefore, be read in conjunction with Chapter 7 of this report. Though the Committee has already opined in Chapter 4 of this Report here that the issues of grievance redressal should be dealt with in a separate legislation, the Committee hereby also strongly recommends that there should be a similar declaration either in the same Chapter of the Lokpal or in a separate Chapter proposed to be added in the Indian Constitution, giving the same constitutional status to the citizens grievances and redressal machinery.
- (k) This recommendation also reflects the genuine and deep concern of this Committee about the need, urgency, status and importance of a Citizens' Charter/grievance machinery and the Committee believes that the giving of the aforesaid constitutional status to this machinery would go a long way in enhancing its efficacy and in providing a healing touch to the common man.
- (l) Furthermore, the Committee believes that this recommendation herein is also fully consistent with the letter and spirit of para 1.8 above viz. the conclusions of the Minister of Finance in the Lower House recorded in para 1.8 above.

## CHAPTER-14

### THE JURISDICTIONAL LIMITS OF LOKPAL : PRIVATE NGOS, CORPORATES AND MEDIA

#### I. INTRODUCTION AND BACKGROUND

- 14.1 There was an intense debate in the Committee on whether to include purely private NGOs, corporations, corporate entities and media under the institution of Lokpal being proposed in this Report and, if so, to what extent and, if not, why not.
- 14.2 A large number of Members, cutting across party lines, felt that the proposed Bill on the Lokpal pending before this Committee would, at best, be a partial and incomplete measure since it did not police and regulate in respect of corruption, large segments of society, especially private NGOs, corporate entities and media. It was felt that for the last six decades, the focus had been only on policing and regulating the political classes and, to a lesser extent, the bureaucracy, in respect of issues relating to corruption. It was strongly believed that a substantial slice of society should not be excluded from such regulatory purview and that the entire gamut of 'private' corruption (in the sense of corruption not involving the political class or bureaucrats) with all its attendant features and facets, is also required to be dealt with by an effective legal regime.

#### II. SUMMARY OF SUGGESTIONS/OBSERVATIONS RECEIVED THROUGH WRITTEN MEMORANDA

- 14.3 The memoranda received by the Committee carried the following suggestions/observations:
- Since media is the fourth pillar of democracy, it should be brought under the purview of Lokpal.
  - The aspect of paid news should also be covered under the Lokpal Bill.
  - Office bearers of NGOs and movements that do not receive any Government funds cannot be treated as "public servants".
  - Jurisdiction of Lokpal should be extended to societies/associations/trusts that are constituted for religious purposes.

- Large corporate houses & activities of corporate lobbyists should be brought under the scanner of Lokpal.
- PSUs should be brought under the ambit of Lokpal.
- Only Government supported NGOs to be brought under Lokpal.
- Consequent tangible & intangible losses to the nation should also be included under the Bill.
- Powerful media houses, NGOs, corporate bodies, organizations & institutions, because of their clout and their ability to manipulate public opinion in a way that suits their interests need to be dealt separately & effectively when an individual complaints against them for the corrupt practices employed by them. By including them in the ambit of a legislation like Lokpal, a common man will be provided with a level playing field to take on the might of these bodies engaged in corrupt practices, just as it would provide people the same to take on the might of the State.
- Only NGOs and firms that are funded by Government should be brought within the purview of Lokpal.
- All NGOs, with which any public servant is associated in their management, should be brought under the ambit of Lokpal Bill and 'acts of corruption' in the definition clause should include the acts of omissions and commissions of public servants, in relation to management of any society/trust/any other institution, with which such public servant may be associated in its management.
- The fundamental right to establish an independent association should not be curbed; otherwise a lot of useful activity of the citizen for social benefit would be curtailed. Further, 'annual income' criterion is arbitrary and violates Article 14 of the Constitution.
- Second proviso to Clause (g) of Section 17(1) is repugnant to good conscience and morality. A free citizen would be subjected to 'responsibility' without any 'power' of a public servant—'liability' without rights and 'culpability' without an overt act is prepositions. The proviso should be deleted.
- On the matter of covering the private sector, proposal is that PCA may be amended appropriately to include 'Where any private body, corporation or profit seeking entity receives from any public authority any concession or dispensation, including



but not restricted to licences, subsidies, contracts, orders, quotas, allocations, clearances, grants, etc., that is in violation of the law or of any prevailing rules, it would be deemed to have indulged in corrupt practices unless it can show that it was unreasonable to expect the corporation to know that a law or rule had been violated’.

- Corporate Corruption—

- (a) Provide for adequate punitive power in Lokpal Bill and the PC Act to address corporate corruption.
- (b) Definition of corruption be enlarged as per the recommendations of Fourth Report of Second ARC.
- (c) Increase the punishment for such offences including collusive bribery on the lines of recommendations of Fourth Report of the Second ARC.

- Corruption by Private Party and Issue of recovery—

- (a) Fourth Report of the Second Administrative Reforms Commission has a unique suggestion in the form of a civil recovery law for fraud, which seeks to recover 5 times the amount of loss to the Government exchequer caused by private parties. This suggestion models itself on the unique law in the USA, called the False Claims Act/Lincoln Law. Not only does this law make the private party which has committed the fraudulent act disgorge 3 times the damage to the exchequer, but also legal costs, and the costs of investigation. In this law, public servants cannot be tried; only private parties that knowingly over-bill the Government or deny revenue to the Government or make false statements/certification to achieve the same end. It is not a criminal, but a civil statute, so it does not require *mens rea* or *quid pro quo*; only a ‘preponderance of evidence’, that the defendant acted ‘knowingly’ to defraud the Government. Since the objective of the law is not to prove criminal guilt, but to make civil recoveries, and deter other fraudulent actions, this reduction in the burden of proof makes sense. The law was borne amidst heightened corruption during the American Civil War, and due to its success, has been made stronger today with amendments and supporting legislation. One of the key aspects of this law is the concept of *quitam*. This concept allows private citizens to approach a civil court and file claims on behalf

of the Government. If the fraud is proven, the citizen/whistleblowers stand to gain upto 30% of the recoveries.

- (b) The five times recovery of loss should be combined with banning of any business with that of the Government of India for a period of five years. If the company being investigated and tried in a civil court, is co-operative and admits to wrong-doing as the civil suit is initiated, it should be allowed to settle for damages not less than three times the loss to the exchequer and can escape the ban on business. Such civil recovery procedures become thereby equal to the civil service/parliamentary disciplinary procedures as an intermediary punishment whether or not a case is made for criminal offence under the PCA. Furthermore, any violations of agreements with the Government in terms of acquisition of land/granting of subsidized Government land/Government subsidies, such as private hospitals that have obtained subsidized land and not treated poor patients for free should also be subject to recoveries/damages under our version of the False Claims Act.

- 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 fight *quitam* 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.

#### 14.4 The DoPT's comments in this regard are:

*"...As regards the corruption by Corporate/MNCs and paid news of both print and electronic media are concerned, it is stated that the scope of the Lokpal is to enquire into the complaints of the alleged corruption against certain public functionaries. If MNCs and media are also to be covered under the Lokpal, in that case, the definition of the public servant would be required to be modified to include such entities. In order to tackle corruption by private*

*parties, which include MNC and media, Ministry of Home Affairs, in consultation with the States, is already examining amendment to the IPC. However, Clause 17(3) of the Bill provide that the Lokpal may inquire into any act or conduct of any person other than those referred to in sub-section (1) of Clause 17, is such person associated with the allegation of corruption under the Prevention of Corruption Act, 1988. The Government has also introduced Prevention of Bribery of Foreign Public Officials and Officials of Public International Organisations, Bill, 2011 in the Lok Sabha. As far as the conduct of MPs on the floor of the House is concerned, they are already subject to Ethics Committee of the respective House, and it would be desirable if the matter is left to the respective House for appropriate action in this regard. For Media and Press, it is felt that a separate mechanism, perhaps under the Press Council of India, may be required. The NGOs receiving Government funds or donations are covered...*

*...It is felt that the organisations who are receiving grants etc. from the Government should be covered. Similarly, the NGOs which are getting donations from the public, are also getting tax relief thereby, they are also indirectly funded by the Government, it is felt that those organisations which are set up other than for religious purposes and are receiving public donations, should come within the ambit of the Lokpal..."*

14.5 The comments of CVC in this regard are:

*"...While most of our anti-corruption efforts are focused more on the demand side of corruption i.e. punishing the public servants (the receiver of bribes) there is a need to effectively address the equally culpable supply side (the bribe-givers) of corruption. United Nations Convention Against Corruption (UNCAC) and the anti-corruption laws in most of the countries focus more on penalising active bribery i.e. payment of bribes, largely involving the private sector. The UK Bribery Act, 2010 as well as the Foreign Corrupt Practices Acts of the USA has strong provisions to punish companies who not only involve in corrupt practices but also companies failing to prevent corruption. Therefore, there is a need to introduce strong regulatory framework for preventing and punishing corporate corruption. Lokpal could be best suited to address such supply side corporate corruption and suitable amendments to the Lokpal Bill and the PC Act should be made expeditiously..."*

14.6 Shri Pratap Bhanu Mehta, in his written memorandum, has stated:

*"...The State has to balance to competing considerations. On the one hand, it has to ensure that any organization that is funded by*

*the State is subject to proper accountability. On the other hand, it must not make civil society subject to pervasive State scrutiny and control in a way that impinges on their autonomy.*

*In this light while 17(1)(f) seems reasonable, 17(g) gives State a very wide latitude. It would be advisable to retain 17(f) and drop 17(g).*

*17(g) is also discriminatory. It allows the State to scrutinize any organisation that receives public donations. But at the same time, it exempts private companies that might “charge” for conducting the very same activity.*

*17 (g) also would apply to political parties. It is not clear if it is desirable to treat political parties as if they are the State.*

*The sense in which a private citizen or an NGO can be corrupt needs to be defined. Offences in the Prevention of Corruption Act relate to taking or abetting the taking of gratification. What counts as an offence for a private citizen or NGO? Embezzlement etc. are covered by a variety of laws. For example, there is a real danger that in case of research organisations for instance, the State could simply rule that a particular position taken by a research organization constitutes an act of corruption merely on account of who funded it. This worry may also apply to institutions covered under 17 (f). So in the absence of any clear definition of corruption for in the case of private citizens, there is real danger of the Act posing a threat to valuable freedoms in civil society.*

*In light of the above – and for other practical considerations – it will be advisable to keep NGOs out of the purview of the Lokpal. They are subject to other accountability mechanisms...”*

### **III. SUMMARY OF DEPOSITION GIVEN BY THE WITNESSES**

#### **14.7 Dr. Jayaprakash Narayan stated as under:-**

*“...Then, Mr. Chairman, there are issues relating to corporates and NGOs. We cannot ignore them altogether. There are, obviously, some philosophical issues and also practical issues. The philosophical issue being rights cannot exist against non-governmental organizations, individuals or corporates.*

*The second class of corruption is “collusive corruption.” It is broadly defined as collusion between a public servant and a private entity or an individual to defraud the public exchequer or the public*

*resources. It may be mines, it may be land or it may be some other natural resource. Therefore, this distinction must be kept in mind. In those cases, we argued that penalty must be substantially higher and more importantly, the burden of proof must be shifted. If there is a prima facie evidence, it is for the party accused to prove that there was no collusion. In fact, even in case of the Prevention of Corruption Act, the Supreme Court argued that once a property is accumulated, there is a prima facie evidence. It is for the corrupt public servant to prove that that was not corruptly acquired. Therefore, the burden of proof must be shifted. I know that there will be some concern from many jurists and others because in this country, we have taken the burden of proof issue very seriously. Therefore, if corporates come under this umbrella of collusive corruption and shifting the burden of proof, that will take care of the problem...”*

14.8 He further stated:

*“...Then, about NGOs and civil society organizations, I believe, corruption is not limited to those in Government alone. There are plenty outside who are equally culpable and, therefore, wherever a civil society organization takes any substantial assistance of the Government — Mr. Chairman, I am emphasizing the words ‘substantial assistance from the Government’ — then they must be definitely brought under the Prevention of Corruption Act.*

*Sir, it is time that the NGOs are made accountable on issues like from where they receive their money, how do they utilize that money etc. If they want to be a part of India’s governance, and, they have become a part of India’s governance, then, they must share the accountability with other institutions of governance...”*

14.9 Shri Shekhar Singh (NCPRI) was of the following view:

*“...Let us retain what is in the Prevention of Corruption Act, which says that any NGO which gets Government funding comes under the purview. But we have gone further. We have said it at the end of our note, that we must amend the Prevention of Corruption Act and bring both the corporate sector and the NGO by doing the following. And what we have suggested is that section 12 of the Prevention of Corruption Act talks about abetment to an offence under the Prevention of Corruption Act. What we have suggested is that every time an NGO or a corporate sector gets a licence, an order, a clearance or any sort of dispensation from the Government, which is in violation of the rules or laws, it would be assumed that corrupt practices have been indulged in and would, therefore, be considered an abetment...”*

14.10 One of the Members of the Committee stated thus:-

"...इन्हीं को सपोर्ट करते हुए मैं यह कहना चाहता हूँ कि भ्रष्टाचार की गंगोत्री तब से बढ़ी है, जब से प्राइवेट सैक्टर को सब जगहों पर खोला गया है। चूंकि गवर्नमेंट सैक्टर में जब तक मामला था, तब तक किसी न किसी रूप में वह कंट्रोल होता रहता था, लेकिन जब से प्राइवेट सैक्टर खुल गया है, तो आपने *flood gate* खोल दिया, अब आप खिड़की को बंद करके नहीं रख सकते हैं। अब धीरे-धीरे गवर्नमेंट सैक्टर खत्म होता जा रहा है। जो 90 परसेंट है, वह तो गवर्नमेंट से बाहर का है। मुझे आज तक आश्चर्य हो रहा है कि ये जो *corporate houses* हैं, जहां सबसे ज्यादा करप्शन है, जहां एक पैसे के बदले में हजार करोड़ रुपये से कम की बात नहीं होती है, तो आप इसमें कॉर्पोरेट हाउसेज को जोड़ने का काम क्यों नहीं करते, मीडिया को जोड़ने का काम क्यों नहीं करते?..."

14.11 The following observation was made by another Member of the Committee:-

*"...The second question is that the entire draft that you have mentioned appears to be that politicians at all levels, as also the bureaucracy, alone are responsible for corruption. Now, politicians and the bureaucracy on the one hand and excluding them is the entire civil society. This is absolutely fallacious for the very simple reason that, after all, wherefrom is the bureaucracy coming. The bureaucracy is coming from amongst the civil society. Who are contesting the elections? Wherefrom the Ministers, the Prime Minister are coming? So, why is there distinction between the civil society and the so-called non civil society, namely, the bureaucracy and the Parliamentarians or the legislators or the Ministers alone? This is a kind of trade off. If civil society is not corrupt, wherefrom the Ministers are bringing the money to get into corruption? If civil society is not involved in corruption, wherefrom the bureaucracy is bringing the money?..."*

14.12 Shri Prashant Bhushan, while appearing before the Committee, stated thus:-

"...करप्शन की *definition* अगर आप *Prevention of Corruption Act* में देखें, उसमें कहा गया है कि यदि इसमें कोई सरकारी संस्था या सरकारी अधिकारी *involved* है तो उसी को *corruption* माना है। इसका यह मतलब नहीं है कि कोई निजी संस्था या कोई निजी आदमी *fraud* नहीं कर सकता, *cheating* नहीं कर सकता, तो लोग *fraud* भी करते हैं, *cheating* भी करते हैं और क्रिमिनल मिस-एप्रोप्रिएशन भी करते हैं। उसको *Prevention of Corruption Act* में *corruption* नहीं माना गया है, *unless* कि वह किसी सरकारी संस्था या सरकारी अधिकारी को घूस देते हैं या भ्रष्ट करते हैं। जहां तक सरकारी अधिकारी जिस *corruption* में *involved* हैं, यानी कि अगर कोई प्राइवेट

कम्पनी या कोई NGO किसी सरकारी अधिकारी या संस्था को भ्रष्ट करता है, तो वह तो लोकपाल के दायरे में ही आएगा।

...अगर कोई प्राइवेट संस्था या एन.जी.ओ. किसी दूसरे आदमी, मान लीजिए कि कोई प्राइवेट संस्था है, उसका जो ट्रेजरर है या मैनेजर है, उसने उस संस्था के पैसे का गबन कर लिया तो इसको करप्शन नहीं कहा जाता, इसको फ्रॉड या मिस-एप्रोप्रिएशन कहा जाता है। क्योंकि इसमें सरकार इनवोल्व नहीं है, इसलिए इसके लिए जो नॉर्मल सरकारी संस्था है, पुलिस या और कोई जो भी संस्था है, वह उसकी तहकीकात कर सकती है...”

14.13 A Member of the Committee said thus:

“...जब कोई टेंडर प्रोसेसिंग में आता है, तो उसके लिए जो सरकारी पैसा लेगा, उसको सजा मिलेगी और टेंडरिंग प्रोसेस में जो कॉर्पोरेट हाउस इनवोल्वड है, उसको सजा नहीं मिलेगी।...”

14.14 Shri J.B. Mohapatra, while deposing before the Committee, said:

“...Third proviso to Clause 17 says that religious trusts, associations of persons, or societies are not be regarded as public servants for this purpose. Now, proviso below Clause 17(1)(g) says that religious trusts are not be proceeded against under the Lokpal Act. Now, look at Clause 17(3), it says that any person other than mentioned in Clause 17(1) can be proceeded against. There is a contradiction and my view is that if religious trusts are exempted from the Lokpal Bill, tomorrow, other charitable institutions like hospitals, education institutions, etc. will also come. When the CrPC, CPC or the Income Tax Act do not exonerate these kinds of religious charities from being proceeded against, why give an exemption in the Lokpal Bill?...”

14.15 Speaking on this issue, the representative of PRS Legislative Research opined as follows:

“...I would just like to point out that Clause 17(1)(g) says that the Bill includes not only NGOs, it also includes any association of persons. This would include companies; it would include unregistered groups, etc., which have obtained donations from the public. The Bill also deems all officers, Directors, etc. or such groups as public servants. If we look back at certain other laws, the Offences and Prevention of Corruption Act, 1988, we will find that they are restricted to taking of gratification, which is bribe, by a public servant in his official capacity. To me, it is not clear, how an officer of a private trust or a society can be accused of corruption. He can be accused of embezzlement; he can be accused of various

*other crimes, but how does such a person, who is taking donation from the public, actually, causes loss to the exchequer, which is what we narrowly define as 'corruption'. If we look at the IPC, 'public servant' is defined in Section 21. There are 11 different categories of persons which are included in the definition. If you look at them together, it, essentially, includes any person who is in the service or pay of the Government or a local authority, a corporation established by law or a Government company and receives a fee or commission for the performance of public duties. So, in some sense, if we take the IPC as a guidance to determine who should be determined a public servant, one could conclude that anyone who performs the function of the State, directly or indirectly, and is compensated by the exchequer for performing a public duty is the person that Section 21 of the IPC covers as 'public servant'; it does not cover anyone else. Under the RTI Act too, the definition of 'public authority' includes the NGOs which receive Government funding: it does not include other donations..."*

14.16 The representatives of ABVP, while tendering oral evidence before the Committee, stated:

*“बाकी क्लॉज 17 (एफ) में ट्रस्ट के बारे में या NGOs के बारे में लिखा गया है। उसमें पहला नंबर है सरकार द्वारा सहायता प्राप्त संस्थाएं, उसका हम समर्थन करते हैं। उसे रखा जाना चाहिए और उसके बारे में जो भी amount of grant सरकार तय करेगी, वह उसी समय तय किया जा सकता है। हम इसमें दो और प्रकार के NGOs को जोड़ना चाहते हैं – एक, जो विदेशों से धन प्राप्त करते हैं। दूसरे, जो कॉर्पोरेट और निजी कंपनियों donations लेते हैं। भले ही छोटा donation न रखें इसलिए मैं सुझाव के तौर पर कह रहा हूँ कि जो सालाना 5 करोड़ से ज्यादा donation लेते हैं। बड़े-बड़े NGOs हैं जो सरकार के निर्णयों को प्रभावित करते हैं। यह मुद्दा बहुत महत्वपूर्ण है। इसलिए जब तक हम निर्णयों को प्रभावित करने वाले economic sources को catch नहीं करेंगे तब तक करप्शन नहीं रुक सकता है। इसलिए कॉर्पोरेट कंपनियों व निजी क्षेत्र से donation लेने वाली संस्थाओं के लिए 5 करोड़ से ऊपर लेने वाली संस्थाओं की लिमिट रखें और उनको इसमें जरूर शामिल किया जाना चाहिए। बाकी लोकपाल बिल में जो अन्य छोटे-मोटे ट्रस्ट और दुनिया भर के लोगों को शामिल किया गया है, मुझे लगता है कि उस प्रावधान को हटा देना चाहिए। केवल तीन प्रकार के ही ट्रस्ट इसमें रखे जाने चाहिए—जो सरकारी donation लेने वाले हैं, विदेशों से धन लेने वाले हैं और प्राइवेट कंपनियों से एक निश्चित amount से अधिक लेने वाले हैं। बाकी इसका दायरा नहीं बढ़ाना चाहिए अन्यथा फिर यह कोई काम ही नहीं कर पाएगा और इसका misuse ही होने की संभावना है।”*



#### IV. ANALYSIS AND DISCUSSION

- 14.16A A large number of Members, cutting across party lines, felt that the proposed Bill on the Lokpal pending before this Committee would be a partial and incomplete measure since it did not police and regulate in respect of corruption, large segments of society, especially private NGOs, corporate entities and media. It was felt that for the last six decades, the focus had been only on policing and regulating the political classes and, to a lesser extent, the bureaucracy, in respect of issues relating to corruption, it was strongly believed that a substantial slice of society should not be excluded from such regulatory purview and that the entire gamut of “private corruption” in the sense of corruption not involving the political class or bureaucrats with all its attendant features and facets, is also required to be dealt with by an effective legal regime.
- 14.17 There is no doubt that corruption is neither the exclusive preserve nor the special privilege nor the unique entitlement of only the political or bureaucratic classes. Nor anyone can justify exclusionary holy cows, supposedly immunized, exempted or put outside the purview of a new and vigorous anti-corruption monitoring, investigation and prosecution regime as the proposed new Lokpal Bill seeks to create. If corruption is rampant in a country like India, it permeates and pervades every nook and cranny of society and is certainly not restricted to the political or bureaucratic classes. Indeed, while no specific statistical data are available, it may not be at all inconceivable that, in quantification terms, the degree of corruption in the non-political/non-bureaucratic private sector, in the aggregate, is far higher than in the realm of political and bureaucratic classes alone. Therefore, in principle, non-application of the proposed Lokpal Bill to all such classes does not appear to be justifiable.
- 14.18 In this connection, the very recent UK Bribery Act, 2010, is both interesting and instructive. Drafted in a completely non-legalistic manner, format and language, this Act seeks to criminalize corruption everywhere and anywhere, *i.e.* in the public and private sectors in UK, in Governmental and non-Governmental sectors, by UK citizens abroad, by non-UK citizens acting in UK and in the entire gamut of private and individual transactions in addition to covering dealings in the private sector, intra-private sector, intra-public sector, in Government and private interface and in every other nook and cranny of society.

- 14.19 Despite the above and despite the simplicity and attractiveness of an all inclusive approach, the latter must yield to exigencies of logistics, operational efficacy and pragmatism. Since this is the nation's first experiment with a Lokpal institution, it would amount to starry-eyed idealism to recommend the blanket inclusion of every segment of society under the jurisdiction of an omnipotent and omniscient Lokpal. Such comprehensive inclusion is entirely understandable and may be logically more justifiable in principle, but, in the final opinion of the Committee, must await several years of evolution of the Lokpal institution and a corpus of experiential and practical lessons as also the wisdom of a future generation of Parliamentarians.
- 14.20 As far as the proposed dispensation is concerned, the only available dividing and demarcating line between the complete inclusion and partial exclusion of entities from the jurisdiction of the Lokpal would have to be some test of Government ownership and/or control and/or size of the entity concerned. In this regard, Clauses 17(1)(f) and (g) of the Lokpal Bill, 2011 are relevant. Clause 17(1)(f) applies the Lokpal jurisdiction mainly to office-bearers of every society, A.o.P. or trust, registered or not, but wholly or partially financed or aided by the Government, subject to being above some specified annual income minima. Clause 17(1)(g), similarly, applies the Lokpal to office-bearers of every society, A.o.P., or trust, receiving donations from the public, again subject to an annual income minima to be specified by the Central Government.
- 14.20A After deep consideration, the Committee believes and recommends that these clauses should be merged and expanded to provide for the following coverage/jurisdiction of the Lokpal:
- (a) The Lokpal jurisdiction should apply to each and every institution/entity, by whatever name called, owned or controlled by the Central Government, subject, however, to an exclusionary minima, where the ownership or control of the Central Government *de minimis*. Such minima would have to be specified and the power of such specification should be given to the Central Government by notification;
  - (b) Additionally, all entities/institutions, by whatever name called, receiving donations from the public above a certain minima, liable to be specified by the Central Government, should be included, *as also all entities/institutions* receiving donations from foreign sources in the terms and context of the Foreign Contribution Regulation Act (FCRA) in excess of Rs. 10 lakh per

year, should be covered, whether or not, controlled by the Government. This is largely as per existing Clause 17(1)(g), except for the addition of the foreign donation recipient facet;

(c) It should be clarified that this coverage shall apply, as also stated above, to every entity and institution, by whatever name called, be it corporate, society, trust, A.o.P., partnership, sole proprietorship, LLP or any other, registered or not. It should also be made clear that the approach is functional or ownership or size based and not based on nomenclature;

(d) It is thus clear that corporates, media or NGOs should and would be covered *only to the above extent and not otherwise*.

14.21 Despite the foregoing elaborations and ‘lament’ regarding exclusion of large slices of society from the Lokpal regime, it must not be forgotten that all persons, whether private, individual, and totally non-Governmental, are already necessarily covered as abettors, co-conspirators, inciters and givers or recipients or bribes in terms of Clause 17(3) of the Lokpal Bill, 2011. It may, however, be further clarified suitably in inclusive and not exhaustive terms in Clause 17(3) that the phrase ‘if such person is associated with the allegation of corruption,’ should include abettors, bribe-givers, bribe-takers, conspirators and all other persons, directly or indirectly, involved in the act or omission relating to corruption within which all other persons and entities in Clause 17 are subsumed. The word “associated” presently used is too general and vague.

14.21A The Committee further recommends that Clause 17(3) should be explicitly clarified to the effect that the abettor, conspirator or person associated, in any manner, directly or indirectly, with the corruption allegation, shall not only be included but be fully liable to investigation, prosecution and punishment and that the proviso to Clause 17(3) shall be limited only to proposed action to be taken ‘in case of a person serving in the affairs of a State’ and not *qua* anyone else.

## V. REASONS AND RECOMMENDATIONS

14.22 There is no doubt that corruption is neither the exclusive preserve nor the special privilege nor the unique entitlement of only the political or bureaucratic classes. Nor can anyone justify exclusionary holy cows, supposedly immunized, exempted or put outside the purview of a new and vigorous anti-corruption monitoring, investigation and prosecution regime as the proposed

new Lokpal Bill seeks to create. If corruption is rampant in a country like India, it permeates and pervades every nook and cranny of society and is certainly not restricted to the political or bureaucratic classes. Indeed, while no specific statistical data are available, it may not be at all inconceivable that, in quantum terms, the degree of corruption in the non-political/non-bureaucratic private sector, in the aggregate, is far higher than in the realm of political and bureaucratic classes alone. Therefore, in principle, non-application of the proposed Lokpal Bill to all such classes does not appear to be justifiable.

- 14.23 In this connection, the very recent UK Bribery Act, 2010, is both interesting and instructive. Drafted in a completely non-legalistic manner, format and language, this Act seeks to criminalize corruption everywhere and anywhere, *i.e.* in the public and private sectors in UK, in Governmental and non-Governmental sectors, by UK citizens abroad, by non-UK citizens acting in UK and in the entire gamut of private and individual transactions in addition to covering dealings in the private sector, intra-private sector, intra-public sector, in Government and private interface and in every other nook and cranny of society.
- 14.24 Despite the above and despite the simplicity and attractiveness of an all inclusive approach, the latter must yield to exigencies of logistics, operational efficacy and pragmatism. Since this is the nation's first experiment with a central Lokpal institution, it would amount to starry-eyed idealism to recommend the blanket inclusion of every segment of society under the jurisdiction of an omnipotent and omniscient Lokpal. Such comprehensive inclusion is entirely understandable and may be logically more justifiable in principle, but, in the final opinion of the Committee, must await several years of evolution of the Lokpal institution and a corpus of experiential and practical lessons as also the wisdom of a future generation of Parliamentarians.
- 14.25 As far as the proposed dispensation is concerned, the only available dividing and demarcating line between the complete inclusion and partial exclusion of entities from the jurisdiction of the Lokpal would have to be some test of Government ownership and/or control and/or size of the entity concerned. In this regard, Clauses 17(1)(f) and (g) of the Lokpal Bill, 2011 are relevant. Clause 17(1)(f) applies the Lokpal jurisdiction mainly to office-bearers of every society, A.o.P. or trust, registered or not, but wholly or partially financed or aided by the Government,

subject to being above some specified annual income minima. Clause 17(1)(g), similarly, applies the Lokpal to office-bearers of every society, A.o.P. or trust, receiving donations from the public, again subject to an annual income minima to be specified by the Central Government.

14.25A After deep consideration, the Committee believes and recommends that these clauses should be merged and expanded to provide for the following coverage/jurisdiction of the Lokpal:

- (a) The Lokpal jurisdiction should apply to each and every institution/entity by whatever name called, owned or controlled by the Central Government, subject, however, to an exclusionary minima, where the ownership or control of the Central Government *de minimis*. Such minima would have to be specified and the power of such specification should be given to the Central Government by notification;
- (b) Additionally, all entities/institutions, by whatever name called, receiving donations from the public above a certain minima, liable to be specified by the Central Government should be included. In addition, *as also all* entities/institutions receiving donations from foreign sources in the terms and context of the Foreign Contribution Regulation Act (FCRA) in excess of Rs. 10 lakh per year, should be covered, whether or not, controlled by the Government. This is largely as per existing Clause 17(1)(g), except for the addition of the foreign donation recipient facet;
- (c) It should be clarified that this coverage shall apply, as also stated above, to every entity and institution, by whatever name called, be it corporate, society, trust, A.o.P., partnership, sole proprietorship, LLP or any other, registered or not. It should also be made clear that the approach is functional or ownership based or size based and not based on nomenclature;
- (d) It is thus clear that corporates, media or NGOs should and would be covered only to the above extent and not otherwise.

14.26 Despite the foregoing elaborations and 'lament' regarding exclusion of large slices of society from the Lokpal regime, it must not be forgotten that all persons, whether private, individual, and totally non-Governmental, are already necessarily covered as abettors, co-conspirators, inciters and givers or recipients of bribes in terms of Clause 17(3) of the Lokpal Bill,

2011. It may, however, be further clarified suitably in inclusive and not exhaustive terms in Clause 17(3) that the phrase “if such person is associated with the allegation of corruption”, should include abettors, bribe-givers, bribe-takers, conspirators and all other persons, directly or indirectly, involved in the act or omission relating to corruption within which all other persons and entities in clause 17 are subsumed. The word “associated” presently used is too general and vague.

- 14.26A The Committee further recommends that Clause 17(3) should be explicitly clarified to the effect that the abettor, conspirator or person associated, in any manner, directly or indirectly, with the corruption allegation, shall not only be included but be fully liable to investigation, prosecution and punishment and that the proviso to Clause 17(3) shall be limited only to proposed action to be taken ‘in case of a person serving in the affairs of a State’ and not *qua* anyone else.

## CHAPTER-15

### **SUPPORT STRUCTURES FOR LOKPAL : WHISTLEBLOWERS, PHONE TAPPERS AND LEGAL AID/ASSISTANCE ISSUES**

#### **I. INTRODUCTION AND BACKGROUND**

- 15.1 Three issues have been clubbed together in this chapter. Two of them – whistleblower protection and special phone tapping power for the Lokpal – find no mention in the Lokpal Bill, 2011. The issue of legal assistance/aid is provided for in Clause 56 of the 2011 Bill. Certain quarters, especially Team Anna have advocated insertion of whistleblower protection for complainants in respect of Lokpal jurisdiction and for empowering the Lokpal to tap phones without the need of any prior reference to or prior authorization from any other entity. Finally, some quarters have also opposed the provision of what they consider to be automatic legal aid to alleged corrupt accused under the Lokpal jurisdiction.

#### **15.2 Phone tapping**

#### **II. SUMMARY OF SUGGESTIONS/OBSERVATIONS RECEIVED THROUGH WRITTEN MEMORANDA**

- Phone tapping/interceptions etc. shall be done only with the permission of Home Secretary to safeguard privacy of citizens.
- Presently, almost 32 investigative and intelligence agencies have powers to tap telephones. However, they need permission from Home Secretary to do that. Lokpal will be an independent agency. If it were to obtain permission from Home Secretary, the information would get leaked and the entire operation would become infructuous. Moreover, that would also compromise the functional autonomy of the Lokpal. Therefore, we propose that Lokpal Bench should have powers to allow phone tapping rather than having to obtain permission from Home Secretary.
- For the purposes of investigation of offences related to acts of corruption, the appropriate Bench of the Lokpal shall be deemed to be designated authority under Section 5 of the Indian Telegraph Act empowered to approve interception and

monitoring of messages of data or voice transmitted through telephones, internet or any other medium as covered under the Indian Telegraph Act read with Information and Technology Act, 2000 and as per rules and regulations made under the Indian Telegraph Act, 1885.

- Recorded conversion, sting operation etc. should be made admissible.
- No need for special powers to intercept telephones since even Deputy SP can do that by recording his reason in station diary kept in ACB units.

### III. SUMMARY OF DEPOSITIONS GIVEN BY THE WITNESSES

15.2 A While placing his views before the Committee, Shri Prashant Bhushan stated thus:

*“...Today, under the rules made under the Indian Telegraph Act, it is only the Home Secretary which has the power to grant permission to tap telephone. The power to tap telephone is an essential power of investigation, particularly investigation for corruption. Very often, the evidence for detecting that corruption is taking place comes only from tapped telephone conversations. Unless the Lokpal has independent power, it cannot depend on the Government or the Home Secretary to allow tapping of telephones. This Lokpal is being constituted as a very high-level authority. Therefore, of course, the permission to tap should be given by the bench. Therefore, the amendment that we are suggesting is, not by any officer of the Lokpal but only by a bench of the Lokpal. The bench can permit the tapping. This bench is a far safer authority than the Home Secretary apart from being independent. Therefore, we have said, “For the purpose of investigation of offences related to acts of corruption, the appropriate bench of the Lokpal shall be deemed to be the designated authority under section 5 of the Indian Telegraph Act empowered to approve interception and monitoring of messages of data or voice transmitted through telephones, etc...”*

15.2 B Shri Arvind Kejriwal stated as under:-

*“...A wrong impression is being created as if a new power is being sought to be given to tap telephones, जैसे कि हम कोई नयी पावर देने की बात कर रहे हैं। लोकपाल के पास टेलीफोन को टैप करने की पावर तो होगी ही under other laws, लेकिन आज उन्हें होम सेक्रेटरी से परमिशन लेनी पड़ेगी। होम सेक्रेटरी से परमिशन लेने का मतलब यह है कि सारी चीजों का खुलासा हो गया। There is a*



*conflict of interest, वहां से information सब को divulge हो जाएगी। इसलिए यह independent होना चाहिए। हम कोई नयी पावर देने की बात नहीं कर रहे हैं, बल्कि हम केवल यह suggest कर रहे हैं कि rather than permission being given by the Home Secretary the permission should be given by the bench of the Lokpal...”*

### 15.3 Protection of whistleblowers

## IV. SUMMARY OF SUGGESTIONS/OBSERVATIONS RECEIVED THROUGH WRITTEN MEMORANDA

- Anonymous complaints should be investigated indiscreetly and if found substantial, should be proceeded further.
- Whistleblowers' Bill needs to be revamped and made applicable to all institutions.
- In case of anonymous complaints, in case of verifiable & specific information about misconduct/corruption, the case shall not be rejected.
- Lokpal, being an independent body, should have a duty to provide protection to whistleblowers against physical and professional victimization.
- False Claims Act: In the US, an innovative law has been in operation for long. In its modern form, the False Claims Act is a federal law that empowers any citizen or whistleblower 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 *quitam* litigator receives a portion (usually 15-25 per cent) 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.

15.4 The proponents of Jan Lokpal Bill, in their written note submitted to the Committee, has proposed the following amendments in the instant Bill:

- (1) “Whistleblower” means any person, who provides information about corruption in a public authority or is a witness or victim in that case or who faces the threat of:
  - (i) professional harm, including but not limited to illegitimate transfer, denial of promotion, denial of appropriate perquisites, departmental proceedings, discrimination or
  - (ii) physical harm, or
  - (iii) is actually subjected to any harm;  
because of either making a complaint to the Lokpal under this Act, or for filing an application under the Right to Information Act, 2005 or by any other legal action aimed at preventing or exposing corruption or mal-governance.
- (2) Any public official or any other person having information of any corruption in any public authority would be encouraged to send the information confidentially to the Lokpal; and it shall be the duty of the Lokpal to get an inquiry made into such information and if necessary get an investigation made under the Prevention of Corruption Act.
- (3) It shall be the duty of the Lokpal to provide full protection to whistleblowers from any physical harm or administrative harassment. Identity of such whistleblowers shall also be protected if the whistleblower so desires.
- (4) For achieving this objective it shall be competent for the Lokpal to give suitable direction to any security agencies for providing security as well as to any other authority to ensure that no harassment is caused to such whistleblower.
- (5) Orders under this section shall be passed expeditiously and in any case within a month of receipt of complaint. Immediate action will be taken in cases involving a threat of physical victimization.

- (6) The investigations in complaints by whistleblowers facing physical or professional victimization shall be fast tracked and completed within three months of receipt of the same.”

## V. SUMMARY OF DEPOSITIONS GIVEN BY THE WITNESSES

### 15.4A Shrimati Anjali Bhardwaj opined as under:

“...I will just put forth what NCPRI has proposed on the Whistleblower Protection Bill because we feel that this is very closely linked to the whole issue of corruption and people who are blowing whistle on corruption. We have already deposed before the Standing Committee which was dealing with the whistleblower protection issue. Quite a few of the suggestions that we had put forth were already included by the Standing Committee. But there are just two things which I want to flag which have not really been included. The first one is, expanding the definition of a whistleblower. अभी जो मौजूदा provisions हैं, अभी पार्लियामेंट के सामने जो Whistleblower Protection Bill है, उसमें केवल आर्गनाइजेशन के अंदर जो Whistleblowers हैं, उनके प्रोटेक्शन की बात है। हमें यह लगता है कि जिस तरह से RTI users जो करप्शन को एक्सपोज़ करने के लिए RTI एप्लीकेशंस डाल रहे हैं, उनको धमकियां मिली हैं और कई जगहों पर उन पर हमले भी हुए हैं तथा पिछले 2 सालों में 18 लोगों से ज्यादा लोगों की मौतें हो चुकी हैं। We feel that they should also be included under the ambit of the Whistleblower Protection Bill. It should, therefore, not just be limited to people working in organizations, it should also extend to common citizens.

The second point is that we feel that wherever a complainant, who is trying to expose corruption, or is making a complaint on the issue of corruption, is being threatened, that issue must be dealt with by the Government on a priority basis. In fact, one of the suggestions that has come up in the Central Information Commission is that wherever an information seeker is being targeted, then, the Government will take every step possible to, in fact, put out that information immediately in the public domain on its own, and that, we feel, should be something of a principle that could be adopted in the Whistleblowers’ Protection Bill as well...”

### 15.4B Shri Prashant Bhushan stated as follows:

“...Then, as regards victimization of a whistleblower or a witness, for example, if a Government Servant for mala fide reasons deliberately suspends a whistleblower, an officer who is a whistleblower who makes a complaint to the Lokpal saying that

*this corruption is going on in his department and that whistleblower is suspended by the person who is involved in that corruption, then, that victimization should also be considered to be an act of corruption.*

*Then, the next amendment is about whistleblower protection. This is also very important, actually. It is said that whistleblower protection के लिए there is some Bill in the offing. There is a proposed Bill on Whistleblower Protection. You see, what we feel is that so far as the whistleblower protection for corruption is concerned, where the complaints are being made to the Lokpal, the power to protect that person, that whistleblower must vest with the Lokpal. मतलब यह है कि अगर उसको कोई complaint आती है, from some whistleblower, और उस complainant को, उस whistleblower को victimize किया जाता है, either by physical threats or by administrative harassment, उसको suspend कर दिया जाता है, वगैरह तब उसे प्रोटेक्ट करने की पावर लोकपाल के पास होनी चाहिए। That means, he should have the power to give him physical protection and to protect him from administrative harassment...*

15.4C Shri Arvind Kejriwal opined as follows:

*“...मैं इसमें बहुत strongly request करूंगा कि जो whistleblower का दूसरा बिल आ रहा है, if this Committee can recommend withdrawal of that Bill because उस बिल में सी.वी.सी. को अथॉरिटी बनाया है for whistleblower protection. अब सी.वी.सी. के पास किसी को प्रोटेक्ट करने की न तो रिसोर्सेस हैं, न पावर्स हैं। The CVC is an advisory body...”*

15.4D Shrimati Kiran Bedi was of the following opinion:

*“...अगर यह whistleblower को कानून में डाल दिया जाए, तो इससे बहुत करप्शन खत्म हो जाएगी, क्योंकि डिपार्टमेंट के अंदरूनी व्यक्ति को जितना मालूम होता है कि उसका डिपार्टमेंट क्या कर रहा है, इतना बाहर के आदमी को नहीं मालूम होता। An insider has much more information and authentic information and would even have evidence of the note sheets, of the orders, of the conversations which you never know. Now with this reward scheme, including the whistleblower and giving them protection under the Lokpal, would be very effective in prevention, not only in detection, in prevention. This section reads like that. ‘Any public official or any other person having information of any corruption in any public authority would be encouraged to send the information confidentially to the Lokayukta and it shall be the duty of the Lokayukta to get an inquiry made into such information and if necessary get investigation made under the Prevention of Corruption Act, 1988. Lokayukta*

*may issue necessary orders to provide protection to the whistleblowers from any physical harm or administrative harassment. Identity of such whistleblowers shall also be protected if the whistleblower so desires. For achieving this objective, it shall be competent for the Lokayukta to give suitable direction to the Government for providing security as well as to other authorities to ensure no harassment is caused to such whistleblowers. Orders under this section shall be passed expeditiously; it is a time limit of fifteen days. Investigation complaints by whistleblowers facing physical or professional victimization...* underlining the words, 'professional victimization', 'shall be fast tracked and completed within three months of the receipt.' जिस दिन लोकपाल में यह क्लॉज आ गया, अंदर के डिपार्टमेंट में करप्शन उस दिन से बंद हो जाएगी, या बड़े डर के होगी, एवीडेंस आ जाएगा, प्रोटेक्शन मिलेगी और करप्शन में प्रिवेंशन आएगी।...

#### 15.5 Legal aid provisions

### VI. SUMMARY OF SUGGESTIONS/OBSERVATIONS RECEIVED THROUGH WRITTEN MEMORANDA

- The provision for giving legal assistance under Clause 56 against a person against whom a complaint has been made and there being no provision for providing defence assistance to the complainant is arbitrary and will encourage corruption.
- It has been suggested that where the accused is finally found guilty of any of the charges made against him by the special court provided for in the Act, and subject to further appeals, the accused would be required to refund the total cost of the assistance so provided. In exceptional circumstances where the Lokpal so determines that the recovery of such dues might result in unwarranted hardship to the accused or his family, the amount can be adjusted against confiscation of property as specified under Sections 33 and 34.

### VII. ANALYSIS AND DISCUSSION

- 15.6 The Committee has deliberated upon the so called Whistleblower Bill, 2010 (known more fully as the Public Interest Disclosure and Protection to Persons Making the Disclosures Bill, 2011) and submitted a detailed report in this regard on 10 August, 2011. That report is under the active consideration of the Government of India for eventual transformation into appropriate legislation. The Committee believes that the concern for providing appropriate protection, physical and otherwise, to complainants or whistleblowers, is

reasonable and legitimate, since apprehensions in respect of life, liberty, standard of living, job safety and security of self and family would constitute the greatest deterrent to free and frank disclosure of wrong doing.

- 15.7 However, as explained herein below in the next section, there may be no need to enact a separate law or to make elaborate provisions in the proposed Lokpal Bill, in view of the recommendations already made in respect of the pending Bill in respect of whistleblowers.
- 15.8 The Committee notes that there is an elaborate existing procedure, now operative for many years, with periodic improvements and refinements, in respect of the power, authorization, manner and mode of phone tapping. The Committee notes the existing checks and balances which have been operative for many years since phone tapping has been a power frequently exercised by diverse authorities for the last several years, well before the Lokpal regime was contemplated in the contemporary context. Phone tapping has, thus being used, by agencies as diverse as CBI, Enforcement Directorate, Directorate of Revenue Intelligence and host of other agencies. None of them, however, have had a power to decide to do so on their own, which is now being sought for the new proposed Lokpal. The Committee's recommendations in the next section are based on this awareness.
- 15.9 The Committee notes the language and terms of Clause 56 and especially the phrase "legal assistance". The Committee's interpretation of Clause 56 is different, from not only that of Team Anna, but also several interpretations given at various times in the press. The Committee's recommendations in this regard in the next section also constitute a clarification of the interpretative confusion in regard to Clause 56.

#### **VIII. REASONS AND RECOMMENDATIONS**

- 15.10 As regards the whistleblower issue, this Committee has made a detailed recommendation on the subject on 10 August, 2011 in respect of the Bill referred to it. That Bill and the Committee's recommendation are under the active decision making process of the Government of India for eventual translation into law.
- 15.11 The Committee recommends that the Whistleblower Bill (Bill No. 97 of 2010) referred to the Committee, with the changes already recommended by the Committee in respect of that Bill (in the Committee's report dated 10 August, 2011), be implemented into law simultaneously and concurrently with the Lokpal Bill. In

that case, only one provision needs to be inserted in the Lokpal Bill to the effect that safeguards and machinery provided elaborately in the proposed Whistleblower Bill, as opined upon by the Committee, would be applicable, *mutatis mutandis* to the Lokpal Bill. In particular, the Committee notes that Clauses 10, 11, 12 and 13 of the aforesaid Whistleblower Bill, provide a fairly comprehensive fasciculus of provisions providing safeguards against victimization, protection of witnesses and other persons, protection of identity of complainant and power to pass interim orders. The Whistleblower Bill also sets up a competent authority and provides for several other related provisions to make the functioning of that authority efficacious and to enhance the efficiency, potency and vigour of the safeguards intended to be provided to a whistleblower. The proposed provision in the Lokpal Bill should act as a cross referencing, breach of which should activate the related/applicable provisions of the Whistleblower Bill and render them applicable to all Lokpal proceedings, as if set out in the Lokpal Bill, 2011.

- 15.12 Naturally, one of the main adaptations of the Whistleblower Bill for Lokpal proceedings would be that the competent authority in respect of Lokpal covered persons and offences would be the Lokpal and references in the Whistleblower Bill to CVC or other entities would be rendered inoperative for purposes of Lokpal personnel and officers.
- 15.13 If, however, the aforesaid Whistleblower Bill, along with the recommendations of this Committee in that regard, are not enacted into law by the Government of India, co-terminously and simultaneously with the Lokpal Bill, then this Committee recommends the creation of some safeguards, in substance and essence, by the addition of a whole new chapter and certain provisions in the proposed Lokpal Bill. However, those provisions in the Lokpal Bill would be largely an adaptation of the same provisions of the Whistleblower Bill, especially Clauses 10 to 13 of the Whistleblower Bill, while, as explained above, making the Lokpal the competent authority for such whistleblower issues.
- 15.14 As regards phone tapping, the Committee emphasizes and underlines the basic reality that phone tapping by regulatory and policing agencies has been prevalent in India for several years and the rules and regulations in that regard have undergone periodic refinement and amendment. Currently the regime of phone tapping is governed by Indian Telegraph Act and Rules

read with the judgments of the Supreme Court *inter alia* in People Union for Civil Liberties Vs. Union of India (1997) 1 SCC 301. The Committee believes that there is no reason, sufficiently strong, to suggest that this substantive law should be altered in respect of Lokpal proceedings.

- 15.15 Phone tapping has been resorted to, *inter alia*, by agencies as diverse as CBI, Enforcement Directorate, Directorate of Revenue Intelligence and others, under the aforesaid regime of the Act, Rules and the Supreme Court mandated principles. In all such cases, the Committee is not aware of any situation where any of these agencies are entitled to *suo motu*, on their own, without separate authorization, and in secrecy, initiate or continue phone tapping. There is, therefore, no reason as to why the proposed Lokpal institution should also not be subjected to the same regime and mechanism. To provide for inherent and separate power in the Lokpal institution in this regard, would also create an excessive and undesirable concentration of powers, would frequently involve a conflict of interest between preliminary inquiry, investigation and prosecution and would disturb the equilibrium of all investigative agencies for the past several years with established practices in respect of phone tapping issues. Indeed, the Committee notes that in other parts of this Report (Chapter 12), the CBI is the principal investigating agency and, therefore, its powers of phone tapping must continue as they exist today.
- 15.16 As regards legal aid/assistance, the Committee concludes that Clause 56 as framed does not intend to and should not be read to be a mandate for provision of automatic legal aid for every accused in a Lokpal proceeding. Clause 56, by any fair reading, and in the opinion of this Committee, is only intended to provide legal assistance by way of legal representation to the accused in any case before the Lokpal e.g. a preliminary inquiry. Firstly, the Committee does not read this to mean automatic monetary or fiscal assistance or by way of lawyers' fees for the accused. Secondly, the Committee believes that this was intended to and recommended so that it should be explicitly clarified that it permits the use of, or appearance by a legal practitioner, where the accused asks for one in Lokpal proceedings e.g. a preliminary inquiry. In any event, elsewhere in this Report we have recommended deletion of the concept of hearing an accused during preliminary inquiry. If that is done away with, no issue would arise of legal practitioners appearing. In any case, they



are entitled to appear in all later stages including trial. Finally, it should be clarified that Clause 56 does not intend to abrogate or dilute or attenuate any other provision of law under where, by virtue of those provisions of law, the accused may be entitled to a monetary/fiscal legal aid or assistance.

## CHAPTER-16

### THE LOKPAL MISCELLANY : RESIDUAL ISSUES

#### I. INTRODUCTION

- 16.1 As we come to the end, a number of ostensibly unconnected issues are dealt with in this Chapter. Neither their lack of connection to each other nor the use of the words ‘miscellany or residual’ should diminish or undermine their significance. However, since memoranda and witnesses have not spoken with any degree of particularization on many of these specific issues, this introductory section is followed straightaway by the section on reasons and recommendations.
- 16.2 These issues include the necessity of specifying that the special judge adjudicating Lokpal offences should have powers to deal with and conduct adjudication under all other statutes; the scope and coverage, if any, in respect of offences done by a former public servant as opposed to serving public servant; issues relating to form and manner of removal of Lokpal and the form and manner of initiating *suo motu* complaints by the Lokpal institution and so on and so forth.

#### II. REASONS AND RECOMMENDATIONS

- 16.3 Although it is implicit in the Lokpal Bill, 2011, the Committee believes that to obviate all doubts and to prevent any jeopardy to ongoing trials, the proposed Lokpal should have a specific provision categorically applying Section 4(3) of the POCA to Lokpal proceedings, to enable the special judge or Lokpal judge to try any other offence, where connected, other than those covered by the Lokpal Act.
- 16.4 Clause 17(1) in most of its sub-clauses, including (b), (c), (d) and so on, specifically refers to a current/serving as also a former public servant (e.g. “Minister, MP, bureaucrat, etc. both past and present).
- 16.5 The Committee has seen the substantive provisions of POCA and it appears to be clear that the POCA, which shall continue to be the substantive law applicable to Lokpal trials and proceedings, seeks to render culpable and punish only official acts done by

public servants. Be that as it may, the Committee is of the opinion that a specific provision should be inserted in Clause 17 clarifying and specifying that reference to present and former public servants only means that they can be prosecuted whether in or not in office, but only for acts/omissions done while they were in office and not for allegedly fresh acts/omissions after ceasing to hold office.

- 16.6 The Committee finds that Clause 8 and especially Clause 8(1) of the Lokpal Bill, 2011 has struck the right balance and does not need any fundamental changes. It is intended to strengthen the independence and autonomy of the Lokpal by not making it easy to initiate complaints against Lokpal for the Lokpal's removal. The Committee, however, recommends an addition to Clause 8 (1)(iii), to allay and obviate the apprehension expressed in some quarters, that the process to remove the Lokpal cannot be initiated, under the sub-clause, if the President (which essentially means the Central Government) refuses to refer the complaint against the Lokpal. The Committee feels that this apprehension would be adequately taken care of by providing in Clause 8(1)(iii) that where the President does not refer a citizen's complaint against the Lokpal to the Apex Court, the President (*i.e.* the Central Government) shall be obliged to record reasons for the same and to furnish those reasons to the complainant within a maximum period of 3 months from the date of receipt of the complaint. The Committee feels that this process, including the transparency involved in recording these reasons and the attendant judicial review available to the complainant to challenge such reason/refusal, contains an adequate check and balance on this subject.
- 16.6A Additionally, the Committee recommends that Clause 8(1)(iv) be added in the existing Lokpal Bill, 2011 to provide, specifically, that anyone can directly approach the apex court in respect of a complaint against the Lokpal (institution or individual member) and that such complaint would go through the normal initial hearing and filter as a preliminary matter before the normal bench strength as prescribed by the Supreme Court Rules but that, if the matter is admitted and put for final hearing, the same shall be heard by an apex court bench of not less than 5 members. It is but obvious that other consequential changes will have to be made in the whole of Section 8 to reflect the addition of the aforesaid Clause 8(1)(iv).

- 16.7 Clause 21 of the Lokpal Bill, 2011 needs a re-look. In its present form, it appears to empower the Lokpal Chairperson to intervene and transfer any pending case from one Bench to another, which appears to include the power of transfer even while a case is under consideration of the Lokpal bench on the merits. This un-circumscribed power would seriously impair the objectivity and autonomy of Lokpal Benches, especially at the stage of preliminary inquiry which is a crucial filtering mechanism. It also appears to be inconsistent with normal principles of jurisprudence which seriously frown upon interference even by the Chief Justice in a pending judicial matter before another Bench. The way out would be to delete this provision and to provide for transfer only in exceptional cases where, firstly, strong credible allegations are brought to the forefront in respect of the functioning of any particular Lokpal Bench and secondly, the decision to transfer is taken by not only the entire Lokpal institution sitting together, but also including the Members of the Bench from which the matter is sought to be transferred.
- 16.8 As regards punishment under the Prevention of Corruption Act for a person convicted of different offences relating to corruption, it is noteworthy that the Prevention of Corruption Act prescribes, as it now stands, punishment not less than six months which may extend to five years for various offences involving public servant taking gratification in Sections 7, 8, 9, 10 and also Section 11 which deals with public servant obtaining valuable thing without consideration. Section 12 of POCA dealing with the abetment prescribes the same as six months to five years range of punishment. On the other hand, for offences of criminal misconduct by public servant, the prescribed punishment is not less than one year, extendable upto seven years in Section 13 while Section 14 prescribes punishment of not less than two years extendable to seven years. Section 15 prescribes the punishment for offences referred to in Clause C or Clause D of 5.13(i) which has no lower limit but a maximum of three years. Additionally, all these provisions empower the imposition of fine.
- 16.9 Diverse representations from diverse quarters have suggested an enhancement of punishment, with diverse prescriptions of quantum of sentence, including life imprisonment. After deep consideration, the Committee finds it prudent to strike a balanced, reasonable middle ground. A sudden, dramatic and draconian enhancement is, in the opinion of the Committee, undesirable. The Committee cannot ignore the inherent fallibility of mankind

and if fallibility is inherent in every system, draconian and extreme punishment, even in a few cases of wrongful conviction, would be undesirable.

16.9A Taking a holistic view, the Committee is of the opinion that:

- (a) In the cases of Sections 7, 8, 9 and the like, the range from six months to five years should be substituted by imprisonment not less than three years which may extend to not more than seven years.
- (b) In the Sections 13 and 14 category of cases providing for a range to one year to seven years, the Committee suggests enhancement, in the case of Section 13 offences, to a minimum of four years and a maximum of ten years while for Section 14, the Committee suggests a minimum of five years and a maximum of ten years.
- (c) For Section 12 which presently prescribes six months to five years, the aforesaid of minimum three and maximum of seven years shall apply whereas for Section 15 which presently prescribes zero to three years, the range should be very minimum from two to maximum five years.
- (d) Additionally, wherever applicable, there should be a general provision, cutting across sections, creating a power of full confiscation of assets, proceeds, receipts and benefits, by whatever name called, arising from corruption by the accused. This provision should be properly drafted in a comprehensive manner to cover diverse situations of benefit in cash or kind, which, to the maximum extent possible, should fully be liable to confiscation.

16.10 Although this issue has been discussed in other parts of this Report, for the sake of clarity, the Committee clarifies that there should be 3 specific and important time limits in the final enactment viz. firstly, the period of 30 days extendable once by a further period of 60 days for preliminary inquiry by the Lokpal; secondly, for completion of investigation by the investigating agency, within 6 months with one further extension of 3 months and thirdly, for completion of trials, within one year with one further extension of 6 months.

16.11 The Committee finds no basis for and no reason to retain the last proviso to Clause 17(1)(g) which appears to be overbroad and altogether exempts from the Lokpal Bill, 2011 any entity, simply

because it is constituted as a new religious entity or meant to be constituted as an entity for religious purposes. This proviso should be deleted, otherwise this exception would virtually swallow up the entire rule found in the earlier parts of Clause 17.

- 16.12 As regards Clause 51 of the Lokpal Bill, 2011, the Committee recommends that the intent behind the clause be made clear by way of an Explanation to be added to the effect that the clause is not intended to provide any general exemption and that “good faith” referred to in Clause 52 shall have the same meaning as provided in Section 52 of the IPC.

## CHAPTER-17

## AFTERWORD : REASONS AND RECOMMENDATIONS AT A GLANCE

## Committee Proceedings and Timelines

1. In a nutshell, therefore, this Committee could become legally operational only w.e.f. 23 September, 2011 and has completed hearing witnesses on 4 November, 2011. It had its total deliberations including Report adoption spread over 14 meetings, together aggregating 40 hours within the space of ten weeks commencing from 23 September, 2011 and ending 7 December, 2011. [Para 2.6]
2. Though not specific to this Committee, it is an established practice that all 24 Parliamentary Standing Committees automatically lapse on completion of their one year tenure and are freshly constituted thereafter. This results in a legal vacuum, each year, of approximately two to three weeks and occasionally, as in the present case, directly affects the urgent and ongoing business of the Committee. The Committee would respectfully request Parliament to reconsider the system of automatic lapsing. Instead, continuity in Committees but replacement of Members on party-wise basis would save time. [Para 2.7]

## The Concept of Lokpal: Evolution and Parliamentary History

3. A proposal in this regard was first initiated in the Lok Sabha on 3 April, 1963 by the Late Dr. L.M. Singhvi, MP<sup>1</sup>. While replying to it, the then Law Minister observed that though the institution seemed full of possibilities, since it involved a matter of policy, it was for the Prime Minister to decide in that regard<sup>2</sup>. Dr. L.M. Singhvi then personally communicated this idea to the then Prime Minister, Pandit Jawaharlal Nehru who in turn, with some initial hesitation, acknowledged that it was a valuable idea which could be incorporated in our institutional framework. On 3 November, 1963, Hon'ble Prime Minister made a statement in respect of the possibilities of this institution and said that the system of

<sup>1</sup> Lok Sabha Debates dated 3rd April, 1963, vol. XVI, pp. 7556-7558.

<sup>2</sup> *ibid.*, pp. 7590-92.

Ombudsman fascinated him as the Ombudsman had an overall authority to deal with the charges of corruption, even against the Prime Minister, and commanded the respect and confidence of all<sup>3</sup>. [Para 3.3]

4. Thereafter, to give effect to the recommendations of the First Administrative Reforms Commission, eight Bills were introduced in the Lok Sabha from time to time. However, all these Bills lapsed consequent upon the dissolution of the respective Lok Sabhas, except in the case of the 1985 Bill which was subsequently withdrawn after its introduction. A close analysis of the Bills reflects that there have been varying approaches and shifting foci in scope and jurisdiction in all these proposed legislations. The first two Bills viz. of 1968 and of 1971 sought to cover the entire universe of bureaucrats, Ministers, public sector undertakings, Government controlled societies for acts and omissions relating to corruption, abuse of position, improper motives and mal-administration. The 1971 Bill, however, sought to exclude the Prime Minister from its coverage. The 1977 Bill broadly retained the same coverage except that corruption was subsequently sought to be defined in terms of IPC and Prevention of Corruption Act. Additionally, the 1977 Bill did not cover mal-administration as a separate category, as also the definition of “public man” against whom complaints could be filed did not include bureaucrats in general. Thus, while the first two Bills sought to cover grievance redressal in respect of mal-administration in addition to corruption, the 1977 version did not seek to cover the former and restricted itself to abuse of office and corruption by Ministers and Members of Parliament. The 1977 Bill covered the Council of Ministers without specific exclusion of the Prime Minister.

The 1985 Bill was purely focused on corruption as defined in IPC and POCA and neither sought to subsume mal-administration or

<sup>3</sup> His initial hesitation to this idea was probably due to the Scandinavian origin of the nomenclature of the institution. In a lighter vein, he happened to ask Dr. L.M. Singhvi “To what zoo does this animal belong” and asked Shri Singhvi to indigenize the nomenclature of the institution. Dr. L.M. Singhvi then coined the term Lokpal/Lokayukta to modify the institution of Ombudsman to the Indian context (as related by Dr. L.M. Singhvi to the Chairman of this Committee). Also referred to by Mr. Arun Jaitley, M.P. during the Parliament Debate on 27th August, 2011. He started the debate in the Upper House thus:- “Now, ‘Ombudsman’ was a Scandinavian concept and, coincidentally, on 3 April, 1963, then an Independent young Member of the Lok Sabha, Dr. L.M. Singhvi, in the course of his participation in a debate for having an Ombudsman in India, attempted to find out what the Indian equivalent could be, and this word ‘Lokpal’ was added to our vocabulary, the Hindi vocabulary, by Dr. L.M. Singhvi who translated this word.”



mis-conduct generally nor bureaucrats within its ambit. Moreover, the 1985 Bill impliedly included the Prime Minister since it referred to the office of a Minister in its definition of ‘public functionary’.

The 1989 Bill restricted itself only to corruption, but corruption only as specified in the POCA and did not mention IPC. It specifically sought to include the Prime Minister, both former and incumbent.

Lastly, the last three versions of the Bill in 1996, 1998 and 2001, all largely:

- (a) focused only on corruption;
- (b) defined corruption only in terms of POCA;
- (c) defined “public functionaries” to include Prime Minister, Ministers and MPs;
- (d) did not include bureaucrats within their ambit. [Para 3.5]

5. Though the institution of Lokpal is yet to become a reality at the Central level, similar institutions of Lokayuktas have in fact been set up and are functioning for many years in several States. In some of the States, the institution of Lokayuktas was set up as early as in 1970s, the first being Maharashtra in 1972. Thereafter, State enactments were enacted in the years 1981 (M.P.), 1983 (Andhra Pradesh and Himachal Pradesh), 1984 (Karnataka), 1985 (Assam), 1986 (Gujarat), 1995 (Delhi), 1999 (Kerala), 2001 (Jharkhand), 2002 (Chhattisgarh) and 2003 (Haryana). At present, Lokayuktas are in place in 17 States and one Union Territory. However, due to the difference in structure, scope and jurisdiction, the effectiveness of the State Lokayuktas vary from State to State. It is noteworthy that some States like Gujarat, Karnataka, Bihar, Rajasthan and Andhra Pradesh have made provisions in their respective State Lokayuktas Act for *suo motu* investigation by the Lokpal. In the State Lokayukta Acts of some States, the Lokayukta has been given the power for prosecution and also power to ensure compliance of its recommendations. However, there is a significant difference in the nature of provisions of State Acts and in powers from State to State. Approximately, nine States in India have no Lokayukta at present. Of the States which have an enactment, four States have no actual appointee in place for periods varying from two months to eight years. [Para 3.8]

### Citizens' Charter and Grievance Redressal Mechanism

6. The Committee believes that while providing for a comprehensive Grievance Redressal Mechanism is absolutely critical, it is equally imperative that this mechanism be placed in a separate framework which ensures speed, efficiency and focus in dealing with citizens' grievances as per a specified Citizens' Charter. The humongous number of administrative complaints and grievance redressal requests would critically and possibly fatally jeopardize the very existence of a Lokpal supposed to battle corruption. At the least, it would severally impair its functioning and efficiency. Qualitatively, corruption and mal-administration fall into reasonably distinct watertight and largely non-overlapping, mutually exclusive compartments. The approach to tackling such two essentially distinct issues must necessarily vary in content, manpower, logistics and structure. The fact that this Committee recommends that there must be a separate efficacious mechanism to deal with Grievance Redressal and Citizens' Charter in a comprehensive legislation other than the Lokpal Bill does not devalue or undermine the vital importance of that subject.  
[Para 4.15]
7. Consequently, the Committee strongly recommends the creation of a separate comprehensive enactment on this subject and such a Bill, if moved through the Personnel/Law Ministry and if referred to this Standing Committee, would receive the urgent attention of this Committee. Indeed, this Committee, in its 29th Report on "Public Grievance Redressal Mechanism", presented to Parliament in October, 2008 had specifically recommended the enactment of such a mechanism.  
[Para 4.16]
8. To emphasize the importance of the subject of Citizens' Charter and to impart it the necessary weight and momentum, the Committee is of the considered opinion that any proposed legislation on the subject:
  - (i) should be urgently undertaken and be comprehensive and all inclusive;
  - (ii) such enactment should, subject to constitutional validity, also be applicable for all States as well in one uniform legislation;
  - (iii) must provide for adequate facilities for proper guidance of the citizens on the procedural and other requirements while making requests;

- (iv) must provide for acknowledgement of citizen's communications within a fixed time-frame;
- (v) must provide for response within stipulated time-frame;
- (vi) must provide for prevention of spurious or lame queries from the department concerned to illegally/unjustifiably prolong/extend the time limit for response;
- (vii) must provide for clearly identifiable name tags for each employee of different Government departments;
- (viii) must provide for all pending grievances to be categorized subject-wise and notified on a continually updated website for each department;
- (ix) must provide for a facilitative set of procedures and formats, both for complaints and for appeals. on this subject – along the lines of the Information Commissioners system set up under the RTI;
- (x) must, in the event that the proposed Central law does not cover States, make strong recommendations to have similar enactments for grievance redressal/Citizens' Charter at each State level;
- (xi) may provide for exclusionary or limited clauses in the legislation to the effect that Citizens' Charter should not include services involving constraints of supply e.g. power, water, etc. but should include subjects where there is no constraint involved e.g. birth certificates, decisions, assessment orders. These two are qualitatively different categories and reflect an important and reasonable distinction deserving recognition without which Government departments will be burdened with the legal obligation to perform and provide services or products in areas beyond their control and suffering from scarcity of supply.

[Para 4.17]

9. The Committee strongly feels that the harmonious synchronization of the RTI Act and of the Citizens' Charter and Public Grievances Redressal Mechanism will ensure greater transparency and accountability in governance and enhance the responsiveness of the system to the citizens' needs/expectations/grievances.

[Para 4.18]

10. Lastly, the Committee wishes to clarify that the conclusion of the Hon'ble Union Minister for Finance on the Floor of the House quoted in para 1.8 above of the Report does not intend to direct or mandate or bind or oblige this Committee to provide for a Citizens' Charter within the present Lokpal Bill alone. The Committee reads the quoted portion in para 1.8 above to mean and agree in principle to provide for a Citizens' Charter/Grievance Redressal system but not necessarily and inexorably in the same Lokpal Bill. Secondly, the reference to 'appropriate mechanism' in para 1.8 above further makes it clear that there must be a mechanism dealing with the subject but does not require it to be in the same Lokpal Bill alone. Thirdly, the reference in para 1.8 above to the phrase 'under Lokpal' is not read by the Committee to mean that such a mechanism must exist only within the present Lokpal Bill. The Committee reads this to mean that there should be an appropriate institution to deal with the subject of Citizens' Charter/Grievance Redressal which would be akin to the Lokpal and have its features of independence and efficacy, but not that it need not be the very same institution *i.e.* present Lokpal. Lastly, the Committee also takes note of the detailed debate and divergent views of those who spoke on the Floor of both Lok Sabha and Rajya Sabha on this issue and concludes that no binding consensus or resolution to the effect that the Grievance Redressal/Citizens' Charter mechanism must be provided in the same institution in the present Lokpal Bill, has emerged.  
[Para 4.19]
11. Contextually, the issues and some of the suggestions in this Chapter may overlap with and should, therefore, be read in conjunction with Chapter 13 of this report. Though the Committee has already opined that the issue of grievance redressal should be dealt with in a separate legislation, the Committee hereby also strongly recommends that there should be a similar declaration either in the same Chapter of the Lokpal or in a separate Chapter proposed to be added in the Indian Constitution, giving the same constitutional 'status to the citizens' grievances and redressal machinery.  
[Para 4.20]
12. This recommendation to provide the proposed Citizens' Charter and Grievance Redressal Machinery the same constitutional status as the Lokpal also reflects the genuine and deep concern of this Committee about the need, urgency, status and importance of a Citizens' Charter/grievance machinery. The Committee believes that the giving of the aforesaid constitutional status to this

machinery would go a long way in enhancing its efficacy and in providing a healing touch to the common man. Conclusions and recommendations in this regard made in para 13.12 (j) and (k) should be read in conjunction herein. [Para 4.21]

13. Furthermore, the Committee believes that this recommendation herein is also fully consistent with the letter and spirit of para 1.8 above *viz.* the conclusions of the Minister of Finance in the Lower House recorded in para 1.8 above. [Para 4.22]

#### The Prime Minister: Full Exclusion Versus Degrees of Inclusion

14. The issue of the Prime Minister's inclusion or exclusion or partial inclusion or partial exclusion has been the subject of much debate in the Committee. Indeed, this has occupied the Committee's deliberations for at least three different meetings. Broadly, the models/options which emerged are as follows:
  - (a) The Prime Minister should be altogether excluded, without exception and without qualification.
  - (b) The Prime Minister should altogether be included, without exception and without qualification (though this view appears to be that of only one or two Members).
  - (c) The Prime Minister should be fully included, with no exclusionary caveats but he should be liable to action/prosecution only after demitting office.
  - (d) The Prime Minister should be included, with subject matter exclusions like national security, foreign affairs, atomic energy and space. Some variants and additions suggested including the addition of "national interest" and "public order" to this list of subject matter exclusions.
  - (e) One learned Member also suggested that the Prime Minister be included but subject to the safeguard that the green signal for his prosecution must be first obtained from either both Houses of Parliament in a joint sitting or some variation thereof. [Para 5.22]
15. It may be added that so far as the deferred prosecution model is concerned, the view was that if that model is adopted, there should be additional provisions limiting such deferment to one term of the Prime Minister only and not giving the Prime Minister the same benefit of deferred prosecution in case the Prime Minister is re-elected. [Para 5.23]

16. In a nut shell, as far as the overwhelming number of Members of the Committee are concerned, it was only three models above viz. as specified in paras (a), (c) and (d) in para 5.17 above which were seriously proposed. [Para 5.24]
17. Since the Committee finds that each of the views as specified in paras (a), (c) and (d) in para 5.17 above had reasonably broad and diverse support without going into the figures for or against or into the names of individual Members, the Committee believes that, in fairness, all these three options be transmitted by the Committee as options suggested by the Committee, leaving it to the good sense of Parliament to decide as to which option is to be adopted. [Para 5.25]
18. It would be, therefore, pointless in debating the diverse arguments in respect of each option or against each option. In fairness, each of the above options has a reasonable zone of merit as also some areas of demerit. The Committee believes that the wisdom of Parliament in this respect should be deferred to and the Committee, therefore, so opines. [Para 5.26]

**Members of Parliament: Vote, Speech and  
Conduct within the House**

19. The Committee strongly feels that constitutional safeguards given to MPs under Article 105 are sacrosanct and time-tested and in view of the near unanimity in the Committee and among political part on their retention, there is no scope for interfering with these provisions of the Constitution. Vote, conduct or speech within the House is intended to promote independent thought and action, without fetters, within Parliament. Its origin, lineage and continuance is ancient and time-tested. Even an investigation as to whether vote, speech or conduct in a particular case involves or does not involve corrupt practices, would whittle such unfettered autonomy and independence within the Houses of Parliament down to vanishing point. Such immunity for vote, speech or conduct within the Houses of Parliament does not in any manner leave culpable MPs blameless or free from sanction. They are liable to and, have, in the recent past, suffered severe parliamentary punishment including expulsion from the Houses of Parliament, for alleged taking of bribes amounting to as little as Rs. 10,000/- for asking questions on the floor of the House. It is only external policing of speech, vote or conduct within the House that Article 105 frowns upon. It leaves such speech, vote and conduct not only subject to severe intra-parliamentary

scrutiny and action, but also does not seek to affect corrupt practices or any other vote, speech or conduct outside Parliament. There is absolute clarity and continued unanimity on the necessity for this limited immunity to be retained. Hence, speculation on constitutional amendment in this regard is futile and engenders interminable delay. [Para 6.19]

20. Consequently, the existing structure, mechanism, text and context of Clauses 17(1)(c) and 17(2) in the Lokpal Bill 2011 should be retained. [Para 6.20]

**Lokpal and State Lokayuktas:  
Single Enactment and Uniform Standards**

21. The Committee finds merit in the suggestion for a single comprehensive federal enactment dealing with Lokpal and State Lokayuktas. The availability of uniform standards across the country is desirable; the prosecution of public servants based upon widely divergent standards in neighboring States is an obvious anomaly. The Committee has given its earnest attention to the constitutional validity of a single enactment subsuming both the Lokpal and Lokayukta and concludes that such an enactment would be not only desirable but constitutionally valid, *inter-alia* because:
- (a) The legislation seeks to implement the UN Convention on Corruption ratified by India.
  - (b) Such implementing legislation is recognized by Article 253 and is treated, as one in List III of the 7th Schedule.
  - (c) It gets additional legislative competence, *inter-alia*, individually or jointly under Entries 1, 2 and 11A of List-III.
  - (d) A direct example of provision for National Human Rights Commission and also for State Human Rights Commissions in the same Act is provided in the Protection of the Human Rights Act, 1986 seeking to implement the UN Convention for the Protection of Human Rights.
  - (e) Such Parliamentary legislation under Article 253, if enacted, can provide for repealing of State Lokayukta Acts; subject, however, to the power of any State to make State specific amendments to the federal enactments after securing Presidential assent for such State specific amendments. [Para 7.26]

22. Additionally, it is recommended that the content of the provisions dealing with State Lokayuktas in the proposed central/federal enactment must be covered under a separate chapter in the Lokpal Bill. That may be included in one or more chapters possibly after Chapter II and before Chapter III as found in the Lokpal Bill, 2011. The entire Lokpal Bill, 2011 would have to incorporate necessary changes and additions, *mutatis mutandis*, in respect of the State Lokayukta institutions. To give one out of many examples, the Selection Committee would be comprised of the State Chief Minister, the Speaker of the Lower House of the State, the Leader of Opposition in the Lower House, the Chief Justice of the High Court and a joint nominee of the State Election Commissioner, the State Auditor General and State PSC Chairman or, where one or more of such institutions is absent in the State, a joint nominee of comparable institutions having statutory status within the State. [Para 7.27]
23. All these State enactments shall include the Chief Minister within their purview. The Committee believes that the position of the State Chief Minister is not identical to that of the Prime Minister. The argument for preventing instability and those relating to national security or the image of the country do not apply in case of a Chief Minister. Finally, while Article 356 is available to prevent a vacuum for the post of Chief Minister, there is no counterpart constitutional provision in respect of the federal Government. [Para 7.28]
24. Article 51(c) of the Directive Principles of State Policy enjoining the federation to “foster respect for international law and treaty obligations...” must also be kept in mind while dealing with implementing legislations pursuant to international treaties, thus providing an additional validating basis for a single enactment. [Para 7.29]
25. The Committee recommends that the Lokpal Bill, 2011 may be expanded to include several substantive provisions which would be applicable for Lokayuktas in each State to deal with issues of corruption of functionaries under the State Government and employees of those organizations controlled by the State Government, but that, unlike the Lokpal, the State Lokayuktas would cover an classes of employees. [Para 7.30]
26. The Committee recommends that if the above recommendation is implemented the Lokpal Bill, 2011 may be renamed as “Lokpal and Lokayuktas Bill, 2011”. [Para 7.31]



27. The Committee believes that the recommendations, made herein, are fully consistent with and implement, in letter and spirit, the conclusions of the Minister of Finance on the floor of the Houses in respect of establishment of Lokayuktas in the States, as quoted in para 1.8 above. The Committee is conscious of the fact that the few States which have responded to the Secretariat's letter sent to each and every State seeking to elicit their views, have opposed a uniform Central federal Lokpal and Lokayukta Bill and, understandably and expectedly, have sought to retain their powers to enact State level Lokayukta Acts. The Committee repeats and reiterates the reasons given hereinabove, in support of the desirability of one uniform enactment for both Lokpal and Lokayuktas. The Committee also reminds itself that if such a uniform Central enactment is passed, it would not preclude States from making any number of State specific amendments, subject to prior Presidential assent, as provided in the Indian Constitution. The Committee, therefore, believes that it has rightly addressed the two issues which arise in this respect *viz.* the need and desirability for a uniform single enactment and, secondly, if the latter is answered in the affirmative, that such a uniform enactment is constitutionally valid and permissible. [Para 7.32]
28. Since this report, and especially this chapter, recommends the creation of a uniform enactment for both Central and State Lokayuktas, it is reiterated that a whole separate chapter (or, indeed, more than one chapter) would have to be inserted in the Lokpal Bill of 2011 providing for State specific issues. Secondly, this would have to be coupled with *mutatis mutandis* changes in other parts of the Act to accommodate the fact that the same Act is addressing the requirement of both the federal institution and also the State level institution. [Para 7.33]
29. Furthermore, each and every chapter and set of recommendations in this report should also be made applicable, *mutatis mutandis*, by appropriate provisions in the chapter dealing with State Lokayuktas. [Para 7.34]
30. Although, it is not possible for this Committee to specifically list the particularised version of each and every amendment or adaptation required to the Lokpal Bill, 2011 to subsume State Lokayuktas within the same enactment, it gives below a representative non-exhaustive list of such amendments/adaptations, which the Government should suitably implement in

the context of one uniform enactment for both Lokpal and Lokayuktas. These include:

- (a) Clause 1(2) should be retained even for the State Lokayukta provisions since State level officers could well be serving in parts of India other than the State concerned as also beyond the shores of India.
- (b) The Chief Minister must be included within the State Lokayukta on the same basis as any other Minister of the Council of Ministers at the State level. Clause 2 of the 2011 Bill must be amended to include Government servants at the State level. The competent authority in each case would also accordingly change e.g. for a Minister of the Council of Ministers, it would be the Chief Minister; for MLAs, it would be the presiding officer of the respective House and so on and so forth. The competent authority for the Chief Minister would be the Governor.
- (c) As regards Clause 3, the only change would be in respect of the Chairperson, which should be as per the recommendation made for the Lokpal.
- (d) As regards the Selection Committee, the issue at the Lokayukta level has already been addressed above.
- (e) References in the Lokpal context to the President of India shall naturally have to be substituted at the Lokayukta level by references to the Governor of the State.
- (f) The demarcation of the criminal justice process into five broad areas from the initiation of complaint till its adjudication, as provided in Chapter 12, should also apply at the State Lokayukta level. The investigative agency, like the CBI, shall be the anti-corruption unit of the State but crucially, it shall be statutorily made independent by similar declarations of independence as already elaborated in the discussion in Chapter 12. All other recommendations in Chapter 12 can and should be applied *mutatis mutandis* for the Lokayukta.
- (g) Similarly, all the recommendations in Chapter 12 in respect of departmental inquiry shall apply to the Lokayukta with changes made, *mutatis mutandis*, in respect of State bodies. The State Vigilance Commission/machinery would, in such cases, discharge the functions of the CVC. However, wherever

wanting, similar provisions as found in the CVC Act buttressing the independence of the CVC shall be provided.

- (h) The recommendations made in respect of elimination of sanction as also the other recommendations, especially in Chapter 12, relating to Lokpal, can and should be applied *mutatis mutandis* in respect of Lokayukta.
- (i) Although, no concrete fact, situation exists in respect of a genuine multi-State or inter-State corruption issue, the Committee opines that in the rare and unusual case where the same person is sought to be prosecuted by two or more State machineries of two or more Lokayuktas, there should be a provision entitling the matter to be referred by either of the States or by the accused to the Lokpal at the federal level, to ensure uniformity and to eliminate turf wars between States or jurisdictional skirmishes by the accused.
- (j) As already stated above, the coverage of the State Lokayukta, unlike the Lokpal, would extend to all classes of employees, including employees of State owned or controlled entities.

[Para 7.35]

#### Lower Bureaucracy: Degrees of Inclusion

31. The Committee, therefore, recommends:
  - (a) That for the Lokpal at the federal level, the coverage should be expanded to include Group A and Group B officers but not to include Group C and Group D.
  - (b) The provisions for the State Lokayuktas should contain similar counterpart reference, for purposes of coverage, of all similar categories at the State level which are the same or equivalent to Group A and Group B for the federal Lokpal. Though the Committee was tempted to provide only for enabling power for the States to include the State Lokayuktas to include the lower levels of bureaucracy like groups 'C' and 'D' at the State level, the Committee, on careful consideration, recommends that all the groups, including the lower bureaucracy at the State level and the groups equivalent with 'C' and 'D' at the State level should also be included within the jurisdiction of State Lokayuktas with no exclusion. Employees of State owned or controlled entities should also be covered.

- (c) The Committee is informed by the DoPT that after the Sixth Pay Commission Report, Group D has been/will be transposed and sub-merged fully in Group C. In other words, after the implementation of the Sixth Pay Commission Report, which is already under implementation, Group D will disappear and there will be only Group C as far as the Central Government employees are concerned.
- (i) Consequently, Group C, which will shortly include the whole of Group D will comprise a total number of approximately 30 lakhs (3 million) employees. Though the figures are not fully updated, A+B classes recommended for inclusion by this Committee would comprise just under 3 lakhs employees. With some degree of approximation, the number of Railway employees from Group A to D inclusive can be pegged at about 13½ lakhs (as on March 2010). If Central Government PSUs are added, personnel across all categories (Group A, B, C and D as existing) would be approximately an additional 15 lakhs employees. Post and Telegraph across all categories would further number approximately 4½ lakhs employees. Hence the total, on the aforesaid basis (which is undoubtedly an approximation and a 2010 figure) for Group A to D (soon, as explained above, to be only Group C) + Railways + Central PSUs + Post and Telegraph would be approximately 63 lakhs, or at 2011 estimates, let us assume 65 lakhs *i.e.* 6.5 million.
- (ii) On a conservative estimate of one policing officer per 200 employees (a ratio propounded by several witnesses including Team Anna), approximately 35000 employees would be required in the Lokpal to police the aforesaid group of Central Government employees (including, as explained above, Railways, Central PSUs, P&T etc.). This policing is certainly not possible by the proposed nine member Lokpal. The Lokpal would have to spawn a bureaucracy of at least 35000 personnel who would, in turn, be recruited for a parallel Lokpal bureaucracy. Such a mammoth bureaucracy, till it is created, would render the Lokpal unworkable. Even after it is created, it may lead to a huge parallel bureaucracy which would set in train its own set of consequences, including arbitrariness, harassment and unfair and illegal action

by the same bureaucracy which, in the ultimate analysis would be nothing but a set of similar employees cutting across the same A, B and C categories. As some of the Members of the Committee, in a lighter vein put it, one would then have to initiate a debate on creating a super Lokpal or a Dharampal for the policing of the new bureaucracy of the Lokpal institution itself.

- (iia) The Committee also notes that as far as the Lokpal institution is concerned, it is proposed as a new body and there is no such pre-existing Lokpal bureaucracy available. In this respect, there is a fundamental difference between the Lokpal and Lokayuktas, the latter having functioned, in one form or the other in India for the last several decades, with a readily available structure and manpower in most parts of India.
- (iii) If, from the above approximate figure of 65 lakhs, we exclude C and D categories (as explained earlier, D will soon become part of C) from Central Government, Railways, PSUs, Post and Telegraph etc., the number of A and B categories employees in these departments would aggregate approximately 7.75 lakhs. In other words, the aggregate of C and D employees in these classes aggregate approximately 57 or 58 lakhs. The Committee believes that this figure of 7.75 or 8 lakhs would be a more manageable, workable and desirable figure for the Lokpal institution, at least to start with.
- (iv) The impression that inclusion of Group 'A' and 'B' alone involves exclusion of large sections of the bureaucracy must be dispelled. Though in terms of number, the aggregation of Groups 'C' and 'D' is an overwhelming percentage of total Central Government employees, Groups 'A' and 'B' include the entire class above the supervisory level. Effectively, this means that virtually all Central Government employees at the Section Officer level and above would be included. It is vital to emphasize that this demarcation has to be viewed in functional terms, since it gives such categories significant decision making power in contra-distinction to mere numbers and necessarily subsumes a major chunk of medium and big ticket corruption.

- (v) Another misconception needs to be clarified. There is understandable and justifiable anger that inclusion of Group C and D would mean exclusion of a particular class which has tormented the common man in different ways over the years viz. Tehsildar, Patwari and similarly named or equivalent officers. Upon checking, the Secretariat has clarified that these posts are State Government posts under gazette notification notified by the State Government and, hence, the earlier recommendation of this Committee will enable their full inclusion.
- (vi) We further recommend that for the hybrid category of Union Territories, the same power be given as is recommended above in respect of State Lokayuktas. The Committee also believes that this is the appropriate approach since a top heavy approach should be avoided and the inclusionary ambit should be larger and higher at the state level rather than burdening the Lokpal with all classes of employees.
- (vii) As of now, prior to the coming into force of the Lokpal Act or any of the recommendations of this report, Group C and D officers are not dealt with by the CVC. Group C and D employees have to be proceeded against departmentally by the appropriate Department Head, who may either conduct a departmental enquiry or file a criminal corruption complaint against the relevant employee through the CBI and/or the normal Police forces. The Committee now recommends that the entire Group C and D, (later only Group C as explained above) shall be brought specifically under the jurisdiction of the CVC. In other words, the CVC, which is a high statutory body of repute and whose selection process includes the Leader of the Opposition, should be made to exercise powers identical to or at least largely analogous, in respect of these class C and class D employees as the Lokpal does for Group A and B. employees. The ultimate Lokpal Bill/Act should thus become a model for the CVC, in so far as Group C and D employees are concerned. If that requires large scale changes in the CVC Act, the same should be carried out. This would considerably strengthen the existing regime of policing, both departmentally and in terms of anti-

corruption criminal prosecutions, all Group C and D employees and would not in any manner leave them either unpoliced or subject to a lax or ineffective regime of policing.

- (viii) Furthermore, this Committee recommends that there would be broad supervisory fusion at the apex level by some appropriate changes in the CVC Act. The CVC should be made to file periodical reports, say every three months, to the Lokpal in respect of action taken for these class C and D categories. On these reports, the Lokpal shall be entitled to make comments and suggestions for improvement and strengthening the functioning of CVC, which in turn, shall file, appropriate action taken reports with the Lokpal.
- (ix) Appropriate increase in the strength of the CVC manpower, in the light of the foregoing recommendations, would also have to be considered by the Government.
- (x) The Committee also feels that this is the start of the Lokpal institution and it should not be dogmatic and inflexible on any of the issues. For a swift and efficient start, the Lokpal should be kept slim, trim, effective and swift. However, after sometime, once the Lokpal institution has stabilized and taken root, the issue of possible inclusion of Group C classes also within the Lokpal may be considered. This phase-wise flexible and calibrated approach would, in the opinion of this Committee, be more desirable instead of any blanket inclusion of all classes at this stage.
- (xi) Another consideration which the Committee has kept in mind is the fact that if all the classes of higher, middle and lower bureaucracy are included within the Lokpal at the first instance itself, in addition to all the aforesaid reasons, the CVC's role and functioning would virtually cease altogether, since the CVC would have no role in respect of any class of employee and would be reduced, at best, to a vigilance clearance authority. This would be undesirable in the very first phase of reforms, especially since the CVC is a high statutory authority in this country which has, over the last half century, acquired a certain institutional identity and stability along with conventions and practices which ought not to be uprooted in this manner.

- (d) All provisions for prior sanction/prior permission, whether under the CrPC or Prevention of Corruption Act or DSPE Act or related legislation must be repealed in respect of all categories of bureaucrats/government servants, whether covered by the Lokpal or not, and there should consequently be no requirement of sanction of any kind in respect of any class or categories of officers at any level in any Lokpal and Lokayukta or, indeed, CVC proceedings (for non-Lokpal covered categories). In other words, the requirement of sanction must go not only for Lokpal covered personnel but also for non-Lokpal covered personnel *i.e.* class 'C' and 'D' (class 'D', as explained elsewhere, will eventually be submerged into class 'C'). The sanction requirement, originating as a salutary safeguard against witch hunting has, over the years, as applied by the bureaucracy itself, degenerated into a refuge for the guilty, engendering either endless delay or obstructing all meaningful action. Moreover, the strong filtering mechanism at the stage of preliminary inquiry proposed in respect of the Lokpal, is a more than adequate safeguard, substituting effectively for the sanction requirement.
- (e) No doubt corruption at all levels is reprehensible and no doubt corruption at the lowest levels does affect the common man and inflicts pain and injury upon him but the Committee, on deep consideration and reconsideration of this issue, concluded that this new initiative is intended to send a clear and unequivocal message, first and foremost, in respect of medium and big ticket corruption. Secondly, this Committee is not oblivious to the fact that jurisdiction to cover the smallest Government functionary at the peon and driver level (class C largely covers peons, assistants, drivers, and so on, though it does also cover some other more "powerful" posts) may well provide an excuse and a pretext to divert the focus from combating medium and big ticket corruption to merely catching the smaller fry and building up an impressive array of statistical prosecutions and convictions without really being able to root out the true malaise of medium and big ticket corruption which has largely escaped scrutiny and punishment over the last 60 years.
- (f) The Committee also believes that the recommendations in respect of scope of coverage of the lower bureaucracy, made herein, are fully consistent with the conclusions of the



Minister of Finance on the floor of the Houses, as quoted in para 1.8 above of this Report. Firstly, the lower bureaucracy has been, partly, brought within the coverage as per the recommendations above and is, thus, consistent with the essence of the conclusion contained in para 1.8 above. Secondly, the Committee does not read para 1.8 above to meet an inevitable and inexorable mandate to necessarily subsume each and every group of civil servant (like Group C or Group D, etc.). Thirdly, the in principle consensus reflected in para 1.8 would be properly, and in true letter and spirit, be implemented in regard to the recommendations in the present Chapter for scope and coverage of Lokpal presently. Lastly, it must be kept in mind that several other recommendations in this Report have suggested substantial improvements and strengthening of the provisions relating to policing of other categories of personnel like C and D, *inter alia*, by the CVC and/or to the extent relevant, to be dealt with as Citizens' Charter and Grievance Redressal issues. [Para 8.18]

#### False Complaints and Complainants : Punitive Measures

32. It cannot be gainsaid that after the enormous productive effort put in by the entire nation over the last few months for the creation of a new initiative like the Lokpal Bill, it would not and cannot be assumed to be anyone's intention to create a remedy virtually impossible to activate, or worse in consequence than the disease. The Committee, therefore, starts with the basic principle that it must harmoniously balance the legitimate but competing demands of prevention of false, frivolous complaints on the one hand as also the clear necessity of ensuring that no preclusive bar arises which would act as a deterrent for genuine and *bona fide* complaints. [Para 9.6]
33. The Committee sees the existing provisions in this regard as disproportionate, to the point of being a deterrent. [Para 9.7]
34. The Committee finds a convenient analogous solution and therefore adopts the model which the same Committee has adopted in its recently submitted report on Judicial Standards and Accountability Bill, 2010 presented to the Rajya Sabha on 30 August, 2011. [Para 9.8]
35. In para 18.8 of the aforesaid Report, the Committee, in the context of Judicial Standards and Accountability Bill, 2010 said:

“The Committee endorses the rationale of making a provision for punishment for making frivolous or vexatious complaints. The Committee, however, expresses its reservation over the prescribed quantum of punishment both in terms of imprisonment which is up to 5 years and fine which is up to 5 lakh rupees. The severe punishment prescribed in the Bill may deter the prospective complainants from coming forward and defeat the very rationale of the Bill. In view of this, the Committee recommends that Government should substantially dilute the quantum of the punishment so as not to discourage people from taking initiatives against the misbehaviour of a judge. In any case, it should not exceed the punishment provided under the Contempt of Court Act. The Government may also consider specifically providing in the Bill a proviso to protect those complainants from punishment/penalty who for some genuine reasons fail to prove their complaints. The Committee, accordingly, recommends that the Bill should specifically provide for protection in case of complaints made ‘in good faith’ in line with the defence of good faith available under the Indian Penal Code.” [Para 9.9]

36. Consequently, in respect of the Lokpal Bill, the Committee recommends that, in respect of false and frivolous complaints:
- (a) The punishment should include simple imprisonment not exceeding six months;
  - (b) The fine should not exceed Rs. 25000; and
  - (c) The Bill should specifically provide for protection in case of complaints made in good faith in line with the defence of good faith available under the Indian Penal Code under Section 52 IPC. [Para 9.10]

#### The Judiciary: To Include or Exclude

37. The Committee recommends:
- (i) The Judiciary, comprising 31 odd judges of the Apex Court, 800 odd judges of the High Courts, and 20,000 odd judges of the subordinate judiciary are a part of a separate and distinct organ of the State. Such separation of judicial power is vitally necessary for an independent judiciary in any system and has been recognized specifically in Article 50 of the Indian Constitution. It is interesting that while the British Parliamentary democratic system, which India adopted, has

never followed the absolute separation of powers doctrine between the Legislature and the Executive, as, for example, found in the US system, India has specifically mandated under its Constitution itself that such separation must necessarily be maintained between the Executive and the Legislature on the one hand and the Judiciary on the other.

- (ii) Such separation, autonomy and necessary isolation is vital for ensuring an independent judicial system. India is justifiably proud of a vigorous (indeed sometimes over vigorous) adjudicatory judicial organ. Subjecting that organ to the normal process of criminal prosecution or punishment through the normal courts of the land would not be conducive to the preservation of judicial independence in the long run.
- (iii) If the Judiciary were included simpliciter as suggested in certain quarters, the end result would be the possible and potential direct prosecution of even an apex Court Judge before the relevant magistrate exercising the relevant jurisdiction. The same would apply to High Court Judges. This would lead to an extraordinarily piquant and an untenable situation and would undermine judicial independence at its very root.
- (iv) Not including the Judiciary under the present Lokpal dispensation does not in any manner mean that this organ should be left unpoliced in respect of corruption issues. This Committee has already proposed and recommended a comprehensive Judicial Standards and Accountability Bill which provides a complete in-house departmental mechanism, to deal with errant judicial behavior by way of censure, warning, suspension, recommendation or removal and so on within the judicial fold itself. The Committee deprecates the criticism of the Judicial Standards and Accountability Bill as excluding issues of corruption for the simple reason that they were never intended to be addressed by that Bill and were consciously excluded.
- (v) As stated in para 21 of the report of this Committee on the Judicial Standards and Accountability Bill, to this report, the Committee again recommends, in the present context of the Lokpal Bill, that the entire appointment process of the higher Judiciary needs to be revamped and reformed. The appointment process cannot be allowed and should not be

allowed to continue in the hands of a self-appointed common law mechanism created by judicial order operating since the early 1990s. A National Judicial Commission must be set up to create a broad-based and comprehensive model for judicial appointments, including, if necessary, by way of amendment of Articles 124 and 217 of the Indian Constitution. Without such a fundamental revamp of the appointment process at source and at the inception, all other measures remain purely *ex-post facto* and curative. Preventive measures to ensure high quality judicial recruitment at the entrance point is vital.

- (vi) It is the same National Judicial Commission which has to be entrusted with powers of both transfer and criminal prosecution of judges for corruption. If desired, by amending the provisions of the Constitution as they stand today, such proposed National Judicial Commission may also be given the power of dismissal/removal. In any event, this mechanism of the National Judicial Commission is essential since it would obviate allegations and challenges to the validity of any enactment dealing with judges on the ground of erosion or impairment of judicial independence. Such judicial independence has been held to be part of the basic structure of the Indian Constitution and is, therefore, unamendable even by way of an amendment of the Indian Constitution. It is for this reason that while this Committee is very categorically and strongly of the view that there should be a comprehensive mechanism for dealing with the trinity of judicial appointments, judicial transfers and criminal prosecution of judges, it is resisting the temptation of including them in the present Lokpal Bill. The Committee, however, exhorts the appropriate departments, with all the power at its command, to expeditiously bring a Constitutional Amendment Bill to address the aforesaid trinity of core issues directly impinging on the judicial system today *viz.* appointment of high quality and high calibre judges at the inception, non-discriminatory and effective transfers and fair and vigorous criminal prosecution of corrupt judges without impairing or affecting judicial independence.
- (vii) The Committee finds no reason to exclude from the conclusions on this subject, the burgeoning number of *quasi-judicial* authorities including tribunals as also other statutory and non-statutory bodies which, where not covered under

category 'A' and 'B' bureaucrats, exercise *quasi-judicial* powers of any kind. Arbitrations and other modes of alternative dispute resolution should also be specifically covered in this proposed mechanism. They should be covered in any eventual legislation dealing with corruption in the Higher Judiciary. The Committee notes that a large mass of full judicial functions, especially from the High Courts has, for the last 30 to 40 years, been progressively hived off to diverse tribunals exercising diverse powers under diverse statutory enactments. The Committee also notes that apart from and in addition to such tribunals, a plethora of Government officials or other *persona designata* exercise *quasi-judicial* powers in diverse situations and diverse contexts. Whatever has been said in respect of the Judiciary in this chapter should, in the considered opinion of this Committee, be made applicable, with appropriate modifications in respect of *quasi-judicial* bodies, tribunals and persons as well. [Para 10.21]

#### The Lokpal : Search and Selection

38. To ensure flexibility, speed and efficiency on the one hand and representation to all organs of State on the other, the Committee recommends a Selection Committee comprising:

- (a) The Prime Minister of India - as Head of the Executive.
- (b) The Speaker of Lok Sabha - as Head of the Legislature.
- (c) The Chief Justice of India - as Head of the Judiciary.
- (d) The leader of the Opposition of the Lower House.
- (e) An eminent Indian, selected as elaborated in the next paragraph.

N.R.: Functionaries like the Chairman and Leader of the Opposition of the Upper House have not been included in the interests of compactness and flexibility. The Prime Minister would preside over the Selection Committee.

[Para 11.18]

39. The 5th member of the Selection Committee in (e) above should be a joint nominee selected jointly by the three designated Constitutional bodies viz., the Comptroller and Auditor General of India, the Chief Election Commissioner and the UPSC Chairman.

This ensures a reasonably wide and representative degree of inputs from eminent constitutional bodies, without making the exercise too cumbersome. Since the other Members of the Selection Committee are all *ex-officio*, this 5th nominee of the aforesaid constitutional bodies shall be nominated for a fixed term of five years. Additionally, it should be clarified that he should be an eminent Indian and all the diverse criteria, individually, jointly or severally, applicable as specified in Clause 4(1)(i) of the Lokpal Bill, 2011 should be kept in mind by the aforesaid three designated constitutional nominators. [Para 11.19]

40. There should however, be a proviso in Clause 4(3) to the effect that a Search Committee shall comprise at least seven Members and shall ensure representation, 50 per cent to Members of SCs and/or STs and/or Other Backward Classes and/or Minorities and/or Women or any category or combination thereof. Though there is some merit in the suggestion that the Search Committee should not be mandatory since, firstly, the Selection Committee may not need to conduct any search and secondly, since this gives a higher degree of flexibility and speed to the Selection Committee, the Committee, on deep consideration, finally opines that the Search Committee should be made mandatory. The Committee does so, in particular, in view of the high desirability of providing representation in the Search Committee as stated above which, this Committee believes, cannot be effectively ensured without the mandatory requirement to have a Search Committee. It should, however, be clarified that the person/s selected by the Search Committee shall not be binding on the Selection Committee and secondly, that, where the Selection Committee rejects the recommendations of the Search Committee in respect of any particular post, the Selection Committee shall not be obliged to go back to the Search Committee for the same post but would be entitled to proceed directly by itself. [Para 11.20]
41. Over the years, there has been growing concern in India that the entire mass of statutory *quasi-judicial* and other similar tribunals, bodies or entities have been operated by judicial personnel *i.e.* retired judges, mainly of the Higher Judiciary *viz.* the High Courts and the Supreme Court. [Para 11.20(A)]
42. There is no doubt that judicial training and experience imparts not only a certain objectivity but a certain technique of adjudication which, intrinsically and by training, is likely to lead to greater care and caution in preserving principles like fair play,

natural justice, burden of proof and so on and so forth. Familiarity with case law and knowledge of intricate legal principles, is naturally available in retired judicial personnel of the Higher Judiciary. [Para 11.20(B)]

43. However, when a new and nascent structure like Lokpal is being contemplated, it is necessary not to fetter or circumscribe the discretion of the appointing authority. The latter is certainly entitled to appoint judges to the Lokpal, and specific exclusion of judges is neither contemplated nor being provided. However, to consider, as the Lokpal Bill, 2011 does, only former Chief Justices of India or former judges of the Supreme Court as the Chairperson of the Lokpal would be a totally uncalled for and unnecessary fetter. The Committee, therefore, recommends that Clause 3(2) be suitably modified not to restrict the Selection Committee to selecting only a sitting or former Chief Justice of India or judge of the Supreme Court as Chairperson of the Lokpal. [Para 11.20(C)]
44. A similar change is not suggested in respect of Members of the Lokpal and the existing provision in Clause 3(2)(b) read with Clause 19 may continue. Although the Committee does believe that it is time to consider tribunals staffed by outstanding and eminent Indians, not necessarily only from a pool of retired members of the Higher Judiciary, the Committee feels hamstrung by the Apex Court decision in *L. Chandra Kumar Vs. Union of India* 1997 (3) SCC 261 which has held and has been interpreted to hold that statutory tribunals involving adjudicatory functions must not sit singly but must sit in benches of two and that at least one of the two members must be a judicial member. Hence, unless the aforesaid judgment of the Apex Court in *L. Chandra Kumar Vs. Union of India* is reconsidered, the Committee refrains from suggesting corresponding changes in Clause 3(2)(b) read with Clause 19, though it has been tempted to do so. [Para 11.20(D)]
45. There is merit in the suggestion that Clause 3(4) of the Lokpal Bill, 2011 be further amended to clarify that a person shall not be eligible to become Chairperson or Member of Lokpal if:
  - (a) He/she is a person convicted of any offence involving moral turpitude;
  - (b) He/she is a person less than 45 years of age, on date of assuming office as Chairperson or Member of Lokpal;

- (c) He/she has been in the service of any Central or State Government or any entity owned or controlled by the Central or State Government and has vacated office either by way of resignation, removal or retirement within the period of 12 months prior to the date of appointment as Chairperson or Member of Lokpal. [Para 11.20(E)]
46. In Clause 9(2), the existing provision should be retained but it should be added at the end of that clause, for the purpose of clarification, that no one shall be eligible for re-appointment as Chairperson or Member of the Lokpal if he has already enjoyed a term of five years. [Para 11.20(F)]
47. The Committee has already recommended appropriate representation on the Search Committee, to certain sections of society who have been historically marginalized. The Committee also believes that although the institution of Lokpal is a relatively small body of nine members and specific reservation cannot and ought not to be provided in the Lokpal institution itself, there should be a provision added after Clause 4(5) to the effect that the Selection Committee and the Search Committee shall make every endeavour to reflect, on the Lokpal institution, the diversity of India by including the representation, as far as practicable, of historically marginalized sections of the society like SCs/STs, OBCs, minorities and women. [Para 11.20(G)]
48. As regards Clause 51 of the Lokpal Bill, 2011, the Committee recommends that the intent behind the clause be made clear by way of an Explanation to be added to the effect that the clause is not intended to provide any general exemption and that “good faith” referred to in Clause 52 shall have the same meaning as provided in Section 52 of the IPC. [Para 11.20(H)]

**The Trinity of the Lokpal, CBI and CVC:  
In Search of an Equilibrium**

49. (A) Whatever is stated hereinafter in these recommendations is obviously applicable only to Lokpal and Lokayukta covered personnel and offences/misconduct, as already delineated in this report earlier, *inter alia*, in Chapter 8 and elsewhere.
- (B) For those outside (A) above, the existing law, except to the extent changed, would continue to apply. [Para 12.32]
50. This Chapter, in the opinion of the Committee, raises an important issue of the quality of both investigation and prosecution; the correct balance and an apposite equilibrium of 3 entities



(viz. Lokpal, CBI and CVC) after creation of the new entity called Lokpal; harmonious functioning and real life operational efficacy of procedural and substantive safeguards; the correct balance between initiation of complaint, its preliminary screening/inquiry, its further investigation, prosecution, adjudication and punishment; and the correct harmonization of diverse provisions of law arising from the Delhi Special Police Establishment Act, the CVC Act, the proposed Lokpal Act, the IPC, CrPC and the Prevention of Corruption Act. It is, therefore, a somewhat delicate and technical task. [Para 12.33]

51. The stages of criminal prosecution of the Lokpal and Lokayukta covered persons and officers can be divided broadly into 5 stages, viz. (a) The stage of complaint, whether by a complainant or *suo motu*, (b) the preliminary screening of such a complaint, (c) the full investigation of the complaint and the report in that respect, (d) prosecution, if any, on the basis of the investigation and (e) adjudication, including punishment, if any. [Para 12.34]
52. The Committee recommends that the complaint should be allowed to be made either by any complainant or initiated *suo motu* by the Lokpal. Since, presently, the CBI also has full powers of *suo motu* initiation of investigation, a power which is frequently exercised, it is felt that the same power of *suo motu* proceedings should also be preserved for both the CBI and the Lokpal, subject, however, to overall supervisory jurisdiction of the Lokpal over the CBI, including simultaneous intimation and continued disclosure of progress of any inquiry or investigation by the CBI to the Lokpal, subject to what has been elaborated in the next paragraph. [Para 12.35]
53. Once the complaint, through any party or *suo motu* has arisen, it must be subject to a careful and comprehensive preliminary screening to rule out false, frivolous and vexatious complaints. This power of preliminary inquiry must necessarily vest in the Lokpal. However, in this respect, the recommendations of the Committee in para 12.36(I) should be read with this para. This is largely covered in Clause 23(1) of the Lokpal Bill, 2011. However, in this respect, the Lokpal would have to be provided, at the inception, with a sufficiently large internal inquiry machinery. The Lokpal Bill, 2011 has an existing set of provisions (Clauses 13 and 14 in Chapter III) which refers to a full-fledged investigation wing. In view of the structure proposed in this Chapter, there need not be such an investigation wing but an

efficacious inquiry division for holding the preliminary inquiry in respect of the complaint at the threshold. Preliminary inquiry by the Lokpal also semantically distinguishes itself from the actual investigation by the CBI after it is referred by the Lokpal to the CBI. The pattern for provision of such an inquiry wing may be similar to the existing structure as provided in Chapter III of the Lokpal Bill, 2011 but with suitable changes made, *mutatis mutandis*, and possible merger of the provisions of Chapter VII with Chapter III. [Para 12.36]

54. The Committee is concerned at the overlap of terminology used and procedures proposed, between preliminary inquiry by the Lokpal as opposed to investigation by the investigating agency, presently provided in Clause 23 of the Lokpal Bill. The Committee, therefore, recommends:
- (a) that only two terms be used to demarcate and differentiate between the preliminary inquiry to be conducted by the Lokpal, *inter-alia*, under Chapters VI and VII read with Clause 2(1)(e) as opposed to investigation by the investigating agency which has been proposed to be the CBI in the present report. Appropriate changes should make it clear that the investigation (by the CBI as recommended in this report), shall have the same meaning as provided in Clause 2(h) of the CrPC whereas the terms “inquiry” or “preliminary investigation” should be eschewed and the only two terms used should be “preliminary inquiry” (by the Lokpal) on the one hand and “investigation” (by the CBI), on the other.
  - (b) the term preliminary inquiry should be used instead of the term inquiry in Clause 2(1)(e) and it should be clarified therein that it refers to preliminary inquiry done by the Lokpal in terms of Chapters VI and VII of the Lokpal Bill, 2011 and does not mean or refer to the inquiry mentioned in Section 2(g) of the CrPC.
  - (c) the term “investigation” alone should be used while eschewing terms like “preliminary investigation” and a similar definitional provision may be inserted after Clause 2(1)(e) to state that the term investigation shall have the same meaning as defined in Clause 2(h) of the CrPC.
  - (d) Similar changes would have to be made in all other clauses in the Lokpal Bill, 2011, one example of which includes Clause 14. [Para 12.36(A)]

55. There are several parts of Clause 23 of the 2011 Bill, including Clauses 23(4), 23(5), 23(6), 23(9) and 23(11) which require an opportunity of being heard to be given to the public servant during the course of the preliminary inquiry *i.e.* the threshold proceedings before the Lokpal in the sense discussed above. After deep consideration, the Committee concludes that it is unknown to criminal law to provide for hearing to the accused at the stage of preliminary inquiry by the appropriate authority *i.e.* Lokpal or Lokayukta in this case. Secondly, the preliminary inquiry is the stage of verification of basic facts regarding the complaint, the process of filtering out false, frivolous, fictitious and vexatious complaints and the general process of seeing that there is sufficient material to indicate the commission of cognizable offences to justify investigation by the appropriate investigating agency. If the material available in the complaint at the stage of its verification through the preliminary inquiry is fully disclosed to the accused, a large part of the entire preliminary inquiry, later investigation, prosecution and so on, may stand frustrated or irreversibly prejudiced at the threshold. Thirdly, and most importantly, the preliminary inquiry is being provided as a threshold filter in favour of the accused and is being entrusted to an extremely high authority like the Lokpal, created after a rigorous selection procedure. Other agencies like the CBI also presently conduct preliminary inquiries but do not hear or afford natural justice to the accused during that process. Consequently the Committee recommends that all references in Clause 23 or elsewhere in the Lokpal Bill, 2011 to hearing of the accused at the preliminary inquiry stage should be deleted.  
[Para 12.36(B)]
56. Since the Committee has recommended abolition of the personal hearing process before the Lokpal during the preliminary inquiry, the Committee deems it fit and proper to provide for the additional safeguard that the decision of the Lokpal at the conclusion of the preliminary inquiry to refer the matter further for investigation to the CBI, shall be taken by a Bench of the Lokpal consisting of not less than 3 Members which shall decide the issue regarding reference to investigation, by a majority out of these three.  
[Para 12.36(BB)]
57. Naturally it should also be made clear that the accused is entitled to a full hearing before charges are framed. Some stylistic additions like referring to the chargesheet “if any” (since there may or may not be a chargesheet) may also be added to

- Clause 23(6). Consequently, Clauses like 23(7) and other similar clauses contemplating proceedings open to public hearing must also be deleted. [Para 12.36(C)]
58. Clause 23(8) would have to be suitably modified to provide that the appropriate investigation period for the appropriate investigating agency *i.e.* CBI in the present case, should normally be within six months with only one extension of a further six months, for special reasons. Reference in Clause 23(8) to “inquiry” creates highly avoidable confusion and it should be specified that the meanings assigned to inquire and investigate should be as explained above. [Para 12.36(D)]
59. The Committee also believes that there may be several exigencies during the course of both preliminary inquiry and investigation which may lead to a violation of the 30 days or six months periods respectively specified in Clause 27(2) and 23(8). The Committee believes that it cannot be the intention of the law that where acts and omissions by the accused create an inordinate delay in the preliminary inquiry and/or other factors arise which are entirely beyond the control of the Lokpal, the accused should get the benefit or that the criminal trial should terminate. For that purpose it is necessary to insert a separate and distinct provision which states that Clauses 23(2), 23(8) or other similar time limit clauses elsewhere in the Lokpal Bill, 2011, shall not automatically give any benefit or undue advantage to the accused and shall not automatically thwart or terminate the trial. [Para 12.36(E)]
60. Clause 23(10) also needs to be modified. Presently, it states in general terms the discretion to hold or not to hold preliminary inquiry by the Lokpal for reasons to be recorded in writing. However, this may lead to allegations of pick and choose and of arbitrariness and selectivity. The Committee believes that Clause 23(10) should be amended to provide for only one definition *viz.*, that preliminary inquiry may be dispensed with only in trap cases and must be held in all other cases. Even under the present established practice, the CBI dispenses with preliminary inquiry only in a trap case for the simple reason that the context of the trap case itself constitutes preliminary verification of the offence and no further preliminary inquiry is necessary. Indeed, for the trap cases, Section 6A(ii) of the Delhi Special Police Establishment Act, 1946 also dispenses with the provision of preliminary inquiries. For all cases other than the trap cases, the preliminary inquiry by the Lokpal must be a non dispensable necessity. [Para 12.36(F)]

61. Clause 23(11) also needs to be modified/deleted since, in this report, it is proposed that it is the CBI which conducts the investigation which covers and includes the process of filing the chargesheet and closure report. [Para 12.36(G)]
62. Similarly Clause 23(12)(b) would have to be deleted, in view of the conclusion hereinabove regarding the absence of any need to provide natural justice to the accused at the stage of preliminary inquiry. Clause 23(14) is also unusually widely worded. It does not indicate as to whom the Lokpal withhold records from. Consequently that cannot be a general blanket power given to the Lokpal to withhold records from the accused or from the investigating agency. Indeed, that would be unfair, illegal and unconstitutional since it would permit selectivity and also suppress relevant information. The Clause, therefore, needs to be amended. [Para 12.36(H)]
63. The case of the Lokpal initiating action *suo motu*, requires separate comment. In a sense, the preliminary inquiry in the case of a Lokpal *suo motu* action becomes superfluous since the same body (*i.e.* Lokpal) which initiates the complaint, is supposed to do a preliminary inquiry. This may, however, not be as anomalous as it sounds since even under the present structure, the CBI, or indeed the local police, does both activities *i.e.* *suo motu* action as also preliminary screening/inquiry. The Committee was tempted to provide for another body to do preliminary inquiry in cases where the Lokpal initiates *suo motu* action, but in fact no such body exists and it would create great multiplicity and logistical difficulty in creating and managing so many bodies. Hence the Committee concludes that in cases of *suo motu* action by Lokpal, a specific provision must provide that that part of the Lokpal which initiates the *suo motu* proposal, should be scrupulously kept insulated from any part of the preliminary inquiry process following upon such *suo motu* initiation. It must be further provided that the preliminary inquiry in cases of *suo motu* initiation must be done by a Lokpal Bench of not less than five Members and these should be unconnected with those who do the *suo motu* initiation. [Para 12.36(I)]
64. These recommendations also prevent the Lokpal from becoming a single institution fusing unto itself the functions of complainant, preliminary inquirer, full investigator and prosecutor. It increases objectivity and impartiality in the criminal investigative process and precludes the charge of creating an unmanageable behemoth

like Lokpal, while diminishing the possibility of abuse of power by the Lokpal itself. [Para 12.37]

65. These recommendations also have the following advantages:

- (i) The CBI's apprehension, not entirely baseless, that it would become a Hamlet without a Prince of Denmark if its Anti-Corruption Wing was hived off to the Lokpal, would be taken care of.
- (ii) It would be unnecessary to make CBI or CVC a Member of the Lokpal body itself.
- (iii) The CBI would not be subordinate to the Lokpal nor its *esprit de corps* be adversely affected; it would only be subject to general superintendence of Lokpal. It must be kept in mind that the CBI is an over 60 year old body, which has developed a certain morale and *esprit de corps*, a particular culture and set of practices; which should be strengthened and improved, rather than merely subsumed or submerged within a new or nascent institution, which is yet to take root. Equally, the CBI, while enhancing its autonomy and independence, cannot be left on auto pilot.
- (iv) The CVC would retain a large part of its disciplinary and functional role for non Lokpal personnel and regarding misconduct while not being subordinate to the Lokpal. However, for Lokpal covered personnel and issues, including the role of the CBI, the CVC would have no role.
- (v) *Mutatis mutandis* statutory changes in the Lokpal Bill, the CVC and the CBI Acts and in related legislation, is accordingly recommended. [Para 12.38]

66. After the Lokpal has cleared the stage for further investigation, the matter should proceed to the CBI. This stage of the investigation must operate with the following specific enumerated statutory principles and provisions:

- (A) On the merits of the investigation in any case, the CBI shall not be answerable or liable to be monitored either by the Administrative Ministry or by the Lokpal. This is also fully consistent with the established jurisprudence on the subject which makes it clear that the merits of the criminal investigation cannot be gone into or dealt with even by the superior courts. However, since in practice it has been

observed in the breach, it needs to be unequivocally reiterated as a statutory provision, in the proposed Lokpal Act, a first in India.

- (B) The CBI shall, however, continue to be subject to the general supervisory superintendence of the Lokpal. This shall be done by adding a provision as exists today in the CVC Act which shall now apply to the Lokpal in respect of the CBI. Consequently, the whole of the Section 8(1) [not Section 8(2)] of the CVC Act should be included in the Lokpal Bill to provide for the superintendence power of the Lokpal over the CBI. [Para 12.39]

67. Correspondingly, reference in Section 4 of the Delhi Special Police Establishment Act to the CVC would have to be altered to refer to the Lokpal. [Para 12.40]
68. At this stage, the powers of the CBI would further be strengthened and enhanced by clarifying explicitly in the Lokpal Bill that all types of prior sanctions/terms or authorizations, by whatever name called, shall not be applicable to Lokpal covered persons or prosecutions. Consequently, the provisions of Section 6(A) of the Delhi Special Police Establishment Act, Section 19 of the Prevention of Corruption Act and Section 197 of the IPC or any other provision of the law, wherever applicable, fully or partially, will stand repealed and rendered inoperative in respect of Lokpal and Lokayukta prosecutions, another first in India. Clause 27 of the Lokpal Bill, 2011 is largely consistent with this but the Committee recommends that it should further clarify that Section 6A of the DSPE Act shall also not apply in any manner to proceedings under the proposed Act. The sanction requirement, originating as a salutary safeguard against witch hunting has, over the years, as applied by the bureaucracy itself, degenerated into a refuge for the guilty, engendering either endless delay or obstructing all meaningful action. Moreover, the strong filtering mechanism at the stage of preliminary inquiry proposed in respect of the Lokpal, is a more than adequate safeguard, substituting effectively for the sanction requirement. Elsewhere, this Report recommends that all sanction requirements should be eliminated even in respect of non Lokpal covered personnel. [Para 12.41]
69. The previous two paragraphs if implemented, would achieve genuine and declared statutory independence of investigation for the first time for the CBI. [Para 12.42]

70. The main investigation, discussed in the previous few paragraphs, to be conducted by the CBI, necessarily means the stage from which it is handed over to the CBI by the Lokpal, till the stage that the CBI files either a chargesheet or a closure report under Section 173 of the CrPC. However, one caveat needs to be added at this stage. The CBI's chargesheet or closure report must be filed after the approval by the Lokpal and, if necessary, suitable changes may have to be made in this regard to Section 173 CrPC and other related provisions. [Para 12.43]
71. The aforesaid independence of the CBI is reasonable and harmonizes well with the supervisory superintendence of the Lokpal in the proposed Lokpal Bill, which is now exercised by CVC under Section 8(1) of the CVC Act. The Committee recommends the above provision, suitably adapted to be applicable in the relationship between the Lokpal and the CBI. [Para 12.44]
72. The next stage of the criminal process would go back to the Lokpal with full powers of prosecution on the basis of the investigation by the CBI. The following points in this respect are noteworthy:
- Clause 15 in Chapter IV of the Lokpal Bill, 2011 already contains adequate provisions in this regard and they can, with some modifications, be retained and applied.
  - The Committee's recommendations create, again for the first time, a fair demarcation between independent investigation and independent prosecution by two distinct bodies, which would considerably enhance impartiality, objectivity and the quality of the entire criminal process.
  - It creates, for the first time in India, an independent prosecution wing, under the general control and superintendence of the Lokpal, which, hopefully will eventually develop into a premium, independent autonomous Directorate of Public Prosecution with an independent prosecution service (under the Lokpal institution). The Committee also believes that this structure would not in any manner diminish or dilute the cooperative and harmonious interface between the investigation and prosecution processes since the former, though conducted by the CBI, comes under the supervisory jurisdiction of the Lokpal. [Para 12.45]



73. The next stage is that of adjudication and punishment, if any, which shall, as before, be done by a special Judge. The Committee considers that it would be desirable to use the nomenclature of 'Lokpal Judge' (or Lokayukta Judge in respect of States) under the new dispensation. However, this is largely a matter of nomenclature and existing provisions in the Lokpal Bill, 2011 in Chapter IX are adequate, though they need to be applied, with modifications. [Para 12.46]
74. The aforesaid integrates all the stages of a criminal prosecution for an offence of corruption but still leaves open the issue of departmental proceedings in respect of the same accused. [Para 12.47]
75. The Committee agrees that for the Lokpal covered personnel and issues, it would be counter-productive, superfluous and unnecessary to have the CVC to play any role in departmental proceedings. Such a role would be needlessly duplicative and superfluous. For such matters, the Lokpal should be largely empowered to do all those things which the CVC presently does, but with some significant changes, elaborated below. [Para 12.48]
76. Clauses 28 and 29 of the Lokpal Bill are adequate in this regard but the following changes are recommended:
- (i) The Lokpal or Lokayukta would be the authority to recommend disciplinary proceedings for all Lokpal or Lokayukta covered persons.
  - (ii) The CVC would exercise jurisdiction for all non Lokpal covered persons in respect of disciplinary proceedings.
  - (iii) The CBI would similarly continue to exercise its existing powers under the CVC's superintendence for all non Lokpal personnel and proceedings.
  - (iv) Departmental action must, as the law today stands, comply with the over arching mandate of Article 311 of the Indian Constitution. Dissatisfaction or objection to the practical operation of Article 311, fully understandable and indeed justifiable, does not permit or impel us to ignore the existence of Article 311, until altered. If there is consensus outside the Committee on amending Article 311, it must be amended as elaborated and recommended by the Committee in paragraph 12.49. However, absent such a consensus, the passage of the Lokpal Bill need not be held up on that

account and hence the present report makes recommendations on the basis of the continuance of Article 311. If, however, it is amended as per paragraph 12.49, the proposed Lokpal Act can easily be modified to reflect such changes.

- (v) It may also be remembered that the Lokpal itself does not conduct the departmental proceedings. For the law to provide for Lokpal to conduct the entire departmental proceedings itself, would be to put a humungous and unworkable burden on the institution.
- (vi) Therefore, the power to take departmental action whether in the case of bureaucrats or in the case of Ministers as provided in Clauses 28 and 29 of the Lokpal Bill 2011, are largely appropriate.
- (vii) The Committee is informed that suspension of a delinquent officer during his criminal prosecution is virtually automatic in practice. However, the Committee feels the need to emphasize that a specific provision be added in Chapter VII making it clear that once any bureaucrat (*viz.* group A or group B officer) as covered in the proposed Lokpal Bill is under investigation and the Lokpal makes a recommendation that such a person be suspended, such suspension should mandatorily be carried out unless, for reasons to be recorded in writing by a majority out of a group of 3 persons not below the rank of Ministers of State belonging to the Ministries of Home, Personnel and the relevant administrative Ministry of the delinquent officer, opine to the contrary. Such suspension on Lokpal recommendation does not violate Article 311 in any manner. Refusal by the aforesaid Committee of three provides a check and balance *qua* possibly unreasonable Lokpal recommendations. The reference is to three high functionaries of three Ministries and not to the administrative Ministry alone since it is frequently found in practice that the administrative Ministry's responses alone may seek to preserve the status *quo* on account of vested interests arising from the presence of the delinquent officer in that administrative Ministry.
- (viii) There cannot be a counterpart suspension provision in respect of MPs or Ministers or the like, but an explicit clause may be added to the existing Clause 29 that the Presiding Officer of the relevant House in the case of MPs and

Prime Minister in the case of a member of the Council of Ministers shall record a note in writing indicating the action being taken in regard to the Lokpal's recommendations or the reasons for not taking such action.

- (ix) Wherever otherwise applicable, in respect of the details of the departmental inquiry, the provisions of Article 311 would, unless altered and subject to paras D above and 12.49 below, continue to apply. [Para 12.49]

77. The Committee strongly pleads and recommends that the provisions of Article 311 require a close and careful re-look to ensure that reasonable protection is given to bureaucrats for the independent and fair discharge of their functions but that the enormous paraphernalia of procedural rules and regulations which have become a major obstacle in the taking of genuine and legitimate departmental action against delinquent officers, be eliminated. The Committee notes with concern and with growing apprehension that serious and high level/big ticket corruption has increased exponentially since independence at all levels in the Lokpal proposed categories of personnel. In particular, bureaucratic corruption has been relatively ignored or underplayed in the context of the excessive media and civil society focus on political corruption, coupled with the doctrine of civil service anonymity, which this country imported from our former colonial masters. Hence, the substantial modification of Article 311 or, indeed, its replacement by a much lesser statutory (not constitutional counterpart) should be taken up and implemented at the earliest. It may be added that what requires to be looked into is not the mere text of Article 311 but the context which has grown around it, through an undesirably large number of statutory and non-statutory rules, procedures and regulations coupled with huge common law jurisprudence over the last 6 decades. It is universally believed that the aforesaid has, in practice, converted Article 311, from a reasonable and salutary safeguard to a haven for those indulging in mal-administration and/corruption with no fear of consequences and the certainty of endless delay. The fact that Article 311 had been given constitutional and not mere statutory status is also responsible for its largely unchanged character over the last six plus decades. [Para 12.50]
78. Though not strictly within the purview of the Lokpal Bill 2011 itself, the Committee also recommends that CVC's advice in respect of departmental action to be taken by the relevant

department in case of non-Lokpal covered personnel must, by a suitable amendment to the CVC Act, be made binding to the extent that, unless for reasons to be recorded by a majority out of the same joint group as aforesaid, comprising 3 persons not below the rank of Ministers of State belonging respectively to the Ministries of Home Affairs, Personnel and the Administrative Ministry to which the delinquent officer belongs, states that CVC advice be not followed, such CVC advice shall be binding.

[Para 12.51]

79. The Committee has deliberated long and hard on whether it can or should go to the extent of suggesting changes in the selection procedure of the CBI chief. Presently, the CBI chief is appointed by the Government on the recommendation of a Committee consisting of the CVC as Chairperson, Vigilance Commissioner, Secretary, Government of India in the Ministry of Home Affairs and Secretary of the Administrative Ministry (in this case the Ministry of Personnel) [See Section 4A of the Delhi Special Police Establishment Act, 1946]. Section 8(2) of the 1946 Act further provides for a mandatory input in the selection of a new Director to be made by the outgoing Director and also enjoins upon the Committee, in Section 8(3), to make recommendations for a panel of officers on the basis of seniority, integrity and experience in the investigation of anti-corruption cases, necessarily belonging to the Indian Police Services. [Para 12.52]
80. Interestingly, Section 4C of the same 1946 Act provides for the same Committee to make recommendations for all appointments as also extension or curtailment of tenure of all officers above the level of Superintendent of Police in the CBI. [Para 12.53]
81. It is thus clear that it is not correct to suggest that the Central Government has absolute discretion in appointing the CBI Director. After the Vineet Narain vs. Union of India judgment\* by the Apex Court, significant changes were brought into the Delhi Special Police Establishment Act, 1946. In 2003 (by Act 45 of 2003) providing for the aforesaid independent and autonomous regime for selection and appointment of CBI Director. The Central Vigilance Commissioner who heads the selection and recommendation process is itself a high statutory authority under a separate enactment called the Central Vigilance Commission Act of 2003 which, in turn in Section 4, obliges the Government to appoint the CVC on the basis of a recommendation of a high

\* 1996(2) SCC 199.

powered Committee comprising the Prime Minister, the Home Minister and the Leader of Opposition in the Lok Sabha. It is, therefore, erroneous to brush aside the existing system as merely involving absolute power/discretion to select Government favourites as CBI Director. [Para 12.54]

82. Furthermore, the Committee believes that it would neither be proper nor desirable for the Committee to go into and suggest fundamental statutory alterations to the procedure for selection and appointment of CBI Director, which appears, nowhere, directly or indirectly, to be a subject referred for the consideration of this Committee. Collateral recommendations of this nature by a side wind should, in the opinion of this Committee, be avoided, especially since significant statutory changes have been brought in with respect to the appointment of the CBI Director less than 8 years ago. [Para 12.55]

#### Constitutional Status: If, How and How Much

83. The Committee, therefore, recommends:
- (a) The institution of Lokpal must be given constitutional status by inserting into the Constitution by way of constitutional amendment certain basic principles about the Lokpal and leaving the details in the new proposed statute on which this Committee is opining.
  - (b) One practical, reasonable and legally valid model would be for the Government to consider the model and set of provisions asked for by the Committee and presented in the evidence to the Committee as a draft constitutional amendment by two former Chief Justices of India. That draft is enclosed herewith as Annexure 'F' and is self-explanatory.
  - (c) This constitutional amendment does not require ratification by not less than half of the State Legislatures since it does not seek to make any change in any of the provisions listed in the second proviso to Article 368(2) of the Indian Constitution.
  - (d) The constitutional amendment should, as reflected in the enclosed Annexure 'F' be a set of basic principles for the Lokpal as also provide for the basic set up of the Lokayuktas. Both these provisions, proposed in the enclosed draft, propose Part XVA and Articles 329(C) and 329(D), as enabling,

empowering and permissive provisions and authorize and empower the appropriate legislature to make proper laws, *mutatis mutandis*, for Lokpal at the Centre and for Lokayuktas at the State.

- (e) Such a constitutional status would not only considerably enhance the stature, legal and moral authority of the Lokpal institution but would make interference and tinkering in these basic principles not subject to the vicissitudes of ordinary or transient majorities. Over a period of time, it is likely that these principles would develop into a set of immutable principles and, possibly, even become part of basic structure of the Constitution rendering the existence of the Lokpal and its basic features un-amendable even by a constitutional amendment.
- (f) Apprehensions regarding delay are misplaced. The constitutional amendment bill would be much shorter than the statutory bill for the new proposed Lokpal and can be passed on the same day and at the same time as the latter, though by a different majority. It is inconceivable that while parties are in favour of the institution of Lokpal in principle, as a statutory body, parties would not agree with equal alacrity for the passage of a constitutional amendment bill.
- (g) The suggestion that the entire statutory bill should be transposed as a constitutional amendment into the Constitution is untenable and impracticable. That would eliminate flexibility and would require a constitutional amendment for the smallest future change. Moreover, the Constitution does not and is not intended to provide for nitty gritty operational details. It should be and is intended to be a declaration of general and basic principles which, in turn, enable and empower formal legislation, which in turn would take care of the details.
- (h) An easy or casual repeal of the entire Lokpal scheme would not be possible once it is constitutionally entrenched.
- (i) Similarly, there would be no option for the federal or State Legislatures not to have a Lokpal or a Lokayukta at all since the constitutional mandate would be to the contrary.
- (j) Contextually, the issues and some of the suggestions in this Chapter may overlap with and should, therefore, be read in conjunction with Chapter 7 of this report. Though the

Committee has already opined in Chapter 4 of this Report here that the issues of grievance redressal should be dealt with in a separate legislation, the Committee hereby also strongly recommends that there should be a similar declaration either in the same Chapter of the Lokpal or in a separate Chapter proposed to be added in the Indian Constitution, giving the same constitutional status to the citizens grievances and redressal machinery.

- (k) This recommendation also reflects the genuine and deep concern of this Committee about the need, urgency, status and importance of a Citizens' Charter/grievance machinery and Committee believes that the giving of the aforesaid constitutional status to this machinery would go a long way in enhancing its efficacy and in providing a healing touch to the common man.
- (l) Furthermore, the Committee believes that this recommendation herein is also fully consistent with the letter and spirit of para 1.8 above viz. the conclusions of the Minister of Finance in the Lower House recorded in para 1.8 above. [Para 13.12]

#### The Jurisdictional Limits of Lokpal: Private NGOs, Corporates and Media

- 84. There is no doubt that corruption is neither the exclusive preserve nor the special privilege nor the unique entitlement of only the political or bureaucratic classes. Nor can anyone justify exclusionary holy cows, supposedly immunized, exempted or put outside the purview of a new and vigorous anti-corruption monitoring, investigation and prosecution regime as the proposed new Lokpal Bill seeks to create. If corruption is rampant in a country like India, it permeates and pervades every nook and cranny of society and is certainly not restricted to the political or bureaucratic classes. Indeed, while no specific statistical data are available, it may not be at all inconceivable that, in quantum terms, the degree of corruption in the non-political/non-bureaucratic private sector, in the aggregate, is far higher than in the realm of political and bureaucratic classes alone. Therefore, in principle, non-application of the proposed Lokpal Bill to all such classes does not appear to be justifiable. [Para 14.22]
- 85. In this connection, the very recent UK Bribery Act, 2010, is both interesting and instructive. Drafted in a completely non-legalistic manner, format and language, this Act seeks to criminalize

corruption everywhere and anywhere, *i.e.* in the public and private sectors in UK, in Governmental and non-Governmental sectors, by UK citizens abroad, by non-UK citizens acting in UK and in the entire gamut of private and individual transactions in addition to covering dealings in the private sector, intra-private sector, intra-public sector, in Government and private interface and in every other nook and cranny of society. [Para 14.23]

86. Despite the above and despite the simplicity and attractiveness of an all inclusive approach, the latter must yield to exigencies of logistics, operational efficacy and pragmatism. Since this is the nation's first experiment with a central Lokpal institution, it would amount to starry-eyed idealism to recommend the blanket inclusion of every segment of society under the jurisdiction of an omnipotent and omniscient Lokpal. Such comprehensive inclusion is entirely understandable and may be logically more justifiable in principle, but, in the final opinion of the Committee, must await several years of evolution of the Lokpal institution and a corpus of experiential and practical lessons as also the wisdom of a future generation of Parliamentarians. [Para 14.24]
87. As far as the proposed dispensation is concerned, the only available dividing and demarcating line between the complete inclusion and partial exclusion of entities from the jurisdiction of the Lokpal would have to be some test of Government ownership and/or control and/or size of the entity concerned. In this regard, Clauses 17(1)(f) and (g) of the Lokpal Bill, 2011 are relevant. Clause 17(1)(f) applies the Lokpal jurisdiction mainly to office-bearers of every society, A.o.P. or trust, registered or not, but wholly or partially financed or aided by the Government, subject to being above some specified annual income minima. Clause 17(1)(g), similarly, applies the Lokpal to office-bearers of every society, A.o.P. or trust, receiving donations from the public, again subject to an annual income minima to be specified by the Central Government. [Para 14.25]
88. After deep consideration, the Committee believes and recommends that these clauses should be merged and expanded to provide for the following coverage/jurisdiction of the Lokpal:
- (a) The Lokpal jurisdiction should apply to each and every institution/entity, by whatever name called, owned or controlled by the Central Government, subject, however, to an exclusionary minima, where the ownership or control of the Central Government *de minimis*. Such minima would have



to be specified and the power of such specification should be given to the Central Government by notification;

- (b) Additionally, all entities/institutions, by whatever name called, receiving donations from the public above a certain minima, liable to be specified by the Central Government should be included. In addition, as also all entities/institutions receiving donations from foreign sources in the terms and context of the Foreign Contribution Regulation Act (FCRA) in excess of Rs. 10 lakh per year, should be covered, whether or not, controlled by the Government. This is largely as per existing Clause 17(1)(g), except for the addition of the foreign donation recipient facet;
- (c) It should be clarified that this coverage shall apply, as also stated above, to every entity and institution, by whatever name called, be it corporate, society, trust, A.o.P., partnership, sole proprietorship, LLP or any other, registered or not. It should also be made clear that the approach is functional or ownership based or size based and not based on nomenclature;
- (d) It is thus clear that corporates, media or NGOs should and would be covered only to the above extent and not otherwise.

[Para 14.25(A)]

89. Despite the foregoing elaborations and 'lament' regarding exclusion of large slices of society from the Lokpal regime, it must not be forgotten that all persons, whether private, individual, and totally non-Governmental, are already necessarily covered as abettors, co-conspirators, inciters and givers or recipients or bribes in terms of Clause 17(3) of the Lokpal Bill, 2011. It may, however, be further clarified suitably in inclusive and not exhaustive terms in Clause 17(3) that the phrase "if such person is associated with the allegation of corruption", should include abettors, bribe-givers, bribe-takers, conspirators and all other persons, directly or indirectly, involved in the act or omission relating to corruption within which all other persons and entities in Clause 17 are subsumed. The word "associated" presently used is too general and vague.

[Para 14.26]

90. The Committee further recommends that Clause 17(3) should be explicitly clarified to the effect that the abettor, conspirator or person associated, in any manner, directly or indirectly, with the corruption allegation, shall not only be included but be fully

liable to investigation, prosecution and punishment and that the proviso to Clause 17(3) shall be limited only to proposed action to be taken 'in case of a person serving in the affairs of a State' and not qua anyone else. [Para 14.26A]

**Support Structure for the Lokpal: Whistleblowers, Phone Tappers and Legal Aid/Assistance Issues**

91. As regards the whistleblower issue, this Committee has made a detailed recommendation on the subject on August 10, 2011 in respect of the Bill referred to it. That Bill and the Committee's recommendation are under the active decision making process of the Government of India for eventual translation into law. [Para 15.10]
92. The Committee recommends that the Whistleblowers Bill (Bill No. 97 of 2010) referred to the Committee, with the changes already recommended by the Committee in respect of that Bill (in the Committee's report dated August 10, 2011) be implemented into law simultaneously and concurrently with the Lokpal Bill. In that case, only one provision needs to be inserted in the Lokpal Bill to the effect that safeguards and machinery provided elaborately in the proposed Whistleblowers Bill, as opined upon by the Committee, would be applicable, *mutatis mutandis* to the Lokpal Bill. In particular, the Committee notes that Clauses 10, 11, 12 and 13 of the aforesaid Whistleblowers Bill, provide a fairly comprehensive fasciculus of provisions providing safeguards against victimization, protection of witnesses and other persons, protection of identity of complainant and power to pass interim orders. The Whistleblowers Bill also sets up a competent authority and provides for several other related provisions to make the functioning of that authority efficacious and to enhance the efficiency, potency and vigour of the safeguards intended to be provided to a whistleblower. The proposed provision in the Lokpal Bill should act as a cross referencing, breach of which should activate the related/applicable provisions of the Whistleblower Bill and render them applicable to all Lokpal proceedings, as if set out in the Lokpal Bill, 2011. [Para 15.11]
93. Naturally, one of the main adaptations of the Whistleblowers Bill for Lokpal proceedings would be that the competent authority in respect of Lokpal covered persons and offences would be the Lokpal and references in the Whistleblowers Bill to CVC or other

entities would be rendered inoperative for purposes of Lokpal personnel and officers. [Para 15.12]

94. If, however, the aforesaid Whistleblower Bill, along with the recommendations of this Committee in that regard, are not enacted into law by the Government of India, co-terminously and simultaneously with the Lokpal Bill, then this Committee recommends the creation of some safeguards, in substance and essence, by the addition of a whole new chapter and certain provisions in the proposed Lokpal Bill. However, those provisions in the Lokpal Bill would be largely an adaptation of the same provisions of the Whistleblowers Bill, especially Clauses 10 to 13 of the Whistleblowers Bill, while, as explained above, making the Lokpal the competent authority for such whistleblower issues. [Para 15.13]

95. As regards phone tapping, the Committee emphasizes and underlines the basic reality that phone tapping by regulatory and policing agencies has been prevalent in India for several years and the rules and regulations in that regard have undergone periodic refinement and amendment. Currently the regime of phone tapping is governed by Indian Telegraph Act and Rules read with the judgments of the Supreme Court *inter alia* in People 'Union for Civil Liberties Vs. Union of India (1997) 1 SCC 301. The Committee believes that there is no reason, sufficiently strong, to suggest that this substantive law should be altered in respect of Lokpal proceedings. [Para 15.14]

96. Phone tapping has been resorted to, *inter alia*, by agencies as diverse as CBI, Enforcement Directorate, Directorate of Revenue Intelligence and others, under the aforesaid regime of the Act, Rules and the Supreme Court mandated principles. In all such cases, the Committee is not aware of any situation where any of these agencies are entitled to *suo motu*, on their own, without separate authorization, and in secrecy, initiate or continue phone tapping. There is, therefore, no reason as to why the proposed Lokpal institution should also not be subjected to the same regime and mechanism. To provide for inherent and separate power in the Lokpal institution in this regard, would also create an excessive and undesirable concentration of powers, would frequently involve a conflict of interest between preliminary inquiry, investigation and prosecution and would disturb the equilibrium of all investigative agencies for the past several years with established practices in respect of phone tapping issues.

Indeed, the Committee notes that in other parts of this Report (Chapter 12), the CBI is the principal investigating agency and, therefore, its powers of phone tapping must continue as they exist today. [Para 15.15]

97. As regards legal aid/assistance, the Committee concludes that Clause 56 as framed does not intend to and should not be read to be a mandate for provision of automatic legal aid for every accused in a Lokpal proceeding. Clause 56, by any fair reading, and in the opinion of this Committee, is only intended to provide legal assistance by way of legal representation to the accused in any case before the Lokpal e.g. a preliminary inquiry. Firstly, the Committee does not read this to mean automatic monetary or fiscal assistance or by way of lawyers' fees for the accused. Secondly, the Committee believes that this was intended to and recommended so that it should be explicitly clarified that it permits the use of, or appearance by a legal practitioner, where the accused asks for one in Lokpal proceedings e.g. a preliminary inquiry. In any event, elsewhere in this Report we have recommended deletion of the concept of hearing an accused during preliminary inquiry. If that is done away with, no issue would arise of legal practitioners appearing. In any case, they are entitled to appear in all later stages including trial. Finally, it should be clarified that Clause 56 does not intend to abrogate or dilute or attenuate any other provision of law under where, by virtue of those provisions of law, the accused may be entitled to a monetary/fiscal legal aid or assistance. [Para 15.16]

#### The Lokpal Miscellany: Residual Issues

98. Although it is implicit in the Lokpal Bill, 2011, the Committee believes that to obviate all doubts and to prevent any jeopardy to ongoing trials, the proposed Lokpal should have a specific provision categorically applying Section 4(3) of the POCA to Lokpal proceedings, to enable the special judge or Lokpal judge to try any other offence, where connected, other than those covered by the Lokpal Act. [Para 16.3]
99. Clause 17(1) in most of its sub-clauses, including (b), (c), (d) and so on, specifically refers to a current/serving as also a former public servant (e.g. Minister, MP, bureaucrat, etc. both past and present). [Para 16.4]

100. The Committee has seen the substantive provisions of POCA and it appears to be clear that the POCA, which shall continue to be the substantive law applicable to Lokpal trials and proceedings, seeks to render culpable and punish only official acts done by public servants. Be that as it may, the Committee is of the opinion that a specific provision should be inserted in Clause 17 clarifying and specifying that reference to present and former public servants only means that they can be prosecuted whether in or not in office, but only for acts/omissions done while they were in office and not for allegedly fresh acts/omissions after ceasing to hold office. [Para 16.5]
101. The Committee finds that Clause 8 and especially Clause 8(1) of the Lokpal Bill, 2011 has struck the right balance and does not need any fundamental changes. It is intended to strengthen the independence and autonomy of the Lokpal by not making it easy to initiate complaints against Lokpal for the Lokpal's removal. The Committee, however, recommends an addition to Clause 8(1)(iii), to allay and obviate the apprehension expressed in some quarters, that the process to remove the Lokpal cannot be initiated, under the sub-clause, if the President (which essentially means the Central Government) refuses to refer the complaint against the Lokpal. The Committee feels that this apprehension would be adequately taken care of by providing in Clause 8(1)(iii) that where the President does not refer a citizen's complaint against the Lokpal to the Apex Court, the President (*i.e.* the Central Government) shall be obliged to record reasons for the same and to furnish those reasons to the complainant within a maximum period of 3 months from the date of receipt of the complaint. The Committee feels that this process, including the transparency involved in recording these reasons and the attendant judicial review available to the complainant to challenge such reason/refusal, contains an adequate check and balance on this subject. [Para 16.6]
102. Additionally, the Committee recommends that Clause 8(1)(iv) be added in the existing Lokpal Bill, 2011 to provide, specifically, that anyone can directly approach the apex court in respect of a complaint against the Lokpal (institution or individual member) and that such complaint would go through the normal initial hearing and filter as a preliminary matter before the normal bench strength as prescribed by the Supreme Court Rules but that, if the matter is admitted and put for final hearing, the same shall be heard by an apex court bench of not less than

5 members. It is but obvious that other consequential changes will have to be made in the whole of Section 8 to reflect the addition of the aforesaid Clause 8(1)(iv). [Para 16.6A]

103. Clause 21 of the Lokpal Bill, 2011 needs a re-look. In its present form, it appears to empower the Lokpal Chairperson to intervene and transfer any pending case from one Bench to another, which appears to include the power of transfer even while a case is under consideration of the Lokpal bench on the merits. This un-circumscribed power would seriously impair the objectivity and autonomy of Lokpal Benches, especially at the stage of preliminary inquiry which is a crucial filtering mechanism. It also appears to be inconsistent with normal principles of jurisprudence which seriously frown upon interference even by the Chief Justice in a pending judicial matter before another Bench. The way out would be to delete this provision and to provide for transfer only in exceptional cases where, firstly, strong credible allegations are brought to the forefront in respect of the functioning of any particular Lokpal Bench and secondly, the decision to transfer is taken by not only the entire Lokpal institution sitting together, but also including the Members of the Bench from which the matter is sought to be transferred. [Para 16.7]
104. As regards punishment under the Prevention of Corruption Act for a person convicted of different offences relating to corruption, it is noteworthy that the Prevention of Corruption Act prescribes, as it now stands, punishment not less than six months which may extend to five years for various offences involving public servant taking gratification in Sections 7, 8, 9, 10 and also Section 11 which deals with public servant obtaining valuable thing without consideration. Section 12 of POCA dealing with the abetment prescribes the same as six months to five years range of punishment. On the other hand, for offences of criminal misconduct by public servant, the prescribed punishment is not less than one year, extendable upto seven years in Section 13 while Section 14 prescribes punishment of not less than two years extendable to seven years. Section 15 prescribes the punishment for offences referred to in clause C or clause D of 5.13(i) which has no lower limit but a maximum of three years. Additionally, all these provisions empower the imposition of fine. [Para 16.8]
105. Diverse representations from diverse quarters have suggested an enhancement of punishment, with diverse prescriptions of

quantum of sentence, including life imprisonment. After deep consideration, the Committee finds it prudent to strike a balanced, reasonable middle ground. A sudden, dramatic and draconian enhancement is, in the opinion of the Committee, undesirable. The Committee cannot ignore the inherent fallibility of mankind and if fallibility is inherent in every system, draconian and extreme punishment, even in a few cases of wrongful conviction, would be undesirable. [Para 16.9]

106. Taking a holistic view, the Committee is of the opinion that:
- (a) In the cases of Sections 7, 8, 9 and the like, the range from six months to five years should be substituted by imprisonment not less than three years which may extend to not more than seven years.
  - (b) In the Sections 13 and 14 category of cases providing for a range to one year to seven years, the Committee suggests enhancement, in the case of Section 13 offences, to a minimum of four years and a maximum of ten years while for Section 14, the Committee suggests a minimum of five years and a maximum of ten years.
  - (c) For Section 12 which presently prescribes six months to five years, the aforesaid of minimum three and maximum of seven years shall apply whereas for Section 15 which presently prescribes zero to three years, the range should be very minimum from two to maximum five years.
  - (d) Additionally, wherever applicable, there should be a general provision, cutting across Sections, creating a power of full confiscation of assets, proceeds, receipts and benefits, by whatever name called, arising from corruption by the accused. This provision should be properly drafted in a comprehensive manner to cover diverse situations of benefit in cash or kind, which, to the maximum extent possible, should fully be liable to confiscation. [Para 16.9A]
107. Although this issue has been discussed in other parts of this Report, for the sake of clarity, the Committee clarifies that there should be 3 specific and important time limits in the final enactment viz. firstly, the period of 30 days extendable once by a further period of 60 days for preliminary inquiry by the Lokpal; secondly, for completion of investigation by the investigating agency, within 6 months with one further extension of 3 months and thirdly, for completion of trials, within one year with one further extension of 6 months. [Para 16.10]

108. The Committee finds no basis for and no reason to retain the last proviso to Clause 17(1)(g) which appears to be overbroad and altogether exempts from the Lokpal Bill 2011 any entity, simply because it is constituted as a new religious entity or meant to be constituted as an entity for religious purposes. This proviso should be deleted, otherwise this exception would virtually swallow up the entire rule found in the earlier parts of Clause 17.  
[Para 16.11]
109. As regards Clause 51 of the Lokpal Bill 2011, the Committee recommends that the intent behind the Clause be made clear by way of an Explanation to be added to the effect that the Clause is not intended to provide any general exemption and that “good faith” referred to in Clause 52 shall have the same meaning as provided in Section 52 of the IPC.  
[Para 16.12]





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## MINUTES OF DISSENT

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**(i) MINUTES OF DISSENT SUBMITTED BY SHRI BALAVANT ALIAS BAL APTE, SHRI KIRTI AZAD, SHRI D.B. CHANDRE GOWDA, SHRI HARIN PATHAK, SHRI ARJUN RAM MEGHWAL AND SHRI MADHUSUDAN YADAV**

We are in receipt of the draft report discussed on 30/11/2011 on the Lokpal Bill. We have perused the report and there are several substantial questions on which we are unable to agree. We are, therefore, placing our opinion on those provisions of the report and the bill for your kind consideration. Since the Final Report has not been circulated, the contents of this note should be treated as our Final opinion.

**1. On inclusion of the Prime Minister in the Lokpal:**

The draft recommendation presented to the Standing Committee does not give a tentative opinion with regard to the inclusion of Prime Minister within the jurisdiction of the Lokpal. The Lokpal is a procedural law. The substantive laws, be it in the Indian Penal Code or Prevention of Corruption Act do not grant any immunity to the Prime Minister from the provisions of penal law. The Code of Criminal Procedure also does not grant any immunity to the Prime Minister from the provisions of the penal law. Thus the procedural law, such as the Lokpal Bill cannot grant to the Prime Minister or any individual immunity from punishment under the substantive penal laws. If such immunity is considered and granted the same may offend the mandate of equality contained in Article 14 of the Constitution. The Prime Minister must be held accountable before the Lokpal in relation to his conduct. We are not in agreement to the suggestion that if a Prime Minister is held guilty of corruption, the nation must continue to accept him and hold him accountable only after he ceases to be a Prime Minister. However, the discharged of the authority like the Prime Minister, in relation to sensitive function of national security and public order could be excluded from the provision of the Lokpal. This would be in consonance with the Bill presented by the NDA Government. No immunity would be available in relation to commercial transactions.

**2. Citizens' Charter and grievances redressal mechanism:**

The draft placed before the Standing Committee has recommended that a Grievances Redressal Mechanism should be provided for in order to ensure that neither red-tapism nor delay on account of collateral motives hurts the interest of the citizens. The draft has recommended that this mechanism should be placed in a separate framework and that the proposed

Lokpal should not be overloaded with the work of administering this mechanism. We are of the opinion that providing such mechanism is absolutely necessary. It should be ensured that such a mechanism is provided for in the present proposed law itself. The linkage between the Lokpal and the Grievance Redressal Mechanism could also be maintained by providing for an appeal against the competent authority dealing with orders and grievances arising out of the redressal mechanism. A second appeal on limited questions could be provided for the Lokpal itself. The enforceability of Citizens' Charter and Grievance Redressal Mechanism could thus converge under the authority of the Lokpal itself. This would also be in accordance with the Finance Minister's 'Sense of the House' statement that "This House agrees in principle on the Citizen's Charter, Lower Bureaucracy be brought under Lokpal through appropriate mechanism..."

**3. Members of the Parliament—vote, speech and conduct within the House:**

The conduct of MPs within the House can only be investigated by the House and the authorities constituted in the House itself. Each House is the master of its own discipline and privileges. Thus, it would not be appropriate to allow an outside agency, including the Lokpal to investigate the conduct of the MPs within the House itself. To this extent, we are in agreement with the recommendations of the Standing Committee. However, we are of the considered opinion that the conduct of MPs which takes place physically and geographically outside the House and amounts to an actionable conduct can be investigated as per the Law of the land. There can be no immunity provided to the MPs not to have their conduct outside the House investigated.

**4. Provision of State Lokayuktas in this Act:**

It needs to be carefully examined whether dealing with Services of the State could be provided for by a Central Legislation. List II Entry 41 deals with the state public services. It is a subject in the State List. If Constitutionally permitted, we may in this regard have a law under Article 253 or pass an enabling provision under Article 252 in order to provide uniformity throughout the country. In either case this could be done by a Central Legislation.

**5. Lower Bureaucracy:**

The earlier draft has suggested that Gr. C&D staff should be kept out of the ambit of the Lokpal. It has been agreed that all Public servants holding civil post in Government should be covered under the Bill. This is in consonance with our view and the 'sense of the House' conveyed by the Finance Minister.

**6. False and Frivolous complaints:**

The Committee has rightly disagreed with the draft bill which provide for exemplary punishment of five years and/or fine of Rs.5 lakhs in the event of a false and frivolous complaint. The Committee has directed that the imprisonment for false and frivolous complaints should not exceed six months. The fine should not exceed Rs. 25,000/-. The authority to prosecute for a false and frivolous complaint should be with the Lokpal. We are of the opinion that we cannot deter away people from filing complaints because of fear of a very high punishment/penalty. Proportionality has to be maintained between the crime and the punishment proposed to be imposed. Thus a punishment of a period not exceeding 30 days and/or false fine of Rs. 25,000/- should be enough to deal with the false and frivolous complaint.

**7. Judiciary:**

The Committee has rightly suggested that Higher Judiciary should be kept out of the provisions of the Lokpal. The manner in which the Lokpal has to be constituted cannot be an appropriate mechanism to deal with the Judiciary. We agree with the suggestion contained with the draft that a National Judicial Commission be appointed in order to deal with the complaints of misdemeanor against Judges. We further feel that a National Judicial Commission should be the competent authority to deal with matters of both judicial appointments and complaints. There should be a National Judicial Commission, which should comprise of the following:

1. The Chief Justice of India.
2. Two senior-most Judges of the Supreme Court.
3. Minister of Law and Justice of Union Council of Ministers.
4. Leader of Opposition, in the House of the People.
5. Two eminent citizens nominated by a collegium comprising of the Prime Minister, the Chief Justice of India and the Leader of the Opposition in the House of the People.
6. The Chief Justice of the High Court to be a member whenever appointments or complaints in relation to that High Court are to be investigated.

This would require a Constitutional Amendment. The Amendment in this regard can be introduced in Parliament in this session.

**8. The Lokpal—Search and Selection:**

We have considered the appointment mechanism suggested by the Committee. We are unable to agree with the appointment mechanism

suggested in the draft report. In our view, the mechanism should comprise of a Selection Committee consisting of the:

1. Prime Minister of India.
2. A Minister in the Union Council of Ministers, nominated by the PM.
3. Leader of the Opposition, in the House of the People.
4. Leader of the Opposition, in the Council of States.
5. Two Judges of the Supreme Court nominated by the CJI in consultation with the Collegium of five (5) Senior Judges of the Supreme Court.
6. Central Vigilance Commissioner.

We are unable to agree to the suggestion made in the draft report that it is not mandatory to have a Search Committee. It is extremely important that a Search Committee should be appointed to undertake the spadework in selecting the very best of people to be appointed to Lokpal institution.

There should be at least five members of the Search Committee. It should be headed by an eminent person in order to ensure that the best names are recommended by the Search Committee for the consideration of the Selection Committee.

The Search Committee shall consist of persons possessing an unblemished record. These persons could be persons who have been Chief Justice of India, Comptroller and Auditor General of India, Chief Election Commissioner, Chief Vigilance Commissioner, Cabinet Secretary, Judges of the Supreme Court, Chief Justice of the High Court etc. We would further suggest that the process of short listing of the Lokpal Institution must be a transparent process inviting nominations and publishing the details about the proposed names on the internet. While constituting the Search Committee, due regard shall be given to ensure that historically and socially marginalized sections are represented.

#### **9. The Trinity of Lokpal, CVC and CBI—In search of an Equilibrium:**

The CBI is an important limb of the anti-corruption set-up in the Government for investigating and punishing corrupt public servants. The CBI has experience of decades and has evolved as an institution. It has expertise in the matter of gathering evidence in relation to crimes and in investigating the crime as also in prosecuting the criminals. We believe that in recent years the CBI has seriously compromised itself as an institution

because it is under the control of the Central Government. We are, therefore, of the opinion that for efficient handling of the anti-corruption mechanism and maintenance of independent and autonomous character of the CBI as an institution, it is essential that the following steps are to be taken:

- (i) The appointment of the CBI Director is made by the Government of India. This appointment is made under the Delhi Special Police Establishment Act. The independence and autonomous character of the institution depends directly on the personality of the Director. The appointment of the Director of the CBI will have to be taken out of the purview of the Central Government of the day. Thus the appointment of the Director of CBI should be made by a Statutory Collegium which is created by amending the said Act under which the CBI functions. The said collegium should comprise of the Prime Minister, Leader of the Opposition in the House of the People and *the Chairperson, Lokpal*. It shall be the responsibility of this Collegium to ensure that the best available police officials are appointed at the senior level in the CBI.
- (ii) The Department of Personnel will only be an administrative interface of the Central Government dealing with the autonomous CBI. It shall be responsible for answering questions in the Parliament.
- (iii) In order to ensure that the CBI functions professionally and independently, an additional safeguard should be provided by delinking the investigating wing of the CBI from the prosecuting wing of the CBI. The Director of Prosecution of the CBI should be an independent official and not merely an officer on deputation from the Ministry of Law as at present in the practice. The appointment of the Director of the Prosecution should be made by the same Collegium, which will appoint the Director of the CBI. The Director of the Prosecution should be an officer of the rank of a Special Director in the CBI. The Director of Prosecution shall appoint the CBI Prosecutors who shall take instructions from him. They shall be entitled to independently appraise the evidence and not follow blindly the instructions from the investigative wing or the CBI.
- (iv) The CBI shall report the progress of the cases referred to it by the Lokpal. The CBI must function independently of Central Government as an independent and autonomous agency. The Lokpal shall be entitled to conduct preliminary inquiries and if



it is of the opinion that a corrupt public servant needs to be investigated further, it shall refer the matter to the CBI who shall investigate the same in accordance with the provisions of Code of Criminal Procedures. For the purposes of conducting preliminary enquiries, the Lokpal shall be entitled to create a staff competent to discharge this job.

- (v) The Lokpal should be entitled to perform the function in relation to the CBI which were earlier being performed under Section 8(1)(a) & 8(1)(b) of 'The Central Vigilance Commission Act, 2003' by the CVC.

#### **10. Constitutional Status:**

We are in agreement with the recommendations contained with the draft that a constitutional provision could be enacted by amendment providing for the institution of the Lokpal. However, the details of the Lokpal legislation should be provided for a separate law.

#### **11. NGOs, private companies and media organizations:**

We have gone through the draft, which has been prepared. The draft is confusing. We are of the opinion that the authority of the Lokpal should extend to investigating public servants/office bearers and organizations connected with the Government or funded by the Government. It is essential that the jurisdiction of the Lokpal should be extended to such organizations, which receives sizeable funding: from government, and whose limit is a cap fixed by law *i.e.* Rs. 10 lakhs per annum and are discharging functions of a public character. Any private organization, which does not receive any funding from the Government, cannot be included within the ambit of the Lokpal. For the functioning of the healthy democracy, we cannot afford to have intrusive institutions.

#### **12. Whistleblowers legislation:**

We believe that the whistleblowers protection legislation should simultaneously be enacted as a part of the Lokpal legislation and the Lokpal should ensure the protection of the whistleblowers.

#### **13. Phone tapping:**

We are clearly of the opinion that the Standing Committee's recommendation with regard to the present *status quo* being maintained in the matter of tapping of telecommunications should be maintained.

#### **14. Removal of Lokpal:**

We are clearly of the opinion that the proposal that only the Government can move for the removal of Lokpal for his conduct is not appropriate. If a member of the Lokpal is biased in favour of the

Government, obviously the Government will not seek his removal. Any 'person aggrieved' should be entitled to move the Supreme Court for removal of the Lokpal. The Supreme Court should have a two-phased procedure. A frivolous complaint against the Lokpal should be dismissed at the initial stage itself. Heavy penalties can also be imposed, if frivolous petitions are filed. If the Supreme Court decides to hear the complaint against a member of the Lokpal then the detailed procedure of enquiry should be specified in the proposed bill. The power to recommend suspension of a member of the Lokpal pending enquiry should be with the Supreme Court who will forward the same to the Hon'ble President.

**15. Budget of Lokpal:**

A separate budget head in the Union Budget should be authorized and approved by the Parliament to clear the budget of the Lokpal as an institution. Rules can be framed, laying down detailed guidelines as to the manner in which the members of the Lokpal are entitled to spend the budget.

**16. Article 311 to be followed:**

Once the Lokpal holds a public servant guilty and liable for disciplinary action, the requirements of Article 311 of the Constitution will have to be complied with. The provisions of Article 311 require that it is only the appointing authority, which can remove a public servant. Needless to say that the appointing authority should give 'due regard' to the recommendations of the Lokpal. In case, it chooses to disagree with the recommendations, it will have to give reasons in writing.

**17. Complaints against the Lokpal Staff:**

A statutory Tribunal should be created by the Bill, which should hear the complaints against the members of the administrative staffs of the Lokpal. Since, the senior members can delegate the functions, which may be prescribed by rules, it is important that this complaint redressal mechanism should be completely independent and autonomous.

**18. Quantum of Punishment:**

The cancer of corruption has spread very deeply and it has entered into the vitals of the system. Therefore, the quantum of punishment prescribed for the guilty should be such that, it acts as a deterrent. There should be time limit prescribed for the Lokpal, *i.e.* six months after initiating

an enquiry against the delinquent public servant. Similarly, the Act must provide for creation of special benches of High Court, which shall in time-bound manner endeavor to dispose off the appeals against the Lokpal.

Thanking you.

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|---|---|
| 1.       Sd/-<br>(KIRTI AZAD)<br>Member, Lok Sabha.                       | 2.       Sd/-<br>(HARIN PATHAK)<br>Member, Lok Sabha.       |
| 3.       Sd/-<br>(BALAVANT <i>alias</i> BAL APTE)<br>Member, Rajya Sabha. | 4.       Sd/-<br>(ARJUN RAM MEGHWAL)<br>Member, Lok Sabha.  |
| 5.       Sd/-<br>(MADHUSUDAN YADAV)<br>Member, Lok Sabha.                 | 6.       Sd/-<br>(D.B. CHANDRE GOWDA)<br>Member, Lok Sabha. |

**(ii) MINUTES OF DISSENT SUBMITTED BY SHRI RAM JETHMALANI**

I have gone through the draft report on the Lokpal Bill, hereafter called the Report. I however find that I am unable to agree with some recommendations made in the report. I, therefore, submit the following note of dissent:

**BRINGING THE CBI UNDER THE LOKPAL**

This is my major point of concern and dissent. One has only to recall the glorious history of the CBI and its present state of degradation. It owes its horizon to corruption offences committed during the Second World War. It was intended to bring the offenders to book. For quite sometime its record was excellent. It enjoyed the confidence of the Courts as well as the people. It is a great misfortune for the country that today it is no better if not worse than any other police organisation or investigating agency.

I must start with what a three Judge Bench of the Supreme Court of India had to say in a judgment *Centre for Public Interest Litigation & Anr. Vs. Union of India and others* Paragraph 28. It is reproduced here under in full:

“28. While CBI had to explain this averment made in para 18 of the writ petition, if really it wanted to convey to the Court as to the non-availability of Part II file to comment on the above allegation, one would have expected CBI to come forward with a simple explanation that it is unable to respond to the above allegation in view of the fact that the said file was not traceable instead of averring in the affidavit that no such file is in existence. The use of the words “no such file” clearly indicates that what CBI intended to convey to the Court in the first affidavit was to tell the Court that such file never existed and it is only when the reply to the said affidavit was filed by the writ petitioners with a view to get over the earlier statement, the second affidavit was filed by Mr. Raghuvanshi interpreting the word “existence” to mean “not traceable”. In the circumstances mentioned hereinabove, we are unable to accept this explanation of CBI and are constrained to observe that the statement made in the first affidavit as to the existence of Part II file can aptly be described as *suggestio falsi* and *suppressio veri*. That apart, the explanation given in the second affidavit of CBI also discloses a sad state of affairs prevailing in the organisation. In that affidavit, CBI

has stated before the Court that Part II file with which the Court was concerned, was destroyed unauthorisedly with an ulterior motive by none other than an official of CBI in collusion with a senior officer of the same organisation which fact, if true, reflects very poorly on the integrity of CBI. We note herein with concern that courts including this Court have very often relied on this organisation for assistance by conducting special investigations. This reliance of the courts on CBI is based on the confidence that the courts have reposed in it and the instances like the one with which we are now confronted, are likely to shake our confidence in this organisation. Therefore, we feel it is high time that this organisation puts its house in order before it is too late”.

The Supreme Court had to say this even though four years earlier in another case *Costao Fernandez Vs. State at the Instance of SSP. CBI Bombay* in (1996)7 SCC 516 paragraph 7 and 8 held—

“7. The CBI says the injuries were self-inflicted. The CBI has taken this stand because, according to it, the appellant had an ulterior motive in killing the deceased, which was to share reward relating to recovery of smuggled gold worth Rs. 28 lakhs. The reward had, however, become due in 1984 and the present occurrence had taken place on 16.05.1991. How far-fetched is the imputed motive? The High Court itself has disbelieved this and has really criticized the CBI for suggesting the same. This is, however not all. As the further case of the CBI is that no records were placed before it to show that the appellant had prior information of smuggling, following which the smuggler was chased. Another material used against the appellant is his so-called abscondence.

8. None of the aforesaid has legs to stand, as would appear from what is being stated later. A biased investigation of the type at hand from the CBI has indeed pained us, because people of this country have still high hopes from it, which would get dashed if, bias creeps in its investigation. But then the deceased was no ordinary mortal, as he was a brother of the one time Chief Minister of Goa; and the occurrence had taken place in Goa.”

These two paragraphs show how it is instrument of serious miscarriage of Justice.

I am not exaggerating but I believe that I have tremendous experience of the criminal side of our justice system and the way CBI has become a shameless instrument of the evil political design of the ruling government. My experience convinces me that the CBI has got to be rescued from this

infamy and the nation saved from the grave consequences of its misdeeds. The present system of supervision has become hopelessly inadequate and much more effective one has to be imposed upon it.

I could quote instances a galore. The first instance that comes to my mind is Bofors investigation and the role of Ottavio Quattrocchi. When investigation outside India revealed that Mr. Quattrocchi had received a large amount of money in a foreign bank because he had assured the Swedish Company that the deal will go through by a designated date and it did. An Ex-Director of the CBI for whom I have great respect immediately informed the then director of the CBI that now that Quattrocchi's name has appeared and there is reason to believe that he is a conspirator, immediate steps should be taken to arrest him. This was not done. The written request and advice of the earlier CBI Director is on record and is available. Quattrocchi was not only able to fly out of the country but his wife, whom he left behind, sold out all the Indian assets of the family and without challenge or hindrance quietly walked out of the country, thereafter a pretence of effort to extradite him from abroad was enacted but without any genuine intension of securing his extradition.

Kindly enquire how the Malaysian Court refused the request for extradition because the CBI did not carry out the simple request of the Judge to supply him with a summary of implicating evidence against Quattrocchi. Arrogantly and almost in language which in India would be contempt they told the Judge that they have filed a large number of volumes of evidence and the Judge could find the evidence for himself clearly inviting a dismissal. Crores have been spent on this pretended performance first in Malaysia and then elsewhere.

As hereinafter explained the appointment of the Director and Officers of equivalent status should be totally immunized from government's interference or influence. In the following pages you will find other instances of this unpardonable misdemeanor.

The entire reason for the Lokpal is to have an institution independent of the government for investigating corruption involving the government so as to avoid the conflicts of interest involved in a government controlled agency investigating corruption in the government. The Report proposes that the CBI be the main anti-corruption agency and that it be left in the administrative control of the Government, with only some vague and weak supervisory jurisdiction of the Lokpal in the same manner in which the CVC currently has that supervisory jurisdiction. This would be totally unsatisfactory and would leave the CBI under the control of the Government through its power of postings, transfers, promotions and disciplinary control. Using these powers the Governments of the day have been misusing the

CBI for their own political purposes despite the supervisory jurisdiction of the CVC.

I have equally strong views on including the Citizens' Charter and Public Grievance Redressal Mechanism in the text of the Bill. Similarly the dissent of some Members of Parliament on Vote, Speech and Conduct within House has my approve. I believe that some members have put in their dissent and I endorse it.

I do wish to recall my great appreciation of the work that you have accomplished as a Chairman of this Committee. I believe the Committee has unanimously recorded their admiration.

My comments on the CBI do not retract from the presence in their force of some honest officers but they don't seem to prevail.

I hope this reaches you within time.

Sd/-  
(SHRI RAM JETHMALANI)  
Member, Rajya Sabha.

**(iii) MINUTES OF DISSENT SUBMITTED BY SHRI RAM VILAS PASWAN**

(i) It may be recalled that the glass of juice that Anna Hazare drank to end his fast the Ramlila maidan was offered by a little Dalit girl and a Muslim girl. This symbolic act was a clear acknowledgement that they presented groups that are among the foremost victims of a social order which is still far from equal. It is a stark reality that even 60 odd years after Independence, the SC & STs, women, minorities and OBCs continue to suffer from discrimination in almost every walk of life.

(ii) It may be recalled on several occasions the subject matter came up for discussion in the Standing Committee as also when Team Anna appeared before the committee. From the deliberations one got the general impression that reservation in Lokpal and Search Committee would be given for this groups. But in the last meeting position was change and therefore I gave my note dissent on the subject.

(iii) I strongly object to the ambivalent clause in the Report that insinuates that reservation of positions in the Lokpal and Search Committee will be optional and not mandatory. I wish to emphasize that the Search Committee and Lokpal must have reservation for SC/ST, OBCs, Minorities and Women to the extent of 50% of the total so that it represents and inclusive secular polity. Anything short of this basic requirement is unacceptable to me.

(iv) I have serious reservations regarding the recommendations of the Standing Committee on the Lokpal Bill.

(v) Most importantly, I strongly object to the ambivalent clause in the Report that insinuates that reservation of positions in the Lokpal is desirable but optional. I wish to emphasize that the Lokpal must necessarily have representation of women, SCs & STs, OBCs and minorities in the apex body to the extent of 50% of the total so that it represents our inclusive secular polity. Anything short of this basic requirement is unacceptable to me and my party.

(vi) I have grave reservations regarding the Committee's recommendation to include Group 'A' and 'B' officers (totaling about one million), corporates, private NGOs and media within the Lokpal ambit, as this mandate when combined with the inquiry, investigation and prosecution procedures spelt out in paras 49 to 81, will not only spawn a massive Lokpal bureaucracy that is another Frankenstein monster similar to that envisaged in the Jan Lokpal Bill but will destroy all existing institutions



such as the CBI, the CVC, the internal vigilance apparatus in all Government organizations, which have been painstakingly built up over the decades. Let me explain my reasons for this seemingly harsh judgement.

(vii) The Standing Committee has recommended that the preliminary enquiry will be done by the Lokpal for which it will have a “sufficiently large internal enquiry division” and it has also been mandated that no complaint except a trap case can be closed without inquiry. Is the Committee aware that the CVC which deals only with Group ‘A’ officers of Central Government and PSUs was required to give its advice on 5327 cases involving Group ‘A’ officers in 2010? By adding Group ‘B’, NGOs, media, corporates and politicians, the Lokpal will have to deal with 30,000 to 40,000 cases and possibly more, every year covering the length and breadth of the country. The mammoth task of conducting preliminary enquiries into all these cases would require thousands of enquiry officials and their paraphernalia in various parts of the country. Presently, the preliminary enquiry in most cases is done by the internal vigilance of each organization. On top of this, the Committee also envisages a separate prosecution division under the Lokpal.

(viii) The Committee has recommended that in all cases, the investigation will be done by the CBI which presently deals only with major cases of corruption. By entrusting all vigilance cases of Lokpal covered employees to the CBI for investigation, we are ensuring that the CBI is unable to handle even a small fraction of the workload with the existing strength. The CBI will certainly insist on a massive increase in its manpower, while at the same time, it will be frittering away much of its energies on relatively petty cases.

(ix) The Committee has proposed that after the investigation is conducted by the CBI, the case will be referred back to the Lokpal which will then give the public servant an opportunity to be heard. What this entails is that every charged employee from any part of the country will have to appear before the Lokpal Board before the chargesheet is issued. This is a patently absurd and unworkable suggestion.

(x) My greatest worry is the adverse impact that an overarching Lokpal will have on all Government institutions. With disciplinary powers largely in the hands of the Lokpal, thereby emasculating the management of the different offices, there is bound to be organizational atrophy and paralysis.

(xi) I have highlighted the main issues on which I differ with the Committee’s recommendations. May I also point out that my self and the Secretary General of my Party have sent four letters to the Committee highlighting my party’s views on the Jan Lokpal Bill, the Government draft

and what my party envisages should be the structure and powers of the Lokpal. For some reasons, the content of the letters have not been mentioned in the Report. For ready reference, I am enclosing another copy.

Sd/-  
(RAM VILAS PASWAN)

**(iv) MINUTES OF DISSENT SUBMITTED BY SHRI SHAILENDRA KUMAR**

I have following dissensions over the recommendations of Lokpal Committee. These should also be included in the recommendations and report.

**Citizens' Charter and Public Grievance Redressal Mechanism**

According to the para 1.8 of the draft report of the Standing Committee, at the end of the discussions held on 27 August, 2011 over the issue of Lokpal, the Minister of Finance Shri Pranab Mukherjee had given the following statement in the House:

*"This House agrees in principle on the Citizens' Charter, Lower Bureaucracy to be brought under Lokpal through appropriate mechanism and Establishment of Lok Ayuktas in the States. I will request you to transmit the proceedings to the Department-related Standing Committee for its perusal while formulating its recommendations for a Lokpal Bill."*

From this it is clear that it was the desire of the House to bring the issue of Citizens' Charter within the ambit of Lokpal. And if it is not done then it would appear that the Standing Committee is violating the proposal of the House. Hence, it is my suggestion that the issue of Citizens' Charter should also be included in Lokpal Bill by adding another chapter to the Report. I am annexing a draft of this Chapter along with this note (Annexure-'A').

The mechanism suggested in the Annexure would be completely decentralized in its nature and this would facilitate public in getting their grievances addressed at the block or district level itself. There will be no direct appeal to the members of the Lokpal in this mechanism. This mechanism would also negate the apprehension that Lokpal would be overburdened by the complaints and thus it would be rendered defunct.

On the contrary if a penalty is imposed on the head of a department, he would immediately ensure that the Citizens' Charter is not violated and such grievances are redressed immediately. After some time people would not be required to file a complaint and the number of complaints would instead start decreasing.

**Group 'C' Employees**

During a discussion in the House on 27 August, "The Sense of the House" included bring the corruption of lower level officials under the ambit of Lokpal, whether this Committee is not once again violating the proposal of the House by deviating from this?

In most of the corruption cases officers and employees from top to bottom rung of the bureaucracy are involved. In such a situation, how can we claim to establish an effective mechanism against corruption by creating separate investigation agencies for higher and lower bureaucracy? What would be the effect and utility of Lokpal if 95 per cent Government employees are not included within the ambit of this institution? General Public have to deal with these Government employees in their day to day life. Police Inspector, Ration Inspector, School Inspector, Sales Tax Inspector, Tehsildar, Patwari, corrupt Junior Engineer of NAREGA etc. are the officers whose act of corruption victimises each and every citizen of the country. Allowing them to continue their corrupt practices or to handover them to any weak institution would prove to be fatal for anti-corruption mechanism. Therefore, I strongly demand to bring the group 'C' employees also under the ambit of Lokpal.

It is said that by bringing 60 lakh employees within the ambit of Lokpal the volume of work of this institution would increase to such an extent that the Lokpal would not be able to handle it. Hence a separate agency would be entrusted the corruption related issues of group 'C' and 'D' employees. I wonder that if a separate agency can handle 57 lakh employees, why not the Lokpal itself.

**The Prime Minister and Lokpal**

I agree with the point in view of the sensitivity of the office of the Prime Minister, he shall be kept out of the ambit of the Lokpal. However, except the issues related to the national security, nuclear, defence and foreign policy, the office of the Prime Minister may be brought within the ambit of the Lokpal.

**Selection of Members of Lokpal**

I do not agree with the suggestion made by the Standing Committee in respect of selection committee. This selection committee consists of 5 members. Out of these 5 members, Prime Minister and the Speaker, Lok Sabha are from the Ruling Party. In additions to this the Leader of the Opposition is also a member of the selection committee. In this perspective, a question arises that when accusations of corruption against these persons would come within the ambit of Lokpal, would they ever like to select a strong & effective Lokpal?

Another member in the Selection Committee, would be jointly suggested by the CVC, CAG and the Chairman, Union Public Service Commission (UPSC). In my opinion, these three persons could never reach a consensus on a common name. There is every possibility that some names would be suggested to them by the Government and they would reach a consensus on one of the names. Therefore, it is my suggestion that Selection Committee should consist of the following members:-

1. The Prime Minister
2. The Leader of Opposition in the Lok Sabha
- 3&4. One Judge of the Supreme Court and one Chief Justice of one of the High Courts. (Their names' selection would be done by a full bench of the Supreme Court)
5. Chief Vigilance Commissioner
6. Chief Election Commissioner
7. Comptroller and Auditor General of India

#### **Search Committee**

As all members of the selection committee would be very important persons and they would also be very busy. It is, therefore, necessary that a joint Search Committee should be formed by including some retired and distinguished citizens. The Search Committee should invite public to propose some of the names and then submit the names to Selection Committee after shortlisting for their consideration.

Search Committee should consist of ten members out of these five members should have retired as Chief Justice, Chief Election Commissioner, Comptroller and Auditor General of India and Chief Vigilance Commissioner (person included in the Search Committee should be unblemished, independent of any political outfit and should not be holding any public office after retirement). While these five names of the members for Search Committee would be determined by the Selection Committee, these five members together would choose another five members from the civil society. The five members of civil society would be the distinguished persons from Scheduled Caste, Scheduled Tribes, Other Backward Castes, Minorities and Women. Thus, Selection Committee would consist of ten members out of these 5 members would be retired persons and 5 from the civil society. It is essential that 50 per cent members from these must come from SC, ST, OBCs, Minorities and Women.

Selection Committee and the Search Committee would take note of that fact that while selecting the Lokpal 50% of the members must have representation from all the sections of the society like SC, ST, OBCs, Minorities and Women.

**Process of shortlisting the names for Search Committee**

Draft Report of the Standing Committee is silent about the selection process. The selection process must be completed in transparent manner with public participation and such process must be categorically mentioned in the Bill itself. Our experience tells us that due to non-availability of categorical selection process the Government of the day have been making arbitrary appointments as head of the institutions. In this process competent persons close to and faithful to some political families get appointed to such institutions and thus these institutions deviate from their objectives. It is, therefore, my suggestion that following selection process may be incorporated in the Statute:

1. The Search Committee shall invite suitable nomination for the office of Chairman and members of Lokpal from distinguished persons or groups of various sections.
2. Only persons with integrity and with vast experience (particularly against corruption) in public service could be nominated for the office of the Chairman and members of the Lokpal.
3. While recommending the nomination, it would be essential to provide the basis of eligibility of the candidate for that office, his contribution against corruption and details of any type of accusations labeled against him under any law as also any other details that Search Committee may prescribe.
4. The Search Committee would collect maximum details about the background of these candidates and their achievements through other mediums.
5. After receiving the details of nominated candidates, it would be put on website in order to invite reactions of the public regarding their eligibility and ineligibility.
6. Keeping in view above information, the Search Committee would prepare a unanimous list of shortlisted probable candidates for the office of the Chairman and member of Lokpal as far as possible. This list would contain thrice the names of the number of vacancies.
7. In case three or more members of the Search Committee express reservations about any of the candidates his name would not be included in the shortlist.
8. Before sending the list of shortlisted candidates to the Selection Committee, the details of such candidates would be put on the website and again the information from general public would be invited thereon.

9. Keeping in view all the information's, the Selection Committee would select the Chairman and members of Lokpal from amongst the candidates included in the shortlist. This selection as far as possible would be unanimous. If three or more members of the Selection Committee express reservations on the name of the candidate, selection of such candidates would not be considered.
10. After selecting eligible candidate for the office of chairman or members of the Lokpal the Selection Committee shall seek consent of selected candidates before forwarding it to the President for final approval.

#### **Lokpal and Central Bureau of Investigation (CBI)**

At present CBI is under the control of the Government and we all know now the Ruling Party in the Centre has been misusing the CBI for furthering their interest. Hence, there is an urgent need to bring the CBI out from the control of the Government.

Now the question arises that whether CBI should be made an autonomous body or be brought under the control of Lokpal. To make the CBI an autonomous body would mean to create an institution which will have all powers of the police but would not be accountable to anyone. Such an institution could become a threat to our democracy in future. Therefore, I am of the opinion that CBI may be brought under the control of Lokpal with following provisions:

- (a) Selection of Director, CBI should be made in the same manner as the members of Lokpal.
- (b) Director, CBI shall be under the Lokpal.
- (c) The Central Government would have no role to play or intervene in formulation of its policy or otherwise. All the work related to CBI shall be done by Lokpal.

#### **Process for removal of Members of Lokpal**

Who will be vested with the power of removal of Chairman or members of Lokpal. In case they have been found involved in corruption? Government wants that this power should exclusively vest in it. I am of the view that this power should be given to the public. Any person could file a complaint against the Chairman or the members of Lokpal the Chairman or the members of Lokpal in the Supreme Court. After hearing the complaint the Supreme Court should decide whether there is *prima facie* case or not? If there is a case, the Supreme Court shall direct removal of Chairman and member of the Lokpal after getting it investigated within three months.

In case of false and baseless complaints being made against the Chairman or members of Lokpal, the Supreme Court should have power to impose heavy fine or imprisonment so as to deter public from unnecessary wasting the time of the Supreme Court. The power to suspend the Chairman or members of Lokpal against whom the complaints are under consideration should be with the Supreme Court and not with the Government.

### **Autonomy and Independence of the Lokpal**

It is very important that Lokpal should be completely free from Government's control. It has been observed in the past that the Government is not comfortable with the institutions. It stops funding them adequately in order to cripple their functioning and render them ineffective. Here Lokpal would go into the depth of highest level corruption, it is obvious that it could buy the wrath of those in the Government in some of the cases.

Therefore, following provisions are necessary to make the Lokpal autonomous and independent:

1. In order to make Lokpal financially independent a certain percentage of Government of India's expenditure may be fixed for Lokpal which could be as little as 0.1% of the total expenditure of the Government. Lokpal could ask for budget for spending on any item within the limit of the said allocation which could be placed for approval of Parliament. Lokpal, instead of forwarding its budget to any Ministry, would place it directly before the Parliament. The Parliament shall directly approve its budget.

In order to prevent misuse of funds for personal benefits or private amenities, a provision could be made that the pay scales of members of Lokpal and employees would be at par with the pay scales of similarly placed officials in the Government of India. Lokpal would seek the approval from Parliament for any modifications therein.

2. Lokpal shall be completely independent of the Government for its administrative, economic and functional activities.
3. Lokpal would not be required to get any of its expenditure approved from any Ministry.
4. The appointment of the officers of Lokpal shall be made according to the rules made by the Board of Lokpal (consisting of the Chairman, all members of the Lokpal).



5. Lokpal shall appoint a Secretary whose hierarchy would be at par with the Secretary to the Government of India.
6. Lokpal shall be free to make appointments of judicial officer, advocates, senior advocates etc. for their various functions,
7. In the official Bill the power to formulate rules regarding working of Lokpal has been retained with the Government in respect of many issues. As a consequence the Government is getting overwhelming powers to interfere in the working of the Lokpal. Misusing these powers the Government could pose unwanted hindrance in the working of Lokpal. The Power to formulate rules in respect of working of Lokpal should vest exclusively with the Lokpal. The Government should have no power to formulate any rule regarding Lokpal without its concurrence.

#### **Removal of Government Employees from Service**

After the completion of an enquiry the case would be referred to the trial court. In addition to this, the officer shall be liable for departmental penalty. In the official Bill there is a provision for imposition of departmental penalty by the minister of the concerned Department on the employees working under him. It is not possible to abide by the same owing to the close relation between the minister and the employees working under him since they work in close coordination. There is every possibility of their being hands in gloves.

Therefore, it is my suggestion that the Lokpal Bench should offer the accused an opportunity to be heard in public and reach the decision for imposition of the departmental penalty. Lokpal would suggest the penalty to be imposed by the Appointing Authority of the accused officer. The Appointing Authority within a month of receipt of the report of the Lokpal shall take a decision on the action to be taken according to report within one month of the Report. In case the Appointing Authority prefers to disagree with the suggestions of the Lokpal, same would be intimated to the Lokpal after recording the reasons therefor. In case the Lokpal feels necessary he would move the Court against this.

A bench comprising of the Members of the Lokpal shall deal with the matters related to senior officers. But in order to deal with matters concerning Junior officers a bench comprising of appointed judicial officers may be constituted.

#### **Complaints against Employees of Lokpal**

According to the provisions of the draft of the official Lokpal Bill, the Lokpal itself would conduct inquiry into the complaints related to its own employees. This shall create a paradoxical situation.

I suggest that for this an independent complaint Authority may be constituted on the lines of suggestions given by the Hon'ble Supreme Court for police reforms. For this the following chapter would be required to be added to the official Lokpal Bill.

#### **Independent Complaint Authority**

A complaint authority shall be constituted at the national level and one or more such authorities shall be constituted at State level to hear the complaints against the officers and employees of Lokpal.

1. The procedure for selection to such authorities shall be same as for the members for the Lokpal and it shall be done by the same Committee.
2. The Chairperson of the authority shall be a retired judge of the High Court. In addition to this it shall also have two retired Government officers and two other distinguished citizens.
3. The complaint authority shall conduct open hearing of the complaints against the employees of the Lokpal and shall take a decision on every complaint within two months of its receipt. The employee of the Lokpal shall be given every opportunity to defend himself. If the accused employee is found guilty of misconduct, or unfair inquiry or corruption, then the Complaint Authority may order his removal, dismissal or reduction in rank.
4. The final order of the complaint authority shall be appealable to Supreme Court under Article 226 of the Constitution.
5. If the Authority feels it appropriate it can order suspension of the employee of the Lokpal.
6. The Lokpal shall also bear the expenses incurred on the business of the complaint Authority.
7. The business of the Authority shall be transacted in the benches as per rules made under this Act.

#### **Punishment in cases of Corruption**

In case a company or its employees is punished under Prevention of Corruption Act such company and all other companies associated with the promoters of such a company shall be barred from transacting business with Government in the future. If any employee is punished for corruption, he shall be removed from his office.

**Procedure for Time Bound Appeal**

At present it takes many years for a decision by the High Courts in corruption case, therefore, a provision for constitution of special division benches of the High Court for exclusive hearing of cases under Anti-Corruption law shall be inserted in the law. The law should provide that hearing of such appeal shall be concluded within a period of not more than six months.

The Judges of special courts (at trial level) hearing cases under Prevention of Corruption Act and the Judges of the Appellate Benches constituted in the High Courts for hearing these cases shall exclusively hear the cases of Prevention of Corruption Act.

**Incentives to Whistleblowers**

*Encouraging persons against corruption.*

The Lokpal shall put in place the appropriate incentive schemes to encourage Government employees and other citizens to raise their voice, against corruption, to provide information and encourage spirit of providing evidences about corruption and the amount of such incentive award shall not be more than 10% of the amount recorded either out of the loss suffered by the Government or expected loss to the Government.

**Protection to Whistleblowers**

Persons raising voice against corruption either by using Right to Information or otherwise are being targetted across the nation. They are being victimized and are also subject to attacks. There is apprehension that no sooner than some person lodges a complaint with Lokpal he would be subjected to harassment. In such a situation only the Lokpal will be better placed to provide security to the complainant since it would be well conversant with the case. But to tackle this problem, the Government is bringing a separate bill where the authority to provide security to the person raising voice against corruption will vest with the Central Vigilance Commission instead of the Lokpal. In the year 2003, the Supreme Court in the matter of Satyendra Dubey's Murder had appointed Central Vigilance Commission (CVC) as the nodal agency to provide professional and physical security to the whistleblowers. But during past 8 years despite receiving a huge number of applications the CVC has failed to provide security even to a single person. It is because that the CVC neither has the resources nor the authority to do so. During the last few years 13 right to information activist have been murdered and CVC has failed to provide security to any one of them. Even the Standing Committee of the Parliament stated in their point that the CVC is not the appropriate institution for this work.

I therefore, strongly opine that the responsibility of providing security to the whistleblowers should vest with Lokpal.

#### **Annexure ‘A’**

**Definition:** ‘Grievance’ means a claim made by any person who did not get a satisfactory solution as provided in Citizens’ Charter even after contacting the Head of a department.

#### **Chapter:**

1. After the enforcement of this law every public authority shall in a reasonable time, but within a maximum of one year, formulate a Citizens’ Charter.
2. Every Citizens’ Charter shall clearly mention the committed time frame and business being transacted by the officers responsible for completion of the work within given time frame.
3. If any public authority fails to formulate a Citizens’ Charter within an year of the enforcement of this law. The Lokpal after the deliberation with that public authority shall itself formulate the Citizens’ Charter and it would be binding upon the Public Authority.
4. Every public authority shall assess the necessary resources required to implement its Citizens’ Charter and the Government shall provide the said resources.
5. Every public authority, in its office where it may be, shall nominate one employee as the public grievance officer. In the event of violation of the Citizens’ Charter a citizen will be able to complain to such Public Grievance Officer.
6. The senior most officer in every office shall be nominated as the Public Grievance Officer.
7. It will be the duty of the Public Grievance Officer to receive complaints regarding violation of Citizens’ Charter and to address them not more than 30 days time.
8. In the event of a complaint, not being addressed within the stipulated time frame of 30 days by the Public Grievance Officer, a complaint can be lodged with the Head of the Department.
9. If the head of the department also fails to address the problem within 30 days, a complaint can be made to the Judicial Officer of the Lokpal.

10. Lokpal shall appoint at least one Judicial Officer in every district. This number may be more, depending upon the quantum of work in every district. Lokpal shall appoint Judicial Officers from amongst retired judges, retired Government officers or such kind of ordinary citizens.
11. If in the opinion of the Judicial Officer, the complaint has not been address in an appropriate matter, he shall penalize the responsible officer for the non-redressal of the grievance after giving the related parties an opportunity for hearing. The penalty for delay in grievance redressal shall not be more than 500 per day and 50,000 per officer. This amount shall be deducted from the salary of the accused officer for responsible. In such cases, if aggrieved person is socially or economically backward, the amount of penalty to be recovered from the responsible officer will be double.
12. In such cases the Judicial Officer of the Lokpal shall also order the concerned officer to address the complaint of the complainant in a given time frame.
13. Recurrence of similar nature of complaints received against an officer, it will be treated as corruption.
14. In the event of recurring complaints being received against an officer, the Judicial Officer shall recommend to the division bench of Lokpal for removal or reduction in the rank of the responsible officer for such complaints. The division bench after duly hearing the officer shall recommend such stringent action to the Government.
15. Every public authority shall review its Citizens' Charter once a year and shall bring appropriate changes. The review shall be done in the presence of the representative of the Lokpal and through public deliberations.
16. The Lokpal can order for incorporating changes in the Citizens' Charter of the public authority. But such changes have to be approved by the three member division bench of the Lokpal.
17. The concerned public authority shall implement the order of the Lokpal to make changes in the Citizens' Charter within one month of the receipt of such order.
18. The social audit of the work of every Judicial Officer shall be done once in every six months. In such social audit the Judicial

Officer shall present himself before the public, and present all facts related to his work, shall answer all question asked by the public and shall incorporate the suggestions of the public in his procedure. Such public hearing shall be done in the presence of the senior officer of the Lokpal.

19. No case shall be closed until the complaint of the complainant is addressed or it is rejected by the judicial officer.

Sd/-  
(SHRI SHAILENDRA KUMAR)  
Member, Lok Sabha

**(v) MINUTES OF DISSENT SUBMITTED BY SHRI PRASANTA KUMAR MAJUMDAR**

As has been widely acknowledged by overwhelming sections of our society, unabated rise of corruption and incidents of scams are attributable to the policy of economic liberalization being mindlessly pursued by the successive Governments since the early 1990's in the country without caring for the need of putting in place adequate regulatory measures and/or ensuring transparency.

Even the commitment for putting in place the mechanism of 'Ombudsman' (Lokpal) have witnessed wavering by Government of the day since 1967. The present Lokpal Bill, 2011, therefore, holds out yet again a substantial potential for the Parliament to make good for the lost opportunities by bringing in an effective Law; in the backdrop of the enormous dimension and magnitude of corruption witnessed by the society virtually since independence of our country, in its attempt to usher in a corruption-free system of governance. Since India is a country comprising vastly of poor population and knowing that corruption hurt them the hardest, by any attempt to combat the 'corruption' if made in a half-hearted manner we would not only be failing in our duty to protect the basic interest of the poor but would also be inviting the wrath of the affected citizens which would, in turn, weaken Indian democracy—the signs of which have off late started surfacing in various forms and substance.

Viewed in this perspective, the Draft of the 48th Report of the Standing Committee on the 'Lokpal Bill, 2011' has disappointed us as it has failed to hit at the root of corruption in our society in several critical areas where it has been seen to be prevailing mostly and, hence, I, on behalf of the Revolutionary Socialist Party, feel constrained to register dissent note on some of the Committee's recommendations as detailed hereunder:-

**Chapter 4: Citizens' Charter and Grievances Redressal Mechanism**

While the recommendation in para 4.16 is appreciated, I would like to reiterate the suggestion made in my letter to the Chairman dated 4.11.2011 that the proposed mechanism on the Citizens' Charter and Grievances Redressal should be given a constitutional status in order to prevent its casual amendments/manipulation.

**Chapter 5: Inclusion/Exclusion of Prime Minister**

While I take note that on the issue of inclusion or exclusion of the Prime Minister under the Lokpal Committee will be awaiting the outcome

of its deliberations scheduled for Nov. 30 & Dec. 01, 2011, I take this opportunity to reiterate our party stand that Prime Minister and PMO must be included within the ambit of the Lokpal because Prime Minister is not above the Law and nor is he immune to the Indian Penal Code or CrPC in the matter relating to the Prevention of Corruption Act, keeping him out of the Lokpal will not be justified. Notably, Prime Ministers in several other democracies of the world are included within the provision of Ombudsman.

#### **Chapter 8: Inclusion of Lower Bureaucracy under the Lokpal**

The common man (aam admi) experiences 'corruption' at the lower level of bureaucracy who are entrusted with the responsibility of delivery of public services, like issuing of Ration Card, Birth Certificate, ST/SC/OBC certificates, Driving Licence, Passports, Disbursement of Government subsidies and so on, on day to day basis. While the Lokpal Bill is restricted to the Group A cadre of bureaucracy, it is recommended in the Draft Report (Para 8.18A) for inclusion of Group B official within its ambit.

Since this will be a half-hearted attempt to combat corruption, we strongly demanded that Group C employees of Government/PSUs must be brought under the Lokpal in order to make the system corruption free.

#### **Chapter 10: Corruption in Judiciary**

While we confer with the suggestion contained in para 10.21(ii) of the Draft Report that subjecting Judiciary to the normal process of criminal prosecution or punishment through the normal courts of the land would not be conducive to the preservation of the judicial independence in the long run, we demand that a comprehensive provision for facilitating investigation/prosecution and punishment against corruption in the Judiciary in a non-complicated manner by an appropriate provision in the proposed Judicial Commission. We demand that this requirement must be fulfilled by providing appropriate mechanism within the Judicial Standards and Accountability Bill, 2010.

We would demand that the above Chapter-wise suggestions may be incorporated in the final Report of the Standing Committee failing which this letter be treated as a Note of Dissent from my side and be annexed to the Final Report of the Committee.

Sd/-  
(SHRI PRASANTA KUMAR MAJUMDAR)  
Member, Lok Sabha



**(vi) MINUTES OF DISSENT SUBMITTED BY SHRI PINAKI MISRA**

1. The Biju Janata Dal (BJD) is firmly of the opinion that the office of the Prime Minister must be included in the purview of the Lokpal Institution. The Constitution framers advisedly did not give the Prime Minister any immunity from prosecution, as they did to the office of the President of India. Similarly the Indian Parliament when enacting the Prevention of Corruption Act did not give the PM any immunity from prosecution. In fact this was again advisedly so since, unlike in the United States of America, in our system since independence the PM has very often held important economic portfolios such as defence, telecom etc., in which ministries there have been numerous scandals. Therefore there is no reason to grant the PM who in our Parliamentary System is “only first among equals”, any immunity from the Lokpal’s scrutiny, WHILE THE PM HOLDS OFFICE.

This can be subject to just exceptions of some sensitive subjects like Space, Atomic Energy, National Security etc. Also a further safeguard could be that the full strength of the Lokpal must decide on an investigation/prosecution of the P.M., with at least a 3/4th majority deciding in favour of such action.

2. The ‘A’ and ‘B’ category Government Servants in Central Services have already been included as per the Committee’s decision. As far as category ‘C’ is concerned a provision should be incorporated in the Bill that in the event in future the Lokpal believes that there are any “significant decision making level staff” escaping the rigors of scrutiny, and which is significantly impacting the anti corruption drive, the said ‘C’ category staff may also be included. That way the vast number of nearly 57 lakh ‘C’ level employees such as peons, stenographers and typists etc., who really have no important decision making roles, will not burden the Lokpal institution. The BJD believes the Lokpal at the Centre should be a body of prestigious and reputed persons, served by a honest and compact Secretariat and the discussion which was mooted in our Committee Meetings that a 35,000 strong Lokpal Secretariat could be created to monitor the approximately 60 lakh employees of ‘A’, ‘B’ & ‘C’ category will be extremely impractical due to multifarious reasons.

Further the lower bureaucracy in category ‘C’ in the States, who play an important role in the lives of the people on a daily basis such as SHOs and sub-inspectors of police, junior engineers of various departments such as PWD, irrigation and rural development, excise and civil supplies

staff, revenue field staff etc. can all be included under the purview of the Lokayuktas in the States, which would make the institution have a wide base at the bottom, becoming learner and more tightly knitted as it goes up, to tackle the big ticket corruption at the Central level, rather than making it “TOO TOP HEAVY”, which may result in collapse of the mechanism before it starts its important work.

3. The independence of the CBI is of paramount importance. The Supreme Court’s judgment in the Vineet Narain case envisaging the independence of the CBI has been followed in the breach by all Government since 1998. This is because the CBI has continued to be the favoured hatchet instrument of all ruling regimes, and therefore it has become ineffective in tackling corruption, and that has led to the present clamour for a popular anti corruption crusade leading up to the demand for a vigorous Lokpal by the public.

The decision of the Committee on 30th November to free the CBI Director’s appointment from the control of the ruling Government was a salutary step and the decision to reverse the same by majority vote at the meeting of 1st December is MOST REGRETTABLE and appears to have been motivated by vested interests at the Centre. The BJD believes that since the CBI is going to be the principal investigative arm of the Lokpal, it must be released from the right control of the Central Government as at present.

The post of Director CBI and all Special Directors must be selected by a Selection Committee comprising of the Prime Minister, Leader of the Opposition in the Lok Sabha and the Chairman, Lokpal. This would be an effective way to ensure that in future the ruling party at the Centre is not able to control the CBI through handpicked officers and pick and choose the anti corruption drive to suit their political convenience as has happened repeatedly in the past, leading to severe erosion in the credibility of the CBI and serious weakening of the entire anti corruption drive. Further it has been seen that the CBI has become the exclusive turf of the Indian Police Service, which is not desirable. It should be ensured in future that the CBI is staffed with officers from diverse services in order to make it a more representative body. Similarly the post of CVC and the Director of the Directorate of Prosecution (recommended elsewhere by our Committee), should also be released from Governmental controls and be selected by this above suggested independent mechanism. This would truly add to the robustness of the anti corruption movement.

4. The decision of the Committee to recommend separate constitutional provision for the creation of an independent Citizens’ Charter is a good step and the BJD hopes that an effective Citizens’ Charter and

Public Grievance Redress Mechanism will be put in place by the Government at the earliest. The BJD believes that the mechanism provided by the Government in the draft Citizen's Right to Grievance Redress Bill which has been put up on the website is inadequate and must be comprehensively changed and redrafted to make it more efficacious. Further since giving effect to this would entail substantial additional expenditure for poorer states like Odisha, the BJD hopes that the Central Government will support the states entirely in terms of the necessary financial outlay in that regard.

5. The BJD also believe that the present Whistleblower's Protection Bill that is pending in Parliament has serious lacunae and has given rise to acute misgivings amongst large sections of civil society. This must be withdrawn by the Government and a more comprehensive and effective Whistleblower's Protection Bill should be introduced at the earliest.

**Sd/-**  
**(SHRI PINAKI MISRA)**  
**Member, Lok Sabha**

**(vii) MINUTES OF DISSENT SUBMITTED BY ADV. A. SAMPATH**

The people of India are eagerly expecting Parliament to adopt a legislation that will constitute an effective Lokpal authority to curb corruption in high places and in the public sphere. With this in view, I am submitting this note of dissent as I strongly feel the incorporation of the steps mentioned below are essential for a strong and effective Lokpal body to be set up.

1. The Prime Minister should be brought under the purview of the Lokpal.

2. The Members of Parliament should be brought under the purview of the Lokpal. For Members of Parliament, Article 105 of the Constitution provides protection with regard to freedom of speech and voting. The real issue is that, this freedom and protection does not extend to acts of corruption by Members of Parliament. This should be done through an amendment to Article 105 of the Constitution of India on the lines recommended by the National Commission to review the working of the Constitution.

3. The powers of the Lokpal should be expanded to include not only Group A and Group B officers, but also officers belonging to Group C and Group D. The provisions for the State Lokayuktas should contain similar counterpart reference for purposes of coverage of all similar categories at the state level which are the same or equivalent to Group A, Group B, Group C and Group D for the Lokpal.

4. The constitution of the Search Committee should be made mandatory to prepare the panel of names for the consideration of the Selection Committee for the appointment of Chairperson and other members of the Lokpal.

5. The Lokpal should be provided with its own investigative mechanism with exclusive jurisdiction for the Prevention of Corruption Act.

6. The CBI Director should be selected by the Selection Committee constituted for selecting Chairperson and other members of the Lokpal.

7. The definition of “corruption” under the PCA 1988 is inadequate. Therefore the following needs to be added: “willfully giving any undue benefit to any person or obtaining any benefit from any public servant in violation of any laws or rules.”

8. Lokpal should be given powers to investigate cases which involve business entities and to recommend cancellation of licenses, contracts, lease or agreements if it was obtained by corrupt means. The Lokpal should also have the power to recommend blacklisting companies from getting Government contracts and licenses. Similarly, if the beneficiary of an offense is a business entity, the Lokpal should have the power to recommend concrete steps to recover the loss caused to the public exchequer.

Sd/-  
(ADV. A. SAMPATH)  
Member, Lok Sabha

**(viii) MINUTES OF DISSENT SUBMITTED BY SHRI S. SEMMALAI**

I strongly feel that the decision arrived at the Parliamentary Standing Committee on Personnel, Public Grievances, Law & Justice relating to the formation of Lokayukta as necessary instrument to contain corruption through a single enactment of Lokpal Bill by the Centre is an infringement of the State's power and intrusion of State autonomy. It would strike at the roots of the federal concept enshrined in the Constitution of India.

Art. 246 of the Constitution empowers the States to make law with respect to any of the matters enumerated in list-III of the Seventh Schedule of the Indian Constitution. By exercising the powers provided under Art. 253 of the Constitution has indicated in the draft report, the Centre attempts to over-ride the independence of the State and relegate the States to a subordinate position. This is quite unacceptable. The concept of federalism, as mandated by the Constitution does not allow the Centre to treat the States with over-riding powers and authority. Strong States are vital to a stable and strong Centre. The Constitution does not make any difference between Centre and States and the concurrent list enjoyed by the Centre and the States should be to serve the interest of both the limbs.

Hence, I strongly advocate that the States should be given freedom to constitute Lokayukta and the State Legislature should be allowed to decide when and in what manner such a body (Lokayukta) has to be created. The Centre's directions in this regard through a Lokpal Act as contemplated in the Committee's report is unwarranted and unjustifiable.

I place on record on behalf of my party AIADMK my dissenting view against the Committee's report in paragraph 16 of page No.143. I urge the Committee to reconsider its view taking into account the strong sentiments and views expressed by the Government of Tamil Nadu and other State Governments and withdraw the portion of the recommendation (Para 16 of page No. 143) contained in the Committee report.

Sd/-  
(SHRI S. SEMMALAI)  
Member, Lok Sabha

**(ix) MINUTES OF DISSENT BY KUMARI MEENAKSHI NATARAJAN, ADV.  
P.T. THOMAS AND SHRIMATI DEEPA DASMUNSHI**

We the undersigned member of the Department-related Parliamentary Standing Committee on Personnel, Public Grievances, Law & Justice propose that the 48th Report of the Committee on the Lokpal Bill, 2011 be amended as needed to reflect the following:

1. The CVC should be placed under the Lokpal and the State Vigilance Commissions should be under Lokayukta.
2. Investigations into corruption cases by the CBI shall be subject to the superintendence and control of the Lokpal.
3. Group C officers shall be included in the jurisdiction of the Lokpal in accordance with appropriate administrative arrangements.
4. The proposal that Article 311 of the Constitution of India be repealed or amended should be deleted from the Report.

**Sd/-  
(Meenakshi Natarajan)**

**Sd/-  
(P.T. Thomas)**

**Sd/-  
(Deepa Dasmunshi)**

**(x) MINUTES OF DISSENT SUBMITTED BY SHRI VIJAY BAHADUR SINGH**

The common man is being harassed and has to pay bribes at each steps whenever he contacts the Government officials. The quantum of bribe increase with the status of officials. But the common man in majority is harassed by lower officials also and have to grease their palm at the entry level who are mostly lower officials.

Since, in Lokayukta at the State level employees of Class I to IV have been covered there is no reason or logic of exempting similar Class C employees in the Central Government from the jurisdiction of Lokpal.

Majority of the poor man are harassed on day to day basis by Class C employees also in very large degrees. Therefore, it would fair, proper and also in public interest to cover Class C employees also under jurisdiction of Lokpal.

**Sd/-  
(Vijay Bahadur Singh)**





**APPENDIX-A**

AS INTRODUCED IN LOK SABHA

**Bill No. 39 of 2011**

## THE LOKPAL BILL, 2011

## ARRANGEMENTS OF CLAUSES

## CHAPTER I

## PRELIMINARY

## CLAUSES

1. Short title, extent and commencement.
2. Definitions.

## CHAPTER II

## ESTABLISHMENT OF LOKPAL

3. Establishment of Lokpal.
4. Appointment of Chairperson and Members and Selection Committee.
5. Filling up of vacancies of Chairperson and Members.
6. Term of office of Chairperson and Members.
7. Salary, allowances and other conditions of service of Chairperson and Members.
8. Removal and suspension of Chairperson and Member of Lokpal.
9. Restriction on employment by Chairperson and Members after ceasing to hold office.
10. Member to act as Chairperson or to discharge his functions in certain circumstances.
11. Secretary, other officers and staff of Lokpal.

## CHAPTER III

## INVESTIGATION WING

12. Investigation Wing.

## CLAUSES

13. Investigation officer to have powers of police.
14. Investigation officer to inquire on direction of Lokpal.

## CHAPTER IV

## PROSECUTION WING

15. Prosecution wing and appointment of Director of Prosecution.

## CHAPTER V

## EXPENSES OF INSTITUTION OF LOKPAL TO BE CHARGED ON CONSOLIDATED FUND OF INDIA

16. Expenses of Lokpal to be charged on Consolidated Fund of India.

## CHAPTER VI

## JURISDICTION IN RESPECT OF INQUIRY

17. Jurisdiction of Lokpal.
18. Matters pending before any court or committee or authority before inquiry before Lokpal not to be affected.
19. Constitution of Benches of Lokpal.
20. Distribution of business amongst Benches.
21. Power of Chairperson to transfer cases.
22. Decision to be by majority.

## CHAPTER VII

## PROCEDURE IN RESPECT OF INQUIRY AND INVESTIGATION

23. Provisions relating to complaints and inquiry and investigation.
24. Inspection of documents and furnishing copies thereof to persons against whom complaints have been made.
25. Persons likely to be prejudicially affected to be heard.
26. Lokpal may require any public servant or any other person to furnish information, etc.
27. Previous sanction not necessary for investigation and initiating prosecution by Lokpal in certain cases.
28. Action on inquiry in relation to public servants not being Ministers or Members of Parliament.
29. Action on inquiry against public servant being Ministers or Members of Parliament.

## CLAUSES

## CHAPTER VIII

## POWERS OF LOKPAL

30. Search and seizure.
31. Lokpal to have powers of civil court in certain cases.
32. Power of Lokpal to utilise services of officers of Central or State Government.
33. Provisional attachment of assets.
34. Confirmation of attachment of assets.
35. Power of Lokpal to recommend transfer or suspension of public servant connected with allegation of corruption.
36. Power of Lokpal to give directions to prevent destruction of records during inquiry.
37. Power to delegate.

## CHAPTER IX

## SPECIAL COURTS

38. Special Courts to be notified by Central Government.
39. Letter of request to a contracting State in certain cases.

## CHAPTER X

## COMPLAINTS AGAINST CHAIRPERSON, MEMBERS AND OFFICIALS OF LOKPAL

40. Complaints against Chairperson and Members not to be inquired by Lokpal.
41. Complaints against officials of Lokpal.

## CHAPTER XI

## ASSESSMENT OF LOSS AND RECOVERY THEREOF BY SPECIAL COURT

42. Assessment of loss and recovery thereof by Special Court.

## CHAPTER XII

## FINANCE, ACCOUNTS AND AUDIT

43. Budget.
44. Grants by Central Government.
45. Annual statement of accounts.
46. Furnishing of returns, etc., to Central Government.

## CLAUSES

## CHAPTER XIII

## DECLARATION OF ASSETS

- 47. Declaration of assets.
- 48. Presumption as to acquisition of assets by corrupt means in certain cases.

## CHAPTER XIV

## OFFENCES AND PENALTIES

- 49. Prosecution for false complaint and payment of compensation, etc., to public servant.
- 50. False complaint made by society or association of persons or trust.

## CHAPTER XV

## MISCELLANEOUS

- 51. Protection of action taken in good faith by any public servant.
- 52. Protection of action taken in good faith by others.
- 53. Members, officers and employees of Lokpal to be public servants.
- 54. Limitation to apply in certain cases.
- 55. Bar of Jurisdiction.
- 56. Legal assistance.
- 57. Act to have overriding effect.
- 58. Provision of this Act to be in addition to other laws.
- 59. Amendment of certain enactments.
- 60. Power to make rules.
- 61. Power of Lokpal to make regulations.
- 62. Laying of rules and regulations.
- 63. Power to remove difficulties.

## THE FIRST SCHEDULE

## THE SECOND SCHEDULE

**Bill No. 39 of 2011****THE LOKPAL BILL, 2011**

A

BILL

*to provide for the establishment of the institution of Lokpal to inquire into allegations of corruption against certain public functionaries and for matters connected therewith or incidental thereto.*

WHEREAS the Constitution of India established a democratic Republic to ensure justice for all;

And WHEREAS the country's commitment to clean and responsive governance has to be reflected in an effective institution to independently inquire into and prosecute acts of corruption;

NOW, THEREFORE, it is expedient to establish a strong and effective institution to contain corruption.

BE it enacted by Parliament in the Sixty-second Year of the Republic of India as follows:—

**CHAPTER I****PRELIMINARY**

1. (1) This Act may be called the Lokpal Act, 2011.

Short title, extent and commencement.

(2) It extends to the whole of India and also applies to public servants outside India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for different provisions of this Act and any reference in any provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

Definitions.

2. (1) In this Act, unless the context otherwise requires,-

(a) “Bench” means a Bench of the Lokpal;

(b) “Chairperson” means the Chairperson of the Lokpal;

(c) “competent authority”, in relation to—

(i) a member of the Council of Ministers, means the Prime Minister;

(ii) a member of Parliament, other than a Minister, means

(A) in the case of a member of the Council of States, the Chairman of that Council; and

(B) in the case of a member of the House of the People, the Speaker of that House;

(iii) an officer in the Ministry or Department of the Central Government, means the Minister in charge of the Ministry or Department under which such officer is serving;

(iv) a chairperson or members of any body, or Board or corporation or authority or company or society or autonomous body (by whatever name called) established or constituted by an Act of Parliament or wholly or partly financed by the Central Government or controlled by it, means the Minister in charge of the administrative Ministry of such body, or Board or corporation or authority or company or society or autonomous body;

(v) an officer of any body or Board or corporation or authority or company or society or autonomous body (by whatever name called) established or constituted by an Act of Parliament or wholly or partly financed by the Central Government or controlled by it, means the head of such body or Board or corporation or authority or company or society or autonomous body;

(vi) any other case not falling under sub-clauses (i) to (v) above, means the Central Government:

Provided that if any person referred to in subclause (iv) or sub-clause (v) is also a Member of Parliament, then the competent authority shall be—

(A) in case such member is a Member of the Council of States, the Chairman of that House; and

(B) in case such member is a Member of the House of the People, the Speaker of that House;

(d) “complaint” means a complaint, made in such form as may be prescribed, alleging that a public servant has committed an offence punishable under the Prevention of Corruption Act, 1988;

(e) “inquiry” means an inquiry conducted under this Act by the Lokpal;

(f) “Judicial Member” means a Judicial Member of the Lokpal appointed as such;

(g) “Lokpal” means the institution established under section 3;

(h) “Member” means a Member of the Lokpal;

(i) “Minister” means a Union Minister but does not include the Prime Minister;

(j) “notification” means notification published in the Official Gazette and the expression “notify” shall be construed accordingly;

(k) “prescribed” means prescribed by rules made under this Act;

(l) “public servant” means a person referred to in clauses (a) to (g) of sub-section (1) of section 17;

(m) “regulations” means regulations made under this Act;



(n) “rules” means rules made under this Act;

(o) “Schedule” means a Schedule to this Act;

(p) “Special Court” means the court of a Special Judge appointed under sub-section (1) of section 3 of the Prevention of Corruption Act, 1988.

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(2) Words and expressions used herein and not defined in this Act but defined in the Prevention of Corruption Act, 1988, shall have the meanings respectively assigned to them in that Act.

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(3) Any reference in this Act to any other Act or provision thereof which is not in force in any area to which this Act applies shall be construed to have a reference to the corresponding Act or provision thereof in force in such area.

## CHAPTER II

### ESTABLISHMENT OF LOKPAL

Establishment  
of Lokpal.

**3. (1) As from the commencement of this Act, there shall be established, for the purpose of making inquiries in respect of complaints made under this Act, an institution to be called the “Lokpal”.**

**(2) The Lokpal shall consist of—**

**(a) a Chairperson, who is or has been a Chief Justice of India or a Judge of the Supreme Court; and**

**(b) such number of Members, not exceeding eight out of whom fifty per cent, shall be Judicial Members.**

**(3) A person shall be eligible to be appointed,—**

**(a) as a Judicial Member if he is or has been a Judge of the Supreme Court or a Chief Justice of a High Court;**

**(b) as a Member other than a Judicial Member, if he is a person of impeccable**

integrity, outstanding ability and standing having special knowledge and expertise of not less than twenty-five years in the matters relating to anti-corruption policy, public administration, vigilance, finance including insurance and banking, law, and management.

(4) The Chairperson or a Member shall not be a member of Parliament or a member of the Legislature of any State or Union territory and shall not hold any office of trust or profit (other than the office as the Chairperson or a Member) or be connected with any political party or carry on any business or practise any profession and accordingly, before he enters upon his office, a person appointed as the Chairperson or a Member, as the case may be, shall, if—

(a) he holds any office of trust or profit, resign from such office; or

(b) he is carrying on any business, sever his connection with the conduct and management of such business; or

(c) he is practising any profession, cease to practise such profession.

(5) The Chairperson and every Member shall, before entering upon his office, make and subscribe before the President an oath or affirmation in the form set out in the First Schedule.

4. (1) The Chairperson and Members shall be appointed by the President after obtaining the recommendations of a Selection Committee consisting of—

Appointment  
of  
Chairperson  
and  
Members  
and  
Selection  
Committee.

(a) the Prime Minister – chairperson;

(b) the Speaker of the House of the People – member;

(c) the Leader of Opposition in the House of the People – member;

(d) the Leader of Opposition in the Council of States – member;

(e) a Union Cabinet Minister to be nominated by the Prime Minister – member;

(f) one sitting Judge of the Supreme Court to be nominated by the Chief Justice of India – member;

(g) one sitting Chief Justice of a High Court to be nominated by the Chief Justice of India – member;

(h) one eminent Jurist to be nominated by the Central Government – member;

(i) one person of eminence in public life with wide knowledge of and experience in anti-corruption policy, public administration, vigilance, policy making, finance including Insurance and banking, law, or management to be nominated by the Central Government – member.

(2) No appointment of a Chairperson or a Member shall be invalid merely by reason of any vacancy in the Selection Committee.

(3) The Selection Committee may, if it considers necessary for the purposes of selecting the Chairperson and Members of the Lokpal and for preparing a panel of persons to be considered for appointment as such, constitute a Search Committee consisting of such persons of standing and having special knowledge and expertise in the matters relating to anti-corruption policy, public administration, vigilance, policy making, finance including insurance and banking, law, and management, or in any other matter which, in the opinion of the Selection Committee, may be useful in making selection of the Chairperson and Members of the Lokpal.

(4) The Selection Committee shall regulate its own procedure for selecting the Chairperson and Members of the Lokpal which shall be transparent.

(5) The term of the Search Committee referred to in sub-section (3), the fee and allowances payable to its members and the manner of selection of panel of names shall be such as may be prescribed.

5. The President shall take or cause to be taken all necessary steps for the appointment of a new Chairperson and Members at least three months before the expiry of the term of such Chairperson or Member, as the case may be, in accordance with the procedure laid down in this Act.

Filling up of vacancies of Chairperson and Members.

6. The Chairperson and every Member shall, on the recommendations of the Selection Committee, be appointed by the President by warrant under his hand and seal and hold office as such for a term not exceeding five years from the date on which he enters upon his office or until he attains the age of seventy years, whichever is earlier:

Term of office of Chairperson and Members.

Provided that he may—

(a) by writing under his hand addressed to the President, resign his office; or

(b) be removed from his office in the manner provided in section 8.

7. The salary, allowances and other conditions of service of—

(i) the Chairperson shall be the same as those of the Chief Justice of India;

(ii) other Members shall be the same as those of a Judge of the Supreme Court;

Salary, allowances and other conditions of service of Chairperson and Members.

Provided that if the Chairperson or a Member is, at the time of his appointment, in receipt of pension (other than disability pension) in respect of any previous service under the Government of India or under the Government of a State, his salary in respect of service as the Chairperson or, as the case may be, as a Member, be reduced—

(a) by the amount of that pension; and

(b) if he has, before such appointment, received, in lieu of a portion of the pension due to him in respect of such previous service, the commuted value thereof, by the amount of that portion of the pension:

Provided further that the salary, allowances and pension payable to, and other conditions of service of, the Chairperson or a Member shall not be varied to his disadvantage after his appointment.

Removal  
and  
suspension  
of  
Chairperson  
and Member  
of Lokpal.

8. (1) Subject to the provisions of sub-section (3), the Chairperson or any Member shall be removed from his office by order of the President on the grounds of misbehaviour after the Supreme Court, on a reference being made to it—

(i) by the President, or

(ii) by the President on a petition being signed by at least one hundred Members of Parliament, or

(iii) by the President on receipt of a petition made by a citizen of India and where the President is satisfied that the petition should be referred,

has, on an inquiry held in accordance with the procedure prescribed in that behalf, reported that the Chairperson or such Member, as the case may be, ought to be removed on such ground.

(2) The President may suspend from office the Chairperson or any Member in respect of whom a reference has been made to the Supreme Court under sub-section (1) until the President has passed orders on receipt of the report of the Supreme Court on such reference.

(3) Notwithstanding anything contained in sub-section (1), the President may, by order, remove from the office the Chairperson or any Member if the Chairperson or such Member, as the case may be,—

(a) is adjudged an insolvent; or

(b) engages, during his term of office, in any paid employment outside the duties of his office; or

(c) is, in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body.

(4) If the Chairperson or any Member is, or becomes, in any way concerned or interested in any contract or agreement made by or on behalf of

the Government of India or the Government of a State or participates in any way in the profit thereof or in any benefit or emolument arising therefrom otherwise than as a member and in common with the other members of an incorporated company, he shall, for the purposes of sub-section (1), be deemed to be guilty of misbehaviour.

9. (1) On ceasing to hold office, the Chairperson and every Member shall be ineligible for—

(i) reappointment as the Chairperson or a Member of the Lokpal;

(ii) any diplomatic assignment, appointment as administrator of a Union Territory and such other assignment or appointment which is required by law to be made by the President by warrant under his hand and seal;

(iii) further employment to any other office of profit under the Government of India or the Government of a State;

(iv) contesting any election of President or Vice President or Member of either House of Parliament or Member of either House of a State Legislature or Municipality or Panchayat within a period of five years from the date of cessation of holding the office of the Chairperson or Member.

Restriction on employment by Chairperson and Members after ceasing to hold office.

(2) Notwithstanding anything contained in sub-section (1), a Member shall be eligible to be appointed as a Chairperson, if his total tenure as Member and Chairperson does not exceed five years.

10. (1) In the event of occurrence of any vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the President may, by notification, authorise the seniormost Member to act as the Chairperson until the appointment of a new Chairperson to fill such vacancy.

Member to act as Chairperson or to discharge his functions in certain circumstances.

(2) When the Chairperson is unable to discharge his functions owing to absence on leave or

otherwise, the senior-most Member available, as the President may, by notification, authorise in this behalf, shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties.

Secretary,  
other  
officers and  
staff of  
Lokpal.

**11. (1) The appointment of Secretary and other officers and staff of the Lokpal shall be made by the Chairperson or such Member or officer of Lokpal as the Chairperson may direct:**

**Provided that the President may by rule require that the appointment in respect of any post or posts as may be specified in the rule, shall be made after consultation with the Union Public Service Commission.**

**(2) Subject to the provisions of any law made by Parliament, the conditions of service of secretary and other officers and staff of the Lokpal shall be such as may be specified by regulations made by the Lokpal for the purpose:**

**Provided that the regulations made under this sub-section shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the President.**

### CHAPTER III

#### INVESTIGATION WING

Investigation  
Wing.

**12. (1) Notwithstanding anything contained in any law for the time being in force, the Lokpal shall constitute an Investigation Wing for the purpose of conducting investigation of any offence alleged to have been committed by a public servant punishable under the Prevention of Corruption Act, 1988:**

**Provided that till such time the Investigation Wing is constituted by the Lokpal, the Central Government shall make available such number of investigation officers and other staff from such of its Ministries or Departments, as may be required by the Lokpal, for carrying out investigation under this Act.**

25 of 1946 (2) The Central Government may, after obtaining consent of the concerned State Government, by notification, extend the powers and jurisdiction of officers of the Investigation Wing of the Lokpal in that State and the provisions of sub-sections (2) and (3) of section 5 of the Delhi Special Police Establishment Act, 1946, shall apply as if the members of the Investigation Wing were members of the police force of that State.

13. (1) No investigation shall be made by an investigation officer of the Investigation Wing below the rank of a Deputy Superintendent of Police or by any other officer of equivalent rank.

Investigation officer to have powers of police.

49 of 1988 (2) The investigation officers of the Investigation Wing shall have, in relation to the investigation of such offences referred to in sub-section (1) of section 12, all the powers, duties, privileges and liabilities which police officers have in connection with the investigation of such offences under the Prevention of Corruption Act, 1988.

14. (1) The Lokpal may, before holding any inquiry under this Act, by an order, require the investigation officer of its Investigation Wing to make, or cause to be made, a preliminary investigation in such manner as it may direct and submit a report to the Lokpal, within such time as may be specified by the Lokpal, to enable it to satisfy itself as to whether or not the matter requires to be inquired into by the Lokpal.

Investigation officer to inquire on direction of Lokpal.

(2) The investigation officer on receipt of an order under sub-section (1) shall complete the investigation and submit his report within the time specified under that sub-section.

#### CHAPTER IV

##### PROSECUTION WING

15. (1) The Lokpal may, by notification, constitute a prosecution wing and appoint a Director of prosecution and such other officers and employees to assist the Director of Prosecution for the purpose of prosecution of public servants in relation to any complaint by the Lokpal under this Act.

Prosecution wing and appointment of Director of Prosecution.



(2) The Director of prosecution shall, after having been so directed by the Lokpal, file a complaint before the Special Court, and take all necessary steps in respect of the prosecution of public servants in relation to any offence punishable under the Prevention of Corruption Act, 1988. 49 of 1988.

## CHAPTER V

### EXPENSES OF INSTITUTION OF LOKPAL TO BE CHARGED ON CONSOLIDATED FUND OF INDIA

Expenses of Lokpal to be charged on Consolidated Fund of India.

16. The expenses of the Lokpal, including all salaries, allowances and pensions payable to or in respect of the Chairperson, Members or Secretary or other officers or staff of the Lokpal, shall be charged on the Consolidated Fund of India and any fees or other moneys taken by the Lokpal shall form part of that Fund.

## CHAPTER VI

### JURISDICTION IN RESPECT OF INQUIRY

Jurisdiction of Lokpal.

17. (1) Subject to the other provisions of this Act, the Lokpal shall inquire into any matter involved in, or arising from, or connected with, any allegation of corruption made in a complaint in respect of the following, namely:—

(a) a Prime Minister, after he has demitted the office of the Prime Minister;

(b) any other person who is or has been a Minister of the Union;

(c) any person who is or has been a Member of either House of Parliament;

(d) any Group “A” officer or equivalent or above, from amongst the public servants defined in sub-clauses (i) and (ii) of Clause (c) of section 2 of the Prevention of Corruptions Act, 1988 when serving or who has served, in connection with the affairs of the Union; 49 of 1988

(e) any person who is or has been a chairperson or member or officer equivalent to Group “A” officer referred to in Clause (d) or

equivalent or above 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 this clause 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 the officers of its Investigation 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;

(f) 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) wholly or partly financed or aided by the Government and the annual income of which exceeds such amount as the Central Government may by notification specify;

(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) in receipt of any donation from the public and the annual income of which exceeds such amount as the Central Government may by notification specify:

Provided that nothing in this section shall apply in relation to the Prime Minister, in whatever capacity he may be holding an office as a public functionary:

Provided further that any person referred to in this clause shall be deemed to be a public servant under Clause (c) of Section 2 of the Prevention of Corruption Act, 1988 and the provisions of that Act shall apply accordingly: 49 of 1988

Provided also that nothing in Clauses (e) and (f) and this clause shall apply to any society or association of persons or trust constituted for religious purposes.

(2) Notwithstanding anything contained in sub-section (1), the Lokpal shall not inquire into any matter involved in, or arising from, or connected with, any such allegation of corruption against any Member of either House of Parliament in respect of anything said or a vote given by him in Parliament or any committee thereof covered under the provisions contained in Clause (2) of article 105 of the Constitution.

(3) The Lokpal may inquire into any act or conduct of any person other than those referred to in sub-section (1), if such person is associated with the allegation of corruption under the Prevention of Corruption Act, 1988: 49 of 1988

Provided that, no action under this section shall be taken in case of a person serving in connection with the affairs of a State, without the consent of the State Government;

(4) No matter in respect of which a complaint has been made to the Lokpal under this Act, shall be referred for inquiry under the Commissions of Inquiry Act, 1952. 60 of 1952

*Explanation.*—For the removal of doubts, it is hereby declared that a complaint under this Act shall only relate to a period during which the public servant was holding or serving in that capacity.

Matters pending before any court or committee or authority for inquiry before Lokpal not to be affected.

**18.** In case any matter or proceeding related to allegation of corruption under the Prevention of Corruption Act, 1988 has been pending before any court or committee of either House of Parliament or before any other authority prior to commencement of this Act or prior to commencement of any inquiry after the commencement of this Act, such matter or proceeding shall be continued before such court, committee or authority. 49 of 1988

*Explanation.*—For the removal of doubts, it is hereby declared that continuance of such matter or proceeding before any court or committee of either House of Parliament or before any other authority, except for such matters as are protected under Clause (2) of article 105 of the Constitution or are pending before a court, shall not affect the power of the Lokpal to inquire into such matter under this Act.

19. (1) Subject to the provisions of this Act,— Constitution of Benches of Lokpal.

(a) the jurisdiction of the Lokpal may be exercised by Benches thereof;

(b) a Bench may be constituted by the Chairperson with two or more Members as the Chairperson may deem fit;

(c) every Bench shall ordinarily consist of at least one Judicial Member;

(d) where a Bench consists of the Chairperson, such Bench shall be presided over by the Chairperson;

(e) where a Bench consists of a Judicial Member, and a non-Judicial Member, not being the Chairperson, such bench shall be presided over by the Judicial Member;

(f) the Benches of the Lokpal shall ordinarily sit at New Delhi and at such other places as the Lokpal may, by regulations, specify.

(2) The Lokpal shall notify the areas in relation to which each Bench of the Lokpal may exercise jurisdiction.

(3) Notwithstanding anything contained in sub-section (2), the Chairperson shall have the power to constitute or reconstitute Benches from time-to-time.

(4) If at any stage of the hearing of any case or matter it appears to the Chairperson or a Member that the case or matter is of such nature that it ought to be heard by a Bench consisting of three

or more Members, the case or matter may be transferred by the Chairperson or, as the case may be, referred to him for transfer, to such Bench as the Chairperson may deem fit.

Distribution of business amongst Benches.

**20.** Where Benches are constituted, the Chairperson may, from time-to-time, by notification, make provisions as to the distribution of the business of the Lokpal amongst the Benches and also provide for the matters which may be dealt with by each Bench.

Power of Chairperson to transfer cases.

**21.** On an application for transfer made by the complainant or the public servant, the Chairperson, after giving an opportunity of being heard to the complainant or the public servant, as the case may be, may transfer any case pending before one Bench for disposal to any other Bench.

Decision to be by majority.

**22.** If the Members of a Bench consisting of two Members differ in opinion on any point, they shall state the point or points on which they differ, and make a reference to the Chairperson who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other Members of the Lokpal and such point or points shall be decided according to the opinion of the majority of the Members of the Lokpal who have heard the case, including those who first heard it.

## CHAPTER VII

### PROCEDURE IN RESPECT OF INQUIRY AND INVESTIGATION

Provisions relating to complaints and inquiry and investigation.

**23. (1)** The Lokpal, on receipt of a complaint, may either make a preliminary inquiry or direct its Investigation Wing, to make a preliminary investigation to ascertain whether there exists a *prima facie* case for proceeding in the matter.

(2) Every preliminary inquiry or preliminary investigation referred to in sub-section (1) shall ordinarily be completed within a period of thirty days and for reasons to be recorded in writing, within a further period of three months from the date of receipt of the complaint.

(3) Upon completion of the preliminary investigation, the investigating authority shall submit its report to the Lokpal.

(4) Before the Lokpal comes to the conclusion in the course of a preliminary inquiry and after submission of a report referred to in sub-section (3) that a *prima facie* case is made out against the public servant pursuant to such a preliminary inquiry, the Lokpal shall afford the public servant an opportunity of being heard.

(5) Where the Lokpal, after receiving the report of the investigating authority pursuant to a preliminary investigation or conclusion of the preliminary inquiries as referred to in sub-section (1) is satisfied that no *prima facie* case is made out for proceeding further in the matter, the complaint shall be closed and the decision thereon be communicated to the complainant and the public servant.

(6) Where the Lokpal is of the opinion that *prima facie* case is made out and refers the matter for investigation, upon completion of such investigation and before filing the charge sheet, the public servant against whom such investigation is being conducted shall be given an opportunity of being heard.

(7) Every inquiry conducted by the Lokpal, upon being satisfied that a *prima facie* case is made out, shall be open to the public provided that in exceptional circumstances and for reasons to be recorded in writing by the Lokpal, such inquiry may be conducted in camera.

(8) In case the Lokpal proceeds to inquire into the complaint under sub-section (7) it shall hold such inquiry as expeditiously as possible and complete the inquiry within a period of six months from the date of receipt of the complaint which, for reasons to be recorded in writing, may be extended by a further period of six months.

(9) The public servant against whom an inquiry is being conducted under sub-section (8) shall be given an opportunity of being heard.

(10) Where in a case the Lokpal is of the opinion and for reason to be recorded in writing that it is not in the interest of justice to either hold a preliminary inquiry or preliminary investigation, it may refer the matter for investigation.

(11) Upon completion of such investigation but before filing a charge sheet, the investigating authority shall place the records in its possession along with its *prima facie* conclusion before the Lokpal who shall before directing that a charge sheet be filed afford the public servant concerned an opportunity of being heard.

(12) If the Lokpal proposes to inquire into a complaint, it may, at any stage,—

(a) pass appropriate orders for safe custody of the documents relevant to the inquiry as it deems fit; and

(b) forward a copy of the complaint to the public servant concerned along with all relevant material relied upon and afford him an opportunity to represent his case.

(13) The website of the Lokpal shall, from time-to-time and in such manner as may be specified by regulations, display to the public, the status of number of complaints pending before it or disposed of by it.

(14) The Lokpal may withhold the records and evidence which are likely to impede the process of inquiry or conduct of a case by it or by the Special Court.

(15) Save as otherwise provided, the manner and procedure of conducting an inquiry or investigation under this Act, shall be such as may be specified by regulations.

Inspection of documents and furnishing copies thereof to persons against whom complaints have been made.

24. In cases where, an investigation or inquiry into a complaint is proposed to be initiated by the Lokpal, every person against whom such inquiry or investigation is proposed to be conducted, shall be entitled to inspect any record in connection with the commission of any alleged offence and take an extract therefrom, as is considered necessary to defend his case.

25. If, at any stage of the proceeding, the Lokpal—

Persons likely to be prejudicially affected to be heard.

(a) considers it necessary to inquire into the conduct of any person other than the prospective accused; or

(b) is of opinion that the reputation of any person other than an accused is likely to be prejudicially affected by the inquiry,

the Lokpal shall give to that person a reasonable opportunity of being heard in the inquiry and to produce evidence in his defence, consistent with the principles of natural justice:

Provided that nothing in this section shall apply where the credibility of a witness is being questioned.

26. Subject to the provisions of this Act, for the purpose of any inquiry or investigation, the Lokpal or the investigating authority, as the case may be, may require any public servant or any other person who, in its opinion, is able to furnish information or produce documents relevant to such inquiry or investigation, to furnish any such information or produce any such document.

Lokpal may require any public servant or any other person to furnish information, etc.

2 of 1974  
49 of 1988

27. (1) No sanction or approval shall be required by the Lokpal or its Investigation Wing under Section 197 of the Code of Criminal Procedure, 1973 or Section 19 of the Prevention of Corruption Act, 1988 for the purpose of making inquiry by the Lokpal or investigation by its Investigation Wing into any complaint against any public servant or for filing of any complaint in respect thereof before the Special Court under this Act.

Previous sanction not necessary for investigation and initiating prosecution by Lokpal in certain cases.

2 of 1974  
49 of 1988

(2) A Special Court may, notwithstanding anything contained in Section 197 of the Code of Criminal Procedure, 1973 or Section 19 of the Prevention of Corruption Act, 1988, on a complaint filed by the Lokpal or any officer authorised by it in this behalf, take cognizance of offence committed by any public servant.



(3) Nothing contained in sub-sections (1) and (2) shall apply in respect of the persons holding the office in pursuance of the provisions of the Constitution and in respect of which a procedure for removal of such person has been specified therein.

(4) The provisions contained in sub-sections (1), (2) and (3) shall be without prejudice to the generality of the provisions contained in article 311 and sub-clause (c) of Clause (3) of article 320 of the Constitution.

Action on inquiry in relation to public servants not being Ministers or Members of Parliament.

**28. (1)** Where, after the conclusion of the inquiry or investigation, the findings of the Lokpal disclose the commission of an offence under the Prevention of Corruption Act, 1988 by a public servant referred to in Clause (c) or Clause (d) of sub-section (1) of Section 17, the Lokpal may

49 of 1988

(a) file a case in the Special Court and send a copy of the report together with its findings to the competent authority;

(b) recommend to the competent authority the initiation of disciplinary proceedings under the rules of disciplinary proceedings applicable to such public servant;

(c) provide a copy of the report to the public servant or his representative.

(2) The competent authority shall, within a period of thirty days of the receipt of recommendation under Clause (b) of sub-section (1), initiate disciplinary proceedings against the delinquent public servant accused of committing offence under the Prevention of Corruption Act, 1988 and forward its comments on the report, including the action taken or proposed to be taken thereon, to the Lokpal ordinarily within six months of initiation of such disciplinary proceedings.

49 of 1988

Action on inquiry against public servants being Ministers or Members of Parliament.

**29. (1)** Where, after the conclusion of the inquiry or investigation, the findings of the Lokpal disclose the commission of an offence under the Prevention of Corruption Act, 1988 by a public servant referred to in Clause (a) or Clause (b) of sub-section (1) of Section 17, the Lokpal may file

49 of 1988

a case in the Special Court and shall send a copy of the report together with its findings to the competent authority.

(2) The Prime Minister, in the case of the Minister, the Speaker in the case of a Member of the House of the People, and the Chairman of the Council of States; in the case of a Member of that Council shall, as soon as may be, after the receipt of report under sub-section (1), cause the same to be laid before the House of the People or the Council of States, as the case may be, while it is in session, and if the House of the People or the Council of States, as the case may be, is not in session, within a period of one week from the reassembly of the said House or the Council, as the case may be.

(3) The competent authority shall examine the report forwarded to it under sub-section (1) and communicate to the Lokpal, within a period of ninety days from the date of receipt of the report, the action taken or proposed to be taken on the basis of the report.

*Explanation.*—In computing the period of ninety days referred to in this sub-section, any period during which Parliament or, as the case may be, either House of Parliament, is not in session, shall be excluded.

## CHAPTER VIII

### POWERS OF LOKPAL

30. (1) If the Lokpal has reason to believe that any document which, in its opinion, shall be useful for, or relevant to, any investigation or inquiry under this Act, are secreted in any place, it may authorise any officer of the Investigation Wing, to search for and to seize such documents.

Search and seizure.

(2) If the Lokpal is satisfied that any document seized under sub-section (1) would be evidence for the purpose of any investigation or inquiry under

this Act and that it would be necessary to retain the document in its custody or in the custody of such officer as may be authorised, it may so retain or direct such officer authorised to retain such document till the completion of such investigation or inquiry:

Provided that where any document is required to be returned, the Lokpal or the authorised officer may return the same after retaining copies of such document duly authenticated.

(3) The provisions of the Code of Criminal Procedure, 1973 relating to searches shall, so far as may be, apply to searches under this section subject to the modification that sub-section (5) of Section 165 of the said Code shall have effect as if for the word “Magistrate”, wherever it occurs therein, the words “Lokpal or any officer authorised by it” were substituted.

2 of 1974

Lokpal to have powers of civil court in certain cases.

**31. (1)** Subject to the provisions of this section, for the purpose of any inquiry, the Lokpal shall have all the powers of a civil court, under the Code of Civil Procedure, 1908, while trying a suit in respect of the following matters, namely:—

5 of 1908

(i) summoning and enforcing the attendance of any person and examining him on oath;

(ii) requiring the discovery and production of any document;

(iii) receiving evidence on affidavits;

(iv) requisitioning any public record or copy thereof from any court or office;

(v) issuing commissions for the examination of witnesses or documents:

Provided that such commission, in case of a witness, shall be issued only where the witness, in the opinion of the Lokpal, is not in a position to attend the proceeding before the Lokpal; and

(vi) such other matters as may be prescribed.

45 of 1860 (2) Any proceeding before the Lokpal shall be deemed to be a judicial proceeding within the meaning of section 193 of the Indian Penal Code.

**32. (1) The Lokpal may, for the purpose of conducting any inquiry, utilise the services of any officer or investigation agency of the Central Government or any State Government, as the case may be.**

Power of Lokpal to utilise services of officers of Central or State Government.

(2) For the purpose of investigating into any matter pertaining to the inquiry, any officer or agency whose services are utilised under sub-section (2) may, subject to the direction and control of the Lokpal,—

(a) summon and enforce the attendance of any person and examine him;

(b) require the discovery and production of any document; and

(c) requisition any public record or copy thereof from any office.

(3) The officer or agency whose services are utilised under sub-section (2) shall investigate into any matter pertaining to the inquiry and submit a report thereon to the Lokpal within such period as may be specified by the Lokpal in this behalf.

**33. (1) Where the Lokpal or any investigation officer authorised by it in this behalf, has reason to believe, the reason for such belief to be recorded in writing, on the basis of material in its or his possession, that—**

Provisional attachment of assets.

(a) any person is in possession of any proceeds of corruption;

(b) such person is accused of having committed an offence relating to corruption; and

(c) such proceeds of offence are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of offence;

the Lokpal or such investigation officer may, by order in writing, provisionally attach such property for a period not exceeding ninety days from the date of the order, in the manner provided in the Second Schedule to the Income-tax Act, 1961 and the Lokpal or such investigation officer, as the case may be, shall be deemed to be an officer under sub-rule (e) of rule 1 of that Schedule.

43 of 1961

(2) The Lokpal shall, immediately after attachment under sub-section (1), forward a copy of the order, along with the material in his possession, referred to in that sub-section, to the Special Court, in a sealed envelope, in the manner as may be prescribed and such Court may extend the order of attachment and keep such material for such period as the Court may deem fit.

(3) Every order of attachment made under sub-section (1) shall cease to have effect after the expiry of the period specified in that sub-section or after the expiry of the period as directed by the Special Court under sub-section (2).

(4) Nothing in this section shall prevent the person interested in the enjoyment of the immovable property attached under sub-section (1) or sub-section (2), from such enjoyment.

*Explanation.*—For the purposes of this sub-section, “person interested”, in relation to any immovable property, includes all persons claiming or entitled to claim any interest in the property.

Confirmation  
of  
attachment  
of assets.

**34. (1)** The Lokpal, when it provisionally attaches any property under sub-section (1) of Section 33 shall, within a period of thirty days of such attachment, direct its prosecution wing to file an application stating the facts of such attachment before the Special Court and make a prayer for confirmation of attachment of the property till completion of the proceedings against the public servant in the Special Court.

(2) The Special Court may, if it is of the opinion that the property provisionally attached had been

acquired through corrupt means, make an order for confirmation of attachment of such property till the completion of the proceedings against the public servant in the Special Court.

(3) If the public servant is subsequently acquitted of the charges framed against him, the property, subject to the orders of the Special Court, shall be restored to the concerned public servant along with benefits from such property as might have accrued during the period of attachment.

49 of 1988

(4) If the public servant is subsequently convicted of the charges of corruption, the proceeds relatable to the offence under the Prevention of Corruption Act, 1988 shall be confiscated and vest in the Central Government free from any encumbrance or leasehold interest excluding any debt due to any bank or financial institution.

51 of 1993

*Explanation.*—For the purposes of this sub-section, the expressions “bank”, “debt” and “financial institution” shall have the meanings respectively assigned to them in clauses (d), (g) and (h) of Section 2 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993.

35. (1) Where the Lokpal, while making an inquiry into allegations of corruption, is *prima facie* satisfied, on the basis of evidence available, that—

(a) the continuance of the public servant referred to in Clause (c) or Clause (d) of sub-section (1) of Section 17 in his post while conducting the inquiry is likely to affect such inquiry adversely; or

(b) the public servant referred to in Clause (a) is likely to destroy or in any way tamper with the evidence or influence witnesses,

then, the Lokpal may recommend to the Central Government for transfer or suspension of such public servant from the post held by him till such period as may be specified in the order.

Power of Lokpal to recommend transfer or suspension of public servant connected with allegation of corruption.

(2) The Central Government shall ordinarily accept the recommendation of the Lokpal made under sub-section (1), except for the reasons to be recorded in writing in a case where it is not feasible for administrative reasons.

Power of Lokpal to give directions to prevent destruction of records during inquiry.

**36.** The Lokpal may, in discharge of its functions under this Act, issue appropriate directions to a public servant entrusted with the preparation or custody of any document or record—

(a) to protect such document or record from destruction or damage; or

(b) to prevent the public servant from altering or secreting such document or record; or

(c) to prevent the public servant from transferring or alienating any assets allegedly acquired by him through corrupt means.

Power to delegate.

**37.** The Lokpal may, by general or special order in writing, and subject to such conditions and limitations as may be specified therein, direct that any administrative or financial power conferred on it may also be exercised or discharged by such of its Members or officers or employees as may be specified in the order.

## CHAPTER IX

### SPECIAL COURTS

Special Courts to be notified by Central Government.

**38. (1)** The Central Government shall constitute such number of Special Courts, as recommended by the Lokpal, to hear and decide the cases arising out of the Prevention of Corruption Act, 1988 or under this Act.

49 of 1988

(2) The Special Courts constituted under sub-section (1) shall ensure completion of each trial within a period of one year from the date of filing of the case in the Court:

Provided that in case the trial cannot be completed within a period of one year, the Special Court shall record reasons therefor and complete the trial within a further period of not more than three months or such further periods not exceeding three months each, for reasons to be recorded in

writing, before the end of each such three months period, but not exceeding a total period of two years.

2 of 1974

**39. (1)** Notwithstanding anything contained in this Act or the Code of Criminal Procedure, 1973 if, in the course of an inquiry or investigation into an offence or other proceeding under this Act, an application is made to a Special Court by the Investigation Officer of the Lokpal that any evidence is required in connection with the inquiry or investigation into an offence or proceeding under this Act and he is of the opinion that such evidence may be available in any place in a contracting State, and the Special Court, on being satisfied that such evidence is required in connection with the inquiry or investigation into an offence or proceeding under this Act, may issue a letter of request to a court or an authority in the contracting State competent to deal with such request to—

Letter of request to a contracting State in certain cases.

(i) examine the facts and circumstances of the case;

(ii) take such steps as the Special Court may specify in such letter of request; and

(iii) forward all the evidence so taken or collected to the Special Court issuing such letter of request.

(2) The letter of requests shall be transmitted in such manner as the Central Government may prescribe in this behalf.

(3) Every statement recorded or document or thing received under sub-section (1) shall be deemed to be evidence collected during the course of the inquiry or investigation.

## CHAPTER X

### COMPLAINTS AGAINST CHAIRPERSON, MEMBERS AND OFFICIALS OF LOKPAL

**40. (1)** The Lokpal shall not inquire into any complaint made against the Chairperson or any Member.

Complaints against Chairperson and Members not to be inquired by Lokpal.

(2) Any complaint against the Chairperson or Member shall be made by an application by the party aggrieved, to the President.



(3) The President shall, in case there exists a *prima facie* case for bias or corruption, make a reference to the Chief Justice of India in such manner as may be prescribed for inquiring into the complaint against the Chairperson or Member.

(4) The President shall decide the action against the Chairperson or Member on the basis of the opinion of the Chief Justice of India and in case the President is satisfied, on the basis of the said opinion that the Chairperson or the Member is biased or has indulged in corruption, the President shall, notwithstanding anything contained in sub-section (1) of section 8, remove such Chairperson or Member and also order for initiation of prosecution in case of allegation of corruption.

Complaints  
against  
officials of  
Lokpal.

41. (1) Every complaint of allegation or wrongdoing made against any officer or employee or investigation agency under or associated with the Lokpal for offence punishable under the Prevention of Corruption Act, 1988 shall be dealt with in accordance with the provisions of this section.

49 of 1988

(2) The Lokpal shall complete the inquiry into the complaint or allegation made, within a period of thirty days from the date of its receipt.

(3) While making an inquiry into the complaint against any officer or employee of the Lokpal or agency engaged or associated with the Lokpal, if the Lokpal is *prima facie* satisfied on the basis of evidence available, that—

(a) continuance of such officer or employee of the Lokpal in his post or agency engaged or associated while conducting the inquiry is likely to affect such inquiry adversely; or

(b) an officer or employee of the Lokpal or agency engaged or associated is likely to destroy or in any way tamper with the evidence or influence witnesses,

then, the Lokpal may, by order, suspend such officer or employee of the Lokpal or divest such agency engaged or associated with the Lokpal of all powers and responsibilities hereto before exercised by it.

49 of 1988 (4) On the completion of the inquiry, if the Lokpal is satisfied that there is *prima facie* evidence of the commission of an offence under the Prevention of Corruption Act, 1988 or of any wrongdoing, it shall, within a period of fifteen days of the completion of such inquiry, order to prosecute such officer or employee of the Lokpal or such officer or employee of agency engaged or associated with the Lokpal and initiate disciplinary proceedings against the official concerned:

Provided that no such order shall be passed without giving such officer or employee of the Lokpal or officer or employee of agency engaged or associated, a reasonable opportunity of being heard.

## CHAPTER XI

### ASSESSMENT OF LOSS AND RECOVERY THEREOF BY SPECIAL COURT

49 of 1988 42. If any public servant is convicted of an offence under the Prevention of Corruption Act, 1988 by the Special Court, notwithstanding and without prejudice to any law for the time being in force, it may make an assessment of loss, if any, caused to the public exchequer on account of the actions or decisions of such public servant not taken in good faith and for which he stands convicted, and may order recovery of such loss, if possible or quantifiable, from such public servant so convicted:

Assessment of loss and recovery thereof by Special Court.

Provided that if the Special Court, for reasons to be recorded in writing, comes to the conclusion that the loss caused was pursuant to a conspiracy with the beneficiary or beneficiaries of actions or decisions of the public servant so convicted, then such loss may, if assessed and quantifiable under this section, also be recovered from such beneficiary or beneficiaries proportionately.

## CHAPTER XII

### FINANCE, ACCOUNTS AND AUDIT

43. The Lokpal shall prepare, in such form and at such time in each financial year as may be Budget.

prescribed, its budget for the next financial year, showing the estimated receipts and expenditure of the Lokpal and forward the same to the Central Government for information.

Grants by  
Central  
Government.

**44.** Without prejudice to the provisions of Section 16, the Central Government may, after due appropriation made by Parliament by law in this behalf, make to the Lokpal grants of such sums of money as are required to be paid for the salaries and allowances payable to the Chairperson and Members and the administrative expenses, including the salaries and allowances and pension payable to or in respect of officers and other employees of the Lokpal.

Annual  
statement  
of accounts.

**45. (1)** The Lokpal shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India. Assessment of loss and recovery thereof by Special Court.

(2) The accounts of the Lokpal shall be audited by the Comptroller and Auditor General of India at such intervals as may be specified by him.

(3) The Comptroller and Auditor-General of India or any person appointed by him in connection with the audit of the accounts of the Lokpal under this Act shall have the same rights, privileges and authority in connection with such audit, as the Comptroller and Auditor-General of India generally has, in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Lokpal.

(4) The accounts of the Lokpal, as certified by Comptroller and Auditor-General of India or any other person appointed by him in this behalf, together with the audit report thereon, shall be forwarded annually to the Central Government and the Central Government shall cause the same to be laid before each House of Parliament.

46. (1) The Lokpal shall furnish to the Central Government, at such time and in such form and manner as may be prescribed or as the Central Government may request, such returns and statements and such particulars in regard to any matter under the jurisdiction of the Lokpal, as the Central Government may, from time to time, require.

Furnishing of returns, etc., to Central Government.

(2) The Lokpal shall prepare, once every year, in such form and at such time as may be prescribed, an annual report, giving a summary of its activities during the previous year and copies of the report shall be forwarded to the Central Government.

(3) A copy of the report received under sub-section (2) shall be laid by the Central Government, as soon as may be after it is received, before each House of Parliament.

### CHAPTER XIII

#### DECLARATION OF ASSETS

47. (1) Every public servant shall make a declaration of his assets and liabilities in the manner as provided by or under this Act.

Declaration of assets.

(2) Every public servant shall, within a period of thirty days from the date on which he makes and subscribes an oath or affirmation to enter upon his office, furnish to the competent authority the information relating to—

(a) the assets of which he, his spouse and his dependent children are, jointly or severally, owners or beneficiaries;

(b) his liabilities and that of his spouse and his dependent children.

(3) Every public servant holding his office as such, at the time of the commencement of this Act; shall furnish information relating to such assets and liabilities, as referred to in sub-section (2) to the competent authority within thirty days of the coming into force of this Act.

(4) Every public servant shall file with the competent authority, on or before the 31st July of every year, an annual return of such assets and liabilities, as referred to in sub-section (2), as on the 31st March of that year.

(5) The information under sub-section (2) or sub-section (3) and annual return under sub-section (4) shall be furnished to the competent authority in such form and in such manner as may be prescribed.

(6) The competent authority in respect of each office or Department shall ensure that all such statements are published on the website of such office or Department by 31st August of that year.

*Explanation.*—For the purposes of this section, “dependent children” means sons and daughters who have no separate means of earning and are wholly dependent on the public servant for their livelihood.

Presumption as to acquisition of assets by corrupt means in certain cases.

**48.** If any public servant willfully or for reasons which are not justifiable,—

(a) fails to declare his assets; or

(b) gives misleading information in respect of such assets and is found to be in possession of assets not disclosed or in respect of which misleading information was furnished,

then such assets shall, unless otherwise proved, be presumed to belong to the public servant and shall be presumed to be assets acquired by corrupt means:

Provided that the competent authority may condone or exempt the public servant from furnishing information in respect of assets not exceeding such minimum value as may be prescribed.

## CHAPTER XIV

### OFFENCES AND PENALTIES

Prosecution for false complaint and payment of compensation, etc., to public servant.

**49. (1)** Notwithstanding anything contained in this Act, whoever makes any false and frivolous or vexatious complaint under this Act shall, on conviction, be punished with imprisonment for a term which shall not be less than two years but which may extend to five years and with fine which shall not be less than twenty-five thousand rupees but which may extend to two lakh rupees.

(2) No Court, except a Special Court, shall take cognizance of an offence under sub-section (1).

(3) No Special Court shall take cognizance of an offence under sub-section (1) except on a complaint made by a person against whom the false, frivolous or vexatious complaint was made.

(4) The prosecution in relation to an offence under sub-section (1) shall be conducted by the public prosecutor and all expenses connected with such prosecution shall be borne by the Central Government.

(5) In case of conviction of a person [being an individual or society or association of persons or trust (whether registered or not)], for having made a false complaint under this Act, such person shall be liable to pay compensation to the public servant against whom he made the false complaint in addition to the legal expenses for contesting the case by such public servant, as the Special Court may determine.

**50. (1)** Where any offence under section 49 has been committed by any society or association of persons or trust (whether registered or not), every person who, at the time the offence was committed, was directly in charge of, and was responsible to, the society or association of persons or trust, for the conduct of the business or affairs or activities of the society or association of persons or trust as well as such society or association of persons or trust shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

False  
complaint  
made by  
society or  
association  
of persons  
or trust.

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a society or association of

persons or trust (whether registered or not) and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of such society or association of persons or trust, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

## CHAPTER XV

### MISCELLANEOUS

Protection of action taken in good faith by any public servant.

**51.** No suit, prosecution or other legal proceedings under this Act shall lie against any public servant, in respect of anything which is done in good faith or intended to be done in the discharge of his official functions or in exercise of his powers.

Protection of action taken in good faith by others.

**52.** No suit, prosecution or other legal proceedings shall lie against the Lokpal or against any officer, employee, agency or any person, in respect of anything which is done in good faith or intended to be done under this Act or the rules or the regulations made thereunder.

Members, officers and employees of Lokpal to be public servants.

**53.** The Chairperson, Members, officers and other employees of the Lokpal shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Act, to be public servants within the meaning of Section 21 of the Indian Penal Code.

45 of 1860

Limitation to apply in certain cases.

**54.** The Lokpal shall not inquire or investigate into any complaint, if the complaint is made after the expiry of a period of seven years from the date on which the offence mentioned in such complaint is alleged to have been committed.

Bar of Jurisdiction.

**55.** No civil court shall have jurisdiction in respect of any matter which the Lokpal is empowered by or under this Act to determine.

Legal assistance.

**56.** The Lokpal shall provide to every person against whom a complaint has been made, before it, under this Act, legal assistance to defend his case before the Lokpal, if such assistance is requested for.

**57.** The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument having effect by virtue of any enactment other than this Act.

Act to have overriding effect.

**58.** The provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being in force.

Provision of this Act to be in addition to other laws.

**59.** The enactments specified in the Second Schedule shall be amended in the manner, specified therein.

Amendment of certain enactments.

**60. (1)** The Central Government may, by notification make rules to carry out the provisions of this Act.

Power to make rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the form of complaint referred to in clause (d) of sub-section (1) of Section 2;

(b) the term of the Search Committee, the fee and allowances payable to its members and the manner of selection of panel of names under sub-section (5) of Section 4;

(c) the procedure of inquiry into misbehaviour for removal of the Chairperson or any Member under sub-section (1) of section 8;

(d) the post or posts in respect of which the appointment shall be made after consultation with the Union Public Service Commission under the proviso to sub-section (1) of Section 11;

(e) other matters for which the Lokpal shall have the powers of a civil court under clause (vi) of sub-section (1) of Section 31;

(f) the manner of sending the order of attachment along with the material to the Special Court under sub-section (2) of Section 33;



(g) the manner of transmitting the letter of request under sub-section (2) of Section 39;

(h) the manner of making reference to the Chief Justice of India under sub-section (3) of Section 40;

(i) the form and the time for preparing in each financial year the budget for the next financial year, showing the estimated receipts and expenditure of the Lokpal under Section 43;

(j) the form for maintaining the accounts and other relevant records and the form of annual statement of accounts under sub-section (1) of Section 45;

(k) the form and manner and the time for preparing the returns and statements along with particulars under sub-section (1) of Section 46;

(l) the form and the time for preparing an annual report giving a summary of its activities during the previous year under sub-section (2) of Section 46;

(m) the form of annual return to be filed by a public servant under sub-section (5) of Section 47;

(n) the minimum value for which the competent authority may condone or exempt a public servant from furnishing information in respect of assets under the proviso to Section 48;

(o) any other matter which is to be or may be prescribed.

Power of Lokpal to make regulations.

**61. (1)** Subject to the provisions of this Act and the rules made thereunder, the Lokpal may, by notification make regulations to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—

(a) the conditions of service of the secretary and other officers and staff of the Lokpal and

the matters which in so far as they relate to salaries, allowances, leave or pensions, require the approval of the President under sub-section (2) of Section 11;

(b) the place of sittings of Benches of the Lokpal under clause (f) of sub-section (1) of Section 19;

(c) the manner for displaying on the website of the Lokpal, the status of all complaints pending or disposed of along with records and evidence with reference thereto under sub-section (13) of Section 23;

(d) the manner and procedure of conducting an inquiry or investigation under sub-section (15) of Section 23;

(e) any other matter which is required to be, or may be, specified under this Act.

**62.** Every rule and every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation, or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

Laying of rules and regulations.

**63. (1)** If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act, as may appear to be necessary for removing the difficulty:

Power of Lokpal to make regulations.

Provided that no such order shall be made under this section after the expiry of a period of two years from the commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

## THE FIRST SCHEDULE

[See section 3(5)]

I, A.B....., having been appointed Chairperson (or a Member) of the Lokpal, do swear in the name of God/solemnly affirm that I will bear true faith and allegiance to the Constitution of India as by law established, that I will duly and faithfully and to the best of my ability, knowledge and judgment perform the duties of my office without fear or favour, affection or ill-will.

## THE SECOND SCHEDULE

(See section 59)

### AMENDMENT TO CERTAIN ENACTMENTS

#### PART I

##### AMENDMENT TO THE COMMISSIONS OF INQUIRY ACT, 1952 (60 OF 1952)

Amendment  
of Section  
3.

In Section 3, in sub-section (1), for the words “The appropriate Government may”, the words and figures “Save as otherwise provided in the Lokpal Act, 2011, the appropriate Government may” shall be substituted.

#### PART II

##### AMENDMENTS TO THE PREVENTION OF CORRUPTION ACT, 1988 (49 OF 1988)

Amendment  
of Section  
13.

1. In Section 13, in sub-section (2), for the words “seven years”, the words “ten years” shall be substituted.

Amendment  
of Section  
14.

2. In Section 14, for the words “seven years”, the words “ten years” shall be substituted.

Amendment  
of Section  
15.

3. In Section 19, in sub-section (1), after the words “except with the previous sanction”, the words and figures “save as otherwise provided in the Lokpal Act, 2011” shall be inserted.

#### PART III

##### AMENDMENT TO THE CODE OF CRIMINAL PROCEDURE, 1973 (2 OF 1974)

Amendment  
of Section  
197.

In Section 197, after the words “except with the previous sanction”, the words and figures “save as otherwise provided in the Lokpal Act, 2011” shall be inserted.

## STATEMENT OF OBJECTS AND REASONS

The need to have a strong and effective institution of Lokpal has been felt for quite sometime. The Administrative Reforms Commission, in its interim report on the “Problems of Redressal of Citizens’ Grievances” submitted in 1966, *inter alia*, recommended the setting up of an institution of Lokpal at the Centre in this regard. To give effect to this recommendation of the Administrative Reforms Commission, eight Bills on Lokpal were introduced in the Lok Sabha in the past, namely in the years 1968, 1971, 1977, 1985, 1989, 1996, 1998 and 2001. However, these Bills had lapsed consequent upon the dissolution of the respective Lok Sabha except in the case of 1985 Bill which was withdrawn after its introduction.

2. A need has been felt to constitute a mechanism for dealing with complaints on corruption against public functionaries in high places. In this regard, the Central Government constituted a Joint Drafting Committee (JDC) on 8th April, 2011 to draft a Lokpal Bill.

3. Based on the deliberations and having regard to the need for establishing a strong and effective institution of Lokpal to inquire into allegations of corruption against certain public functionaries, it has been decided to enact a stand alone legislation, *inter alia*, to provide for the following matters, namely:—

(i) to establish an Institution of Lokpal with a Chairperson and eight Members of which fifty per cent shall be Judicial Members;

(ii) to set up Lokpal’s own Investigation Wing and Prosecution Wing with such officers and employees as felt by it to be necessary;

(iii) the category of public functionaries against whom allegations of corruption are to be inquired into, namely:—

(a) a Prime Minister, after he has demitted office;

(b) a Minister of the Union;

(c) a Member of Parliament;

(d) any Group “A” officer or equivalent;

(e) a Chairperson or member or officer equivalent to Group “A” in any body, Board, corporation, authority, company, society, trust, autonomous body established by an Act of Parliament or wholly or partly financed or controlled by the Central Government;

(f) any director, manager, secretary or other officer of a society or association of persons or trust wholly or partly financed or aided by the Government or in receipt of any donations from the public and whose annual income exceeds such amount as the Central Government may by notification specify but the organisations created for religious purposes and receiving public donations would be outside the purview of the Lokpal.

(iv) to provide for a mechanism to ensure that no sanction or approval under Section 197 of the Code of Criminal Procedure, 1973 or Section 19 of the Prevention of Corruption Act, 1988, will be required in cases where prosecution is proposed by the Lokpal;

(v) to confer on the Lokpal the power of search and seizures and certain powers of a Civil Court;

(vi) to empower the Lokpal or any investigation officer authorised by it in this behalf to attach property which, *prima facie*, has been acquired by corrupt means;

(vii) to lay down a period of limitation of seven years from the date of commission of alleged offence for filing the complaints before the Lokpal;

(viii) to confer powers of police upon Lokpal which the police officers have in connection with investigation;

(ix) to charge the expenses of Lokpal on the Consolidated Fund of India;

(x) to utilise services of officers of Central or State Government with the consent of the State Government for the purpose of conducting inquiry;

(xi) to recommend transfer or suspension of public servants connected with allegation of corruption;

(xii) to constitute sufficient number of Special Courts as may be recommended by the Lokpal to hear and decide the cases arising out of the Prevention of Corruption Act, 1988 under the proposed enactment;

(xiii) to make every public servant to declare his assets and liabilities, and in case of default or furnishing misleading information, to presume that the public servant has acquired such assets by corrupt means;

(xiv) to provide for prosecution of persons who make false or frivolous or vexatious complaints.

4. The notes on clauses explain in detail the various provisions contained in the Bill.

5. The Bill seeks to achieve the above objects.

NEW DELHI;  
*The 1st August, 2011.*

V. NARAYANASAMY

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RESIDENT'S RECOMMENDATION UNDER ARTICLE 117 OF THE  
CONSTITUTION OF INDIA

[Copy of letter No. 40407/44/2011-AVD. IV, dated the 1st August, 2011 from Shri Y. Narayanasamy, Minister of State in the Ministry of Personnel, Public Grievances and Pensions to the Secretary-General, Lok Sabha]

The President, having been informed of the subject matter of the Lokpal Bill, 2011 recommends the introduction and consideration of the Bill in Lok Sabha under article 117(1) and (3) of the Constitution.



### NOTES ON CLAUSES

*Clause 1.*—This clause of the Bill seeks to provide for the short title, extent and commencement of the proposed Lokpal legislation. It provides that it shall come into force on such date as the Central Government may appoint by notification in the Official Gazette and the Central Government may appoint different dates for different provisions of the proposed legislation.

*Clause 2.*—This clause defines the various expressions used in the Bill which, *inter alia*, include the expressions – “Bench”, “competent authority”, “complaint”, “inquiry”, “Judicial Member”, “Lokpal”, “Member”, “Minister”, “public servant”, “Special Court”, etc. The court of Special Judge appointed under sub-section (1) of section 3 of the Prevention of Corruption Act, 1988 shall be the Special Court.

Sub-clause (3) of the aforesaid clause provides that any reference in the proposed legislation to any other Act or provision thereof which is not in force in any area to which the proposed legislation applies shall be construed to have a reference to the corresponding Act or provision thereof in force in such area.

*Clause 3.*—This clause seeks to provide for the establishment of Lokpal consisting of a Chairperson and eight Members. It also provides that fifty per cent of the Members shall be Judicial Members. The Chairperson shall be a person who is or has been the Chief Justice or a Judge of the Supreme Court. The Judicial Member shall be a person who is or has been the Judge of the Supreme Court or the Chief Justice of a High Court. The Members shall be the persons who are of impeccable integrity, outstanding ability and standing having special knowledge and experience of not less than twenty-five years in the matters relating to anti-corruption policy, public administration, vigilance, finance including insurance and banking, law and management. It further provides that the Chairperson or a Member of the Lokpal shall not be a Member of Parliament or a Member of a Legislature of any State or Union territory and shall not hold any office of trust or profit or be connected with any political party or carry on own business or practice any profession.

It further provides that the person appointed as Chairperson or a Member before he enters upon his office shall resign from the office of trust or profit held by him or sever his connection with the conduct and management of any business carried on by him or cease to practice if he is practicing any profession.

*Clause 4.*—This clause provides for appointment of Chairperson and other Members and constitution of a Selection Committee for that purpose. The Chairperson and Members shall be appointed after obtaining the recommendations of a Selection Committee consisting of the Prime Minister, the Speaker of the House of the People, the Leader of Opposition in the House of the People, the Leader of Opposition” in the Council of States, one Union Cabinet Minister, one sitting Judge of the Supreme Court, one sitting Judge of a High Court nominated by the Chief Justice of India, one eminent jurist and one person of eminence in public life with wide knowledge and experience in anti-corruption policy, public administration, vigilance, policy making, finance including insurance and banking, law or management to be nominated by the Central Government. For the purpose of selecting the Chairperson and other Members of the Lokpal and for preparing a panel of persons to be considered for appointment, the Selection Committee may constitute a Search Committee consisting of such persons of standing having special knowledge and expertise in the matters relating to anti-corruption policy, public administration, vigilance, policy making, finance including insurance and banking, law and management or in any other matter which in the opinion of the Selection Committee may be useful for making the selection of a Chairperson and Members of the Lokpal.

*Clause 5.*—This clause provides that all necessary steps for appointment of a new Chairperson or Members shall be taken at least three months before the expiry of the term of such Chairperson or Member, as the case may be, in accordance with the procedure laid down in the proposed legislation.

*Clause 6.*—This clause deals with the terms of office of the Chairperson and Members. It provides that the Chairperson and every Member shall be appointed by the President by warrant under his hand and seal and hold office as such for a term not exceeding five years from the date on which he enters upon his office or until he attains the age of seventy years, whichever is earlier.

*Clause 7.*—This clause deals with salary, allowances and other conditions of services of Chairperson and Members. It provides that the salary, allowances and other conditions of services of the Chairperson shall be the same as that of a Chief Justice of India. The salary, allowances and other conditions of services of the Members shall be the same as that of a Judges of the Supreme Court. Further, after a person is appointed as a Chairperson or a Member, his conditions of service, allowances and pension payable to him shall not be varied to his disadvantage.

*Clause 8.*—This clause provide for the removal and suspension of Chairperson and Members of the Lokpal. The Chairperson and Members may be removed from his office by an order of the President on the ground of misbehaviour after the Supreme Court held an inquiry in accordance with a prescribed procedure on a reference being made to it by the President *suo motu*, or on a petition of at least one hundred Members of Parliament or on a petition of a citizen referred to the Supreme Court by the President.

Sub-clause (2) provides that the Chairperson or a Member in respect of whom a reference has been made to the Supreme Court may be suspended by the President until orders on receipt of a report from the Supreme Court on the reference made to it. Sub-clause (3) provides that the Chairperson or any Member may be removed from office if he is adjudged as insolvent or if, during his term of office engages in paid employment outside his duties or if in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body. Sub-clause (4) provides certain grounds in which the Chairperson or Member shall be deemed to be guilty of misbehaviour.

*Clause 9.*—This clause provides for restriction on employment by Chairperson and Members after ceasing to hold the office. It provides that the Chairperson or Member shall not be eligible for reappointment in the Lokpal or any diplomatic assignment or appointment as Administrator of Union territory or further employment to any other office of profit. It also provides that the Chairperson and Members of Lokpal shall be ineligible to contest any election of President or Vice-President or Member of either House of Parliament or Member of either House of a State Legislature or Municipality or Panchayat within a period of five years from the date of relinquishing the post. However, a Member shall be eligible to be appointed as a Chairperson if his total tenure as Member and Chairperson does not exceed five years.

*Clause 10.*—This clause seeks to provide that in the event of occurrence of any vacancy in the office of Chairperson, by reason of his death, resignation or otherwise, the President may authorise the senior-most Member to act as the Chairperson until a new Chairperson is appointed to fill the vacancy and when a Chairperson is unable to discharge his functions owing to absence or leave or otherwise, the President may authorise the senior-most Member to discharge his functions.

*Clause 11.*—This clause seeks to provide that the secretary or other officers and staff of the Lokpal shall be appointed by the Chairperson or the Member or officer of Lokpal as the Chairperson may direct. The President may make rules that the appointment in respect of any post or posts shall be made after consultation with the Union Public Service Commission.

*Clause 12.*—This clause provides for setting up of an Investigation Wing of the Lokpal for the purpose of conducting investigation of any offence alleged to have been committed by a public servant punishable under the Prevention of Corruption Act, 1988. It further provides that till such time the Investigation Wing is constituted by the Lokpal, the Central Government will make available the services of its investigation officers and other staff required by the Lokpal. It also provides for extension of powers and jurisdiction of officers of the Investigation Wing of the Lokpal to the States with the consent of the concerned State Government and on such extension the members of the Investigation Wing of the Lokpal will have jurisdiction and powers under certain provisions of the Delhi Special Police Establishment Act, 1946 to act as if they were members of the Police Force of the concerned State.

*Clause 13.*—This clause stipulates that the Investigating Officers shall be of the rank of Deputy Superintendent of Police or any other officer of equivalent rank.

*Clause 14.*—This clause lays down that the Lokpal may require the Investigating Officer of its Investigation Wing to make a preliminary investigation and submit a report within a specified time so as to specify itself as to whether or not the matter requires to be inquired into further by the Lokpal.

*Clause 15.*—This clause seeks to provide that the Lokpal may constitute a Prosecution Wing under a Director of Prosecution with such other officers and employees as required to assist him for the purpose of prosecution of public servants in relation to offences punishable under the Prevention of Corruption Act, 1988, such prosecution shall be on complains to be made by the Lokpal before the Special Court.

*Clause 16.*—This clause lays down that the expenses of the Lokpal including salaries, allowances and pensions payable to or in respect of Chairperson, Members, Secretary or other officers or staff of the Lokpal shall be charged on the Consolidated Fund of India. It also provides that any fees or other moneys taken by the Lokpal shall form part of the Consolidated Fund of India.

*Clause 17.*—This clause deals with the jurisdiction of Lokpal. sub-clause (1) seeks to provide that the Lokpal shall inquire into any matter involved in or arising from or connected with any allegation of corruption made in a complaint in respect of Prime Minister, after he has demitted the office of the Prime Minister, a Minister, a Member of either House of Parliament, any Group “A” officer or equivalent or above from against the public servants as defined in sub-clauses (i) and (ii) of

Clause (c) of Section 2 of the Prevention of Corruption Act, 1988 who was serving or has served in connection with the affairs of the Union, and Chairperson or Member or officers of certain boards, corporations, authority, company, society, trust, etc., established by an Act of Parliament or wholly or partly financed or controlled by the Central Government; director, manager, secretary or other officers of certain societies, association of persons etc. and director, manager, secretary or other officer of every other society, etc. wholly or partly financed or aided by the Government and the annual income of which exceeds such amount as may be notified by the Central Government which are for non-religious purpose and are in receipt of public donations. However, the various offices held by the Prime Minister shall not come within the purview of this provision.

Sub-clause (2) provides that the Lokpal shall not inquire into any matter against any member of either House of Parliament in respect of anything said or vote given by him in Parliament or any Committee thereof covered under the provisions of Clause (2) of Article 105 of the Constitution.

Sub-clause (3) provides that the Lokpal may inquire into any act or conduct of any person if such person is associated with the allegation of corruption under the Prevention of Corruption Act, 1988.

Sub-clause (4) seeks to provide that in the matters in respect of which a complaint has been made under the proposed legislation shall not be referred for inquiry under the Commissions of Inquiry Act, 1952. The Explanation to Clause 17 clarifies that a complaint under the proposed legislation shall relate only to a period during which the public servant was holding or serving as a public servant.

*Clause 18.*—This clause lays down the matters pending before any Court or Committee or Authority prior to commencement of the proposed legislation shall be continued before such Court, Committee or Authority, as the case may be. However, such continuance of proceedings will not affect the powers of the Lokpal to inquire into such matter under the proposed legislation.

*Clause 19.*—This clause seeks to provide that the jurisdiction of the Lokpal may be exercised by Benches thereof. A Bench of the Lokpal may be constituted by the Chairperson with two or more Members. Every Bench shall ordinarily consist of at least one Judicial Member in it. The Benches of Lokpal shall ordinarily be at New Delhi and at such places as the Lokpal may, by regulations, specify.

*Clause 20.*—This clause seeks to empower the Chairperson to distribute the business of Lokpal amongst its Benches and also specify the matters which may be dealt with by each Bench.

*Clause 21.*—This clause seeks to provide that the Chairperson may transfer any case pending before one Bench for disposal to any other Bench on receipt of an application for such transfer from the complainant or the public servant.

*Clause 22.*—This clause seeks to provide that the decision of the Lokpal shall be according to the opinion of the majority of the Members of Lokpal. However, if the Members of a Bench consisting of two Members differ in opinion on any point or points shall be referred to the Chairperson. The Chairperson may either hear such point or points himself or refer the same for hearing by one or more other Member and it shall be decided accordingly to the opinion of the majority of the Members who have heard the case including those who first heard it.

*Clause 23.*—This clause makes provision relating to complaint and inquiry and investigation by Lokpal. It provides that on receipt of a complaint, the Lokpal may either make preliminary inquiry or direct its Investigation Wing to make a preliminary inquiry to ascertain whether there exist a *prima facie* case for proceeding in the matter. A preliminary inquiry or preliminary investigation should ordinarily be completed within thirty days. However, this period could be extended for a further period of three months from the date of receipt of the complaint after recording the reasons for extension. It also provides that in cases where the Lokpal is of the opinion that it is not in the interest of justice to either hold preliminary inquiry or preliminary investigation it may for reasons to be recorded in writing refer the matter for investigation. Sub-clause (4) provides that the Lokpal before coming to a conclusion in the course of a preliminary inquiry that a *prima facie* case is made out against a public servant, the Lokpal shall give an opportunity to the public servant of being heard. It further provides that where the Lokpal is of the opinion that *prima facie* case is made out against the public servant, the public servant against whom such investigation is being conducted shall be given an opportunity to be heard before filing the charge sheet.

*Clause 24.*—This clause seeks to provide that the persons against whom any inquiry or investigation is proposed to be conducted shall be allowed to inspect any record in connection with the commission of any alleged offence which are necessary for him to defend his case and take extracts therefrom.

*Clause 25.*—This clause provides that persons likely to be prejudicially affected are to be provided a reasonable opportunity of being heard in the inquiry and to produce evidence in his defence consistent with the principles of natural justice. However, this will not apply where the credibility of a witness is being questioned.

*Clause 26.*—This clause seeks to provide that Lokpal may require any public servant or any other person to furnish information or produce documents relevant to inquiry or investigation.

*Clause 27.*—This clause makes provision that no previous sanction or approval shall be required by the Lokpal or its Investigation Wing under Section 197 of the Code of Criminal Procedure, 1973 or Section 19 of the Prevention of Corruption Act, 1988.

*Clause 28.*—This clause makes provision for the action to be taken by the Lokpal on conclusion of inquiry or investigation in relation to public servants who are not Ministers or Members of Parliament. It further provides that on conclusion of inquiry or investigation, where it is found that there is commission of offence under the Prevention of Corruption Act, 1988 by a public servant, the Lokpal may file a case in the Special Court and send a copy of the report and its findings to the competent authority, recommend to the competent authority initiation of disciplinary proceedings and also provide a copy of the report to the public servant or his representative.

*Clause 29.*—This clause makes provision for action to be taken by the Lokpal on conclusion of inquiry or investigation against public servants being Ministers or Members of Parliament. It provides that where the commission of offence under Prevention of Corruption Act, 1988 by such public servants has-taken place, the Lokpal may file a case in the Special Court and send a copy of the report along with its findings to the competent authority as defined in the proposed legislation. It also provides that the competent authority shall examine the report and communicate to the Lokpal within a period of ninety days from the date of receipt of the report, the action taken or proposed to be taken on the basis of the report. However, in computing the period of ninety days, the period during which the Parliament will not be in session shall be excluded.

*Clause 30.*—This clause seeks to confer power of search and seizure of documents on the Lokpal.

*Clause 31.*—This clause provides that the Lokpal shall have all the powers of a Civil Court in certain matters and the proceedings before the Lokpal shall be deemed to be judicial proceedings within the meaning of Section 193 of the Indian Penal Code.

*Clause 32.*—This clause seeks to make provision that the Lokpal may utilize the services of any officer or investigating agency of the Central Government or the State Government, as the case may be. It also enables the Lokpal to confer certain powers on such officers.

*Clause 33.*—This clause makes provision for provisional attachment of assets by the Lokpal or any investigation officer authorised by it if such assets are any proceeds of corruption.

*Clause 34.*—This clause makes provision for confirmation of provisional attachment of assets made by the Lokpal under Clause 33 by the Special Court.

*Clause 35.*—This clause seeks to provide that the Lokpal may recommend transfer or suspension of any public servant connected with allegation of corruption. This clause also provides that ordinarily the recommendation of the Lokpal shall be accepted by the Government.

*Clause 36.*—This clause seeks to provide that the Lokpal may give directions to prevent destruction of records during inquiry.

*Clause 37.*—This clause provides that the Lokpal may, by general or special order in writing, and subject to such conditions and limitations as may be specified therein, direct that any administrative or financial power conferred on it may also be exercised or discharged by such of its Members or officers or employees as may be specified in the order.

*Clause 38.*—This clause provides for constitution of Special Courts by the Central Government as recommended by the Lokpal to hear and decide the cases arising out of the Prevention of Corruption Act, 1988 or under the proposed legislation. It also provides that the Special Courts shall ensure completion of each trial within a period of one year from the date of filing the case in the court, However, in case the trial cannot be completed within a period of one year, the Special Court shall record reasons therefor and complete the trial within a further period of not more than three months or such further periods not exceeding three months each, for reasons to be recorded in writing, before the end of each such three months period, but not exceeding a total period of two years.

*Clause 39.*—This clause makes provision for issue of letter of request to a court or an authority in the contracting State in certain cases.

*Clause 40.*—This clause makes provisions for handling of complaints against the Chairperson and Members of the Lokpal.

*Clause 41.*—This clause provides for the provisions for dealing the complaints against officials of Lokpal.

*Clause 42.*—This clause provides that when a public servant has committed an offence under the Prevention of Corruption Act, 1988, the Special Court may make an assessment of loss, if any; caused to the public exchequer on account of actions or decisions of such public servant not taken in good faith and for which he stands convicted, and may order recovery of such losses.

*Clause 43.*—This clause seeks to provide that the Lokpal shall prepare its budget showing the estimated receipts and expenditure of the Lokpal and forward the same to the Central Government for intervention.



*Clause 44.*—This clause provides that without prejudice to the provisions of Clause 16, the Central Government may make grants of such sums of money to the Lokpal as are required to be paid for salaries and allowances payable to the Chairperson and Members and the administrative expenses, including the salaries and allowances and pension payable to or in respect of officers and other employees of the Lokpal.

*Clause 45.*—This clause provides for maintaining the accounts and other relevant records and annual statement of accounts by the Lokpal. It further provides that accounts of the Lokpal shall be audited by the Comptroller and Auditor General of India. It also provides that the accounts of Lokpal together with the Audit Report thereon shall be forwarded annually to the Central Government and the Central Government shall lay the same before each House of Parliament.

*Clause 46.*—This clause provides that the Lokpal shall furnish to the Central Government such returns or statements and such particulars with regard to any matter under the jurisdiction of Lokpal as the Central Government may prescribe from time-to-time.

*Clause 47.*—This clause provides that the public servants shall make a declaration of their assets and liabilities in the manner as provided in this Act.

*Clause 48.*—This clause provides that any wilful failure on the part of a public servant to declare his assets shall amount to presumption that the assets have been acquired by corrupt means.

*Clause 49.*—This clause provides that if any person makes false or frivolous or vexatious complaint under this Act, he shall be liable for prosecution and on conviction he may be punished with imprisonment for a minimum term of two years and a maximum term of five years and with fine minimum of which shall be twenty-five thousand rupees and maximum of two lakh rupees.

*Clause 50.*—This clause provides that if false complaint is made by the Society or association of persons or trust, in that case every person who, at the time of commission of offence, was directly in-charge of the affairs or activities of such society etc. shall be deemed to be guilty of the offence under Clause 48 and liable for punishment.

*Clause 51.*—This clause provides for protection of public servant from legal proceedings, etc., for the action taken in good faith.

*Clause 52.*—This clause provides for the protection of action taken in good faith by Lokpal, any officer, employee, agency or any person in respect of anything done or intended to be done under the proposed legislation or the rules or regulations made thereunder.

*Clause 53.*—This clause provides that the Chairperson, Members, Officers and other employees of the Lokpal shall be public servants within the meaning of Section 21 of the Indian Penal Code.

*Clause 54.*—This clause lays down the period of limitation for filing of complaints before the Lokpal as seven years from the date of commission of the alleged offence.

*Clause 55.*—This clause provides that no civil court shall have jurisdiction in the matters for which Lokpal is empowered under the proposed legislation.

*Clause 56.*—This clause provides that legal assistance for defending a case before the Lokpal shall be provided to every person against whom complaint has been made before it, if such assistance is requested for.

*Clause 57.*—This clause seeks to provide that the provisions of the proposed legislation shall have overriding effect.

*Clause 58.*—This clause provides that the provisions of the proposed legislation shall be in addition to any other law for the time being in force.

*Clause 59.*—This clause seeks to amend certain enactments as specified in Second Schedule to the proposed legislation.

*Clause 60.*—This clause seeks to empower the Central Government to make rules for carrying out the provisions of the proposed legislation. Sub-clause (2) of the said clause enumerates the various matters in respect of which such rules may be made.

*Clause 61.*—This clause seeks to confer power on the Lokpal to make regulations for carrying out the provisions of the proposed legislation consistent with the provisions of the proposed legislation and the rules made by the Central Government under Clause 60. Sub-clause (2) enumerates the various matters in respect of which such regulations may be made.

*Clause 62.*—This clause provides that every rule and every regulation made under the proposed legislation shall be laid before each House of Parliament.

*Clause 63.*—This clause relates to the power of the Central Government to remove difficulties. In case any difficulty arises in giving effect to the provisions of the proposed legislation, the Central Government may make such provisions as may be necessary in removing the difficulties by order published in the Official Gazette. However, no such order shall be made under this clause after the expiry of a period of two years from the commencement of the proposed legislation and every such order shall also be required to be laid before each House of Parliament.

The First Schedule to the proposed legislation lays down the form of oath or affirmation which may be taken by any person before entering upon the office of Chairperson or Member of the Lokpal.

The Second Schedule contains the details of amendments in certain enactments which are consequential to the enactment of the proposed legislation.

### FINANCIAL MEMORANDUM

Sub-clause (1) of Clause 3 of the Bill provides for the establishment of an institution to be called the Lokpal for the purpose of making inquiries in respect of complaints as may be made under the proposed legislation.

2. Sub-clause (2) of Clause 3 provides for the appointment of the Lokpal consisting of a Chairperson and eight Members. Clause 7 of the Bill envisages that the salary, allowances and other conditions of service of, the Chairperson of the Lokpal shall be the same as those of the Chief Justice of India and the Members as those of the Judges of the Supreme Court. This clause also provides that the salary payable to the Chairperson and Members shall be reduced by any pension and pension equivalent to other pensionary benefits to which the Member may be entitled to in respect of any previous service under the Government of India or under the Government of a State.

3. Clause 11 of the Bill provides for the appointment of a Secretary and such other officers and employees for the Lokpal. Sub-clause (2) of the said clause provides that the conditions of service of Secretary and other officers and staff of the Lokpal shall be such as may be specified by regulations made by the Lokpal for the purpose.

4. Sub-clause (1) of Clause 12 provides that the Lokpal shall constitute an Investigation Wing for the purpose of conducting investigation of any offence alleged to have been committed by a public servant punishable under the Prevention of Corruption Act, 1988. Sub-clause (1) of Clause 15 of the Bill provides that the Lokpal shall constitute a Prosecution Wing under a Director of Prosecution and such other officers and staff for the purpose of prosecution of public servants in relation to any complaint by the Lokpal. Sub-clause (1) of Clause 32 empowers the Lokpal to utilise the services of any officer or investigating agency of the Central Government or any State Government for the purpose of conducting any inquiry.

5. Clause 16 of the Bill provides that the expenses of the Lokpal including the salaries, allowances and pensions payable to or in respect of the Chairperson, Members or Secretary or other officers or staff of the Lokpal shall be charged on the Consolidated Fund of India and any fees and other moneys taken by the Lokpal shall form part of that fund.

6. At this stage, it is not possible to give precise details of the expenditure to be incurred on the Lokpal. It is, however, expected that the Bill, if enacted and brought into operation, would involve a non-

recurring expenditure of fifty crores of rupees and a recurring expenditure of hundred crores of rupees in a financial year. In case it becomes necessary to construct a building to house the establishment of the Lokpal, additional expenditure of a nonrecurring nature of the order four hundred crores of rupees may also be involved.

7. The Bill, if enacted, is not likely to involve any other recurring or non-recurring expenditure.

## MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 60 of the Bill empowers the Central Government to make rules for the purpose of carrying out the provisions of the proposed legislation. Sub-clause (1) of the said clause specifies the various matters in respect of which the rules may be made. These matters, *inter alia*, relate to the form of complaint referred to in clause (d) of sub-section (1) of Section 2; the term of Search Committee, fee and allowances payable to the members of Search Committee and the manner of selection of panel of names; procedure of inquiry into misbehaviour for removal of the Chairperson or any Member; the posts in respect of which appointments shall be made after consultation with the Union Public Service Commission; matters for which the Lokpal shall have the powers of a Civil Court; the manner of sending an order of attachment to a Special Court; the manner of transmitting the letter of request under sub-section (2) of Section 39; the manner of making reference to the Chief Justice of India; the form and the time for preparing the budget; the form for maintaining accounts and other relevant records and the form of annual statement of accounts; the form and manner and time for preparing the returns and statements under sub-section (1) of Section 46; the form and the time for preparing the annual report; the form of annual return to be filed by a public servant under sub-section (5) of Section 47; the minimum value for which the competent authority may condone or exempt a public servant from furnishing information in respect of assets under the proviso to Section 48.

2. Clause 61 of the Bill empowers the Lokpal to make, by notification, regulations for carrying out the provisions of the proposed legislation. Such regulations should be consistent with the provisions of the proposed legislation and the rules made thereunder. The matters in respect of which the Lokpal may make regulations, *inter alia*, include the conditions of service of the secretary and other officers and staff of the Lokpal and the matters which in so far as relate to salaries, allowances, leave or pensions, the place of sittings of Benches of the Lokpal, the manner for displaying the status of all complaints pending or disposed of on the website of the Lokpal, and the manner and procedure of conducting an inquiry or investigation.

3. The rules and regulations made under the proposed legislation shall be required to be laid before each House of Parliament.

4. The matters in respect of which rules or regulations may be made under the proposed legislation are matters of procedure or administrative details and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

*ANNEXURE*EXTRACT FROM THE COMMISSIONS OF INQUIRY ACT, 1952  
(60 OF 1952)

\* \* \* \* \*

Appointment  
of  
Commission.

3. (1) The appropriate Government may, if it is of opinion that it is necessary so to do, and shall, if a resolution in this behalf is passed by each House of Parliament or, as the case may be, the Legislature of the State, by notification in the Official Gazette, inquiry into any definite matter of public importance and performing such functions and within such time as may be specified in the notification, and the Commission so appointed shall make the inquiry and perform the functions accordingly:

Provided that where any such Commission has been appointed to inquire into any matter—

(a) by the Central Government, no State Government shall, except with the approval of the Central Government, appoint another Commission to inquire into the same matter for so long as the Commission appointed by the Central Government is functioning;

(b) by a State Government, the Central Government shall not appoint another Commission to inquire into the same matter for so long as the Commission appointed by the State Government is functioning, unless the Central Government is of opinion that the scope of the inquiry should be extended to two or more States.

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EXTRACT FROM THE PREVENTION OF CORRUPTION ACT, 1988  
(49 OF 1988)

\* \* \* \* \*

13. (1) \* \* \* \* \* Criminal misconduct by a public servant.

(2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than one year but which may extend to seven years and shall also be liable to fine.

\* \* \* \* \*

14. Whoever habitually commits—  
(a) an offence punishable under Section 8 or Section 9; or  
(b) an offence punishable under Section 12, shall be punishable with imprisonment for a term which

Habitual committing of offence under Sections 8, 9 and 12.

shall be not less than two years but which may extend to seven years and shall also be liable to fine.

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## CHAPTER V

### SANCTION FOR PROSECUTION AND OTHER MISCELLANEOUS PROVISIONS

19. (1) No court shall take cognizance of an offence punishable under Sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanctions,—

Previous sanction necessary for prosecution.

(a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;

(b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office.

\* \* \* \* \*



## EXTRACT FROM THE CODE OF CRIMINAL PROCEDURE, 1973

(2 OF 1974)

\* \* \* \* \*

Prosecution  
of Judges  
and public  
servants.

**197. (1)** When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction—

(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;

(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government:

Provided that where the alleged offence was committed by a person referred to in Clause (b) during the period while a Proclamation issued under Clause (1) of Article 356 of the Constitution was in force in a State, Clause (b) will apply as if for the expression “State Government” occurring therein, the expression “Central Government” were substituted.

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LOK SABHA

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BILL

to provide for the establishment of the institution of Lokpal to inquire into allegations of corruption against certain public functionaries and for matters connected therewith or incidental thereto.

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*(Shri V. Narayanasamy, Minister of State in the Ministry of Personnel,  
Public Grievances and Pensions)*



## **Annexure-IV**

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**The Lokpal and Lokayuktas Bill, 2011**  
(As introduced in the Lok Sabha on 22 December 2011)

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AS INTRODUCED IN LOK SABHA

**Bill No. 134 of 2011**

## THE LOKPAL AND LOKAYUKTAS BILL, 2011

### ARRANGEMENT OF CLAUSES

#### CLAUSES

#### PART I

##### PRELIMINARY

1. Short title, extent, application and commencement.

#### PART II

##### LOKPAL FOR THE UNION

##### CHAPTER I

##### DEFINITIONS

2. Definitions.

##### CHAPTER II

##### ESTABLISHMENT OF LOKPAL

3. Establishment of Lokpal.
4. Appointment of Chairperson and Members on recommendations of Selection Committee.
5. Filling of vacancies of Chairperson or Members.
6. Term of office of Chairperson and Members.
7. Salary, allowances and other conditions of service of Chairperson and Members.
8. Restriction on employment by Chairperson and Members after ceasing to hold office.
9. Member to act as Chairperson or to discharge his functions in certain circumstances.
10. Secretary, other officers and staff of Lokpal.

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##### INQUIRY WING

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## THE SCHEDULE

AS INTRODUCED IN LOK SABHA

**Bill No. 134 of 2011**

## THE LOKPAL AND LOKAYUKTAS BILL, 2011

A

BILL

*to provide for the establishment of a body of Lokpal for the Union and Lokayukta for States to inquire into allegations of corruption against certain public functionaries and for matters connected therewith or incidental thereto.*

WHEREAS the Constitution of India established a Democratic Republic to ensure justice for all;

AND WHEREAS India has ratified the United Nations Convention Against Corruption;

AND WHEREAS the Government's commitment to clean and responsive governance has to be reflected in effective bodies to contain and punish acts of corruption;

NOW, THEREFORE, it is expedient to enact a law, for more effective implementation of the said Convention and to provide for prompt and fair investigation and prosecution in cases of corruption.

BE it enacted by Parliament in the Sixty-second Year of the Republic of India as follows:—

### PART I

#### PRELIMINARY

- |   |  |
|---|--|
| 1. (1) This Act may be called the Lokpal and Lokayuktas Act, 2011.                              | Short title, extent, application and commencement. |
| (2) It extends to the whole of India.   |  |
| (3) It shall apply to public servants in and outside India.                                     |  |
| (4) It shall come into force on such date as the Central Government may, by notification in the |  |

Official Gazette, appoint; and different dates may be appointed for different States and for different provisions of this Act, and any reference in any provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

## PART II

### LOKPAL FOR THE UNION

#### CHAPTER I

##### DEFINITIONS

Definitions. 2. (1) In this Act, unless the context otherwise requires,—

(a) “bench” means a Bench of the Lokpal;

(b) “Chairperson” means the Chairperson of the Lokpal;

(c) “competent authority”, in relation to—

(i) the Prime Minister, means the House of the People;

(ii) a member of the Council of Ministers, means the Prime Minister;

(iii) a member of Parliament other than a Minister, means—

(A) in the case of a member of the Council of States, the Chairman of the Council; and

(B) in the case of a member of the House of the People, the Speaker of the House;

(iv) an officer in the Ministry or Department of the Central Government, means the Minister-in-charge of the Ministry or Department under which the officer is serving;

(v) a chairperson or members of any body or Board or corporation or authority or company or society or autonomous body (by whatever name called) established or

constituted under any Act of Parliament or wholly or partly financed by the Central Government or controlled by it, means the Minister-in-charge of the administrative Ministry of such body or Board or corporation or authority or company or society or autonomous body;

(vi) an officer of any body or Board or corporation or authority or company or society or autonomous body (by whatever name called) established or constituted under any Act of Parliament or wholly or partly financed by the Central Government or controlled by it, means the head of such body or Board or corporation or authority or company or society or autonomous body;

(vii) in any other case not falling under sub-clauses (i) to (vi) above, means such department or authority as the Central Government may, by notification, specify:

Provided that if any person referred to in sub-clause (v) or sub-clause (vi) is also a Member of Parliament, then, the competent authority shall be—

(A) in case such member is a Member of the Council of States, the Chairman of the Council; and

(B) in case such member is a Member of the House of the People, the Speaker of the House;

(d) “Central Vigilance Commission” means the Central Vigilance Commission constituted under sub-section (1) of Section 3 of the Central Vigilance Commission Act, 2003;

45 of 2003

(e) “complaint” means a complaint, made in such form as may be prescribed, alleging that a public servant has committed an offence punishable under the Prevention of Corruption Act, 1988;

49 of 1988

(f) “Delhi Special Police Establishment” means the Delhi Special Police Establishment constituted under sub-section (1) of Section 2

of the Delhi Special Police Establishment Act, 1946; 25 of 1946

(g) “investigation” means an investigation as defined under clause (h) of Section 2 of the Code of Criminal Procedure, 1973; 2 of 1974

(h) “Judicial Member” means a Judicial Member of the Lokpal;

(i) “Lokpal” means the institution established under Section 3;

(j) “Member” means a Member of the Lokpal;

(k) “Minister” means a Union Minister but does not include the Prime Minister;

(l) “notification” means notification published in the Official Gazette and the expression “notify” shall be construed accordingly;

(m) “preliminary inquiry” means an inquiry conducted under this Act;

(n) “prescribed” means prescribed by rules made under this Act;

(o) “public servant” means a person referred to in Clauses (a) to (h) of sub-section (1) of Section 14;

(p) “regulations” means regulations made under this Act;

(q) “rules” means rules made under this Act;

(r) “Schedule” means a Schedule appended to this Act;

(s) “Special Court” means the court of a Special Judge appointed under sub-section (1) of Section 3 of the Prevention of Corruption Act, 1988. 49 of 1988

(2) The words and expressions used herein and not defined in this Act but defined in the Prevention of Corruption Act, 1988, shall have the meanings respectively assigned to them in that Act. 49 of 1988

(3) Any reference in this Act to any other Act or provision thereof which is not in force in any area to which this Act applies shall be construed to have a reference to the corresponding Act or provision thereof in force in such area.

## CHAPTER II

### ESTABLISHMENT OF LOKPAL

3. (1) On and from the commencement of this Act, there shall be established, for the purpose of this Act, a body to be called the “Lokpal”. Establishment of Lokpal.

(2) The Lokpal shall consist of—

(a) a Chairperson, who is or has been a Chief Justice of India or is or has been a Judge of the Supreme Court or an eminent person who fulfils the eligibility specified in Clause (b) of sub-section (3); and

(b) such number of Members, not exceeding eight out of whom fifty per cent shall be Judicial Members:

Provided that not less than fifty per cent of the Members of the Lokpal shall be from amongst the persons belonging to the Scheduled Castes, the Scheduled Tribes, Other Backward Classes and women.

(3) A person shall be eligible to be appointed,—

(a) as a Judicial Member if he is or has been a Judge of the Supreme Court or is or has been a Chief Justice of a High Court;

(b) as a Member other than a Judicial Member, if he is a person of impeccable integrity and outstanding ability having special knowledge and expertise of not less than twenty-five years in the matters relating to anti-corruption policy, public administration, vigilance, finance including insurance and banking, law and management.

(4) The Chairperson or a Member shall not be—

(i) a member of Parliament or a member of the Legislature of any State or Union Territory;



(ii) a person convicted of any offence involving moral turpitude;

(iii) a person of less than forty-five years of age, on the date of assuming office as the Chairperson or Member, as the case may be;

(iv) a member of any Panchayat or Municipality;

(v) a person who has been removed or dismissed from the service of the Union or a State,

and shall not hold any office of trust or profit (other than his office as the Chairperson or a Member) or be connected with any political party or carry on any business or practise any profession and, accordingly, before he enters upon his office, a person appointed as the Chairperson or a Member, as the case may be, shall, if—

(a) he holds any office of trust or profit, resign from such office; or

(b) he is carrying on any business, sever his connection with the conduct and management of such business; or

(c) he is practising any profession, cease to practise such profession.

Appointment  
of  
Chairperson  
and  
Members on  
recommen-  
dations of  
Selection  
Committee.

4. (1) The Chairperson and Members shall be appointed by the President after obtaining the recommendations of a Selection Committee consisting of—

(a) the Prime Minister—Chairperson;

(b) the Speaker of the House of the People—member;

(c) the Leader of Opposition in the House of the People—member;

(d) the Chief Justice of India or a Judge of the Supreme Court nominated by him—member;

(e) one eminent jurist nominated by the President—member.

(2) No appointment of a Chairperson or a Member shall be invalid merely by reason of any vacancy in the Selection Committee.

(3) The Selection Committee shall for the purposes of selecting the Chairperson and Members of the Lokpal and for preparing a panel of persons to be considered for appointment as such, constitute a Search Committee consisting of at least seven persons of standing and having special knowledge and expertise in the matters relating to anti-corruption policy, public administration, vigilance, policy making, finance including insurance and banking, law and management or in any other matter which, in the opinion of the Selection Committee, may be useful in making the selection of the Chairperson and Members of the Lokpal:

Provided that not less than fifty per cent of the members of the Search Committee shall be from amongst the persons belonging to the Scheduled Castes, the Scheduled Tribes, Other Backward Classes and women:

Provided further that Selection Committee may also consider any person other than the persons recommended by the Search Committee.

(4) The Selection Committee shall regulate its own procedure in a transparent manner for selecting the Chairperson and Members of the Lokpal.

(5) The term of the Search Committee referred to in sub-section (3), the fees and allowances payable to its members and the manner of selection of panel of names shall be such as may be prescribed.

5. The President shall take or cause to be taken all necessary steps for the appointment of a new Chairperson and Members at least three months before the expiry of the term of the Chairperson or Member, as the case may be, in accordance with the procedure laid down in this Act.

Filling of vacancies of Chairperson or Members.

6. The Chairperson and every Member shall, on the recommendations of the Selection Committee, be appointed by the President by warrant under his hand and seal and hold office as such for a term of five years from the date on which he enters upon

Term of office of Chairperson and Members.

his office or until he attains the age of seventy years, whichever is earlier:

Provided that he may—

(a) by writing under his hand addressed to the President, resign his office; or

(b) be removed from his office in the manner provided in Section 37.

Salary,  
allowances  
and other  
conditions  
of service  
of  
Chairperson  
and  
Members.

7. The salary, allowances and other conditions of service of—

(i) the Chairperson shall be the same as those of the Chief Justice of India;

(ii) other Members shall be the same as those of a Judge of the Supreme Court:

Provided that if the Chairperson or a Member is, at the time of his appointment, in receipt of pension (other than disability pension) in respect of any previous service under the Government of India or under the Government of a State, his salary in respect of service as the Chairperson or, as the case may be, as a Member, be reduced—

(a) by the amount of that pension; and

(b) if he has, before such appointment, received, in lieu of a portion of the pension due to him in respect of such previous service, the commuted value thereof, by the amount of that portion of the pension:

Provided further that the salary, allowances and pension payable to, and other conditions of service of, the Chairperson or a Member shall not be varied to his disadvantage after his appointment.

Restriction  
on  
employment  
by  
Chairperson  
and  
Members  
after  
ceasing to  
hold office.

8. (1) On ceasing to hold office, the Chairperson and every Member shall be ineligible for—

(i) reappointment as the Chairperson or a Member of the Lokpal;

(ii) any diplomatic assignment, appointment as administrator of a Union territory and such other assignment or appointment which is

required by law to be made by the President by warrant under his hand and seal;

(iii) further employment to any other office of profit under the Government of India or the Government of a State;

(iv) contesting any election of President or Vice President or Member of either House of Parliament or Member of either House of a State Legislature or Municipality or Panchayat within a period of five years from the date of relinquishing the post.

(2) Notwithstanding anything contained in subsection (1), a Member shall be eligible to be appointed as a Chairperson, if his total tenure as Member and Chairperson does not exceed five years.

*Explanation.*—For the purposes of this section, it is hereby clarified that where the Member is appointed as the Chairperson, his term of office shall not be more than five years in aggregate as the Member and the Chairperson.

9. (1) In the event of occurrence of any vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the President may, by notification, authorise the senior-most Member to act as the Chairperson until the appointment of a new Chairperson to fill such vacancy.

Member to act as Chairperson or to discharge his functions in certain circumstances.

(2) When the Chairperson is unable to discharge his functions owing to absence on leave or otherwise, the senior-most Member available, as the President may, by notification, authorise in this behalf, shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties.

10. (1) There shall be a Secretary to the Lokpal in the rank of Secretary to Government of India, who shall be appointed by the Chairperson from a panel of names sent by the Central Government.

Secretary, other officers and staff of Lokpal.

(2) There shall be a Director of Inquiry and a Director of Prosecution not below the rank of

**the Additional Secretary to the Government of India or equivalent, who shall be appointed by the Chairperson from a panel of names sent by the Central Government.**

(3) The appointment of officers and other staff of the Lokpal shall be made by the Chairperson or such Member or officer of Lokpal as the Chairperson may direct:

Provided that the President may by rule require that the appointment in respect of any post or posts as may be specified in the rule, shall be made after consultation with the Union Public Service Commission.

(4) Subject to the provisions of any law made by Parliament, the conditions of service of Secretary and other officers and staff of the Lokpal shall be such as may be specified by regulations made by the Lokpal for the purpose:

Provided that the regulations made under this sub-section shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the President.

### CHAPTER III

#### INQUIRY WING

Inquiry Wing.

**11. (1) Notwithstanding anything contained in any law for the time being in force, the Lokpal shall constitute an Inquiry Wing headed by the Director of Inquiry for the purpose of conducting preliminary inquiry into any offence alleged to have been committed by a public servant punishable under the Prevention of Corruption Act, 1988:**

49 of 1988

Provided that till such time the Inquiry Wing is constituted by the Lokpal, the Central Government shall make available such number of officers and other staff from its Ministries or Departments, as may be required by the Lokpal, for conducting preliminary inquiries under this Act.

(2) For the purposes of assisting the Lokpal in conducting a preliminary inquiry under this Act, the officers of the Inquiry Wing not below the rank of the Under Secretary to the Government of India, shall have the same powers as are conferred upon the Inquiry Wing of the Lokpal under Section 27.

#### CHAPTER IV

##### PROSECUTION WING

**12. (1) The Lokpal shall, by notification, constitute a Prosecution Wing headed by the Director of Prosecution for the purpose of prosecution of public servants in relation to any complaint by the Lokpal under this Act:**

Prosecution Wing.

**Provided that till such time the Prosecution Wing is constituted by the Lokpal, the Central Government shall make available such number of officers and other staff from its Ministries or Departments, as may be required by the Lokpal, for conducting prosecution under this Act:**

(2) The Director of Prosecution shall, after having been so directed by the Lokpal, file a case in accordance with the findings of investigation report, before the Special Court, and take all necessary steps in respect of the prosecution of public servants in relation to any offence punishable under the Prevention of Corruption Act, 1988.

49 of 1988

(3) The case under sub-section (2), shall be deemed to be a report, filed on completion of investigation, referred to in section 173 of the Code of Criminal Procedure, 1973.

2 of 1974

#### CHAPTER V

##### EXPENSES OF LOKPAL TO BE CHARGED ON CONSOLIDATED FUND OF INDIA

**13. The administrative expenses of the Lokpal, including all salaries, allowances and pensions payable to or in respect of the Chairperson, Members or Secretary or other officers or staff of the Lokpal, shall be charged upon the Consolidated Fund of India and any fees or other moneys taken by the Lokpal shall form part of that Fund.**

Expenses of Lokpal to be charged on Consolidated Fund of India.

## CHAPTER VI

## JURISDICTION IN RESPECT OF INQUIRY

Jurisdiction of Lokpal to include Prime Minister, Ministers, Members of Parliament, Groups A, B, C and D officers and officials of Central Government.

14. (1) Subject to the other provisions of this Act, the Lokpal shall inquire or cause an inquiry to be conducted into any matter involved in, or arising from, or connected with, any allegation of corruption made in a complaint in respect of the following, namely:—

(a) any person who is or has been a Prime Minister:

Provided that the Lokpal shall not inquire into any matter involved in, or arising from, or connected with, any such allegation of corruption against the Prime Minister,—

(i) in so far as it relates to international relations, external and internal security, public order, atomic energy and space;

(ii) unless a full bench of the Lokpal consisting of its Chairperson and all Members considers the initiation of inquiry and at least three-fourth of its Members approves of such inquiry:

Provided further that any such inquiry shall be held *in camera* and if the Lokpal comes to the conclusion that the complaint deserves to be dismissed, the records of the inquiry shall not be published or made available to anyone;

(b) any person who is or has been a Minister of the Union;

(c) any person who is or has been a Member of either House of Parliament;

(d) any Group 'A' or Group 'B' officer or equivalent or above, from amongst the public servants defined in sub-clauses (i) and (ii) of Clause (c) of Section 2 of the Prevention of Corruption Act, 1988 when serving or who has served, in connection with the affairs of the Union;

49 of 1988

(e) any Group 'C' or Group 'D' Official or equivalent, from amongst the public servants defined in sub-clauses (i) and (ii) of Clause (c) of Section 2 of the Prevention of Corruption Act, 1988 when serving or who has served in connection with the affairs of the Union subject to the provision of sub-section (1) of Section 20;

(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 the 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;

(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 or aided by the Government and the annual income of which exceeds such amount as the Central Government may, by notification, specify;



(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 the public and the annual income of which exceeds such amount as the Central Government may by notification specify or 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.

42 of 2010

*Explanation.*—For the purpose of Clauses (f) and (g), it is hereby clarified that any entity or institution, by whatever name called, corporate, society, trust, association of persons, partnership, sole proprietorship, limited liability partnership (whether registered under any law for the time being in force or not), shall be the entities covered in those clauses:

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

49 of 1988

(2) Notwithstanding anything contained in sub-section (1), the Lokpal shall not inquire into any matter involved in, or arising from, or connected with, any such allegation of corruption against any Member of either House of Parliament in respect of anything said or a vote given by him in Parliament or any committee thereof covered under the provisions contained in Clause (2) of Article 105 of the Constitution.

(3) The Lokpal may inquire into any act or conduct of any person other than those referred to in sub-section (1), if such person is involved in the act of abetting, bribe giving or bribe taking or conspiracy relating to any allegation of corruption under the Prevention of Corruption Act, 1988 against a person referred to in sub-section (1):

49 of 1988

Provided that no action under this section shall be taken in case of a person serving in connection with the affairs of a State, without the consent of the State Government.

60 of 1952 (4) No matter in respect of which a complaint has been made to the Lokpal under this Act, shall be referred for inquiry under the Commissions of Inquiry Act, 1952.

*Explanation.*—For the removal of doubts, it is hereby declared that a complaint under this Act shall only relate to a period during which the public servant was holding or serving in that capacity.

49 of 1988 15. In case any matter or proceeding related to allegation of corruption under the Prevention of Corruption Act, 1988 has been pending before any court or committee of either House of Parliament or before any other authority prior to commencement of this Act or prior to commencement of any inquiry after the commencement of this Act, such matter or proceeding shall be continued before such court, committee or authority.

Matters pending before any court or committee or authority for inquiry before Lokpal not to be affected.

16. (1) Subject to the provisions of this Act,—  
(a) the jurisdiction of the Lokpal may be exercised by benches thereof;

Constitution of benches of Lokpal.

(b) a bench may be constituted by the Chairperson with two or more Members as the Chairperson may deem fit;

(c) every bench shall ordinarily consist of at least one Judicial Member;

(d) where a bench consists of the Chairperson, such bench shall be presided over by the Chairperson;

(e) where a bench consists of a Judicial Member, and a non-Judicial Member, not being the Chairperson, such bench shall be presided over by the Judicial Member;

(f) the benches of the Lokpal shall ordinarily sit at New Delhi and at such other places as the Lokpal may, by regulations, specify.

(2) The Lokpal shall notify the areas in relation to which each bench of the Lokpal may exercise jurisdiction.

(3) Notwithstanding anything contained in sub-section (2), the Chairperson shall have the power to constitute or reconstitute benches from time to time.

(4) If at any stage of the hearing of any case or matter it appears to the Chairperson or a Member that the case or matter is of such nature that it ought to be heard by a bench consisting of three or more Members, the case or matter may be transferred by the Chairperson or, as the case may be, referred to him for transfer, to such bench as the Chairperson may deem fit.

Distribution of business amongst Benches.

17. Where benches are constituted, the Chairperson may, from time to time, by notification, make provisions as to the distribution of the business of the Lokpal amongst the benches and also provide for the matters which may be dealt with by each bench.

Power of Chairperson to transfer cases.

18. On an application for transfer made by the complainant or the public servant, the Chairperson, after giving an opportunity of being heard to the complainant or the public servant, as the case may be, may transfer any case pending before one bench for disposal to any other bench.

Decision to be by majority.

19. If the Members of a bench consisting of an even number of Members differ in opinion on any point, they shall state the point or points on which they differ, and make a reference to the Chairperson who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other Members of the Lokpal and such point or points shall be decided according to the opinion of the majority of the Members of the Lokpal who have heard the case, including those who first heard it.

## CHAPTER VII

## PROCEDURE IN RESPECT OF PRELIMINARY INQUIRY AND INVESTIGATION

20. (1) The Lokpal shall, on receipt of a complaint first decide whether to proceed in the matter or close the same and if the Lokpal decides to proceed further, it shall order the preliminary inquiry against any public servant by its Inquiry Wing or any agency (including the Delhi Special Police Establishment) to ascertain whether there exists a *prima facie* case for proceeding in the matter:

Provisions relating to complaints and preliminary inquiry and investigation.

45 of 2003 Provided that the Lokpal shall, if it has decided to proceed with the preliminary inquiry by a general or special order, refer the complaints or a category of complaints or a complaint received by it in respect of public servants belonging to Group A or Group B or Group C or Group D to the Central Vigilance Commission constituted under sub-section (1) of Section 3 of the Central Vigilance Commission Act, 2003:

45 of 2003 Provided further that the Central Vigilance Commission in respect of complaints referred to it under the first proviso, after making preliminary inquiry in respect of public servants belonging to Group A and Group B, shall submit its report to the Lokpal in accordance with the provisions contained in sub-sections (2) and (4) and in case of public servants belonging to Group C and Group D, the Commission shall proceed in accordance the provisions of the Central Vigilance Commission Act, 2003.

(2) During the preliminary inquiry referred to in sub-section (1), the Inquiry Wing or any agency (including the Delhi Special Police Establishment) shall conduct a preliminary inquiry and on the basis of material, information and documents collected seek the comments on the allegations made in the complaint from the public servant and the competent authority and after obtaining the comments of the concerned public servant and the competent authority, submit, within sixty days from the date of receipt of the reference, a report to the Lokpal.

(3) A bench consisting of not less than three Members of the Lokpal shall consider every report received under sub-section (2) from the Inquiry Wing or any agency (including the Delhi Special Police Establishment), and after giving an opportunity of being heard to the public servant, decide whether there exists a *prima facie* case, and to proceed with one or more of the following actions, namely:—

(a) investigation by any agency or the Delhi Special Police Establishment, as the case may be;

(b) initiation of the departmental proceedings or any other appropriate action against the concerned public servants by the competent authority;

(c) closure of the proceedings against the public servant and to proceed against the complainant under Section 46.

(4) Every preliminary inquiry referred to in sub-section (1) shall ordinarily be completed within a period of ninety days and for reasons to be recorded in writing, within a further period of ninety days from the date of receipt of the complaint.

(5) In case the Lokpal decides to proceed to investigate into the complaint, it shall direct any agency (including the Delhi Special Police Establishment) to carry out the investigation as expeditiously as possible and complete the investigation within a period of six months from the date of its order and submit the investigation report containing its findings to the Lokpal:

Provided that the Lokpal may extend the said period by a further period of six months for the reasons to be recorded in writing.

(6) Notwithstanding anything contained in Section 173 of the Code of Criminal Procedure, 1973, any agency (including the Delhi Special Police Establishment) shall, in respect of cases referred to it by the Lokpal, submit the investigation report to the Lokpal.

(7) A bench consisting of not less than three Members of the Lokpal shall consider every report received by it under sub-section (6) from any agency (including the Delhi Special Police Establishment) and may decide as to—

(a) file charge-sheet or closure report before the Special Court against the public servant;

(b) initiate the departmental proceedings or any other appropriate action against the concerned public servant by the competent authority.

(8) The Lokpal may, after taking a decision under sub-section (7) on the filing of the charge-sheet, direct its Prosecution Wing to initiate prosecution in the Special Court in respect of the cases investigated by any agency (including the Delhi Special Police Establishment).

(9) The Lokpal may, during the preliminary inquiry or the investigation, as the case may be, pass appropriate orders for the safe custody of the documents relevant to the preliminary inquiry or, as the case may be, investigation as it deems fit.

(10) The website of the Lokpal shall, from time to time and in such manner as may be specified by regulations, display to the public, the status of number of complaints pending before it or disposed of by it.

(11) The Lokpal may retain the original records and evidences which are likely to be required in the process of preliminary inquiry or investigation or conduct of a case by it or by the Special Court.

(12) Save as otherwise provided, the manner and procedure of conducting a preliminary inquiry or investigation (including such material and documents to be made available to the public servant) under this Act, shall be such as may be specified by regulations.

Persons likely to be prejudicially affected to be heard.

**21.** If, at any stage of the proceeding, the Lokpal—

(a) considers it necessary to inquire into the conduct of any person other than the accused; or

(b) is of opinion that the reputation of any person other than an accused is likely to be prejudicially affected by the preliminary inquiry,

the Lokpal shall give to that person a reasonable opportunity of being heard in the preliminary inquiry and to produce evidence in his defence, consistent with the principles of natural justice.

Lokpal may require any public servant or any other person to furnish information, etc.

**22.** Subject to the provisions of this Act, for the purpose of any preliminary inquiry or investigation, the Lokpal or the investigating agencies, as the case may be, may require any public servant or any other person who, in its opinion, is able to furnish information or produce documents relevant to such preliminary inquiry or investigation, to furnish any such information or produce any such document.

Previous sanction not necessary for investigation and initiating prosecution by Lokpal in certain cases.

**23. (1)** No sanction or approval of any authority shall be required by the Lokpal for conducting a preliminary inquiry or an investigation on the direction of Lokpal, under Section 197 of the Code of Criminal Procedure, 1973 or Section 6A of the Delhi Special Police Establishment Act, 1946 or Section 19 of the Prevention of Corruption Act, 1988, as the case may be, for the purpose of making preliminary inquiry by the Inquiry Wing or any agency (including the Delhi Special Police Establishment) or investigation by any agency (including the Delhi Special Police Establishment) into any complaint against any public servant or for filing of any charge-sheet or closure report on completion of investigation in respect thereof before the Special Court under this Act.

2 of 1974  
25 of 1946

49 of 1988

(2) A Special Court may, notwithstanding anything contained in Section 197 of the Code of Criminal Procedure, 1973 or Section 19 of the Prevention of Corruption Act, 1988, on filing of a

2 of 1974  
49 of 1988

charge-sheet in accordance with the provisions of sub-section (7) of Section 20, take cognizance of offence committed by any public servant.

(3) Nothing contained in sub-sections (1) and (2) shall apply in respect of the persons holding office in pursuance of the provisions of the Constitution and in respect of which a procedure for removal of such person has been specified therein.

(4) The provisions contained in sub-sections (1), (2) and (3) shall be without prejudice to the generality of the provisions contained in Article 311 and sub-clause (c) of Clause (3) of Article 320 of the Constitution.

49 of 1988. **24. (1)** Where, after the conclusion of the investigation, the findings of the Lokpal disclose the commission of an offence under the Prevention of Corruption Act, 1988 by a public servant referred to in Clause (a) or Clause (b) or Clause (c) of sub-section (1) of Section 14, the Lokpal may file a case in the Special Court and shall send a copy of the report together with its findings to the competent authority.

Action on investigation against public servant being Prime Minister, Ministers or Members of Parliament.

(2) The House of the People in the case of Prime Minister, the Prime Minister in the case of the Minister, the Speaker in the case of a Member of the House of the People, and the Chairman of the Council of States in the case of a Member of that Council shall, as soon as may be, after the receipt of report under sub-section (1), cause the same to be laid before the House of the People or the Council of States, as the case may be, while it is in session, and if the House of the People or the Council of States, as the case may be, is not in session, within a period of one week from the reassembly of the said House or the Council, as the case may be.

(3) The competent authority shall examine or cause to be examined the report forwarded to it under sub-section (1) and communicate or cause to



be communicated to the Lokpal, within a period of ninety days from the date of receipt of the report, the action taken or proposed to be taken on the basis of the report and the reasons for not taking any action on the recommendation of the Lokpal.

*Explanation.*—In computing the period of ninety days referred to in this sub-section, any period during which Parliament or, as the case may be, either House of Parliament, is not in session, shall be excluded.

## CHAPTER VIII

### POWERS OF LOKPAL

Supervisory  
powers of  
Lokpal.

**25. (1)** The Lokpal shall, notwithstanding anything contained in Section 4 of the Delhi Special Police Establishment Act, 1946 and Section 8 of the Central Vigilance Commission Act, 2003, have the powers of superintendence and direction, over the Delhi Special Police Establishment in respect of the matters referred by the Lokpal for preliminary inquiry or investigation to the Delhi Special Police Establishment under this Act:

25 of 1946  
45 of 2003

Provided that while exercising powers of superintendence or giving direction under this sub-section, the Lokpal shall not exercise powers in such a manner so as to require any agency (including the Delhi Special Police Establishment) to whom the investigation has been given, to investigate and dispose of any case in a particular manner.

(2) The Central Vigilance Commission shall send a statement, at such interval as the Lokpal may direct, to the Lokpal in respect of action taken on complaints referred to it under second proviso to sub-section (1) of Section 20 and on receipt of such statement, the Lokpal may issue guidelines for effective and expeditious disposal of such cases.

Search and  
seizure.

**26. (1)** If the Lokpal has reason to believe that any document which, in its opinion, shall be useful for, or relevant to, any investigation under this Act, are secreted in any place, it may authorise

any agency (including the Delhi Special Police Establishment) to whom the investigation has been given to search for and to seize such documents.

(2) If the Lokpal is satisfied that any document seized under sub-section (1) may be used as evidence for the purpose of any investigation under this Act and that it shall be necessary to retain the document in its custody or in the custody of such officer as may be authorised, it may so retain or direct such authorised officer to retain such document till the completion of such investigation:

Provided that where any document is required to be returned, the Lokpal or the authorised officer may return the same after retaining copies of such document duly authenticated.

5 of 1908 **27. (1)** Subject to the provisions of this section, for the purpose of any preliminary inquiry, the Inquiry Wing of Lokpal shall have all the powers of a civil court, under the Code of Civil Procedure, 1908, while trying a suit in respect of the following matters, namely:—

Lokpal to have powers of civil court in certain cases.

(i) summoning and enforcing the attendance of any person and examining him on oath;

(ii) requiring the discovery and production of any document;

(iii) receiving evidence on affidavits;

(iv) requisitioning any public record or copy thereof from any court or office;

(v) issuing commissions for the examination of witnesses or documents:

Provided that such commission, in case of a witness, shall be issued only where the witness, in the opinion of the Lokpal, is not in a position to attend the proceeding before the Lokpal; and

(vi) such other matters as may be prescribed.

45 of 1860 (2) Any proceeding before the Lokpal shall be deemed to be a judicial proceeding within the meaning of Section 193 of the Indian Penal Code.

Power of Lokpal to utilise services of officers of Central or State Government.

**28. (1) The Lokpal may, for the purpose of conducting any preliminary inquiry or investigation, utilise the services of any officer or organisation or investigation agency of the Central Government or any State Government, as the case may be.**

(2) For the purpose of preliminary inquiry or investigating into any matter pertaining to such inquiry or investigation, any officer or organisation or agency whose services are utilised under sub-section (1) may, subject to the superintendence and direction of the Lokpal,—

(a) summon and enforce the attendance of any person and examine him;

(b) require the discovery and production of any document; and

(c) requisition any public record or copy thereof from any office.

(3) The officer or organisation or agency whose services are utilised under sub-section (2) shall inquire or, as the case may be, investigate into any matter pertaining to the preliminary inquiry or investigation and submit a report thereon to the Lokpal within such period as may be specified by it in this behalf.

Provisional attachment of assets.

**29. (1) Where the Lokpal or any officer authorised by it in this behalf, has reason to believe, the reason for such belief to be recorded in writing, on the basis of material in his possession, that—**

(a) any person is in possession of any proceeds of corruption;

(b) such person is accused of having committed an offence relating to corruption; and

(c) such proceeds of offence are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of offence,

43 of 1961

the Lokpal or he may, by order in writing, provisionally attach such property for a period not exceeding ninety days from the date of the order, in the manner provided in the Second Schedule to the Income-tax Act, 1961 and the Lokpal shall be deemed to be an officer under sub-rule (e) of rule 1 of that Schedule.

(2) The Lokpal or the officer authorised in this behalf shall, immediately after attachment under sub-section (1), forward a copy of the order, along with the material in his possession, referred to in that sub-section, to the Special Court, in a sealed envelope, in the manner as may be prescribed and such Court may extend the order of attachment and keep such material for such period as the Court may deem fit.

(3) Every order of attachment made under sub-section (1) shall cease to have effect after the expiry of the period specified in that sub-section or after the expiry of the period as directed by the Special Court under sub-section (2).

(4) Nothing in this section shall prevent the person interested in the enjoyment of the immovable property attached under sub-section (1) or sub-section (2), from such enjoyment.

*Explanation.*—For the purposes of this sub-section, “person interested”, in relation to any immovable property, includes all persons claiming or entitled to claim any interest in the property.

30. (1) The Lokpal, when it provisionally attaches any property under sub-section (1) of Section 29 shall, within a period of thirty days of such attachment, direct its prosecution wing to file an application stating the facts of such attachment before the Special Court and make a prayer for confirmation of attachment of the property till completion of the proceedings against the public servant in the Special Court.

Confirmation  
of  
attachment  
of assets.

(2) The Special Court may, if it is of the opinion that the property provisionally attached had been

acquired through corrupt means, make an order for confirmation of attachment of such property till the completion of the proceedings against the public servant in the Special Court.

(3) If the public servant is subsequently acquitted of the charges framed against him, the property, subject to the orders of the Special Court, shall be restored to the concerned public servant along with benefits from such property as might have accrued during the period of attachment.

(4) If the public servant is subsequently convicted of the charges of corruption, the proceeds relatable to the offence under the Prevention of Corruption Act, 1988 shall be confiscated and vest in the Central Government free from any encumbrance or leasehold interest excluding any debt due to any bank or financial institution.

49 of 1988

*Explanation.*—For the purposes of this sub-section, the expressions “bank”, “debt” and “financial institution” shall have the meanings respectively assigned to them in Clauses (d), (g) and (h) of Section 2 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993.

51 of 1993

Confiscation of assets, proceeds, receipts and benefits arisen or procured by means of corruption in special circumstances.

31. (1) Without prejudice to the provisions of Sections 29 and 30, where the Special Court, on the basis of *prima facie* evidence, has reason to believe or is satisfied that the assets, proceeds, receipts and benefits, by whatever name called, have arisen or procured by means of corruption by the public servant, it may authorise the confiscation of such assets, proceeds, receipts and benefits till his acquittal.

(2) Where an order of confiscation made under sub-section (1) is modified or annulled by the High Court or where the public servant is acquitted by the Special Court, the assets, proceeds, receipts and benefits, confiscated under sub-section (1) shall be returned to such public servant, and in case it is not possible for any reason to return the assets, proceeds, receipts and benefits, such public servant

shall be paid the price thereof including the money so confiscated with interest at the rate of five per cent per annum thereon calculated from the date of confiscation.

32. (1) Where the Lokpal, while making a preliminary inquiry into allegations of corruption, is *prima facie* satisfied, on the basis of evidence available,—

Power of Lokpal to recommend transfer or suspension of public servant connected with allegation of corruption.

(i) that the continuance of the public servant referred to in Clause (d) or Clause (e) or Clause (f) of sub-section (1) of Section 14 in his post while conducting the preliminary inquiry is likely to affect such preliminary inquiry adversely; or

(ii) such public servant is likely to destroy or in any way tamper with the evidence or influence witnesses,

then, the Lokpal may recommend to the Central Government for transfer or suspension of such public servant from the post held by him till such period as may be specified in the order.

(2) The Central Government shall ordinarily accept the recommendation of the Lokpal made under sub-section (1), except for the reasons to be recorded in writing in a case where it is not feasible to do so for administrative reasons.

33. The Lokpal may, in the discharge of its functions under this Act, issue appropriate directions to a public servant entrusted with the preparation or custody of any document or record—

Power of Lokpal to give directions to prevent destruction of records during preliminary inquiry.

(a) to protect such document or record from destruction or damage; or

(b) to prevent the public servant from altering or secreting such document or record; or

(c) to prevent the public servant from transferring or alienating any assets allegedly acquired by him through corrupt means.

Power to  
delegate.

**34.** The Lokpal may, by general or special order in writing, and subject to such conditions and limitations as may be specified therein, direct that any administrative or financial power conferred on it may also be exercised or discharged by such of its Members or officers or employees as may be specified in the order.

## CHAPTER IX

### SPECIAL COURTS

Special  
Courts to  
be notified  
by Central  
Government.

**35. (1)** The Central Government shall constitute such number of Special Courts, as recommended by the Lokpal, to hear and decide the cases arising out of the Prevention of Corruption Act, 1988 or under this Act.

49 of 1988

**(2)** The Special Courts constituted under sub-section (1) shall ensure completion of each trial within a period of one year from the date of filing of the case in the Court:

Provided that in case the trial cannot be completed within a period of one year, the Special Court shall record reasons therefor and complete the trial within a further period of not more than three months or such further periods not exceeding three months each, for reasons to be recorded in writing before the end of each such three month period, but not exceeding a total period of two years.

Letter of  
request to  
a  
contracting  
State in  
certain  
cases.

**36. (1)** Notwithstanding anything contained in this Act or the Code of Criminal Procedure, 1973 if, in the course of an preliminary inquiry or investigation into an offence or other proceeding under this Act, an application is made to a Special Court by an officer of the Lokpal authorised in this behalf that any evidence is required in connection with the preliminary inquiry or investigation into an offence or proceeding under this Act and he is of the opinion that such evidence may be available in any place in a contracting State, and the Special Court, on being satisfied that such evidence is required in connection with the preliminary inquiry

2 of 1974

or investigation into an offence or proceeding under this Act, may issue a letter of request to a court or an authority in the contracting State competent to deal with such request to—

(i) examine the facts and circumstances of the case;

(ii) take such steps as the Special Court may specify in such letter of request; and

(iii) forward all the evidence so taken or collected to the Special Court issuing such letter of request.

(2) The letter of request shall be transmitted in such manner as the Central Government may prescribe in this behalf.

(3) Every statement recorded or document or thing received under sub-section (1) shall be deemed to be evidence collected during the course of the preliminary inquiry or investigation.

## CHAPTER X

### COMPLAINTS AGAINST CHAIRPERSON, MEMBERS AND OFFICIALS OF LOKPAL

37. (1) The Lokpal shall not inquire into any complaint made against the Chairperson or any Member.

Removal  
and  
suspension  
of  
Chairperson  
and  
Members of  
Lokpal.

(2) Subject to the provisions of sub-section (4), the Chairperson or any Member shall be removed from his office by order of the President on grounds of misbehaviour after the Supreme Court, on a reference being made to it—

(i) by the President; or

(ii) by the President on a petition being signed by at least one hundred Members of Parliament; or

(iii) by the President on receipt of a petition made by a citizen of India and where the President is satisfied that the petition should be referred,

has, on an inquiry held in accordance with the procedure prescribed in that behalf, reported that the Chairperson or such Member, as the case may be, ought to be removed on such ground.



(3) The President may suspend from office the Chairperson or any Member in respect of whom a reference has been made to the Supreme Court under sub-section (2) until the President has passed orders on receipt of the report of the Supreme Court on such reference.

(4) Notwithstanding anything contained in sub-section (2), the President may, by order, remove from the office, the Chairperson or any Member if the Chairperson or such Member, as the case may be,—

(a) is adjudged an insolvent; or

(b) engages, during his term of office, in any paid employment outside the duties of his office; or

(c) is, in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body.

(5) If the Chairperson or any Member is, or becomes, in any way concerned or interested in any contract or agreement made by or on behalf of the Government of India or the Government of a State or participates in any way in the profit thereof or in any benefit or emolument arising therefrom otherwise than as a member and in common with the other members of an incorporated company, he shall, for the purposes of sub-section (2), be deemed to be guilty of misbehaviour.

Complaints  
against  
officials of  
Lokpal.

**38. (1)** Every complaint of allegation or wrongdoing made against any officer or employee or agency (including the Delhi Special Police Establishment), under or associated with the Lokpal for an offence punishable under the Prevention of Corruption Act, 1988 shall be dealt with in accordance with the provisions of this section.

49 of 1988

(2) The Lokpal shall complete the inquiry into the complaint or allegation made, within a period of thirty days from the date of its receipt.

(3) While making an inquiry into the complaint against any officer or employee of the Lokpal or

agency engaged or associated with the Lokpal, if it is *prima facie* satisfied on the basis of evidence available, that—

(a) continuance of such officer or employee of the Lokpal or agency engaged or associated in his post while conducting the inquiry is likely to affect such inquiry adversely; or

(b) an officer or employee of the Lokpal or agency engaged or associated is likely to destroy or in any way tamper with the evidence or influence witnesses,

then, the Lokpal may, by order, suspend such officer or employee of the Lokpal or divest such agency engaged or associated with the Lokpal of all powers and responsibilities hereto before exercised by it.

49 of 1988 (4) On the completion of the inquiry, if the Lokpal is satisfied that there is *prima facie* evidence of the commission of an offence under the Prevention of Corruption Act, 1988 or of any wrongdoing, it shall, within a period of fifteen days of the completion of such inquiry, order to prosecute such officer or employee of the Lokpal or such officer, employee, agency engaged or associated with the Lokpal and initiate disciplinary proceedings against the official concerned:

Provided that no such order shall be passed without giving such officer or employee of the Lokpal, such officer, employee, agency engaged or associated, a reasonable opportunity of being heard.

## CHAPTER XI

### ASSESSMENT OF LOSS AND RECOVERY THEREOF BY SPECIAL COURT

49 of 1988 39. If any public servant is convicted of an offence under the Prevention of Corruption Act, 1988 by the Special Court, notwithstanding and without prejudice to any law for the time being in force, it may make an assessment of loss, if any, caused to the public exchequer on account of the actions or decisions of such public servant not taken in good faith and for which he stands convicted, and may order recovery of such loss, if possible or quantifiable, from such public servant so convicted:

Assessment of loss and recovery thereof by Special Court.

Provided that if the Special Court, for reasons to be recorded in writing, comes to the conclusion that the loss caused was pursuant to a conspiracy with the beneficiary or beneficiaries of actions or decisions of the public servant so convicted, then such loss may, if assessed and quantifiable under this section, also be recovered from such beneficiary or beneficiaries proportionately.

## CHAPTER XII

### FINANCE, ACCOUNTS AND AUDIT

**Budget.**                **40.** The Lokpal shall prepare, in such form and at such time in each financial year as may be prescribed, its budget for the next financial year, showing the estimated receipts and expenditure of the Lokpal and forward the same to the Central Government for information.

**Grants by Central Government.**                **41.** The Central Government may, after due appropriation made by Parliament by law in this behalf, make to the Lokpal grants of such sums of money as are required to be paid for the salaries and allowances payable to the Chairperson and Members and the administrative expenses, including the salaries and allowances and pension payable to or in respect of officers and other employees of the Lokpal.

**Annual statement of accounts.**                **42. (1)** The Lokpal shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of the Lokpal shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him.

(3) The Comptroller and Auditor-General of India or any person appointed by him in connection with the audit of the accounts of the Lokpal under this Act shall have the same rights, privileges and authority in connection with such audit, as the

Comptroller and Auditor-General of India generally has, in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Lokpal.

(4) The accounts of the Lokpal, as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf, together with the audit report thereon, shall be forwarded annually to the Central Government and the Central Government shall cause the same to be laid before each House of Parliament.

43. The Lokpal shall furnish to the Central Government, at such time and in such form and manner as may be prescribed or as the Central Government may request, such returns and statements and such particulars in regard to any matter under the jurisdiction of the Lokpal, as the Central Government may, from time to time, require.

Furnishing of returns, etc., to Central Government.

## CHAPTER XIII

### DECLARATION OF ASSETS

44. (1) Every public servant shall make a declaration of his assets and liabilities in the manner as provided by or under this Act.

Declaration of assets.

(2) A public servant shall, within a period of thirty days from the date on which he makes and subscribes an oath or affirmation to enter upon his office, furnish to the competent authority the information relating to—

(a) the assets of which he, his spouse and his dependent children are, jointly or severally, owners or beneficiaries;

(b) his liabilities and that of his spouse and his dependent children.

(3) A public servant holding his office as such, at the time of the commencement of this Act, shall furnish information relating to such assets and

liabilities, as referred to in sub-section (2) to the competent authority within thirty days of the coming into force of this Act.

(4) Every public servant shall file with the competent authority, on or before the 31st July of every year, an annual return of such assets and liabilities, as referred to in sub-section (2), as on the 31st March of that year.

(5) The information under sub-section (2) or sub-section (3) and annual return under sub-section (4) shall be furnished to the competent authority in such form and in such manner as may be prescribed.

(6) The competent authority in respect of each office or Department shall ensure that all such statements are published on the website of such officer or Department by 31st August of that year.

*Explanation.*—For the purposes of this section, “dependent children” means sons and daughters who have no separate means of earning and are wholly dependent on the public servant for their livelihood.

Presumption  
as to  
acquisition  
of assets by  
corrupt  
means in  
certain  
cases.

**45.** If any public servant wilfully or for reasons which are not justifiable, fails to—

(a) to declare his assets; or

(b) gives misleading information in respect of such assets and is found to be in possession of assets not disclosed or in respect of which misleading information was furnished,

then, such assets shall, unless otherwise proved, be presumed to belong to the public servant and shall be presumed to be assets acquired by corrupt means:

Provided that the competent authority may condone or exempt the public servant from furnishing information in respect of assets not exceeding such minimum value as may be prescribed.

## CHAPTER XIV

## OFFENCES AND PENALTIES

**46. (1)** Notwithstanding anything contained in this Act, whoever makes any false and frivolous or vexatious complaint under this Act shall, on conviction, be punished with imprisonment for a term which may extend to one year and with fine which may extend to one lakh rupees.

Prosecution for false complaint and payment of compensation, etc., to public servant.

(2) No Court, except a Special Court, shall take cognizance of an offence under sub-section (1).

(3) No Special Court shall take cognizance of an offence under sub-section (1) except on a complaint made by a person against whom the false, frivolous or vexatious complaint was made or by an officer authorised by the Lokpal.

(4) The prosecution in relation to an offence under sub-section (1) shall be conducted by the public prosecutor and all expenses connected with such prosecution shall be borne by the Central Government.

(5) In case of conviction of a person [being an individual or society or association of persons or trust (whether registered or not)], for having made a false complaint under this Act, such person shall be liable to pay compensation to the public servant against whom he made the false complaint in addition to the legal expenses for contesting the case by such public servant, as the Special Court may determine.

(6) Nothing contained in this section shall apply in case of complaints made in good faith.

*Explanation.*—For the purpose of this sub-section, the expression “good faith” shall have the same meaning assigned to it in Section 52 of the Indian Penal Code.

45 of 1860

**47. (1)** Where any offence under sub-section (1) of Section 46 has been committed by any society or association of persons or trust (whether registered or not), every person who, at the time the offence was committed, was directly in charge of, and was responsible to, the society or association of persons or trust, for the conduct of the business

False complaint made by society or association of persons or trust.

or affairs or activities of the society or association of persons or trust as well as such society or association of persons or trust shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this subsection shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in subsection (1), where an offence under this Act has been committed by a society or association of persons or trust (whether registered or not) and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of such society or association of persons or trust, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

## CHAPTER XV

### MISCELLANEOUS

Reports of Lokpal.

**48.** It shall be the duty of the Lokpal to present annually to the President a report on the work done by the Lokpal and on receipt of such report the President shall cause a copy thereof together with a memorandum explaining, in respects of the cases, if any, where the advice of the Lokpal was not accepted, the reason for such non-acceptance to be laid before each House of Parliament.

Lokpal to function as appellate authority for appeals arising out of any other law for the time being in force.

**49.** The Lokpal shall function as the final appellate authority in respect of appeals arising out of any other law for the time being in force providing for delivery of public services and redressal of public grievances by any public authority in cases where the decision contains findings of corruption under the Prevention of Corruption Act, 1988.

	<p><b>50.</b> No suit, prosecution or other legal proceedings under this Act shall lie against any public servant, in respect of anything which is done in good faith or intended to be done in the discharge of his official functions or in exercise of his powers.</p>	<p>Protection of action taken in good faith by any public servant.</p>
	<p><b>51.</b> No suit, prosecution or other legal proceedings shall lie against the Lokpal or against any officer, employee, agency or any person, in respect of anything which is done in good faith or intended to be done under this Act or the rules or the regulations made thereunder.</p>	<p>Protection of action taken in good faith by others.</p>
<p>45 of 1860</p>	<p><b>52.</b> The Chairperson, Members, officers and other employees of the Lokpal shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Act, to be public servants within the meaning of Section 21 of the Indian Penal Code.</p>	<p>Members, officers and employees of Lokpal to be public servants.</p>
	<p><b>53.</b> The Lokpal shall not inquire or investigate into any complaint, if the complaint is made after the expiry of a period of seven years from the date on which the offence mentioned in such complaint is alleged to have been committed.</p>	<p>Limitation to apply in certain cases.</p>
	<p><b>54.</b> No civil court shall have jurisdiction in respect of any matter which the Lokpal is empowered by or under this Act to determine.</p>	<p>Bar of Jurisdiction.</p>
	<p><b>55.</b> The Lokpal shall provide to every person against whom a complaint has been made, before it, under this Act, legal assistance to defend his case before the Lokpal, if such assistance is requested for.</p>	<p>Legal assistance.</p>
	<p><b>56.</b> The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument having effect by virtue of any enactment other than this Act.</p>	<p>Act to have overriding effect.</p>
	<p><b>57.</b> The provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being in force.</p>	<p>Provisions of this Act to be in addition of other laws.</p>



Amendment  
of certain  
enactments.

**58.** The enactments specified in the Schedule shall be amended in the manner specified therein.

Power to  
make rules.

**59. (1)** The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the form of complaint referred to in clause (d) of sub-section (1) of Section 2;

(b) the term of the Search Committee, the fee and allowances payable to its members and the manner of selection of panel of names under sub-section (5) of Section 4;

(c) the post or posts in respect of which the appointment shall be made after consultation with the Union Public Service Commission under the proviso to sub-section (3) of Section 10;

(d) other matters for which the Lokpal shall have the powers of a civil court under clause (vi) of sub-section (1) of Section 27;

(e) the manner of sending the order of attachment along with the material to the Special Court under sub-section (2) of Section 29;

(f) the manner of transmitting the letter of request under sub-section (2) of Section 36;

(g) the form and the time for preparing in each financial year the budget for the next financial year, showing the estimated receipts and expenditure of the Lokpal under Section 40;

(h) the form for maintaining the accounts and other relevant records and the form of annual statement of accounts under sub-section (1) of Section 42;

(i) the form and manner and the time for preparing the returns and statements along with particulars under sub-section (1) of Section 43;

(j) the form and the time for preparing an annual report giving a summary of its activities during the previous year under sub-section (2) of Section 43;

(k) the form of annual return to be filed by a public servant under sub-section (5) of Section 44;

(l) the minimum value for which the competent authority may condone or exempt a public servant from furnishing information in respect of assets under the proviso to Section 45;

(m) any other matter which is to be or may be prescribed.

**60. (1)** Subject to the provisions of this Act and the rules made thereunder, the Lokpal may, by notification in the Official Gazette, make regulations to carry out the provisions of this Act.

Power of Lokpal to make regulations.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—

(a) the conditions of service of the secretary and other officers and staff of the Lokpal and the matters which in so far as they relate to salaries, allowances, leave or pensions, require the approval of the President under sub-section (4) of Section 10;

(b) the place of sittings of benches of the Lokpal under Clause (f) of sub-section (1) of Section 16;

(c) the manner for displaying on the website of the Lokpal, the status of all complaints pending or disposed of along with records and evidence with reference thereto under sub-section (9) of Section 20;

(d) the manner and procedure of conducting an preliminary inquiry or investigation under sub-section (11) of Section 20;

(e) any other matter which is required to be, or may be, specified under this Act.

Laying of rules and regulations.

**61.** Every rule and regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation, or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

Power to remove difficulties.

**62. (1)** If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act, as may appear to be necessary for removing the difficulty:

Provided that no such order shall be made under this section after the expiry of a period of two years from the commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

### PART III

#### LOKAYUKTA FOR A STATE

#### CHAPTER I

##### DEFINITIONS

Definitions.

**63. (1)** In this Part unless the context otherwise requires,—

(a) “Bench” means a Bench of the Lokayukta;

(b) “Chairperson” means the Chairperson of the Lokayukta;

(c) “competent authority”, in relation to—

(i) the Chief Minister, means the Legislative Assembly of the State;

(ii) a member of the Council of Ministers, means the Chief Minister;

(iii) a member of State Legislature other than a Minister means—

(A) in the case of a Member of the Legislative Council, the Chairman of that Council; and

(B) in the case of a Member of the Legislative Assembly, the Speaker of that House;

(iv) an officer in the Ministry or Department of the State Government means the Minister-in-charge of the Ministry or Department under which such officer is serving;

(v) a chairperson or members of any body, or Board or corporation or authority or company or society or autonomous body (by whatever name called) established or constituted under an Act of Parliament or of a State Legislature or wholly or partly financed by the Central Government or the State Government or controlled by it, means the Minister-in-charge of the administrative Ministry of such body, or Board or corporation or authority or company or society or autonomous body;

(vi) an officer of any body or Board or corporation or authority or company or society or autonomous body (by whatever name called) established or constituted under an Act of Parliament or of a State Legislature or wholly or partly financed by the Central Government or the State Government or controlled by it, means the

head of such body or Board or corporation or authority or company or society or autonomous body;

(vii) in any other case not falling under sub-clauses (i) to (v) above, means such department or authority as the State Government may by notification specify:

Provided that if any person referred to in sub-clause (iv) or sub-clause (v) is also a Member of the State Legislature, then the competent authority shall be—

(A) in case such member is a Member of the Legislative Council, the Chairman of that Council; and

(B) in case such member is a Member of the Legislative Assembly, the Speaker of that House;

(f) “investigation” means an investigation defined under Clause (h) of Section 2 of the Code of Criminal Procedure, 1973;

2 of 1974

(g) “Judicial Member” means a Judicial Member of the Lokayukta appointed as such;

(h) “Lokayukta” means the body established under Section 64;

(i) “Member” means a Member of the Lokayukta;

(j) “Minister” means Minister of a State Government but does not include the Chief Minister;

(k) “preliminary inquiry” means an inquiry conducted under this Act by the Lokayukta;

(2) The words and expressions used herein and not defined in this part but defined in Section 2 of this Act or defined in the Prevention of Corruption Act, 1988, shall have the meanings respectively assigned to them in the said Acts.

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## CHAPTER II

### ESTABLISHMENT OF LOKAYUKTA

Establishment  
of  
Lokayukta.

**64. (1)** As from the commencement of this Act, there shall be established in a State, by notification in the Official Gazette, for the purpose of making

preliminary inquiry, investigation and prosecution in respect of complaints made under this Act, a body to be called the “Lokayukta”.

(2) The Lokayukta shall consist of—

(a) a Chairperson, who is or has been a Chief Justice of the High Court or a Judge of the High Court or an eminent person who fulfils the eligibility specified in Clause (b) of sub-section (3); and

(b) such number of Members, not exceeding eight out of whom fifty per cent shall be Judicial Members:

Provided that not less than fifty per cent of the Members of the Lokayukta shall be from amongst the persons belonging to the Scheduled Castes, the Scheduled Tribes, Other Backward Classes, and women.

(3) A person shall be eligible to be appointed,—

(a) as a Judicial Member if he is or has been a Judge of the High Court;

(b) as a Member other than a Judicial Member, if he is a person of impeccable integrity, outstanding ability having special knowledge and expertise of not less than twenty-five years in the matters relating to anti-corruption policy, public administration, vigilance, finance including insurance and banking, law, and management.

(4) The Chairperson or a Member shall not be—

(i) a Member of Parliament or a Member of the Legislature of any State or Union territory;

(ii) a person convicted of any offence involving moral turpitude;

(iii) a person of less than forty-five years of age, on the date of assuming office as Chairperson or Member, as the case may be;

(iv) a member of any Panchayat or Municipality;

(v) a person who has been removed or dismissed from service of the Union or a State, and shall not hold any office of trust or profit (other than his office as the Chairperson or a Member) or be connected with any political party or carry on any business or practise any profession and accordingly, before he enters upon his office, a person appointed as the Chairperson or a Member, as the case may be, shall, if—

(a) he holds any office of trust or profit, resign from such office; or

(b) he is carrying on any business, sever his connection with the conduct and management of such business; or

(c) he is practising any profession, cease to practise such profession.

(5) The Lokayukta or State Lokpal (by whatever name called) constituted under any State law for the time being in force, before the commencement of this Act, and applicable to that State, shall continue to discharge their function and exercise powers conferred upon them under that law in respect of that State until such law is amended or repealed by the State Legislature so as to bring in conformity with this Act.

Appointment of Chairperson and Members on recommendation of Selection Committee.

**65. (1)** The Chairperson and Members shall be appointed by the Governor after obtaining the recommendations of a Selection Committee consisting of—

- (a) the Chief Minister – Chairperson;
- (b) the Speaker of the Legislative Assembly – member;
- (c) the Leader of Opposition in the Legislative Assembly – member;
- (d) the Chief Justice of the High Court of the State or a Judge of the High Court nominated by him – member;
- (e) an eminent jurist nominated by the Governor – member;

(2) No appointment of a Chairperson or a Member shall be invalid merely by reason of any vacancy in the Selection Committee.

(3) The Selection Committee shall for the purposes of selecting the Chairperson and Members of the Lokayukta and for preparing a panel of persons to be considered for appointment as such, constitute a Search Committee consisting of at least seven persons of standing and having special knowledge and expertise in the matters relating to anti-corruption policy, public administration, vigilance, policy making, finance including insurance and banking, law, and management, or in any other matter which, in the opinion of the Selection Committee, may be useful in making selection of the Chairperson and Members of the Lokayukta:

Provided that not less than fifty per cent of the Members of the Search Committee shall be from amongst the persons belonging to the Scheduled Castes, the Scheduled Tribes, Other Backward Classes and women:

Provided further that the Selection Committee may also consider any person other than the persons recommended by the Search Committee.

(4) The Selection Committee shall regulate its own procedure for selecting the Chairperson and Members of the Lokayukta which shall be transparent.

(5) The term of the Search Committee referred to in sub-section (3), the fees and allowances payable to its members and the manner of selection of panel of names shall be such as may be prescribed.

**66.** The Governor shall take or cause to be taken all necessary steps for the appointment of a new Chairperson and Members at least three months before the expiry of the term of such Chairperson or Member, as the case may be, in accordance with the procedure laid down in this Act.

Filling of vacancies of Chairperson or Members.



Term of  
office of  
Chairperson  
and  
Members.

**67.** The Chairperson and every Member shall, on the recommendations of the Selection Committee, be appointed by the Governor by warrant under his hand and seal and hold office as such for a term of five years from the date on which he enters upon his office or until he attains the age of seventy years, whichever is earlier:

Provided that he may—

(a) by writing under his hand addressed to the Governor, resign his office; or

(b) be removed from his office in the manner provided in this Act.

Salary,  
allowances  
and other  
conditions  
of service  
of  
Chairperson  
and  
Members.

**68.** The salary, allowances and other conditions of service of—

(i) the Chairperson shall be the same as those of the Chief Justice of the High Court;

(ii) other Members shall be the same as those of a Judge of the High Court:

Provided that if the Chairperson or a Member is, at the time of his appointment, in receipt of pension (other than disability pension) in respect of any previous service under the Government of India or under the Government of a State, his salary in respect of service as the Chairperson or, as the case may be, as a Member, be reduced—

(a) by the amount of that pension; and

(b) if he has, before such appointment, received, in lieu of a portion of the pension due to him in respect of such previous service, the commuted value thereof, by the amount of that portion of the pension:

Provided further that the salary, allowances and pension payable to, and other conditions of service of, the Chairperson or a Member shall not be varied to his disadvantage after his appointment.

**69. (1)** On ceasing to hold office, the Chairperson and every Member shall be ineligible for—

(i) re-appointment as the Chairperson or a Member of the Lokayukta;

(ii) any diplomatic assignment, appointment as administrator of a Union territory and such other assignment or appointment which is required by law to be made by the Governor by warrant under his hand and seal;

(iii) further employment to any other office of profit under the Government of India or the Government of a State;

(iv) contesting any election of President or Vice President or Member of either House of Parliament or Member of either House of a State Legislature or Municipality or Panchayat within a period of five years from the date of relinquishing the post.

Restriction on employment by Chairperson and Members after ceasing to hold office.

(2) Notwithstanding anything contained in subsection (1), a Member shall be eligible to be appointed as a Chairperson, if his total tenure as Member and Chairperson does not exceed five years.

*Explanation.*— For the purposes of this section, it is hereby clarified that where the Member is appointed as the Chairperson, his term of office shall not be more than five years in aggregate as the Member and the Chairperson.

**70. (1)** In the event of occurrence of any vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the Governor may, by notification, authorise the senior-most Member to act as the Chairperson until the appointment of a new Chairperson to fill such vacancy.

Member to act as Chairperson or to discharge his functions in certain circumstances.

(2) When the Chairperson is unable to discharge his functions owing to absence on leave or otherwise, the senior-most Member available, as the Governor may, by notification, authorise in this

behalf, shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties.

Secretary,  
other  
officers and  
staff of  
Lokayukta.

**71. (1)** There shall be a Secretary to the Lokayukta in the rank of Secretary to the State Government, who shall be appointed by the Chairperson from a panel of names sent by the State Government.

(2) There shall be a Director of Inquiry and Director of Prosecution not below the rank of the Additional Secretary to the State Government or equivalent, who shall be appointed by the Chairperson from a panel of names sent by the State Government.

(3) The appointment of secretary and other officers and staff of the Lokayukta shall be made by the Chairperson or such Member or officer of Lokayukta as the Chairperson may direct:

Provided that the Governor may by rule require that the appointment in respect of any post or posts as may be specified in the rule, shall be made after consultation with the State Public Service Commission.

(4) Subject to the provisions of any law made by the State Legislature, the conditions of service of secretary and other officers and staff of the Lokayukta shall be such as may be specified by regulations made by the Lokayukta for the purpose:

Provided that the regulations made under this sub-section shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the Governor.

### CHAPTER III

#### INQUIRY WING

Inquiry  
Wing.

**72. (1)** Notwithstanding anything contained in any law for the time being in force, the Lokayukta shall constitute an Inquiry Wing headed by the Director of Inquiry for the purpose of conducting

preliminary inquiry into any offence alleged to have been committed by a public servant punishable under the Prevention of Corruption Act, 1988:

49 of 1988.

Provided that till such time the Inquiry Wing is constituted by the Lokayukta, the State Government shall make available such number of officers and other staff from such of its Ministries or Departments, as may be required by the Lokayukta, for conducting preliminary inquiry under this Act.

(2) For the purposes of assisting the Lokayukta in conducting a preliminary inquiry under this Act, the officers of the Inquiry Wing not below the rank of Under Secretary to that Government, shall have the same powers as are conferred upon the Lokayukta under Section 88.

#### CHAPTER IV

##### PROSECUTION WING

73. (1) The Lokayukta shall, by notification, constitute a Prosecution Wing headed by the Director of Prosecution for the purpose of prosecution of public servants in relation to any complaint by the Lokayukta under this Act:

Appointment  
of Director  
of  
prosecution.

Provided that till such time the Prosecution Wing is constituted by the Lokayukta, the State Government shall make available such number of officers and other staff from such of its Ministries or Departments, as may be required by the Lokayukta, for conducting prosecution under this Act.

(2) The Director of prosecution shall, after having been so directed by the Lokayukta, file a case in accordance with the investigation report, before the Special Court, and take all necessary steps in respect of the prosecution of public servants in relation to any offence punishable under the Prevention of Corruption Act, 1988.

49 of 1988

(3) The report under sub-section (2) shall be deemed to be a report, filed on completion of investigation, referred to in Section 173 of the Code of Criminal Procedure, 1973.

2 of 1974

## CHAPTER V

EXPENSES OF LOKAYUKTA TO BE CHARGED ON  
CONSOLIDATED FUND OF STATE

Expenses of Lokayukta to be charged on Consolidated Fund of State.

**74.** The administrative expenses of the Lokayukta, including all salaries, allowances and pensions payable to or in respect of the Chairperson, Members or secretary or other officers or staff of the Lokayukta, shall be charged upon the Consolidated Fund of State and any fees or other moneys taken by the Lokayukta shall form part of that Fund.

## CHAPTER VI

## JURISDICTION IN RESPECT OF INQUIRY

Jurisdiction of Lokayukta to include Chief Minister, Ministers, Members of Legislatures, officers and employees of State Government.

**75. (1)** Subject to the other provisions of this Act, the Lokayukta shall inquire or cause an inquiry to be conducted into any matter involved in, or arising from, or connected with, any allegation of corruption made in a complaint in respect of the following, namely:—

(a) any person who is or has been a Chief Minister;

(b) any other person who is or has been a Minister of the State;

(c) any person who is or has been a Member of the State Legislature;

(d) all officers and employees of the State, from amongst the public servants defined in sub-clause (i) and (ii) of Clause (c) of Section 2 of the Prevention of Corruption Act, 1988 when serving or who has served, in connection with the affairs of the State;

(e) all officers and employees referred to in Clause (d) or equivalent 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 of a State Legislature or wholly or partly financed by the State Government or controlled by it;

(f) 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 or aided by the State Government and the annual income of which exceeds such amount as the State Government may by notification specify;

42 of 2010

(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) in receipt of any donation from the public and the annual income of which exceeds such amount as the State Government may by notification specify or 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;

*Explanation.*—For the purpose of Clauses (f) and (g), it is hereby clarified that any entity or institution, by whatever name called, corporate, society, trust, association of persons, partnership, sole proprietorship, limited liability partnership (whether registered under any law for the time being in force or not), shall be the entities covered in those clauses:

49 of 1988

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

Provided further that nothing in Clauses (e) and (f) and this clause shall apply to any society or association of persons or trust constituted for religious purpose.

(2) Notwithstanding anything contained in sub-section (1), the Lokayukta shall not inquire into any matter involved in, or arising from, or

connected with, any such allegation of corruption against any Member of the State Legislature in respect of anything said or a vote given by him in the State Legislature or any committee thereof covered under the provisions contained in Clause (2) of Article 194 of the Constitution.

(3) The Lokayukta may inquire into any act or conduct of any person other than those referred to in sub-section (1), if such person is involved in the act of abetting, bribe giving or bribe taking or conspiracy relating to any allegation of corruption under the Prevention of Corruption Act, 1988 against a person referred to in sub-section (1):

49 of 1988

Provided that, no action under this section shall be taken in case of a person serving in connection with the affairs of the Union, without the consent of the Central Government.

(4) No matter in respect of which a complaint has been made to the Lokayukta under this Act, shall be referred for inquiry under the Commissions of Inquiry Act, 1952.

60 of 1952

*Explanation.*—For the removal of doubts, it is hereby declared that a complaint under this Act shall only relate to a period during which the public servant was holding or serving in that capacity.

Matters pending before any court or committee or authority for inquiry before Lokayukta not to be affected.

**76.** In case any matter or proceeding related to allegation of corruption under the Prevention of Corruption Act, 1988 has been pending before any court or committee of the State Legislature or before any other authority prior to commencement of this Act or prior to commencement of any inquiry after the commencement of this Act, such matter or proceeding shall be continued before such court, committee or authority.

49 of 1988

Constitution of benches of Lokayukta.

**77. (1)** Subject to the provisions of this Act,—

(a) the jurisdiction of the Lokayukta may be exercised by benches thereof;

(b) a bench may be constituted by the Chairperson with two or more Members as the Chairperson may deem fit;

(c) every bench shall ordinarily consist of at least one Judicial Member;

(d) where a bench consists of the Chairperson, such bench shall be presided over by the Chairperson;

(e) where a bench consists of a Judicial Member, and a non-Judicial Member, not being the Chairperson, such bench shall be presided over by the Judicial Member;

(f) the benches of the Lokayukta shall ordinarily sit at Capital of the State and at such other places as the Lokayukta may, by regulations, specify.

(2) The Lokayukta shall notify the areas in relation to which each bench of the Lokayukta may exercise jurisdiction.

(3) Notwithstanding anything contained in sub-section (2), the Chairperson shall have the power to constitute or reconstitute benches from time to time.

(4) If at any stage of the hearing of any case or matter it appears to the Chairperson or a Member that the case or matter is of such nature that it ought to be heard by a bench consisting of three or more Members, the case or matter may be transferred by the Chairperson or, as the case may be, referred to him for transfer, to such bench as the Chairperson may deem fit.

**78.** Where benches are constituted, the Chairperson may, from time to time, by notification, make provisions as to the distribution of the business of the Lokayukta amongst the benches and also provide for the matters which may be dealt with by each bench.

Distribution of business amongst benches.

**79.** On an application for transfer made by the complainant or the public servant, the Chairperson, after giving an opportunity of being heard to the complainant or the public servant, as the case may be, may transfer any case pending before one bench for disposal to any other bench.

Power of Chairperson to transfer cases.



Decision to be by majority.

**80.** If the Members of a bench consisting of an even number of Members differ in opinion on any point, they shall state the point or points on which they differ, and make a reference to the Chairperson who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other Members of the Lokayukta and such point or points shall be decided according to the opinion of the majority of the Members of the Lokayukta who have heard the case, including those who first heard it.

## CHAPTER VII

### PROCEDURE IN RESPECT OF PRELIMINARY INQUIRY AND INVESTIGATION

Provisions relating to complaints and preliminary inquiry and investigation.

**81. (1)** The Lokayukta shall, on receipt of a complaint, first decide whether to proceed in the matter or close the same and if the Lokayukta decides to proceed further, it shall order the preliminary inquiry against any public servant by its Inquiry Wing or any agency (including any special investigation agency) to ascertain whether there exist a *prima facie* case for proceeding in the matter.

(2) During the preliminary inquiry referred to in sub section (1), the Inquiry Wing or any agency shall conduct a preliminary inquiry and on the basis of material, information and documents collected seek the comments on the allegations made in the complaint from the public servant and competent authority and after obtaining the comments of the concerned public servant and competent authority, submit, within sixty days from the date of receipt of the reference, a report to the Lokayukta.

(3) A bench consisting of not less than three Members of the Lokayukta shall consider every report received under sub-section (2) from the Inquiry Wing or any agency and after giving an opportunity of being heard to the public servant, decide as to whether there exists a *prima facie*

case, and make recommendations to proceed with one or more of the following actions, namely:—

(a) investigation by its Investigation Wing or any investigating agency;

(b) initiation of the departmental proceedings or any other appropriate action against the concerned public servants by the competent authority;

(c) closure of the proceedings against the public servant and take action to proceed against the complainant under Section 46.

(4) Every preliminary inquiry referred to in sub-section (1) shall ordinarily be completed within a period of ninety days and for reasons to be recorded in writing, within a further period of ninety days from the date of receipt of the complaint.

(5) In case the Lokayukta decides to proceed to investigate into the complaint, it shall either direct any investigation agency (including any special agency) to carry out the investigation as expeditiously as possible and complete the investigation within a period of six months from the date of its order:

Provided that the Lokayukta may extend the said period by a further period of six months for the reasons to be recorded in writing.

2 of 1974 (6) Notwithstanding anything contained in Section 173 of the Code of Criminal Procedure, 1973, any agency (including any special agency) shall, in respect of cases referred to it by the Lokayukta, submit the investigation report to the Lokayukta.

(7) A bench consisting of not less than three Members of the Lokayukta shall consider every report received by it under sub-section (4) from the Investigation Wing or any other agency and may, decide as to—

(a) file charge-sheet or closure report before the Special Court against the public servant;

(b) initiate the departmental proceedings or any other appropriate action against the concerned public servants by the competent authority.

(8) The Lokayukta may, after taking a decision under sub-section (6) on the filing of the charge-sheet, direct,—

(a) its Prosecution Wing to initiate prosecution in the Special Court in respect of the cases investigated by the investigation agency (including any special agency); or

(b) any other agency in respect of the cases investigated by such agency on the direction of Lokayukta to obtain its approval and thereafter initiate prosecution in the Special Court and forward a copy of charge-sheet filed by it under this clause to the Lokayukta for the purposes of superintendence.

(9) The Lokayukta may, during the preliminary inquiry or the investigation, as the case may be, pass appropriate orders for the safe custody of the documents relevant to the preliminary inquiry or, as the case may be investigation as it deems fit.

(10) The website of the Lokayukta shall, from time to time and in such manner as may be specified by regulations, display to the public, the status of number of complaints pending before it or disposed of by it.

(11) The Lokayukta may retain the original records and evidences, which are likely to be required in the process of preliminary inquiry or investigation or conduct of a case by it or by the Special Court.

(12) Save as otherwise provided, the manner and procedure of conducting a preliminary inquiry or investigation (including such material and documents to be made available to the public servant) under this Act, shall be such as may be specified by regulations.

**82.** If, at any stage of the proceeding, the Lokayukta—

Persons likely to be prejudicially affected to be heard.

(a) considers it necessary to inquire into the conduct of any person other than the prospective accused; or

(b) is of opinion that the reputation of any person other than an accused is likely to be prejudicially affected by the preliminary inquiry,

the Lokayukta shall give to that person a reasonable opportunity of being heard in the preliminary inquiry and to produce evidence in his defence, consistent with the principles of natural justice.

**83.** Subject to the provisions of this Act, for the purpose of any preliminary inquiry or investigation, the Lokayukta or the investigating authority, as the case may be, may require any public servant or any other person who, in its opinion, is able to furnish information or produce documents relevant to such preliminary inquiry or investigation, to furnish any such information or produce any such document.

Lokayukta may require any public servant or any other person to furnish information, etc.

2 of 1974  
49 of 1988

**84. (1)** No sanction or approval of any authority shall be required by the Lokayukta for conducting investigation by any agency in respect of the cases investigated by such agency on the direction of the Lokayukta, under Section 197 of the Code of Criminal Procedure, 1973 or Section 19 of the Prevention of Corruption Act, 1988, as the case may be, for the purpose of making preliminary inquiry by the Inquiry Wing or investigation by any agency into any complaint against any public servant or for filing of any charge-sheet or closure report on completion of investigation in respect thereof before the Special Court under this Act.

Previous sanction not necessary for investigation and initiating prosecution by Lokayukta in certain cases.

2 of 1974  
49 of 1988

**(2)** A Special Court may, notwithstanding anything contained in Section 197 of the Code of Criminal Procedure, 1973 or Section 19 of the Prevention of Corruption Act, 1988, on filing of a charge-sheet on completion of investigation, by the Lokayukta or any officer authorised by it in this behalf, take cognizance of offence committed by any public servant.

(3) Nothing contained in sub-sections (1) and (2) shall apply in respect of the persons holding the office in pursuance of the provisions of the Constitution and in respect of which a procedure for removal of such person has been specified therein.

(4) The provisions contained in sub-sections (1), (2) and (3) shall be without prejudice to the generality of the provisions contained in Article 311 and sub-clause (c) of Clause (3) of Article 320 of the Constitution.

Action on inquiry against public servant being Chief Minister, Ministers or Members of State Legislature.

**85. (1)** Where, after the conclusion of the preliminary inquiry or investigation, the findings of the Lokayukta disclose the commission of an offence under the Prevention of Corruption Act, 1988 by a public servant referred to in Clause (a) or Clause (b) of sub-section (1) of Section 75, the Lokayukta may file a case in the Special Court and shall send a copy of the report together with its findings to the competent authority.

49 of 1988

(2) The Legislative Assembly of the State in the Case of Chief Minister, the Chief Minister, in the case of the Minister, the Speaker in the case of a Member of the Legislative Assembly, and the Chairman of the Legislative Council of the State, where it exists, in the case of a Member of that Council shall, as soon as may be, after the receipt of report under sub-section (1), cause the same to be laid before the Legislative Assembly or the Legislative Council, as the case may be, while it is in session, and if the Legislative Assembly or the Legislative Council, is not in session, within a period of one week from the reassembly of the said Assembly or as the case may be the Council.

(3) The competent authority shall examine the report forwarded to it under sub-section (1) and communicate to the Lokayukta, within a period of ninety days from the date of receipt of the report, the action taken or proposed to be taken on the basis of the report and the reasons for not taking any action on the recommendation of the Lokayukta.

*Explanation.*— In computing the period of ninety days referred to in this sub-section, any period during which the State Legislature is not in session, shall be excluded.

## CHAPTER VIII

### POWERS OF LOKAYUKTA

**86.** The Lokayukta shall, notwithstanding anything contained in any other law for the time being in force, have the powers of superintendence and direction, over the investigation agency in respect of the matters in so far as they relate to the investigation by such agency under this Act.

Supervisory powers of Lokayukta.

**87. (1)** If the Lokayukta has reason to believe that any document which, in its opinion, shall be useful for, or relevant to, any investigation under this Act, are secreted in any place, it may authorise any agency to whom the investigation has been given to search for and to seize such documents.

Search and seizure.

(2) If the Lokayukta is satisfied that any document seized under sub-section (1) may be used as evidence for the purpose of any preliminary inquiry or investigation under this Act and that it shall be necessary to retain the document in its custody or in the custody of such officer as may be authorised, it may so retain or direct such authorised officer to retain such document till the completion of such preliminary inquiry or investigation:

Provided that where any document is required to be returned, the Lokayukta or the authorised officer may return the same after retaining copies of such document duly authenticated.

**88. (1)** Subject to the provisions of this section, for the purpose of any preliminary inquiry, the Inquiry Wing of the Lokayukta shall have all the powers of a civil court, under the Code of Civil Procedure, 1908, while trying a suit in respect of the following matters, namely:—

Lokayukta to have powers of civil court in certain cases.

5 of 1908

(i) summoning and enforcing the attendance of any person and examining him on oath;

(ii) requiring the discovery and production of any document;

(iii) receiving evidence on affidavits;

(iv) requisitioning any public record or copy thereof from any court or office;

(v) issuing commissions for the examination of witnesses or documents:

Provided that such commission, in case of a witness, shall be issued only where the witness, in the opinion of the Lokayukta, is not in a position to attend the proceeding before the Lokayukta; and

(vi) such other matters as may be prescribed.

(2) Any proceeding before the Lokayukta shall be deemed to be a judicial proceeding within the meaning of Section 193 of the Indian Penal Code.

45 of 1860

Power of Lokayukta to utilise services of officers of State Government.

**89. (1)** The Lokayukta may, for the purpose of conducting any preliminary inquiry or investigation, utilise the services of any officer or organisation or investigation agency of the State Government.

(2) For the purpose of preliminary inquiry or investigating into any matter pertaining to such inquiry or investigation, any officer or organisation or agency whose services are utilised under sub-section (1) may, subject to the direction and control of the Lokayukta,—

(a) summon and enforce the attendance of any person and examine him;

(b) require the discovery and production of any document; and

(c) requisition any public record or copy thereof from any office.

(3) The officer or organisation or agency whose services are utilised under sub-section (2) shall inquire or, as the case may be investigate into any matter pertaining to the preliminary inquiry or investigation and submit a report thereon to the Lokayukta within such period as may be specified by it in this behalf.

90. (1) Where the Lokayukta or any investigation officer authorised by it in this behalf, has reason to believe, the reason for such belief to be recorded in writing, on the basis of material in his possession, that—

Provisional attachment of assets.

(a) any person is in possession of any proceeds of corruption;

(b) such person is accused of having committed an offence relating to corruption; and

(c) such proceeds of offence are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of offence, he may, by order in writing, provisionally attach such property for a period not exceeding ninety days from the date of the order, in the manner provided in the Second Schedule to the Income-tax Act, 1961 and the Lokayukta shall be deemed to be an officer under sub-rule (e) of rule 1 of that Schedule.

43 of 1961

(2) The Lokayukta shall, immediately after attachment under sub-section (1), forward a copy of the order, along with the material in his possession, referred to in that sub-section, to the Special Court, in a sealed envelope, in the manner as may be prescribed and such Court may extend the order of attachment and keep such material for such period as the Court may deem fit.

(3) Every order of attachment made under sub-section (1) shall cease to have effect after the expiry of the period specified in that sub-section or after the expiry of the period as directed by the Special Court under sub-section (2).

(4) Nothing in this section shall prevent the person interested in the enjoyment of the immovable property attached under sub-section (1) or sub-section (2), from such enjoyment.



*Explanation.*—For the purposes of this sub-section, “person interested”, in relation to any immovable property, includes all persons claiming or entitled to claim any interest in the property.

Confirmation  
of  
attachment  
of assets.

**91. (1)** The Lokayukta, when it provisionally attaches any property under sub-section (1) of Section 90 shall, within a period of thirty days of such attachment, direct its Prosecution Wing to file an application stating the facts of such attachment before the Special Court and make a prayer for confirmation of attachment of the property till completion of the proceedings against the public servant in the Special Court.

(2) The Special Court may, if it is of the opinion that the property provisionally attached had been acquired through corrupt means, make an order for confirmation of attachment of such property till the completion of the proceedings against the public servant in the Special Court.

(3) If the public servant is subsequently acquitted of the charges framed against him, the property, subject to the orders of the Special Court, shall be restored to the concerned public servant along with benefits from such property as might have accrued during the period of attachment.

(4) If the public servant is subsequently convicted of the charges of corruption, the proceeds relatable to the offence under the Prevention of Corruption Act, 1988 shall be confiscated and vest in the Central Government free from any encumbrance or leasehold interest excluding any debt due to any bank or financial institution.

49 of 1988

*Explanation.*—For the purposes of this sub-section, the expressions “bank”, “debt” and “financial institution” shall have the meanings respectively assigned to them in Clauses (d), (g) and (h) of Section 2 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993.

51 of 1993

92. (1) Without prejudice to the provisions of Sections 90 and 91, where the Special Court, on the basis of *prima facie* evidence, has reason to believe or is satisfied that the assets, proceeds, receipts and benefits, by whatever name called, have arisen or procured by means of corruption by the public servant, it may authorise the confiscation of such assets, proceeds, receipts and benefits till his acquittal.

Confiscation of assets, proceeds, receipts and benefits arisen or procured by means of corruption in special circumstances.

(2) Where an order of confiscation made under sub-section (1) is modified or annulled by the High Court or where the public servant is acquitted by the Special Court, the assets, proceeds, receipts and benefits, confiscated under sub-section (1) shall be returned to such public servant, and in case it is not possible for any reason to return the assets, proceeds, receipts and benefits, such public servant shall be paid the price thereof including the money so confiscated with the interest at the rate of five per cent per annum thereon calculated from the date of confiscation.

93. (1) Where the Lokayukta, while making a preliminary inquiry into allegations of corruption, is *prima facie* satisfied, on the basis of evidence available, that—

Power of Lokayukta to recommend transfer or suspension of public servant connected with allegation of corruption.

(a) the continuance of the public servant referred to in Clause (d) or Clause (e) of sub-section (1) of Section 75 in his post while conducting the preliminary inquiry is likely to affect such preliminary inquiry adversely; or

(b) the public servant referred to in Clause (a) is likely to destroy or in any way tamper with the evidence or influence witnesses,

then, the Lokayukta may recommend to the State Government for transfer or suspension of such public servant from the post held by him till such period as may be specified in the order.

(2) The State Government shall ordinarily accept the recommendation of the Lokayukta made under sub-section (1), except for the reasons to be recorded in writing in a case where it is not feasible for administrative reasons.

Power of Lokayukta to give directions to prevent destruction of records during preliminary inquiry.

**94.** The Lokayukta may, in discharge of its functions under this Act, issue appropriate directions to a public servant entrusted with the preparation or custody of any document or record—

(a) to protect such document or record from destruction or damage; or

(b) to prevent the public servant from altering or secreting such document or record; or

(c) to prevent the public servant from transferring or alienating any assets allegedly acquired by him through corrupt means.

Lokayukta to function as appellate authority for appeals arising out of any other law.

**95.** The Lokayukta shall function as the final appellate authority in respect of appeals arising out of any other law for the time being in force providing for delivery of public services and redressal of public grievances by any public authority in cases where the decision contains findings of corruption under the Prevention of Corruption Act, 1988.

Power to delegate.

**96.** The Lokayukta may, by general or special order in writing, and subject to such conditions and limitations as may be specified therein, direct that any administrative or financial power conferred on it may also be exercised or discharged by such of its Members or officers or employees as may be specified in the order.

Application of certain provisions relating to Lokpal to apply to Lokayukta.

**97.** The provisions contained in Chapters IX, X, XI, XII, XIII, XIV and XV (except Section 59) shall apply to a Lokayukta and shall have effect, subject to the following modifications, namely:—

(a) references to “President” shall be construed as references to “Governor of the State”;

(b) references to the “Central Government” shall be construed as references to “State Government”;

(c) references to “each House of Parliament” or “Parliament”, shall be construed as references to “Legislature of the State”;

(d) references to “Lokpal” shall be construed as references to “Lokayukta”;

(e) references to “Comptroller and Auditor-General of India” shall be construed as references to “Accountant General of the State”;

(f) references to “Chief Justice of India” shall be construed as references to “Chief Justice of the High Court of the State”.

## THE SCHEDULE

[See Section 58]

## AMENDMENT TO CERTAIN ENACTMENTS

## PART I

## AMENDMENT TO THE COMMISSIONS OF INQUIRY ACT, 1952

(60 OF 1952)

Amendment  
of  
Section 3.

In Section 3, in sub-section (1), for the words “The appropriate Government may”, the words, brackets and figures “Save as otherwise provided in the Lokpal and Lokayuktas Act, 2011, the appropriate Government may” shall be substituted.

## PART II

AMENDMENT TO THE DELHI SPECIAL POLICE ESTABLISHMENT  
ACT, 1946

(25 OF 1946)

Amendment  
of Section  
4A.

1. In Section 4A,—

(i) for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) The Central Government shall appoint the Director on the recommendation of the Committee consisting of—

(a) the Prime Minister — Chairperson;

(b) the Leader of Opposition in the House of the People — Member;

(c) the Chief Justice of India or Judge of the Supreme Court nominated by him — Member.”.

(ii) sub-section (2) shall be omitted.

2. In Section 4C, for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) The Central Government shall appoint officers to the posts of the level of

Superintendent of Police and above except Director, and also recommend the extension or curtailment of the tenure of such officers in the Delhi Special Police Establishment, on the recommendation of a committee consisting of:—

(a) the Central Vigilance Commissioner  
— Chairperson;

(b) Vigilance Commissioners — Members;

(c) Secretary to the Government of India in charge of the Ministry of Home — Member;

(d) Secretary to the Government of India in charge of the Department of Personnel — Member;

Provided that the Committee shall consult the Director before submitting its recommendation to the Central Government.”.

### PART III

#### AMENDMENTS TO THE PREVENTION OF CORRUPTION ACT, 1988

(49 OF 1988)

1. In Sections 7, 8, 9 and Sections 12,—

(a) for the words “six months”, the words “three years” shall respectively be substituted;

(b) for the words “five years”, the words “seven years” shall respectively be substituted.

Amendment  
of Sections  
7, 8, 9 and  
12.

2. In Sections 13, in sub-section (2), —

(a) for the words “one year”, the words “four years” shall be substituted;

(b) for the words “seven years”, the words “ten years” shall be substituted.

Amendment  
of Section  
13.

3. In Sections 14,—

(a) for the words “two years”, the words “five years” shall be substituted.

(b) for the words “seven years”, the words “ten years” shall be substituted.

Amendment  
of Section  
14.

Amendment  
of Section  
15.

4. In Section 15, for the words “which may extend to three years”, the words “which shall not be less than two years but which may extend to five years” shall be substituted.

Amendment  
of Section  
19.

5. In Section 19, after the words “except with the previous sanction”, the words “save as otherwise provided in the Lokpal and Lokayuktas Act, 2011” shall be inserted.

#### PART IV

##### AMENDMENT TO THE CODE OF CRIMINAL PROCEDURE, 1973

(2 OF 1974)

Amendment  
of Section  
197.

In Section 197, after the words “except with the previous sanction”, the words “save as otherwise provided in the Lokpal and Lokayuktas Act, 2011” shall be inserted.

#### PART V

##### AMENDMENT TO THE CENTRAL VIGILANCE COMMISSION ACT, 2003

(45 OF 2003)

Amendment  
of Section  
2.

1. In Section 2, after Clause (d), the following clause shall be inserted, namely:—

“(da) “Lokpal” means the Lokpal established under sub-section (1) of Section 3 of the Lokpal and Lokayuktas Act, 2011;”.

Amendment  
of Section  
8.

2. In Section 8, in sub-section (2), after Clause (b), the following clause shall be inserted, namely:—

“(c) on a reference made by the Lokpal under proviso to sub-section (1) of Section 20 of the Lokpal and Lokayuktas Act, 2011, the persons referred to in Clause (d) of sub-section (1) shall also include—

(i) members of Group B, Group C and Group D services of the Central Government;

(ii) such level of officials or staff of the corporations established by or under any Central Act, Government companies, societies and other

local authorities, owned or controlled by the Central Government, as that Government may, by notification in the Official Gazette, specify in this behalf:

Provided that till such time a notification is issued under this clause, all officials or staff of the said corporations, companies, societies and local authorities shall be deemed to be the persons referred in Clause (d) of sub-section (1).”.

3. After Section 8, the following sections shall be inserted, namely:—

Insertion of new Sections 8A and 8B.

49 of 1988

“8A. (1) Where, after the conclusion of the preliminary inquiry relating to corruption of public servants belonging to Group C and Group D officials of the Central Government, the findings of the Commission disclose, after giving an opportunity of being heard to the public servant, a *prima facie* violation of conduct rules relating to corruption under the Prevention of Corruption Act, 1988 by such public servant, the Commission shall proceed with one or more of the following actions, namely:—

Action on preliminary inquiry in relation to public servants.

(a) cause an investigation by any agency or the Delhi Special Police Establishment, as the case may be;

(b) initiation of the disciplinary proceedings or any other appropriate action against the concerned public servant by the competent authority;

(c) closure of the proceedings against the public servant and to proceed against the complainant under Section 46 of the Lokpal and Lokayuktas Act, 2011.

(2) Every preliminary inquiry referred to in sub-section (1) shall ordinarily be completed within a period of ninety days and for reasons to be recorded in writing, within a further period of ninety days from the date of receipt of the complaint.



Action on investigation in relation to public servants.

8B. (1) In case the Commission decides to proceed to investigate into the complaint under clause (a) of sub-section (1) of Section 8A, it shall direct any agency (including the Delhi Special Police Establishment) to carry out the investigation as expeditiously as possible and complete the investigation within a period of six months from the date of its order and submit the investigation report containing its findings to the Commission:

Provided that the Commission may extend the said period by a further period of six months for the reasons to be recorded in writing.

(2) Notwithstanding anything contained in Section 173 of the Code of Criminal Procedure, 1973, any agency (including the Delhi Special Police Establishment) shall, in respect of cases referred to it by the Commission, submit the investigation report to the Commission.

(3) The Commission shall consider every report received by it under sub-section (2) from any agency (including the Delhi Special Police Establishment) and may decide as to—

(a) file charge-sheet or closure report before the Special Court against the public servant;

(b) initiate the departmental proceedings or any other appropriate action against the concerned public servant by the competent authority.”.

Insertion of new Section 11A.

Director of Inquiry for making preliminary inquiry.

4. After Section 11, the following section shall be inserted, namely:—

“11A. (1) There shall be a Director of Inquiry, not below the rank of Joint Secretary to the Government of India, who shall be appointed by the Central Government for conducting preliminary inquiries referred to the Commission by the Lokpal.

(2) The Central Government shall provide the Director of Inquiry such officers and employees as may be required for the discharge of his functions under this Act.”.

## STATEMENT OF OBJECTS AND REASONS

The need to have a legislation for Lokpal has been felt for the quite sometime. In its interim report on the “Problems of Redressal of Citizens’ Grievances” submitted in 1966, the Administrative Reforms Commission, *inter alia*, recommended the setting up of an institution of Lokpal at the Centre. To give effect to this recommendation of the Administrative Reforms Commission, eight Bills on Lokpal were introduced in the Lok Sabha in the past. However, these Bills had lapsed consequent upon the dissolution of the respective Lok Sabha except in the case of 1985 bill which was subsequently withdrawn after its introduction.

2. In pursuance of the efforts to constitute a mechanism for dealing with complaints on corruption against public functionaries including in high places, the Government constituted a Joint Drafting Committee on 8 April, 2011 to draft a Lokpal Bill. Divergent views emerged during deliberations in the JDC. Government introduced a revised Bill namely ‘Lokpal Bill, 2011’ in the Lok Sabha on 4 August, 2011. This Bill was referred to the Department-related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice on the 8 August, 2011 for examination and report and this was followed by discussions in both the Houses of Parliament on 27 August, 2011. A sense of the House was communicated to the Standing Committee on the basis of discussions in the Houses. The Department-related Parliamentary Standing Committee after extensive discussion with all the concerned Stakeholders suggested major amendments as regards the scope and content of the Bill introduced in August 2011. It also recommended that Lokpal at the Centre and Lokayukta at the States be conferred constitutional status in its report of 9 December, 2011. Upon consideration of the recommendations of the Standing Committee it was decided to withdraw the Lokpal Bill, 2011 pending in Lok Sabha and to introduce a thoroughly revised bill for carrying out the necessary amendments to the Constitution for the setting up of Lokpal and Lokayuktas as constitutional bodies.

3. India is committed to pursue the policy of ‘Zero Tolerance against Corruption’. India ratified the United Nations Convention Against Corruption by deposit of Instrument of Ratification on 9 May, 2011. This Convention imposes a number of obligations, some mandatory, some recommendatory and some optional on the member States. The Convention, *inter alia*, envisages that State Parties ensure measures in the domestic law for

criminalization of offences relating to bribery and put in place an effective mechanism for its enforcement. The obligations of the Convention, with reference to India, have come into force with effect from 8 June, 2011. As a policy of Zero Tolerance against Corruption the Bill seeks to establish in the country, a more effective mechanism to receive complaints relating to allegations of corruption against public servants including Ministers, MPs, Chief Ministers, Members of Legislative Assemblies and public servants and to inquire into them and take follow up actions. The bodies, namely, Lokpal and Lokayuktas which are being set up for the purpose will be constitutional bodies. This setting up of these bodies will further strengthen the existing legal and institutional mechanism thereby facilitating a more effective implementation of some of the obligations under the aforesaid Convention.

4. The Lokpal and Lokayuktas Bill, 2011, seeks to provide, *inter alia*, for—

(i) setting up the institution of Lokpal for the Union and Lokayuktas for the States through a single Legislation and these bodies will have a constitutional status for which a Constitution (Amendment) Bill is being introduced.

(ii) Lokpal and Lokayukta will consist of a Chairperson and a maximum of eight Members, of which fifty percent shall be judicial Members.

(iii) that all categories of persons, who are eligible for selection as Member of Lokpal and Lokayukta are also eligible for selection as Chairperson of the Lokpal.

(iv) that the Selection Committee for selection of Chairperson and Members of Lokpal shall consist of—

- (a) Prime Minister;
- (b) Speaker of Lok Sabha;
- (c) Leader of Opposition in the Lok Sabha;
- (d) Chief Justice of India or a sitting Supreme Court Judge nominated by CJI;
- (e) an eminent jurist to be nominated by the President of India;

In the case of Lokayukta, it will be Chief Minister, Speaker, Leader of Opposition of the State Legislature, Chief Justice or the judge of High Court and an eminent jurist nominated by the Governor.

(v) fifty percent of Members of Lokpal and Lokayuktas shall be from amongst Scheduled Castes, Scheduled Tribes, Other Backward Classes and women. Similar reservation is being provided in the Search Committee.

(vi) removal procedure for Lokpal and Lokayuktas and Members in the Bill instead of providing in the Constitution Amendment Bill.

(vii) bringing Prime Minister under the purview of the Lokpal with some subject matter exclusions and specific process for handling complaints against the Prime Minister by providing that Lokpal may not hold any inquiry against the Prime Minister if allegations relate to international relations; external and internal security of the country; public order; atomic energy and Space, and further providing that any decision of the Lokpal to initiate preliminary inquiry or investigation against the Prime Minister shall be taken only by the Full Bench with a majority of 3/4<sup>th</sup> and that such proceedings be held in camera.

(viii) inclusion of all categories of employees under Lokpal/ Lokayuktas who will receive complaints against Group 'A', 'B', 'C' & 'D' categories of Government servants; decide on holding of preliminary inquiry.

(ix) that Lokpal may refer complaints against specified categories of public servants to Central Vigilance Commission and that Commission shall send its report of preliminary inquiry in respect of Group 'A' and 'B' officers back to Lokpal for further decision and with respect to Group 'C' and 'D' employees, Commission shall take action in exercise of its own powers under the Central Vigilance Commission Act, 2003, subject to reporting and review mechanism by Lokpal over the Central Vigilance Commission.

(x) provision for superintendence of Lokpal over the Delhi Special Police Establishment in so far as the cases referred to them by Lokpal.

(xi) bringing under the jurisdiction of Lokpal and Lokayuktas entities/institutions receiving donations from foreign source in terms of and in the context of the Foreign Contribution Regulation Act, 2010 in excess of Rs. 10 lakhs per year.

(xii) setting up of an Inquiry Wing of the Lokpal and Lokayuktas for conducting the preliminary inquiry and also an independent Prosecution Wing in the Lokpal institution.

(xiii) providing that no prior sanction shall be required for launching prosecution in cases enquired by Lokpal and Lokayuktas or initiated on the direction and with the approval of Lokpal and Lokayuktas and,

similarly, no prior approval is required for conducting investigation by the Delhi Special Police Establishment in respect of cases entrusted by Lokpal.

(xiv) as a measure of reinforcing natural justice, a provision enabling inquiring agency to seek comments from the competent authority who after obtaining the comments of the public servant will furnish comments to the inquiring agency within a prescribed timeline. A three Member bench will consider the inquiry report and may decide to recommend investigation or initiate disciplinary proceeding or close the case.

(xv) the Bill seeks to amend the Delhi Special Police Establishment Act, 1940 to provide a High Power Selection Committee for selection of Director, of the Delhi Special Police Establishment.

5. The notes on clauses explain in details the provisions of the Bill.

6. The Bill seeks to achieve the aforesaid objectives.

NEW DELHI;  
*The 21st December, 2011*

V. NARAYANASAMY.

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PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117 OF  
THE CONSTITUTION OF INDIA

**[Copy of letter No. 407/108/2011-AVD.IV dated 21 December, 2011  
from Shri V. Narayanasamy, Minister of State in the Ministry of Personnel,  
Public Grievances and Pensions to the Secretary-General, Lok Sabha]**

The President, having been informed of the subject matter of the Lokpal and Lokayukta Bill, 2011, recommends the introduction and consideration of the Lokpal and Lokayuktas Bill, 2011 in the Lok Sabha under Article 117(1) and 117(3) of the Constitution.

### Notes on Clauses

*Clause 1.*—This clause of the Bill seeks to provide for the short title, extent, application and commencement of the proposed Lokpal and Lokayukta legislation. It provides that it shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different States and for different provisions of the proposed legislation, and any reference in any provision to the commencement of the proposed legislation shall be construed as a reference to the coming into force of that provision.

*Clause 2.*—This clause defines the various expressions used in the Bill which, *inter alia*, include the expressions — “Bench”, “Central Vigilance Commission”, “competent authority”, “complaint”, “investigation”, “preliminary inquiry”, “Judicial Member”, “Lokpal”, “Member”, “Minister”, “public servant”, “Special Court”, etc. The court of Special Judge appointed under sub-clause (1) of Section 3 of the Prevention of Corruption Act, 1988 shall be the Special Court.

Sub-clause (3) of the aforesaid clause provides that any reference in the proposed legislation to any other Act or provision thereof which is not in force in any area to which the proposed legislation applies shall be construed to have a reference to the corresponding Act or provision thereof in force in such area.

*Clause 3.*—This clause seeks to provide for the establishment of Lokpal consisting of a Chairperson and eight Members. It also provides that fifty percent of the Members shall be Judicial Members. The Chairperson shall be a person who is or has been a Chief Justice of India or is or has been a Judge of the Supreme Court or an eminent person who fulfils the eligibility specified for Members under sub-clause (3). The Judicial Member shall be a person who is or has been a Judge of the Supreme Court or who is or has been a Chief Justice of a High Court. The Members shall be the persons who are of impeccable integrity and outstanding ability and standing having special knowledge and experience of not less than twenty-five years in the matters relating to anti-corruption policy, public administration, vigilance, finance including insurance and banking, law and management. It also provides that not less than fifty percent of the Members of the Lokpal, shall be from amongst the persons belonging to the Scheduled Castes, the Scheduled Tribes, Other Backward Classes and women.

It further provides that the Chairperson or a Member of the Lokpal shall not be a Member of Parliament or a Member of a Legislature of any State or Union Territory and shall not be a person, convicted of any offence involving moral turpitude; who is less than forty five years of age, on the date of assuming office as Chairperson or Member; who is a member of any Panchayat or Municipality; who has been removed or dismissed from service of the Union or a State, and shall not hold any office of trust or profit or be connected with any political party or carry on own business or practice any profession. It also provides that the person appointed as Chairperson or a Member before he enters upon his office shall resign from the office of trust or profit held by him or sever his connection with the conduct and management of any business carried on by him or cease to practice if he is practicing any profession.

*Clause 4.*—This clause provides for appointment of Chairperson and other Members and constitution of a Selection Committee for that purpose. The Chairperson and Members shall be appointed after obtaining the recommendations of a Selection Committee consisting of the Prime Minister, the Speaker of the House of the People, the Leader of Opposition in the House of the People, the Chief Justice of India or a Judge of the Supreme Court nominated by him, one eminent jurist nominated by the President. For the purpose of holding the Chairperson and other Members of the Lokpal and for preparing a panel of persons to be considered for appointment, the Selection Committee may constitute a Search Committee consisting of such persons having special knowledge and expertise in the matters relating to anti-corruption policy, public administration, vigilance, policy making, finance including insurance and banking, law and management or in any other matter which in the opinion of the Selection Committee may be useful for making the selection of a Chairperson and Members of the Lokpal. It further provides that the Selection Committee shall regulate its own procedure in a transparent manner for selecting the Chairperson and Members of the Lokpal.

It also provides that not less than fifty percent of the members of the Search Committee shall be from amongst the persons belonging to the Scheduled Castes, the Scheduled Tribes, Other Backward Classes and women. However, the Selection Committee may also consider any person other than the persons recommended by the Search Committee and the Search Committee shall regulate its own procedure in a transparent manner.

*Clause 5.*—This clause provides that all necessary steps for appointment of a new Chairperson or Members shall be taken by the President at least three months before the expiry of the term of the Chairperson or Member, as the case may be, in accordance with the procedure laid down in the proposed legislation.

*Clause 6.*—This clause deals with the terms of office of the Chairperson and Members. It provides that the Chairperson and every Member shall be appointed by the President by warrant under his hand and seal and hold office as such for a term of five years from the date on which he enters upon his office or until he attains the age of seventy years, whichever is earlier.

*Clause 7.*—This clause deals with salary, allowances and other conditions of services of Chairperson and Members. It provides that the salary, allowances and other conditions of services of the Chairperson shall be the same as that of a Chief Justice of India. The salary, allowances and other conditions of services of the Members shall be the same as that of a Judges of the Supreme Court. Further, after a person is appointed as a Chairperson or a Member, his conditions of service, allowances and pension payable to him shall not be varied to his disadvantage.

*Clause 8.*—This clause provides for restriction on employment by Chairperson and Members after ceasing to hold the office. It also provides that the Chairperson and Members of Lokpal shall be ineligible to contest any election of President or Vice-President or Member of either House of Parliament or Member of either House of a State Legislature or Municipality or Panchayat within a period of five years from the date of relinquishing the post. However, a Member shall be eligible to be appointed as a Chairperson if his total tenure as Member and Chairperson does not exceed five years. However, if any Member is appointed as the Chairperson, his term of office shall not be more than five years in aggregate as the Member and the Chairperson.

*Clause 9.*—This clause seeks to provide that in the event of occurrence of any vacancy in the office of Chairperson, by reason of his death, resignation or otherwise, the President may authorise the senior-most Member to act as the Chairperson until a new Chairperson is appointed to fill the vacancy when a Chairperson is unable to discharge his functions owing to absence or leave or otherwise, the President may authorise the seniormost Member to discharge his functions.

*Clause 10.*—This clause seeks to provide that the Secretary, other officers and staff of the Lokpal shall be appointed by the Chairperson or the Member or officer of Lokpal as the Chairperson may direct. It provides that there shall be a Secretary to the Lokpal in the rank of Secretary to Government of India, and a Director of Inquiry and Director of Prosecution not below the rank of the Additional Secretary to the Government of India or equivalent, who shall be appointed by the Chairperson from a panel of names sent by the Central Government. The President may make rules that the appointment in respect of any post or posts shall be made after consultation with the Union Public Service Commission.



*Clause 11.*—This clause provides for setting up of an Inquiry Wing of the Lokpal headed by the Director of Inquiry for the purpose of conducting preliminary inquiry into any offence alleged to have been committed by a public servant punishable under the Prevention of Corruption Act, 1988. It further provides that till such time the Investigation Wing is constituted by the Lokpal, the Central Government will make available the services of its investigation officers and other staff required by the Lokpal. It also provides that for the purposes of assisting the Lokpal in conducting preliminary inquiry under the proposed legislation, the officers of the Inquiry Wing not below the rank of Under Secretary to the Government of India, shall have the same powers as are conferred upon the Lokpal under clause 27.

*Clause 12.*—This clause seeks to provide that the Lokpal may constitute a Prosecution Wing headed by the Director of Prosecution for the purpose of Prosecution of public servants in relation to any complaint by the Lokpal under the proposed legislation. It further provides that the Director of prosecution after having been so directed by the Lokpal, file a case in accordance with the investigation report, before the Special Court and take all necessary steps in respect of the prosecution of public servants in relation to any offence punishable under the Prevention of Corruption Act, 1988. It further provides that the case filed by the Director of Prosecution before the Special Court shall be deemed to be a report, filed on completion of investigation, referred to in section 173 of the Code of Criminal Procedure, 1973.

*Clause 13.*—This clause lays down that the administrative expenses of the Lokpal including salaries, allowances and pensions payable to or in respect of Chairperson, Members, Secretary or other officers or staff of the Lokpal shall be charged upon the Consolidated Fund of India. It also provides that any fees or other moneys taken by the Lokpal shall form part of the Consolidated Fund of India.

*Clause 14.*—This clause deals with the jurisdiction of Lokpal to include Prime Minister, Ministers, Members of Parliament, Groups A, B, C and D officers and officials of Central Government. Sub-clause (1) seeks to provide that the Lokpal shall inquire or cause an inquiry to be conducted into any matter involved in or arising from or connected with any allegation of corruption made in a complaint in respect of any person who is or has been a Prime Minister. However, the Lokpal shall not inquire into any matter involved in, or arising from, or connected with, any such allegation of corruption against the Prime Minister, in so far as it relates to foreign affairs, international relations, external and internal security, public order, atomic energy and space; unless a full bench of the Lokpal considers the

initiation of inquiry and at least three-fourth of its Members approve such inquiry; and unless the inquiry, if any, considered necessary by the Lokpal is held in camera.

It further provides that in the case of a Minister, a Member of either House of Parliament, any Group 'A' or Group 'B' officer or equivalent or above, any Group 'C' and Group 'D' official or equivalent or above from against the public servants as defined in sub-clauses (i) and (ii) of Clause (c) of Section 2 of the Prevention of Corruption Act, 1988 who was serving or has served in connection with the affairs of the Union, and Chairperson or Member or officers of certain boards, corporations, authority, company, society, trust, etc. established by an Act of Parliament or wholly or partly financed or controlled by the Central Government; director, manager, secretary or other officers of certain societies, association of persons etc. and director, manager, secretary or other officer of every other society, etc. wholly or partly financed or aided by the Government and the annual income of which exceeds such amount as may be notified by the Central Government or 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. It also provides that any entity or institution, by whatever name called, corporate, society, trust, association of persons, partnership, sole proprietorship, limited liability partnership (whether registered under any law for the time being in force or not), shall be the entities covered in the items (f) and (g).

Sub-clause (2) provides that the Lokpal shall not inquire into any matter against any member of either House of Parliament in respect of anything said or vote given by him in Parliament or any Committee thereof covered under the provisions of Clause (2) of Article 105 of the Constitution.

Sub-clause (3) provides that the Lokpal may inquire into any act or conduct of any person if such person is involved in the act of abetting, bribe giving or bribe taking or conspiracy relating to any allegation of corruption under the Prevention of Corruption Act, 1988.

Sub-clause (4) seeks to provide that in the matters in respect of which a complaint has been made under the proposed enactment shall not be referred for inquiry under the Commissions of Inquiry Act, 1952. The *Explanation* therein clarifies that a complaint under the proposed legislation shall relate only to a period during which the public servant was holding or serving as a public servant.

*Clause 15.*—This clause lays down that matters pending before any Court or Committee or Authority prior to commencement of the proposed legislation shall be continued before such Court, Committee or Authority, as the case may be.

*Clause 16.*—This clause seeks to provide that the jurisdiction of the Lokpal may be exercised by Benches thereof. A Bench of the Lokpal may be constituted by the Chairperson with two or more Members. Every Bench shall ordinarily consist of at least one Judicial Member in it. The Benches of Lokpal shall ordinarily be at New Delhi and at such places as the Lokpal may, by regulations, specify.

*Clause 17.*—This clause seeks to empower the Chairperson to distribute the business of Lokpal amongst its Benches and also specify the matters which may be dealt with by each Bench.

*Clause 18.*—This clause seeks to provide that the Chairperson may transfer any case pending before one Bench for disposal to any other Bench on receipt of an application for such transfer from the complainant or the public servant.

*Clause 19.*—This clause seeks to provide that the decision of the Lokpal shall be according to the opinion of the majority of the Members of Lokpal. However, if the Members of a Bench consisting of two Members differ in opinion on any point or points shall be referred to the Chairperson. The Chairperson may either hear such point or points himself or refer the same for hearing by one or more other Member and it shall be decided accordingly to the opinion of the majority of the Members who have heard the case including those who first heard it.

*Clause 20.*—This clause makes provision relating to complaint and preliminary inquiry and investigation by Lokpal. It provides that the Lokpal may, on receipt of a complaint first decide whether to proceed in the matter or close the peruse and if the Lokpal decides to proceed further it shall order the preliminary inquiry by its Inquiry Wing or any agency (including Delhi Special Police Establishment) to ascertain whether there exists a *prima facie* case for proceeding in the matter. However, the Lokpal shall if decides to proceed further with the preliminary inquiry, by a general or special order, refer the complaints or a category of complaints or a complaint received by it in respect of public servants belonging to Group A or Group B or Group C or Group D to the Central Vigilance Commission constituted under sub-section (1) of Section 3 of the Central Vigilance Commission Act, 2003. It further provides that the Central Vigilance Commission in respect of complaints referred to it, after making preliminary inquiry in respect of public servants belonging to Group A and Group B, shall submit its report to the Lokpal in accordance with the provisions contained in sub-clauses (2) and (4) and in case of public servants belonging to Group C and D, the Commission shall proceed in accordance with the provisions of the Central Vigilance Commission Act, 2003.

Sub-clause (2) provides that during the preliminary inquiry, the Inquiry Wing or any agency (including Delhi Special Police Establishment) shall conduct a preliminary inquiry and on the basis of material, information and documents collected seek the comments on the allegations made in the complaint from the public servant and competent authority and after obtaining the comments of the concerned public servant and competent authority, submit, within sixty days from the date of receipt of the reference, a report to the Lokpal.

Sub-clause (3) provides that a bench consisting of not less than three Members of the Lokpal shall consider every such report received from the Inquiry Wing, and decide as to whether there exists a *prima facie* case, and make recommendations to proceed with investigation by any investigating agency or the Delhi Special Police Establishment, as the case may be; after giving an opportunity of being heard to the public servant, with initiation of the departmental proceedings or any other appropriate action against the concerned public servant by the competent authority; or with closure of the proceedings against the public servant and take action to proceed against the complainant under Clause 46.

Sub-clause (4) seeks to provide that every preliminary inquiry referred to Lokpal shall ordinarily be completed within a period of ninety days and for reasons to be recorded in writing within a further period of ninety days from the date of receipt of the complaint and in case the Lokpal decides to proceed to investigate into the complaint, it shall direct any agency including the Delhi Special Police Establishment to carry out the investigation as expeditiously as possible and complete the investigation within a period of six months from the date of its order and submit the investigation report containing its findings to the Lokpal. However, after recording the reasons the Lokpal can extend the said period by a further period of six months and a bench consisting of not less than three Members of the Lokpal shall consider every report received by it from any agency (including the Delhi Special Police Establishment), decide as to file charge-sheet or closure report before the Special Court against the public servant; or to initiate the departmental proceedings or any other appropriate action against the concerned public servants by the competent authority.

It also provides that the Lokpal may, after taking a decision on the filing of the charge-sheet direct, its Prosecution Wing to initiate prosecution in the Special Court in respect of the cases investigated by any agency (including the Delhi Special Police Establishment) in respect of the cases investigated by such agency on the direction of Lokpal to obtain its approval at thereafter initiate prosecution in the Special Court and forward a copy of charge-sheet filed by it under this clause to the Lokpal for the purposes of superintendence.

*Clause 21.*—This clause provides that persons likely to be prejudicially affected are to be provided a reasonable opportunity of being heard in the inquiry and to produce evidence in his defence consistent with the principles of natural justice. However, this will not apply where the credibility of a witness is being questioned.

*Clause 22.*—This clause seeks to provide that Lokpal may require any public servant or any other person to furnish information or produce documents relevant to inquiry or investigation.

*Clause 23.*—This clause makes provision that no sanction or approval of any authority shall be required by the Lokpal or its Investigation Wing, in respect of the cases investigated by its Investigation Wing; or any agency (including the Delhi Special Police Establishment) in respect of the cases investigated by such agency on the direction of Lokpal, under Section 197 of the Code of Criminal Procedure, 1973 or Section 19 of the Prevention of Corruption, Act, 1988 for the purpose of making preliminary inquiry by the Lokpal or its Inquiry Wing or investigation by its Investigation Wing or any agency including the Delhi Special Police Establishment into any complaint against any public servant or for filing of any charge-sheet or closure report on completion of investigation in respect thereof before the Special Court under the proposed legislation. However, for the purpose of making preliminary inquiry by the Lokpal or its Inquiry Wing or investigation by its Investigation Wing or any agency including the Delhi Special Police Establishment no decision shall be required by the department concerned in this regard. It is also clarified that no sanction or approval shall be required in respect of all cases falling under Clause (a) or Clause (b).

*Clause 24.*—This clause makes provision for action to be taken by the Lokpal on conclusion of investigation against public servants being Ministers or Members of Parliament. It provides that where the commission of offence under Prevention of Corruption Act, 1988 by such public servants has taken place, the Lokpal may file a case in the Special Court and send a copy of the report along with its findings to the competent authority as defined in the proposed legislation. It also provides that the competent authority shall examine or cause to be examined the report and communicate or cause to be communicated to the Lokpal within a period of ninety days from the date of receipt of the report, the action taken or proposed to be taken on the basis of the report and the reasons for not taking any action on the recommendation of the Lokpal. However, in computing the period of ninety days, the period during which the Parliament will not be in session shall be excluded.

*Clause 25.*—This clause seeks to empower the Lokpal with supervisory powers. It provides that the Lokpal shall, notwithstanding anything contained

in Section 4 of the Delhi Special Police Establishment Act, 1946 and Section 8 of the Central Vigilance Commission Act, 2003, have the powers of superintendence and direction, over the Delhi Special Police Establishment in respect of the matters in so far as they relate to the investigation by the Delhi Special Police Establishment under the proposed legislation.

*Clause 26.*—This clause seeks to confer power of search and seizure of documents on the Lokpal.

*Clause 27.*—This clause provides that the Lokpal shall have all the powers of a Civil Court in certain matters and the proceedings before the Lokpal shall be deemed to be judicial proceedings within the meaning of Section 193 of the Indian Penal Code.

*Clause 28.*—This clause seeks to make provision that the Lokpal may utilise the services of any officer or organisation or investigating agency of the Central Government or the State Government, as the case may be. It also enables the Lokpal to confer certain powers on such officers or organisation or agency.

*Clause 29.*—This clause makes provision for provisional attachment of assets by the Lokpal or any officer authorised by it if such assets are any proceeds of corruption.

*Clause 30.*—This clause makes provision for confirmation of provisional attachment of assets made by the Lokpal under Clause 29 by the Special Court.

*Clause 31.*—This clause makes provision for confiscation of assets, proceeds, receipts and benefits arisen or procured by means of corruption in special circumstances. It provides that the Special Court, on the basis of *prima facie* evidence, has reason to believe or is satisfied that the assets, proceeds, receipts and benefits have arisen or procured by means of corruption by the public servant, then it may authorise the confiscation of such assets, proceeds, receipts and benefits till his acquittal. It further provides that in case the order of confiscation is modified or annulled by the High Court or where the public servant is acquitted by the Special Court, the assets, proceeds, receipts and benefits, confiscated shall be returned to him, and in case it is not possible for any reason to return the assets, proceeds, receipts and benefits, he shall be paid the price thereof including the money so confiscated with the interest at the rate of five per cent per annum calculated from the date of confiscation.

*Clause 32.*—This clause seeks to provide that the Lokpal may recommend transfer or suspension of any public servant connected with allegation of corruption. This clause also provides that ordinarily the recommendation of the Lokpal shall be accepted by the Government.

*Clause 33.*—This clause seeks to provide that the Lokpal may give directions to prevent destruction of records during inquiry.

*Clause 34.*—This clause provides that the Lokpal may, by general or special order in writing, and subject to such conditions and limitations as may be specified therein, direct that any administrative or financial power conferred on it may also be exercised or discharged by such of its Members or officers or employees as may be specified in the order.

*Clause 35.*—This clause provides for constitution of Special Courts by the Central Government as recommended by the Lokpal to hear and decide the cases arising out of the Prevention of Corruption Act, 1988 or under the proposed legislation. It also provides that the Special Courts shall ensure completion of each trial within a period of one year from the date of filing the case in the court. However, in case the trial cannot be completed within a period of one year, the Special Court shall record reasons therefor and complete the trial within a further period of not more than three months or such further periods not exceeding three months each, for reasons to be recorded in writing, before the end of each such three months period, but not exceeding a total period of two years.

*Clause 36.*—This clause makes provision for issue of letter of request to a court or an authority in the contracting State in certain cases.

*Clause 37.*—This clause makes provisions for handling of complaints against the Chairperson and Members of the Lokpal. It provides that the Lokpal shall not inquire into any complaint made against the Chairperson or any Member. The Chairperson or any Member shall be removed from his office by order of the President on grounds of misbehaviour after the Supreme Court, on a reference being made to it, by the President, or by the President on a petition being signed by at least one hundred Members of Parliament, or by the President on receipt of a petition made by a citizen of India and where the President is satisfied that the petition should be referred, has, on an inquiry held in accordance with the procedure prescribed in that behalf, reported that the Chairperson or such Member, as the case may be, ought to be removed on such ground and the President may suspend from office the Chairperson or any Member in respect of whom a reference has been made to the Supreme Court until the President has passed orders on receipt of the report of the Supreme Court on such reference.

It further provides that notwithstanding anything contained in sub-clause (2), the President may, by order, remove from the office the Chairperson or any Member if the Chairperson or such Member, as the case may be, is adjudged an insolvent; or engages, during his term of office,

in any paid employment outside the duties of his office; or is, in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body. It also provides that if the Chairperson or any Member is, or becomes, in any way concerned or interested in any contract or agreement made by or on behalf of the Government of India or the Government of a State or participates in any way in the profit thereof or in any benefit or emolument arising therefrom otherwise than as a member and in common with the other members of an incorporated company, he shall, for the purposes of sub-section (2), be deemed to be guilty of misbehaviour.

*Clause 38.*—This clause seeks to provide for the provisions for the complaints against officials of Lokpal.

*Clause 39.*—This clause provides that when a public servant has committed an offence under the Prevention of Corruption Act, 1988, the Special Court may make an assessment of loss, if any, caused to the public exchequer on account of actions or decisions of such public servant not taken in good faith and for which he stands convicted, and order recovery of such losses.

*Clause 40.*—This clause seeks to provide that the Lokpal shall prepare its budget showing the estimated receipts and expenditure of the Lokpal and forward the same to the Central Government for intervention.

*Clause 41.*—This clause provides that without prejudice to the provisions of Clause 16, the Central Government may make grants of such sums of money to the Lokpal as are required to be paid for salaries and allowances payable to the Chairperson and Members and the administrative expenses, including the salaries and allowances and pension payable to or in respect of officers and other employees of the Lokpal.

*Clause 42.*—This clause provides for maintaining the accounts and other relevant records and annual statement of accounts by the Lokpal. It also provides that the accounts of Lokpal together with the Audit Report thereon shall be forwarded annually to the Central Government and the Central Government shall lay the same before each House of the Parliament.

*Clause 43.*—This clause provides that the Lokpal shall furnish to the Central Government such returns or statements and such particulars with regard to any matter under the jurisdiction of Lokpal as the Central Government may prescribe from time to time.

*Clause 44.*—This clause provides that the public servants shall make a declaration of their assets and liabilities in the manner as provided in this Act.



*Clause 45.*—This clause provides that any willful failure on the part of a public servant to declare his assets shall amount to presumption that the assets have been acquired by corrupt means.

*Clause 46.*—This clause provides that if any person makes false or frivolous or vexatious complaint under this Act, he shall be liable for prosecution and on conviction he may be punished with imprisonment for a term which may extend to one year and with fine which may extend to one lakh rupees. However, there would not be any punishment in case of complaints made in good faith.

*Clause 47.*—This clause provides that if false complaint is made by the Society or association of persons or trust, in that case every person who, at the time of commission of offence, was directly in-charge of the affairs or activities of such society etc. shall be deemed to be guilty of the offence under Clause 53 and liable for punishment.

*Clause 48.*—This clause provides for the Lokpal to present annually a report to the President as to the work done by it and on receipt of such report the President shall cause a copy thereof together with a memorandum explaining, as respect the cases, if any, where the advice of the Lokpal was not accepted, the reason for such non-acceptance to be laid before each House of Parliament.

*Clause 49.*—This clause seeks to empower the Lokpal to function as appellate authority for appeals arising out of any other law for the time being in force. It provides that the Lokpal to function as the final appellate authority in respect of appeals arising out of any other law for the time being in force providing for public service in cases where the decision contains findings of corruption under the Prevention of Corruption Act, 1988.

*Clause 50.*—This clause provides for protection of public servant from legal proceedings etc. for the action taken in good faith.

*Clause 51.*—This clause provides for the protection of action taken in good faith by Lokpal, any officer, employee, agency or any person in respect of anything done or intended to be done under the proposed legislation or the rules or regulations made thereunder.

*Clause 52.*—This clause provides that the Chairperson, Members, officers and other employees of the Lokpal shall be public servants within the meaning of Section 21 of the Indian Penal Code.

*Clause 53.*—This clause lays down the period of limitation for filing of complaints before the Lokpal as seven years from the date of commission of the alleged offence.

*Clause 54.*—This clause provides that no civil court shall have jurisdiction in the matters for which Lokpal is empowered under the proposed legislation.

*Clause 55.*—This clause provides that legal assistance for defending a case before the Lokpal shall be provided to every person against whom complaint has been made before it, if such assistance is requested for.

*Clause 56.*—This clause seeks to provide that the provisions of the proposed legislation shall have overriding effect.

*Clause 57.*—This clause provides that the provisions of the proposed legislation shall be in addition to any other law for the time being in force.

*Clause 58.*—This clause seeks to amend certain enactments as specified in Second Schedule to the proposed legislation.

*Clause 59.*—This clause seeks to empower the Central Government to make rules for carrying out the provisions of the proposed legislation. Sub-clause (2) of the said clause enumerates the various matters in respect of which such rules may be made.

*Clause 60.*—This clause seeks to confer power on the Lokpal to make regulations for carrying out the provisions of the proposed legislation consistent with the provisions of the proposed legislation and the rules made by the Central Government under Clause 59. Sub-clause (2) enumerates the various matters in respect of which such regulations may be made.

*Clause 61.*—This clause provides that every rule and every regulation made under the proposed legislation shall be laid before each House of Parliament.

*Clause 62.*—This clause relates to the power of the Central Government to remove difficulties. In case any difficulty arises in giving effect to the provisions of the proposed legislation, the Central Government may make such provisions as may be necessary in removing the difficulties by order published in the Official Gazette. However, no such order shall be made under this clause after the expiry of a period of two years from the commencement of the proposed legislation and every such order shall also be required to be laid before each House of Parliament.

*Clause 63.*—This clause defines the various expressions used in the Bill in respect of the provisions relating to the Lokayukta for States which, *inter alia*, include the expressions — “Bench”, “competent authority”, “Investigation”, “preliminary inquiry”, “Lokayukta”, “Member”, “Minister”, “public servant”, etc.

*Clause 64.*—This clause seeks to provide for the establishment of Lokayukta consisting of a Chairperson and eight Members. It also provides that fifty percent of the Members shall be Judicial Members. The Chairperson shall be a person who is or has been a Chief Justice of High Court or a retired Judge of the High Court or an eminent person. The judicial Member shall be a person who is or has been a Judge of the High Court. The Members shall be the persons who are of impeccable integrity, outstanding ability and having special knowledge and experience of not less than twenty-five years in the matters relating to anti-corruption policy, public administration, vigilance, finance including insurance and banking, law and management. It further provides that not less than fifty per cent of the Members of the Lokayukta shall be from amongst the persons belonging to the Scheduled Castes, the Scheduled Tribes, Other Backward Classes, and women. It further provides that the Chairperson or a Member of the Lokayukta shall not be a Member of Parliament or a Member of a Legislature of any State or Union Territory and shall not be a person convicted of any offence involving moral turpitude and shall not be a person of less than forty-five years of age, on the date of assuming office as Chairperson or Member, as the case may be, a person who has been removed or dismissed from service of the Union or a State, and shall not hold any office of trust or profit or be connected with any political party or carry on own business or practice any profession.

It further provides that the person appointed as Chairperson or a Member before he enters upon his office shall resign from the office of trust or profit held by him or sever his connection with the conduct and management of any business carried on by him or cease to practice if he is practicing any profession.

It also provides that the Lokayukta or State Lokpal (by whatever name called) constituted under any State law for the time being in force, before the commencement of the proposed legislation, and applicable in that State, shall continue to discharge their function and exercise powers conferred upon them under that law in respect of that State until such law is amended or repealed by the State Legislature so as to bring in conformity with the proposed legislation.

*Clause 65.*—This clause provides for appointment of Chairperson and other Members and constitution of a Selection Committee for that purpose. The Chairperson and Members shall be appointed after obtaining the recommendations of a Selection Committee consisting of the Chief Minister, the Speaker of the Legislative Assembly, the Leader of Opposition in the Legislative Assembly, the Chief Justice of the High Court of the State or a Judge of the High Court nominated by him and one eminent jurist

nominated by the Governor. For the purpose of holding the Chairperson and other Members of the Lokayukta and for preparing a panel of persons to be considered for appointment, the Selection Committee may constitute a Search Committee consisting of such persons of standing having special knowledge and expertise in the matters relating to anti-corruption policy, public administration, vigilance, policy making, finance including insurance and banking, law and management or in any other matter which in the opinion of the Selection Committee may be useful for making the selection of a Chairperson and Members of the Lokayukta. It further provides that not less than fifty per cent of the members of the Search Committee shall be from amongst the persons belonging to the Scheduled Castes, the Scheduled Tribes, Other Backward Classes and women and the Selection Committee may also consider any person other than the persons recommended by the Search Committee and the Selection Committee shall regulate its own procedure in a transparent manner for selecting the Chairperson and Members of the Lokayukta.

*Clause 66.*—This clause provides that all necessary steps for appointment of a new Chairperson or Members shall be taken at least three months before the expiry of the term of such Chairperson or Member, as the case may be, in accordance with the procedure laid down in the proposed legislation.

*Clause 67.*—This clause deals with the terms of office of the Chairperson and Members. It provides that the Chairperson and every Member shall be appointed by the Governor by warrant under his hand and seal and hold office as such for a term of five years from the date on which he enters upon his office or until he attains the age of seventy years, whichever is earlier.

*Clause 68.*—This clause deals with salary, allowances and other conditions of services of Chairperson and Members. It provides that the salary, allowances and other conditions of services of the Chairperson shall be the same as that of a Chief Justice of the High Court. The salary, allowances and other conditions of services of the Members shall be the same as that of a Judges of the High Court. Further, after a person is appointed as a Chairperson or a Member, his conditions of service, allowances and pension payable to him shall not be varied to his disadvantage.

*Clause 69.*—This clause provides for restriction on employment by Chairperson and Members after ceasing to hold the office. It also provides that the Chairperson and Members of Lokayukta shall be ineligible to contest any election of Governor or Vice-Governor or Member of either House of Parliament or Member of either House of a State Legislature or

Municipality or Panchayat within a period of five years from the date of relinquishing the post. However, a Member shall be eligible to be appointed as a Chairperson if his total tenure as Member and Chairperson does not exceed five years. However, it is clarified that where the Member is appointed as the Chairperson, his term of office shall not be more than five years in aggregate as the Member and the Chairperson.

*Clause 70.*—This clause seeks to provide that in the event of occurrence of any vacancy in the office of Chairperson, by reason of his death, resignation or otherwise, the Governor may authorise the senior-most Member to act as the Chairperson until a new Chairperson is appointed to fill the vacancy when a Chairperson is unable to discharge his functions owing to absence or leave or otherwise, the Governor may authorise the seniormost Member to discharge his functions.

*Clause 71.*—This clause seeks to provide that the Secretary or other officers and staff of the Lokayukta shall be appointed by the Chairperson or the Member or officer of Lokayukta as the Chairperson may direct. It provides that there shall be a Secretary to the Lokpal in the rank of Secretary to Government of India, and a Director of Inquiry and Director of Prosecution not below the rank of the Additional Secretary to the Government of India or equivalent, who shall be appointed by the Chairperson from a panel of names sent by the Central Government. The Governor may make rules that the appointment in respect of any post or posts shall be made after consultation with the State Public Service Commission.

*Clause 72.*—This clause provides for setting up of an Inquiry Wing of the Lokayukta headed by the Director of Inquiry for the purpose of conducting preliminary inquiry of any offence alleged to have been committed by a public servant punishable under the Prevention of Corruption Act, 1988. It further provides that till such time the Inquiry Wing is constituted by the Lokayukta, the State Government will make available the services of its inquiry officers and other staff required by the Lokayukta. It also provides that for the purposes of assisting the Lokayukta in conducting preliminary inquiry under the proposed legislation, the officers of the Inquiry Wing not below the rank of Under Secretary in the State Government, shall have the same powers as are conferred upon the Lokayukta under Clause 88.

*Clause 73.*—This clause seeks to provide that the Lokayukta may constitute a Prosecution Wing headed by a Director of Prosecution with such other officers and employees as required to assist him for the purpose of prosecution of public servants in relation to offences punishable under the Prevention of Corruption Act, 1988, and such prosecution on the

directions of the Lokayukta shall file a case in accordance with the investigation report, before the Special Court. It further provides that the report, on the directions of the Lokayukta, filed by the Director of Prosecution before the Special Court shall be deemed to be a report, filed on completion of investigation, referred to in section 173 of the Code of Criminal Procedure, 1973.

*Clause 74.*—This clause lays down that the administrative expenses of the Lokayukta including salaries, allowances and pensions payable to or in respect of Chairperson, Members, Secretary or other officers or staff of the Lokayukta shall be charged upon the Consolidated Fund of the State. It also provides that any fees or other moneys taken by the Lokayukta shall form part of the Consolidated Fund of that State.

*Clause 75.*—This clause deals with the jurisdiction of Lokayukta. Sub-clause (1) seeks to provide that the Lokayukta shall inquire or cause an inquiry to be conducted into any matter involved in or arising from or connected with any allegation of corruption made in a complaint in respect of any person who is or has been a Chief Minister. It further provides that in the case of a Minister, any person who is or has been a Member of the State Legislature, all officers and employees of the State from against the public servants as defined in sub-clauses (i) and (ii) of Clause (c) of Section 2 of the Prevention of Corruption Act, 1988 who was serving or has served in connection with the affairs of the State, and Chairperson or Member or officers of certain boards, corporations, authority, company, society, trust, etc. established by an Act of Parliament or of a State Legislature or wholly or partly financed or controlled by the State Government; director, manager, secretary or other officers of certain societies, association of persons etc. and director, manager, secretary or other officer of every other society, etc. wholly or partly financed or aided by the Government and the annual income of which exceeds such amount as may be notified by the State Government or 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. It also provides that any entity or institution, by whatever name called, corporate, society, trust, association of persons, partnership, sole proprietorship, limited liability partnership (whether registered under any law for the time being in force or not), shall be the entities covered in the items (f) and (g).

Sub-clause (2) provides that the Lokayukta shall not inquire into any matter against any Member of the State Legislature in respect of anything said or vote given by him in the State Legislature or any Committee thereof covered under the provisions of Clause (2) of Article 194 of the Constitution.

Sub-clause (3) provides that the Lokayukta may inquire into any act or conduct of any person if such person is involved in the act of abetting, bribe giving or bribe taking or conspiracy relating to any allegation of corruption under the Prevention of Corruption Act, 1988.

Sub-clause (4) seeks to provide that in the matters in respect of which a complaint has been made under the proposed legislation shall not be referred for inquiry under the Commissions of Inquiry Act, 1952. The *Explanation* clarifies that a complaint under the proposed legislation shall relate only to a period during which the public servant was holding or serving as a public servant.

*Clause 76.*—This clause lays down that matters pending before any Court or Committee or Authority prior to commencement of the proposed legislation shall be continued before such Court, Committee or Authority, as the case may be.

*Clause 77.*—This clause seeks to provide that the jurisdiction of the Lokayukta may be exercised by Benches thereof. A Bench of the Lokayukta may be constituted by the Chairperson with two or more Members. Every Bench shall ordinarily consist of at least one Judicial Member in it. The Benches of Lokayukta shall ordinarily be at capital of the State and at such other places as the Lokayukta may, by regulations, specify.

*Clause 78.*—This clause seeks to empower the Chairperson to distribute the business of Lokayukta amongst its Benches and also specify the matters which may be dealt with by each Bench.

*Clause 79.*—This clause seeks to provide that the Chairperson may transfer any case pending before one Bench for disposal to any other Bench on receipt of an application for such transfer from the complainant or the public servant.

*Clause 80.*—This clause seeks to provide that the decision of the Lokayukta shall be according to the opinion of the majority of the Members of Lokayukta. However, if the Members of a Bench consisting of two Members differ in opinion on any point or points shall be referred to the Chairperson. The Chairperson may either hear such point or points himself or refer the same for hearing by one or more other Member and it shall be decided accordingly to the opinion of the majority of the Members who have heard the case including those who first heard it.

*Clause 81.*—This clause makes provision relating to complaint and preliminary inquiry and investigation by Lokayukta. It provides that the Lokayukta may, on receipt of a complaint first decide whether to proceed in the matter or close the peruse and if the Lokayukta decides to proceed

further it shall order the preliminary inquiry by its Inquiry Wing or any agency (including any special investigation agency) to ascertain whether there exists a *prima facie* case for proceeding in the matter. It further provides that during the preliminary inquiry the Inquiry Wing or any agency shall conduct a preliminary inquiry and on the basis of material, information and documents collected seek the comments on the allegations made in the complaint from the competent authority received from the public servant, within sixty days from the date of receipt of the reference and after obtaining the comments from the competent authority shall report to the Lokayukta.

It further provides that a bench consisting of not less than three Members of the Lokayukta shall consider every such report received from the Inquiry Wing or any agency and after giving an opportunity of being heard to the public servant decide as to whether there exists a *prima facie* case, and make recommendations to proceed with investigation by its Investigation Wing or any investigating agency; or with initiation of the departmental proceedings or any other appropriate action against the concerned public servants by the competent authority; or with closure of the proceedings against the public servant and take action to proceed against the complainant.

It also seeks to provide that in case the Lokayukta decides to proceed to investigate into the complaint, it shall direct its Investigation Wing or any other agency to carry out the investigation as expeditiously as possible and complete the investigation within a period of six months from the date of its order and submit the investigation report containing its findings to the Lokayukta. However, after recording the reasons the Lokayukta can extend the said period by a further period of six months and a bench consisting of not less than three Members of the Lokayukta shall consider every report received by it from the Investigation Wing or any other agency may, after giving an opportunity of being heard to the public servant, decide as to file charge-sheet or closure report before the Special Court against the public servant; or to initiate the departmental proceedings or any other appropriate action against the concerned public servant by the competent authority.

It also provides that the Lokayukta shall direct, its Prosecution Wing to initiate prosecution in the Special Court in respect of the cases investigated by its Investigation Wing; or any other agency in respect of the cases investigated by such agency on the direction of Lokayukta to obtain its approval and thereafter initiate prosecution in the Special Court and forward a copy of charge-sheet filed by it under this clause to the Lokayukta for the purposes of superintendence and the Lokayukta shall



retain the original records and evidences, which are likely to be required in the process of preliminary inquiry or investigation or conduct of a case by it or by the Special Court.

*Clause 82.*—This clause seeks to provide that the persons against whom any preliminary inquiry or investigation is proposed to be conducted shall be allowed to inspect any record in connection with the commission of any alleged offence which are necessary for him to defend his case and take extracts therefrom.

*Clause 83.*—This clause provides that persons likely to be prejudicially affected are to be provided a reasonable opportunity of being heard in the inquiry and to produce evidence in his defence consistent with the principles of natural justice. However, this will not apply where the credibility of a witness is being questioned.

*Clause 84.*—This clause makes provision that no sanction or approval of any authority shall be required by the Lokayukta or its Investigation Wing, in respect of the cases investigated by its Investigation Wing; or any agency in respect of the cases investigated by such agency on the direction of Lokayukta, under Section 197 of the Code of Criminal Procedure, 1973 or Section 19 of the Prevention of Corruption, Act, 1988 for the purpose of making preliminary inquiry by the Lokayukta or its Inquiry Wing or investigation by its Investigation Wing into any complaint against any public servant or for filing of any charge sheet or closure report on completion of investigation in respect thereof before the Special Court under the proposed legislation.

*Clause 85.*— This clause seeks to provide for action on inquiry against public servant being Chief Minister, Ministers or Members of State Legislature. It provides that where the commission of offence under Prevention of Corruption Act, 1988 by such public servants has taken place, the Lokayukta may file a case in the Special Court and send a copy of the report along with its findings to the competent authority as defined in the proposed legislation. It also provides that the competent authority shall examine the report and communicate to the Lokayukta within a period of ninety days from the date of receipt of the report, the action taken or proposed to be taken on the basis of the report and the reasons for not taking any action on the recommendation of the Lokayukta. However, in computing the period of ninety days, the period during which the State Legislative will not be in session shall be excluded.

*Clause 86.*—This clause seeks to empower the Lokayukta with supervisory powers. It provides that the Lokayukta shall, notwithstanding anything contained in any law for the time being in force, have the powers of

superintendence and direction, over the investigation agency in respect of the matters in so far as they relate to the investigation by such agency under the proposed legislation.

*Clause 87.*—This clause seeks to confer power of search and seizure of documents on the Lokayukta.

*Clause 88.*—This clause provides that the Lokayukta shall have all the powers of a Civil Court in certain matters and the proceedings before the Lokayukta shall be deemed to be judicial proceedings within the meaning of Section 193 of the Indian Penal Code.

*Clause 89.*—This clause seeks to make provision that the Lokayukta may utilise the services of any officer or organisation or investigating agency of the State Government. It also enables the Lokayukta to confer certain powers on such officers or organisation or investigating agency.

*Clause 90.*—This clause makes provision for provisional attachment of assets by the Lokayukta or any investigation officer authorised by it if such assets are any proceeds of corruption.

*Clause 91.*—This clause makes provision for confirmation of provisional attachment of assets made by the Lokayukta under Clause 90 by the Special Court.

*Clause 92.*—This clause makes provision for confiscation of assets, proceeds, receipts and benefits arisen or procured by means of corruption in special circumstances. It provides that the Special Court, on the basis of *prima facie* evidence, has reason to believe or is satisfied that the assets, proceeds, receipts and benefits have arisen or procured by means of corruption by the public servant, then it may authorise the confiscation of such assets, proceeds, receipts and benefits till his acquittal. It further provides that in case the order of confiscation is modified or annulled by the High Court or where the public servant is acquitted by the Special Court, the assets, proceeds, receipts and benefits, confiscated shall be returned to him, and in case it is not possible for any reason to return the assets, proceeds, receipts and benefits, he shall be paid the price thereof including the money so confiscated with the interest at the rate of five per cent per annum calculated from the date of confiscation.

*Clause 93.*—This clause seeks to provide that the Lokayukta may recommend transfer or suspension of any public servant connected with allegation of corruption. This clause also provides that ordinarily the recommendation of the Lokayukta shall be accepted by the Government.

*Clause 94.*—This clause seeks to provide that the Lokayukta may give directions to prevent destruction of records during inquiry.

*Clause 95.*—This clause seeks to empower the Lokayukta to function as the appellate authority in respect of appeals arising out of any other law for the time being in force providing for public service and redressal of public grievances by any public authority.

*Clause 96.*—This clause provides that the Lokayukta may, by general or special order in writing, and subject to such conditions and limitations as may be specified therein, direct that any administrative or financial power conferred on it may also be exercised or discharged by such of its Members or officers or employees as may be specified in the order.

*Clause 97.*—This clause seeks to provide for application of certain provisions relating to Lokpal to apply to Lokayukta. It provides that the provisions contained in Chapters IX, X, XI, XII, XIII, XIV and XV (except Section 59) shall apply to a Lokayukta and shall have effect, with the modifications, relating to any references to “President” shall be construed as references to “Governor of the State”; “Central Government” as “State Government”; “each House of Parliament” or “Parliament”, as “Legislature of the State”; “Lokpal” as “Lokayukta”; “Comptroller and Auditor-General of India” as “Accountant General of the State” and references to “Chief Justice of India” shall be construed as references to “Chief Justice of the High Court of the State”.

The Schedule to the proposed legislation contains the details of amendments in certain enactments which are consequential to the enactment of the proposed legislation.

### FINANCIAL MEMORANDUM

Sub-clause (1) of Clause 3 of the Bill provides for the establishment of a body to be called the Lokpal for the purpose of making inquiries in respect of complaints as may be made under the proposed legislation.

2. Sub-clause (2) of Clause 3 provides for the appointment of the Lokpal consisting of a Chairperson and eight Members. Clause 7 of the Bill envisages that the salary, allowances and other conditions of service of, the Chairperson of the Lokpal shall be the same as those of the Chief Justice of India and the Members as those of the Judges of the Supreme Court. This clause also provides that the salary payable to the Chairperson and Members shall be reduced by any pension and pension equivalent to other pensionary benefits to which the Member may be entitled to in respect of any previous service under the Government of India or under the Government of a State.

3. Clause 10 of the Bill provides for the appointment of a Secretary, Director of Inquiry and Director of Prosecution and officers and other staff. Sub-clause (4) of the said clause provides that the conditions of service of Secretary and other officers and staff of the Lokpal shall be such as may be specified by regulations made by the Lokpal for the purpose.

4. Sub-clause (1) of Clause 11 provides that the Lokpal shall constitute an Inquiry Wing headed by the Director of Inquiry for the purpose of conducting preliminary inquiry of any offence alleged to have been committed by a public servant punishable under the Prevention of Corruption Act, 1988. Sub-clause (1) of Clause 12 provides that the Lokpal shall constitute a Prosecution Wing headed by the Director of Prosecution for the purpose of prosecution of public servants in relation to any complaint by the Lokpal under this Act. Sub-clause (1) of Clause 28 empowers the Lokpal to utilise the services of any officer or investigating agency of the Central Government or any State Government for the purpose of conducting any inquiry.

5. Clause 13 of the Bill provides that the administrative expenses of the Lokpal, including the salaries, allowances and pensions payable to or in respect of the Chairperson, Members or Secretary or other officers or staff of the Lokpal, shall be charged upon the Consolidated Fund of India and any fees and other moneys taken by the Lokpal shall form part of that fund.

6. At this stage, it is not possible to give precise details of the expenditure to be incurred on the Lokpal. It is, however, expected that the Bill, if enacted and brought into operation, would involve a non-recurring expenditure of one hundred crores of rupees and a recurring expenditure of two hundred crores of rupees in a financial year. In case it becomes necessary to construct a building to house the establishment of the Lokpal, additional expenditure of a non-recurring nature of the order four hundred crores of rupees may also be involved.

7. Part III of the Bill provides for constitution of Lokayukta in every State. Clause 74 provides that the administrative expenses of the Lokayukta, including all salaries, allowances and pensions payable to or in respect of the Chairperson, Members or Secretary or other officers or staff of the Lokayukta, shall be charged upon the Consolidated Fund of the State and any fees or other moneys taken by the Lokayukta shall form part of that Fund. The expenditure in this regard shall be borne by the respective State Governments. The expenditure in this regard may differ from State to State.

8. The Bill, if enacted, is not likely to involve any other recurring or non-recurring expenditure.

## MEMORANDUM REGARDING DELEGATED LEGISLATION

*Clause 59* of the Bill empowers the Central Government to make rules for the purpose of carrying out the provisions of the proposed legislation. Sub-clause (1) of the said clause specifies the various matters in respect of which the rules may be made. These matters, *inter alia*, relate to the form of complaint referred to in Clause (d) of sub-section (1) of Section 2; the term of Search Committee, fee and allowances payable to the members of Search Committee and the manner of selection of panel of names; procedure of inquiry into misbehaviour for removal of the Chairperson or any Member; the posts in respect of which appointments shall be made after consultation with the Union Public Service Commission; matters for which the Lokpal shall have the powers of a Civil Court; the manner of sending an order of attachment to a Special Court; the manner of transmitting the letter of request under sub-section (2) of Section 36; the manner of making reference to the Chief Justice of India; the form and the time for preparing the budget; the form for maintaining accounts and other relevant records and the form of annual statement of accounts; the form and manner and time for preparing the returns and statements under sub-section (1) of Section 43; the form and the time for preparing the annual report; the form of annual return to be filed by a public servant under sub-section (5) of Section 44; the minimum value for which the competent authority may condone or exempt a public servant from furnishing information in respect of assets under the proviso to Section 45.

2. Clause 60 of the Bill empowers the Lokpal to make, by notification in the Official Gazette, regulations for carrying out the provisions of the proposed legislation. Such regulations should be consistent with the provisions of the proposed legislation and the rules made thereunder. The matters in respect of which the Lokpal may make regulations, *inter alia*, include the conditions of service of the Secretary and other officers and staff of the Lokpal and the matters which in so far as relate to salaries, allowances, leave or pensions, the place of sittings of Benches of the Lokpal, the manner for displaying the status of all complaints pending or disposed of on the website of the Lokpal, and the manner and procedure of conducting an inquiry or investigation.

3. Clause 61 of the Bill provides that the rules made by the Central Government and regulations made by the Lokpal under the proposed legislation are required to be laid before each House of Parliament, as soon as they are made.

4. Clause 97 of the Bill provides for application of certain provisions relating to Lokpal to apply to Lokayukta in the States. The aforesaid provisions, *inter alia*, confers power upon the State Government to make rules for Lokayukta in respect of the matters similar to the Lokpal and also confers powers upon the Lokayukta to make regulations in respect of the matters similar to the Lokpal.

5. The rules made by the State Government and regulations made by the Lokayukta under the proposed legislation are required to be laid before the State Legislature, as soon as they are made.

6. The matters in respect of which rules or regulations may be made under the proposed legislation are matters of procedure or detail necessary for effective administration of the provisions of the proposed legislation and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

## ANNEXURE

## EXTRACT FROM THE COMMISSIONS OF INQUIRY ACT, 1952

(60 OF 1952)

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3. (1) The Appropriate Government may, if it is of opinion that it is necessary so to do, and shall, if a resolution in this behalf is passed by each House of Parliament or, as the case may be, the Legislature of the State, by notification in the Official Gazette, appoint a Commission of Inquiry for the purpose of making an inquiry into any definite matter of public importance and performing such functions and within such time as may be specified in the notification, and the Commission so appointed shall make the inquiry and perform the functions accordingly:

Appointment of Commission.

Provided that where any such Commission has been appointed to inquire into any matter—

(a) by the Central Government, no State Government shall, except with the approval of the Central Government, appoint another Commission to inquire into the same matter for so long as the Commission appointed by the Central Government is functioning;

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## EXTRACTS FROM THE DELHI SPECIAL POLICE ESTABLISHMENT ACT, 1946

(25 OF 1946)

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4A. (1) The Central Government shall appoint the Director on the recommendation of the Committee consisting of—

Committee for appointment of Director.

(a) the Central Vigilance Commissioner — Chairperson;

(b) Vigilance Commissioners — Member;



(c) Secretary to the Government of India in-charge of the Ministry of Home Affairs in the Central Government — Member;

(d) the Secretary to the Government of India in-charge of the Ministry or Department of the Central Government having administrative control of the Delhi Special Police Establishment — Member.

\* \* \* \* \*

Appointment for posts of Superintendent of Police and above, extension and curtailment of their tenure.

**4C. (1)** The Committee referred to in Section 4A shall, after consulting the Director, recommend officers for appointment to the posts of the level of Superintendent of Police and above and also recommend the extension or curtailment of the tenure of such officers in the Delhi Special Police Establishment.

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#### EXTRACTS FROM THE PREVENTION OF CORRUPTION ACT, 1988

(49 OF 1988)

#### CHAPTER III

#### OFFENCES AND PENALTIES

Public servant taking gratification other than legal remuneration in respect of an official act.

**7.** Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in Clause (c) of Section 2, or

with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than six months but which may extend to five years and shall also be liable to fine.

*Explanations.*— (a) “Expecting to be a public servant.” If a person not expecting to be in office obtains a gratification by deceiving others into a belief that he is about to be in office, and that he will then serve them, he may be guilty of cheating, but he is not guilty of the offence defined in this section.

(b) “Gratification.” The word “gratification” is not restricted to pecuniary gratifications or to gratifications estimable in money.

(c) “Legal remuneration.” The words “legal remuneration” are not restricted to remuneration which a public servant can lawfully demand, but include all remuneration which he is permitted by the Government or the organisation, which he serves, to accept.

(d) “A motive or reward for doing.” A person who receives a gratification as a motive or reward for doing what he does not intend or is not in a position to do, or has not done, comes within this expression.

(e) Where a public servant induces a person erroneously to believe that his influence with the Government has obtained a title for that person and thus induces that person to give the public servant, money or any other gratification as a reward for this service, the public servant has committed an offence under this section.

8. Whoever accepts or obtains, or agrees to accept, or attempts to obtain, from any person, for himself or for any other person, any gratification whatever as a motive or reward for inducing, by corrupt or illegal means, any public servant, whether named or otherwise, to do or to forbear

Taking gratification, in order, by corruption or illegal means, to influence public servant.

to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person or to render or attempt to render any service or disservice to any person with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in Clause (c) of Section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.

Taking gratification for exercise of personal influence with public servant.

9. Whoever accepts or obtains or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification whatever, as a motive or reward for inducing, by the exercise of personal influence, any public servant whether named or otherwise to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in Clause (c) of Section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.

\* \* \* \*

Punishment for abetment of offences defined in Section 7 or 11.

12. Whoever abets any offence punishable under Section 7 or Section 11 whether or not that offence is committed in consequence of that abetment, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.

13. (1) \* \* \* \* \*

Criminal misconduct by a public servant.

(2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than one year but which may extend to seven years and shall also be liable to fine.

14. Whoever habitually commits—

Habitual committing of offence under Sections 8, 9 and 12.

(a) an offence punishable under Section 8 or Section 9; or

(b) an offence punishable under Section 12,

shall be punishable with imprisonment for a term which shall be not less than two years but which may extend to seven years and shall also be liable to fine.

15. Whoever attempts to commit an offence referred to in Clause (c) or Clause (d) of sub-section (1) of Section 13 shall be punishable with imprisonment for a term which may extend to three years and with fine.

Punishment for attempt.

\* \* \* \* \*

## CHAPTER V

### SANCTION FOR PROSECUTION AND OTHER MISCELLANEOUS PROVISIONS

19. (1) No court shall take cognizance of an offence punishable under Sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction,—

Previous sanction necessary for prosecution.

(a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;

(b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office.

(2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by the Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973,—

2 of 1974

(a) no finding, sentence or order passed by a special Judge shall be reversed or altered by a court in appeal, confirmation or revision on the ground of the absence of or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that court, a failure of justice has in fact been occasioned thereby;

(b) no court shall stay the proceeding under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;

(c) no court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings.

(4) In determining under sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice the court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings.

*Explanation.*—For the purposes of this section,—

(a) error includes competency of the authority to grant sanction;

(b) a sanction required for prosecution includes reference to any requirement that the prosecution shall be at the instance of a specified authority or with the sanction of a specified person or any requirement of a similar nature.

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## LOK SABHA

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A

## BILL

to provide for the establishment of a body of Lokpal for the Union and Lokayukta for States to inquire into allegations of corruption against certain public functionaries and for matters connected therewith or incidental thereto.

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*(Shri V. Narayanasamy, Minister of State in the Ministry of Personnel,  
Public Grievances and Pensions)*

## **Annexure-V**

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**Synopsis of the Debate in the Lok Sabha on  
the Lokpal and Lokayuktas Bill, 2011 on  
22 December 2011 and 27 December 2011**

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**LOK SABHA**  
**SYNOPSIS OF DEBATES\***

**22 December 2011**

**LOKPAL BILL, 2011**

THE MINISTER OF STATE IN THE MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS AND MINISTER OF STATE IN THE PRIME MINISTER'S OFFICE (SHRI V. NARAYANASAMY) moved for leave to withdraw the Bill to provide for the establishment of the institution of Lokpal to inquire into allegations of corruption against certain public functionaries and for matters connected therewith or incidental thereto.

*The Bill was withdrawn.*

**LOKPAL AND LOKAYUKTAS BILL, 2011**

THE MINISTER OF STATE IN THE MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS AND MINISTER OF STATE IN THE PRIME MINISTER'S OFFICE (SHRI V. NARAYANASAMY) moved for leave to introduce a Bill.

SHRIMATI SUSHMA SWARAJ opposing the introduction of the Bill said: I would like to raise two objections under Rule 72 at the stage of introduction of the Bill. My objections are not related with the legislative competence of the House to take this Bill, rather, they are constitutional objections that is why I have given notice under Rule 72. The first objection is that this Bill provides that the Lokpal shall consist of a Chairperson and eight other Members. There is a proviso in the Bill which states that not less than 50 per cent of the Lokpal shall be from amongst the persons belonging to the scheduled castes, the scheduled tribes, other backward classes, minorities and women. The provisions of more than 50 per cent reservation and the religion-based reservation are unconstitutional. The second objection is that the Bill violates the federal structure of our country. This Bill does not grant any option to the states to make legislation for Lokayuktas. The Lokayukta will supervise the public services of the States, therefore, the legislation pertaining to Lokayuktas should be passed

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\* This Synopsis is not an authoritative record of the proceedings of the Lok Sabha. For the complete version of the debate refer <http://164.100.47.132/debatetext/15/IX/2212.pdf>

by the State Governments. The Parliament can pass a model Bill and the State Governments should have the option to adopt that Bill. But it would be unconstitutional for us to pass a mandatory Bill. So, on the basis of these two objections my humble submission is that this Bill should be withdrawn.

**SHRI MULAYAM SINGH YADAV:** We have some objections with regard to the introduction of this Bill. This Bill will have far-reaching consequences, therefore, it would have been circulated among the Members of Parliament before introduction. Second, the effort to make the Prime Minister accountable to Lokpal is against the spirit of the Indian Constitution. In the wake of the passage of this Bill, the entire administrative structure will get crumbled. So, this Bill should not be allowed to be introduced.

**SHRI LALU PRASAD:** The assertion made by the hon. Leader of Opposition that the 50 per cent reservation is unconstitutional is incorrect. The Lokpal is not a Government service. Secondly, the Ex-MPs have been brought under the ambit of Lokpal. This is wrong. The Judiciary should not be brought under the control of Lokpal. Parliament is supreme. It will enact a law in its own wisdom for strong Lokpal. There must not be any pressure on Parliament for this purpose. The Government should explain as to why they have included the media in this Bill. The Prime Minister is the leader of the country and, therefore, he should remain out of its ambit. This is not an effective Lokpal Bill and it should be sent back to the Standing Committee. An important piece of legislation like the Lokpal Bill, should not be enacted in haste and this Bill should be framed incorporating even then minute details so that finally an effective and credible Bill takes the shape.

**SHRI ASADUDDIN OWAISI:** I have given notice under Rule 72(1). My reasons for opposing the introduction of the proposed Bill are, firstly, by including the Prime Minister under the jurisdiction of the Lokpal, we are definitely undermining and weakening the institutional autonomy of the executive. Then, there is a conceptual problem in this Bill. It starts on the premise that not only the Members of this august House, but also the Prime Minister is corrupt. The second issue is about not including the minorities. Minorities comprise 19 per cent of our population. A deliberate attempt is being made over here to cleverly confuse this august House by talking about Articles 15 and 16. What is the Presidential Order of 1950, what is Article 340? I oppose the introduction of the Bill and I welcome the errata that has been issued.

**SHRI SHARAD YADAV:** In several States, Lokayuktas have been appointed after due diligence. Therefore, I would request the Government to keep that in mind and then pass any Bill in this House.

**SHRI DARA SINGH CHAUHAN:** This whole House desires that an effective Lokpal should come. However, this is not an effective Lokpal Bill. Initially, minorities were not included therein but I would congratulate the Government that after we raised this issue, minorities have been included in it. If there is any difficulty on inclusion of minorities, then our Party's stand is that the Constitution should be amended if it is so needed and our Party would support it. The minorities should get reservation in all spheres of the Government.

**SHRI KALYAN BANERJEE:** Our leader requested the Government to bring in the minorities by way of amendment and the Government has done it, I welcome it. The hon. Leader of the House very rightly said that there is no scope for debate on this question regarding the introduction of the Bill. There is no scope for taking any opinion from the House in respect of introduction of the Bill and introduction of the Bill is an automatic thing and other debate is nothing but an ordinary thing. Therefore, I support whatever has been said by our Leader of the House in respect of the interpretation of Rule 72(1) that there is no scope for debate.

**DR. M. THAMBIDURAI:** My Party is for the Lokpal Bill. But, at the same time, the manner in which this Bill is being introduced, we are against the Lokpal and Lokayukta Bill. In the name of the Concurrent List, encroaching upon the rights of the State Governments is against the principle of our federal structure. In this context also, I oppose the introduction of the Bill. Secondly, the Prime Minister's name must not be included in this Lokpal Bill. This is the view of our Party.

**SHRI T.K.S. ELANGOVA:** I welcome the Government's stand that minorities will also be given reservation in the composition of the Lokpal. As far as composition of the Lokayukta is concerned, it should be left to the respective State Governments to decide because we are not supporting the Government of India trespassing into the powers of the State Governments as it may affect the federal structure of the Constitution.

**SHRI BASU DEB ACHARIA:** We are always for a strong, effective and credible Lokpal. But, the federal structure of our Constitution in regard to constitution of Lokayukta should not be disturbed. If such provision is there, the Government must seriously look into it and bring amendment so that the federal structure of our Constitution is not disturbed. One Constitution Amendment Bill has been circulated. In order to provide Constitutional status, that Constitution Amendment Bill should be enacted first and then the Lokpal. We want the Bill to be passed within this Session. It should not be delayed. The House is being extended by three days. During these three days, there will be a structured debate when we will point out some deficiencies that are there. The suggestions that we

made in the All-Party Meeting have not been incorporated in the Bill. We will table our amendments and we will discuss them at length. But it should not be delayed. We want a strong Lokpal to tackle corruption in our country.

**SHRI YASHWANT SINHA:** We have been waiting for this Bill in the House since morning. When we came here at 11 O'clock, we anticipated the Bill to be introduced by the Government. We were told that it was going to be introduced at 2 O'clock. However, now it is being introduced at 3:30 p.m. and even the notice for Supplementary Agenda was also circulated at that very time. There was no notice earlier. Now this Corrigendum has been circulated. When has it been done? It has been circulated after we resumed our seat and now you are asking for the notices. When shall we give the notices? This Corrigendum has 46 items. The point I am making is this that when you circulate a Corrigenda or an Errata, a typographical error is supposed to be rectified through it, you also opt for rectifying your error of choosing wrong words. But you never seek to amend a Bill through Corrigenda. You are amending this Bill. My point is that you are seeking to amend this Bill through Corrigenda. This is blackmail. This is not a Parliamentary practice and I oppose it strongly. The Government has no business doing this through this Corrigendum. They have added the word 'minority' through Corrigenda. Is it Corrigenda? I would ask, is that not an amendment? It is not a Corrigendum. When the Bill is brought, you are free to move your amendments officially and we can debate it whether they need to be retained or not. However, this Government has shown a monumental inefficiency in dealing with this Bill.

**SHRI BHARTRUHARI MAHTAB:** The basic issue which I would like to mention here is that the Lokayukta will be established by the appropriate authority. But I was dismayed by the Bill which was debated, discussed by the Standing Committee to which Anna DMK, as a Party, has given their note of dissent. Our Member had also expressed his opinion in that Committee. But Biju Janata Dal always stood for the federal structure of the Constitution. We will always strive to maintain the federal structure of the Constitution. At no point of time, Biju Janata Dal will compromise in relation to the protection to the federal structure of the Constitution. But here in this Bill because during that period an impression had gone around, a model of Lokayukta will be circulated. The Constitution provides if two States prepare a Lokayukta and implement it, the Central Government can take it as a model and circulate it to the other States and that can be implemented. If the concern is that respective State Governments may not implement that model, then that provision can be worked out. It is not required to be a part of this Bill. In this Bill, by bringing Lokayukta, you are trampling into the affairs of the State Legislative Assembly. The interest

and the dignity of the State Legislative Assembly and the States need to be protected and this is the House where it should be maintained and this Bill is actually trampling that power of the State. With these words, I would only urge upon the Government, please consider and reconsider this aspect before bringing this Bill to the House for consideration.

**SHRI ANANT GANGARAM GEETE:** Shiv Sena has always opposed Lokpal. Shiv Sena Chief was the first leader of the country who had opposed it without indulging in calculation of political mileage or loss that will be suffered on account of this opposition. Our Constitution and Parliament are supreme and we are trying to denigrate the authority of our Constitution and the Parliament by enacting Lokpal. We want to concentrate all powers in the hands of Lokpal who will not be accountable to anybody. Shiv Sena Chief is apprehensive that whether we are going towards dictatorship at the cost of our democracy and he has made his apprehension quite clear to the public without any political calculation. We are for uprooting corruption and are fully against it. However, it needs to be kept in mind that while dealing with corruption we may take such a false step that our posterity will find it hard to forgive our Parliament who has enacted such a law. We have repeatedly underlined that what is the haste in bringing such a law like Lokpal? When we are talking about the future of the country then no steps should be taken in any haste. So we oppose the introduction of this Bill. The Government should withdraw it and convene an All Party Meeting.

**SHRI GURUDAS DASGUPTA:** Better late than never! The country was awaiting for such a legislation for a pretty long time. No Government from this side or no Government from that side had sought to enact such a Bill. Therefore, I appreciate the move of the Government to introduce this Bill—up to this only! Let me tell you that we should not do it under duress. Let us not surrender the sovereignty of the Parliament. I am saddened by the speech of the Leader of the House. The Leader of the House was referring to some hunger strike by some individual. Today again, he is referring to an impending phase of agitation. Is it that? Are we not fighting corruption on our own? We are doing it because somebody else is threatening the country as a whole. Is it the way the Leader of the House should speak in the House? I appeal to the Congress Party and the Government that under no circumstances, the sovereignty of the Parliament should be surrendered. It should not do anything under duress. Having said so, there are a number of concerns. This Bill is being sought to be introduced in an unusual haste. I am here in the Parliament for many years. But I have never seen this; in the Order Paper there was no reference to this Bill. Even half-an-hour ago, we did not know what is going to happen. Suddenly there was a Supplementary List. After that we got a corrigendum or in the

name of a corrigendum, an amendment. Is it the way a constitutionally constituted Government should function? It is absolutely parliamentary mismanagement; and the Government is acting in peril. Let us not be afraid of anybody. Let nobody pretend as the single crusader against corruption. We have also fought against corruption. Therefore, there is not a single crusader against corruption. Do not surrender the sovereignty of Parliament. But my concern is that the source of corruption in this country is the black-money and the corporates. Why the corporates have not been included? They must be included in this Bill. This is my first concern. Secondly, the federal system of the country must not be infringed upon. Thirdly, nobody should be beyond the arm of law. Whatever may be his or her position in the Government or outside, nobody should be beyond the arm of law. Everybody must be equal in the eyes of law.

**SHRI NAMA NAGESWARA RAO:** From the beginning our Party and our leader wanted a strong and effective Lokpal Bill. As regards the issue of haste, I would say that nothing is hasty. We have been discussing this Lokpal Bill for the last forty years in the country. Under the present situation all countrymen are looking forward to an effective and strong Lokpal Bill. Intention of we people should be to ensure the passage of this Bill.

**THE MINISTER OF FINANCE (SHRI PRANAB MUKHERJEE):** I would just like to make one submission that normally at the stage of the introduction of the Bill, objection is raised on the legislative competence of the House to take that Bill. So far as the legislative competence is concerned, the Central Government is fully competent to pass a legislation on this subject. The other issues which the hon. Leader of the Opposition has raised relate to the merit of the Bill. They cannot be discussed at this time. It is the constitutional responsibility of this House to pass the laws and it is for the Judiciary to sit upon whether the laws passed are in conformity with the various provisions of the Constitution. Therefore, my respectful submission would be that the hon. Members are fully entitled to make their comments. I would also like to assure that there is no question of undue haste in introducing the Lokpal Bill. The country is waiting for 40 years for this Bill. Several Governments have come and gone. Even in 2001, one of the Reports of the Standing Committee presided over by me recommended the Lokpal Bill. NDA was in Government at that time. After getting the Report for two years they could not bring the Bill for certain reasons. I do not blame anybody. The fact of the matter is several Governments, several times made efforts to bring an effective Lokpal, an ombudsman type of organization to deal with corruption at high places. The Civil Society started agitation. The Government had appointed a negotiating committee with the representatives of the Civil Society. There were series of meetings

and four meetings of all political parties took place from the month of June till the last one and various political parties gave their views. There was a discussion in both the Houses of Parliament on 27 August, 2011. Therefore, my submission is that it is not undue haste. So, many laws have been passed within the legislative competence of the Parliament. Sometimes, they were declared *ultra vires* by the higher judiciary. Sometimes, we accepted their verdict as the law of the land and sometimes we again came to Parliament to amend the law. We, 543 Members of this House will finally decide that what will be the fate of the Lokpal. We already had more than enough debate required for introduction. I would like to reiterate that it is collectively for us to pass this Bill. The whole country is looking at us that what type of Lokpal Bill we are going to have. If you find that there are deficiencies and shortcomings, you amend it and change it. Therefore, keeping that in view, I would request you to allow the Bill to be introduced by putting the motion to vote.

*The Bill was introduced.*



**LOK SABHA**  
**SYNOPSIS OF DEBATES\***  
**27 December 2011**  
**LOKPAL AND LOKAYUKTAS BILL, 2011**  
**CONSTITUTION (ONE HUNDRED AND SIXTEENTH**  
**AMENDMENT) BILL, 2011**  
*(Insertion of new Part XIVB)*  
**AND**  
**PUBLIC INTEREST DISCLOSURE AND PROTECTION TO PERSONS**  
**MAKING THE DISCLOSURES BILL, 2010**

THE MINISTER OF STATE IN THE MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS AND MINISTER OF STATE IN THE PRIME MINISTER'S OFFICE (SHRI V. NARAYANASAMY) moving the motion for consideration of the Bills, said: There was the sense of the House that there should be a Citizens' Charter, the lower bureaucracy should be brought within the ambit of Lokpal through appropriate mechanism and Lokayuktas in the States should be established on the lines of Lokpal. The Lokpal will consist of a Chairman and eight other members. Fifty per cent of those members will be judicial members, and the others are to be eminent persons. For the purpose of reservation, a provision has been made that 50 per cent reservation should be there for Scheduled Castes, Scheduled Tribes, Backward Classes, minorities and women. Hon. President of India is the appointing authority. The Selection Committee to select the Lokpal is headed by the hon. Prime Minister and it comprises of the hon. Speaker, Lok Sabha; Leader of the Opposition; hon. Chief Justice of India or the sitting Justice of SC nominated by the Chief Justice, and an eminent jurist nominated by the President of India.

There is also a Search Committee. The Search Committee will be guided by the Selection Committee. The Search Committee will comprise of eminent persons. The Search Committee will also have reservations for Scheduled Castes, Scheduled Tribes, Backward Classes, minorities and

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\* This Synopsis is not an authoritative record of the proceedings of the Lok Sabha. For the complete version of the debate refer <http://164.100.47.132/debatetext/15/IX/z2712.pdf>

women. The Director of Inquiry will be appointed by the Lokpal. There will be a Prosecution Wing, the Director of which will be appointed by the Lokpal. All the four categories of employees – Group ‘A’, ‘B’, ‘C’ and ‘D’ – have been covered in the Lokpal Bill. A mechanism has been worked out. The sanction for prosecution has been done away with. Fine balance of the Legislature, the Executive and the Judiciary has been kept in place. A time frame has been mentioned for investigation. The maximum punishment has been increased to ten years.

India became the signatory to the United Nations Convention against Corruption in May, 2011. When there is a uniform legislation, there will be effective Lokayuktas in the States also. The Prime Minister is representing 120 crore population of this country. The Prime Minister has been brought under the ambit of the Bill. Some of the political parties say that the CBI should be brought within the ambit of Lokpal. Though it is a path-breaking legislation yet a lot of criticism is being made. In no other legislation except this Lokpal Bill there is a provision to confiscate the property before punishment. The Lokpal has got powers to recommend the Government to transfer or suspend an officer. A fine balance has been maintained in this Bill. Our Government is committed to uphold the Constitution of this country. The basic structure of the Constitution is very important. This House is supreme and we will go by whatever this House decides. To give constitutional status to Lokpal and Lokayuktas Bill, another Bill has been moved before the House. We have reworded the Public Interest Disclosure and Protection to Persons making the Disclosures Bill, 2010 as the Whistle Blowers Bill. It may also be taken up for consideration.

**SHRIMATI SUSHMA SWARAJ:** The issue of Lokpal is being debated in the country for the last one year. The movement launched by Shri Anna Hazareji has further flared up this debate. The country was waiting with great curiosity that the Government will bring a strong Lokpal Bill during the Winter Session. But, the Bill brought by the Government has many shortcomings, this Bill violates the important provisions of the Constitution, there are enormous discrepancies in this Bill and this Bill has overlooked the sense of the House which was reached during the last Session. Our Constitution has some basic principles which cannot be tampered with. The power to legislate in regard to employees of the State Government is vested with the State Legislatures. A Bill should be enacted under Article 252 so that the State Governments could adopt it as it is or as they wish to do so. This Bill is being enacted to translate into action the Convention of the United Nations against Corruption. That is why this has been brought under Article 253 of the Constitution. The law enacted under Article 253 is mandatory. But, as per the Constitution amendment which has been brought, this is optional and the Government do not want to impose it on

the States. This Bill is against our federal structure. On enforcement of this Bill, the Lokayukta Acts already in vogue in States will become null and void. The Government admits that this Bill has been brought under Article 253 of the Constitution then it should also be admitted that a law enacted under Article 253 is mandatory and not optional. The Government has brought a Bill which is not only an attack on the federal structure of the country but it also dilutes authority of the States which are fighting corruption effectively. My other objection is related to the provision of reservation. The hon. Supreme Court has repeatedly said that the maximum limit of reservation will be 50 per cent but from the provision of this Bill, it is clear that the limit of reservation will be minimum 50 per cent and it can be anything above 50 per cent also. If there is limit of reservation of 50 per cent in Government's jobs then there is no reservation at all in respect of Constitutional posts and institutions. The Standing Committee has also stated that this reservation is not desirable. The Government has not only made a provision for reservation in respect of constitutional institutions and exceeded the limit of 50 per cent but it has also brought religion based reservation. Whatever we are doing today is not going to do anything good for the country. Religion based reservation will sow the seeds of further division of the country. How we can tolerate that a patently unconstitutional Bill is passed by this House? Therefore, I have asserted that this Bill should be brought under Article 252 and since religion based reservation is not as per the Constitution, therefore, it should be as per the Constitution. I allege that this Bill is very weak. We had said that the CBI should be free from the clutches of the Government but what happened is totally contrary. The CBI could not be freed from the hold of the Government but the Lokpal has also come under the control of the Government. What is the need of the jurist when we have the Chief Justice of India in the appointing panel of the Lokpal. My amendment is that instead of the jurist, the Leader of Opposition in Rajya Sabha should be included in it. The Government side is dominant in appointing the Lokpal and the method of his removal is all the more wonderful. The Government will remove and appoint the Lokpal and then claims that it will be very effective, independent and impartial. How it can be? Therefore, I have said that the Lokpal is totally in the grip of the Government. This Bill is full of discrepancies and contradictions. The Prime Minister has been brought under the purview of the Lokpal with so many safeguards and riders that no one can even touch him. If there is any complaint against the Prime Minister then the full bench of Lokpal will decide and 3/4th of the judges will decide whether an action should be initiated on it or not. Where from this concept of 3/4th has come. I have moved an amendment to make it 2/3rd. Section 24 has been added to this Bill. I do not know where from this section has come. The Standing Committee has not discussed

about this provision then where from this section has come? CBI is such a tool which converts the minority Government into majority. Therefore, we wanted that the CBI should be free from the clutches of the Government but now it has to report to four different authorities. The CBI shall report to the Lokpal for cases related to Group 'A' and Group 'B' officers, for Group 'C' and Group 'D' to the Central Vigilance Commission and to the Courts for the cases referred to it by the respective courts. The Department of Personnel and Training have administrative and financial control over CBI. The investigation and prosecution wings of CBI should be separated and it should be brought under the financial and administrative control of the Lokpal so that it may be free from the influence of the Government and work as an independent investigative agency. It will not only enable the Lokpal to have an established investigating agency under its control but also help in creating strong mechanism to fight against corruption. All the temples, mosques, gurudwaras, churches and schools have been brought under the Lokpal but 57 lakh employees belonging to lower bureaucracy have been kept out of its ambit. The Government has ignored the sense of the House. The sense of the House was that lower bureaucracy should be brought under the ambit of the Lokpal, the Lokpal and the Lokayuktas should be constituted and a Citizens' Charter should be there. There is a confusion about the Lokpal and the Lokayuktas. The lower bureaucracy has been brought under the Central Vigilance Commission and the Citizens' Charter Bill is under the consideration of the Standing Committee. We want that a strong, effective and constitutionally valid Lokpal should be constituted. Therefore, either accept all the amendments suggested by us and improve this Bill or the Bill should be referred back again to the Standing Committee and the Government should bring such a fresh Bill which meets the expectations of the people.

**THE MINISTER OF HUMAN RESOURCE DEVELOPMENT AND MINISTER OF COMMUNICATIONS AND INFORMATION TECHNOLOGY (SHRI KAPIL SIBAL):** The hon. Leader of opposition said that this Bill strikes at the federal structure of our Constitution and she referred to Article 252 of the Constitution. Article 252 provides that if the Parliament does not have the authority to pass a law in respect of a particular item in the Union List and that law is under the exclusive jurisdiction of the State List and only the State Legislature can pass that law, then only Article 252 comes into operation. Entry 41 refers to State Public Services but this Bill has something to do with corruption. So, this particular legislation has nothing to do with 'State Public Services' and it has everything to do with criminality and corruption and it squarely falls within Entry 1, 2 and 11A of the List 3. So, it is clear that Article 252 has absolutely no application in this particular case. Therefore, it is a political conspiracy to say that this Bill should be brought under Article 252 instead of Article 253 because the opposition

wants that this Bill should never be passed. They intend that the Lokpal Bill should be passed for the Union and there should be no Lokayuktas for the States. But, we say that it is an enabling law and Article 253 has an absolute application in this case because Article 253 relates to implementation of international conventions to which India is a signatory. Therefore, the applicable Article is 253 and not Article 252. If Article 252 is applied, there will be a Lokpal for the Union but no Lokayuktas for States. No concrete steps have been taken by the States to fight against corruption. So, under Article 253, the Parliament has power to pass a law in respect of corruption.

Section 1, sub-section (iv) of the Bill provides that different dates may be appointed for appointment of Lokayukta and for different provisions of this Act for different States. Therefore, it is an enabling legislation. Undoubtedly, this Bill has been brought under Article 253 but when and which provisions of this Bill will be put into effect will have to be decided by State Legislatures and the Central Government will then issue a notification to that effect. When the Resolution was passed on 27 August in this House, the sense of the House was that we will provide three things through this Bill. First, a Citizens' Charter will be provided, lower bureaucracy would be brought under appropriate mechanism through Lokpal and Lokayukta will be appointed. This was the sense of the House and all these three provisions have been incorporated in this Bill. But, the real corruption is in the services provided by the States which directly affects the common man. In the States which have the provision of Lokayuktas, the Chief Minister is the appointing authority whereas we have provided for a Selection Committee for the appointment of Lokpal. The strategy of the opposition is that the Lokpal Bill is not passed and they can go to the people and say that the Government is bringing a weak Lokpal and get electoral benefits. They have nothing to do with the Lokpal, they want to serve their political ends. It is argued that the provision for reservation in the appointment of the Lokpal is unconstitutional. I may mention here that the Articles 15 and 16, under which reservation is given, are not applicable in this case as the Lokpal is not a Government service. It seems that they have no intention for providing representation for nearly 16 crore people constituting minorities in the Lokpal. If the SCs, STs, OBCs, women and minorities do not have representation, then justice could not be delivered to the public. Will a committee comprising of the Prime Minister, the Leader of Opposition, the hon. Speaker, the nominees of the Chief Justice of India and eminent Jurists make any wrong appointment. Don't we have any confidence in these five people? A balance of power has been maintained within the framework of the Constitution. The Judiciary, the Parliament and the Executive have their own role to play. No such institution has ever been imagined which does not come under the purview

of any of these three organs of the Government. It seems that you want to change this fabric of the Constitution and to establish an institution which is not accountable to anyone. Who else if not the Government will recommend a panel of names for the appointment of the Secretary of the Lokpal. We will recommend best people for the appointment and you have to take decision on these names. Although we make appointments of the CAG, the Judges and the Election Commissioner, yet they are not under our control. Section 24 provides that when the Lokpal decides to file a charge sheet against any Member of Parliament, then the report on which the Member is being prosecuted by the Lokpal will be submitted to the hon. Speaker. The speaker will decide the course of action to be taken on such report. What wrong has been done by bringing the Prime Minister under the ambit of Lokpal under certain conditions? It is not possible that the Officers of the CBI should be appointed by any outside institution. CBI is an autonomous and independent institution ever since and this autonomy and independence of the CBI will also be maintained in future. The appointments under CVC Act are made by CVC and we have no role in such appointments. It is this Government, in the history of this country, which has brought about unprecedented legislation for the future of this country. Merely by passing this Bill, we cannot fight against corruption. This Bill is only just a means to eliminate corruption. Let us support the Lokpal Bill and have a Lokayukta in the States.

**SHRI MULAYAM SINGH YADAV:** Lok Sabha is the collective representation of the people of this country, therefore, they feel that there should be an effective law to protect their interests. The Government should delve upon this issue. I do not hesitate to say that the present Lokpal Bill has disappointed the denizen of this country. It is also a fact that corruption percolates from top to bottom and not *vice-versa*. It is, therefore, pertinent to note that corruption cannot be rooted out if the people will continue to point fingers towards the politicians. I mean to say that this Government could not achieve the objectives for which this Bill has been introduced as it is not a strong Bill. How do we believe that they will not act in vengeance? I do believe that the present Lokpal Bill has everything which favours the Government. The Government incorporated only those things which were in their interests and not in the interests of the people of this country. Therefore, this Bill is not going to check corruption in any way. I, therefore, request the Government to kindly incorporate all those amendments which have been listed in this regard otherwise Lokpal will also be blamed in the same fashion as the CBI is being blamed. Therefore, the Government should ponder over this issue seriously.

I would also like to emphasize upon the fact that the Government should incorporate good amendments which have been forwarded by the

Opposition in regard to Lokpal Bill. This is, in fact, the voice of the people of this country, voice of the young generation and voice of the students. But the present Lokpal Bill in the present fashion will never check the corruption. I do firmly believe that the Government stature will further improve and faith of the people of this country will further strengthen if Government provides this Bill more teeth. Indubitably, the people of this country especially young people view the political parties, Parliament and the system with disdain. We extend full support to the Government in this regard. This is indeed a historic debate. Secondly, democracy is definitely much bigger and more important than Lokpal but I do feel, that present Lokpal Bill is definitely seems to be a Government Bill and it does not has any such rights which provide them autonomy in any way.

**SHRI DARA SINGH CHAUHAN:** This is not the first time that this Lokpal Bill has been introduced in the Lok Sabha on which we are discussing today. It has been introduced eleven times before. Our leader, Miss Mayawati has stated her position clearly from the very beginning that this country needs an effective and strong Lokpal Bill in order to root out corruption from the country. Therefore, the people of this country will never forgive unless and until this Government brings forth an effective Lokpal Bill. It is also a fact that we will never be in a position to effect a strong Lokpal Bill so far we continue to see it with a view of hustings. Therefore, the need of the hour is that we should look at the Lokpal Bill with utmost seriousness keeping all those jaundiced view aside in order to frame a strong Lokpal Bill. In this regard the hon. Baba Saheb Ambedkar while handing over the Constitution to the Government had stated that whatever our policy be but our intention should be crystal clear in order to achieve our objectives. It is pertinent here that had our intention in the last 63 years would have been without doubt then this present prevalence of corruption would not have been there at all. So far as the matter pertaining to CBI is concerned, I am of the opinion that the Government should bring an amendment in this regard. It is an open secret that CBI has always been subjected to misuse and our hon. Chief Minister of U.P. was one of its victims. She is not a lone person who has been falsely implicated in cases by the CBI but there are so many other leaders like her who have been wrongly implicated in different cases by the CBI in order to gain political advantage. I, therefore, request the Government to bring CBI under the ambit of Lokpal only then we can expect a strong Lokpal otherwise it will be a futile effort.

Hon. Dr. Bhimrao Ambedkar had talked about federal structure while framing the Constitution. He had opined that federal structure of the Constitution will not be compromised while honouring the Constitution. But I am of the opinion that whoever were or are in the helms of the

affairs have weakened the federal structure of our Constitution somehow or the other. The Bahujan Samaj Party wants an effective and strong Lokpal in this country but the way CBI is being misused, it is in the fitness of things to leave the State Governments on the Lokayukta to make the federal structure stronger. It definitely raises suspicion if the rights of State Governments are encroached upon. I, therefore, believe that the present Lokpal Bill is not at all a strong and effective Lokpal Bill. If the Government brings a strong Lokpal Bill, brings the junior employees, the CBI under it, the Bahujan Samaj Party would support it, otherwise it would oppose this Bill.

**SHRI SHARAD YADAV:** Alongwith corruption, there is honesty in the country and due to it there has been development in the country. There is an urgency to treat the malaise of corruption and dishonesty. But there is a need to improve the present Lokpal Bill so that it is not repealed by the Supreme Court. This Bill has been introduced to eradicate corruption. To combat corruption, the CBI first of all has to be strengthened and made impartial to make it autonomous. The CBI has worked properly in cases of corruption where political persons have not been involved. If the selection process in CBI is made impartial, it would not remain in the hands of the Government, notwithstanding whosoever Government comes to power. If it is brought under the Lokpal, the CBI would have one more authority over it. Reservation in the Lokpal is appropriate in view of the social realities of the country. The Government should accede to the amendments proposed by Sushmaji in this regard. There is a need for further and threadbare discussion on Lokpal. This is not a good Lokpal Bill. Bring a better Lokpal and do not handover CBI to anybody, rather make it autonomous and find out whether it can fight against the corruption or not. It will definitely be able to do so.

**SHRI T.K.S. ELANGOVA:** If we pass an Act for Lokayukta, then we are trespassing into the powers of the State. As a Member of the DMK, we are opposed to any trespassing into the powers of the State. I want to make this point to the Government. This Article 323 (b) itself is enough for the States to make law for the Lokpal. This Act should be a prospective Act and not a retrospective Act. Secondly, while I object to law-making in regard to Lokayuktas, I want to make a comment in regard to one particular Section, that is, Section 95 which makes Lokpal final appellate authority. They cannot be a final appellate authority when there is the Supreme Court. How can it be a final appellate authority? It means, the accused, the aggrieved has no other way to prove his innocence. So, there should be an avenue for him to go on appeal against the Lokpal or Lokayukta or whatever it is. That provision should be made.



**SHRI BASU DEB ACHARIA:** Today the people of the country are eagerly listening to Lok Sabha as to how we will be able to uproot the biggest problem of corruption which the country is presently facing. This is a serious and big problem in the country. We have been demanding for long that an effective and strong Lokpal should be constituted. The Bill which we are discussing today has many shortcomings. We demanded strong, effective and credible Lokpal. However, the moot point is that whether we will be able to set up an effective and strong Lokpal with the kind of Bill that has been presented in the House today. We had made several suggestions about Lokpal. One of the suggestions was that there should be an independent investigative agency under the Lokpal. If there is no independent agency, will the Lokpal be able to deliver? Lokpal will be converted into a dysfunctional institution. Do we want such a Lokpal? Therefore, my humble submission to the Government is that it should not act with a close mind and act with an open mind by being receptive of the suggestions made by the hon. Members in the House and also those given by the public at large so that an effective and strong Lokpal could be formed. In our view the Prime Minister should come under the ambit of Lokpal. I would suggest that in addition to the safeguards like internal security, national security and public order, a forth safeguard should also be added that any agreement signed between India and the head of the State of a country should fall under the ambit of Lokpal. Genesis of corruption can be traced to the indifferent attitude and inaction of the Government and also the neo-liberal policies being pursued by the Government. Plunder and loot of public assets are taking place. I would like to know whether Lokpal will also enquire into that aspect of corruption which is happening in our country. Dimensions of corruption have undergone a sea change from pre-reform era to the post-reform era and a number of scams have emerged. There is a nexus among corporate houses, bureaucracy and the corrupt persons. We had made repeated demand that corporate houses should also be brought under the ambit of Lokpal. However, the Bill is completely silent on this issue and does not mention about corporate houses. There are several instances to cite to support the notion that CBI is being used by the Government to take political advantage. Therefore, there is a need for making CBI independent and accountable. Lokpal should also be made accountable to either the parliament or the Supreme Court. At last, I would like to say that merely setting up of a Lokpal is not going to prove adequate. There is an urgent requirement for bringing in various electoral reforms as well. The Government should enact a model act asking the various State Governments to constitute Lokayuktas. Then only we will be able to safeguard our federal structure.

**SHRI BHARTRUHARI MAHTAB:** All of us want a strong Lokpal to curb the menace of corruption. But this Bill is not making a strong Lokpal. The

Bill is far cry on a number of counts. The Bill has four major lacunae which must be removed to carry credibility and serve the purpose for which it is being legislated. Firstly, the Bill strikes at the functional autonomy of State guaranteed by the Constitution. It is not for the Union Government to impose the structure and functions of Lokayukta on State Governments but is for the respective State Governments to decide what they want bearing in mind their specific requirements. I would only urge upon the Government to delete part 3 of the Bill and implement only part 1 and part 2. It makes no sense at all to keep the Central Bureau of Investigation out of the purview of Lokpal. Nor does it have any sense to have a parallel investigation and prosecution system that will be controlled by the Lokpal. I would reiterate that the Central Bureau of Investigation should not be under the Government control as it is being misused against political enemies as before. The anti-corruption and prosecution wings of the CBI can be separated and placed under the Lokpal and the rest may continue with the Government. Thirdly, the move to impose quotas from the Scheduled Castes, Scheduled Tribes, Other Backward Classes, women and 'minority' not only is the proposal abhorrent, it is hideous to seek to divide the institution of Lokpal along community, caste, gender and communal lines. Corruption has no community, caste, gender or religious identity. The proposal is very dangerous and need to be thwarted. The hon. Prime Minister should be included in the ambit of Lokpal with the exception of internal security, public order, atomic energy and space. No special procedures are needed for enquiries, investigation against the hon. Prime Minister. I would also again reiterate that to eradicate corruption, there is a need to have an effective Ombudsman Mechanism. Our Party would not be a party to this type of a half-baked Bill which wants to have a namesake Lokpal but gives little power and ties it up with so many infirmities. I would urge upon the Government to take back this Bill, re-draft it and come back to us. Otherwise, it can send the Bill to the Standing Committee for further consideration.

**SHRI ANANT GANGARAM GEETE:** The Lokpal Bill has been pending in this House for one reason or the other. By constituting the institution of Lokpal we are going to set up a super power centre which may pose a danger to our democracy. Some hon. Members have been demanding of bringing the hon. Prime Minister within the ambit of Lokpal. The office of the Prime Minister carries high dignity. Therefore, by including it under the Lokpal, we will be lowering the dignity of the office of the Prime Minister. Then what is the guarantee that the members in the institution of Lokpal will be honest? Our party is against corruption. We cannot root out corruption from our country by this Lokpal Bill alone. Therefore, we oppose the setting up of an undemocratic institution like the Lokpal. Therefore, the government should withdraw this Bill. At the most, it can

refer it to the Standing Committee where the voice of every section of society should be heard. We have very strong laws in place. We can eradicate corruption from the country by implementing these laws effectively. Therefore, the Government should not rush this Bill through.

**SHRIMATI SUPRIYA SULE:** India is the largest democracy in the world and we have managed to sustain it. The UPA Government is totally committed to cleaning up the country and making India totally corruption-free. I would like Prime Minister to be under Lokpal. We should get this Lokpal across and review it every six months or one year. I want a corruption free society. I urge upon the Government to take a neutral stand, to take the whole sense of the Government. The entire political corruption will not be eradicated without electoral reforms. Lokpal will make a difference. If we pass Lokpal Bill, we can bring amendments at different stages of life. It is a small beginning. It is the commitment of the hon. Prime Minister which is made to this country.

**THE PRIME MINISTER (DR. MANMOHAN SINGH)** intervening the debate said: The broad provisions of Lokpal and Lokayuktas Bill, 2011 have been vigorously debated both in the public domain and by political parties. The task of legislation is very serious business and must eventually be performed by all of us who have been constitutionally assigned this duty. Others can persuade and have their voices heard. But the decision must rest with us. Let us, therefore, endorse this Bill as proposed. In drafting this legislation, we have had a wide range of consultations. I compliment the hon. Members and the Chairman of the Standing Committee which looked into this Bill in great detail. We believe in transparent, open governance and the well-being of the *aam aadmi* is central to all our policy prescriptions. For that we brought the Right to Information Act in 2005, enacted the National Rural Employment Guarantee Act, 2005 and the Right of Children to Free and Compulsory Education Act, 2009. We have launched the National Rural Health Mission, the Jawaharlal Nehru National Urban Renewable Mission and the Rajiv Awas Yojana and also introduced National Food Security Bill and the Land Acquisition, Rehabilitation and Resettlement Bill. Our Government has taken decisive steps on corruption. In the last one year, we have been working on certain landmark legislations.

On the administrative side, our Government seeks to streamline decision making consistent with the principles of transparency and accountability. We began with the Right to Information Act. We will not end the fight against corruption with the Lokpal and Lokayuktas Bill. Our laws must be all pervasive if we are genuine in our endeavour. Legal sophistry cannot be used to argue that State Legislatures must not adopt the model law

proposed or delay its enforcement. Corruption is corruption whether in the Union or in the States. We are committed to establish Lokayuktas in the States along with the Lokpal. I urge all my colleagues in Parliament to rise to the occasion and look beyond politics to pass this law.

The Central Government is responsible for providing a limited number of public services directly to the citizen. The real problem lies in the domain of State Governments where the *aam aadmi* feels the pinch of petty corruption on a daily basis. It is for this reason that Group C and Group D employees have been brought within the ambit of Lokayuktas in States. Federalism cannot be an impediment in our war against corruption. I believe that the CBI should function independently of the Lokpal and the Government. But independence does not mean absence of accountability. We have, therefore, proposed a process of appointment of the CBI Director. None should have doubts about the integrity of this process. As far as the issue of CBI functioning under the Lokpal is concerned, our Government believes that this would create an executive structure outside Parliament, which is accountable to none. I believe that the Bill contains a judicious blend of functional autonomy and accountability of the CBI. I do not think all public functionaries need to be painted with the same brush just as all politicians should not be presumed to be dishonest or corrupt. Without a functional, efficient administrative system, no Government can deliver for its people. Very often our public servants have to take decisions under conditions of great uncertainty. It is possible that an action which *ex ante* appears to be rational may *ex post* turn out to be faulty. Our systems of reward and punishment must not lose sight of this fact.

It is the people's trust that we in Government reflect and protect. Our polity with its enormous size and diversity can only be held together when we put our faith and trust in institutions that we have carefully built over the last 63 years. The power of the electorate is the ultimate authority which brings accountability to our democratic institutions.

**DR. M. THAMBIDURAI:** We want Lokpal Bill. But, we are not accepting certain things from the contents of the Lokpal. Prime Minister's office must not be included in the Lokpal. It is the highest office. He has to run the Government and deliver the goods for country. C and D categories of employees which are brought under Lokayukta have to be included in Lokpal also. I oppose the inclusion of the Lokayukta because it is infringing into the rights of the States. Most of the States want to protect their rights. We must preserve the federal set up. There are State Legislatures. In the legislature, they have every right to legislate this Lokayukta. Though under Article 253, the provision for Lokayukta is there but according to the Article 246 in the Concurrent List, the State Governments also have

the right to enact the laws. If the government is encroaching upon in the name of 253, then the government is ignoring the Article 246.

Bringing provision for making the Speaker, Lok Sabha and the Chairman Rajya Sabha accountable to the Lokpal is not right. They are supreme bodies. These bodies have to enact law. I request for excluding them. I request the Government not to include the Prime Minister within the purview of this Bill. Lokayukta must be excluded from the Bill. With this condition, I am for Lokpal and not for Lokayuktas.

**SHRI KALYAN BANERJEE:** For eradication of corruption, a Bill or statute is not sufficient; a mentality is required to enforce it. If part III of the Bill is required to be taken as a model or it has to be adopted, then, I think, it encroaches upon the federal set up of the Constitution. This Lokpal is nothing but a super-investigating agency. Ultimately, after giving chances to all as an investigating agency, the Lokpal's Report will be given to a Special Court established under the Prevention of Corruption Act. The Special Court will decide the matter in accordance with the procedures of the Code of Criminal Procedure and nothing more than that. This super-investigating agency has been given a job that when the investigating agency submits a report under Section 81 sub-section 7 (b), then the State has to initiate disciplinary proceedings. Does this not mean interference in the affairs of the States? Therefore, let us not undermine the State Legislatures; undermine the Ministers of the States; and do not enter into the field of State Legislatures, as it would be a dangerous proposition.

Everybody is against corruption. It is not that the persons who are holding demonstrations and *dharnas* are the only persons who are fighting against corruption. We have also been elected by people because people know that we are honest. On the basis of a report, a person cannot be a convict; he may be an accused. I would like to say that in our country if at all one has to point out the most non-transparent system, then it is the appointment of the Judges of the High Courts. In this non-transparent system in respect of the High Court Judges, a person who would become the Chief Justice of India only because of his seniority, he would decide whether I am corrupt or not. It seems to be very funny that this type of a person will be in the Committee to decide who would be the Lokpal.

Let the Lokpal be elected after seeing who is honest or dishonest, just like some American Supreme Court Judges who remain Judges for 14 years on the basis of the Senate elections. Let the people know who are all interested in being appointed as the Lokpal. I suggest that let the Lokpal be elected from the House itself because accountability has to be fixed. I would make a request to the hon. Prime Minister to delete Part III and make a provision by requesting the State Government to adopt the guidelines

which have been given in the Lokpal Bill itself. All of us are interested in bringing a Bill like this. But in reality we are bringing this Bill under pressure. This does not reflect a very good image of the Members of Parliament.

**SHRI NAMA NAGESWARA RAO:** On the scale of 0-10, corruption level in India is at 8.67. The hon. Prime Minister has categorically spoken on two points. First, the stand of the present Government and second accepting the fact that corruption is rampant in the country. We should make concerted efforts to bring an effective Bill to weed out corruption. It is our collective responsibility to rein in corruption. CBI should either be brought under Lokpal or it should act as a separate autonomous body. There should be a strong and effective Lokpal Bill spelling out its accountability too. In addition to it, Electoral Reforms Bill and Financial Reforms Bill should also be brought in the House.

**SHRI JAYANT CHAUDHARY:** Everybody may have different opinion in a democracy, but the Government's proposal is a step in the positive direction. Only taking bribe is not a corruption. The way we are depriving the citizen of the country from his rights is also a corruption, the atrocities being committed against the dalits and women is also a corruption. If the farmer is not getting remunerative price, it is also a corruption. This problem is not going to get solved by mere enactment of a law, or setting up a constitutional body. Some steps have been taken to empower the CBI in this Bill. We will have to contemplate setting up an independent cadre for the CBI, so that it may have an independent talent pool and special training. To a large extent, I agree with the issue of accountability raised by our MPs. I understand that no other person in any sector does have that kind of accountability, which we have in the public life. If group C and D employees are brought into its ambit, it will affect their working style.

**SHRI GURUDAS DASGUPTA:** I welcome a Lokpal Bill, but not the Lokpal Bill, which has been introduced. The hon. Prime Minister was talking about agitation outside. If he says that protests have been very loud during the last one year, then they forget that this country had fought against corruption from the inception of Independence. As regard Mahatma Gandhi National Rural Employment Guarantee Scheme, it is good. But only 38 per cent of the money has been spent on this. There are talks of developing economy but we are facing an unprecedented economic crisis.

It is not the State which is the centre of corruption. The political Capital of India is the Capital of criminality perpetrating corruption in India. This Bill is nothing but a cosmetic operation. The Government must show the political will. There was Bofors scandal and Harshad Mehta scandal, but 2G spectrum scandal has hit the sky. Our new and liberal economic

policy is responsible for this. Let us discuss the Bill dispassionately, without being overcharged by what is happening in Mumbai or what has happened in Ramlila maidan. Let us protect the sovereignty of the Parliament.

I want to know why has the private sector been left out? They are those who bribe the politicians and bureaucrats. It is the corporates who generate black money and evade the tax. Every Government has used the CBI as a political weapon to fight the opponents. Independent investigation has to be done. There should be special courts to deliver judgements within a specific period of time.

**SHRI LALU PRASAD:** I request to bring a strong Lokpal Bill and no political party will go against it. This Bill has been brought in haste. I would like to caution all the members that supremacy of Parliament should be maintained. A conspiracy is going on to crush our system and malign this Supreme Institution. A ceiling should be imposed on 'right to property' in order to root out corruption. In this Bill, sitting Members of Parliament have been granted immunity but Ex-MPs have been included. According to it, complaint or case can be filed against Ex-MPs even after seven years. This provision should be removed. Military has its own system and there is a provision of court martial. IB, RAW and other intelligence agencies spend a lot of money without any audit and that should be permissible. However, these have also been included in this Bill. CBI should not be included in this Bill at all. The structures and systems made by the founding fathers of the Constitution are being smashed. It is not an appropriate Bill so it should be withdrawn. I do not agree on the issue of social justice and minority also. This Bill should be withdrawn and a strong Lokpal Bill should be enacted.

**SHRIMATI HARSIMARAT KAUR BADAL:** Today, Winter Session of this Parliament was especially extended to usher in a historic Bill. But instead of a Bill that would have been a historic piece of legislation, it is nothing but useless, toothless and aimless. That is neither acceptable to the agitators that they are trying to pacify nor does it take any concrete step to curb this menace of corruption. So, all in all, Government have ensured that this Lokpal Bill does not see the light of the day. This hurriedly introduced Lokpal Bill is with the sole purpose of stemming the agitation to ensure that they do not go and campaign against the ruling party in the five election-bound states. As the common man reels under the steep price rise and inflation, he watches helplessly but with a deep sense of disgust the erupting scams of the political parties and the total loot that is happening in the country. Then, instead of seeing that the looters are being properly punished, instead of that the government goes into a cover up plan. Unless the Judiciary does not step in, the looters go scot-free.

So, the political class is being viewed by the public as to only perpetrators of corruption but also the people who are trying to block a legislation. This wandering anger of the public has found an anchor in the Anna Hazare's agitation which has woken up the sleeping conscience of this nation to demand from the people that a strong Lokpal Bill should be introduced which puts an end to this corruption. Since the Government does not want that the CBI come under the purview of the Lokpal. Besides the fact that now the Government also has the power to remove the member of the Lokpal under the Bill. Today, the people are looking for a body that is free from the clutches of the so called law makers or so called politicians who are perceived to be corrupt. So, let us make a Bill and give action to what the hon. Prime Minister has said : 'The well-being of the *aam aadmi* is the centre to of all our policies.

**SHRI H.D. DEVEGOWDA:** While speaking without any request in writing to take your permission I would like to just say two or three points. In the entire Lokayukta Bill, no mention has been made about the corporate houses. In Karnataka, in 1984, the conclusion that had been drawn by Karnataka Lokayukta, said that the only charge on which a *prima facie* case was found to have been made out was to the effect that the respondent had committed an offence about a single house-site allotted to my widow sister-in-law. For allotting one house-site, I had to face this charge. I am mentioning this because farmers' land had been looted in Karnataka in the name of the so-called the 'project promoters' and the 'corporate houses'. The Government expected that a lot of money would come from foreign countries when the country was facing economic crisis. But the end result is that the land taken by the corporate houses at Rs. 10 per acre of land had been pledged for Rs. 150 crore in the ICICI Bank. Now today, in Karnataka, it was not that Central Government to have taken action against three or four ministers including the Chief Minister found guilty of corruption by the Karnataka Lokayukta. It was only Advaniji who took the decision and said that 'please go'. The Government do not want to bring to book those people who are looting poor farmers. For one site, for Rs. 20,000, I was to be prosecuted. This is the position today. We cannot accept this Bill. What is going on in Karnataka is that the land leased at the rate of Rs. 10 per acre is now being sold at the rate of Rs. 20 crore per acre. The corporate has brought not even one rupee and invested. The Government do not want to include such people within the ambit of the proposed Lokayukta.

**SHRI YASHWANT SINHA:** The House has been extended for three days to discuss how to curb corruption and what kind of Lokpal we should make to check corruption. This is the question before the nation. There has never been an intensity so sharp and forceful to pass the Lokpal Bill as it



is today. Hon'ble Prime Minister's speech was a farewell speech. Government's approach is not that of to create consensus. Intention of the Government is purely political. The Government is not concerned about Lokpal and fight against corruption. Election is round the corner in many States and they want to contest the election with this claim that they brought the Bill but the same was not passed by the Lok Sabha. Such intention of the Government is not correct and they are still levelling charges against others. As my party leader said we are not in favour of this Bill because you have deliberately brought such weak and ineffective Lokpal. You are working against the spirit of the Constitution deliberately and you say that court will take the decision. This is useless claim. Today an old man is sitting on hunger strike in Mumbai due to large scale corruption that took place in previous years. Today most corrupt Government is in power under the most honest Prime Minister. There is unrest among people. People are facing the brunt of price rise and corruption. People want to bring back black money deposited in foreign banks and want it to be utilized in public interest. Therefore, the people who are raising the issue of corruption are getting good response. We cannot ignore them. You are responsible for the present situation.

We doubt their intention that they themselves do not want the Bill to be passed. So, they have incorporated some irrelevant issues deliberately in it. Firstly, they have jeopardized the federal structure in such a way that the moment it comes for judicial scrutiny, it will be struck down. Secondly, they have included the minority reservation deliberately through corrigendum, which was not in the Bill earlier. I request that the constitutional amendment should be taken up first and there should be division on it and thereafter the Bill should be taken up for consideration and voting. 18 States already have such a Bill. We want our model Bill, which is an inferior Bill, to be imposed upon the States. It cannot be justified. What sort of language is being used for Anna Hazareji? The Prime Minister has written him several letters respectfully, while his partymen are calling him by his name in the media. Presently, our country is trapped in a vicious economic crisis, but no one is concerned about it. Prime Minister should not have enumerated his achievements here. I want to say that the laws will be made here, we have to fight corruption, but we have to fight it resolutely. We will continue our fight against corruption but we should make an appropriate institution for it. If we really want to fight against corruption which is the intention of this House and which is the intention of all of us, then you should reconsider it. The Government is not making consensus among its allies. So, endorsing the views expressed by our leader, I request the Government through you to withdraw this Bill. The Bill forwarded by the Standing Committee has been changed completely. A number of such provisions including minority reservation, Clause 24 has

been included in the Bill which were not even under consideration of the Standing Committee. It is the tradition of the Parliament that if amendments are made after the recommendations of the Standing Committee, it should be referred back to the Standing Committee. After the discussion, the Government should announce that they want this Bill to be strong, that their intentions are clear and that they do not want to make a Sarkari Lokpal or Darbari Lokpal.

**DR. SHASHI THAROOR:** We heard a powerful and statesmanlike speech from our Prime Minister, not as has just been alleged, a farewell speech but a speech of taking stock of the platform that has been built for further progress. Today, we have another such day when a powerful idea has reached us, the idea of an independent and effective anti-corruption body. As the Durban commitment to effective action against corruption declared in 1999, corruption deepens poverty, debases human rights, degrades the environment, derails development, destroys confidence in democracy and the legitimacy of Governments. There is a need for a strong anti-corruption agency which is effective and independent of the Government so that any wrong-doings by the public officials can be investigated, prosecuted and punished. We had a cure being prescribed from outside that would have created a supra-institution that would have combined the police powers of investigation and arrest with the judicial powers of prosecution and punishment, all in one institution. It would have been extremely dangerous. This Bill builds in effective checks and balances. We must not create a situation in which bureaucrats are impelled to do nothing. We must make it possible for the honest to have fair and due process and where honest officials do not feel that they need to duck the responsibility to take initiatives and decisions.

One hon. Minister has made it very clear that Article 253 does empower Parliament to enact a law for the whole or any part of the territory of India to implement an international treaty or Convention. This provision actually does overwrite the List in the Seventh Schedule. However, it seems to me that corruption-free governance is a basic human right in India. It is, in fact, judicially recognized and enforceable. In fact, the only way we can bring it by having a unified and comprehensive framework, in which we can fight corruption in a united way at the national level, State level and local level. I must disagree with those who have said that international standards, European standards do not apply to the Indian reality. We can have the same standards or we can have better standards. We do not need to dilute our laws by absolving the States of their responsibility. The Lokpal is positioned as an independent agency, exclusively responsible for the superintendence and direction of investigation and prosecution. We cannot expect the Lokpal to be simultaneously the

investigator as well as have the power of superintendence and control over the investigator. It is a fundamental contradiction.

Section 25 in the Bill protects the independence of the investigative process while leading the Government to fulfil its constitutional and legal duties and responsibilities to the offices of the Government. Perhaps, the Bill is not everything that you hoped for; perhaps it does not contain every provision. Think of the Right to Information Act, the RTI. Think what people assumed when the Bill was being passed and think how strong and effective it has become. Corruption is not going to disappear overnight. This Bill must be seen as part of a much broader set of laws and institutions in our country. It has to be seen as a part of an international obligation under the UN Convention against Corruption. It must be seen domestically as being strengthened and buttressed by our vibrant media, by our rich civil society which too will ensure that this Act works well. Today we have the Whistle Blowers Bill before us, the Public Interest Disclosure and Protection to Persons making the Disclosures Bill. That too will be one more pillar strengthening our efforts against corruption. We need to simplify laws and regulations in our country and increase administrative transparency. Who is ultimately responsible for corruption? For every bribe taker, there is a bribe giver. There is somebody who is trying to short circuit the process, get a shortcut, avoid punishment by the Government, avoid a tax and avoid a law. We cannot merely point fingers at the system, merely clamour for some sort of super powerful legal body and not forget the moral responsibility of society to change for the better. We have evolved our own corrective mechanisms and this Bill is an example of such a mechanism. Others may have bullets but we have ballots. Others have civil wars, we have civil society. We, in this House, are not infallible. But we are doing our best. The people of India have elected this Parliament. Have faith in our judgment and good sense in what we are trying to do. Prime Minister is here only to uphold what we believe is in the best interest of this country, this nation and its people.

**SHRI S.D. SHARIQ:** The mechanism of Lokpal was conceived 41 years ago and today this government has finally brought this Bill after 41 years. I would like to congratulate the government for this. People have been asking for elimination of bribery and corruption. This Bill may have some weaknesses in it but then amendments can be brought any time. But I would like to request the Government to ensure that the federal structure of the country is not disturbed. The Lokayuktas should not be imposed on the States by the Centre. The Union Government should not interfere in the affairs of the States. If you have to keep our States with this country, the promises made by this House and Pandit Jawaharlal Nehru must be fulfilled. The second thing is that the unity and integrity of the country

is maintained. The country will remain united till this Parliament exists. If the people talk against the Parliament on the roads, none will bear it in this House. I would like to request the media not to cross their limit as it would not be in the interest of the country. The media should give right information to the countrymen because the media is also a pillar of democracy.

**SHRI INDER SINGH NAMDHARI:** I want to raise certain impartial points so that the stalemate created in the House may be resolved because in the tension between the Government and the Opposition, real issues are put on back burner. On 27 August when the sense of the House was being taken, both the Houses, Rajya Sabha and Lok Sabha unanimously gave a message. Anna Hazare was given a letter containing three things from the sense of the House. I think Prime Minister should have stuck to that. That should have at least been presented before the Standing Committee. Here Prime Minister should have asserted himself that it was his commitment. Today if a 74 year old man, not for himself but for the sake of the country, says that root out the corruption, he should not be taunted and jeered at. This is not Indian culture. I want to say one thing, please make CBI independent. I have moved amendment to this effect only. Because CBI has tamed several wild lions. The Prime Minister should not backtrack. Therefore, he should insist that the three things he gave in writing to Anna Hazare must be there.

**SHRI ASADUDDIN OWAISI:** There is no definition of victimization in this Whistle Blower Bill. Law Commission had stated that a witness protection programme be prepared for the witnesses but there is no mention in this regard in the Bill. The powers of Vigilance Commission are limited to make recommendation in the case. In my view, Vigilance Commission should be given more powers. I have moved two amendments regarding this Bill. First amendment is that Prime Minister should be kept out of Lokpal's purview. The second amendment is related to the limitation period of seven years prescribed for investigation against MPs. In my view this limitation period should be of six months only. I had asked an unstarred question about the number of corrupt IAS, IPS officers and also to amend Conduct Rules and Civil Service Rules. The reply was given that Service Rules contained sufficient provisions. If service rules are sufficient then why are you bringing Lokpal. You are saying that under Section 24 Speaker will be answerable to Lokpal. When Speaker will appoint Lokpal and Speaker will be one of the Members then how Speaker will have to be answerable to Lokpal. Which type of law are you going to enact? Under Section 14 those who take donations including mosque trusts will be under the ambit of Lokpal. You are also bringing them under suspicion. So far as giving representation to minorities in Lokpal is concerned if you will not give

representation to the 19 percent people of this country in Lokpal then what type of Lokpal it would be.

**SHRI NARAHARI MAHATO:** Corruption is increasing by leaps and bounds but we have not passed the Lokpal Bill till today. In the All-political party Meeting it was stated that we want a strong, credible and effective Lokpal Bill but it is a weak Bill. In this Lokpal Bill, the finger is being pointed towards the position of the Members of Parliament. CBI should be independent. It is the wish of the 130 crore people of this country. It is a curse for our country that we spend crores and crores of rupees during elections by which a lot of corruption is emerging in our country. Let us protect the independence of this House and let us protect the sovereignty of our country. The Lokpal Bill cannot protect the sovereignty and independence of our country.

**SHRI AJAY KUMAR:** Some of the good points of the Bill are missed. One is the non-requirement of permission for prosecution. Other is related to timebound investigation and the representation of people from all sections. CBI's autonomy is something which should be considered. So far as inclusion of private companies is concerned, if you are walking away from not including the private companies, it would be against the course of justice. We have to fight corruption through various new reforms such as electoral reforms. The Lokpal is not only going to be the single silver bullet which is going to solve the problem. The issue of speedy disposal of cases coming before Lokpal also needs to be considered. So far as works related to RTI are concerned, if everything is in the public domain, then there would never be the requirement of an RTI. There is a need to implement an effective Lokayukta in Jharkhand.

**SHRI KAMESHWAR BAITHA:** I fought for 26 years in villages. I fought for those people who were being oppressed by big feudal lords. Only then, I realized that there was corruption and feudal oppression in villages. Jharkhand is on the boil today. The poor people in the State are fighting for their rights. Maoist movement is going on there. There is a need to enact laws to fight corruption with the help of Lokpal Bill and only then corruption will be stamped out. The People belonging to minorities, dalits, OBC, Scheduled Castes and Scheduled Tribes etc. should be given reservation under the Lokpal Bill.

**SHRI PRASANTA KUMAR MAJUMDAR:** I, on behalf of my party, reaffirm the supremacy of Parliament and would like to mention the following facts on the Lokpal. As regards the inclusion of the Prime Minister under the Lokpal, I would like to say that people's perception is that such large incidents of financial scam could not have occurred without the knowledge of the Prime Minister or the Prime Minister's Office about the same and

the Prime Minister is not above the law of the land. Moreover, in many democracies of the world, executive heads like the Prime Minister or the President of several countries do not enjoy immunity against the criminal proceedings. Therefore, our Party strongly demands that the Prime Minister should be brought under the ambit of the Lokpal without any exclusion and without any safeguard. Since a strong Lokpal with a weak or dishonest judiciary are to be not in the best interest of the nation, we demand that judiciary be brought under an effective regulatory and overseeing mechanism in order to make them accountable. As regards covering all ranks of the Government employees under the Lokpal, I would like to say that covering only Group A and Group B officials will not be adequately addressing the concern of the people about combating corruption. We, therefore, demand that all Government officials of all ranks from Group A to Group D must be brought under the Lokpal. About the CBI, my party firmly insists upon the view that either the Anti-Corruption Branch of the CBI be transferred to function under the Lokpal mechanism so that it is completely free from executive interference or the entire CBI be shifted out of the PMO and brought under the Lokpal mechanism and be made subordinate to it. About the Statutory Grievance Redressal Mechanism, we demand that the Grievance Redressal Mechanism should be given a statutory status. About the State Lokayuktas, we demand that for providing Lokayuktas in the States, the Act of the Parliament should seek to do the same under Article 252 of the Constitution instead of Article 253.

**DR. TARUN MANDAL:** We wanted a very strong, effective, autonomous, independent and powerful Lokpal and Lokayuktas Bill. But there are some dubious provisions in the Bill, through which—not directly but indirectly—the Government is wanting to control the Lokpal, thereby making it ineffective and not keeping it independent. So, these dubious provisions must be removed from the Lokpal. There should not be any exemptions for the Prime Minister keeping him under the Lokpal. Since CBI has been repeatedly misused, underused, overused and unused, this institution must be under a very substantially independent authority. The Members of Parliament also must be included within the Lokpal. I want to mention that reservation position in the Lokpal is not necessary at all. It would rather create divisions and dissensions among the Members. It would, thereby, delay in giving any sort of direction from that particular body. By making it a nine-members body, it has been made wieldy and it has been made most ineffective. This Lokpal institution must also be overseen by an independent body and that should be evolved by a proper discussion with all the stakeholders and also within this Parliament. On the protection in respect of whistleblower, I would like to add that it should be ensured that protection should really be given and it should not be only on paper.

**SHRI OM PRAKASH YADAV:** I fully support the Lokpal Bill brought by the Union Government. Although opposition parties and other people have found out many lacunae in this Bill but I believe that no Bill is complete and final in itself. This Bill should be allowed to be passed and if need be amendments can be brought in this after holding discussions with the Government. Most of the diseases do not differentiate between poor and rich people but corruption is one such disease with which poor people suffer most. Be it the office of Sarpanch, Tehsildar, BDO or District Magistrate's Office, poor people are exploited everywhere. Therefore, I support every such step taken which can reduce the problems of poor people and farmers. Lokpal Bill is one such bill, which should have been brought much earlier and the Government has brought it very late.

**SHRIMATI PUTUL KUMARI:** No one is above the supremacy and universality of Parliament. Lokpal is an authority being created above all these institutions and the Speaker of the House will also be accountable to that, this sounds very serious. Lokpal has been conceptualized above the legislative and executive body but that Lokpal is not accountable to anyone. Regarding Central Bureau of Investigation some Members have mentioned that it should partially be covered under Lokpal and other few have asked it to be completely removed from under the Lokpal Bill, but my opinion is that it should be completely kept out of it because CBI has its own role to play, it has its own impartial work.

**SHRI JOSEPH TOPPO:** The whole nation is keenly watching us that how sensitive we are on the issue that is being discussed today. The Government also come to know today that corruption has increased in our country. An old man Shri Anna Hazare has raised this issue. Earlier also there was corruption prevalent in the country but Anna Hazareji has brought this issue into the limelight. In view of large-scale corruption the Government should bring such a bill so that the millions of rupees deposited in the foreign banks should be brought back to our country. The Bill brought out by the Government for checking corruption is not in a position to do so. Therefore the Government should bring such a bill which is fully able to eradicate corruption in real sense.

**SHRI THOL THIRUMAVALAVAN:** I appreciate the UPA Government for providing reservation for SC, ST, OBC, minorities and women in the Lokpal, but I would request the Government to lift the upper limit of fifty per cent in the reservation. If we want to achieve real social justice, a legislation must be passed to accommodate all sections of deprived classes. I insist that Chairpersons of the National Commissions of SCs, STs, women and minorities must be consulted before the selection of members to the Lokpal. A person with religious, caste and gender bias should not be

selected for any post in the Lokpal. Out of 4,30,000 registered NGOs, more than 70 per cent are religious NGOs. Most of the religious NGOs are doing political works. I suggest an amendment to include all the NGOs under Lokpal whether they receive foreign money or not. We must include the corporates also under the purview of the Lokpal. Today, the media is playing a big role in the society. I insist the inclusion of corporate media under the purview of the Lokpal.

**SHRI RAJU SHETTI:** The Government has introduced a Bill pertaining to Lokpal and Lokayukta which is not fully appropriate to control and eradicate corruption completely. I request the House to bring forth a strong Lokpal Bill so that corruption may be rooted out from the country.

**SHRI SANSUMA KHUNGGUR BWISWMUTHIARY:** I suggest that the Prime Minister should not be brought in the ambit of this Bill. The Prime Minister is the Executive Head of the Indian Government. Let the Government consider the issue of reservation as to which of the committees would be given representation as per this Bill.

**SHRI KIRTI AZAD:** Discussion is going on in the House since morning today on issue of corruption. I am concerned to note that nobody has initiated discussion on the Whistleblower Bill. It is an important Bill. If we are to do away with corruption, this Bill must be taken seriously. We have seen it for last many years how injustice is being done to whistleblowers. The Bill in the present form does not provide any security to whistleblowers.

We have several examples in this regard. In the case of the year 2003, Shri Satyendra Dubey had worked against those involved in the corruption in the NHAI. He was eliminated. Shri Manjunath Shanmugam met the same fate who worked against adulteration in the ONGC oil. There are so many similar cases of local activists. Some of them are the cases of Shashidhar Mishra of Fulwaria village, that of Vitthal Geete, that of RTI activist from Bangalore, Venkatesh, the senior female tribal labour unionist Shamim Modi, the NAREGA activist Shri Kameshwar Yadav. All such people as blew whistle, were murdered in cold blood. If you do not provide proper protection to whistleblowers why would they come forward with their tip-offs? The Bill does provide different penalties for those making false complaints, but it is silent over their protection. The Article 32 of the United Nations Convention Against Corruption held in 2003 has provided protection of witnesses, experts and victims in cases of corruption. It has clearly said that the whistleblowers and their families, if necessary, should be rehabilitated. The Law Commission also has stated so. Take the example of the United States of America. There the identity of the whistleblower is completely changed. He and his family are fully rehabilitated. But we do not have any such facilities here. One cannot register complaint



anonymously. The Bill provides that if somebody declines to reveal his name before the head of the Department, his case won't be taken up. There are many other provisions in the Bill but nothing has been said on mal-administration. The commonwealth Games 2010 is the burning example in this regard. Delay was made on preparation of infrastructure, the general public suffered huge loss due to it. But nothing has been said in the Bill on mal-administration. The issue of mal-administration must be covered in this Bill.

**SHRI J.M. AARON RASHID:** This is a much-awaited Bill which provides for the establishment of the body of Lokpal for the Union and Lokayukta for States to inquire into allegations of corruption against certain public functionaries. Times have been changing and so are the notions about the mechanism to be set up. Along with the change in the complexion of successive Lok Sabhas, the draft Bills were also taking different shapes giving rise to differences of opinion and thereby enormous delay till date. Hence, it has resulted in a long wait. Now, that long wait is being hijacked by those impatient revolutionaries who want to steal the name for themselves without a long march. My personal view is that hon. Prime Minister should be kept out of the purview of Lokpal. He should not be included in the Lokpal. But he himself offered for that. Many top secret agencies, top secret military services are there under his purview. So, the hon. Prime Minister should be excluded from the jurisdiction of the Lokpal. As the post of Prime Minister is unique and he heads the Executive arm of the Government provided for in our Constitution, we must take care to see that the office of the Prime Minister is not denigrated wantonly by mischievous elements by way or misusing the provisions of this Bill. Care and caution must be balanced in our legislation. This is one reason why even when many political parties opposed the inclusion of Prime Minister in this Lokpal, congress has vowed to include the Prime Minister. We cannot be skeptic entirely and build any institution based on the premises that all are corrupt and no one is free from corruption. We must repose faith in certain given institutions and offices. If this democratic spirit is missing then people will be impatient and become irreverent. This Government is the one that has given that eminent status to Shri Anna Hazare. Parliament is supreme and our Prime Minister is supreme. Our Prime Minister was the first senior leader to have accorded a status to his team. Even when their utterances and behaviour at times borders on uncivil manners, we still recognize them as Civil Society.

**SHRI SHAILENDRA KUMAR:** There are a number of shortcomings in this Bill. All the parties and Members, except the ruling front, gave their dissent notes in the Standing Committee. If their dissenting notes are not considered upon, this Bill will prove totally unconstitutional. As such, this

Bill should be again referred to the Standing Committee. We are with the Government if it considers this issue; otherwise we oppose it.

**THE MINISTER OF FINANCE (SHRI PRANAB MUKHERJEE)** replying, said: We have had dialogue with Anna Hazare and the Civil Society. On 31 May, 2011, I wrote as Chairman of the Joint Drafting Committee to 25 Chief Ministers and major political parties. We received their responses. We received the mandate from the All-Party meeting that we should bring the legislation. Then again, we called the meeting of all political parties on 3 July, 2011. There the mandate we received was that we should bring the Bill. I do not find anything wrong in entering into a dialogue with the representatives of the Civil Society. I do not find anything wrong in joining their *dharna manch*, but at the same time I cannot claim exclusivity that only we should do it and nobody else should do it. The hon. Prime Minister from the ramparts of the Red Fort appealed to Shri Anna Hazare that the Parliament was seized of the matter and the Government was trying to work out something and that he should not go for fasting. But it was not listened to. Again, agitation started. There were three demands. The demands were, firstly, to bring the Lokpal and the Lokayukta together; secondly, to have a Citizens' Charter and thirdly to bring lower bureaucracy under the purview of the Lokpal. We took an unprecedented step just to accommodate the sentiments of the representatives of the Civil Society that we requested the hon. Speaker of the Lok Sabha and the Chairman of the Rajya Sabha that the entire proceedings of that day's debate of both the Houses be forwarded to the Standing Committee for their perusal. We discussed all the ten important items. We have incorporated the suggestions coming from various sections including the suggestions given by the Civil Society in our interactions in the Joint Drafting Committee. Considering the recommendations of the Standing Committee, we received the suggestions and formulated the Bill. The salient features of the Bill are as follows. There shall be a single legislation for setting up the institution of Lokpal for the Union and the Lokayuktas for the States and they shall be given constitutional status. Lokpal will consist of a Chairperson and a maximum of eight members of which 50 per cent shall be Judicial Members. Selection Committee for selection of the Chairperson and members of the Lokpal shall consist of the Prime Minister, the Speaker of Lok Sabha, the Leader of the Opposition in the Lok Sabha, the Chief Justice of India or a sitting Supreme Court judge nominated by the Chief Justice of India, eminent jurist to be nominated by the President of India. The Prime Minister is proposed to be brought under the purview of the Lokpal. It is being provided that the Lokpal may not hold any inquiry against the Prime Minister if the subjects are related to, which may affect international relations, external and internal security of the country, maintenance of public order, atomic energy and space. It is also now proposed that all

Government employees, starting from Group A to Group D will be within the purview of the Lokpal. In this country, if democracy has survived it is because of the strength of the institution. We have vibrant Civil Society, media, independent judiciary, independent election machinery, independent watch-dog of Government expenditure, in the form of the CAG, and vibrant Parliament. These institutions have strengthened the democratic structure. When some representatives of the Civil Society were making an agitation, the hon. Prime Minister in his wisdom thought it necessary that we should rope in other views to get reflected in our decision making. He could have taken the position. The law-making is the job of the Department concerned. Let the Department ponder over it. Let it be sent to the relevant Standing Committee. But we went out of the normal convention and out of the normal practice that let us accommodate because it is a country of 120 crore plus people. That is why, he appointed as many as five senior Ministers to enter into dialogue with them. The Government is not insensitive to the suggestions made by the hon. Members. The Government is not insensitive even to the demand coming from outside. We are considering them. But we cannot allow the system to be destroyed. I may bring the Bill but majority of you have to decide – whether you will accept it or you will not accept it. We are bringing it for the consideration of the House. Judge it. I will appeal to the hon. Members who have moved a large number of amendments not to press for their amendments because the Government is to bring 10 amendments. Let us pass this Bill because the people are waiting for us.

**(I) LOKPAL AND LOKAYUKTAS BILL, 2011**

*The Bill, as amended, was passed*

**(II) CONSTITUTION (ONE HUNDRED AND SIXTEENTH AMENDMENT) BILL, 2011**

*(Insertion of new part XIV B)*

*Since all the Clauses of the Bill were negatived, the Motion for passing the Bill became infructuous. Accordingly, the motion for passing the Bill was not moved.*

**(III) PUBLIC INTEREST DISCLOSURE AND PROTECTION TO PERSONS MAKING THE DISCLOSURE BILL, 2010**

*The Bill, as amended, was passed.*

## **Annexure-VI**

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**The Lokpal and Lokayuktas Bill, 2011**  
(As passed by the Lok Sabha on 27 December 2011)

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AS PASSED BY LOK SABHA  
ON 27TH DECEMBER, 2011

**Bill No. 134-C of 2011**

## THE LOKPAL AND LOKAYUKTAS BILL, 2011

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### ARRANGEMENT OF CLAUSES

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#### PART I PRELIMINARY

#### CLAUSES

1. Short title, extent, application and commencement.

#### PART II LOKPAL FOR THE UNION

##### CHAPTER I DEFINITIONS

2. Definitions.

##### CHAPTER II ESTABLISHMENT OF LOKPAL

3. Establishment of Lokpal.
4. Appointment of Chairperson and Members on recommendations of Selection Committee.
5. Filling of vacancies of Chairperson or Members.
6. Term of office of Chairperson and Members.
7. Salary, allowances and other conditions of service of Chairperson and Members.
8. Restriction on employment by Chairperson and Members after ceasing to hold office.
9. Member to act as Chairperson or to discharge his functions in certain circumstances.
10. Secretary, other officers and staff of Lokpal.

## CLAUSES

## CHAPTER III

## INQUIRY WING

11. Inquiry Wing.

## CHAPTER IV

## PROSECUTION WING

12. Prosecution Wing.

## CHAPTER V

## EXPENSES OF LOKPAL TO BE CHARGED ON CONSOLIDATED FUND OF INDIA

13. Expenses of Lokpal to be charged on Consolidated Fund of India.

## CHAPTER VI

## JURISDICTION IN RESPECT OF INQUIRY

14. Jurisdiction of Lokpal to include Prime Minister, Ministers, Members of Parliament, Groups A, B, C and D officers and officials of Central Government.
15. Matters pending before any court or committee or authority for inquiry not to be affected.
16. Constitution of benches of Lokpal.
17. Distribution of business amongst benches.
18. Power of Chairperson to transfer cases.
19. Decision to be by majority.

## CHAPTER VII

## PROCEDURE IN RESPECT OF PRELIMINARY INQUIRY AND INVESTIGATION

20. Provisions relating to complaints and preliminary inquiry and investigation.
21. Persons likely to be prejudicially affected to be heard.
22. Lokpal may require any public servant or any other person to furnish information, etc.
23. Previous sanction not necessary for investigation and initiating prosecution by Lokpal in certain cases.
24. Action on investigation against public servant being Prime Minister, Ministers or Members of Parliament.

## CLAUSES

## CHAPTER VIII

## POWERS OF LOKPAL

25. Supervisory powers of Lokpal.
26. Search and seizure.
27. Lokpal to have powers of civil court in certain cases.
28. Power of Lokpal to utilise services of officers of Central or State Government.
29. Provisional attachment of assets.
30. Confirmation of attachment of assets.
31. Confiscation of assets, proceeds, receipts and benefits arisen or procured by means of corruption in special circumstances.
32. Power of Lokpal to recommend transfer or suspension of public servant connected with allegation of corruption.
33. Power of Lokpal to give directions to prevent destruction of records during preliminary inquiry.
34. Power to delegate.

## CHAPTER IX

## SPECIAL COURTS

35. Special Courts to be constituted by Central Government.
36. Letter of request to a contracting State in certain cases.

## CHAPTER X

## COMPLAINTS AGAINST CHAIRPERSON, MEMBERS AND OFFICIALS OF LOKPAL

37. Removal and suspension of Chairperson and Members of Lokpal.
38. Complaints against officials of Lokpal.

## CHAPTER XI

## ASSESSMENT OF LOSS AND RECOVERY THEREOF BY SPECIAL COURT

39. Assessment of loss and recovery thereof by Special Court.

## CHAPTER XII

## FINANCE, ACCOUNTS AND AUDIT

40. Budget.
41. Grants by Central Government.
42. Annual statement of accounts.
43. Furnishing of returns, etc., to Central Government.



## CLAUSES

## CHAPTER XIII

## DECLARATION OF ASSETS

- 44. Declaration of assets.
- 45. Presumption as to acquisition of assets by corrupt means in certain cases.

## CHAPTER XIV

## OFFENCES AND PENALTIES

- 46. Prosecution for false complaint and payment of compensation, etc., to public servant.
- 47. False complaint made by society or association of persons or trust.

## CHAPTER XV

## MISCELLANEOUS

- 48. Reports of Lokpal.
- 49. Lokpal to function as appellate authority for appeals arising out of any other law for the time being in force.
- 50. Protection of action taken in good faith by any public servant.
- 51. Protection of action taken in good faith by others.
- 52. Members, officers and employees of Lokpal to be public servants.
- 53. Limitation to apply in certain cases.
- 54. Bar of Jurisdiction.
- 55. Legal assistance.
- 56. Act to have overriding effect.
- 57. Provisions of this Act to be in addition of other laws.
- 58. Amendment of certain enactments.
- 59. Power to make rules.
- 60. Power of Lokpal to make regulations.
- 61. Laying of rules and regulations.
- 62. Power to remove difficulties.

## PART III

## LOKAYUKTA FOR A STATE

## CHAPTER I

## DEFINITIONS

- 63. Definitions.

## CLAUSES

## CHAPTER II

## ESTABLISHMENT OF LOKAYUKTA

64. Establishment of Lokayukta.
65. Appointment of Chairperson and Members on recommendation of Selection Committee.
66. Filling of vacancies of Chairperson or Members.
67. Term of office of Chairperson and Members.
68. Salary, allowances and other conditions of service of Chairperson and Members.
69. Restriction on employment by Chairperson and Members after ceasing to hold office.
70. Member to act as Chairperson or to discharge his functions in certain circumstances.
71. Secretary, other officers and staff of Lokayukta.

## CHAPTER III

## INQUIRY WING

72. Inquiry Wing.

## CHAPTER IV

## PROSECUTION WING

73. Appointment of Director of Prosecution.

## CHAPTER V

## EXPENSES OF LOKAYUKTA TO BE CHARGED ON CONSOLIDATED FUND OF STATE

74. Expenses of Lokayukta to be charged on Consolidated Fund of State.

## CHAPTER VI

## JURISDICTION IN RESPECT OF INQUIRY

75. Jurisdiction of Lokayukta to include Chief Minister, Ministers, Members of Legislatures, officers and employees of State Government.
76. Matters pending before any court or committee or authority for inquiry before Lokayukta not to be affected.
77. Constitution of benches of Lokayukta.
78. Distribution of business amongst benches.

## CLAUSES

- 79. Power of Chairperson to transfer cases.
- 80. Decision to be by majority.

## CHAPTER VII

## PROCEDURE IN RESPECT OF PRELIMINARY INQUIRY AND INVESTIGATION

- 81. Provisions relating to complaints and preliminary inquiry and investigation.
- 82. Persons likely to be prejudicially affected to be heard.
- 83. Lokayukta may require any public servant or any other person to furnish information, etc.
- 84. Previous sanction not necessary for investigation and initiating prosecution by Lokayukta in certain cases.
- 85. Action on inquiry against public servant being Chief Minister, Ministers or Members of State Legislature.

## CHAPTER VIII

## POWERS OF LOKAYUKTA

- 86. Supervisory powers of Lokayukta.
- 87. Search and seizure.
- 88. Lokayukta to have powers of civil court in certain cases.
- 89. Power of Lokayukta to utilise services of officers of State Government.
- 90. Provisional attachment of assets.
- 91. Confirmation of attachment of assets.
- 92. Confiscation of assets, proceeds, receipts and benefits arisen or procured by means of corruption in special circumstances.
- 93. Power of Lokayukta to recommend transfer or suspension of public servant connected with allegation of corruption.
- 94. Power of Lokayukta to give directions to prevent destruction of records during preliminary inquiry.
- 95. Lokayukta to function as appellate authority for appeals arising out of any other law.
- 96. Power to delegate.
- 97. Application of certain provisions relating to Lokpal to apply to Lokayukta.

## THE SCHEDULE

AS PASSED BY LOK SABHA  
ON 27TH DECEMBER, 2011

**Bill No. 134-C of 2011**

## THE LOKPAL AND LOKAYUKTAS BILL, 2011

A

BILL

*to provide for the establishment of a body of Lokpal for the Union and Lokayukta for States to inquire into allegations of corruption against certain public functionaries and for matters connected therewith or incidental thereto.*

WHEREAS the Constitution of India established a Democratic Republic to ensure justice for all;

AND WHEREAS India has ratified the United Nations Convention Against Corruption;

AND WHEREAS the Government's commitment to clean and responsive governance has to be reflected in effective bodies to contain and punish acts of corruption;

NOW, THEREFORE, it is expedient to enact a law, for more effective implementation of the said Convention and to provide for prompt and fair investigation and prosecution in cases of corruption.

BE it enacted by Parliament in the Sixty-second Year of the Republic of India as follows:—

### PART I

#### PRELIMINARY

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|---|--|
| 1. (1) This Act may be called the Lokpal and Lokayuktas Act, 2011.                              | Short title, extent, application and commencement. |
| (2) It extends to the whole of India.   |  |
| (3) It shall apply to public servants in and outside India.                                     |  |
| (4) It shall come into force on such date as the Central Government may, by notification in the |  |

Official Gazette, appoint; and different dates may be appointed for different States and for different provisions of this Act, and any reference in any provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision:

Provided that the provisions of this Act shall be applicable to a State which has given its prior consent to the application of this Act.

## PART II

### LOKPAL FOR THE UNION

#### CHAPTER I

##### DEFINITIONS

Definitions.

2. (1) In this Act, unless the context otherwise requires,—

- (a) “bench” means a bench of the Lokpal;
- (b) “Chairperson” means the Chairperson of the Lokpal;
- (c) “competent authority”, in relation to—
  - (i) the Prime Minister, means the House of the People;
  - (ii) a Member of the Council of Ministers, means the Prime Minister;
  - (iii) a Member of Parliament other than a Minister, means—
    - (A) in the case of a Member of the Council of States, the Chairman of the Council; and
    - (B) in the case of a Member of the House of the People, the Speaker of the House;
  - (iv) an officer in the Ministry or Department of the Central Government, means the Minister-in-charge of the Ministry or Department under which the officer is serving;
  - (v) a chairperson or members of any body or Board or corporation or authority or company or society or autonomous body

(by whatever name called) established or constituted under any Act of Parliament or wholly or partly financed by the Central Government or controlled by it, means the Minister-in-charge of the administrative Ministry of such body or Board or corporation or authority or company or society or autonomous body;

(vi) an officer of any body or Board or corporation or authority or company or society or autonomous body (by whatever name called) established or constituted under any Act of Parliament or wholly or partly financed by the Central Government or controlled by it, means the head of such body or Board or corporation or authority or company or society or autonomous body;

(vii) in any other case not falling under sub-clauses (i) to (vi) above, means such Department or authority as the Central Government may, by notification, specify:

Provided that if any person referred to in sub-clause (v) or sub-clause (vi) is also a Member of Parliament, then, the competent authority shall be—

(A) in case such member is a Member of the Council of States, the Chairman of the Council; and

(B) in case such member is a Member of the House of the People, the Speaker of the House.

(d) “Central Vigilance Commission” means the Central Vigilance Commission constituted under sub-section (1) of Section 3 of the Central Vigilance Commission Act, 2003;

45 of 2003

(e) “complaint” means a complaint, made in such form as may be prescribed, alleging that a public servant has committed an offence punishable under the Prevention of Corruption Act, 1988;

49 of 1988

(f) “Delhi Special Police Establishment” means the Delhi Special Police Establishment constituted under sub-section (1) of Section 2 of the Delhi Special Police Establishment Act, 1946; 25 of 1946

(g) “investigation” means an investigation as defined under clause (h) of Section 2 of the Code of Criminal Procedure, 1973; 2 of 1974

(h) “Judicial Member” means a Judicial Member of the Lokpal;

(i) “Lokpal” means the body established under Section 3;

(j) “Member” means a Member of the Lokpal;

(k) “Minister” means a Union Minister but does not include the Prime Minister;

(l) “notification” means notification published in the Official Gazette and the expression “notify” shall be construed accordingly;

(m) “preliminary inquiry” means an inquiry conducted under this Act;

(n) “prescribed” means prescribed by rules made under this Act;

(o) “public servant” means a person referred to in Clauses (a) to (h) of sub-section (1) of Section 14 but does not include a public servant in respect of whom the jurisdiction is exercisable by any court or other authority under the Army Act, 1950, the Air Force Act, 1950, the Navy Act, 1957 and the Coast Guard Act, 1978 or the procedure is applicable to such public servant under those Acts; 45 of 1950  
46 of 1950  
62 of 1957  
30 of 1978

(p) “regulations” means regulations made under this Act;

(q) “rules” means rules made under this Act;

(r) “Schedule” means a Schedule appended to this Act;

49 of 1988 (s) "Special Court" means the court of a Special Judge appointed under sub-section (1) of Section 3 of the Prevention of Corruption Act, 1988.

49 of 1988 (2) The words and expressions used herein and not defined in this Act but defined in the Prevention of Corruption Act, 1988, shall have the meanings respectively assigned to them in that Act.

(3) Any reference in this Act to any other Act or provision thereof which is not in force in any area to which this Act applies shall be construed to have a reference to the corresponding Act or provision thereof in force in such area.

## CHAPTER II

### ESTABLISHMENT OF LOKPAL

3. (1) On and from the commencement of this Act, there shall be established, for the purpose of this Act, a body to be called the "Lokpal".

Establishment of Lokpal.

(2) The Lokpal shall consist of—

(a) a Chairperson, who is or has been a Chief Justice of India or is or has been a Judge of the Supreme Court or an eminent person who fulfils the eligibility specified in Clause (b) of sub-section (3); and

(b) such number of Members, not exceeding eight out of whom fifty per cent shall be Judicial Members:

Provided that not less than fifty per cent of the Members of the Lokpal shall be from amongst the persons belonging to the Scheduled Castes, the Scheduled Tribes, Other Backward Classes, Minorities and women.

(3) A person shall be eligible to be appointed,—

(a) as a Judicial Member if he is or has been a Judge of the Supreme Court or is or has been a Chief Justice of a High Court;

(b) as a Member other than a Judicial Member, if he is a person of impeccable integrity and outstanding ability having special knowledge



and expertise of not less than twenty-five years in the matters relating to anti-corruption policy, public administration, vigilance, finance including insurance and banking, law and management.

(4) The Chairperson or a Member shall not be—

(i) a Member of Parliament or a Member of the Legislature of any State or Union territory;

(ii) a person convicted of any offence involving moral turpitude;

(iii) a person of less than forty-five years of age, on the date of assuming office as the Chairperson or Member, as the case may be;

(iv) a Member of any Panchayat or Municipality;

(v) a person who has been removed or dismissed from the service of the Union or a State,

and shall not hold any office of trust or profit (other than his office as the Chairperson or a Member) or be connected with any political party or carry on any business or practise any profession and, accordingly, before he enters upon his office, a person appointed as the Chairperson or a Member, as the case may be, shall, if—

(a) he holds any office of trust or profit, resign from such office; or

(b) he is carrying on any business, sever his connection with the conduct and management of such business; or

(c) he is practising any profession, cease to practise such profession.

Appointment  
of  
Chairperson  
and  
Members on  
recommend-  
ations of  
Selection  
Committee.

4. (1) The Chairperson and Members shall be appointed by the President after obtaining the recommendations of a Selection Committee consisting of—

(a) the Prime Minister—Chairperson;

(b) the Speaker of the House of the People—Member;

(c) the Leader of Opposition in the House of the People—Member;

(d) the Chief Justice of India or a Judge of the Supreme Court nominated by him—Member;

(e) one eminent jurist nominated by the President—Member.

(2) No appointment of a Chairperson or a Member shall be invalid merely by reason of any vacancy in the Selection Committee.

(3) The Selection Committee shall for the purposes of selecting the Chairperson and Members of the Lokpal and for preparing a panel of persons to be considered for appointment as such, constitute a Search Committee consisting of at least seven persons of standing and having special knowledge and expertise in the matters relating to anti-corruption policy, public administration, vigilance, policy making, finance including insurance and banking, law and management or in any other matter which, in the opinion of the Selection Committee, may be useful in making the selection of the Chairperson and Members of the Lokpal:

Provided that not less than fifty per cent of the members of the Search Committee shall be from amongst the persons belonging to the Scheduled Castes, the Scheduled Tribes, Other Backward Classes, Minorities and women:

Provided further that the Selection Committee may also consider any person other than the persons recommended by the Search Committee.

(4) The Selection Committee shall regulate its own procedure in a transparent manner for selecting the Chairperson and Members of the Lokpal.

(5) The term of the Search Committee referred to in sub-section (3), the fees and allowances payable to its members and the manner of selection of panel of names shall be such as may be prescribed.

Filling of  
vacancies of  
Chairperson  
or Members.

5. The President shall take or cause to be taken all necessary steps for the appointment of a new Chairperson and Members at least three months before the expiry of the term of the Chairperson or Member, as the case may be, in accordance with the procedure laid down in this Act.

Term of  
office of  
Chairperson  
and  
Members.

6. The Chairperson and every Member shall, on the recommendations of the Selection Committee, be appointed by the President by warrant under his hand and seal and hold office as such for a term of five years from the date on which he enters upon his office or until he attains the age of seventy years, whichever is earlier:

Provided that he may—

(a) by writing under his hand addressed to the President, resign his office; or

(b) be removed from his office in the manner provided in Section 37.

Salary,  
allowances  
and other  
conditions  
of service  
of  
Chairperson  
and  
Members.

7. The salary, allowances and other conditions of service of—

(i) the Chairperson shall be the same as those of the Chief Justice of India;

(ii) other Members shall be the same as those of a Judge of the Supreme Court:

Provided that if the Chairperson or a Member is, at the time of his appointment, in receipt of pension (other than disability pension) in respect of any previous service under the Government of India or under the Government of a State, his salary in respect of service as the Chairperson or, as the case may be, as a Member, be reduced—

(a) by the amount of that pension; and

(b) if he has, before such appointment, received, in lieu of a portion of the pension due to him in respect of such previous service, the commuted value thereof, by the amount of that portion of the pension:

Provided further that the salary, allowances and pension payable to, and other conditions of service of, the Chairperson or a Member shall not be varied to his disadvantage after his appointment.

8. (1) On ceasing to hold office, the Chairperson and every Member shall be ineligible for—

(i) reappointment as the Chairperson or a Member of the Lokpal;

(ii) any diplomatic assignment, appointment as administrator of a Union territory and such other assignment or appointment which is required by law to be made by the President by warrant under his hand and seal;

(iii) further employment to any other office of profit under the Government of India or the Government of a State;

(iv) contesting any election of President or Vice-President or Member of either House of Parliament or Member of either House of a State Legislature or Municipality or Panchayat within a period of five years from the date of relinquishing the post.

(2) Notwithstanding anything contained in sub-section (1), a Member shall be eligible to be appointed as a Chairperson, if his total tenure as Member and Chairperson does not exceed five years.

*Explanation.*—For the purposes of this section, it is hereby clarified that where the Member is appointed as the Chairperson, his term of office shall not be more than five years in aggregate as the Member and the Chairperson.

9. (1) In the event of occurrence of any vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the President may, by notification, authorise the senior-most Member to act as the Chairperson until the appointment of a new Chairperson to fill such vacancy.

Restriction on employment by Chairperson and Members after ceasing to hold office.

Member to act as Chairperson or to discharge his functions in certain circumstances.

(2) When the Chairperson is unable to discharge his functions owing to absence on leave or otherwise, the senior-most Member available, as the President may, by notification, authorise in this behalf, shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties.

Secretary,  
other  
officers and  
staff of  
Lokpal.

**10. (1) There shall be a Secretary to the Lokpal in the rank of Secretary to Government of India, who shall be appointed by the Chairperson from a panel of names sent by the Central Government.**

(2) There shall be a Director of Inquiry and a Director of Prosecution not below the rank of Additional Secretary to the Government of India or equivalent, who shall be appointed by the Chairperson from a panel of names sent by the Central Government.

(3) The appointment of officers and other staff of the Lokpal shall be made by the Chairperson or such Member or officer of Lokpal as the Chairperson may direct:

Provided that the President may by rule require that the appointment in respect of any post or posts as may be specified in the rule, shall be made after consultation with the Union Public Service Commission.

(4) Subject to the provisions of any law made by Parliament, the conditions of service of Secretary and other officers and staff of the Lokpal shall be such as may be specified by regulations made by the Lokpal for the purpose:

Provided that the regulations made under this sub-section shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the President.

### CHAPTER III

#### INQUIRY WING

Inquiry  
Wing.

**11. (1) Notwithstanding anything contained in any law for the time being in force, the Lokpal shall constitute an Inquiry Wing headed by the**

49 of 1988      **Director of Inquiry for the purpose of conducting preliminary inquiry into any offence alleged to have been committed by a public servant punishable under the Prevention of Corruption Act, 1988:**

**Provided that till such time the Inquiry Wing is constituted by the Lokpal, the Central Government shall make available such number of officers and other staff from its Ministries or Departments, as may be required by the Lokpal, for conducting preliminary inquiries under this Act.**

(2) For the purposes of assisting the Lokpal in conducting a preliminary inquiry under this Act, the officers of the Inquiry Wing not below the rank of the Under Secretary to the Government of India, shall have the same powers as are conferred upon the Inquiry Wing of the Lokpal under Section 27.

#### CHAPTER IV

##### PROSECUTION WING

**12. (1) The Lokpal shall, by notification, constitute a Prosecution Wing headed by the Director of Prosecution for the purpose of prosecution of public servants in relation to any complaint by the Lokpal under this Act:**

Prosecution Wing.

**Provided that till such time the Prosecution Wing is constituted by the Lokpal, the Central Government shall make available such number of officers and other staff from its Ministries or Departments, as may be required by the Lokpal, for conducting prosecution under this Act.**

49 of 1988      (2) The Director of Prosecution shall, after having been so directed by the Lokpal, file a case in accordance with the findings of investigation report, before the Special Court and take all necessary steps in respect of the prosecution of public servants in relation to any offence punishable under the Prevention of Corruption Act, 1988.

2 of 1974      (3) The case under sub-section (2), shall be deemed to be a report, filed on completion of investigation, referred to in section 173 of the Code of Criminal Procedure, 1973.

## CHAPTER V

EXPENSES OF LOKPAL TO BE CHARGED ON CONSOLIDATED  
FUND OF INDIA

Expenses of Lokpal to be charged on Consolidated Fund of India.

**13. The administrative expenses of the Lokpal, including all salaries, allowances and pensions payable to or in respect of the Chairperson, Members or Secretary or other officers or staff of the Lokpal, shall be charged upon the Consolidated Fund of India and any fees or other moneys taken by the Lokpal shall form part of that Fund.**

## CHAPTER VI

## JURISDICTION IN RESPECT OF INQUIRY

Jurisdiction of Lokpal to include Prime Minister, Ministers, Members of Parliament, Groups A, B, C and D officers and officials of Central Government.

**14. (1) Subject to the other provisions of this Act, the Lokpal shall inquire or cause an inquiry to be conducted into any matter involved in, or arising from, or connected with, any allegation of corruption made in a complaint in respect of the following, namely:—**

(a) any person who is or has been a Prime Minister:

Provided that the Lokpal shall not inquire into any matter involved in, or arising from, or connected with, any such allegation of corruption against the Prime Minister,—

(i) in so far as it relates to international relations, external and internal security, public order, atomic energy and space;

(ii) unless a full bench of the Lokpal consisting of its Chairperson and all Members considers the initiation of inquiry and at least two-thirds of its Members approves of such inquiry:

Provided further that any such inquiry shall be held *in camera* and if the Lokpal comes to the conclusion that the complaint deserves to be dismissed, the records of the inquiry shall not be published or made available to anyone;

(b) any person who is or has been a Minister of the Union;

(c) any person who is or has been a Member of either House of Parliament;

49 of 1988 (d) any Group 'A' or Group 'B' officer or equivalent or above, from amongst the public servants defined in sub-clauses (i) and (ii) of Clause (c) of Section 2 of the Prevention of Corruption Act, 1988 when serving or who has served, in connection with the affairs of the Union;

49 of 1988 (e) any Group 'C' or Group 'D' official or equivalent, from amongst the public servants defined in sub-clauses (i) and (ii) of Clause (c) of Section 2 of the Prevention of Corruption Act, 1988 when serving or who has served in connection with the affairs of the Union subject to the provision of sub-section (1) of Section 20;

(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 the 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;



(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 or aided by the Government and the annual income of which exceeds such amount as the Central Government may, by notification, specify;

(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 the public and the annual income of which exceeds such amount as the Central Government may, by notification-specify or 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.

42 of 2010

*Explanation.*—For the purpose of Clauses (f) and (g), it is hereby clarified that any entity or institution, by whatever name called, corporate, society, trust, association of persons, partnership, sole proprietorship, limited liability partnership (whether registered under any law for the time being in force or not), shall be the entities covered in those clauses:

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

49 of 1988

(2) Notwithstanding anything contained in sub-section (1), the Lokpal shall not inquire into any matter involved in, or arising from, or connected with, any such allegation of corruption against any Member of either House of Parliament in respect of anything said or a vote given by him in Parliament

or any committee thereof covered under the provisions contained in Clause (2) of Article 105 of the Constitution.

49 of 1988 (3) The Lokpal may inquire into any act or conduct of any person other than those referred to in sub-section (1), if such person is involved in the act of abetting, bribe giving or bribe taking or conspiracy relating to any allegation of corruption under the Prevention of Corruption Act, 1988 against a person referred to in sub-section (1):

Provided that no action under this section shall be taken in case of a person serving in connection with the affairs of a State, without the consent of the State Government.

60 of 1952 (4) No matter in respect of which a complaint has been made to the Lokpal under this Act, shall be referred for inquiry under the Commissions of Inquiry Act, 1952.

*Explanation.*—For the removal of doubts, it is hereby declared that a complaint under this Act shall only relate to a period during which the public servant was holding or serving in that capacity.

49 of 1988 15. In case any matter or proceeding related to allegation of corruption under the Prevention of Corruption Act, 1988 has been pending before any court or committee of either House of Parliament or before any other authority prior to commencement of this Act or prior to commencement of any inquiry after the commencement of this Act, such matter or proceeding shall be continued before such court, committee or authority.

Matters pending before any court or committee or authority for inquiry not to be affected.

16. (1) Subject to the provisions of this Act,—

Constitution of benches of Lokpal.

(a) the jurisdiction of the Lokpal may be exercised by benches thereof;

(b) a bench may be constituted by the Chairperson with two or more Members as the Chairperson may deem fit;

(c) every bench shall ordinarily consist of at least one Judicial Member;

(d) where a bench consists of the Chairperson, such bench shall be presided over by the Chairperson;

(e) where a bench consists of a Judicial Member, and a non-Judicial Member, not being the Chairperson, such bench shall be presided over by the Judicial Member;

(f) the benches of the Lokpal shall ordinarily sit at New Delhi and at such other places as the Lokpal may, by regulations, specify.

(2) The Lokpal shall notify the areas in relation to which each bench of the Lokpal may exercise jurisdiction.

(3) Notwithstanding anything contained in sub-section (2), the Chairperson shall have the power to constitute or reconstitute benches from time to time.

(4) If at any stage of the hearing of any case or matter it appears to the Chairperson or a Member that the case or matter is of such nature that it ought to be heard by a bench consisting of three or more Members, the case or matter may be transferred by the Chairperson or, as the case may be, referred to him for transfer, to such bench as the Chairperson may deem fit.

Distribution of business amongst benches.

**17.** Where benches are constituted, the Chairperson may, from time to time, by notification, make provisions as to the distribution of the business of the Lokpal amongst the benches and also provide for the matters which may be dealt with by each bench.

Power of Chairperson to transfer cases.

**18.** On an application for transfer made by the complainant or the public servant, the Chairperson, after giving an opportunity of being heard to the complainant or the public servant, as the case may be, may transfer any case pending before one bench for disposal to any other bench.

19. If the Members of a bench consisting of an even number of Members differ in opinion on any point, they shall state the point or points on which they differ, and make a reference to the Chairperson who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other Members of the Lokpal and such point or points shall be decided according to the opinion of the majority of the Members of the Lokpal who have heard the case, including those who first heard it.

Decision to be by majority.

## CHAPTER VII

### PROCEDURE IN RESPECT OF PRELIMINARY INQUIRY AND INVESTIGATION

20. (1) The Lokpal shall, on receipt of a complaint first decide whether to proceed in the matter or close the same and if the Lokpal decides to proceed further, it shall order the preliminary inquiry against any public servant by its Inquiry Wing or any agency (including the Delhi Special Police Establishment) to ascertain whether there exists a *prima facie* case for proceeding in the matter:

Provisions relating to complaints and preliminary inquiry and investigation.

Provided that the Lokpal shall if it has decided to proceed with the preliminary inquiry, by a general or special order, refer the complaints or a category of complaints or a complaint received by it in respect of public servants belonging to Group A or Group B or Group C or Group D to the Central Vigilance Commission constituted under sub-section (1) of Section 3 of the Central Vigilance Commission Act, 2003:

45 of 2003

Provided further that the Central Vigilance Commission in respect of complaints referred to it under the first proviso, after making preliminary inquiry in respect of public servants belonging to Group A and Group B, shall submit its report to the Lokpal in accordance with the provisions contained in sub-sections (2) and (4) and in case of public servants belonging to Group C and Group D, the

Commission shall proceed in accordance with the provisions of the Central Vigilance Commission Act, 2003. 45 of 2003

(2) During the preliminary inquiry referred to in sub-section (1), the Inquiry Wing or any agency (including the Delhi Special Police Establishment) shall conduct a preliminary inquiry and on the basis of material, information and documents collected seek the comments on the allegations made in the complaint from the public servant and the competent authority and after obtaining the comments of the concerned public servant and the competent authority, submit, within sixty days from the date of receipt of the reference, a report to the Lokpal.

(3) A bench consisting of not less than three Members of the Lokpal shall consider every report received under sub-section (2) from the Inquiry Wing or any agency (including the Delhi Special Police Establishment), and after giving an opportunity of being heard to the public servant, decide whether there exists a *prima facie* case, and to proceed with one or more of the following actions, namely:—

(a) investigation by any agency or the Delhi Special Police Establishment, as the case may be;

(b) initiation of the departmental proceedings or any other appropriate action against the concerned public servants by the competent authority;

(c) closure of the proceedings against the public servant and to proceed against the complainant under Section 46.

(4) Every preliminary inquiry referred to in sub-section (1) shall ordinarily be completed within a period of ninety days and for reasons to be recorded in writing, within a further period of ninety days from the date of receipt of the complaint.

(5) In case the Lokpal decides to proceed to investigate into the complaint, it shall direct any agency (including the Delhi Special Police

Establishment) to carry out the investigation as expeditiously as possible and complete the investigation within a period of six months from the date of its order and submit the investigation report containing its findings to the Lokpal:

Provided that the Lokpal may extend the said period by a further not exceeding of six months at a time for the reasons to be recorded in writing.

2 of 1974 (6) Notwithstanding anything contained in Section 173 of the Code of Criminal Procedure, 1973, any agency (including the Delhi Special Police Establishment) shall, in respect of cases referred to it by the Lokpal, submit the investigation report to the Lokpal.

(7) A bench consisting of not less than three Members of the Lokpal shall consider every report received by it under sub-section (6) from any agency (including the Delhi Special Police Establishment) and may decide to—

(a) file charge-sheet or closure report before the Special Court against the public servant;

(b) initiate the departmental proceedings or any other appropriate action against the concerned public servant by the competent authority.

(8) The Lokpal may, after taking a decision under sub-section (7) on the filing of the charge-sheet, direct its Prosecution Wing to initiate prosecution in the Special Court in respect of the cases investigated by any agency (including the Delhi Special Police Establishment).

(9) The Lokpal may, during the preliminary inquiry or the investigation, as the case may be, pass appropriate orders for the safe custody of the documents relevant to the preliminary inquiry or, as the case may be, investigation as it deems fit.

(10) The website of the Lokpal shall, from time to time and in such manner as may be specified by regulations, display to the public, the status of number of complaints pending before it or disposed of by it.

(11) The Lokpal may retain the original records and evidences which are likely to be required in the process of preliminary inquiry or investigation or conduct of a case by it or by the Special Court.

(12) Save as otherwise provided, the manner and procedure of conducting a preliminary inquiry or investigation (including such material and documents to be made available to the public servant) under this Act, shall be such as may be specified by regulations.

Persons likely to be prejudicially affected to be heard.

21. If, at any stage of the proceeding, the Lokpal—

(a) considers it necessary to inquire into the conduct of any person other than the accused; or

(b) is of opinion that the reputation of any person other than an accused is likely to be prejudicially affected by the preliminary inquiry,

the Lokpal shall give to that person a reasonable opportunity of being heard in the preliminary inquiry and to produce evidence in his defence, consistent with the principles of natural justice.

Lokpal may require any public servant or any other person to furnish information, etc.

22. Subject to the provisions of this Act, for the purpose of any preliminary inquiry or investigation, the Lokpal or the investigating agency, as the case may be, may require any public servant or any other person who, in its opinion, is able to furnish information or produce documents relevant to such preliminary inquiry or investigation, to furnish any such information or produce any such document.

Previous sanction not necessary for investigation and initiating prosecution by Lokpal in certain cases.

23. (1) No sanction or approval of any authority shall be required by the Lokpal for conducting a preliminary inquiry or an investigation on the direction of the Lokpal, under Section 197 of the Code of Criminal Procedure, 1973 or Section 6A of the Delhi Special Police Establishment Act, 1946 or Section 19 of the Prevention of Corruption Act, 1988, as the case may be, for the purpose of making preliminary inquiry by the Inquiry Wing or any

2 of 1974  
25 of 1946  
49 of 1988

agency (including the Delhi Special Police Establishment) or investigation by any agency (including the Delhi Special Police Establishment) into any complaint against any public servant or for filing of any charge-sheet or closure report on completion of investigation in respect thereof before the Special Court under this Act.

2 of 1974  
49 of 1988 (2) A Special Court may, notwithstanding anything contained in Section 197 of the Code of Criminal Procedure, 1973 or Section 19 of the Prevention of Corruption Act, 1988, on filing of a charge-sheet in accordance with the provisions of sub-section (7) of Section 20, take cognizance of offence committed by any public servant.

(3) Nothing contained in sub-sections (1) and (2) shall apply in respect of the persons holding office in pursuance of the provisions of the Constitution and in respect of which a procedure for removal of such person has been specified therein.

(4) The provisions contained in sub-sections (1), (2) and (3) shall be without prejudice to the generality of the provisions contained in Article 311 and sub-clause (c) of Clause (3) of Article 320 of the Constitution.

49 of 1988 24. Where, after the conclusion of the investigation, the findings of the Lokpal disclose the commission of an offence under the Prevention of Corruption Act, 1988 by a public servant referred to in Clause (a) or Clause (b) or Clause (c) of sub-section (1) of Section 14, the Lokpal may file a case in the Special Court and shall send a copy of the report together with its findings to the competent authority.

Action on investigation against public servant being Prime Minister, Ministers or Members of Parliament.

## CHAPTER VIII

### POWERS OF LOKPAL

25 of 1946 25. (1) The Lokpal shall, notwithstanding anything contained in section 4 of the Delhi Special Police Establishment Act, 1946 and Section 8 of the

Supervisory powers of Lokpal.



Central Vigilance Commission Act, 2003, have the powers of superintendence and direction, over the Delhi Special Police Establishment in respect of the matters referred by the Lokpal for preliminary inquiry or investigation to the Delhi Special Police Establishment under this Act: 45 of 2003

Provided that while exercising powers of superintendence or giving direction under this sub-section, the Lokpal shall not exercise powers in such a manner so as to require any agency (including the Delhi Special Police Establishment) to whom the investigation has been given, to investigate and dispose of any case in a particular manner.

(2) The Central Vigilance Commission shall send a statement, at such interval as the Lokpal may direct, to the Lokpal in respect of action taken on complaints referred to it under the second *proviso* to sub-section (1) of Section 20 and on receipt of such statement, the Lokpal may issue guidelines for effective and expeditious disposal of such cases.

Search and seizure.

**26. (1)** If the Lokpal has reason to believe that any document which, in its opinion, shall be useful for, or relevant to, any investigation under this Act, are secreted in any place, it may authorise any agency (including the Delhi Special Police Establishment) to whom the investigation has been given to search for and to seize such documents.

(2) If the Lokpal is satisfied that any document seized under sub-section (1) may be used as evidence for the purpose of any investigation under this Act and that it shall be necessary to retain the document in its custody or in the custody of such officer as may be authorised, it may so retain or direct such authorised officer to retain such document till the completion of such investigation:

Provided that where any document is required to be returned, the Lokpal or the authorised officer may return the same after retaining copies of such document duly authenticated.

5 of 1908      **27. (1)** Subject to the provisions of this section, for the purpose of any preliminary inquiry, the Inquiry Wing of the Lokpal shall have all the powers of a civil court, under the Code of Civil Procedure, 1908, while trying a suit in respect of the following matters, namely:—

Lokpal to have powers of civil court in certain cases.

(i) summoning and enforcing the attendance of any person and examining him on oath;

(ii) requiring the discovery and production of any document;

(iii) receiving evidence on affidavits;

(iv) requisitioning any public record or copy thereof from any court or office;

(v) issuing commissions for the examination of witnesses or documents:

Provided that such commission, in case of a witness, shall be issued only where the witness, in the opinion of the Lokpal, is not in a position to attend the proceeding before the Lokpal; and

(vi) such other matters as may be prescribed.

45 of 1860      (2) Any proceeding before the Lokpal shall be deemed to be a judicial proceeding within the meaning of Section 193 of the Indian Penal Code.

**28. (1)** The Lokpal may, for the purpose of conducting any preliminary inquiry or investigation, utilise the services of any officer or organisation or investigating agency of the Central Government or any State Government, as the case may be.

Power of Lokpal to utilise services of officers of Central or State Government.

(2) For the purpose of preliminary inquiry or investigating into any matter pertaining to such inquiry or investigation, any officer or organisation or agency whose services are utilised under subsection (1) may, subject to the superintendence and direction of the Lokpal,—

(a) summon and enforce the attendance of any person and examine him;

(b) require the discovery and production of any document; and

(c) requisition any public record or copy thereof from any office.

(3) The officer or organisation or agency whose services are utilised under sub-section (2) shall inquire or, as the case may be, investigate into any matter pertaining to the preliminary inquiry or investigation and submit a report thereon to the Lokpal within such period as may be specified by it in this behalf.

Provisional attachment of assets.

**29. (1)** Where the Lokpal or any officer authorised by it in this behalf, has reason to believe, the reason for such belief to be recorded in writing, on the basis of material in his possession, that—

(a) any person is in possession of any proceeds of corruption;

(b) such person is accused of having committed an offence relating to corruption; and

(c) such proceeds of offence are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of offence,

the Lokpal or the authorised officer may, by order in writing, provisionally attach such property for a period not exceeding ninety days from the date of the order, in the manner provided in the Second Schedule to the Income-tax Act, 1961 and the Lokpal and the officer shall be deemed to be an officer under sub-rule (e) of rule 1 of that Schedule.

43 of 1961

(2) The Lokpal or the officer authorised in this behalf shall, immediately after attachment under sub-section (1), forward a copy of the order, along with the material in his possession, referred to in that sub-section, to the Special Court, in a sealed envelope, in the manner as may be prescribed and such Court may extend the order of attachment and keep such material for such period as the Court may deem fit.

(3) Every order of attachment made under sub-section (1) shall cease to have effect after the expiry of the period specified in that sub-section or after the expiry of the period as directed by the Special Court under sub-section (2).

(4) Nothing in this section shall prevent the person interested in the enjoyment of the immovable property attached under sub-section (1) or sub-section (2), from such enjoyment.

*Explanation.*—For the purposes of this sub-section, “person interested”, in relation to any immovable property, includes all persons claiming or entitled to claim any interest in the property.

30. (1) The Lokpal, when it provisionally attaches any property under sub-section (1) of Section 29 shall, within a period of thirty days of such attachment, direct its Prosecution Wing to file an application stating the facts of such attachment before the Special Court and make a prayer for confirmation of attachment of the property till completion of the proceedings against the public servant in the Special Court.

Confirmation  
of  
attachment  
of assets.

(2) The Special Court may, if it is of the opinion that the property provisionally attached had been acquired through corrupt means, make an order for confirmation of attachment of such property till the completion of the proceedings against the public servant in the Special Court.

(3) If the public servant is subsequently acquitted of the charges framed against him, the property, subject to the orders of the Special Court, shall be restored to the concerned public servant along with benefits from such property as might have accrued during the period of attachment.

(4) If the public servant is subsequently convicted of the charges of corruption, the proceeds relatable to the offence under the Prevention of Corruption Act, 1988 shall be confiscated and vest in the Central Government free from any encumbrance or leasehold interest excluding any debt due to any bank or financial institution.

*Explanation.*—For the purposes of this sub-section, the expressions “bank”, “debt” and “financial institution” shall have the meanings respectively assigned to them in Clauses (d), (g) and (h) of Section 2 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993.

51 of 1993

Confiscation of assets, proceeds, receipts and benefits arisen or procured by means of corruption in special circumstances.

31. (1) Without prejudice to the provisions of Sections 29 and 30, where the Special Court, on the basis of *prima facie* evidence, has reason to believe or is satisfied that the assets, proceeds, receipts and benefits, by whatever name called, have arisen or procured by means of corruption by the public servant, it may authorise the confiscation of such assets, proceeds, receipts and benefits till his acquittal.

(2) Where an order of confiscation made under sub-section (1) is modified or annulled by the High Court or where the public servant is acquitted by the Special Court, the assets, proceeds, receipts and benefits, confiscated under sub-section (1) shall be returned to such public servant, and in case it is not possible for any reason to return the assets, proceeds, receipts and benefits, such public servant shall be paid the price thereof including the money so confiscated with interest at the rate of five per cent per annum thereon calculated from the date of confiscation.

Power of Lokpal to recommend transfer or suspension of public servant connected with allegation of corruption.

32. (1) Where the Lokpal, while making a preliminary inquiry into allegations of corruption, is *prima facie* satisfied, on the basis of evidence available,—

(i) that the continuance of the public servant referred to in Clause (d) or Clause (e) or Clause (f) of sub-section (1) of Section 14 in his post while conducting the preliminary inquiry is likely to affect such preliminary inquiry adversely; or

(ii) such public servant is likely to destroy or in any way tamper with the evidence or influence witnesses,

then, the Lokpal may recommend to the Central Government for transfer or suspension of such public servant from the post held by him till such period as may be specified in the order.

(2) The Central Government shall ordinarily accept the recommendation of the Lokpal made under sub-section (1), except for the reasons to be recorded in writing in a case where it is not feasible to do so for administrative reasons.

33. The Lokpal may, in the discharge of its functions under this Act, issue appropriate directions to a public servant entrusted with the preparation or custody of any document or record—

(a) to protect such document or record from destruction or damage; or

(b) to prevent the public servant from altering or secreting such document or record; or

(c) to prevent the public servant from transferring or alienating any assets allegedly acquired by him through corrupt means.

Power of Lokpal to give directions to prevent destruction of records during preliminary inquiry.

34. The Lokpal may, by general or special order in writing, and subject to such conditions and limitations as may be specified therein, direct that any administrative or financial power conferred on it may also be exercised or discharged by such of its Members or officers or employees as may be specified in the order.

Power to delegate.

## CHAPTER IX

### SPECIAL COURTS

49 of 1988 35. (1) The Central Government shall constitute such number of Special Courts, as recommended by the Lokpal, to hear and decide the cases arising out of the Prevention of Corruption Act, 1988 or under this Act.

Special Courts to be constituted by Central Government.

(2) The Special Courts constituted under sub-section (1) shall ensure completion of each trial within a period of one year from the date of filing of the case in the Court:

Provided that in case the trial cannot be completed within a period of one year, the Special Court shall record reasons therefor and complete the trial within a further period of not more than three months or such further periods not exceeding three months each, for reasons to be recorded in writing before the end of each such three months period, but not exceeding a total period of two years.

Letter of request to a contracting State in certain cases.

**36. (1)** Notwithstanding anything contained in this Act or the Code of Criminal Procedure, 1973 if, in the course of a preliminary inquiry or investigation into an offence or other proceeding under this Act, an application is made to a Special Court by an officer of the Lokpal authorised in this behalf that any evidence is required in connection with the preliminary inquiry or investigation into an offence or proceeding under this Act and he is of the opinion that such evidence may be available in any place in a contracting State, and the Special Court, on being satisfied that such evidence is required in connection with the preliminary inquiry or investigation into an offence or proceeding under this Act, may issue a letter of request to a court or an authority in the contracting State competent to deal with such request to—

2 of 1974

(i) examine the facts and circumstances of the case;

(ii) take such steps as the Special Court may specify in such letter of request; and

(iii) forward all the evidence so taken or collected to the Special Court issuing such letter of request.

(2) The letter of request shall be transmitted in such manner as the Central Government may prescribe in this behalf.

(3) Every statement recorded or document or thing received under sub-section (1) shall be deemed to be evidence collected during the course of the preliminary inquiry or investigation.

## CHAPTER X

COMPLAINTS AGAINST CHAIRPERSON, MEMBERS AND  
OFFICIALS OF LOKPAL

37. (1) The Lokpal shall not inquire into any complaint made against the Chairperson or any Member.

Removal  
and  
suspension  
of  
Chairperson  
and  
Members of  
Lokpal.

(2) Subject to the provisions of sub-section (4), the Chairperson or any Member shall be removed from his office by order of the President on grounds of misbehaviour after the Supreme Court, on a reference being made to it—

(i) by the President; or

(ii) by the President on a petition being signed by at least one hundred Members of Parliament; or

(iii) by the President on receipt of a petition made by a citizen of India and where the President is satisfied that the petition should be referred,

has, on an inquiry held in accordance with the procedure prescribed in that behalf, reported that the Chairperson or such Member, as the case may be, ought to be removed on such ground.

(3) The President may suspend from office the Chairperson or any Member in respect of whom a reference has been made to the Supreme Court under sub-section (2) until the President has passed orders on receipt of the report of the Supreme Court on such reference.

(4) Notwithstanding anything contained in sub-section (2), the President may, by order, remove from the office, the Chairperson or any Member if the Chairperson or such Member, as the case may be,—

(a) is adjudged an insolvent; or

(b) engages, during his term of office, in any paid employment outside the duties of his office; or



(c) is, in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body.

(5) If the Chairperson or any Member is, or becomes, in any way concerned or interested in any contract or agreement made by or on behalf of the Government of India or the Government of a State or participates in any way in the profit thereof or in any benefit or emolument arising therefrom otherwise than as a member and in common with the other members of an incorporated company, he shall, for the purposes of sub-section (2), be deemed to be guilty of misbehaviour.

Complaints  
against  
officials of  
Lokpal.

**38. (1)** Every complaint of allegation or wrongdoing made against any officer or employee or agency (including the Delhi Special Police Establishment), under or associated with the Lokpal for an offence punishable under the Prevention of Corruption Act, 1988 shall be dealt with in accordance with the provisions of this section.

49 of 1988

(2) The Lokpal shall complete the inquiry into the complaint or allegation made within a period of thirty days from the date of its receipt.

(3) While making an inquiry into the complaint against any officer or employee of the Lokpal or agency engaged or associated with the Lokpal, if it is *prima facie* satisfied on the basis of evidence available, that—

(a) continuance of such officer or employee of the Lokpal or agency engaged or associated in his post while conducting the inquiry is likely to affect such inquiry adversely; or

(b) an officer or employee of the Lokpal or agency engaged or associated is likely to destroy or in any way tamper with the evidence or influence witnesses,

then, the Lokpal may, by order, suspend such officer or employee of the Lokpal or divest such agency engaged or associated with the Lokpal of all powers and responsibilities hereto before exercised by it.

49 of 1988 (4) On the completion of the inquiry, if the Lokpal is satisfied that there is *prima facie* evidence of the commission of an offence under the Prevention of Corruption Act, 1988 or of any wrongdoing, it shall, within a period of fifteen days of the completion of such inquiry, order to prosecute such officer or employee of the Lokpal or such officer, employee, agency engaged or associated with the Lokpal and initiate disciplinary proceedings against the official concerned:

Provided that no such order shall be passed without giving such officer or employee of the Lokpal, such officer, employee, agency engaged or associated, a reasonable opportunity of being heard.

#### CHAPTER XI

##### ASSESSMENT OF LOSS AND RECOVERY THEREOF BY SPECIAL COURT

49 of 1988 39. If any public servant is convicted of an offence under the Prevention of Corruption Act, 1988 by the Special Court, notwithstanding and without prejudice to any law for the time being in force, it may make an assessment of loss, if any, caused to the public exchequer on account of the actions or decisions of such public servant not taken in good faith and for which he stands convicted, and may order recovery of such loss, if possible or quantifiable, from such public servant so convicted:

Assessment of loss and recovery thereof by Special Court.

Provided that if the Special Court, for reasons to be recorded in writing, comes to the conclusion that the loss caused was pursuant to a conspiracy with the beneficiary or beneficiaries of actions or decisions of the public servant so convicted, then such loss may, if assessed and quantifiable under this section, also be recovered from such beneficiary or beneficiaries proportionately.

#### CHAPTER XII

##### FINANCE, ACCOUNTS AND AUDIT

40. The Lokpal shall prepare, in such form and at such time in each financial year as may be prescribed, its budget for the next financial year, showing the estimated receipts and expenditure of the Lokpal and forward the same to the Central Government for information.

Budget.

Grants by  
Central  
Government.

41. The Central Government may, after due appropriation made by Parliament by law in this behalf, make to the Lokpal grants of such sums of money as are required to be paid for the salaries and allowances payable to the Chairperson and Members and the administrative expenses, including the salaries and allowances and pension payable to or in respect of officers and other employees of the Lokpal.

Annual  
statement  
of accounts.

42. (1) The Lokpal shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of the Lokpal shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him.

(3) The Comptroller and Auditor-General of India or any person appointed by him in connection with the audit of the accounts of the Lokpal under this Act shall have the same rights, privileges and authority in connection with such audit, as the Comptroller and Auditor-General of India generally has, in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Lokpal.

(4) The accounts of the Lokpal, as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf, together with the audit report thereon, shall be forwarded annually to the Central Government and the Central Government shall cause the same to be laid before each House of Parliament.

Furnishing  
of returns,  
etc., to  
Central  
Government.

43. The Lokpal shall furnish to the Central Government, at such time and in such form and manner as may be prescribed or as the Central Government may request, such returns and statements and such particulars in regard to any matter under the jurisdiction of the Lokpal, as the Central Government may, from time to time, require.

## CHAPTER XIII

## DECLARATION OF ASSETS

44. (1) Every public servant shall make a declaration of his assets and liabilities in the manner as provided by or under this Act. Declaration of assets.

(2) A public servant shall, within a period of thirty days from the date on which he makes and subscribes an oath or affirmation to enter upon his office, furnish to the competent authority the information relating to—

(a) the assets of which he, his spouse and his dependent children are, jointly or severally, owners or beneficiaries;

(b) his liabilities and that of his spouse and his dependent children.

(3) A public servant holding his office as such, at the time of the commencement of this Act, shall furnish information relating to such assets and liabilities, as referred to in sub-section (2), to the competent authority within thirty days of the coming into force of this Act.

(4) Every public servant shall file with the competent authority, on or before the 31st July of every year, an annual return of such assets and liabilities, as referred to in sub-section (2), as on the 31st March of that year.

(5) The information under sub-section (2) or sub-section (3) and annual return under sub-section (4) shall be furnished to the competent authority in such form and in such manner as may be prescribed.

(6) The competent authority in respect of each Ministry or Department shall ensure that all such statements are published on the website of such Ministry or Department by 31st August of that year.

*Explanation.*—For the purposes of this section, “dependent children” means sons and daughters who have no separate means of earning and are wholly dependent on the public servant for their livelihood.

Presumption as to acquisition of assets by corrupt means in certain cases.

**45.** If any public servant wilfully or for reasons which are not justifiable, fails to—

(a) to declare his assets; or

(b) gives misleading information in respect of such assets and is found to be in possession of assets not disclosed or in respect of which misleading information was furnished,

then, such assets shall, unless otherwise proved, be presumed to belong to the public servant and shall be presumed to be assets acquired by corrupt means:

Provided that the competent authority may condone or exempt the public servant from furnishing information in respect of assets not exceeding such minimum value as may be prescribed.

## CHAPTER XIV

### OFFENCES AND PENALTIES

Prosecution for false complaint and payment of compensation, etc., to public servant.

**46. (1)** Notwithstanding anything contained in this Act, whoever makes any false and frivolous or vexatious complaint under this Act shall, on conviction, be punished with imprisonment for a term which may extend to one year and with fine which may extend to one lakh rupees.

(2) No Court, except a Special Court, shall take cognizance of an offence under sub-section (1).

(3) No Special Court shall take cognizance of an offence under sub-section (1) except on a complaint made by a person against whom the false, frivolous or vexatious complaint was made or by an officer authorised by the Lokpal.

(4) The prosecution in relation to an offence under sub-section (1) shall be conducted by the public prosecutor and all expenses connected with such prosecution shall be borne by the Central Government.

(5) In case of conviction of a person [being an individual or society or association of persons or trust (whether registered or not)], for having made

a false complaint under this Act, such person shall be liable to pay compensation to the public servant against whom he made the false complaint in addition to the legal expenses for contesting the case by such public servant, as the Special Court may determine.

(6) Nothing contained in this section shall apply in case of complaints made in good faith.

*Explanation.*—For the purpose of this sub-section, the expression “good faith” shall have the same meaning assigned to it in Section 52 of the Indian Penal Code.

45 of 1860

47. (1) Where any offence under sub-section (1) of Section 46 has been committed by any society or association of persons or trust (whether registered or not), every person who, at the time the offence was committed, was directly in charge of, and was responsible to, the society or association of persons or trust, for the conduct of the business or affairs or activities of the society or association of persons or trust as well as such society or association of persons or trust shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

False complaint made by society or association of persons or trust.

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a society or association of persons or trust (whether registered or not) and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of such society or association of persons or trust, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

## CHAPTER XV

## MISCELLANEOUS

Reports of Lokpal.

**48.** It shall be the duty of the Lokpal to present annually to the President a report on the work done by the Lokpal and on receipt of such report the President shall cause a copy thereof together with a memorandum explaining, in respect of the cases, if any, where the advice of the Lokpal was not accepted, the reason for such non-acceptance to be laid before each House of Parliament.

Lokpal to function as appellate authority for appeals arising out of any other law for the time being in force.

**49.** The Lokpal shall function as the final appellate authority in respect of appeals arising out of any other law for the time being in force providing for delivery of public services and redressal of public grievances by any public authority in cases where the decision contains findings of corruption under the Prevention of Corruption Act, 1988.

49 of 1988

Protection of action taken in good faith by any public servant.

**50.** No suit, prosecution or other legal proceedings under this Act shall lie against any public servant, in respect of anything which is done in good faith or intended to be done in the discharge of his official functions or in exercise of his powers.

Protection of action taken in good faith by others.

**51.** No suit, prosecution or other legal proceedings shall lie against the Lokpal or against any officer, employee, agency or any person, in respect of anything which is done in good faith or intended to be done under this Act or the rules or the regulations made thereunder.

Members, officers and employees of Lokpal to be public servants.

**52.** The Chairperson, Members, officers and other employees of the Lokpal shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Act, to be public servants within the meaning of Section 21 of the Indian Penal Code.

45 of 1860

- 53.** The Lokpal shall not inquire or investigate into any complaint, if the complaint is made after the expiry of a period of seven years from the date on which the offence mentioned in such complaint is alleged to have been committed. Limitation to apply in certain cases.
- 54.** No civil court shall have jurisdiction in respect of any matter which the Lokpal is empowered by or under this Act to determine. Bar of Jurisdiction.
- 55.** The Lokpal shall provide to every person against whom a complaint has been made, before it, under this Act, legal assistance to defend his case before the Lokpal, if such assistance is requested for. Legal assistance.
- 56.** The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument having effect by virtue of any enactment other than this Act. Act to have overriding effect.
- 57.** The provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being in force. Provisions of this Act to be in addition of other laws.
- 58.** The enactments specified in the Schedule shall be amended in the manner specified therein. Amendment of certain enactments.
- 59. (1)** The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act. Power to make rules.
- (2)** In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—
- (a)** the form of complaint referred to in Clause (e) of sub-section (1) of Section 2;
- (b)** the term of the Search Committee, the fee and allowances payable to its members and the manner of selection of panel of names under sub-section (5) of Section 4;



(c) the post or posts in respect of which the appointment shall be made after consultation with the Union Public Service Commission under the proviso to sub-section (3) of Section 10;

(d) other matters for which the Lokpal shall have the powers of a civil court under Clause (vi) of sub-section (1) of Section 27;

(e) the manner of sending the order of attachment along with the material to the Special Court under sub-section (2) of Section 29;

(f) the manner of transmitting the letter of request under sub-section (2) of Section 36;

(g) the form and the time for preparing in each financial year the budget for the next financial year, showing the estimated receipts and expenditure of the Lokpal under Section 40;

(h) the form for maintaining the accounts and other relevant records and the form of annual statement of accounts under sub-section (1) of Section 42;

(i) the form and manner and the time for preparing the returns and statements along with particulars under Section 43;

(j) the form and the time for preparing an annual return giving a summary of its activities during the previous year under sub-section (5) of Section 44;

(k) the form of annual return to be filed by a public servant under sub-section (5) of Section 44;

(l) the minimum value for which the competent authority may condone or exempt a public servant from furnishing information in respect of assets under the proviso to Section 45;

(m) any other matter which is to be or may be prescribed.

**60. (1)** Subject to the provisions of this Act and the rules made thereunder, the Lokpal may, by notification in the Official Gazette, make regulations to carry out the provisions of this Act.

Power of Lokpal to make regulations.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—

(a) the conditions of service of the secretary and other officers and staff of the Lokpal and the matters which in so far as they relate to salaries, allowances, leave or pensions, require the approval of the President under sub-section (4) of Section 10;

(b) the place of sittings of benches of the Lokpal under Clause (f) of sub-section (1) of Section 16;

(c) the manner for displaying on the website of the Lokpal, the status of all complaints pending or disposed of along with records and evidence with reference thereto under sub-section (10) of Section 20;

(d) the manner and procedure of conducting preliminary inquiry or investigation under sub-section (11) of Section 20;

(e) any other matter which is required to be, or may be, specified under this Act.

**61.** Every rule and regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation, or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however,

Laying of rules and regulations.

that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

Power to  
remove  
difficulties.

**62. (1)** If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act, as appear to be necessary for removing the difficulty:

Provided that no such order shall be made under this section after the expiry of a period of two years from the commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

### PART III

#### LOKAYUKTA FOR A STATE

#### CHAPTER I

##### DEFINITIONS

Definitions.

**63. (1)** In this Part unless the context otherwise requires,—

(a) “Bench” means a Bench of the Lokayukta;

(b) “Chairperson” means the Chairperson of the Lokayukta;

(c) “competent authority”, in relation to—

(i) the Chief Minister, means the Legislative Assembly of the State;

(ii) a member of the Council of Ministers, means the Chief Minister;

(iii) a member of State Legislature other than a Minister means—

(A) in the case of a member of the Legislative Council, the Chairman of that Council; and

(B) in the case of a member of the Legislative Assembly, the Speaker of that House;

(iv) an officer in the Ministry or Department of the State Government means the Minister in charge of the Ministry or Department under which such officer is serving;

(v) a chairperson or members of any body, or Board or corporation or authority or company or society or autonomous body (by whatever name called) established or constituted under an Act of Parliament or of a State Legislature or wholly or partly financed by the Central Government or the State Government or controlled by it, means the Minister in charge of the administrative Ministry of such body, or Board or corporation or authority or company or society or autonomous body;

(vi) an officer of any body or Board or corporation or authority or company or society or autonomous body (by whatever name called) established or constituted under an Act of Parliament or of a State Legislature or wholly or partly financed by the Central Government or the State Government or controlled by it, means the head of such body or Board or corporation or authority or company or society or autonomous body;

(vii) in any other case not falling under sub-clauses (i) to (vi) above, means such department or authority as the State Government may, by notification, specify:

Provided that if any person referred to in sub-clause (v) or sub-clause (vi) is also a Member of the State Legislature, then the competent authority shall be—

(A) in case such member is a Member of the Legislative Council, the Chairman of that Council; and

(B) in case such member is a Member of the Legislative Assembly, the Speaker of that House;

(f) “investigation” means an investigation defined under clause (h) of Section 2 of the Code of Criminal Procedure, 1973; 2 of 1974

(g) “Judicial Member” means a Judicial Member of the Lokayukta appointed as such;

(h) “Lokayukta” means the body established under Section 64;

(i) “Member” means a Member of the Lokayukta;

(j) “Minister” means Minister of a State Government but does not include the Chief Minister;

(k) “preliminary inquiry” means an inquiry conducted under this Act by the Lokayukta;

(2) The words and expressions used herein and not defined in this Part but defined in Section 2 of this Act or defined in the Prevention of Corruption Act, 1988, shall have the meanings respectively assigned to them in the said Acts. 49 of 1988

## CHAPTER II

### ESTABLISHMENT OF LOKAYUKTA

Establishment  
of  
Lokayukta.

64. (1) As from the commencement of this Act, there shall be established in a State, by notification in the Official Gazette, a body to be called the “Lokayukta”.

(2) The Lokayukta shall consist of—

(a) a Chairperson, who is or has been a Chief Justice of the High Court or a Judge of the High Court or an eminent person who fulfils the eligibility specified in Clause (b) of sub-section (3); and

(b) such number of Members, not exceeding eight out of whom fifty per cent, shall be Judicial Members:

Provided that not less than fifty per cent of the Members of the Lokayukta shall be from amongst the persons belonging to the Scheduled Castes, the Scheduled Tribes, Other Backward Classes, Minorities and women.

(3) A person shall be eligible to be appointed,—

(a) as a Judicial Member if he is or has been a Judge of the High Court;

(b) as a Member other than a Judicial Member, if he is a person of impeccable integrity, outstanding ability having special knowledge and expertise of not less than twenty-five years in the matters relating to anti-corruption policy, public administration, vigilance, finance including insurance and banking, law and management.

(4) The Chairperson or a Member shall not be—

(i) a member of Parliament or a member of the Legislature of any State or Union Territory;

(ii) a person convicted of any offence involving moral turpitude;

(iii) a person of less than forty-five years of age, on the date of assuming office as Chairperson or Member, as the case may be;

(iv) a member of any Panchayat or Municipality;

(v) a person who has been removed or dismissed from service of the Union or a State, and shall not hold any office of trust or profit (other than his office as the Chairperson or a Member) or be connected with any political party or carry on any business or practise any profession and accordingly, before he enters upon his office, a person appointed as the Chairperson or a Member, as the case may be, shall, if—

(a) he holds any office of trust or profit, resign from such office; or

(b) he is carrying on any business, sever his connection with the conduct and management of such business; or

(c) he is practising any profession, cease to practise such profession.

(5) The Lokayukta or State Lokpal (by whatever name called) constituted under any State law for the time being in force, before the commencement of this Act, and applicable to that State, shall continue to discharge their function and exercise powers conferred upon them under that law in respect of that State until such law is amended or repealed by the State Legislature so as to bring in conformity with this Act.

Appointment of Chairperson and Members on recommendation of Selection Committee.

**65. (1)** The Chairperson and Members shall be appointed by the Governor after obtaining the recommendations of a Selection Committee consisting of—

- (a) the Chief Minister – Chairperson;
- (b) the Speaker of the Legislative Assembly – Member;
- (c) the Leader of Opposition in the Legislative Assembly – Member;
- (d) the Chief Justice of the High Court of the State or a Judge of the High Court nominated by him – Member;
- (e) an eminent jurist nominated by the Governor – Member;

(2) No appointment of a Chairperson or a Member shall be invalid merely by reason of any vacancy in the Selection Committee.

(3) The Selection Committee shall for the purposes of selecting the Chairperson and Members of the Lokayukta and for preparing a panel of persons to be considered for appointment as such, constitute a Search Committee consisting of at least seven persons of standing and having special knowledge and expertise in the matters relating to anti-corruption policy, public administration, vigilance, policy making, finance including insurance and banking, law, and management, or in any other matter which, in the opinion of the Selection Committee, may be useful in making selection of the Chairperson and Members of the Lokayukta:

Provided that not less than fifty per cent of the Members of the Search Committee shall be from amongst the persons belonging to the Scheduled Castes, the Scheduled Tribes, Other Backward Classes, Minorities and women:

Provided further that the Selection Committee may also consider any person other than the persons recommended by the Search Committee.

(4) The Selection Committee shall regulate its own procedure for selecting the Chairperson and Members of the Lokayukta which shall be transparent.

(5) The term of the Search Committee referred to in sub-section (3), the fees and allowances payable to its members and the manner of selection of panel of names shall be such as may be prescribed.

**66.** The Governor shall take or cause to be taken all necessary steps for the appointment of a new Chairperson and Members at least three months before the expiry of the term of such Chairperson or Member, as the case may be, in accordance with the procedure laid down in this Act.

Filling of vacancies of Chairperson or Members.

**67.** The Chairperson and every Member shall, on the recommendations of the Selection Committee, be appointed by the Governor by warrant under his hand and seal and hold office as such for a term of five years from the date on which he enters upon his office or until he attains the age of seventy years, whichever is earlier:

Term of office of Chairperson and Members.

Provided that he may—

(a) by writing under his hand addressed to the Governor, resign his office; or

(b) be removed from his office in the manner provided in this Act.

**68.** The salary, allowances and other conditions of service of—

(i) the Chairperson shall be the same as those of the Chief Justice of the High Court;

(ii) other Members shall be the same as those of a Judge of the High Court:

Salary, allowances and other conditions of service of Chairperson and Members.



Provided that if the Chairperson or a Member is, at the time of his appointment, in receipt of pension (other than disability pension) in respect of any previous service under the Government of India or under the Government of a State, his salary in respect of service as the Chairperson or, as the case may be, as a Member, be reduced—

(a) by the amount of that pension; and

(b) if he has, before such appointment, received, in lieu of a portion of the pension due to him in respect of such previous service, the commuted value thereof, by the amount of that portion of the pension:

Provided further that the salary, allowances and pension payable to, and other conditions of service of, the Chairperson or a Member shall not be varied to his disadvantage after his appointment.

Restriction  
on  
employment  
by  
Chairperson  
and  
Members  
after  
ceasing to  
hold office.

**69. (1)** On ceasing to hold office, the Chairperson and every Member shall be ineligible for—

(i) reappointment as the Chairperson or a Member of the Lokayukta;

(ii) any diplomatic assignment, appointment as administrator of a Union territory and such other assignment or appointment which is required by law to be made by the Governor by warrant under his hand and seal;

(iii) further employment to any other office of profit under the Government of India or the Government of a State;

(iv) contesting any election of President or Vice President or Member of either House of Parliament or Member of either House of a State Legislature or Municipality or Panchayat within a period of five years from the date of relinquishing the post.

(2) Notwithstanding anything contained in subsection (1), a Member shall be eligible to be appointed as a Chairperson, if his total tenure as Member and Chairperson does not exceed five years.

*Explanation.*— For the purposes of this section, it is hereby clarified that where the Member is appointed as the Chairperson, his term of office shall not be more than five years in aggregate as the Member and the Chairperson.

**70. (1)** In the event of occurrence of any vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the Governor may, by notification, authorise the senior-most Member to act as the Chairperson until the appointment of a new Chairperson to fill such vacancy.

Member to act as Chairperson or to discharge his functions in certain circumstances.

(2) When the Chairperson is unable to discharge his functions owing to absence on leave or otherwise, the senior-most Member available, as the Governor may, by notification, authorise in this behalf, shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties.

**71. (1)** There shall be a Secretary to the Lokayukta in the rank of Secretary to the State Government, who shall be appointed by the Chairperson from a panel of names sent by the State Government.

Secretary, other officers and staff of Lokayukta.

(2) There shall be a Director of Inquiry and Director of Prosecution not below the rank of the Additional Secretary to the State Government or equivalent, who shall be appointed by the Chairperson from a panel of names sent by the State Government.

(3) The appointment of officers and staff of the Lokayukta shall be made by the Chairperson or such Member or officer of Lokayukta as the Chairperson may direct:

Provided that the Governor may by rule require that the appointment in respect of any post or posts as may be specified in the rule, shall be made after consultation with the State Public Service Commission.

(4) Subject to the provisions of any law made by the State Legislature, the conditions of service of secretary and other officers and staff of the Lokayukta shall be such as may be specified by regulations made by the Lokayukta for the purpose:

Provided that the regulations made under this sub-section shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the Governor.

### CHAPTER III

#### INQUIRY WING

Inquiry  
Wing.

**72. (1)** Notwithstanding anything contained in any law for the time being in force, the Lokayukta shall constitute an Inquiry Wing headed by the Director of Inquiry for the purpose of conducting preliminary inquiry into any offence alleged to have been committed by a public servant punishable under the Prevention of Corruption Act, 1988:

49 of 1988

Provided that till such time the Inquiry Wing is constituted by the Lokayukta, the State Government shall make available such number of officers and other staff from such of its Ministries or Departments, as may be required by the Lokayukta, for conducting preliminary inquiry under this Act.

(2) For the purposes of assisting the Lokayukta in conducting a preliminary inquiry under this Act, the officers of the Inquiry Wing not below the rank of Under Secretary to that Government, shall have the same powers as are conferred upon the Lokayukta under section 88.

### CHAPTER IV

#### PROSECUTION WING

Appointment  
of Director  
of  
prosecution.

**73. (1)** The Lokayukta shall, by notification, constitute a Prosecution Wing headed by the Director of Prosecution for the purpose of prosecution of public servants in relation to any complaint by the Lokayukta under this Act:

Provided that till such time the Prosecution Wing is constituted by the Lokayukta, the State Government shall make available such number of officers and other staff from such of its Ministries or Departments, as may be required by the Lokayukta, for conducting prosecution under this Act.

49 of 1988 (2) The Director of prosecution shall, after having been so directed by the Lokayukta, file a case in accordance with the findings of the investigation report, before the Special Court, and take all necessary steps in respect of the prosecution of public servants in relation to any offence punishable under the Prevention of Corruption Act, 1988.

2 of 1974 (3) The report under sub-section (2) shall be deemed to be a report, filed on completion of investigation, referred to in Section 173 of the Code of Criminal Procedure, 1973.

#### CHAPTER V

##### EXPENSES OF LOKAYUKTA TO BE CHARGED ON CONSOLIDATED FUND OF STATE

74. The administrative expenses of the Lokayukta, including all salaries, allowances and pensions payable to or in respect of the Chairperson, Members or secretary or other officers or staff of the Lokayukta, shall be charged upon the Consolidated Fund of State and any fees or other moneys taken by the Lokayukta shall form part of that Fund.

Expenses of Lokayukta to be charged on Consolidated Fund of State.

#### CHAPTER VI

##### JURISDICTION IN RESPECT OF INQUIRY

75. (1) Subject to the other provisions of this Act, the Lokayukta shall inquire or cause an inquiry to be conducted into any matter involved in, or arising from, or connected with, any allegation of corruption made in a complaint in respect of the following, namely:—

(a) any person who is or has been a Chief Minister;

(b) any other person who is or has been a Minister of the State;

Jurisdiction of Lokayukta to include Chief Minister, Ministers, Members of Legislatures, officers and employees of State Government.

(c) any person who is or has been a Member of the State Legislature;

(d) all officers and employees of the State, from amongst the public servants defined in sub-clauses (i) and (ii) of Clause (c) of Section 2 of the Prevention of Corruption Act, 1988 when serving or who has served, in connection with the affairs of the State; 49 of 1988

(e) all officers and employees referred to in clause (d) or equivalent 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 of a State Legislature or wholly or partly financed by the State Government or controlled by it;

(f) 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 or aided by the State Government and the annual income of which exceeds such amount as the State Government may, by notification, specify;

(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) in receipt of any donation from the public and the annual income of which exceeds such amount as the State Government may by notification specify or 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; 42 of 2010

*Explanation.*—For the purpose of Clauses (f) and (g), it is hereby clarified that any entity or institution, by whatever name called, corporate,

society, trust, association of persons, partnership, sole proprietorship, limited liability partnership (whether registered under any law for the time being in force or not), shall be the entities covered in those clauses:

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

(2) Notwithstanding anything contained in sub-section (1), the Lokayukta shall not inquire into any matter involved in, or arising from, or connected with, any such allegation of corruption against any Member of the State Legislature in respect of anything said or a vote given by him in the State Legislature or any committee thereof covered under the provisions contained in Clause (2) of Article 194 of the Constitution.

49 of 1988      (3) The Lokayukta may inquire into any act or conduct of any person other than those referred to in sub-section (1), if such person is involved in the act of abetting, bribe giving or bribe taking or conspiracy relating to any allegation of corruption under the Prevention of Corruption Act, 1988 against a person referred to in sub-section (1):

Provided that, no action under this section shall be taken in case of a person serving in connection with the affairs of the Union, without the consent of the Central Government.

60 of 1952      (4) No matter in respect of which a complaint has been made to the Lokayukta under this Act shall be referred for inquiry under the Commissions of Inquiry Act, 1952.

*Explanation.*—For the removal of doubts, it is hereby declared that a complaint under this Act shall only relate to a period during which the public servant was holding or serving in that capacity.

Matters pending before any court or committee or authority for inquiry before Lokayukta not to be affected.

**76.** In case any matter or proceeding related to allegation of corruption under the Prevention of Corruption Act, 1988 has been pending before any court or committee of the State Legislature or before any other authority prior to commencement of this Act or prior to commencement of any inquiry after the commencement of this Act, such matter or proceeding shall be continued before such court, committee or authority.

49 of 1988

Constitution of benches of Lokayukta.

**77. (1)** Subject to the provisions of this Act,—

(a) the jurisdiction of the Lokayukta may be exercised by benches thereof;

(b) a bench may be constituted by the Chairperson with two or more Members as the Chairperson may deem fit;

(c) every bench shall ordinarily consist of at least one Judicial Member;

(d) where a bench consists of the Chairperson, such bench shall be presided over by the Chairperson;

(e) where a bench consists of a Judicial Member, and a non-Judicial Member, not being the Chairperson, such bench shall be presided over by the Judicial Member;

(f) the benches of the Lokayukta shall ordinarily sit at Capital of the State and at such other places as the Lokayukta may, by regulations, specify.

(2) The Lokayukta shall notify the areas in relation to which each bench of the Lokayukta may exercise jurisdiction.

(3) Notwithstanding anything contained in subsection (2), the Chairperson shall have the power to constitute or reconstitute benches from time to time.

(4) If at any stage of the hearing of any case or matter it appears to the Chairperson or a Member

that the case or matter is of such nature that it ought to be heard by a bench consisting of three or more Members, the case or matter may be transferred by the Chairperson or, as the case may be, referred to him for transfer, to such bench as the Chairperson may deem fit.

**78.** Where benches are constituted, the Chairperson may, from time to time, by notification, make provisions as to the distribution of the business of the Lokayukta amongst the benches and also provide for the matters which may be dealt with by each bench.

Distribution of business amongst benches.

**79.** On an application for transfer made by the complainant or the public servant, the Chairperson, after giving an opportunity of being heard to the complainant or the public servant, as the case may be, may transfer any case pending before one bench for disposal to any other bench.

Power of Chairperson to transfer cases.

**80.** If the Members of a bench consisting of an even number of Members differ in opinion on any point, they shall state the point or points on which they differ, and make a reference to the Chairperson who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other Members of the Lokayukta and such point or points shall be decided according to the opinion of the majority of the Members of the Lokayukta who have heard the case, including those who first heard it.

Decision to be by majority.

## CHAPTER VII

### PROCEDURE IN RESPECT OF PRELIMINARY INQUIRY AND INVESTIGATION

**81. (1)** The Lokayukta shall, on receipt of a complaint, first decide whether to proceed in the matter or close the same and if the Lokayukta decides to proceed further, it shall order the preliminary inquiry against any public servant by its Inquiry Wing or any agency (including any special investigation agency) to ascertain whether there exist a *prima facie* case for proceeding in the matter.

Provisions relating to complaints and preliminary inquiry and investigation.



(2) During the preliminary inquiry referred to in sub-section (1), the Inquiry Wing or any agency shall conduct a preliminary inquiry and on the basis of material, information and documents collected, seek the comments on the allegations made in the complaint from the public servant and competent authority and after obtaining the comments of the concerned public servant and competent authority, submit, within sixty days from the date of receipt of the reference, a report to the Lokayukta.

(3) A bench consisting of not less than three Members of the Lokayukta shall consider every report received under sub-section (2) from the Inquiry Wing or any agency and after giving an opportunity of being heard to the public servant, decide as to whether there exists a *prima facie* case, and make recommendations to proceed with one or more of the following actions, namely:—

(a) investigation by any agency (including any special investigation agency);

(b) initiation of the departmental proceedings or any other appropriate action against the concerned public servants by the competent authority;

(c) closure of the proceedings against the public servant and take action to proceed against the complainant under Section 46.

(4) Every preliminary inquiry referred to in sub-section (1) shall ordinarily be completed within a period of ninety days and for reasons to be recorded in writing, within a further period of ninety days from the date of receipt of the complaint.

(5) In case the Lokayukta decides to proceed to investigate into the complaint, it shall either direct any investigation agency (including any special agency) to carry out the investigation as expeditiously as possible and complete the investigation within a period of six months from the date of its order:

Provided that the Lokayukta may extend the said period by a further period not exceeding six months at a time for the reasons to be recorded in writing.

2 of 1974 (6) Notwithstanding anything contained in section 173 of the Code of Criminal Procedure, 1973, any investigation agency (including any special agency) shall, in respect of cases referred to it by the Lokayukta, submit the investigation report to the Lokayukta.

(7) A bench consisting of not less than three Members of the Lokayukta shall consider every report received by it under sub-section (6) from any investigation agency (including any special agency) and may, decide as to—

(a) file charge-sheet or closure report before the Special Court against the public servant;

(b) initiate the departmental proceedings or any other appropriate action against the concerned public servants by the competent authority.

(8) The Lokayukta may, after taking a decision under sub-section (7) on the filing of the charge-sheet, direct its Prosecution Wing to initiate prosecution in a Special Court in respect of cases investigated by any investigation agency (including any special agency),—

(a) its Prosecution Wing to initiate prosecution in the Special Court in respect of the cases investigated by the investigation agency (including any special agency); or

(b) any other agency in respect of the cases investigated by such agency on the direction of Lokayukta to obtain its approval and thereafter initiate prosecution in the Special Court and forward a copy of charge-sheet filed by it under this clause to the Lokayukta for the purposes of superintendence.

(9) The Lokayukta may, during the preliminary inquiry or the investigation, as the case may be, pass appropriate orders for the safe custody of the documents relevant to the preliminary inquiry or, as the case may be, investigation, as it deems fit.

(10) The website of the Lokayukta shall, from time to time and in such manner as may be specified by regulations, display to the public, the status of number of complaints pending before it or disposed of by it.

(11) The Lokayukta may retain the original records and evidences, which are likely to be required in the process of preliminary inquiry or investigation or conduct of a case by it or by the Special Court.

(12) Save as otherwise provided, the manner and procedure of conducting a preliminary inquiry or investigation (including such material and documents to be made available to the public servant) under this Act, shall be such as may be specified by regulations.

Persons likely to be prejudicially affected to be heard.

**82.** If, at any stage of the proceeding, the Lokayukta—

(a) considers it necessary to inquire into the conduct of any person other than the accused; or

(b) is of opinion that the reputation of any person other than an accused is likely to be prejudicially affected by the preliminary inquiry,

the Lokayukta shall give to that person a reasonable opportunity of being heard in the preliminary inquiry and to produce evidence in his defence, consistent with the principles of natural justice.

Lokayukta may require any public servant or any other person to furnish information, etc.

**83.** Subject to the provisions of this Act, for the purpose of any preliminary inquiry or investigation, the Lokayukta or the investigating authority, as the case may be, may require any public servant or any other person who, in its opinion, is able to furnish information or produce documents relevant to such preliminary inquiry or investigation, to furnish any such information or produce any such document.

- 2 of 1974  
49 of 1988
- 84. (1)** No sanction or approval of any authority shall be required by the Lokayukta for conducting investigation by any agency in respect of the cases investigated by such agency on the direction of the Lokayukta, under Section 197 of the Code of Criminal Procedure, 1973 or Section 19 of the Prevention of Corruption Act, 1988, as the case may be, for the purpose of making preliminary inquiry by the Inquiry Wing or investigation by any agency into any complaint against any public servant or for filing of any charge sheet or closure report on completion of investigation in respect thereof before the Special Court under this Act.
- 2 of 1974  
49 of 1988
- (2)** A Special Court may, notwithstanding anything contained in Section 197 of the Code of Criminal Procedure, 1973 or Section 19 of the Prevention of Corruption Act, 1988, on filing of a chargesheet on completion of investigation, by the Lokayukta or any officer authorised by it in this behalf, take cognizance of offence committed by any public servant.
- (3)** Nothing contained in sub-sections (1) and (2) shall apply in respect of the persons holding the office in pursuance of the provisions of the Constitution and in respect of which a procedure for removal of such person has been specified therein.
- (4)** The provisions contained in sub-sections (1), (2) and (3) shall be without prejudice to the generality of the provisions contained in Article 311 and sub-clause (c) of Clause (3) of Article 320 of the Constitution.
- 49 of 1988
- 85.** Where, after the conclusion of the investigation, the findings of the Lokayukta disclose the commission of an offence under the Prevention of Corruption Act, 1988 by a public servant referred to in Clause (a) or Clause (b) or Clause (c) of sub-section (1) of Section 75, the Lokayukta may file a case in the Special Court and shall send a copy of the report together with its findings to the competent authority.

Previous sanction not necessary for investigation and initiating prosecution by Lokayukta in certain cases.

Action on inquiry against public servant being Chief Minister, Ministers or Members of State Legislature.

## CHAPTER VIII

## POWERS OF LOKAYUKTA

Supervisory  
powers of  
Lokayukta.

**86.** The Lokayukta shall, notwithstanding anything contained in any other law for the time being in force, have the powers of superintendence and direction over the investigation agency in respect of the matters in so far as they relate to the investigation by such agency under this Act.

Search and  
seizure.

**87. (1)** If the Lokayukta has reason to believe that any document which, in its opinion, shall be useful for, or relevant to, any investigation under this Act, are secreted in any place, it may authorise any agency to whom the investigation has been given to search for and to seize such documents.

(2) If the Lokayukta is satisfied that any document seized under sub-section (1) may be used as evidence for the purpose of any preliminary inquiry or investigation under this Act and that it shall be necessary to retain the document in its custody or in the custody of such officer as may be authorised, it may so retain or direct such authorised officer to retain such document till the completion of such preliminary inquiry or investigation:

Provided that where any document is required to be returned, the Lokayukta or the authorised officer may return the same after retaining copies of such document duly authenticated.

Lokayukta  
to have  
powers of  
civil court  
in certain  
cases.

**88. (1)** Subject to the provisions of this section, for the purpose of any preliminary inquiry, the Inquiry Wing of the Lokayukta shall have all the powers of a civil court, under the Code of Civil Procedure, 1908, while trying a suit in respect of the following matters, namely:—

5 of 1908

(i) summoning and enforcing the attendance of any person and examining him on oath;

(ii) requiring the discovery and production of any document;

(iii) receiving evidence on affidavits;

(iv) requisitioning any public record or copy thereof from any court or office;

(v) issuing commissions for the examination of witnesses or documents:

Provided that such commission, in case of a witness, shall be issued only where the witness, in the opinion of the Lokayukta, is not in a position to attend the proceeding before the Lokayukta; and

(vi) such other matters as may be prescribed.

45 of 1860 (2) Any proceeding before the Lokayukta shall be deemed to be a judicial proceeding within the meaning of Section 193 of the Indian Penal Code.

**89. (1)** The Lokayukta may, for the purpose of conducting any preliminary inquiry or investigation, utilise the services of any officer or organisation or investigation agency of the State Government.

Power of Lokayukta to utilise services of officers of State Government.

(2) For the purpose of preliminary inquiry or investigating into any matter pertaining to such inquiry or investigation, any officer or organisation or agency whose services are utilised under sub-section (1) may, subject to the direction and control of the Lokayukta,—

(a) summon and enforce the attendance of any person and examine him;

(b) require the discovery and production of any document; and

(c) requisition any public record or copy thereof from any office.

(3) The officer or organisation or agency whose services are utilised under sub-section (2) shall inquire or, as the case may be investigate into any matter pertaining to the preliminary inquiry or investigation and submit a report thereon to the Lokayukta within such period as may be specified by it in this behalf.

Provisional  
attachment  
of assets.

**90. (1)** Where the Lokayukta or any investigation officer authorised by it in this behalf, has reason to believe, the reason for such belief to be recorded in writing, on the basis of material in his possession, that—

(a) any person is in possession of any proceeds of corruption;

(b) such person is accused of having committed an offence relating to corruption; and

(c) such proceeds of offence are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of offence, he may, by order in writing, provisionally attach such property for a period not exceeding ninety days from the date of the order, in the manner provided in the Second Schedule to the Income-tax Act, 1961 and the Lokayukta shall be deemed to be an officer under sub-rule (e) of rule 1 of that Schedule.

43 of 1961

(2) The Lokayukta shall, immediately after attachment under sub-section (1), forward a copy of the order, along with the material in his possession, referred to in that sub-section, to the Special Court, in a sealed envelope, in the manner as may be prescribed and such Court may extend the order of attachment and keep such material for such period as the Court may deem fit.

(3) Every order of attachment made under sub-section (1) shall cease to have effect after the expiry of the period specified in that sub-section or after the expiry of the period as directed by the Special Court under sub-section (2).

(4) Nothing in this section shall prevent the person interested in the enjoyment of the immovable property attached under sub-section (1) or sub-section (2), from such enjoyment.

*Explanation.*—For the purposes of this sub-section, “person interested”, in relation to any immovable property, includes all persons claiming or entitled to claim any interest in the property.

91. (1) The Lokayukta, when it provisionally attaches any property under sub-section (1) of Section 90 shall, within a period of thirty days of such attachment, direct its prosecution wing to file an application stating the facts of such attachment before the Special Court and make a prayer for confirmation of attachment of the property till completion of the proceedings against the public servant in the Special Court.

Confirmation  
of  
attachment  
of assets.

(2) The Special Court may, if it is of the opinion that the property provisionally attached had been acquired through corrupt means, make an order for confirmation of attachment of such property till the completion of the proceedings against the public servant in the Special Court.

(3) If the public servant is subsequently acquitted of the charges framed against him, the property, subject to the orders of the Special Court, shall be restored to the concerned public servant along with benefits from such property as might have accrued during the period of attachment.

(4) If the public servant is subsequently convicted of the charges of corruption, the proceeds relating to the offence under the Prevention of Corruption Act, 1988 shall be confiscated and vest in the Central Government free from any encumbrance or leasehold interest excluding any debt due to any bank or financial institution.

49 of 1988

*Explanation.*—For the purposes of this sub-section, the expressions “bank”, “debt” and “financial institution” shall have the meanings respectively assigned to them in Clauses (d), (g) and (h) of Section 2 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993.

51 of 1993



Confiscation of assets, proceeds, receipts and benefits arisen or procured by means of corruption in special circumstances.

**92. (1)** Without prejudice to the provisions of Sections 90 and 91, where the Special Court, on the basis of *prima facie* evidence, has reason to believe or is satisfied that the assets, proceeds, receipts and benefits, by whatever name called, have arisen or procured by means of corruption by the public servant, it may authorise the confiscation of such assets, proceeds, receipts and benefits till his acquittal.

(2) Where an order of confiscation made under sub-section (1) is modified or annulled by the High Court or where the public servant is acquitted by the Special Court, the assets, proceeds, receipts and benefits, confiscated under sub-section (1) shall be returned to such public servant, and in case it is not possible for any reason to return the assets, proceeds, receipts and benefits, such public servant shall be paid the price thereof including the money so confiscated with the interest at the rate of five per cent per annum thereon calculated from the date of confiscation.

Power of Lokayukta to recommend transfer or suspension of public servant connected with allegation of corruption.

**93. (1)** Where the Lokayukta, while making a preliminary inquiry into allegations of corruption, is *prima facie* satisfied, on the basis of evidence available, that—

(a) the continuance of the public servant referred to in Clause (d) or Clause (e) of sub-section (1) of Section 75 in his post while conducting the preliminary inquiry is likely to affect such preliminary inquiry adversely; or

(b) the public servant referred to in clause (a) is likely to destroy or in any way tamper with the evidence or influence witnesses,

then, the Lokayukta may recommend to the State Government for transfer or suspension of such public servant from the post held by him till such period as may be specified in the order.

(2) The State Government shall ordinarily accept the recommendation of the Lokayukta made under sub-section (1), except for the reasons to be recorded in writing in a case where it is not feasible for administrative reasons.

**94.** The Lokayukta may, in discharge of its functions under this Act, issue appropriate directions to a public servant entrusted with the preparation or custody of any document or record—

(a) to protect such document or record from destruction or damage; or

(b) to prevent the public servant from altering or secreting such document or record; or

(c) to prevent the public servant from transferring or alienating any assets allegedly acquired by him through corrupt means.

Power of Lokayukta to give directions to prevent destruction of records during preliminary inquiry.

**95.** The Lokayukta shall function as the final appellate authority in respect of appeals arising out of any other law for the time being in force providing for delivery of public services and redressal of public grievances by any public authority in cases where the decision contains findings of corruption under the Prevention of Corruption Act, 1988.

Lokayukta to function as appellate authority for appeals arising out of any other law.

49 of 1988

**96.** The Lokayukta may, by general or special order in writing, and subject to such conditions and limitations as may be specified therein, direct that any administrative or financial power conferred on it may also be exercised or discharged by such of its Members or officers or employees as may be specified in the order.

Power to delegate.

**97.** The provisions contained in Chapters IX, X, XI, XII, XIII, XIV and XV (except Section 62) shall apply to a Lokayukta and shall have effect, subject to the following modifications, namely:—

Application of certain provisions relating to Lokpal to apply to Lokayukta.

(a) references to “President” shall be construed as references to “Governor of the State”;

(b) references to the “Central Government” shall be construed as references to “State Government”;

(c) references to “each House of Parliament” or “Parliament”, shall be construed as references to “Legislature of the State”;

(d) references to “Lokpal” shall be construed as references to “Lokayukta”;

(e) references to “Comptroller and Auditor-General of India” shall be construed as references to “Accountant General of the State”;

(f) references to “Chief Justice of India” shall be construed as references to “Chief Justice of the High Court of the State”.

## THE SCHEDULE

[See Section 58]

## AMENDMENT TO CERTAIN ENACTMENTS

## PART I

## AMENDMENT TO THE COMMISSIONS OF INQUIRY ACT, 1952

(60 OF 1952)

In Section 3, in sub-section (1), for the words “The appropriate Government may”, the words, brackets and figures “Save as otherwise provided in the Lokpal and Lokayuktas Act, 2011, the appropriate Government may” shall be substituted.

Amendment  
of Section  
3.

## PART II

AMENDMENT TO THE DELHI SPECIAL POLICE ESTABLISHMENT  
ACT, 1946

(25 OF 1946)

## 1. In Section 4A,—

Amendment  
of Section  
4A.

(i) for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) The Central Government shall appoint the Director on the recommendation of the Committee consisting of—

(a) the Prime Minister — Chairperson;

(b) the Leader of Opposition in the House of the People — Member;

(c) the Chief Justice of India or Judge of the Supreme Court nominated by him — Member.”.

(ii) sub-section (2) shall be omitted.

## 2. In Section 4C, for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) The Central Government shall appoint officers to the posts of the level of Superintendent of Police and above except

Director, and also recommend the extension or curtailment of the tenure of such officers in the Delhi Special Police Establishment, on the recommendation of a committee consisting of:—

(a) the Central Vigilance Commissioner—Chairperson;

(b) Vigilance Commissioners — Members;

(c) Secretary to the Government of India in charge of the Ministry of Home — Member;

(d) Secretary to the Government of India in charge of the Department of Personnel—Member:

Provided that the Committee shall consult the Director before submitting its recommendation to the Central Government.”.

### PART III

#### AMENDMENTS TO THE PREVENTION OF CORRUPTION ACT, 1988

(49 OF 1988)

Amendment  
of Sections  
7, 8, 9 and  
12.

1. In Sections 7, 8, 9 and Sections 12,—

(a) for the words “six months”, the words “three years” shall respectively be substituted;

(b) for the words “five years”, the words “seven years” shall respectively be substituted;

Amendment  
of Section  
13.

2. In Section 13, in sub-section (2),—

(a) for the words “one year”, the words “four years” shall be substituted;

(b) for the words “seven years”, the words “ten years” shall be substituted;

Amendment  
of Section  
14.

3. In Section 14,—

(a) for the words “two years”, the words “five years” shall be substituted.

(b) for the words “seven years”, the words “ten years” shall be substituted.

4. In Section 15, for the words “which may extend to three years”, the words “which shall not be less than two years but which may extend to five years” shall be substituted.

Amendment  
of Section  
15.

5. In Section 19, after the words “except with the previous sanction”, the words “save as otherwise provided in the Lokpal and Lokayuktas Act, 2011” shall be inserted.

Amendment  
of Section  
19.

#### PART IV

##### AMENDMENT TO THE CODE OF CRIMINAL PROCEDURE, 1973

(2 OF 1974)

In Section 197, after the words “except with the previous sanction”, the words “save as otherwise provided in the Lokpal and Lokayuktas Act, 2011” shall be inserted.

Amendment  
of Section  
197.

#### PART V

##### AMENDMENT TO THE CENTRAL VIGILANCE COMMISSION ACT, 2003

(45 OF 2003)

1. In Section 2, after Clause (d), the following clause shall be inserted, namely:—

Amendment  
of Section  
2.

“(da) “Lokpal” means the Lokpal established under sub-section (1) of Section 3 of the Lokpal and Lokayuktas Act, 2011;”.

2. In Section 8, in sub-section (2), after Clause (b), the following clause shall be inserted, namely:—

Amendment  
of Section  
8.

“(c) on a reference made by the Lokpal under proviso to sub-section (1) of Section 20 of the Lokpal and Lokayuktas Act, 2011, the persons referred to in Clause (d) of sub-section (1) shall also include—

(i) members of Group B, Group C and Group D services of the Central Government;

(ii) such level of officials or staff of the corporations established by or under any Central Act, Government companies,

societies and other local authorities, owned or controlled by the Central Government, as that Government may, by notification in the Official Gazette, specify in this behalf:

Provided that till such time a notification is issued under this clause, all officials or staff of the said corporations, companies, societies and local authorities shall be deemed to be the persons referred in Clause (d) of sub-section (1).”.

Insertion of new Sections 8A and 8B.

3. After Section 8, the following sections shall be inserted, namely:—

Action on preliminary inquiry in relation to public servants.

“8A. (1) Where, after the conclusion of the preliminary inquiry relating to corruption of public servants belonging to Group C and Group D officials of the Central Government, the findings of the Commission disclose, after giving an opportunity of being heard to the public servant, a *prima facie* violation of conduct rules relating to corruption under the Prevention of Corruption Act, 1988 by such public servant, the Commission shall proceed with one or more of the following actions, namely:—

49 of 1988

(a) cause an investigation by any agency or the Delhi Special Police Establishment, as the case may be;

(b) initiation of the disciplinary proceedings or any other appropriate action against the concerned public servant by the competent authority;

(c) closure of the proceedings against the public servant and to proceed against the complainant under Section 46 of the Lokpal and Lokayuktas Act, 2011.

(2) Every preliminary inquiry referred to in sub-section (1) shall ordinarily be completed within a period of ninety days and for reasons to be recorded in writing, within a further period of ninety days from the date of receipt of the complaint.

8B. (1) In case the Commission decides to proceed to investigate into the complaint under Clause (a) of sub-section (1) of Section 8A, it shall direct any agency (including the Delhi Special Police Establishment) to carry out the investigation as expeditiously as possible and complete the investigation within a period of six months from the date of its order and submit the investigation report containing its findings to the Commission:

Action on investigation in relation to public servants.

Provided that the Commission may extend the said period by a further period of six months for the reasons to be recorded in writing.

2 of 1974

(2) Notwithstanding anything contained in Section 173 of the Code of Criminal Procedure, 1973, any agency (including the Delhi Special Police Establishment) shall, in respect of cases referred to it by the Commission, submit the investigation report to the Commission.

(3) The Commission shall consider every report received by it under sub-section (2) from any agency (including the Delhi Special Police Establishment) and may decide as to—

(a) file charge-sheet or closure report before the Special Court against the public servant;

(b) initiate the departmental proceedings or any other appropriate action against the concerned public servant by the competent authority.”.

4. After Section 11, the following section shall be inserted, namely:—

Insertion of new Section 11A.

“11A. (1) There shall be a Director of Inquiry, not below the rank of Joint Secretary to the Government of India, who shall be appointed by the Central Government for conducting preliminary inquiries referred to the Commission by the Lokpal.

Director of Inquiry for making preliminary inquiry.

(2) The Central Government shall provide the Director of Inquiry such officers and employees as may be required for the discharge of his functions under this Act.”.



## LOK SABHA

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A

## BILL

to provide for the establishment of a body of Lokpal for the Union and Lokayukta for States to inquire into allegations of corruption against certain public functionaries and for matters connected therewith or incidental thereto.

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*(As passed by Lok Sabha)*

## **Annexure-VII**

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**Synopsis of the Debate in the Rajya Sabha on  
29 December 2011 on the Lokpal and  
Lokayuktas Bill, 2011 as passed by the Lok Sabha**

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**RAJYA SABHA**  
**SYNOPSIS OF DEBATE\***

**29 December 2011**

**THE LOKPAL AND LOKAYUKTAS BILL, 2011**

THE MINISTER OF STATE IN THE MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS AND THE MINISTER OF STATE IN THE PRIME MINISTER'S OFFICE (SHRI V. NARAYANASAMY), moving the motion for consideration of the Bill, said: In the year 1966, the Administrative Reforms Commission recommended that an institution of Lokpal be brought in this country. Therefore, several Governments took various steps and about eight Bills were introduced. In consultation with the Law Ministry, the Lokpal Bill, 2010, was prepared. I would like to submit that in April 2011, some of the organisations said that the Lokpal Bill has to come as early as possible in this country. Therefore, under a new experiment, Anna Hazare and others and the Government team sat together. The Lokpal Bill and Jan Lokpal Bill both were discussed. The Government, finally, drafted Lokpal Bill and it was presented before the Lok Sabha. Thereafter, it was sent to the Standing Committee. The Lok Sabha and the Rajya Sabha deliberated the issue of Lokpal again on Citizens' Charter, lower bureaucracy within the ambit of Lokpal, and Lokayukta in line with the Lokpal. The Resolution adopted by the sense of the House. The sense of the House was sent to the Standing Committee. The Standing Committee submitted its Report before the Lok Sabha and the Rajya Sabha. Thereafter, the Government, after considering the recommendations of the Standing Committee, formulated a new Bill. Therefore, the Lokpal and Lokayuktas Bill, 2011 is in the domain of Parliament.

The Lokpal will consist of a Chairperson and eight other members, of which 50 percent are judicial members. There were lot of demands from various political circles that there should be reservation for Scheduled Castes, Scheduled Tribes, OBCs, minorities and women. It has been incorporated in the Bill. It was decided that the Selection Committee will comprise of the hon. Prime Minister, hon. Speaker of the Lok Sabha, hon. Leader of the Opposition of Lok Sabha, hon. Chief Justice or a Judge of the Supreme Court nominated by the Chief Justice of India and an eminent

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\* This Synopsis is not an authoritative record of the proceedings of the Rajya Sabha. For the complete version of the debate refer <http://rsdebate.nic.in/handle/123456789/596885>

jurist. As far as question of inclusion of Prime Minister is concerned then with certain clauses, giving some exemptions, the Prime Minister was brought under the purview of the Bill. Group A, Group B, Group C and Group D Government employees have been brought within the ambit of Lokpal. The selection of the CBI Director will be done by a committee comprising, the hon. Prime Minister, hon. Leader of the Opposition in the Lok Sabha and the Chief Justice or his nominee. Then, we agreed that the Citizens' Charter would form part of the Lokpal.

I want to submit that the legislative competence of the Parliament has been questioned. This issue has been debated and some amendments have also been proposed. India became a signatory to the United Nations Convention Against Corruption. Therefore, According to me, Article 253 has ample provision for the purpose of passing a legislation under the Concurrent List.

**THE LEADER OF THE OPPOSITION (SHRI ARUN JAITLEY):** I rise to support on behalf of my party and my different colleagues, for enactment of a strong, impartial Lokpal legislation. But I also rise to fully oppose a weak and phoney Lokpal. Today, Rajya Sabha by passing it with Amendments should prove that the elected representatives are committed to the country that they would bring a good law to remove corruption. The Hon'ble Minister of Finance expressed the sense of the House on 27 August. But there is a sense of the country also that our elected Government, our MPs, our both Houses should enact strong Lokpal legislation. Hon'ble Minister stated that this law was brought first time in 1966 on the basis of Administrative Reforms Commission. This law has been brought eight times during the last 44-45 years. There is concern related to the issues of land, mining, alcohol or liquor, revenue and municipalities where the common man faces lot of harassment and corruption. The whole mechanism which we have created to fight against corruption is not strong enough in itself. We have to bring improvement in this situation. Can those be brought by incomplete legislation? And I regret to say that this is a incomplete legislation. The public of the country would not forgive those who want a weak legislation, The Government had very clear strategy to create smoke screen before this entire debate, to give constitutional status and enact a weak legislation. You want to create phoney Lokpal and create a smoke screen that we are giving it a constitutional status. Lokpal would be a constitutional institution. But when the investigating agency with it would be controlled by the Government, it would become toy in itself. You want to make it a toy and then say that it is a constitutional authority. This will be the game changer. The game will change if you do create an effective institution. Make it clear that while making constitutional institution you would not strike on the rights of the States. Amendment

was for that you say that it will be a law under Article 252 of the Constitution. There is no contradiction in the fight against corruption and the federal structure of this country. Both can coexist. I oppose the Bill on three basic grounds. In this Bill you want to control appointment, removal mechanisms. You have created an impossible methodology of investigation. You have kept an investigative agency to be controlled by the Government so that Lokpal, as an institution, becomes a toy itself. You want to make Lokpal to intrude into every area of civil society. The Government has consciously brought a law which is constitutionally vulnerable. We will support the appointment procedure of the Lokpal, but we cannot support an institution where the Government controls appointment and removal. This is not an ideological subject. Don't make it a prestige issue. In this law the power to file charge sheet will not be in the hands of investigating officer. Against whom cases would be filed is the power of investigating authority. Whoever created this mechanism is completely alien to the concept of how criminal law investigations are done. All of us are saying that it is an unworkable mechanism. CBI must be kept independent. Private institutions and NGOs, who don't take financial support from the Government, should be kept out of the purview of the Lokpal. By this we are going to establish an institution which is so intrusive that it will enter every area of even private life. If you want to make this country a controlled regime, we are not going to support it. I entirely agree that the Lokayukta or the Lokpal will have to be established by law made by the Legislature. We have a Constitution of federal structure. The powers of the Centre and the States are clearly demarcated. Clause 81 of the Bill says that Lokayukta has two jurisdictions, one is the criminal law jurisdiction and the second is power to take disciplinary action. Entry 41 says, "The power to deal with services of the State belongs to the States. Disciplinary action is not an incidental power; it is a substantive power. A system is being created by which disciplinary action against officers of the State will take place by a Central law! It can only take place by a State legislation. In this situation, the State Governments won't be able to run their Governments. You can bring legislation under Section 252. The option provision is available only under Article 252 and no other Article. You only have the criminal law power; you don't have the disciplinary action power. Under Article 253, the decisions taken are implemented in that Convention. But convention does not say that procedure prescribed under convention should be flouted. The rights of the States are being trampled upon by you. A new constitution is being created. This Government is now trying to make a 'constitutional cocktail'. If the law is under 253, there is no provision for an option. Most of these laws under 253 were because of international covenants. The authority to deal with State services can only be with the State Legislature. If you have the

authority under the Concurrent List, then the States don't have the authority. We are committed to making a law, and the correct constitutional course should be followed. The manner in which the Raj Bhavan subverted the appointment for years is itself a good case for why we must have an institutional mechanism not controlled by the Government. We are supporting reservation. You are bringing such a legislation against which objection can be raised constitutionally. We had a sense of the House 'Resolution'. It was committed that Group 'C' and 'D' employees and citizen charter will be put under the Lokpal. With regard to Lokayukta, it has to be done constitutionally in the correct manner. You want to subvert this institution even before it was formed. We need to create a powerful and an independent Lokpal. An effective Lokpal needs an independent investigative agency. Accept the amendments that some of our colleagues have moved so that we can have a powerful Lokpal.

**DR. ABHISHEK MANU SINGHVI:** The fundamental question today is whether you want to pass Lokpal Bill or not. It is no use putting a string of conditionalities in your statements. Do not try to mislead the nation by trying to look always as if you are passing the Bill. Let's look at the CBI in the investigation process. The Bill draftsmen rightly has a dilemma, should the birth of a new institution like the Lokpal mean the automatic destruction of every existing institution? There is a difference of approach of philosophy. One philosophy is that the entire grievance redressal and Citizens' Charter must be subsumed under the Lokpal. You are, in fact, making a body outside the whole system. You are having a body with inherent conflict of interest. Our conception is of mutual checks and balances. An equilibrium has to be created among the Lokpal, the CVC and the CBI. There will, now, for the first time, be no Section 6A prior sanction. We have been talking in this country for 60 years that it is better to have some differentiation between investigation and prosecution. This Bill, for the first time, creates a separation. For Lokpal-referred investigations, the Lokpal shall prosecute. There is objectivity there. The Lokpal is the one which will file the chargesheet. On the other hand, when we provide for Lokpal-initiated investigation, that the whole control remains with the Lokpal, you start objecting. We have amended Section 173. Does any law say that Parliament, under the new Bill, cannot amend the common law? Apart from actually putting the CBI under the Lokpal, we have given great control and power to the Lokpal over the CBI. At least, there are five new systems in this new Bill – prosecution separated, all sanctions abolished, no influence during investigation under Section 25 or Clause 25, charge sheet to be filed by Lokpal, supervisory jurisdiction of 8A with the Lokpal and selection by a very high-powered body. Now, if you do not trust people like the Chief Justice of India, the Speaker of Lok Sabha, *all ex-officio*, and if you say that there is a Government selection, then, I think,

fundamental restructuring of a democracy must come about. Now, look at this administrative freedom. Do you want a system where administrative control is not vested with the Minister who gets up here and answers questions in Parliament? Do you want administrative control with a Minister who does not get up and seek the Consolidated Fund of India funding? Let us turn to a very important issue of Article 253. Our Founding Fathers discussed that the State autonomy was very important. Then they created Article 249 to Article 253. They said that for higher national interest, you have to have provisions where affirmatively Parliament is given power to have an inroad. So, Article 253 is a constitutionally decided national interest provision. How can it be an assault on federalism? Article 253 is supreme. Earlier this Article 253 was called 230. It says it shall apply only with the consent of the States. Now, if Parliament has power, that means the Parliament can pass law. If Parliament can pass law, it has to be law under List I or List III. If Parliament can pass law, then why can't Parliament put clause 1(4) which we have put that this law shall apply provided there is State's consent. I am asking you: how is it possible to have an inroad into State's rights if the State doesn't give consent? This Bill does not have any reservation at all. If you just read the clause, it is a clause that gives a statutory mandate to provide diverse representation consistent with the pluralistic diversity of India. Now, I don't have to take a woman, an OBC etc. every time because so long as four out of eight comprise some or all of these categories. We have said that the CVC is obliged to file a report to the Lokpal and the Lokpal will have the power to give an advisory back, saying you should do things like this and not like this. Is that not fully meeting the sense of the House. There is a representation given by the BJP to the Standing Committee, which specifically says that we want a Constitutional status to be given. We have no objection to a constitutional status. But, you then come to the Lok Sabha, and the argument you give is two-fold. We want the constitutional status, but only if you take away the Lokayukta part. How does it have any connection with the constitutional status? Constitutional status for the Lokpal is an excellent idea and you are only pretending to oppose it for one reason or the other. I have heard no constructive suggestion. As regards the removal of Lokpal, his removal has to be the same as a Supreme Court judge. For a Supreme Court judge also, you have to make a reference to the President of India, and the President then refers it further. We have copied the same system as a Supreme Court judge. As far as your trust point is concerned, it only covers those trusts which satisfy cumulative condition. So, it is not every trust. My friend raised a valid point. There are two sections- one Lokpal and the other is Lokayukta. At the centre, it is Clause 20(3) and 20(4). At the state level, it is 81(3)(b) and 85. If you read together, for the Lokayukta (81 and 85) and if you read together for Lokpal {20(3) and 20(4)}, it only



provides for a recommendatory power. There is no binding effect. But, the second one is more important. The report, even for departmental action, can be sent only on the basis of corruption findings. So, it is recommendatory and it is corruption based. You are creating a prosecution agency. The prosecution agency at the centre is Lokpal and at the State it is Lokayukta. The Lokayukta will prosecute in the state. The Lokayukta will do it on the basis of corruption which can be passed by the Central Government and the Lokayukta will only make a recommendation. There are people in this House and a large number outside who do not seem to have the confidence in our institutions. But, it is only through Parliament that you can have a stake in the institutions as far as decision-making is concerned. It will be a great betrayal and great disservice to history if you don't join us in passing this Bill. We are making a new model. And, we are not afraid of criticism. I would urge upon you to leave all your pretensions, to stop finding excuses and with some minor technical changes if you want, pass this Bill.

**SHRI SATISH CHANDRA MISRA:** First of all, I would like to talk about the autonomy of CBI, about the independence of CBI. It cannot become independent till the Centre's control over it is not removed. Now, CVC has the power of superintendence over CBI for investigation purpose and overall control is with the Central Government. CVC itself is not independent. The agency which is controlling CBI in investigation is itself not independent. All the members sitting here and even the ministers sitting here also know how the CBI is being misused and that CBI has not been given independence. Whichever Government is in power, it misuses CBI. It is very important that independence should be given to CBI and CVC. What type of reservation is that? It shows your mindset. You says that you have the power to select any category in selection procedure. You can exclude any category. We are not going to accept this type of reservation. You consider them only vote bank. You are destroying the federal structure. You brought a proviso into sub-section 4 and you have taken legislative power by executive order and cabinet decision. You have not given the power to states to legislate on this. You have only said that it will be implemented when you give the consent. You are making them fool. It is our duty in the council of states to see the interests of the states we are representing here. We have no right to frame such a law which is unconstitutional. The State has exclusive power as far as State employees are concerned. We should not pass laws and make an unconstitutional provision under pressure as far as list I, II and III are concerned. There are conventions and various agreements with foreign countries which they signed without taking the States into confidence or without even consulting the States. We see that almost every subject is included in the list of convention and agreements and therefore, they can make law with respect to States on every subject and they can have

a legal sanction and have full control over the States and completely ruin the federal system which will not be permitted. You cannot frame law on a State subject by saying that Article 249 gives you the power. You can only pass laws in emergency when you impose emergency under Article 356, otherwise, you cannot. Kindly bring an effective Lokpal Bill. Don't make it a prestige issue. Reconsider this and bring a law which is really effective and constitutionally viable.

**SHRI SITARAM YECHURY:** We are happy that after 44 years Lokpal Bill has passed in the Lok Sabha. But in this Bill there are so many shortcomings which are to be removed. Mainly there are four weaknesses of this Bill. The first point where correction needs to be done is on the question of federal content of this Bill. Article 1 of Constitution says, "India, that is Bharat, shall be a Union of States". Please remember, without States there is no India and if you are trying to make a law that is going against the interest of the States, you are making a law that is going against the interest of India itself. We are all for an Act which says that there shall be Lokayuktas in States. The second point is that it was asked if we want Lokpal or not. We want a better Lokpal. We suggested an amendment and Government should accept it for a consensus Lokpal. For a better Lokpal there should be a democratic procedure for its appointment and removal. If we really want to fight against corruption then corporate funding of political parties should be banned. Include corporates and foreign-funded NGOs within the ambit of the Lokpal. Most important point is the question of investigation under the Lokpal. You cannot allow the investigative agency to be under the control of the Government. On the question of the CBI and corruption, all matters, connected under the Prevention of Corruption Act, which will be investigated by the CBI, should come under the control, jurisdiction, and superintendence of the Lokpal. We would be happy if the Government would seriously consider the amendments and accept them only from the point of view of making this Lokpal a more effective instrument. It is this Parliament which will have to enact legislations and laws for the country. The Parliament is discharging its responsibility.

**SHRI SHIVANAND TIWARI:** We agree that the Central Government can make laws for whole of the country. In the Act of 1935, the States had more rights than the Centre. In that background, our Constitution was made and it provided federal structure to the country. I would like to exhort the point that, at present, the States have taken more advanced steps to fight corruption than the Centre. In Karnataka, the sitting Chief Minister was sent to jail by the order of the Lokayukta. In Uttar Pradesh also, anybody of the Cabinet can be expelled by the decision of the Lokayukta. The executive has no role in appointing the Lokayukta. I request you not to violate the rights of the States. Therefore, the Article 253

should be taken care of. The powers of the States should not be usurped. In order to fight corruption, our laws are more effective than those of the Centre. In the battle of Kashmir, there was a jeep scandal and no action was taken against the person who was involved therein. The Public Accounts Committee twice said that there should be judicial inquiry. This is the history of corruption against which the Congress is eager to fight. On the one hand, a recommendation is made to conduct an inquiry and on the other hand character certificate is issued. There should be reply to the allegations made by me. The legislation made by you, is meant for punishing the culprits involved in corruption. But, there is no provision to uproot the corruption. Only bribery is not a corruption, misuse of public office is also a corruption. Inequality is the cause of corruption. There is a big gulf between the rich and the poor in the country. Five crore masses are poverty-stricken who loiter along railway platforms and bus stands. Farmers and weavers are committing suicides and poor mothers are selling their daughters. 70-80 per cent population is deprived of food. The rich persons have the motive to incite corruption. The corrupt people have their vested interest. In my area, people have not enough money even to purchase 'khaini' and tea. Wealthy persons contest in the elections by giving rupees to the poor voters. By removing inequality, the corruption in the elections can be vanished. At the time of formation of the Constitution, the directive principles could not be included in the fundamental rights. While forming policy, the Government do not follow the directive principles. As a result thereof, inequality have increased. All the legislations made to abolish corruption were failure because the laws could not be utilized. The present economic policy gives impetus to corruption. In 1952, Shri C.D. Deshmukh had for the first time connoted towards Ombudsman. Even the Dr. Rajendra Prasad had also asked Pt. Nehru to make a law in this regard. Gandhi ji had reacted severely against corruption; but, Pt. Nehru thought that issue of corruption was petty. Lastly, I request you to incorporate our suggestions honestly in the Bill, which is, at present, very weak.

**SHRI TIRUCHI SIVA:** At the outset, I would deny that this Bill is a by-product of a coercive public opinion. The need to have a legislation for a Lokpal has been felt in the past. The Administrative Reforms Commission has suggested to form a Lokpal at the Central level. India is committed to pursue the policy of zero tolerance against corruption. India had signed the United Nations Convention Against Corruption in 2005. Shri Rajagopalachari had already anticipated that corruption, injustice, inefficiency of administration and so on, would make a hell of life as soon as freedom is given to us. Swami Vivekananda had also prophesied about the corruption in the electoral politics. However, corruption is not prevailing in India alone. It is a global phenomenon. That is why United Nations Convention against Corruption has come into being. We already have strong

legislations against dowry, but still dowry is increasing manifold. Transparency in every aspect of governance can curtail corruption to a great extent. In Andhra Pradesh, people download stamp papers from the internet and pay the price through DDs, which has totally eliminated fake stamp papers. The introduction of RAC, computerization and online booking in the railways has brought down corruption in railway ticketing. Cooperation and coordination from the people can make any law effective. In respect of the Bill being unconstitutional, we feel that it is un-federal. Though we are all free from foreign rule, the Centre's chains are still fettering the States. We are second to none in fighting for State autonomy and establishing the State's rights. According to observation made by Justice Verma in the Standing Committee we should have an omnibus federal legislation to set up Lokayuktas in the States. This may also be against the concept of the protection presently available to the public servants. We are afraid, the recent activities tend to show a sign that the Centre is invading into the territory of the States. It is a very genuine apprehension. Regarding the constitutionality of including State Lokayuktas in the Lokpal Bill 2011, the Parliament may consider to enact a model law for the States. Don't make an attempt in which it may appear that the powers of the States are being usurped. We have to express this apprehension on our part. The Prime Minister is included while he is in office and also after he demits office. Group 'C' and 'D' employees have also been included. Group 'C' and 'D' employees alone constitute about 88 percent of the total number of employees. The burden will be increased. Also, the process of going through Lokpal is very welcome. Nothing is done in an urgent manner. Then, the prosecution wing will take up the matter and file the case before the special court establish under the POCA. I need a very important clarification on Clause 95 which I think, is quite confusing. Lokpal is another way by which we are trying to curb corruption. If it needs drastic changes, could revisit it at any time and make the suitable amendments.

**SHRI TARIQ ANWAR:** I rise to support the Bill. This Bill is very important to check corruption. My party, the NCP has been since the beginning in favour of a strong Lokpal to be constituted to check corruption. Over the last few days an agitation is being launched in respect of corruption. A few political parties, directly or indirectly are trying to fanning the same. Our constitutional setup was also attacked. A question mark was raised on our election process. The image of our country has been tarnished. An environment is tried to be created that we all are of no use. Corruption is prevailing only in India. I think that efforts have been made in the Bill that it could check corruption in the coming days. If it does have any loopholes, it can also be rectified. The post of Prime Minister has been placed under Lokpal. Our party was not in favour of it because Prime Minister's post is constitutional one. It is said in regard to the CBI that

people do not trust it. It is always under control of the ruling party. It has repeatedly been stated that the CBI should be placed under Lokpal but it is also a fact that the CBI do not deal with the cases of corruption alone, it also deals with host of other complex matters. The Bill has especially taken care of the social set up of the country. It is for this reason that I urge upon the Lokpal Bill to be passed unanimously so that people of the country can believe that the entire House wants to fight with the corruption.

**SHRI PYARIMOHAN MOHAPATRA:** I rise to oppose certain provisions of the Lokpal and Lokayuktas Bill, 2011 for which I have certain amendments. Except few exceptions, the officials and politicians, involved in corruption, are not sent to jail. No action was taken in respect of the Report of the Sanathanam Committee. When the multiple scams have affected the society, many people of the civil society came forward. There is mining scam in five States where the mining companies earned profits worth crores of rupees. When Ramdev and civil society threatened, you were afraid on account of moral degeneration. In both the Houses, it was said that a strong Lokpal Bill would be brought. But, the same was not done. The selection process is also faulty. The Chief Justice was not appointed therefor. Really, I am not making allegations against any institution. Unless we tell things honestly, we will never find a solution. So, we should make the process of selection transparent so that proper people can be selected. You should appoint the most powerful man with honesty and integrity. I request you to give the Anti-Corruption Wing of the CBI to the Lokpal; otherwise, this Lokpal will be a useless piece of anachronism. Federalism is not an impediment in the war against corruption. Bihar and Uttarakhand have very powerful Lokayukta Bills which should be looked at. The Clauses 62 to 97 should not be imposed on the States. It is contradictory to add Article 253 with Article 252. The federal structure should not be affected adversely in any manner. About 80 per cent of the population is affected by corruption, committed by the employees at the level of Group C and Group D. Therefore, they should be brought in the ambit of the Lokpal Bill.

**SHRI SUKHENDU SHEKHAR ROY:** I rise to oppose the Lokpal and the Lokayuktas Bill, 2011. Though I belong to the All India Trinamool Congress, which is a partner of the Government, I oppose the Bill because I represent a party which is transparent. There is a violation of constitutional provision in the Bill which affects the interests of the people and the States. The Bill determines the establishment of Lokayuktas in the States. This should be left for the State Legislatures to decide. At the State level, the State Governments will have to consider about setting up of Lokayuktas. According to the suggestions made by the former Chief Justice of India, Shri J.S. Verma and the legal luminary, Shri Harish Salve, we should follow the

federal structure. This Bill encroaches upon the authority of the State to which we are opposed. Bringing Lokayuktas under the Bill may be unconstitutional and anti-federal. It was stated by another legal luminary, Mr. Rajiv Dhawan before the Standing Committee. As this Parliament will have the power to enact for Lokayuktas in the States, the powers of the State Legislatures will be taken away. If the Chief Minister's image is affected, the image of the country is also affected. If a Chief Minister is put on trial, the image of the country is also tarnished. I have a question whether an international covenant enforces upon the Government of India to evolve a mechanism against the federal structure of the Constitution. In this respect, I request you to delete the portion of Part III entirely from the existing Bill. The entire nation is looking at us. It is the issue of autonomy of the States, the issue of federalism of the country which cannot be abridged or affected under any circumstances. I would request the Government to delete Chapter-III from this Bill. I oppose the Bill.

**PROF. RAM GOPAL YADAV:** The Samajwadi Party opposes the Bill as passed by the Lok Sabha. The more was legislation to curb the corruption enacted, the more was the same on the rise. If they think that with the creation of the Lokpal corruption will come to an end, they are in a great misunderstanding. I have submitted lots of amendments in the Bill. There are five persons in it. If you glance at it, it is in favour of ruling party. It is for this reason that I have submitted an amendment that the Leader of Opposition, Rajya Sabha should be therein. It is correct that the CBI has so far been misused so much. Lokpal is likely to be misused much more than that. That is why I have submitted an amendment also. Unless and until you provide autonomy to CBI, the same would have been misused. The day a Member of Parliament ceased to be an MP he should be out of the purview of the Lokpal. If he has committed anything wrong outside the Parliament and if there is complaint against him that should be heard. I want an amendment therein. Chapter III of the Bill goes against the federal character of the country and thus it requires an amendment. I have also requested therein the inclusion of media.

**SHRI D. RAJA:** My Party supports a strong and effective Lokpal Bill. The present Bill lacks that strength. I would like to deal with four issues. One is reservation to the Scheduled Castes, the Scheduled Tribes, Other Backward Classes, Minorities and Women. The second one is the issue relating to federal principles of the country. The third one is bringing those who are in corporate and private big business houses, dealing with the Union Government and State Governments, manipulating its policies and the NGOs receiving foreign funds and the Government funds, within the ambit of the Lokpal Bill. Then, fourth one is the role of the CBI. A major movement against corruption is necessary in the country without

diminishing the position of Parliament. I find some parties which refuse to share the responsibility of the Government. But they claim that they are part of the Government. The Lokpal Bill falls short of many strong provisions to counter corruption. There are several amendments which need to be considered seriously. We should learn from the experience of other countries? Can Hazare's team or Pranabda's team argue on these points, asking the rich to pay more and giving more representation to women in legislative bodies? The biggest corruption that India is facing today is the denial of rights to the people belonging to Scheduled Castes, Scheduled Tribes, OBCs, women and minorities. Even if money is earmarked for them, it is diverted. We had also moved an amendment in regard to the need to bring Chairmen, Managing Directors, Members of Board of Directors of any private company or business houses or its employees. They should also be brought within the ambit of Lokpal. The NGOs that receive foreign funds must also be brought within the ambit of Lokpal. The CBI should have independence. The Government will have to consider these points with all seriousness. Otherwise, this Bill will remain a weak Bill.

**DR. V. MAITREYAN:** AIADMK is for a strong Lokpal and for an effective Lokpal. We are strongly opposed to the efforts of the UPA Government to thrust Lokayuktas on the States. But it rejected the provision of constitutional body status to the Lokpal. The Bill presented today, as passed by Lok Sabha, is a serious assault on the principle of federalism. By introducing this legislation, through Article 253, the UPA Government is not only taking away the legitimate rights of the States to enact laws on issues which squarely fall within the ambit of List II of Seventh Schedule, but also it attempts to foist a body of its choice on the State where Lokayuktas already exist. The Lokpal Bill should exclude the Prime Minister since the Prime Minister is already covered under the Prevention of Corruption Act and any misconduct by the Prime Minister can be investigated by the CBI. Similarly, for the very same reasons, the Chief Minister of the State should also be kept out of the purview of the State Lokayukta. We are for a strong and effective Lokpal. But, the Bill, in its present form, does not address the serious concerns raised by our Party on the above issues.

**SHRI H.K. DUA:** The question of federalism has been raised. They think that the Parliament is encroaching upon the rights of the States, which may not be true. Corruption, we are told, is a national question. So, the remedies also have to be national, and, hence you cannot exclude the States. The Bill has one clause to which I have reservation. The clause is that the office of the Prime Minister has been included under the purview of the Lokpal. Now, you cannot have a situation when authority of the office of the Prime Minister is compromised. This Bill has come in a

strange kind of circumstances when the so-called civil society has tried to put pressure on the Parliament of India and its sovereign rights to pass the legislation. Patriotism is not anybody's monopoly. But for passing of the laws, tomorrow another group can come at Ramlila Ground, and that worries me more. Don't give the right to odd groups outside to pass the law. By passing the Lokpal Bill with grace and with unanimity, we will be sending the right message to those who want to create anarchy in the country.

**DR. MANOHAR JOSHI:** Corruption has, no doubt, become an important issue. But, while listening to the debate I thought that the main issue was being neglected and procedural issues were getting more importance. I think that the people sitting here should make recommendations for removing corruption totally. People are aware that corruption is everywhere. People also think that corruption cannot go any time by passing any law. If you really want to remove the corruption what is necessary is to change the mindset of the people in the country. You should start giving education right from childhood and their minds should be made such that we are working for the country and corruption is coming in the way of prosperity. I feel that if it is done, there will be no difficulty in removing corruption. Therefore, firstly, if such type of Lokpal Bill is brought, it should have been unanimous and secondly, if you want to take proper care, it should have been taken right from the childhood. I am afraid that this Lokpal might become another centre of power in the country. While creating a Lokpal, it must be kept in mind that the democracy must remain untouched and, therefore, Parliament should always remain supreme and above Lokpal. We feel that the Prime Minister should be brought within the purview of the Lokpal Bill, of course, with some conditions. The judiciary should be kept absolutely independent and should not be brought under Lokpal at any level. We support some parts of the Lokpal Bill. The aspect of bringing the lower bureaucracy under the purview of Lokpal is not acceptable, but we support the uniform Lokayukta law at the State level. There should be tools to remove Lokpal if found guilty and corrupt. Parliament should be empowered to impeach the Lokpal. This can be done by either withdrawing this Bill or taking back the proposal that you have given.

**SHRI RAM JETHMALANI:** I am totally opposed to this Bill. It is that crucial moment in our history where if we don't make a sensible response to the imperatives of the situation, we shall suffer in the future. It is, therefore, necessary to understand what are the essentials of the present situation which needs to be dealt with by the united wisdom of this whole House, forgetting the party loyalties and positions. Let us go back to the history of corruption. Corruption is not a discovery by Anna Hazare. Lal Bahadur Shastri was the one who warned the nation that corruption



has made progress at a galloping pace and it has risen from the lowest levels to the highest decks of our political life. Today, Anna Hazare has done one thing that he has brought out the consciousness of the nation to this great evil of corruption. But, there is another aspect of this corruption. While this corruption was growing by leaps and bounds, what else was happening to the most important and prestigious investigating agency of this country? I am talking of the CBI. The CBI has to exist as a primary investigating agency in this country. The question is: What do you do about it? I suggest that power of superintendence must now be divested from the Central Government and vested in the Lokpal which you create under the Lokpal Bill and that is the only way to make some changes in the character of the CBI. There are other powers which the Central Government inevitably possesses over the CBI. These powers have to be relegated to some other body altogether. You are relying upon the Convention Against Corruption which the U.N. has passed. Therefore, you claim that this is legislation under Article 253 of the Constitution of India. Let me talk of the fraud. The fraud is that on the 30 August, 2010, the Government of India and the Swiss Federal Council signed a Protocol which would amend the existing Double Taxation Avoidance Treaty. It is important to know what you achieved by this and what you intended to achieve by this. Those who have committed the act of pilfering the assets of the poor people of this country, for them the Government of Germany said that they are prepared to give that information to every friendly country that wants to know those names. For avoidance of double taxation there is Double Taxation Avoidance Treaty. Under that treaty there is mutual obligation of sharing information, but the information can only be used for tax purposes. After having made this bilateral treaty with Switzerland, when they came to ratify the convention, in the ratification, they added a condition that if there is a bilateral treaty between the two nations the convention does not apply. I have not trusted this Government ever. We shall not support this Bill under any circumstances.

**THE MINISTER OF STATE IN THE MINISTRY OF PARLIAMENTARY AFFAIRS (SHRI RAJEEV SHUKLA):** It is our collective responsibility that we should try to get this Bill passed. To fight with the corruption is everyone's responsibility. This Government brought many Bills to fight with the corruption. Government has taken many effective steps so it is not correct to raise question on Government's intention. Your all demands have been covered in this Bill. I am not in the favour to bring the Prime Minister in the purview of Lokpal. This is very strong and effective Bill. In the Lokpal law, they have maintained the balance of authority and power alongwith giving all the rights to Lokpal. CBI, Government employees of Group A, B, C and D would come under this. Such a balanced legislation has been enacted which maintains the respect of all our institutions as well as which may work. Both democracy and Constitution would remain safe.

I am a strong supporter of the rights of the States. A strong legislation should also come in the States. You say it is not strong. If it is not strong and effective then how the people are talking about such stringent provisions? There is provision for one year sentence for wrong complaint. If it had been given the constitutional status in the other house, it would have been very good. But it is a very good legislation.

**SHRIMATI SHOBHANA BHARTIA:** Over the years graft has taken such deep roots in every sphere of public life that it has almost become institutionalized and that is where the problem lies. That is why it is imperative to have the institution of Ombudsman or Lokpal. I would like to compliment the Government for including the institution of the Prime Minister in its ambit. To provide certain safeguards like having in camera proceedings is a step in the right direction. The Director, CBI should have full functional autonomy. The meaning of the word 'administrative control' of the DOPT should be very clearly defined. I would request the Government to consider augmenting the strength of the CBI and the CVC. I would just like to say that it is a very good initiative on the part of the Government. The Government has set the best architecture for fighting corruption.

**SHRI M.V. MYSURA REDDY:** I would like to speak about the procedure of selection of Lokpal. Regarding this I have given amendments also. It is a weak Bill and that it won't weed out corruption in political system. This is a big Bill. If these public servants are brought into the system then what will be the effect of these different Establishments and courts in the States? If you make an imperfect law, definitely we are leaving room for courts to interpret the law. People are looking at it suspiciously. The intention of the Government is not good. Laws concerning the corporates have to be amended so that there should not be corruption in these areas.

**SHRI BIRENDRA PRASAD BAISHYA:** We are in favour of a strong Lokpal at the Centre and simultaneously a strong Lokayukta in the State. I am happy that they brought the Prime Minister under the purview of the Lokpal. It is a welcome move and that is our stand also. Everybody had said that all the successive Central Governments misused the CBI. Our opinion is that the investigating wing of the CBI should be brought under the purview of the Lokpal. I feel that there is a conflict with natural justice in this Bill. My suggestion is that the CBI Director should be appointed by a Committee under the Chairmanship of the Prime Minister, and then the Leader of the Opposition and the Lokpal should be its Members. There should be a separate Judicial Commission. We want that the lower bureaucracy should be brought under the purview of the Lokpal. On the one hand we want a strong Lokpal in the Centre, and on the other hand, there should be a strong Lokayukta at the State level. It will not be possible for us to support this Bill in the existing form.

**SHRI BHAGAT SINGH KOSHYARI:** We want a strong Lokpal having moral authority. In the present Bill there are certain shortcomings. We have brought some amendments for this purpose. Government should accept these amendments for a better Lokpal.

**DR. K. KESHAVA RAO:** We all agree that there should be a strong Lokpal. But we are still fighting with the basic tenets as to what would make a strong Lokpal. It is nice that today we are not sitting under duress. We are not running away from the Bill against corruption. Our party has always been for fighting corruption. Our Prime Minister felt that the Bill should incorporate the mind and the sense of the people; it should reach out to as many people as possible in the country. States' rights have not been taken away in this Bill. The provisions of this Act shall be applicable to a state which has given its prior consent to the application of this Act. If you still think that a few clauses to be added or taken out of the Bill, it all can be discussed. So far as the appointment of Lokpal and inclusion of the Prime Minister is concerned, I am not able to understand what exactly BJP wants. If any misunderstanding is there, we can sit together and sort it out. We should evaluate our Bill in the background of the Supreme Court's verdict. As far as reservation is concerned, this is our policy. Few States have not implemented this, but Andhra Pradesh has started implementing this. I say that reservation should remain with us.

**DR. ASHOK S. GANGULY:** I support the Bill. Many of the apprehensions are raised about the sanctity of the Constitution and the federal structure of this country. They will be replied to appropriately. The so-called leaders of the civil society have now turned out to be promoters of elections and they have found legitimacy both from the *Vampanthis* and *Rampanthis*. Corruption has spread like a plague. Now the time for debate is over. But the issue cannot be hijacked by self-styled leaders. Let us not disappoint the silent majority of our citizens by not approving a Lokpal Bill. I appeal to everyone let us pass this Bill and let the Treasury Bench also respond to some of the apprehensions.

**SHRI AHMAD SAEED MALIHABADI:** Our unanimous view is that bribery has become a major problem. Lokpal Bill is passed by the Lower House and now this is before us. We must ponder over that this Bill should be made as strong as we can. There is a historic responsibility on our yoke now and we must meet that.

**SHRI RAMA CHANDRA KHUNTIA:** I stand here to support the Bill. We have introduced all the Bills as per our commitment. The NDA Government and BJP were not interested to bring the Lokpal Bill and to bring back black-money. They can only blame the Congress Party. Taking advantage of the situation today, they are talking about the Lokpal Bill. In one way BJP

is talking for a strong Lokpal Bill and, on the other hand, they do not support the constitutional authority to be given to the Lokpal. We are talking about the CBI, CVC, and corruption. Do you expect that corruption is only in Centre, not in the States? I do also say that the State Government should also agree to hand over their investigating agency to the Lokayukta. In my opinion Corporate Houses, Media and NGOs should also be covered under the purview of the Lokpal. We must not have any political intention. I also want to say that this is not the final Lokpal Bill, it can be further amended. I appeal to all the Members to support and pass the Bill in the House.

**SHRI MOHAMMED ADEEB:** I am unable to differentiate between a strong Lokpal Bill and a weak Lokpal Bill. As the Bill covers the Prime Minister, CBI, CVC and so on, the entire sovereign will be in the hands of The Lokpal. It is a conspiracy against the Parliamentary democracy. It is not proper to see the post of Prime Minister with suspicion. A mentality is being formed that the Prime Minister, Ministers and MPs are thieves. We are responsible to maintain the democratic values in the country. If we are afraid, we will die. The kind of activities will paralyse the whole democratic system. Media should also be covered in the Bill. The editors of petty news papers make a mockery of what we discuss in the House. I request you not to include the Prime Minister in the Bill. The Prime Minister is the prestige of the nation and this House. So far all the cases of crimes were referred to the CBI. Now, they will be referred to the Lokpal. It is not tenable. Such a society and thinking should not be formed where everybody will be suspected. In a big democracy like America, there is no such system. Such nations that respect their rules make progress.

**DR. BARUN MUKHERJI:** We want a strong and effective Lokpal. Lokpal cannot be effective if it does not have its own independent investigative wing. So, I think that corruption-related investigation under the CBI should be independent and completely free from Government influence and control. Rather, the Lokpal should have its own investigative wing which will be accountable to Lokpal only. The corporates, which are Government-funded, Government-aided and foreign-funded NGOs, must be under the ambit of Lokpal. Besides, inclusion of Lokayukta in the Bill goes against the spirit of the Constitution. It will severely disturb our federal structure. Lokayuktas should be left to the States to enact their own anti-corruption Act. Hence, the provision with respect to the Lokayuktas should be taken back from this Bill. The Centre can frame one best model Bill that can give guidelines to the States. It is also necessary to bring the lower bureaucracy under the ambit of Lokpal as the *aam aadmi* is mainly in close touch with them and stands to suffer. I must assert on behalf of our party—All India Forward Block—that supremacy of Parliament must be upheld in matters of framing laws. Let us join hands together to narrow down our differences.

**SHRI NARESH GUJRAL:** Finally after much hesitation and under immense public pressure, the Government has introduced a half-baked Lokpal Bill. The CBI has been an utter failure in checking corruption in public life and has been misused for political purposes. The Government should keep control over the CBI but restrict its role to non-corruption cases like homicide, cyber crime, economic offences, etc. The Government should create another body under the Lokpal for corruption cases. The Bill directly attacks the sanctity of the federal structure of our Constitution and my party takes very serious objection to it. I hope that the Government will accept this proposed amendment of my party in the interest of Centre-State harmony. I welcome Clause 8 of chapter 2 that, after ceasing to hold office, the chairman and members will be ineligible for appointment as Governors, Ambassadors, Members of Parliament or the Members of State Legislatures so that the Government cannot tempt them in any way. I would suggest that we should enact a law to include all Election Commissioners, CVCs and Directors of CBI, RAW and IB in this list so that the Government cannot influence them by offering them post-retirement benefits. My Party fully endorses this view that LOP must be free of Government control. In regard to Chapter 6, Clause 14, since the jurisdiction of the Lokpal Bill includes the Prime Minister, Ministers, Members of Parliament and Group A, B, C and D officials, I would like to suggest an amendment to the effect that if a case has to be registered against a Member of Parliament or a Minister or Officer of the rank of Secretary, the Lokpal must have a quorum of, at least, two-thirds of its members present in the meeting. Besides, we need preventive measures in order to bring transparency and accountability. This can be possible if we reduce administrative discretion, penalise deliberate delay by the corrupt bureaucrats and politicians, and enforce Citizens' Charter.

**DR. PRABHA THAKUR:** At first, I would support the feeling of the Government which has come with a strong Lokpal Bill to abolish corruption. Besides, the Bills relating to the Citizen's Charter, Whistle Blowers Protection Bill and Judicial Accountability have been given perfection so that there may not be any flaw. Today Lokpal Bill is going to be introduced, we should welcome it, we should pass it. Whether our representatives are not obstructing it or really they intend to pass it. The Leader, Opposition has also pleaded that the NGOs should also be kept out. Mr. Anna has now been completely exposed.

**SHRI BISWAJIT DAIMARY:** We, on behalf of the Bodoland People Front party fully support the Bill and want the Bill to be passed today itself. Today, corruption in the country has crossed all its limitations. We have not been able to check the same with our existing legal instruments, therefore this Lokpal should be brought at the earliest. If at all there is

some shortcoming in the Bill, it can be rectified in future. The Lokpal can catch hold of anyone after corruption only, but how can we check the persons compelling us to commit corruption. Therefore, we have also to address the subject today.

**DR. CHANDAN MITRA:** I would like to pose a direct question to the Ruling Party that whether they are serious about bringing the level of corruption down in the country and introducing a strong and effective Lokpal. I don't believe that they can be because corruption lies in the genes of the Congress Party. There has never been a single Prime Minister with the exception of Lal Bahadur Shastri against whom corruption charges have not been levelled. I know they are trying to create disturbance to get the House adjourned. The CBI filed a case against unnamed persons, and for two years, took no action, despite the fact that repeatedly the stories appeared in the media. The CBI was pressurized into not acting. I am demanding that the CBI be given the real autonomy which this Government has refused to allow in the Lokpal Bill.

**SHRI TAPAN KUMAR SEN:** I suggest certain important changes that are required to make the Lokpal effective, to correct the distortions and aberrations in the Bill. Besides correcting the constitutional propriety and making an effective Lokpal by making the selection process much more independent and credible, it is important to address the supply side of corruption. For that the corporate houses and private entities that are operating in the public service area in a very big way should also be brought within the ambit of the Lokpal. Then, to make Lokpal effective, the concept of public servant, who is being scrutinized by the Lokpal to prevent corruption, needs to be expanded. After the Sixth Pay Commission recommendations, the place of Group 'D' has been taken over by outsourced workers of contract agencies. Apart from that, a majority of the public sector undertakings come in the domain. 50 per cent of the workforce is on contract basis. Unless these are not clearly clinched, the Bill will in no way become effective. We want an effective Lokpal because the people are suffering due to corruption. For that purpose these basic issues will have to be seriously considered by the Government.

**SHRI HUSAIN DALWAI:** The level of corruption will certainly come down after passing of the Lokpal Bill. 50 per cent representation has been given to the Scheduled Castes, Scheduled Tribes, backward classes and women in the Bill. This is a welcome step. We are determined to pass this Bill. This Bill is being debated since 1966, but nobody took initiative to make Lokpal a constitutional body. We had made a demand in this regard in Lok Sabha. But it could not be done due to opposition of some people. The Prime Minister should not be brought under the Lokpal. It will tarnish

our international image. This should not be politicized. Then, CBI is an independent body, it should not be brought under the Lokpal. If needed, CBI will definitely help the Lokpal. But, if the control of CBI is given to the Lokpal, it is not good. The role of the opposition is very important in the parliamentary democracy. It exercises control over the Government. But, today the opposition has become ineffective and directionless. Therefore, it is talking like this. Sufficient powers have been given to the Lokpal to remove the corruption thriving in the country, but still some parties need even more stronger Lokpal. I am not able to understand the reason for that. They want Lokpal with super powers. I would request the opposition that this Bill should be passed in view of need of the hour.

**SHRI RAM KRIPAL YADAV:** Our Party will not support the Lokpal bill in its present form. We have a number of reservations against the Bill. I would request all the Hon'ble Members that it is a suicidal step. An environment in the country has been created that all politicians are the corrupt. It is an important issue and people should have faith on Parliament. It is becoming very painful for me as I have a spotless public life of 33 years. The office of Prime Minister should be kept out of the ambit of Lokpal. There are enough provisions in IPC for controlling corruption. Investigation is going on against various ministers. Even Lokpal will also implement the provisions of IPC. We are trying to murder the democracy by passing a law like Lokpal. I would like to submit to all my hon'ble colleagues to not to accord their consent to this Bill. Have you ever seen that a nominated person will take action against us. We can't support this kind of law. Earlier there was no reservation in Lokpal but my party has strongly advocated for reservation. I am very thankful that in principal reservation has been accepted. But rotational reservation has been provided in the Lokpal. This is not acceptable to us. We oppose such rotational reservation. There is no provision of reservation as per Section 15 and 16 of the Constitution. We want a strong Lokpal Bill but we will not accept the bill in its present form. CBI and Group 'C' and 'D' employees should be kept out of the purview of Lokpal.

**SHRI O.T. LEPCHA:** I support the Bill, but I would like to make my remarks on two issues. No government organization would like that other government organization appoint its Members. Thus, it is very important to strike a balance in matters concerning appointments of such strategic positions. The appointment provision of the Director of CBI has been amended through this Bill and we welcome this step. Placing of CBI under another body will not be right and the independence of the investigation wing of the CBI should remain intact and even the Supreme Court cannot interfere in the investigation of CBI. Thus upholding the sanctity of the Constitution and not undermining the federal structure of the country, the

amended provisions of this Bill, which state that the Bill, once passed, shall be applicable to States if they give consent to its application is a positive step and we completely agree to it. I hope that the Lokpal at the Centre and Lokayuktas at the States march furiously to end the ages old war against corruption.

**SHRI RAM VILAS PASWAN:** Our Parliamentary democracy is an elected body and Lokpal would be a nominated body and Parliamentary democracy is bowing before mobocracy. Some people want to destroy this Parliamentary democracy. Government should act like a Government and Parliament is supreme it is not under anybody. Why Lokpal would investigate against the Prime Minister after his retirement? Lok Sabha and Rajya Sabha have the right to remove the Prime Minister. We are playing with the security of the country by bringing Prime Minister under the purview of Lokpal Bill. There is a difference between Reservation and Representation. A person from SCs, STs, OBCs and minorities and a woman must be a member of Selection Committee. Neither, will we support any bill nor allow it to be passed. It is a matter of life and death for us. Our demand has been to make CBI completely independent. Make it accountable. Only Group 'A' and 'B' employees should be brought under Lokpal. Big cases should be brought under it. We are supporter of Citizens' Charter. But it should be made with good deal of thinking. Indian Judicial Service should be made on the line of Indian Administrative Service and SCs, STs, minorities and backwards should get automatic reservation in it. We are of the opinion that either Government withdraw this Bill or send it to the select committee. It should be discussed again and after discussion this Bill should be brought again in Parliament. Then it should be considered.

**SHRI RANBIR SINGH PARJAPATI:** I request the Government to prepare a strong Lokpal Bill honouring the public feelings instead of speaking against Anna. Our party has always supported the Jan Lokpal Bill. I demand that CBI should be brought under Lokpal to stop its misuse. The provision of Lokayukta made by the Government is a transgression of states' autonomy. It is against the fundamental concept of the constitution. It is also necessary to bring group 'C' and 'D' employees under Lokpal to provide relief to the common men.

**SHRI KUMAR DEEPAK DAS:** I am sorry to say that it is not the strong Lokpal Bill that people of India need. We want that black money should be brought back to India from the foreign banks. In addition to this Bill, Government should take necessary steps to raise the ceiling on income and property. The Government should take steps after every ten years to curb black money. The Government can bring a strong Lokpal Bill. Please take back this Bill and bring a new Bill accommodating the strong provisions in question. I oppose the Bill.



**SHRI MOHAMMAD SHAFI:** My party supports this Lokpal Bill. But we have some important objections. Under Section 370, Jammu and Kashmir enjoys special status with regard to law making. Lokpal Bill could be introduced under Section 252 and can be put to vote. You have to take action under IPC and CrPC under the Law which you have brought. But your these laws are not enforced upon us. I request that after reconsideration you should give exception to the Lokpal Bill as you have given in Whistle Blowers protection Bill. Special status of the State should be restored. I request you that the Prime Minister may not be brought within the ambit of the Lokpal. While making provision of reservation for minorities in the Lokpal, the population of Muslims should be taken care of. In view of the present situation, this Bill should be submitted to the Select Committee to have consensus on it.

**SHRI RAJNITI PRASAD:** It is not good to say that all politicians are corrupt. I don't support this Bill. It should be sent to the Select Committee.

**THE MINISTER OF STATE IN THE MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS AND THE MINISTER OF STATE IN THE PRIME MINISTER'S OFFICE (SHRI V. NARAYANASAMY) replying to the debate, said:** I am grateful to the hon. Leader of Opposition and also leaders of various political parties for having participated in the discussion in this august House. Observation of various quarters has been that this is a weak Bill, it is not effective and it is toothless. This Bill has a very important provision for confiscation of property before conviction. It proposes to give an autonomous status to the institution of Lokpal. Previously, during NDA regime the Lokpal Bill brought in the Lok Sabha on 14 August, 2001. It then went to the Standing Committee. But even two years after the Standing Committee Report they did not take any step to form the Lokpal. In the present Bill, we have five members. It comprises the hon. Prime Minister, hon. Speaker, hon. Chief Justice, an eminent person and the hon. Leader of the Opposition. The Opposition says now that the Prime Minister should come within the ambit of the Lokpal with more safeguards. Very divergent views have been expressed from all sections of the House regarding the status of CBI. One section says that it should be independent; the other says that it should come under the purview of the Lokpal; the third says that an investigation wing should be created under the Lokpal and the fourth Section says that the CBI should entirely be out of the purview of the Lokpal. We wanted that the selection process should be independent. The sense of the majority of the political parties in the All-Party Meeting was that the Scheduled Castes, the Scheduled Tribes, the Other Backward Classes, the minorities and the women should come. Therefore, it has been put there. Now, they have given amendment to delete minorities. Clause 3 of the Bill is very clear. As far as the Government is concerned,

the people belonging to the SC, ST, OBC, minorities and women will be representing there. It is not less than fifty per cent. The Lokpal Bill is a part of anti-corruption machinery. But there are other mechanisms also. So far as giving a constitutional status to the Lokpal is concerned, the BJP, while giving a dissenting note in the Standing Committee, had made it very clear that they agree with giving a constitutional status to the Lokpal. But, now, they have turned around. If a State is not giving prior consent, the Lokayukta Act would not come into force in that State. The proviso is very clear. The appointing authority alone can remove the Lokpal and not any other agency. The UPSC Chairman, the C&AG and the Chief Election Commissioner are the appointees of the Government. The CBI is an independent investigating agency. *(Speech unfinished.)*

*(The National song, "Vande Mataram" was played.)*  
*The House adjourned sine die.*



## **Annexure-VIII**

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**Synopsis of the Debate in the Rajya Sabha on  
21 May 2012 on the Motion for Reference  
of the Lokpal and Lokayuktas Bill, 2011  
to a Select Committee**

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**RAJYA SABHA**  
**SYNOPSIS OF DEBATE\***

21 May 2012

**THE LOKPAL AND LOKAYUKTAS BILL, 2011—Contd.**

**MOTION FOR REFERENCE OF THE BILL TO A SELECT COMMITTEE**

**THE MINISTER OF STATE IN THE MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS AND THE MINISTER OF STATE IN THE PRIME MINISTER'S OFFICE (SHRI V. NARAYANASAMY):** On 29th December, 2011, there was an elaborate discussion in this august House on the Bill that has been passed by the Lok Sabha. More than 197 notices of amendments were given by the hon. Members. After elaborate discussion and participation by hon. Members, I started my reply but could not complete the same. The Bill has gone through not only the Standing Committee but also the Lok Sabha. The hon. Prime Minister had called a meeting of the floor leaders of the Rajya Sabha on 23 March, 2012, heard their views and the differences have been narrowed down. Thereafter, the Government considered them. I do not want to go into the details. Therefore, I request this hon. House to consider it for the purpose of passing it. The Bill should be passed on the basis of consensus and in line with the sense of the House.

**SHRI NARESH AGRAWAL**, moving the motion for reference of the Bill to the Select Committee, said: The Lokpal and Lokayuktas Bill, 2011, as passed by Lok Sabha, should be referred to a Select Committee of the Rajya Sabha. The Select Committee will give its report to the House within three months and it will be taken up for consideration by the Rajya Sabha in the Winter Session. I have put up the motion because the hon'ble Prime Minister is sitting in the House.

**THE LEADER OF THE OPPOSITION (SHRI ARUN JAITLEY):** The Government last evening circulated an amendment to the Official Bill of the Government. It was suddenly added in the agenda today, knowing fully well that today is the last but one day of the Session of the House. Now, a proposal came today that the matter be referred to a Select Committee. It is very easy for the Government to say that 190 amendment were made. The proposed amendments were broadly under four heads — with regard

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\* This Synopsis is not an authoritative record of the proceedings of the Rajya Sabha. For the corrected debate refer <http://rsdebate.nic.in/handle/123456789/603657>

to control of the investigative agency, with regard to the appointment and removal mechanism of the Lokpal, who all are going to be covered by the Lokpal, and whether the Lokayukta should be appointed under a Central Legislation or every State's own system must decide as to what the character of the Lokayukta in the States is going to be. I will urge the Government and the hon. Prime Minister, let us be straightforward and answer one basic question: Do we want a Lokpal or don't we want a Lokpal? Today, if the Government feels that on these four issues, there is a serious conflict of opinion, the Government can be straightforward say that we want a Select Committee. The Minister can get up and make a proposal. The country expects a straightforward answer from us rather than these kind of games being played.

**SHRI SITARAM YECHURY:** If the Government wants the Select Committee, we have no objection. But, a Motion that this be considered by a Select Committee must be moved by the Government. Without a motion, you are talking of an amendment. There are broadly four areas, and we have a fifth area in addition to what the LoP said. The fifth issue that we have is the question of 'including private corporate'. Now, if you want to consider all the amendments one-by-one in the House and then discuss it, fine. If you don't think that is feasible, then you propose a Select Committee. So, let the hon. Minister propose it, and we have no objection to accept it.

**KM. MAYAWATI:** I think that this motion is not as per prescribed rules. Hon'ble Minister should present the motion himself for referring it to the Select Committee. Government was saying that we will bring the Lokpal Bill in the current session while it is being deferred for one or another reason. Our party don't want this Bill be passed in hasty manner and we want detailed discussion with regard to this Bill. Government is not playing its role properly. Lokpal Bill needs to be discussed in a serious manner. If you want to send it to the Select Committee, then take the views of leaders of all the parties in this regard, whether they are agreed with it or not. Take it in a proper way.

**SHRI DEVENDER GOUD T.:** Without any preparation, the Government wants to send it to the Select Committee. They can move the Motion itself. Why are you troubling the other Members unnecessarily. Discuss it with Members and then pass the Bill.

**SHRI RAM KRIPAL YADAV:** Whether you want to demolish the democratic system through this Bill? There is no need to bring this Bill. My party thinks that Prime Minister should not be included in this. I am sorry to say that in the motion moved by Government, there is no place for small parties, women and minorities.

**SHRIMATI MAYA SINGH:** The ruling party and the Chair have done injustice to us. All our MPs came here fully prepared for discussion on this Bill.

**SHRI SHANTA KUMAR:** With regard to the motion moved to be sent to the Select Committee, I would like to say that entire country is watching us. On 29th of December, we were ready to pass the Bill. But the Bill, was not passed. I would like to ask that instead of passing the Bill what for the Bill is being sent to the Select Committee. You would have passed the Bill during the debate. Entire country might be thinking that we are playing hide and seek on the question of corruption.

**SHRI BIRENDRA PRASAD BAISHYA:** We are discussing a very important topic today. For the last several months, we have been discussing about the Lokpal. From the very beginning, we are in favour of Lokpal.

**SHRI PREM CHAND GUPTA:** Government wants to send it to the Select Committee. No member of our party is included in it. I want to know why a smaller party like us is not included in the Committee.

**THE MINISTER OF STATE IN THE MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS AND THE MINISTER OF STATE IN THE PRIME MINISTER'S OFFICE (SHRI V. NARAYANASAMY):** I move: "That the Bill to provide for the establishment of a body of Lokpal for the Union and Lokayukta for States to inquire into allegations of corruption against certain public functionaries and for matters connected therewith or incidental thereto, as passed by Lok Sabha, be referred to a Select Committee of the Rajya Sabha consisting of the following Members:—

1. Shri Shantaram Naik
2. Shri Satyavrat Chaturvedi
3. Shri Shadi Lal Batra
4. Shri Arun Jaitley
5. Shri Rajiv Pratap Rudy
6. Shri Bhupender Yadav
7. Shri Satish Chandra Misra
8. Shri K.N. Balagopal
9. Shri Shivanand Tiwari
10. Shri D. Bandyopadhyay
11. Shri Tiruchi Siva
12. Shri D.P. Tripathi



13. Prof. Ram Gopal Yadav

14. Dr. V. Maitreyan

15. Dr. Ashok S. Ganguly

with instructions to report to the Rajya Sabha by the first day of the last week of the Monsoon Session.” It is our commitment to have a Lokpal in the Government of India for dealing with allegations of corruption against public servants.

*The motion was adopted.*

## **Annexure-IX**

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**Report of the Select Committee of Rajya Sabha  
on the Lokpal and Lokayuktas Bill, 2011  
(Presented to the Rajya Sabha on 23 November 2012)**

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PARLIAMENT OF INDIA  
RAJYA SABHA

REPORT OF THE SELECT COMMITTEE OF  
RAJYA SABHA ON THE LOKPAL AND  
LOKAYUKTAS BILL, 2011

(PRESENTED TO THE RAJYA SABHA ON 23rd NOVEMBER, 2012)



RAJYA SABHA SECRETARIAT  
NEW DELHI

NOVEMBER, 2012/KARTIKA, 1934 (SAKA)



**COMPOSITION OF THE COMMITTEE**

1. Shri Satyavrat Chaturvedi — *Chairman*

**MEMBERS**

2. Shri Shantaram Naik
3. Shri Shadi Lal Batra
4. Shri Arun Jaitley
5. Shri Rajiv Pratap Rudy
6. Shri Bhupender Yadav
7. Shri Satish Chandra Misra
8. Shri K.N. Balagopal
9. Shri Shivanand Tiwari
10. Shri D. Bandyopadhyay
11. Shri Tiruchi Siva
12. Shri D.P. Tripathi
13. Prof. Ram Gopal Yadav
14. Dr. V. Maitreya
15. Dr. Ashok S. Ganguly

**SECRETARIAT**

- |                               |   |                           |
|-------------------------------|---|---------------------------|
| 1. Shri Deepak Goyal          | — | <i>Joint Secretary</i>    |
| 2. Shri K.P. Singh            | — | <i>Director</i>           |
| 3. Shri Ashok Kumar Sahoo     | — | <i>Joint Director</i>     |
| 4. Shri B.M.S. Rana           | — | <i>Deputy Director</i>    |
| 5. Shrimati Niangkhanem Guite | — | <i>Assistant Director</i> |
| 6. Shrimati Catherine John L. | — | <i>Committee Officer</i>  |

**REPRESENTATIVES OF THE MINISTRIES**

**Ministry of Personnel, Public Grievances & Pensions  
(Department of Personnel & Training)**

1. Shri Alok Kumar, Joint Secretary
2. Shri P.K. Das, Joint Secretary

3. Ms. Mamta Kundra, Joint Secretary
4. Shri Ashok K.K. Meena, Director
5. Shri V.M. Rathnam, Deputy Secretary
6. Shri Amarjit Singh, Deputy Secretary

**Ministry of Law and Justice**

**(i) Legislative Department**

1. Dr. Sanjay Singh, Additional Secretary
2. Dr. G. Narayana Raju, Joint Secretary & Legislative Counsel
3. Shri Diwakar Singh, Deputy Legislative Counsel
4. Shri K.V. Kumar, Deputy Legislative Counsel

**(li) Department of Legal Affairs**

1. Shri D. Bhardwaj, Joint Secretary and Legislative Counsel
2. Dr. R.J.R. Kasibhatla, Deputy Legal Advisor

## INTRODUCTION

As the Chairman of the Select Committee of Rajya Sabha on the Lokpal and Lokayuktas Bill, 2011 and having been authorized by the Committee to submit the Report on its behalf, I present this Report on the Bill.

2. The Lokpal and Lokayuktas Bill, 2011 was introduced in the Lok Sabha on the 22 December, 2011. The Bill provides for the establishment of a body of Lokpal for the Union and Lokayukta for States to inquire into allegations of corruption against certain public functionaries and for matters connected therewith or incidental thereto. The Lok Sabha took up the consideration of the Bill on the 27 December, 2011 and passed the same with certain amendments. The Bill, as passed by the Lok Sabha, was taken up in Rajya Sabha. On the 21 May, 2012, the Rajya Sabha adopted a Motion that the Bill, as passed by the Lok Sabha, be referred to a Select Committee of the Rajya Sabha, comprising of 15 Members of Rajya Sabha, for examination of the Bill and report thereon to the Rajya Sabha by the first day of the last week of the Monsoon Session, 2012.

3. The Committee held nineteen sittings in all.

4. As the Committee was not in a position to present its Report to the House within the period stipulated in the Motion for appointment of the Committee, the House granted, on a Motion being moved to that effect on the 31 August, 2012, an extension of time for presentation of the Report, upto the last day of the first week of the ensuing Winter Session.

5. The Committee, in its first sitting held on 25 June, 2012, had a general discussion on the issues involved in the Bill and deliberated upon the course of action and the procedure for examination of the Bill. As is the practice, the Committee decided to invite views and suggestions from interested individuals/organizations/stakeholders/experts by issuing a Press Release in the form of an advertisement in English, Hindi and other vernacular languages in major leading national and regional newspapers and also through Prasar Bharti. Accordingly, a Press Release was published in leading national and regional newspapers and was also telecast on Doordarshan for involving all sections of society in the “examination of the Bill”. The Committee also decided to elicit the opinion of the State Governments on the provisions of the Bill. In response thereto, the State Governments of Mizoram, Chhattisgarh, Karnataka, West Bengal, Maharashtra, Nagaland, Tamil Nadu, Haryana, Manipur, Arunachal Pradesh, Uttar Pradesh and Union Territories of Andaman and Nicobar Administration, the Administration of Daman & Diu and Chandigarh Administration furnished their written comments on the Bill.



6. In its second sitting held on the 4 July, 2012, the Committee heard the presentation of the Secretary, Department of Personnel and Training on the provisions of the Bill.

7. In its third sitting held on the 5 July, 2012, the Committee heard the Secretary, Department of Legal Affairs on the Bill and sought clarifications on the complex legal issues.

8. In its fourth sitting held on the 13 July, 2012, the Committee heard the views of Director, Central Bureau of Investigation on the Bill and interacted on functional autonomy and independence of the premier investigative agency of the country.

9. In its fifth sitting held on the 25 July, 2012, the Committee heard Shri Nripendra Mishra, Director, Public Interest Foundation, Delhi; and Shri Shekhar Singh and colleagues, NCPRI and received valuable inputs from them.

10. In its sixth sitting held on the 6 August, 2012, the Committee heard the views of Ld. Attorney General of India.

11. In its seventh sitting held on the 14 August, 2012, the Committee heard the views of Justice A.P. Shah, Former Chief Justice of High Courts of Madras and Delhi.

12. In its eighth sitting held on the 30 August, 2012, the Committee authorized the Chairman to move a motion in the House seeking extension till the first day of the last week of the ensuing Winter Session, for completing the work of the Committee.

13. In its ninth sitting held on the 5 September, 2012, the Committee heard Shri Harish N. Salve, Senior Advocate, Supreme Court of India and the representatives of PRS Legislative Research.

14. In its tenth sitting held on the 6 September, 2012, the Committee heard the views of Dr. Jayaprakash Narayan, Lok Satta.

15. In its eleventh sitting held on the 14 September, 2012, the Committee heard oral evidence of Shri Ashok Kapur, IAS (Retd.), Director General, Institute of Directors, International Academy of Law, New Delhi; Er. V.K. Agarwal & Er. H.C. Israni, Bharastachar Niwaran Samiti, Delhi; Shri Deepak Tongli, Hyderabad; Shri Hansraj Jain, Delhi; Shri Dinesh Nath, Delhi; Shri M.K. Rajput, Delhi; Shri Kulamani Mishra, Odisha; Shri K.K. Swami & Shri Dalip Kumar Babhota, Akhil Bhartiya Grahak Panchayat, Delhi; Shri J.K. Palit, Gaya; Shri Manoj Nandkishor Agrawal, Pune; and Shri Mahesh Pandya, Ahmedabad.

16. At its sittings held on the 9, 10, 19, 20, 30 & 31 October and 9 November, 2012, the Committee took up clause by clause consideration of the Bill.

17. In response to the Press Release issued seeking suggestions/views on the Bill, approximately 128 responses were received and out of these, 15 were treated as memoranda as per list at Annexure-I.

18. The Committee also received suggestions from some of its Members in the course of consideration of the Bill. The suggestions so received are placed at Annexure-II.

19. The Committee considered and adopted its draft Report on the Bill at its sitting held on the 19 November, 2012.

20. The Committee wishes to place on record its gratitude to the representatives of the Ministry of Personnel, Public Grievances & Pensions (Department of Personnel and Training), Central Bureau of Investigation and Ministry of Law and Justice (Legislative Department and Department of Legal Affairs) for furnishing necessary information/documents and rendering valuable assistance to the Committee in its deliberations. The Committee also wishes to express its gratitude to all the distinguished persons who appeared before the Committee and placed "their valuable views on the Bill and furnished written notes and information in connection with the examination of the Bill.

NEW DELHI;  
19th November, 2012

**SATYAVRAT CHATURVEDI**  
*Chairman,*  
*Select Committee of Rajya Sabha on*  
*the Lokpal and Lokayuktas Bill, 2011*



## REPORT

The Lokpal and Lokayuktas Bill, 2011 seeks to provide for the establishment of a body of Lokpal for the Union and Lokayukta for States to inquire into allegations of corruption against certain public functionaries and for matters connected therewith or incidental thereto.

2. The Statement of Objects and Reasons appended to the Lokpal and Lokayuktas Bill, 2011 when it was introduced in the Lok Sabha, states that the need to have a legislation for Lokpal has been felt for quite sometime. In its interim report on the “Problems of Redressal of Citizens’ Grievances” submitted in 1966, the Administrative Reforms Commission, *inter alia*, recommended the setting up of an institution of Lokpal at the Centre. To give effect to this recommendation of the Administrative Reforms Commission, eight Bills on Lokpal were introduced in the Lok Sabha in the past from time to time. However, these Bills lapsed consequent upon the dissolution of the respective Lok Sabha except the Bill of 1985 which was subsequently withdrawn after its introduction.

3. India is committed to pursue the policy of ‘Zero Tolerance against Corruption’. India ratified the United Nations Convention Against Corruption by deposit of Instrument of Ratification on the 9 May, 2011. This Convention imposes a number of obligations, some mandatory, some recommendatory and some optional on the Member States. The Convention, *inter alia*, envisages that State Parties ensure measures in the domestic law for criminalization of offences relating to bribery and put in place an effective mechanism for its enforcement. The obligations of the Convention, with reference to India, have come into force with effect from 8 June, 2011. As a policy of Zero tolerance against Corruption the Bill seeks to establish in the country, a more effective mechanism to receive complaints relating to allegations of corruption against public servants including Ministers, MPs, Chief Ministers, Members of Legislative Assemblies and public servants and to inquire into them and take follow up actions. The bodies, namely, Lokpal and Lokayuktas which are being set up for the purpose will be constitutional bodies. The setting up of these bodies will further strengthen the existing legal and institutional mechanism thereby facilitating a more effective implementation of some of the obligations under the aforesaid Convention.

4. The Bills viz., The Lokpal and Lokayuktas Bill, 2011 and The Constitution 116th Amendment Bill, 2011 were taken up for consideration

by the Lok Sabha on 27.12.2011. The Lokpal and Lokayuktas Bill, 2011 was passed with certain amendments whereas the Constitution 116th Amendment Bill, 2011 could not be passed for want of the requisite majority required for Constitutional amendments. The Bill was listed for consideration in Rajya Sabha on 29 December, 2011, when some Hon'ble Members had expressed the view that more time was needed for consideration of the Bill. The debate on the Bill continued till midnight on 29 December, 2011 but the Bill could not be taken up for consideration and passing at that time. On 21 May, 2012, the House adopted a motion that the Lokpal and Lokayuktas Bill, 2011, as passed by Lok Sabha, be referred to a Select Committee of the Rajya Sabha, with instructions to report to the Rajya Sabha.

### **Salient Features of the Bill**

5.0 The Bill seeks to establish the institution of Lokpal at the Centre and Lokayukta at the level of the States. Thus, it seeks to provide a uniform vigilance and anti-corruption road-map for the nation, both at the Centre and the States. The Bill also institutionalises separation of investigation from prosecution and thereby removing conflict of interest as well as increasing the scope of professionalism and specialization.

5.1 The Lokpal will consist of a Chairperson and a maximum of eight Members, of which fifty per cent shall be judicial Members. Fifty per cent of members of Lokpal shall be from amongst SC, ST, OBCs, Minorities and Women. There shall be an Inquiry Wing of the Lokpal for conducting the preliminary inquiry and an independent Prosecution Wing. The selection of Chairperson and Members of Lokpal shall be through a Selection Committee consisting of:

Prime Minister;

Speaker of Lok Sabha;

Leader of Opposition in the Lok Sabha;

Chief Justice of India or a sitting Supreme Court Judge nominated by CJI;

Eminent jurist to be nominated by the President of India.

5.2 A Search Committee will assist the Selection Committee in the process of selection. Fifty per cent of members of the Search Committee shall also be from amongst SC, ST, OBCs, minorities and women.

5.3 Prime Minister has been brought under the purview of the Lokpal with subject matter exclusions and specific process for handling complaints

against the Prime Minister. Lokpal cannot hold any inquiry against the Prime Minister if allegations relate to international relations; external and internal security of the country; public order; atomic energy and space. Any decision of Lokpal to initiate preliminary inquiry or investigation against the Prime Minister shall be taken only by the Full Bench with a “2/3rd majority”. Initially, the Bill had provided for a “3/4th majority” which has been reduced to “2/3rd majority” by the Lok Sabha while passing the Bill. It has also been provided that such proceedings shall be held in camera.

5.4 Lokpal’s jurisdiction will cover all categories of public servants including Group ‘A’, ‘B’, ‘C’ and ‘D’ officers and employees of Government. On complaints referred to CVC by Lokpal, CVC will send its report of PE in respect of Group ‘A’ and ‘B’ officers back to Lokpal for further decision. With respect to Group ‘C’ and ‘D’ employees, CVC will proceed further in exercise of its own powers under the CVC Act subject to reporting and review by Lokpal. All entities funded/aided by the Government and those receiving donations from foreign source in the context of the Foreign Contribution Regulation Act (FCRA) in excess of Rs. 10 lakhs per year are brought under the jurisdiction of Lokpal.

5.5 The Bill also incorporates a number of other significant features. For instance, no prior sanction shall be required for launching prosecution in cases enquired by Lokpal or initiated on the direction and with the approval of Lokpal. Provisions have also been made for attachment and confiscation of property acquired by corrupt means, even while prosecution is pending. A high powered Committee, chaired by the Prime Minister, with Leader of Opposition in Lok Sabha and Chief Justice of India as Members, will recommend selection of the Director, CBI. Lokpal shall be the final appellate authority on all decisions by public authorities relating to provision of public services and redressal of grievances containing findings of corruption. Lokpal will have power of superintendence and direction over any investigation agency including CBI for cases referred to them by Lokpal.

5.6 The Bill lays down clear time lines for:

- Preliminary enquiry – three months extendable by three months.
- Investigation – six months which may be extended by six months at a time.
- Trial – one year extendable by one year.

5.7 The Bill proposes to enhance maximum punishment under the Prevention of Corruption Act from seven years to ten years. The minimum punishment under the Act will now be two years.

6. The Committee deliberated at length on the various provisions of the Bill and also heard the views of a cross section of experts and organizations including the Attorney General of India, former High Court

Judge, eminent jurists, NGOs and legal experts. The Committee also took into account the suggestions contained in the memoranda received on the Bill.

7. The Committee, after having gone through the memoranda, background notes, other documents and evidence tendered before it, as well as the views expressed by its Members on the provisions of the Bill, recommends enactment of the legislation with certain additions and modifications in the Bill as detailed below:

### **Clause 3: Establishment of Lokpal**

8.0 Clause 3 of the Bill deals with the establishment of Lokpal. It includes its constitution, the eligibility conditions for appointment as a Member of the Lokpal and the category of persons prohibited from holding the position of the Chairperson or a Member of the Lokpal. The Committee had detailed discussions on the following issues under Clause 3:-

#### **(i) Holding the position of Chairperson Lokpal by an “eminent person” referred to in Clause 3(3)(b)**

8.1 As per Clause 3(2)(a) an eminent person referred to in Clause 3(3)(b) can also be appointed as the Chairperson of the Lokpal. While considering the provisions of Clause 3(2)(a), a question arose before the Committee about the appropriateness of having the “eminent” person in terms of Clause 3(2)(b) as the Chairperson of the Lokpal. As per the provisions of Clause 3, the Lokpal consists of a Chairperson and such number of members not exceeding eight out of whom 50 percent shall be Judicial Members. A Judicial Member has to be an existing/former judge of Supreme Court or Chief Justice of a High Court. The Bill, in Clause 3(3)(b), prescribes the eligibility criteria in the case of a Member, other than a Judicial Member. He/she has to be a person of impeccable integrity and outstanding ability having special knowledge and expertise of not less than 25 years, etc.

8.2 The Committee had some apprehensions about the workability of the institution of Lokpal if it had a non-Judge as its Head (Chairperson) with Members (half of the total strength) who would be sitting/former Judges of Supreme Court/Chief Justice of High Courts. The Committee, however, accepted the provisions of Clause 3(2)(a) which provide equal opportunity to persons from both judicial and non-judicial background for holding the post of the Chairperson of the Lokpal. **Accordingly, the Committee does not recommend any change in the provisions of Clause 3(2)(a).**

**(ii) Inclusion of sitting/former Judges of High Courts for appointment as Chairperson/Member of Lokpal**

8.3 Under the existing provisions of Clause 3, only sitting/former Judges of the Supreme Court and Chief Justice of the High Courts are eligible for holding the post of Chairperson/Member of the Lokpal. Keeping in view the scarcity of former Supreme Court Judges, a view emerged in the Committee that the Judges of the High Court may also be made eligible for appointment as Chairperson/Member of the Lokpal. After detailed deliberations, the Committee decided not to effect any change in the existing provisions. The Committee felt that the Judges of the High Court could be an appropriate option for the post of Lokayuktas in the States. **Accordingly, the Committee does not recommend any change in the provisions of Clause 3(3)(a).**

**(iii) Ineligibility of persons 'connected' with any political party for holding the post of Chairperson/Member of the Lokpal**

8.4 Clause 3(4) of the Bill lays down who all are ineligible for holding the post of Chairperson/Member of the Lokpal. It provides that the Chairperson/Member of the Lokpal shall not, *inter-alia*, 'be connected with any political party'. The Committee had detailed deliberations on these provisions of the Bill and it felt that the word 'connected' appearing in Clause 3(4) carried a wide connotation and it might be difficult to construe the exact meaning and purport of this term. The Committee felt that the spirit behind this provision seems to be to keep persons having a political bias away from this institution. **In order to overcome this ambiguity associated with the word 'connected', the Committee recommends that the words 'connected with any political party' may be replaced by the words 'affiliated with any political party'. In the opinion of the Committee, the word 'affiliated' has a definite connotation and would well serve the desired objective.**

**(iv) Provision for SC, ST, OBC, Minorities and Women to the extent of not less than 50 per cent among Members in the Lokpal**

8.5 The proviso to Clause 3(2)(b) provides that 'not less than fifty per cent of the members of the Lokpal' shall be from amongst the persons belonging to Scheduled Castes, Scheduled Tribes, Other Backward Classes, Minorities and Women. There was a strong view in the Committee that such a provision in the Bill does not have a constitutional basis and may not be sustainable. The Committee sought inputs on this issue from the DoPT as well as the Department of Legal Affairs. The DoPT were of the view that these provisions were in the nature of 'representation' and not 'reservation' and hence they were sustainable. The Department of Legal



Affairs commenting on this issue stated that ‘an affirmative action in favour of women following the philosophy underlying the provisions of Article 15(3) of the Constitution may not be inapposite’.

8.6 Members of the Committee raised concern whether such provisions in Lokpal would be valid as the Constitution does not provide for reservation to the minorities. Some Members of the Committee felt that such a reservation would be outside the Constitutional scheme. Moreover, the word “minority” is incapable of specifying a particular group or class. For example, such a term would include members of Hindu community from J&K, Punjab or any other State, where they are in minority and similarly the linguistic minorities would also be included in the meaning of the term minority. The Committee also heard the views of experts/legal luminaries on this issue and found them almost divided on both sides.

8.7 The Committee takes note of the fact that there is no concept of reservation either in the higher judiciary or among men falling in the category of persons with outstanding ability from among whom the Chairperson/Members of the Lokpal are to be selected. Thus, the reservation principles are not applicable in such a high profile body.

8.8 The Committee, however, notes that Articles 15 and 16 of the Constitution provide reservation for certain categories of persons. The Committee is of the considered view that the intention behind these provisions in the Bill is to ensure that there is a representation of at least 50 per cent of Members of Lokpal from diverse sections of the society. This being the intent and purpose in the legislation, the Committee is inclined to endorse the existing proviso to Clause 3(2)(b) of the Bill.

8.9 Some Members of the Committee also expressed reservation on the words ‘not less than’ 50 per cent appearing in the proviso to Clause 3(2). They felt that not less than 50 per cent could also mean even 100 per cent. It was further pointed out by the Members that exceeding the ceiling of 50 per cent in such matters is against the settled law of the country through judicial pronouncements that put a cap of fifty per cent on all categories of reservations taken together.

8.10 The Committee notes that these provisions merely aim at providing representation to the diverse sections of the society in the institution of Lokpal and hence the rules of reservation are not involved in this case. Accordingly, the Committee does not recommend any change in the proviso to Clause 3(2)(b) that indicates the quantum of representation and not reservation.

#### **Clause 4 : Appointment of Chairperson and Members on Recommendations of Selection Committee**

9.0 Clause 4(1) provides for a Selection Committee consisting of Prime Minister as Chairperson, Speaker, Lok Sabha, Leader of Opposition,

Lok Sabha, Chief Justice of India or the Judge of the Supreme Court, nominated by him and one eminent jurist, nominated by the President, to be the Members of the Selection Committee. The Committee in the first place had an apprehension that the present Selection Committee was tilted in favour of the Government. The Committee came across some suggestions during the course of its deliberations like, the Selection Committee may include the outgoing Lokpal, serving CEC or the Comptroller and Auditor General. However, in the opinion of the DoPT, the Selection Committee carried a fine balance and needed no change.

9.1 The Committee, however, could not find itself in agreement with the Government's point of view. In order to correct the tilt in favour of the Government in the Selection Committee, the Committee felt that the fifth person in the Selection Committee *i.e.*, an eminent jurist could, instead of being nominated by the President, be recommended by the first four Members of the Selection Committee as mentioned in Clause 4(1)(a) to (d). Such a recommendation may go to the Government and the Government after taking the Cabinet's approval, could forward the same to the President. Thus, the appointment of the fifth Member of the Selection Committee, may be done by the President, but, his selection would be done by the first four Members of the Selection Committee and not by the President.

9.2. In the light of the above position, the Committee recommends that the Clause 4(1)(e) be substituted as under:

**“one eminent jurist as recommended by the members of the Selection Committee as at Clause 4(1)(a) to (d) to the Government and appointed by the President-member”.**

#### **Clause 14 : Jurisdiction of Lokpal**

10.0 Clause 14 of the Bill deals with the jurisdiction of Lokpal. As per Clause 14(1), the Prime Minister falls under the jurisdiction of Lokpal. However, there is an exception to this under Clause 14(1) in favour of the Prime Minister in the area of international relations, external and internal security, public order, atomic energy and space. In this context, the Committee noted with concern whether the subject specific exemption that has been granted to the PM should be extended to the PMO and officials of the Departments of Government handling the specified areas of work. The Committee wondered whether the objective of providing for subject specific exemption to the PM would be lost if the PMO or for that matter the officials of the concerned Departments of Government referred to above were retained under the jurisdiction of the Lokpal. The Committee after detailed discussion noted that under the scheme of the Bill, the exemption has been provided only to the PM and that too if the allegations

of corruption relate to the specified areas of activity. In terms of Clause 14(1)(a), if the charge of corruption against the PM fall in other than the said category, then, the inquiry is supposed to be carried out in camera. The Bill further provides that in case, on inquiry, the Lokpal comes to the conclusion that the complaint deserves to be dismissed, the record of inquiry shall not be made public.

**10.1 The Committee notes that in the scheme of the Bill, the exemption has been created only in respect of the PM and there are adequate safeguards to protect information of sensitive nature in the areas specified in Clause 14(1)(a)(i). Accordingly, the Committee does not recommend any change in Clause 14(1)(a).**

10.2 Clause 14 of the Bill also deals with the jurisdiction of the Lokpal over the officers/officials of a society or association of persons or trust (whether registered or not) wholly or partly financed or aided by the Government or in receipt of donation from the public. The Committee deliberated at length on the relevant provisions in the Bill in this regard *i.e.*, Clause 14(1)(g) & (h) and suggested certain modifications as enumerated in the succeeding paragraphs.

10.3 Taking up Clause 14(1)(g), the Committee noted that the jurisdiction of Lokpal extends to Officers/officials of Societies, Association of persons, Trusts etc., which are wholly or partly financed or aided by the Government and the annual income of which exceeds such amount as the Central Government may by notification specify. The Members of the Committee observed that the word “aided” leaves scope for plethora of entities to be covered within the jurisdiction of Lokpal. Given the meaning of the term “aided” and as supplemented by the judicial pronouncements from time to time, this is likely to include within the jurisdiction of Lokpal petty organisations, which might have received aid in one form or the other. For example, the category of “aided” would cover bodies that have received land at subsidized rates or get exemption under the Income Tax Act. In Committee’s view, inclusion of such institutions or entities would flood the Lokpal with large number of complaints, thereby diverting it from tackling big ticket corruption. The Committee is of the considered view that only these bodies, organisations, Societies, Trusts etc., should be brought under the jurisdiction of Lokpal, which receive support from the Government directly in the form of funds and not indirectly in other forms, within the meaning of the term aided . **The Committee, therefore, recommends that the word “aided” in Clause 14(1)(g) may be omitted.**

10.4 Clause 14(1)(h) brings under the jurisdiction of Lokpal, Societies, Associations and persons or Trusts receiving donations from the Public, which exceed such amount as the Central Government may notification

specify and also such organisations that receive donations from foreign source under the Foreign Contribution (Regulation) Act, 2010 in excess of Rs. 10 lakhs in a year. A suggestion, however, came before the Committee that entities not connected with the affairs of the State or not receiving any financial support from the Government in the form of funds need not be brought under the Lokpal.

10.5 The Committee discussed the issue in detail and its considered view was that the bodies receiving funds from Government wholly or partly are since covered under Clause 14(1)(g) whereas, the clause 14(1)(h) specifically refers to those organisations, which receive donations from Public above the limit as specified by the Central Government by a notification to that effect. Thus, under Clause 14(1)(h), entities receiving donations from the Public, have also been brought under the jurisdiction of the Lokpal. The Committee having considered the matter at length, is of the view that the legislation provisionally is meant to enquire into matters of corruption of public functionaries and in that sense, the entities that takes private donations do not strictly fall into that category. In the opinion of the Committee, entities that are neither working in connection with the affairs of the State and which are not receiving any funds from Government by way of aid do not fall in the category of public functionary. In Committee's view, only such entities should essentially be brought under the jurisdiction of Lokpal that are (i) wholly or partially financed by Government or controlled by it, (ii) working in connection with the affairs of the State, or (iii) receiving donations above specified limit from foreign source under Foreign Contribution (Regulation) Act, 2010. The Committee felt that if such entities taking donations from the public, are brought under the Lokpal, it would be unmanageable. It would bring under Lokpal all domestic bodies, which raised money from the Public and may cover bodies like the Rotary Club, School, Dharamshalas, Resident Welfare Association, etc. **The Committee, accordingly, recommends that in Clause 14(1)(h), the words "from the public and the annual income of which exceeds such amount as the Central Government may, by notification-specify or" be deleted.**

**Clause 20 : Provisions relating to complaints and preliminary inquiry and investigation by the Lokpal**

11.0 The Committee had extensive deliberations on the provisions of Clause 20 of the Bill. The Committee's efforts were directed towards bringing the provisions of Clause 20 in consonance with the accepted and time tested principles of criminal jurisprudence. The Committee made an attempt to rationalize the provisions of Clause 20 of the Bill related to seeking of comments from the public servants and affording to them an

opportunity to be heard during the course of inquiry/investigation. The modifications in the provisions of Clause 20 that have been suggested by the Committee seek to ensure that the public servant against whom a complaint has been received by the Lokpal does not get any chance to destroy or vitiate vital evidence against him while he is asked to offer comments or is heard during the course of inquiry/investigation. The Committee has also dealt with the issue of sanction and sought to put in place a balanced mechanism by vesting the power to grant sanction with the Lokpal after hearing the public servant as well as the concerned Government Department. The Committee's deliberations in relation to Clause 20 have been enumerated in the succeeding paragraphs.

11.1 Clause 20(1) provides that the Lokpal shall, on receipt of a complaint first decide whether to proceed in the matter or close the same and if the Lokpal decides to proceed further it shall order the preliminary inquiry by its Inquiry Wing or any agency (including Delhi Special Police Establishment) to ascertain whether there exists a *prima facie* case for proceeding in the matter.

11.2 The Committee contemplated a situation where the Lokpal may receive complaints, in which a *prima facie* case is made out against the public servant from the facts/information given in the complaint and hence, may be a fit case to be referred directly, for investigation by any agency. The Committee was of the opinion that Clause 20(1) does not envisage such a course of action on complaints. Members raised concern over the provision of Clause 20(1) whereby the Lokpal, if it decides to proceed, shall invariably have to order preliminary inquiry against any person to ascertain whether there exists a *prima facie* case. The Members questioned the need for preliminary inquiry where a *prima facie* case is made out from the facts/information given in the complaint itself or there is substantial evidence for the same. In such a situation, holding a preliminary inquiry may not be appropriate and instead, the Lokpal should proceed for the investigation, directly. In order to deal with such situations, the Committee recommends that Clause 20(1) may be amended to read as follows:

“The Lokpal on receipt of a complaint, if it decides to proceed further, shall order the preliminary inquiry against any public servant by its Inquiry Wing or any agency (including the Delhi Special Police Establishment) to ascertain whether there exists a *prima facie* case for proceeding in the matter or may order investigation by any agency (including the Delhi Special Police Establishment) where there exists a *prime facie* case”.

11.3 The Committee recommends the Clause may accordingly be amended.

11.4 Clause 20(2) provides that during the preliminary inquiry, the Inquiry Wing or any agency (including Delhi Special Police Establishment) shall conduct a preliminary inquiry and on the basis of material, information and documents collected seek the comments on the allegations made in the complaint from the public servant and the competent authority and after obtaining the comments of the concerned public servant and the competent authority, submit, within sixty days from the date of receipt of the reference, a report to the Lokpal.

11.5 Clause 20(2) provides that the Inquiry Wing or any agency conducting the preliminary inquiry is mandatorily required to seek comments on the allegations made in the complaint from the public servant and the competent authority. The Members felt that the Inquiry Wing of the Lokpal or any agency may be given discretion for seeking comments from the public servant at this stage. The Committee felt that it should not be made binding on the Lokpal or the agency to seek comments of the public servant in cases, where there is *prima facie* evidence towards the commission of the offence. **In view of this, the Committee recommends insertion of the word “may” after the words “documents collected” in Clause 20(2).**

11.6 Clause 20(3) provides that a bench consisting of not less than three Members of the Lokpal shall consider every such report received from its Inquiry Wing or any agency and after giving an opportunity of being heard to the public servant decide as to whether there exists a *prima facie* case, and make recommendations to proceed, with one or more of the following course of action:

- (i) investigation by any investigating agency or the Delhi Special Police Establishment, as the case may be;
- (ii) initiation of the departmental proceedings or any other appropriate action against the concerned public servant by the competent authority; or
- (iii) closure of the proceedings against the public servant and take action to proceed against the complainant under clause 46.

11.7 Clause 20(3) *inter alia* provides for an opportunity of being heard to the public servant at preliminary inquiry stage in order to decide whether there exists a *prima facie* case or not. The Members of the Committee expressed their strong reservations about the public servant being given an opportunity of being heard at this stage. Some Members even felt that the opportunity to hear the charged official at PE stage may be done away with in order to retain the element of surprise. The Members took note of the fact that nowhere in criminal procedure such an opportunity is

given to any accused at the inquiry stage. The Committee, therefore, was of the view that no such opportunity be given to the public servant at this stage. **The Committee, accordingly, recommends that in Clause 20(3) the words “and after giving an opportunity of being heard to the public servant,” be deleted.**

11.8 Clause 20(7) provides that every report received under sub-section (6) from any agency shall be considered by a bench consisting of not less than three members of the Lokpal which may decide to file charge sheet or closure report before the special court against the public servant or initiate the departmental proceedings or any other appropriate action against public servant by the competent authority.

11.9 The Committee had detailed deliberations on the issue whether granting the sanction by Government to prosecute a public servant should be done away with completely or be retained and placed with the Lokpal. It was felt that doing away with the sanction completely may erode the protection given to the public servant for taking *bona fide* decisions and retaining the power of sanction will ensure that such *bona fide* decisions are protected and also the interest of justice is served. Retention of the sanction is also required for protecting honest public servants, the Committee felt. Members also noted that object of sanction has always been positive and that today, in 80 per cent of the cases sanction is not required. Illustrating on this point, it was pointed out in the deliberations that when a public servant is caught taking bribe, it is not part of his official duty or, similarly, if he is caught with disproportionate assets it is also not part of his official duty and hence, no sanction was called for. In view of this, the Committee was of the view that power to grant sanction be retained. But this power of sanction could be shifted to the Lokpal in place of Government. However, in order to further rationalize the procedure, the Lokpal may be required to seek comments of the competent authority and the public servant before taking such decision. Such a dispensation, in Committee's view, would strike an all round balance not only in the inquiry/investigation procedure but would also retain the safeguard of sanction needed to protect the interest of honest public servants. **The Committee, therefore, recommends that the Clause 20(7) may be amended to read as under:**

**A bench consisting of not less than three Members of the Lokpal shall consider every report received by it under sub-section (6) from any agency (including the Delhi Special Police Establishment) and after obtaining the comments of the competent authority and the public servant may—**

- (a) grant sanction to its Prosecution Wing or the Investigating Agency to file chargesheet or direct the closure of report before the Special Court against the public servant;**

- (b) direct the competent authority to initiate the departmental proceedings or any other appropriate action against the concerned public servant.**

**11.10 The Committee also recommends the further consequential changes wherever necessary in other provisions of the Bill.**

11.11 Clause 20(8) provides that the Lokpal, after taking a decision under sub-section (7) on the filing of the chargesheet direct its Prosecution Wing to initiate prosecution in the Special Court in respect of cases investigated by any agency (including the Delhi Special Police Establishment). The Committee considered the existing dispensation under Clause 20(8) and felt that it would be a better and useful option if the Lokpal has the discretion either to direct its own Prosecution Wing or the Investigating Agency (through its Prosecution Wing) to initiate proceedings in the Special Court. This, in Committee's view, would add to the resource of the Lokpal, which the latter could utilize through exercise of discretion, depending on the requirements. Accordingly, the Committee recommends that in addition to the Prosecution Wing of Lokpal, the Investigating Agency may also be allowed to initiate prosecution. **The Committee recommend that the Clause 20(8) may be amended, as under:-**

**“The Lokpal may, after taking a decision under sub-section (7) on the filing of the chargesheet, direct either its own Prosecution Wing or the investigating agency (including the Delhi Special Police Establishment) to initiate prosecution in the Special Court in respect of the cases investigated by the agency”.**

**Clause 23 : Previous sanction not necessary for investigation and initiating prosecution by Lokpal in certain cases**

12.0 This Clause does away with the requirement of sanction by the Lokpal before ordering preliminary inquiry or investigation or filing of any chargesheet or closure report on completion of investigation before the Special Court under Section 197 of the Code of Criminal Procedure, 1973 or under Section 6A of the Delhi Special Police Establishment Act, 1946 or Section 19 of the Prevention of Corruption Act, 1988.

12.1 While considering Clause 20, the Committee has recommended that the provisions regarding grant of sanction to initiate prosecution be retained. However, the power to grant sanction is proposed to be vested with the Lokpal in place of the Central Government. The Committee, accordingly, has proposed to amend Clause 20(7) of the Bill.

**12.2 The Committee notes that the power to sanction preliminary inquiry or an investigation into any complaint against a public servant**



or filing of any chargesheet or closure report on completion of investigation before the Special Court is proposed to be vested in the Lokpal. Accordingly, the provisions of Clause 23 of the Bill need to be revised and suitably adapted to the dispensation recommended by the Committee under Clause 20 of the Bill. The Committee, accordingly, recommends that Clause 23 of the Bill may be revised suitably.

**Clause 25 : Supervisory powers of Lokpal read with Part II of Schedule to the Bill suggesting amendment to the Delhi Special Police Establishment Act, 1946**

13.0 Clause 25 of the Bill vests in the Lokpal the power of superintendence and direction over the Delhi Special Police Establishment in respect of matters referred by the Lokpal for preliminary inquiry or investigation to the DSPE. These powers of superintendence and directions shall be exercised by the Lokpal in such a manner so as not to require the investigative agency to investigate or dispose of any case in a particular manner.

13.1 There had been elaborate discussion in the Committee on the role of the CBI in the process of inquiry/investigation into complaints received by the Lokpal. The Committee also discussed at length the efficacy of the mechanism provided for in the Bill which vests the investigative function with the CBI and gives to the Lokpal the power of superintendence and direction over it. Besides this, serious concerns were also raised regarding the independence of the CBI *vis-à-vis* the Central Government. In this backdrop, various suggestions were received in the Committee which aimed at putting in place a system which has efficient investigation and prosecution processes, free from any outside influence. Some important suggestions received in the Committee are enumerated hereunder:

- The CBI will have two wings. Director, CBI will head the entire organization. Under him a separate Directorate of Prosecution should function.
- The Investigative Wing and Prosecution Wing of the CBI should act independently.
- The Director of CBI and Director of Prosecution should be appointed by a collegium comprising the Prime Minister, Leader of Opposition, Lok Sabha and Chairman of Lokpal.
- Both the Director, CBI and Director of Prosecution must have a fixed term.
- Both Director, CBI and Director, Prosecution shall not be considered for re-employment in Government.

- The power of superintendence and direction of the CBI in relation to Lokpal referred cases must vest with the Lokpal.
- If an officer investigating a case is sought to be transferred for any reason whatsoever, the prior approval of Lokpal should be required.
- The panel of Advocates who appear for and advise the CBI should be independent of the Government Advocates. They can be appointed by the Director, Prosecution after obtaining prior approval of the Lokpal.
- Separate demand for grant should be generated from Consolidated Fund of India and Director, CBI to be the Grant Controlling Authority and Chief Accounting Authority for this grant. The Director, CBI to exercise power of Secretary to Government of India as provided under the Delegation of Financial Power Rules, 1978.
- Director, CBI should have full authority in appointment, extension and curtailment of tenure of officers up to the rank of DIG in CBI.
- Director, CBI should be included as a member of Selection Committee for appointment of other officers above the rank of DIG in CBI. Section 4C of DSPE Act should be amended, accordingly.
- Director, CBI should also have powers for engaging special counsels and specialists of different disciplines.

13.2 The Committee took note of the various suggestions as enumerated above. The Committee was convinced that the institution of CBI has been assigned a vital role in the implementation of the Lokpal and Lokayuktas Bill, 2011. The Bill foresees the CBI as the investigating agency in respect of most of the complaints received by the Lokpal. In view of this, the Committee is convinced that a strong and independent CBI is *sine qua non* for an effective implementation of the Lokpal and Lokayuktas Bill, 2011. Accordingly, keeping in view the various suggestions that arose during the course of its deliberations, the Committee recommends as follows:

- (i) The CBI shall have a separate Directorate of Prosecution under a Director, who shall function under Director of CBI. The Director of CBI shall be the head of the entire Organisation.
- (ii) Director of CBI will be appointed by a collegium comprising of the Prime Minister, Leader of Opposition in Lok Sabha and Chief Justice of India.

- (iii) Director of Prosecution will be appointed on the recommendation of the CVC.
- (iv) Director of Prosecution and Director of CBI shall have a fixed term of two years.
- (v) The power of superintendence over and direction to CBI in relation to Lokpal referred cases must vest in Lokpal.
- (vi) Officers of CBI investigating cases referred by Lokpal will be transferred with the approval of Lokpal.
- (vii) For Lokpal referred cases, CBI may appoint a panel of Advocates, other than the Government Advocates, with the consent of Lokpal.
- (viii) The Government shall make available all such expenditure, which in the opinion of Director, CBI is necessary for the conduct of effective investigation. The Director, CBI shall be responsible for all expenditure sanctioned and spent by CBI, for the conduct of such investigation.

13.3 The Committee desires that necessary consequential amendments, may be carried out in this Bill as well as in other related legislations for implementing its recommendations as above.

**Clause 37 : Removal and suspension of Chairperson and Members of Lokpal**

14.0 This clause makes provision for handling of complaints against the Chairperson and Members of the Lokpal.

14.1 The Committee considered the removal procedure in the light of suggestions that came before it and also the amendments moved by Government in the Rajya Sabha. One suggestion that came before the Committee was that the President's discretion in filtering complaints before forwarding the same to the Supreme Court needs to be curtailed. The suggestion was that complaints could also be made directly to the Supreme Court. The Department of Personnel and Training informed the Committee that since the President is the Appointing Authority in respect of the Chairperson and Members of the Lokpal, the power to make reference to the Supreme Court and suspend them has to be exercised by the President and not by any other authority. It was further stated that empowering citizens to approach the Supreme Court directly would result in flooding the Supreme Court with large number of petitions. Some Members of the Committee expressed their apprehension that if the power of removal is given to the executive, it would destroy the independence of the Lokpal.

14.2 As per the existing provisions of Clause 37(2), the reference to the Supreme Court for removal from Office of the Chairperson/Member of the Lokpal can be made (i) by the President, or (ii) by the President on a petition signed by atleast 100 Members of Parliament, or (iii) by the President on receipt of a petition made by a citizen of India and where the President is satisfied that the petition should be referred. The Committee takes note of the proposed Government amendment relating to these provisions whereby the existing three options are proposed to be replaced by only one option, viz., on a reference being made to it by the President on a petition signed by atleast 100 Members of Parliament.

**14.3 The Committee, while taking note of the concern expressed by the Members regarding fair and discreet exercise of powers by Government in the matter of suspension/removal of the Chairperson/Member of the Lokpal, agrees with the proposed Government amendment and recommends that Clause 37(2) of the Bill may be amended accordingly.**

14.4 The Committee had extensive deliberations on Clause 37(3) regarding President's power to suspend from the Office of the Chairperson or a Member of Lokpal in respect of whom a reference has been made to the Supreme Court until the President has passed the orders on receipt of the Report of the Supreme Court on such a reference. There was a suggestion before the Committee that power of suspension should not be with the President but with the Supreme Court. The Government's view was that since the President is appointing authority, the power to suspend should also lie with the President. The Members in the Committee were not in favour of the Government's point of view. They were of the opinion that there has to be a judicial application of mind and that it could not be an executive decision. **The final view that emerged in the Committee was that the suspension of Chairperson/Members of Lokpal shall be operative only after the recommendation/interim orders of the Supreme Court to that effect. The Committee recommends that the Clause 37(3) be amended, accordingly.**

**Clause 46 : Prosecution for false complaints and payment of compensation, etc., to Public Servant**

15.0 Clause 46 of the Bill provides for a punishment with imprisonment for a term which may extend to one year and with fine which may extend to Rs. 1 lakh in case of a complaint that is found to be false and frivolous or vexatious.

15.1 The Committee is in agreement with the above provisions in as much as they provide a filter against those who may attempt to misuse the

system for some ulterior motives. But, at the same time, the Committee is also concerned about those complainants who might have made the complaints in good faith but, on inquiry a case is not made out. **The Committee feels that such complainants need to be protected from imposition of any penalty. The Committee is of the view that if the complaints are made in good faith, the same should be protected even if it turns out to be untrue. Further, the term “good faith” should be interpreted as “with due care and caution, and a sense of responsibility” in line with Section 79 of the IPC. The Committee recommends that the provisions of Clause 46 of the Bill may be amended, accordingly.**

#### **Clauses 63 to 97 : Establishment of Lokayukta**

16.0 The Part-III of the Bill seeks to provide for establishment of a Lokayukta in every State. The provisions relating to Lokayukta for the States are on the lines of the Lokpal at the Centre. There has been an intense debate in the Committee on the issue of the competence of Parliament to provide for Lokayuktas in the States through the Bill in hand. In this context, there have been references to Articles 252 and 253, Article 246 along with Entry 13 of List-I under the Seventh Schedule of the Constitution. The Committee took note of the Government amendment No. 150 moved in the Rajya Sabha which provide for substitution of Clause 1(4) regarding commencement of the Bill as follows:

“(4) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for different provisions of this Act, and any reference in any provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision:

Provided that Part-III of this Act shall be applicable to a State, if—

- (a) the Legislature of that State adopts a Resolution to the effect that Part-III shall apply to that State with or without modifications from a date specified in that Resolution; or
- (b) instead of adopting a Resolution as aforesaid, the State Legislature enacts a law for that State having regard to the provisions of Part-III of this Act as a model legislation:

Provided further that every State Legislature shall adopt a Resolution or enact a law as specified in the first proviso”.

16.1 The question of competence of Parliament to provide for institution of Lokayukta in the States was discussed with various experts in the judicial field, NGOs as well as the non-official witnesses who appeared before the Committee. There were varied views from them on the said issue. Some

of the witnesses endorsed the route of Article 253 and felt that the Bill in hand could withstand judicial scrutiny. There were other witnesses/experts who did not endorse the course of action followed in the Bill. There was a strong view in the Committee that the route of Article 253 of the Constitution does not lie. After the pronouncement of the Supreme Court in the Keshavanand Bharati case (1973), federalism is a part of basic structure of the Constitution and is inviolable. Therefore, Government cannot, by following the route of Article 253, legislate on matters that fall within the jurisdiction of the State Governments. In this context, it was further pointed out that even the UNCAC, *vide* Article 6 has stated that the implementation of the Convention in the Member countries may be subject to their internal laws.

16.2 The Committee was, however, unanimously in agreement about the requirement of the institution of Lokpal both at the level of the Centre and States. The Committee took note of the fact that all States except five already have a Lokayukta.

16.3 On detailed deliberations on this issue, the Committee agreed upon as follows:

- (i) Every State to mandatorily have a Lokayukta within a period of one year from the date of notification of the present Bill.
- (ii) The Lokpal Bill may be sent to all States as a model through executive instruction, but States to have absolute freedom in determining the nature and type of the institution of Lokayukta, depending upon their needs/requirements.
- (iii) Necessary consequential changes may be carried in the remaining provisions of the Bill.

16.4 In view of the consensus in the Committee as above, Part-III of the Bill may be substituted as follows:

#### **ESTABLISHMENT OF THE LOKAYUKTA**

##### **16.5 Clause 63: Establishment of Lokayukta for a State**

There shall be established a body called “Lokayukta” in every State through enactment of a law by the State Legislatures within a period of 365 days from the date of commencement of this Act.



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**THE LOKPAL AND LOKAYUKTAS BILL, 2011**  
As Reported by the Select Committee

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**THE LOKPAL AND LOKAYUKTAS BILL, 2011  
(As Reported by the Select Committee)**

[Words underlined indicate the amendments and asterisks  
indicate omissions suggested by the Select Committee]

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**THE LOKPAL AND LOKAYUKTAS BILL, 2012**

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**ARRANGEMENT OF CLAUSES**

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**CLAUSES**

**PART I**

**PRELIMINARY**

1. Short title, extent, application and commencement.

**PART II**

**LOKPAL FOR THE UNION**

**CHAPTER I**

**DEFINITIONS**

2. Definitions.

**CHAPTER II**

**ESTABLISHMENT OF LOKPAL**

3. Establishment of Lokpal.
4. Appointment of Chairperson and Members on recommendations of Selection Committee.
5. Filling of vacancies of Chairperson or Members.
6. Term of office of Chairperson and Members.
7. Salary, allowances and other conditions of service of Chairperson and Members.
8. Restriction on employment by Chairperson and Members after ceasing to hold office.
9. Member to act as Chairperson or to discharge his functions in certain circumstances.
10. Secretary, other officers and staff of Lokpal.

## CLAUSES

## CHAPTER III

## INQUIRY WING

11. Inquiry Wing.

## CHAPTER IV

## PROSECUTION WING

12. Prosecution Wing.

## CHAPTER V

## EXPENSES OF LOKPAL TO BE CHARGED ON CONSOLIDATED FUND OF INDIA

13. Expenses of Lokpal to be charged on Consolidated Fund of India.

## CHAPTER VI

## JURISDICTION IN RESPECT OF INQUIRY

14. Jurisdiction of Lokpal to include Prime Minister, Ministers, Members of Parliament, Groups A, B, C and D officers and officials of Central Government.
15. Matters pending before any court or committee or authority for inquiry not to be affected.
16. Constitution of benches of Lokpal.
17. Distribution of business amongst benches.
18. Power of Chairperson to transfer cases.
19. Decision to be by majority.

## CHAPTER VII

## PROCEDURE IN RESPECT OF PRELIMINARY INQUIRY AND INVESTIGATION

20. Provisions relating to complaints and preliminary inquiry and investigation.
21. Persons likely to be prejudicially affected to be heard.
22. Lokpal may require any public servant or any other person to furnish information, etc.
23. Power of Lokpal to grant sanction for initiating prosecution.
24. Action on investigation against public servant being Prime Minister, Ministers or Members of Parliament.

## CHAPTER VIII

## POWERS OF LOKPAL

25. Supervisory powers of Lokpal.

## CLAUSES

26. Search and seizure.
27. Lokpal to have powers of civil court in certain cases.
28. Power of Lokpal to utilise services of officers of Central or State Government.
29. Provisional attachment of assets.
30. Confirmation of attachment of assets.
31. Confiscation of assets, proceeds, receipts and benefits arisen or procured by means of corruption in special circumstances.
32. Power of Lokpal to recommend transfer or suspension of public servant connected with allegation of corruption.
33. Power of Lokpal to give directions to prevent destruction of records during preliminary inquiry.
34. Power to delegate.

## CHAPTER IX

## SPECIAL COURTS

35. Special Courts to be constituted by Central Government.
36. Letter of request to a contracting State in certain cases.

## CHAPTER X

## COMPLAINTS AGAINST CHAIRPERSON, MEMBERS AND OFFICIALS OF LOKPAL

37. Removal and suspension of Chairperson and Members of Lokpal.
38. Complaints against officials of Lokpal.

## CHAPTER XI

## ASSESSMENT OF LOSS AND RECOVERY THEREOF BY SPECIAL COURT

39. Assessment of loss and recovery thereof by Special Court.

## CHAPTER XII

## FINANCE, ACCOUNTS AND AUDIT

40. Budget
41. Grants by Central Government.
42. Annual statement of accounts.
43. Furnishing of returns, etc., to Central Government.

## CHAPTER XIII

## DECLARATION OF ASSETS

44. Declaration of assets.

## CLAUSES

45. Presumption as to acquisition of assets by corrupt means in certain cases.

## CHAPTER XIV

## OFFENCES AND PENALTIES

46. Prosecution for false complaint and payment of compensation, etc., to public servant.  
47. False complaint made by society or association of persons or trust.

## CHAPTER XV

## MISCELLANEOUS

48. Reports of Lokpal.  
49. Lokpal to function as appellate authority for appeals arising out of any other law for the time being in force.  
50. Protection of action taken in good faith by any public servant.  
51. Protection of action taken in good faith by others.  
52. Members, officers and employees of Lokpal to be public servants.  
53. Limitation to apply in certain cases.  
54. Bar of Jurisdiction.  
55. Legal assistance.  
56. Act to have overriding effect.  
57. Provisions of this Act to be in addition of other laws.  
58. Amendment of certain enactments.  
59. Power to make rules.  
60. Power of Lokpal to make regulations.  
61. Laying of rules and regulations.  
62. Power to remove difficulties.

## PART III

## ESTABLISHMENT OF THE LOKAYUKTA

63. Establishment of Lokayukta.  
64 to 97. \* \* \* \*

## THE SCHEDULE

Working Draft  
[Legislative Department]  
20th November, 2012

**THE LOKPAL AND LOKAYUKTAS BILL, 2011  
(As Reported by the Select Committee)**

[Words underlined indicate the amendments and asterisks  
indicate omissions suggested by the Select Committee]

**THE LOKPAL AND LOKAYUKTAS BILL, 2012**

A

**BILL**

*to provide for the establishment of a body of Lokpal for the Union  
and Lokayukta for States to inquire into allegations of corruption  
against certain public functionaries and for matters  
connected therewith or incidental thereto.*

WHEREAS the Constitution of India established a  
Democratic Republic to ensure justice for all;

AND WHEREAS India has ratified the United Nations  
Convention Against Corruption;

AND WHEREAS the Government's commitment to  
clean and responsive governance has to be reflected  
in effective bodies to contain and punish acts of  
corruption;

NOW, THEREFORE, it is expedient to enact a law,  
for more effective implementation of the said  
Convention and to provide for prompt and fair  
investigation and prosecution in cases of corruption.

BE it enacted by Parliament in the Sixty-third  
Year of the Republic of India as follows:—

**PART I**

**PRELIMINARY**

1. (1) This Act may be called the Lokpal and Lokayuktas Act, 2012.

(2) It extends to the whole of India.

Short title,  
extent,  
application  
and  
commence-  
ment.

(3) It shall apply to public servants in and outside India.

(4) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

\* \* \* \*

## PART II

### LOKPAL FOR THE UNION

#### CHAPTER I

##### DEFINITIONS

Definitions. 2. (1) In this Act, unless the context otherwise requires,—

(a) “bench” means a bench of the Lokpal;

(b) “Chairperson” means the Chairperson of the Lokpal;

(c) “competent authority”, in relation to—

(i) the Prime Minister, means the House of the People;

(ii) a member of the Council of Ministers, means the Prime Minister;

(iii) a Member of Parliament other than a Minister, means—

(A) in the case of a member of the Council of States, the Chairman of the Council; and

(B) in the case of a member of the House of the People, the Speaker of the House;

(iv) an officer in the Ministry or Department of the Central Government, means the Minister-in-charge of the Ministry or Department under which the officer is serving;

(v) a Chairperson or members of any body or Board or corporation or authority or company or society or autonomous body (by whatever name called) established or

constituted under any Act of Parliament or wholly or partly financed by the Central Government or controlled by it, means the Minister in charge of the administrative Ministry of such body or Board or corporation or authority or company or society or autonomous body;

(vi) an officer of any body or Board or corporation or authority or company or society or autonomous body (by whatever name called) established or constituted under any Act of Parliament or wholly or partly financed by the Central Government or controlled by it, means the head of such body or Board or corporation or authority or company or society or autonomous body;

(vii) in any other case not falling under sub-clauses (i) to (vi) above, means such Department or authority as the Central Government may, by notification, specify:

Provided that if any person referred to in sub-clause (v) or sub-clause (vi) is also a Member of Parliament, then, the competent authority shall be—

(A) in case such member is a Member of the Council of States, the Chairman of the Council; and

(B) in case such member is a Member of the House of the People, the Speaker of the House;

(d) “Central Vigilance Commission” means the Central Vigilance Commission constituted under sub-section (1) of Section 3 of the Central Vigilance Commission Act, 2003;

45 of 2003

(e) “complaint” means a complaint, made in such form as may be prescribed, alleging that a public servant has committed an offence punishable under the Prevention of Corruption Act, 1988;

49 of 1988

(f) “Delhi Special Police Establishment” means the Delhi Special Police Establishment constituted under sub-section (1) of Section 2 of the Delhi Special Police Establishment Act, 1946;

25 of 1946



(g) “investigation” means an investigation as defined under Clause (h) of Section 2 of the Code of Criminal Procedure, 1973; 2 of 1974

(h) “Judicial Member” means a Judicial Member of the Lokpal;

(i) “Lokpal” means the body established under Section 3;

(j) “Member” means a Member of the Lokpal;

(k) “Minister” means a Union Minister but does not include the Prime Minister;

(l) “notification” means notification published in the Official Gazette and the expression “notify” shall be construed accordingly;

(m) “preliminary inquiry” means an inquiry conducted under this Act;

(n) “prescribed” means prescribed by rules made under this Act;

(o) “public servant” means a person referred to in Clauses (a) to (h) of sub-section (1) of Section 14 but does not include a public servant in respect of whom the jurisdiction is exercisable by any court or other authority under the Army Act, 1950, the Air Force Act, 1950, the Navy Act, 1957 and the Coast Guard Act, 1978 or the procedure is applicable to such public servant under those Acts; 45 of 1950  
46 of 1950  
62 of 1957  
30 of 1978

(p) “regulations” means regulations made under this Act;

(q) “rules” means rules made under this Act;

(r) “Schedule” means a Schedule appended to this Act;

(s) “Special Court” means the court of a Special Judge appointed under sub-section (1) of Section 3 of the Prevention of Corruption Act, 1988. 49 of 1988

(2) The words and expressions used herein and not defined in this Act but defined in the Prevention of Corruption Act, 1988, shall have the meanings respectively assigned to them in that Act. 49 of 1988

(3) Any reference in this Act to any other Act or provision thereof which is not in force in any area to which this Act applies shall be construed to have a reference to the corresponding Act or provision thereof in force in such area.

## CHAPTER II

### ESTABLISHMENT OF LOKPAL

3. (1) On and from the commencement of this Act, there shall be established, for the purpose of this Act, a body to be called the Lokpal. Establishment of Lokpal.

(2) The Lokpal shall consist of—

(a) a Chairperson, who is or has been a Chief Justice of India or is or has been a Judge of the Supreme Court or an eminent person who fulfils the eligibility specified in Clause (b) of sub-section (3); and

(b) such number of Members, not exceeding eight out of whom fifty per cent shall be Judicial Members:

Provided that not less than fifty per cent of the Members of the Lokpal shall be from amongst the persons belonging to the Scheduled Castes, the Scheduled Tribes, Other Backward Classes, Minorities and women.

(3) A person shall be eligible to be appointed,—

(a) as a Judicial Member if he is or has been a Judge of the Supreme Court or is or has been a Chief Justice of a High Court;

(b) as a Member other than a Judicial Member, if he is a person of impeccable integrity and outstanding ability having special knowledge and expertise of not less than twenty-five years in the matters relating to anti-corruption policy, public administration, vigilance, finance including insurance and banking, law and management.

(4) The Chairperson or a Member shall not be—

(i) a Member of Parliament or a member of the Legislature of any State or Union Territory;

(ii) a person convicted of any offence involving moral turpitude;

(iii) a person of less than forty-five years of age, on the date of assuming office as the Chairperson or Member, as the case may be;

(iv) a member of any Panchayat or Municipality;

(v) a person who has been removed or dismissed from the service of the Union or a State,

and shall not hold any office of trust or profit (other than his office as the Chairperson or a Member) or be affiliated with any political party or carry on any business or practise any profession and, accordingly, before he enters upon his office, a person appointed as the Chairperson or a Member, as the case may be, shall, if—

(a) he holds any office of trust or profit, resign from such office; or

(b) he is carrying on any business, sever his connection with the conduct and management of such business; or

(c) he is practising any profession, cease to practise such profession.

Appointment  
of  
Chairperson  
and  
Members on  
recommend-  
ations of  
Selection  
Committee.

4. (1) The Chairperson and Members shall be appointed by the President after obtaining the recommendations of a Selection Committee consisting of—

(a) the Prime Minister—Chairperson;

(b) the Speaker of the House of the People—member;

(c) the Leader of Opposition in the House of the People—member;

(d) the Chief Justice of India or a Judge of the Supreme Court nominated by him—member;

(e) one eminent jurist, as recommended by the Chairperson and members referred to in Clauses (a) to (d) above, to be nominated by the President—member.

(2) No appointment of a Chairperson or a Member shall be invalid merely by reason of any vacancy in the Selection Committee.

(3) The Selection Committee shall for the purposes of selecting the Chairperson and Members of the Lokpal and for preparing a panel of persons to be considered for appointment as such, constitute a Search Committee consisting of at least seven persons of standing and having special knowledge and expertise in the matters relating to anti-corruption policy, public administration, vigilance, policy making, finance including insurance and banking, law and management or in any other matter which, in the opinion of the Selection Committee, may be useful in making the selection of the Chairperson and Members of the Lokpal:

Provided that not less than fifty per cent of the members of the Search Committee shall be from amongst the persons belonging to the Scheduled Castes, the Scheduled Tribes, Other Backward Classes, Minorities and women:

Provided further that the Selection Committee may also consider any person other than the persons recommended by the Search Committee.

(4) The Selection Committee shall regulate its own procedure in a transparent manner for selecting the Chairperson and Members of the Lokpal.

(5) The term of the Search Committee referred to in sub-section (3), the fees and allowances payable to its members and the manner of selection of panel of names shall be such as may be prescribed.

5. The President shall take or cause to be taken all necessary steps for the appointment of a new Chairperson and Members at least three months before the expiry of the term of the Chairperson or Member, as the case may be, in accordance with the procedure laid down in this Act.

Filling of vacancies of Chairperson or Members.

Term of  
office of  
Chairperson  
and  
Members.

6. The Chairperson and every Member shall, on the recommendations of the Selection Committee, be appointed by the President by warrant under his hand and seal and hold office as such for a term of five years from the date on which he enters upon his office or until he attains the age of seventy years, whichever is earlier:

Provided that he may—

(a) by writing under his hand addressed to the President, resign his office; or

(b) be removed from his office in the manner provided in section 37.

Salary,  
allowances  
and other  
conditions  
of service  
of  
Chairperson  
and  
Members.

7. The salary, allowances and other conditions of service of—

(i) the Chairperson shall be the same as those of the Chief Justice of India;

(ii) other Members shall be the same as those of a Judge of the Supreme Court:

Provided that if the Chairperson or a Member is, at the time of his appointment, in receipt of pension (other than disability pension) in respect of any previous service under the Government of India or under the Government of a State, his salary in respect of service as the Chairperson or, as the case may be, as a Member, be reduced—

(a) by the amount of that pension; and

(b) if he has, before such appointment, received, in lieu of a portion of the pension due to him in respect of such previous service, the commuted value thereof, by the amount of that portion of the pension:

Provided further that the salary, allowances and pension payable to, and other conditions of service of, the Chairperson or a Member shall not be varied to his disadvantage after his appointment.

8. (1) On ceasing to hold office, the Chairperson and every Member shall be ineligible for—

(i) reappointment as the Chairperson or a Member of the Lokpal;

(ii) any diplomatic assignment, appointment as administrator of a Union Territory and such other assignment or appointment which is required by law to be made by the President by warrant under his hand and seal;

(iii) further employment to any other office of profit under the Government of India or the Government of a State;

(iv) contesting any election of President or Vice-President or Member of either House of Parliament or Member of either House of a State Legislature or Municipality or Panchayat within a period of five years from the date of relinquishing the post.

Restriction on employment by Chairperson and Members after ceasing to hold office.

(2) Notwithstanding anything contained in subsection (1), a Member shall be eligible to be appointed as a Chairperson, if his total tenure as Member and Chairperson does not exceed five years.

*Explanation.*—For the purposes of this section, it is hereby clarified that where the Member is appointed as the Chairperson, his term of office shall not be more than five years in aggregate as the Member and the Chairperson.

9. (1) In the event of occurrence of any vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the President may, by notification, authorise the senior-most Member to act as the Chairperson until the appointment of a new Chairperson to fill such vacancy.

Member to act as Chairperson or to discharge his functions in certain circumstances.

(2) When the Chairperson is unable to discharge his functions owing to absence on leave or otherwise, the senior-most Member available, as the President may, by notification, authorise in this behalf, shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties.

Secretary,  
other  
officers and  
staff of  
Lokpal.

**10. (1)** There shall be a Secretary to the Lokpal in the rank of Secretary to Government of India, who shall be appointed by the Chairperson from a panel of names sent by the Central Government.

(2) There shall be a Director of Inquiry and a Director of Prosecution not below the rank of Additional Secretary to the Government of India or equivalent, who shall be appointed by the Chairperson from a panel of names sent by the Central Government.

(3) The appointment of officers and other staff of the Lokpal shall be made by the Chairperson or such Member or officer of Lokpal as the Chairperson may direct:

Provided that the President may by rule require that the appointment in respect of any post or posts as may be specified in the rule, shall be made after consultation with the Union Public Service Commission.

(4) Subject to the provisions of any law made by Parliament, the conditions of service of Secretary and other officers and staff of the Lokpal shall be such as may be specified by regulations made by the Lokpal for the purpose:

Provided that the regulations made under this sub-section shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the President.

### CHAPTER III

#### INQUIRY WING

Inquiry  
Wing.

**11. (1)** Notwithstanding anything contained in any law for the time being in force, the Lokpal shall constitute an Inquiry Wing headed by the Director of Inquiry for the purpose of conducting preliminary inquiry into any offence alleged to have been committed by a public servant punishable under the Prevention of Corruption Act, 1988:

49 of 1988

Provided that till such time the Inquiry Wing is constituted by the Lokpal, the Central Government shall make available such number of officers and

other staff from its Ministries or Departments, as may be required by the Lokpal, for conducting preliminary inquiries under this Act.

(2) For the purposes of assisting the Lokpal in conducting a preliminary inquiry under this Act, the officers of the Inquiry Wing not below the rank of the Under Secretary to the Government of India, shall have the same powers as are conferred upon the Inquiry Wing of the Lokpal under Section 27.

#### CHAPTER IV

##### PROSECUTION WING

12. (1) The Lokpal shall, by notification, constitute a Prosecution Wing headed by the Director of Prosecution for the purpose of prosecution of public servants in relation to any complaint by the Lokpal under this Act:

Prosecution Wing.

Provided that till such time the Prosecution Wing is constituted by the Lokpal, the Central Government shall make available such number of officers and other staff from its Ministries or Departments, as may be required by the Lokpal, for conducting prosecution under this Act.

(2) The Director of Prosecution shall, after having been so directed by the Lokpal, file a case in accordance with the findings of investigation report, before the Special Court and take all necessary steps in respect of the prosecution of public servants in relation to any offence punishable under the Prevention of Corruption Act, 1988.

49 of 1988

(3) The case under sub-section (2), shall be deemed to be a report, filed on completion of investigation, referred to in section 173 of the Code of Criminal Procedure, 1973.

2 of 1974

#### CHAPTER V

##### EXPENSES OF LOKPAL TO BE CHARGED ON CONSOLIDATED FUND OF INDIA

13. The administrative expenses of the Lokpal, including all salaries, allowances and pensions payable to or in respect of the Chairperson, Members or Secretary or other officers or staff of the Lokpal, shall be charged upon the Consolidated

Expenses of Lokpal to be charged on Consolidated Fund of India.



Fund of India and any fees or other moneys taken by the Lokpal shall form part of that Fund.

## CHAPTER VI

### JURISDICTION IN RESPECT OF INQUIRY

Jurisdiction of Lokpal to include Prime Minister, Ministers, Members of Parliament, Groups A, B, C and D officers and officials of Central Government.

14. (1) Subject to the other provisions of this Act, the Lokpal shall inquire or cause an inquiry to be conducted into any matter involved in, or arising from, or connected with, any allegation of corruption made in a complaint in respect of the following, namely:—

(a) any person who is or has been a Prime Minister:

Provided that the Lokpal shall not inquire into any matter involved in, or arising from, or connected with, any such allegation of corruption against the Prime Minister,—

(i) in so far as it relates to international relations, external and internal security, public order, atomic energy and space;

(ii) unless a full bench of the Lokpal consisting of its Chairperson and all Members considers the initiation of inquiry and at least two-thirds of its Members approves of such inquiry:

Provided further that any such inquiry shall be held *in camera* and if the Lokpal comes to the conclusion that the complaint deserves to be dismissed, the records of the inquiry shall not be published or made available to anyone;

(b) any person who is or has been a Minister of the Union;

(c) any person who is or has been a Member of either House of Parliament;

(d) any Group 'A' or Group 'B' officer or equivalent or above, from amongst the public servants defined in sub-clauses (i) and (ii) of Clause (c) of Section 2 of the Prevention of Corruption Act, 1988 when serving or who has

served, in connection with the affairs of the Union;

49 of 1988 (e) any Group 'C' or Group 'D' official or equivalent, from amongst the public servants defined in sub-clauses (i) and (ii) of Clause (c) of Section 2 of the Prevention of Corruption Act, 1988 when serving or who has served in connection with the affairs of the Union subject to the provision of sub-section (1) of Section 20;

(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 the 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;

(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;

(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.

42 of 2010

*Explanation.*—For the purpose of Clauses (f) and (g), it is hereby clarified that any entity or institution, by whatever name called, corporate, society, trust, association of persons, partnership, sole proprietorship, limited liability partnership (whether registered under any law for the time being in force or not), shall be the entities covered in those clauses:

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

49 of 1988

(2) Notwithstanding anything contained in sub-section (1), the Lokpal shall not inquire into any matter involved in, or arising from, or connected with, any such allegation of corruption against any Member of either House of Parliament in respect of anything said or a vote given by him in Parliament or any committee thereof covered under the provisions contained in Clause (2) of Article 105 of the Constitution.

(3) The Lokpal may inquire into any act or conduct of any person other than those referred to in sub-section (1), if such person is involved in the act of abetting, bribe giving or bribe taking or conspiracy relating to any allegation of corruption under the Prevention of Corruption Act, 1988 against a person referred to in sub-section (1):

49 of 1988

Provided that no action under this section shall be taken in case of a person serving in connection with the affairs of a State, without the consent of the State Government.

60 of 1952 (4) No matter in respect of which a complaint has been made to the Lokpal under this Act, shall be referred for inquiry under the Commissions of Inquiry Act, 1952.

*Explanation.*—For the removal of doubts, it is hereby declared that a complaint under this Act shall only relate to a period during which the public servant was holding or serving in that capacity.

49 of 1988 15. In case any matter or proceeding related to allegation of corruption under the Prevention of Corruption Act, 1988 has been pending before any court or committee of either House of Parliament or before any other authority prior to commencement of this Act or prior to commencement of any inquiry after the commencement of this Act, such matter or proceeding shall be continued before such court, committee or authority.

Matters pending before any court or committee or authority for inquiry not to be affected.

16. (1) Subject to the provisions of this Act,— Constitution of benches of Lokpal.

(a) the jurisdiction of the Lokpal may be exercised by benches thereof;

(b) a bench may be constituted by the Chairperson with two or more Members as the Chairperson may deem fit;

(c) every bench shall ordinarily consist of at least one Judicial Member;

(d) where a bench consists of the Chairperson, such bench shall be presided over by the Chairperson;

(e) where a bench consists of a Judicial Member, and a non-Judicial Member, not being the Chairperson, such bench shall be presided over by the Judicial Member;

(f) the benches of the Lokpal shall ordinarily sit at New Delhi and at such other places as the Lokpal may, by regulations, specify.

(2) The Lokpal shall notify the areas in relation to which each bench of the Lokpal may exercise jurisdiction.

(3) Notwithstanding anything contained in sub-section (2), the Chairperson shall have the power to constitute or reconstitute benches from time to time.

(4) If at any stage of the hearing of any case or matter it appears to the Chairperson or a Member that the case or matter is of such nature that it ought to be heard by a bench consisting of three or more Members, the case or matter may be transferred by the Chairperson or, as the case may be, referred to him for transfer, to such bench as the Chairperson may deem fit.

Distribution of business amongst benches.

**17.** Where benches are constituted, the Chairperson may, from time to time, by notification, make provisions as to the distribution of the business of the Lokpal amongst the benches and also provide for the matters which may be dealt with by each bench.

Power of Chairperson to transfer cases.

**18.** On an application for transfer made by the complainant or the public servant, the Chairperson, after giving an opportunity of being heard to the complainant or the public servant, as the case may be, may transfer any case pending before one bench for disposal to any other bench.

Decision to be by majority.

**19.** If the Members of a bench consisting of an even number of Members differ in opinion on any point, they shall state the point or points on which they differ, and make a reference to the Chairperson who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other Members of the Lokpal and such point or points shall be decided according to the opinion of the majority of the Members of the Lokpal who have heard the case, including those who first heard it.

## CHAPTER VII

PROCEDURE IN RESPECT OF PRELIMINARY INQUIRY AND  
INVESTIGATION

20. (1) The Lokpal on receipt of a complaint, if it decides to proceed further, may order—

Provisions relating to complaints and preliminary inquiry and investigation.

(a) preliminary inquiry against any public servant by its Inquiry Wing or any agency (including the Delhi Special Police Establishment) to ascertain whether there exists a *prima facie* case for proceeding in the matter; or

(b) investigation by any agency (including the Delhi Special Police Establishment) where there exists a *prima facie* case.

Provided that the Lokpal shall if it has decided to proceed with the preliminary inquiry, by a general or special order, refer the complaints or a category of complaints or a complaint received by it in respect of public servants belonging to Group A or Group B or Group C or Group D to the Central Vigilance Commission constituted under sub-section (1) of Section 3 of the Central Vigilance Commission Act, 2003:

54 of 2003

Provided further that the Central Vigilance Commission in respect of complaints referred to it under the first proviso, after making preliminary inquiry in respect of public servants belonging to Group A and Group B, shall submit its report to the Lokpal in accordance with the provisions contained in sub-sections (2) and (4) and in case of public servants belonging to Group C and Group D, the Commission shall proceed in accordance with the provisions of the Central Vigilance Commission Act, 2003.

54 of 2003

(2) During the preliminary inquiry referred to in sub-section (1), the Inquiry Wing or any agency (including the Delhi Special Police Establishment) shall conduct a preliminary inquiry and on the basis of material, information and documents collected

may seek the comments on the allegations made in the complaint from the public servant and the competent authority and after obtaining the comments of the concerned public servant and the competent authority, submit, within sixty days from the date of receipt of the reference, a report to the Lokpal.

(3) A bench consisting of not less than three Members of the Lokpal shall consider every report, received under sub-section (2) from the Inquiry Wing or any agency (including the Delhi Special Police Establishment), \* \* \* \* to decide whether there exists a *prima facie* case, and \* proceed with one or more of the following actions, namely:—

(a) investigation by any agency or the Delhi Special Police Establishment, as the case may be;

(b) initiation of the departmental proceedings or any other appropriate action against the concerned public servants by the competent authority;

(c) closure of the proceedings against the public servant and to proceed against the complainant under Section 46.

(4) Every preliminary inquiry referred to in sub-section (1) shall ordinarily be completed within a period of ninety days and for reasons to be recorded in writing, within a further period of ninety days from the date of receipt of the complaint.

(5) In case the Lokpal decides to proceed to investigate into the complaint, it shall direct any agency (including the Delhi Special Police Establishment) to carry out the investigation as expeditiously as possible and complete the investigation within a period of six months from the date of its order: \* \* \* \*

Provided that the Lokpal may extend the said period by a further period not exceeding of six months at a time for the reasons to be recorded in writing.

(6) Notwithstanding anything contained in Section 173 of the Code of Criminal Procedure, 1973, any agency (including the Delhi Special Police Establishment) shall, in respect of cases referred to it by the Lokpal, submit the investigation report under that section to the court having jurisdiction and forward a copy thereof to the Lokpal.

(7) A bench consisting of not less than three Members of the Lokpal shall consider every report received by it under sub-section (6) from any agency (including the Delhi Special Police Establishment) and after obtaining the comments of the competent authority and the public servant may— \*\*

(a) grant sanction to its Prosecution Wing or investigating agency to file charge-sheet or direct the closure of report before the Special Court against the public servant;

(b) direct the competent authority to initiate the departmental proceedings or any other appropriate action against the concerned public servant \* \* \* \*.

(8) The Lokpal may, after taking a decision under sub-section (7) on the filing of the charge-sheet, direct its Prosecution Wing or any investigating agency (including the Delhi Special Police Establishment) to initiate prosecution in the Special Court in respect of the cases investigated by the agency \* \* \*.

(9) The Lokpal may, during the preliminary inquiry or the investigation, as the case may be, pass appropriate orders for the safe custody of the documents relevant to the preliminary inquiry or, as the case may be, investigation as it deems fit.

(10) The website of the Lokpal shall, from time to time and in such manner as may be specified by regulations, display to the public, the status of number of complaints pending before it or disposed of by it.

(11) The Lokpal may retain the original records and evidences which are likely to be required in the process of preliminary inquiry or investigation or conduct of a case by it or by the Special Court.



(12) Save as otherwise provided, the manner and procedure of conducting a preliminary inquiry or investigation (including such material and documents to be made available to the public servant) under this Act, shall be such as may be specified by regulations.

Persons likely to be prejudicially affected to be heard.

21. If, at any stage of the proceeding, the Lokpal—

(a) considers it necessary to inquire into the conduct of any person other than the accused; or

(b) is of opinion that the reputation of any person other than an accused is likely to be prejudicially affected by the preliminary inquiry,

the Lokpal shall give to that person a reasonable opportunity of being heard in the preliminary inquiry and to produce evidence in his defence, consistent with the principles of natural justice.

Lokpal may require any public servant or any other person to furnish information, etc.

22. Subject to the provisions of this Act, for the purpose of any preliminary inquiry or investigation, the Lokpal or the investigating agency, as the case may be, may require any public servant or any other person who, in its opinion, is able to furnish information or produce documents relevant to such preliminary inquiry or investigation, to furnish any such information or produce any such document.

Power of Lokpal to grant sanction for initiating prosecution.

23. (1) Notwithstanding anything contained in Section 197 of the Code of Criminal Procedure, 1973 or Section 6A of the Delhi Special Police Establishment Act, 1946 or Section 19 of the Prevention of Corruption Act, 1988, the Lokpal shall have the power to grant sanction for prosecution under Clause (a) of sub-section (7) of Section 20.

2 of 1974

25 of 1946

49 of 1988

(2) No prosecution under sub-section (1) shall be initiated against any public servant accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, and no court shall take cognizance of such offence except with the previous sanction of the Lokpal.

(3) Nothing contained in sub-sections (1) and (2) shall apply in respect of the persons holding office in pursuance of the provisions of the Constitution and in respect of which a procedure for removal of such person has been specified therein.

(4) The provisions contained in sub-sections (1), (2) and (3) shall be without prejudice to the generality of the provisions contained in Article 311 and sub-clause (c) of Clause (3) of Article 320 of the Constitution.

49 of 1988      24. Where, after the conclusion of the investigation, the findings of the Lokpal disclose the commission of an offence under the Prevention of Corruption Act, 1988 by a public servant referred to in Clause (a) or Clause (b) or Clause (c) of sub-section (1) of Section 14, the Lokpal may file a case in the Special Court and shall send a copy of the report together with its findings to the competent authority.

Action on investigation against public servant being Prime Minister, Ministers or Members of Parliament.

## CHAPTER VIII

### POWERS OF LOKPAL

25 of 1946  
45 of 2003      25. (1) The Lokpal shall, notwithstanding anything contained in Section 4 of the Delhi Special Police Establishment Act, 1946 and Section 8 of the Central Vigilance Commission Act, 2003, have the powers of superintendence over, and to give direction to, the Delhi Special Police Establishment in respect of the matters referred by the Lokpal for preliminary inquiry or investigation to the Delhi Special Police Establishment under this Act:

Supervisory powers of Lokpal.

Provided that while exercising powers of superintendence or giving direction under this sub-section, the Lokpal shall not exercise powers in such a manner so as to require any agency (including the Delhi Special Police Establishment) to whom the investigation has been given, to investigate and dispose of any case in a particular manner.

(2) The Central Vigilance Commission shall send a statement, at such interval as the Lokpal may direct, to the Lokpal in respect of action taken on

complaints referred to it under the second proviso to sub-section (1) of Section 20 and on receipt of such statement, the Lokpal may issue guidelines for effective and expeditious disposal of such cases.

(3) Any officer of the Delhi Special Police Establishment investigating a case referred to it by the Lokpal, shall not be transferred without the approval of the Lokpal.

(4) The Delhi Special Police Establishment may, with the consent of the Lokpal, appoint a panel of Advocates, other than the Government Advocates, for conducting the cases referred to it by the Lokpal.

(5) The Central Government may from time to time make available such funds as may be required by the Director of the Delhi Special Police Establishment for conducting effective investigation into the matters referred to it by the Lokpal and the Director shall be responsible for the expenditure incurred in conducting such investigation.

Search and seizure.

**26. (1)** If the Lokpal has reason to believe that any document which, in its opinion, shall be useful for, or relevant to, any investigation under this Act, are secreted in any place, it may authorise any agency (including the Delhi Special Police Establishment) to whom the investigation has been given to search for and to seize such documents.

(2) If the Lokpal is satisfied that any document seized under sub-section (1) may be used as evidence for the purpose of any investigation under this Act and that it shall be necessary to retain the document in its custody or in the custody of such officer as may be authorised, it may so retain or direct such authorised officer to retain such document till the completion of such investigation:

Provided that where any document is required to be returned, the Lokpal or the authorised officer may return the same after retaining copies of such document duly authenticated.

5 of 1908      **27. (1)** Subject to the provisions of this section, for the purpose of any preliminary inquiry, the Inquiry Wing of the Lokpal shall have all the powers of a civil court, under the Code of Civil Procedure, 1908, while trying a suit in respect of the following matters, namely:—

Lokpal to have powers of civil court in certain cases.

(i) summoning and enforcing the attendance of any person and examining him on oath;

(ii) requiring the discovery and production of any document;

(iii) receiving evidence on affidavits;

(iv) requisitioning any public record or copy thereof from any court or office;

(v) issuing commissions for the examination of witnesses or documents:

Provided that such commission, in case of a witness, shall be issued only where the witness, in the opinion of the Lokpal, is not in a position to attend the proceeding before the Lokpal; and

(vi) such other matters as may be prescribed.

45 of 1860      (2) Any proceeding before the Lokpal shall be deemed to be a judicial proceeding within the meaning of Section 193 of the Indian Penal Code.

**28. (1)** The Lokpal may, for the purpose of conducting any preliminary inquiry or investigation, utilise the services of any officer or organisation or investigating agency of the Central Government or any State Government, as the case may be.

Power of Lokpal to utilise services of officers of Central or State Government.

(2) For the purpose of preliminary inquiry or investigating into any matter pertaining to such inquiry or investigation, any officer or organisation or agency whose services are utilised under subsection (1) may, subject to the superintendence and direction of the Lokpal,—

(a) summon and enforce the attendance of any person and examine him;

(b) require the discovery and production of any document; and

(c) requisition any public record or copy thereof from any office.

(3) The officer or organisation or agency whose services are utilised under sub-section (2) shall inquire or, as the case may be, investigate into any matter pertaining to the preliminary inquiry or investigation and submit a report thereon to the Lokpal within such period as may be specified by it in this behalf.

Provisional attachment of assets.

**29. (1)** Where the Lokpal or any officer authorised by it in this behalf, has reason to believe, the reason for such belief to be recorded in writing, on the basis of material in his possession, that—

(a) any person is in possession of any proceeds of corruption;

(b) such person is accused of having committed an offence relating to corruption; and

(c) such proceeds of offence are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of offence,

the Lokpal or the authorised officer may, by order in writing, provisionally attach such property for a period not exceeding ninety days from the date of the order, in the manner provided in the Second Schedule to the Income-tax Act, 1961 and the Lokpal and the officer shall be deemed to be an officer under sub-rule (e) of rule 1 of that Schedule.

43 of 1961

(2) The Lokpal or the officer authorised in this behalf shall, immediately after attachment under sub-section (1), forward a copy of the order, along with the material in his possession, referred to in that sub-section, to the Special Court, in a sealed envelope, in the manner as may be prescribed and such Court may extend the order of attachment and keep such material for such period as the Court may deem fit.

(3) Every order of attachment made under sub-section (1) shall cease to have effect after the expiry of the period specified in that sub-section or after the expiry of the period as directed by the Special Court under sub-section (2).

(4) Nothing in this section shall prevent the person interested in the enjoyment of the immovable property attached under sub-section (1) or sub-section (2), from such enjoyment.

*Explanation.*—For the purposes of this sub-section, “person interested”, in relation to any immovable property, includes all persons claiming or entitled to claim any interest in the property.

30. (1) The Lokpal, when it provisionally attaches any property under sub-section (1) of section 29 shall, within a period of thirty days of such attachment, direct its Prosecution Wing to file an application stating the facts of such attachment before the Special Court and make a prayer for confirmation of attachment of the property till completion of the proceedings against the public servant in the Special Court.

Confirmation  
of  
attachment  
of assets.

(2) The Special Court may, if it is of the opinion that the property provisionally attached had been acquired through corrupt means, make an order for confirmation of attachment of such property till the completion of the proceedings against the public servant in the Special Court.

(3) If the public servant is subsequently acquitted of the charges framed against him, the property, subject to the orders of the Special Court, shall be restored to the concerned public servant along with benefits from such property as might have accrued during the period of attachment.

(4) If the public servant is subsequently convicted of the charges of corruption, the proceeds relatable to the offence under the Prevention of Corruption Act, 1988 shall be confiscated and vest in the Central Government free from any encumbrance or leasehold interest excluding any debt due to any bank or financial institution.

*Explanation.*—For the purposes of this sub-section, the expressions “bank”, “debt” and “financial institution” shall have the meanings respectively assigned to them in Clauses (d), (g) and (h) of Section 2 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993.

51 of 1993

Confiscation of assets, proceeds, receipts and benefits arisen or procured by means of corruption in special circumstances.

31. (1) Without prejudice to the provisions of Sections 29 and 30, where the Special Court, on the basis of *prima facie* evidence, has reason to believe or is satisfied that the assets, proceeds, receipts and benefits, by whatever name called, have arisen or procured by means of corruption by the public servant, it may authorise the confiscation of such assets, proceeds, receipts and benefits till his acquittal.

(2) Where an order of confiscation made under sub-section (1) is modified or annulled by the High Court or where the public servant is acquitted by the Special Court, the assets, proceeds, receipts and benefits, confiscated under sub-section (1) shall be returned to such public servant, and in case it is not possible for any reason to return the assets, proceeds, receipts and benefits, such public servant shall be paid the price thereof including the money so confiscated with interest at the rate of five per cent per annum thereon calculated from the date of confiscation.

Power of Lokpal to recommend transfer or suspension of public servant connected with allegation of corruption.

32. (1) Where the Lokpal, while making a preliminary inquiry into allegations of corruption, is *prima facie* satisfied, on the basis of evidence available,—

(i) that the continuance of the public servant referred to in Clause (d) or Clause (e) or Clause (f) of sub-section (1) of Section 14 in his post while conducting the preliminary inquiry is likely to affect such preliminary inquiry adversely; or

(ii) such public servant is likely to destroy or in any way tamper with the evidence or influence witnesses,

then, the Lokpal may recommend to the Central Government for transfer or suspension of such public servant from the post held by him till such period as may be specified in the order.

(2) The Central Government shall ordinarily accept the recommendation of the Lokpal made under sub-section (1), except for the reasons to be recorded in writing in a case where it is not feasible to do so for administrative reasons.

33. The Lokpal may, in the discharge of its functions under this Act, issue appropriate directions to a public servant entrusted with the preparation or custody of any document or record—

Power of Lokpal to give directions to prevent destruction of records during preliminary inquiry.

(a) to protect such document or record from destruction or damage; or

(b) to prevent the public servant from altering or secreting such document or record; or

(c) to prevent the public servant from transferring or alienating any assets allegedly acquired by him through corrupt means.

34. The Lokpal may, by general or special order in writing, and subject to such conditions and limitations as may be specified therein, direct that any administrative or financial power conferred on it may also be exercised or discharged by such of its Members or officers or employees as may be specified in the order.

Power to delegate.

## CHAPTER IX

### SPECIAL COURTS

49 of 1988 35. (1) The Central Government shall constitute such number of Special Courts, as recommended by the Lokpal, to hear and decide the cases arising out of the Prevention of Corruption Act, 1988 or under this Act.

Special Courts to be constituted by Central Government.

(2) The Special Courts constituted under sub-section (1) shall ensure completion of each trial within a period of one year from the date of filing of the case in the Court:

Provided that in case the trial cannot be completed within a period of one year, the Special Court shall record reasons therefor and complete



the trial within a further period of not more than three months or such further periods not exceeding three months each, for reasons to be recorded in writing before the end of each such three months period, but not exceeding a total period of two years.

Letter of request to a contracting State in certain cases.

**36. (1)** Notwithstanding anything contained in this Act or the Code of Criminal Procedure, 1973 if, in the course of a preliminary inquiry or investigation into an offence or other proceeding under this Act, an application is made to a Special Court by an officer of the Lokpal authorised in this behalf that any evidence is required in connection with the preliminary inquiry or investigation into an offence or proceeding under this Act and he is of the opinion that such evidence may be available in any place in a contracting State, and the Special Court, on being satisfied that such evidence is required in connection with the preliminary inquiry or investigation into an offence or proceeding under this Act, may issue a letter of request to a court or an authority in the contracting State competent to deal with such request to—

2 of 1974

(i) examine the facts and circumstances of the case;

(ii) take such steps as the Special Court may specify in such letter of request; and

(iii) forward all the evidence so taken or collected to the Special Court issuing such letter of request.

(2) The letter of request shall be transmitted in such manner as the Central Government may prescribe in this behalf.

(3) Every statement recorded or document or thing received under sub-section (1) shall be deemed to be evidence collected during the course of the preliminary inquiry or investigation.

## CHAPTER X

COMPLAINTS AGAINST CHAIRPERSON,  
MEMBERS AND OFFICIALS OF LOKPAL

37. (1) The Lokpal shall not inquire into any complaint made against the Chairperson or any Member.

Removal  
and  
suspension  
of  
Chairperson  
and  
Members of  
Lokpal.

(2) Subject to the provisions of sub-section (4), the Chairperson or any Member shall be removed from his office by order of the President on grounds of misbehaviour after the Supreme Court, on a reference being made to it by the President on a petition signed by at least one hundred Members of Parliament, has, on an inquiry held in accordance with the procedure prescribed in that behalf, reported that the Chairperson or such Member, as the case may be, ought to be removed on such ground.

(3) The President may suspend from office the Chairperson or any Member in respect of whom a reference has been made to the Supreme Court under sub-section (2), on receipt of the recommendation or interim order made by the Supreme Court in this regard, until the President has passed orders on receipt of the final report of the Supreme Court on such reference.

(4) Notwithstanding anything contained in sub-section (2), the President may, by order, remove from the office, the Chairperson or any Member if the Chairperson or such Member, as the case may be,—

(a) is adjudged an insolvent; or

(b) engages, during his term of office, in any paid employment outside the duties of his office; or

(c) is, in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body.

(5) If the Chairperson or any Member is, or becomes, in any way concerned or interested in

any contract or agreement made by or on behalf of the Government of India or the Government of a State or participates in any way in the profit thereof or in any benefit or emolument arising therefrom otherwise than as a member and in common with the other members of an incorporated company, he shall, for the purposes of sub-section (2), be deemed to be guilty of misbehaviour.

Complaints  
against  
officials of  
Lokpal.

**38. (1)** Every complaint of allegation or wrongdoing made against any officer or employee or agency (including the Delhi Special Police Establishment), under or associated with the Lokpal for an offence punishable under the Prevention of Corruption Act, 1988 shall be dealt with in accordance with the provisions of this section.

49 of 1988

(2) The Lokpal shall complete the inquiry into the complaint or allegation made within a period of thirty days from the date of its receipt.

(3) While making an inquiry into the complaint against any officer or employee of the Lokpal or agency engaged or associated with the Lokpal, if it is *prima facie* satisfied on the basis of evidence available, that—

(a) continuance of such officer or employee of the Lokpal or agency engaged or associated in his post while conducting the inquiry is likely to affect such inquiry adversely; or

(b) an officer or employee of the Lokpal or agency engaged or associated is likely to destroy or in any way tamper with the evidence or influence witnesses,

then, the Lokpal may, by order, suspend such officer or employee of the Lokpal or divest such agency engaged or associated with the Lokpal of all powers and responsibilities hereto before exercised by it.

(4) On the completion of the inquiry, if the Lokpal is satisfied that there is *prima facie* evidence of the commission of an offence under the Prevention of Corruption Act, 1988 or of any wrongdoing, it shall, within a period of fifteen days

49 of 1988

of the completion of such inquiry, order to prosecute such officer or employee of the Lokpal or such officer, employee, agency engaged or associated with the Lokpal and initiate disciplinary proceedings against the official concerned:

Provided that no such order shall be passed without giving such officer or employee of the Lokpal, such officer, employee, agency engaged or associated, a reasonable opportunity of being heard.

## CHAPTER XI

### ASSESSMENT OF LOSS AND RECOVERY THEREOF BY SPECIAL COURT

49 of 1988      **39.** If any public servant is convicted of an offence under the Prevention of Corruption Act, 1988 by the Special Court, notwithstanding and without prejudice to any law for the time being in force, it may make an assessment of loss, if any, caused to the public exchequer on account of the actions or decisions of such public servant not taken in good faith and for which he stands convicted, and may order recovery of such loss, if possible or quantifiable, from such public servant so convicted:

Assessment of loss and recovery thereof by Special Court.

Provided that if the Special Court, for reasons to be recorded in writing, comes to the conclusion that the loss caused was pursuant to a conspiracy with the beneficiary or beneficiaries of actions or decisions of the public servant so convicted, then such loss may, if assessed and quantifiable under this section, also be recovered from such beneficiary or beneficiaries proportionately.

## CHAPTER XII

### FINANCE, ACCOUNTS AND AUDIT

**40.** The Lokpal shall prepare, in such form and at such time in each financial year as may be prescribed, its budget for the next financial year, showing the estimated receipts and expenditure of the Lokpal and forward the same to the Central Government for information.

Budget.

**41.** The Central Government may, after due appropriation made by Parliament by law in this behalf, make to the Lokpal grants of such sums of

Grants by Central Government.

money as are required to be paid for the salaries and allowances payable to the Chairperson and Members and the administrative expenses, including the salaries and allowances and pension payable to or in respect of officers and other employees of the Lokpal.

Annual  
statement  
of accounts.

**42. (1)** The Lokpal shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of the Lokpal shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him.

(3) The Comptroller and Auditor-General of India or any person appointed by him in connection with the audit of the accounts of the Lokpal under this Act shall have the same rights, privileges and authority in connection with such audit, as the Comptroller and Auditor-General of India generally has, in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Lokpal.

(4) The accounts of the Lokpal, as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf, together with the audit report thereon, shall be forwarded annually to the Central Government and the Central Government shall cause the same to be laid before each House of Parliament.

Furnishing  
of returns,  
etc., to  
Central  
Government.

**43.** The Lokpal shall furnish to the Central Government, at such time and in such form and manner as may be prescribed or as the Central Government may request, such returns and statements and such particulars in regard to any matter under the jurisdiction of the Lokpal, as the Central Government may, from time to time, require.

## CHAPTER XIII

## DECLARATION OF ASSETS

44. (1) Every public servant shall make a declaration of his assets and liabilities in the manner as provided by or under this Act. Declaration of assets.

(2) A public servant shall, within a period of thirty days from the date on which he makes and subscribes an oath or affirmation to enter upon his office, furnish to the competent authority the information relating to—

(a) the assets of which he, his spouse and his dependent children are, jointly or severally, owners or beneficiaries;

(b) his liabilities and that of his spouse and his dependent children.

(3) A public servant holding his office as such, at the time of the commencement of this Act, shall furnish information relating to such assets and liabilities, as referred to in sub-section (2), to the competent authority within thirty days of the coming into force of this Act.

(4) Every public servant shall file with the competent authority, on or before the 31st July of every year, an annual return of such assets and liabilities, as referred to in sub-section (2), as on the 31st March of that year.

(5) The information under sub-section (2) or sub-section (3) and annual return under sub-section (4) shall be furnished to the competent authority in such form and in such manner as may be prescribed.

(6) The competent authority in respect of each Ministry or Department shall ensure that all such statements are published on the website of such Ministry or Department by 31st August of that year.

*Explanation.*—For the purposes of this section, “dependent children” means sons and daughters who have no separate means of earning and are wholly dependent on the public servant for their livelihood.

Presumption as to acquisition of assets by corrupt means in certain cases.

**45.** If any public servant wilfully or for reasons which are not justifiable, fails to—

(a) to declare his assets; or

(b) gives misleading information in respect of such assets and is found to be in possession of assets not disclosed or in respect of which misleading information was furnished,

then, such assets shall, unless otherwise proved, be presumed to belong to the public servant and shall be presumed to be assets acquired by corrupt means:

Provided that the competent authority may condone or exempt the public servant from furnishing information in respect of assets not exceeding such minimum value as may be prescribed.

## CHAPTER XIV

### OFFENCES AND PENALTIES

Prosecution for false complaint and payment of compensation, etc., to public servant.

**46. (1)** Notwithstanding anything contained in this Act, whoever makes any false and frivolous or vexatious complaint under this Act shall, on conviction, be punished with imprisonment for a term which may extend to one year and with fine which may extend to one lakh rupees.

(2) No Court, except a Special Court, shall take cognizance of an offence under sub-section (1).

(3) No Special Court shall take cognizance of an offence under sub-section (1) except on a complaint made by a person against whom the false, frivolous or vexatious complaint was made or by an officer authorised by the Lokpal.

(4) The prosecution in relation to an offence under sub-section (1) shall be conducted by the public prosecutor and all expenses connected with such prosecution shall be borne by the Central Government.

(5) In case of conviction of a person [being an individual or society or association of persons or trust (whether registered or not)], for having made

a false complaint under this Act, such person shall be liable to pay compensation to the public servant against whom he made the false complaint in addition to the legal expenses for contesting the case by such public servant, as the Special Court may determine.

(6) Nothing contained in this section shall apply in case of complaints made in good faith.

*Explanation.*—For the purpose of this sub-section, the expression “good faith” means any act believed or done by a person in good faith with due care, caution and sense of responsibility or by mistake of fact believing himself justified by law under Section 79 of the Indian Penal Code.

45 of 1860

47. (1) Where any offence under sub-section (1) of Section 46 has been committed by any society or association of persons or trust (whether registered or not), every person who, at the time the offence was committed, was directly in charge of, and was responsible to, the society or association of persons or trust, for the conduct of the business or affairs or activities of the society or association of persons or trust as well as such society or association of persons or trust shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

False complaint made by society or association of persons or trust.

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a society or association of persons or trust (whether registered or not) and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of such society or



association of persons or trust, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

## CHAPTER XV

### MISCELLANEOUS

Reports of Lokpal.

**48.** It shall be the duty of the Lokpal to present annually to the President a report on the work done by the Lokpal and on receipt of such report the President shall cause a copy thereof together with a memorandum explaining, in respect of the cases, if any, where the advice of the Lokpal was not accepted, the reason for such non-acceptance to be laid before each House of Parliament.

Lokpal to function as appellate authority for appeals arising out of any other law for the time being in force.

**49.** The Lokpal shall function as the final appellate authority in respect of appeals arising out of any other law for the time being in force providing for delivery of public services and redressal of public grievances by any public authority in cases where the decision contains findings of corruption under the Prevention of Corruption Act, 1988.

49 of 1988

Protection of action taken in good faith by any public servant.

**50.** No suit, prosecution or other legal proceedings under this Act shall lie against any public servant, in respect of anything which is done in good faith or intended to be done in the discharge of his official functions or in exercise of his powers.

Protection of action taken in good faith by others.

**51.** No suit, prosecution or other legal proceedings shall lie against the Lokpal or against any officer, employee, agency or any person, in respect of anything which is done in good faith or intended to be done under this Act or the rules or the regulations made thereunder.

Members, officers and employees of Lokpal to be public servants.

**52.** The Chairperson, Members, officers and other employees of the Lokpal shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Act, to be public servants within the meaning of Section 21 of the Indian Penal Code.

45 of 1860

- 53.** The Lokpal shall not inquire or investigate into any complaint, if the complaint is made after the expiry of a period of seven years from the date on which the offence mentioned in such complaint is alleged to have been committed. Limitation to apply in certain cases.
- 54.** No civil court shall have jurisdiction in respect of any matter which the Lokpal is empowered by or under this Act to determine. Bar of Jurisdiction.
- 55.** The Lokpal shall provide to every person against whom a complaint has been made, before it, under this Act, legal assistance to defend his case before the Lokpal, if such assistance is requested for. Legal assistance.
- 56.** The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument having effect by virtue of any enactment other than this Act. Act to have overriding effect.
- 57.** The provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being in force. Provisions of this Act to be in addition of other laws.
- 58.** The enactments specified in the Schedule shall be amended in the manner specified therein. Amendment of certain enactments.
- 59. (1)** The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act. Power to make rules.
- (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—
- (a) the form of complaint referred to in clause (e) of sub-section (1) of Section 2;
  - (b) the term of the Search Committee, the fee and allowances payable to its members and the manner of selection of panel of names under sub-section (5) of Section 4;
  - (c) the post or posts in respect of which the appointment shall be made after

consultation with the Union Public Service Commission under the proviso to sub-section (3) of Section 10;

(d) other matters for which the Lokpal shall have the powers of a civil court under Clause (vi) of sub-section (1) of Section 27;

(e) the manner of sending the order of attachment along with the material to the Special Court under sub-section (2) of Section 29;

(f) the manner of transmitting the letter of request under sub-section (2) of Section 36;

(g) the form and the time for preparing in each financial year the budget for the next financial year, showing the estimated receipts and expenditure of the Lokpal under Section 40;

(h) the form for maintaining the accounts and other relevant records and the form of annual statement of accounts under sub-section (1) of Section 42;

(i) the form and manner and the time for preparing the returns and statements along with particulars under of Section 43;

(j) the form and the time for preparing an annual return giving a summary of its activities during the previous year under sub-section (5) of Section 44;

(k) the form of annual return to be filed by a public servant under sub-section (5) of Section 44;

(l) the minimum value for which the competent authority may condone or exempt a public servant from furnishing information in respect of assets under the proviso to Section 45;

(m) any other matter which is to be or may be prescribed.

**60. (1)** Subject to the provisions of this Act and the rules made thereunder, the Lokpal may, by notification in the Official Gazette, make regulations to carry out the provisions of this Act.

Power of Lokpal to make regulations.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—

(a) the conditions of service of the secretary and other officers and staff of the Lokpal and the matters which in so far as they relate to salaries, allowances, leave or pensions, require the approval of the President under sub-section (4) of Section 10;

(b) the place of sittings of benches of the Lokpal under Clause (f) of sub-section (1) of Section 16;

(c) the manner for displaying on the website of the Lokpal, the status of all complaints pending or disposed of along with records and evidence with reference thereto under sub-section (10) of Section 20;

(d) the manner and procedure of conducting preliminary inquiry or investigation under sub-section (11) of Section 20;

(e) any other matter which is required to be, or may be, specified under this Act.

**61.** Every rule and regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation, or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however,

Laying of rules and regulations.

that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

Power to  
remove  
difficulties.

**62. (1)** If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act, as appear to be necessary for removing the difficulty:

Provided that no such order shall be made under this section after the expiry of a period of two years from the commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

### PART III

#### ESTABLISHMENT OF THE LOKAYUKTA

Establishment  
of  
Lokayukta.

**63. Every State shall establish a body to be known as the Lokayukta for the State, if not so established, constituted or appointed, by a law made by the State Legislature, to deal with complaints relating to corruption against certain public functionaries, within a period of one year from the date of commencement of this Act.**

Clauses 64 to 97 (both inclusive) omitted

*	*	*	*	*
*	*	*	*	*
*	*	*	*	*

## THE SCHEDULE

[See Section 58]

## AMENDMENT TO CERTAIN ENACTMENTS

## PART I

## AMENDMENT TO THE COMMISSIONS OF INQUIRY ACT, 1952

(60 OF 1952)

In Section 3, in sub-section (1), for the words “The appropriate Government may”, the words, brackets and figures “Save as otherwise provided in the Lokpal and Lokayuktas Act, 2012, the appropriate Government may” shall be substituted.

Amendment  
of Section  
3.

## PART II

AMENDMENT TO THE DELHI SPECIAL POLICE ESTABLISHMENT  
ACT, 1946

(25 OF 1946)

1. In Section 4A,—

(i) for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) The Central Government shall appoint the Director on the recommendation of the Committee consisting of—

(a) the Prime Minister — Chairperson;

(b) the Leader of Opposition in the House of the People — Member;

(c) the Chief Justice of India or Judge of the Supreme Court nominated by him — Member.”

(ii) sub-section (2) shall be omitted.

Amendment  
of Section  
4A.

2. After Section 4B, the following section shall be inserted, namely:—

Insertion of  
new Section  
4BA.

“4BA. (1) There shall be a Directorate of Prosecution headed by a Director who shall be an

officer not below the rank of Joint Secretary to the Government of India, for conducting prosecution of cases under this Act.

(2) The Director of Prosecution shall function under the overall supervision and control of the Director.

(3) The Central Government shall appoint the Director of Prosecution on the recommendation of the Central Vigilance Commission.

(4) The Director of Prosecution shall notwithstanding anything to the contrary contained in the rules relating to his conditions of service, continue to hold office for a period of not less than two years from the date on which he assumes office.

Director of  
Prosecution.

3. In Section 4C, for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) The Central Government shall appoint officers to the posts of the level of Superintendent of Police and above except Director, and also recommend the extension or curtailment of the tenure of such officers in the Delhi Special Police Establishment, on the recommendation of a committee consisting of:—

(a) the Central Vigilance Commissioner—Chairperson;

(b) Vigilance Commissioners—Members;

(c) Secretary to the Government of India in charge of the Ministry of Home— Member;

(d) Secretary to the Government of India in charge of the Department of Personnel— Member:

Provided that the Committee shall consult the Director before submitting its recommendation to the Central Government.”.

### PART III

#### AMENDMENTS TO THE PREVENTION OF CORRUPTION ACT, 1988 (49 OF 1988)

Amendment  
of Section  
4C.

1. In Sections 7, 8, 9 and Section 12,—

(a) for the words “six months”, the words “three years” shall respectively be substituted;

(b) for the words “five years”, the words “seven years” shall respectively be substituted;

2. In Section 13, in sub-section (2),—

Amendment  
of Sections  
7, 8, 9 and  
12.

(a) for the words “one year”, the words “four years” shall be substituted;

(b) for the words “seven years”, the words “ten years” shall be substituted;

3. In Section 14,—

Amendment  
of Section  
13.

(a) for the words “two years”, the words “five years” shall be substituted.

(b) for the words “seven years”, the words “ten years” shall be substituted.

4. In Section 15, for the words “which may extend to three years”, the words “which shall not be less than two years but which may extend to five years” shall be substituted.

Amendment  
of Section  
14.

5. In Section 19, after the words “except with the previous sanction”, the words “save as otherwise provided in the Lokpal and Lokayuktas Act, 2012” shall be inserted.

Amendment  
of Section  
15.

#### PART IV

##### AMENDMENT TO THE CODE OF CRIMINAL PROCEDURE, 1973 (2 OF 1974)

In Section 197, after the words “except with the previous sanction”, the words “save as otherwise provided in the Lokpal and Lokayuktas Act, 2012” shall be inserted.

Amendment  
of Section  
19.

#### PART V

##### AMENDMENT TO THE CENTRAL VIGILANCE COMMISSION ACT, 2003 (45 OF 2003)

1. In Section 2, after clause (d), the following clause shall be inserted, namely:—

Amendment  
of Section  
197.

‘(da) “Lokpal” means the Lokpal established under sub-section (1) of Section 3 of the Lokpal and Lokayuktas Act, 2012;’.



Amendment  
of Section  
2.

2. In Section 8, in sub-section (2), after Clause (b), the following clause shall be inserted, namely:—

Amendment  
of Section  
8.

“(c) on a reference made by the Lokpal under proviso to sub-section (1) of Section 20 of the Lokpal and Lokayuktas Act, 2012, the persons referred to in Clause (d) of sub-section (1) shall also include—

(i) members of Group B, Group C and Group D services of the Central Government;

(ii) such level of officials or staff of the corporations established by or under any Central Act, Government companies, societies and other local authorities, owned or controlled by the Central Government, as that Government may, by notification in the Official Gazette, specify in this behalf:

Provided that till such time a notification is issued under this clause, all officials or staff of the said corporations, companies, societies and local authorities shall be deemed to be the persons referred in Clause (d) of sub-section (1).”.

Insertion of  
new  
Sections 8A  
and 8B.

3. After Section 8, the following sections shall be inserted, namely:—

Action on  
preliminary  
inquiry in  
relation to  
public  
servants.

“8A. (1) Where, after the conclusion of the preliminary inquiry relating to corruption of public servants belonging to Group C and Group D officials of the Central Government, the findings of the Commission disclose, after giving an opportunity of being heard to the public servant, a *prima facie* violation of conduct rules relating to corruption under the Prevention of Corruption Act, 1988 by such public servant, the Commission shall proceed with one or more of the following actions, namely:—

(a) cause an investigation by any agency or the Delhi Special Police Establishment, as the case may be;

(b) initiation of the disciplinary proceedings or any other appropriate action against the concerned public servant by the competent authority;

(c) closure of the proceedings against the public servant and to proceed against the complainant under Section 46 of the Lokpal and Lokayuktas Act, 2012.

(2) Every preliminary inquiry referred to in sub-section (1) shall ordinarily be completed within a period of ninety days and for reasons to be recorded in writing, within a further period of ninety days from the date of receipt of the complaint.

8B. (1) In case the Commission decides to proceed to investigate into the complaint under Clause (a) of sub-section (1) of Section 8A, it shall direct any agency (including the Delhi Special Police Establishment) to carry out the investigation as expeditiously as possible and complete the investigation within a period of six months from the date of its order and submit the investigation report containing its findings to the Commission:

Action on investigation in relation to public servants.

Provided that the Commission may extend the said period by a further period of six months for the reasons to be recorded in writing.

2 of 1974

(2) Notwithstanding anything contained in Section 173 of the Code of Criminal Procedure, 1973, any agency (including the Delhi Special Police Establishment) shall, in respect of cases referred to it by the Commission, submit the investigation report to the Commission.

(3) The Commission shall consider every report received by it under sub-section (2) from any agency (including the Delhi Special Police Establishment) and may decide as to—

(a) file charge-sheet or closure report before the Special Court against the public servant;

(b) initiate the departmental proceedings or any other appropriate action against the concerned public servant by the competent authority.”.

Insertion of  
new Section  
11A.

4. After Section 11, the following section shall be inserted, namely:—

Director of  
Inquiry for  
making  
preliminary  
inquiry.

“11A. (1) There shall be a Director of Inquiry, not below the rank of Joint Secretary to the Government of India, who shall be appointed by the Central Government for conducting preliminary inquiries referred to the Commission by the Lokpal.

(2) The Central Government shall provide the Director of Inquiry such officers and employees as may be required for the discharge of his functions under this Act.”.

**ANNEXURE-I***(vide para 17 of Introduction)***LIST OF EXPERTS/ORGANIZATIONS/INDIVIDUALS WHO  
SUBMITTED THEIR MEMORANDA**

Sl.No.	Name and Address
1.	Ms. Aruna Roy and others, National Campaign for People's Right to Information, 278, SFS Apartments, DDA Flats, Hauz Khas, New Delhi-110016.
2.	Shri Aswathi Muralidharan, from Anna Hazareji's Office, India Against Corruption, A-119, Kaushambi, Ghaziabad - 201010.
3.	Shri Manoj Nandkishor Agrawal, 2nd floor, Chandramouli Building, Backside of Effector Gym, Parijat Colony, Hadapsar, Pune-411028.
4.	Shri Ramanathan Subramanian, sramanathan6@gmail.com
5.	Shri Amit Kumar Maihan, A-45, 46, Gandhi Vihar, Delhi-110009.
6.	Shri G.K. Agarwal, Advocate, Delhi High Court, III-K-106, Nehru Nagar, Rakesh Marg, Ghaziabad-201001.
7.	Shri P.V. Surendranath, Advocate, Convenor, AILU Legislative Sub Committee, All India Lawyers Union, 4, Asoka Road, New Delhi-1.
8.	Shri Mahesh Pandya, Paryavaran Mitra, 502, Raj Avenue, Bhaikakanagar Road, Thaltej, Ahmedabad-380059.
9.	Shri Ashok Kapur, IAS (Retd.), Director General, Institute of Directors & Member, International Academy of Law, M-52 (IInd Floor) Greater Kailash, Part-II, Market, New Delhi-110048.
10.	Shri M.R. Madhavan, PRS Legislative Research, Centre for Policy Research, Dharma Marg, Chanakyapuri, New Delhi-110021.
11.	Public Interest Foundation, New Delhi.
12.	Shri C.K. Chaturvedi, Working President, All India Judges Association, B-64, Saket District Court Residential Complex, Saket, New Delhi 110014.
13.	Shri P.G. Babu and others, Indira Gandhi Institute of Department Research, Mumbai.
14.	Dr. Jayaprakash Narayan, Flat No. 801 & 806, Srinivasa Towers, beside ITC Kakatiya Hotel, Begumpet, Hyderabad-500016.
15.	Justice A.P. Shah, Chief Justice (Retd.), Madras and Delhi High Courts.

**ANNEXURE-II****(vide para 18 of Introduction)]****SUGGESTIONS RECEIVED FROM SOME MEMBERS OF THE COMMITTEE  
DURING THE COURSE OF CONSIDERATION OF THE BILL****(A) Shri D. Bandyopadhyay:**

I. The power of sanction of prosecution against the public servants by the Government should not be interfered with. This protection is derived from the Article 311 of the Constitution. In cases of external or internal emergencies or natural disaster, public servants may have to violate established laws, rules or procedures for immediate action. Only the Government would know the circumstances under which the public servants had to do so. Hence, the power should remain with the Government. The Lokpal may ask for detailed reasons in cases of refusal of permission.

II. There was a lot of discussion on the autonomy of the CBI. In the name of autonomy of the CBI, which is a police organization, we should not create a Frankenstein's monster. Already under different High Court's and the Supreme Court's order police investigation enjoys immunity from external interference. That element maybe strengthened by some legal provisions. One should not forget that the CBI personnel are as fallible as any public servant. No immunity should make them totally unaccountable either to the Courts or to Lokpal or to the Government.

III. States should be fully empowered to make their own Lokayukta laws. Provisions regarding Lokayukta may remain in the Lokpal Bill as a model which the States may or may not follow or may enact a totally new law of their own. Otherwise one of the basic features of the Constitution *i.e.* the federal character, may be violated.

I shall be deeply grateful if you could consider placing these points before the Committee as and when these issues would come up for consideration.

**Sd/-****(D. Bandyopadhyay)  
Member, Rajya Sabha**

**(B) Shri Arun Jaitley, Shri Rajiv Pratap Rudy and Shri Bhupender Yadav:**

We are in receipt of the communication from the Secretariat asking us to place on record suggestions, if any, in relation to the subject of “The Lokpal and Lokayuktas Bill, 2012” under discussion, to the Bill as approved by the Lok Sabha and having regard to certain amendments—Amendment No. 148 to 164 placed by the Government, we have the following suggestions to offer:

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

India is a union of States. Federalism is a part of the basic structure of our Constitution. A Lokayukta constituted by the States will deal with penal action against public servants as also the departmental proceedings. Whereas the power to initiate penal proceedings is the subject of the Concurrent List, the power to deal with services of the State is entirely a State subject (Entry 41 of List-II of VIIth Schedule of Constitution, State Public Services; State Public Service Commission). Thus, a Lokayukta constituted by a Central legislation would be wholly *ultra vires* the legislative competence of the Central Parliament. Lokayuktas are to be constituted by the States, it is a settled proposition that Legislative and Executive jurisdictions co-exist. It is, thus, only a State which can provide for a Lokayukta in the State.

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

- (a) Federalism is a basic part of the Constitution. Post 1973, in the *Keshvanand Bharati* case 1973 (4) SCC 225, the Hon'ble Supreme Court has held that: the basic structure of the Constitution cannot be amended either by legislation or even a Constitutional amendment. The constitutional provisions cannot be altered in the garb of making legislation for giving effect to international agreements. The basic structure of the Constitution in the pre-1973 law in this regard is highly doubtful in view of the basic structure doctrine.
- (b) Even otherwise the UN Convention Against Corruption categorically states that a legislation will be enacted by all signatory States with regard to their domestic laws. The domestic laws of India will encompass the federal polity of India wherein a law dealing with the services of the States will only be acted upon by the States.
- (c) No where does the UN Convention Against Corruption state that the law so enacted could breach domestic legal provisions.

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

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

## **II. Appointment of Lokpal**

We believe that Clause 4 of the draft Bill needs to be amended. The Selection Committee for appointment of the Lokpal is loaded in favour of the Government of the day. Thus category (e) which provides for an eminent jurist being nominated by the President would effectively mean that the jurist is being appointed on the initiative of the Government. We would, thus, suggest that Clause 4(e) be suitably amended to incorporate that the eminent person, who shall be the fifth member of the Committee, shall be nominated by consensus between the Prime Minister, Speaker of the House of People, Leader of Opposition in the House of People and the Chief Justice of India.

## **III. Removal of the Lokpal**

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

## **IV. Staff and other Officers of the Lokpal**

The draft Bill provides for Director of Enquiry, Director of Prosecution and other staff members to be appointed in the Lokpal from a panel of names suggested by the Government of India. The Lokpal should be empowered to call for certain specific officials if he so desires.

## V. Jurisdiction of the Lokpal

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

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

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

## VI. Procedure for Investigation

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

- (a) The Lokpal on receipt of a complaint can either send the matter for investigation or order a preliminary inquiry through its own inquiry agency or any agency including CBI.
- (b) For the preliminary inquiry, the Inquiry agency would have complete focus on going through all materials on record and after seeking comments of the department and public if it so desires.
- (c) If on completion of preliminary inquiry, the Inquiry Agency recommends closure of the case, the report should be so forwarded to the Lokpal for its final decision.
- (d) If, however, the Inquiry Agency is of the opinion that the Lokpal may refer the matter to any other investigating agency which may include the CBI also.
- (e) After completion of the inquiry the investigating agency shall submit a report to the Lokpal who shall either order the closure of the case, or ask the case to be filed under the provisions of the Criminal Procedure Code or shall invite comments from the public servant and the concerned department of the Government



in order to determine whether sanction for prosecution should be granted or not and whether sanction for prosecution is necessary or not.

- (f) The Lokpal may thereafter direct the investigative agency through its Prosecution Wing to prosecute the public servant or may direct its own Prosecution Wing to prosecute the public servant.

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

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

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

#### **VIII. Position of CBI as an investigative agency**

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

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

**Shri G.E. Vahanvati, Attorney General of India:** “I am told that one of the suggestions is that the CBI would give its own report under Section 173 to the court and the Lokpal would also give its own report to the court. Now, obviously, there is a possibility of a conflict here. Suppose

the Lokpal says that the case must be closed and the CBI denies ‘closure’ because there is a case for prosecution”.

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

**Shri A.P. Singh, Director, CBI:** “...my purpose in making this presentation here today is to convince the Select Committee that CBI is the most important cog in this whole anti-corruption structure and without the CBI the Lokpal is a non-starter right from the beginning. You cannot have the Lokpal without the CBI or with a truncated CBI or a split CBI or a divided CBI. If Lokpal comes, it can only be successful if CBI is an integral part. The basic investigating machinery of the Lokpal can only be the CBI. That is what I wanted to emphasise. Any attempt to dilute the role of CBI or tamper with the present structure would have serious consequences to the anti-corruption machinery in the country. Moreover, Sir, this would also be an opportunity for the Select Committee to consider means of strengthening this Agency and institutionalize its autonomy, both financial and administration”.

**Hon’ble Mr. Justice A.P. Shah:** “It is my belief that the CBI is pliable. There are several instances; I do not want to quote those, recent times where the CBI did remarkable changes in its position before the courts. I feel that it is really not advisable to have administrative control over the

CBI when corruption cases are referred to the Lokpal body. There are some other aspects which I would place before you. Please see para 6 of my note on page 6: While the nine member Lokpal will provide leadership to the corruption combating institution, its effectiveness will be determined by the quality of the staff and investigative machinery that is made available to it. Indeed, a larger part of the debate around the previous version of the Lokpal Bill has been about the investigative arm of the Lokpal, whether to lend the services of the Central Bureau of Investigation (CBI) part-time or full-time for the purpose of investigation, the levels of the bureaucracy which should be under the jurisdiction of the Lokpal and the inadequacies associated with the functioning of the CBI in high profile cases involving politicians accused of corruption”.

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

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

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

- The CBI will have two wings. Director, CBI will head the entire organization. Under him a separate Directorate of Prosecution should function.

- The Investigative Wing and Prosecution Wing of the CBI should act independently.
- The Director of CBI and Director of Prosecution should be appointed by a collegium comprising the Prime Minister, Leader of Opposition, Lok Sabha and Chairman of Lokpal.
- Both the Director, CBI and Director of Prosecution must have a fixed term.
- Both Director, CBI and Director, Prosecution shall not be considered for re-employment in Government.
- The power of superintendence and direction of the CBI in relation to Lokpal referred cases must vest with the Lokpal.
- If an officer investigating a case is sought to be transferred for any reason whatsoever, the prior approval of Lokpal should be required.
- The panel of Advocates who appear for and advise the CBI should be independent of the Government Advocates. They can be appointed by the Director, Prosecution after obtaining prior approval of the Lokpal.

Thanking you.

1. Sd-  
(Arun Jaitley)  
Member, Rajya Sabha.
2. Sd/-  
(Rajiv Pratap Rudy)  
Member, Rajya Sabha.
3. Sd/-  
(Bhupender Yadav)  
Member, Rajya Sabha.

**(C) Shri Satish Chandra Misra:**

This is in reference to the communication sent by the Secretariat asking to place on record the suggestions, if any, in relation to the subject of “Lokpal and Lokayuktas Bill, 2011” under discussion.

I have the privilege of receiving the comments of Shri Arun Jaitley given to the Committee, copy of which has been circulated to the Members. I agree with the suggestions given by him in respect to THE PROVISIONS FOR CONSTITUTION OF LOKAYUKTA UNDER THE STATE LEGISLATION.

I also do agree with the suggestions given by him in respect to the Appointment of Lokpal, Removal of the Lokpal, Staff and other Officers of Lokpal and Jurisdiction of the Lokpal.

However, I am in respectful disagreement in making amendment with regards to the provisions of Reservation in the appointment of the Members of Lokpal and Selection Committee, which I feel is extremely necessary that all sections of the society, specially the deprived and downtrodden classes which include SC, ST, OBC and Minority categories adequately represented so that persons belonging to the said category are not meted with injustice or discrimination in the matters coming before Lokpal. Experience goes to show that wherever there is no reservation, there is no representation of these classes e.g. in the appointment of Judges of High Court and Supreme Court. Since there is no reservation, there is no representation of these categories.

With regard to the PROCEDURE FOR INVESTIGATION, I have following suggestions:

- (a) No comments.
- (b) Seeking comments of the public servant during preliminary enquiry is not desirable as it may compromise with the secrecy of the enquiry and would render subsequent searches futile.
- (c) The enquiry agency should have complete independence in its enquiry which would include the power to decide the final outcome of the enquiry. Thereafter, the report should be sent to the Lokpal. Lokpal may examine it and may seek any clarification on the report, if required, from the enquiry agency.
- (d) No comments.
- (e) The independence of investigation process needs to be protected, importance of which has been upheld by the Hon'ble Supreme Court in various judicial pronouncements. (*viz.* Abhinandan Jha Vs. Dinesh Mishra : AIR 1968 SC 117, Vineet Narayan Judgments, etc.). As per Section 173 CrPC, the police report can be filed in the competent court only by a police officer. The power of taking a final decision as to whether a final report of closure should be filed or a charge sheet should be filed after conclusion of investigation is very much part of the investigation process, which can only be taken by the police and by no other authority, as has been upheld by the Hon'ble Supreme Court.

As regards the power for granting sanction for prosecution, it is *hitherto* vested with the competent authority of the department concerned. This power should be retained as such, who after

obtaining the comments of the Lokpal, and the competent authority concerned, may decide the issue of sanction for prosecution. However, the suggestions for seeking the comments of concerned public servant may not be appropriate, who in any case is given an opportunity to submit his defence during the investigation. Such opportunity will only lead to avoidable delays. In my view if the power of sanction is given to the Lokpal who has himself initiated the proceedings, the action and purpose of granting or refusing sanction would render infructuous as it will be a case of Lokpal judging his own case.

- (f) The prosecution in the court may be conducted by the Prosecution Wing of the Lokpal or the Prosecution Wing of the investigation agency concerned. However, the submission of the police report in the competent report is the prerogative of the investigating agency as per the provisions of CrPC.

With regard to POSITION OF CBI AS AN INVESTIGATING AGENCY, my comments are as under:

The CBI is a premier investigation agency of the country, which not only investigates the corruption cases, but investigates all hues of crimes including conventional crimes, narcotics crimes, wildlife crimes, fake currency cases, human trafficking, cyber crimes, etc. also. Therefore, the total control of CBI cannot be transferred to Lokpal, which would be mandated only with the corruption cases against a certain categories of public servants.

Similarly any existing or proposed institution can only be vested with the powers of superintendence on the investigation agency in order to ensure independence of investigation process, as has been clearly laid down by the Hon'ble Supreme Court in Vineet Narayan judgment. Based on this judgment, Section 8(1)(b) of the CVC Act clearly lays down that the powers of superintendence or giving direction cannot be exercised in such a manner so as to require the investigation agency to investigate or dispose of any case in a particular manner.

Therefore, the proposed institution of Lokpal may also be vested with the similar powers of superintendence/direction in respect of the corruption cases referred by it to the investigation agency and not the general power of control over the investigation agency.

The powers and structure of CBI should not be diluted in any manner in order to protect the effectiveness of the organization. There cannot be two authorities viz. Director of CBI and Director of Prosecution selected through the same collegium. A successful prosecution requires a great team work of good *pairvi* and prosecution of cases.

The powers of superintendence and directions on CBI by the Lokpal in relation to Lokpal referred cases should be in accordance with the principles laid down by Vineet Narayan judgment as quoted above.

Lokpal should not be ideally interfering in the administrative matter of CBI/investigation agency and the powers of assigning the investigation to a particular investigating officer should be vested with the Director, CBI/Head of the investigating agency. In case the Lokpal has any issue with regard to appointment/transfer of any particular investigating officer, the same may be referred to the Director, CBI/Head of investigating agency by the Lokpal for reconsideration.

The selection of advocates to appear for and advice the CBI/investigation agency should be the prerogative of the head of the concerned agency in consultation with the Director of Prosecution and the panel should not be restricted to non-government advocates only.

#### **AUTONOMY OF CBI:**

For proving more autonomy to CBI, it is proposed that:-

- (i) Separate demand for grant should be generated from consolidated Fund of India and Director, CBI will be the Grant Controlling Authority and Chief Accounting Authority for this grant. The Director, CBI would exercise power of Secretary to Government of India as provided under the delegation of financial power rules, 1978.
- (ii) Director, CBI should have full authority in appointment, extension and curtailment of tenure of officers upto the rank of DIG in CBI.
- (iii) Director, CBI should be included as a member of Selection Committee for appointment of other officers above the rank of DIG in CBI. Section 4C of DSPE Act should be amended accordingly.
- (iv) Director, CBI should also have powers for engaging special counsels and specialists of different disciplines.

Sd/-

(Satish Chandra Misra)  
Member, Rajya Sabha

#### **(D) Dr. V. Maitreya:**

Having gone through the Report of the Select Committee of Rajya Sabha on the Lokpal and Lokayuktas Bill, 2011, I wish to place on

record the views of my party, the AIDMK, on certain provisions of the Bill.

1. Clause 14 of the Bill deals with the jurisdiction of Lokpal. As per Clause 14(1), the Prime Minister falls under the jurisdiction of Lokpal. My party is of the strong view that the Lokpal Bill should exclude the Prime Minister since the Prime Minister is already covered under the Prevention of Corruption Act and any misconduct by the Prime Minister can be investigated by the CBI.

The functioning of the Lokpal inclusive of the Prime Minister will pave the way for a parallel Government which would undermine the authority of the office of the Prime Minister.

In consonance with our view that the Prime Minister should be kept out of the Lokpal, for the very same reason the Chief Minister of the State should also be kept out of the purview of the State Lokayukta.

2. Clause 20(7)—Regarding non requirement of grant of sanction to initiate prosecution. This should be deleted since sanction of prosecution acts as a safeguard against witch hunting and therefore provides safety to the honest officers.
3. Clause 46—Prosecution for false complaints and payment of compensation etc. to public servant. I do not agree with the views mentioned in the report regarding protection from imposition of any penalty to the complainants. No lenience should be shown to those who make false and frivolous complaints and it is difficult to say if a complaint is made in good faith or not. Anybody who makes a false complaint can take refuge under “Complaint made in good faith”.
4. Clause 63 to 97—Establishment of Lokayukta. Since Article 246 of the Constitution of India provides for both Parliament and State Legislatures to make laws with respect to any of the matters enumerated in List III of the VII Schedule of the Constitution. Also Federalism is a part of the basic structure of the Constitution and is inviolable. Hence the choice of constituting the Lokayukta should be left to the State Government and the State Government may enact a legislation if it deems it necessary.

Hence Clauses 63-97 and the Government amendment No. 150 should be deleted altogether in to.

Sd/-  
(Dr. V. Maitreya)  
Member, Rajya Sabha



**(E) Shri D.P. Tripathi:**

I have gone through the draft report of the Select Committee on the Lokpal and Lokayuktas Bill, 2011. I have the following suggestions to offer:-

1. The Select Committee is proposing certain amendments in Clause 20 in the Lokpal and Lokayuktas Bill as passed by the Lok Sabha with the objective to ensure that the existing arrangement as per the CrPC with regard to deciding the outcome of investigation and filing of the police report in the competent court are not tampered with. It is also being proposed that the Lokpal will be vested with the powers to accord the sanction for prosecution under Section 19 of the PC Act 1988, in respect of the public servants in Lokpal referred cases. However, the draft amendments still leave scope for ambiguity which needs to be clarified and corrected.

To ensure the above objective, amendments in sub-clauses 20(5) and 20(6) would be required, which have not been proposed. Therefore, I propose that these clauses may be amended to clarify that the investigative agency will submit its police report to the competent court directly and give a copy to the Lokpal.

Further, the proposed amendment in sub-clause 20(8) should clarify that the Prosecution Wing of the Lokpal would initiate prosecution only after filing of police report by the investigative agency (including the DSPE) in the competent court. The sub-clause 12(2) needs to be amended accordingly and the sub-clause 12(3) needs to be deleted.

On the same grounds, Clause 24 would also require suitable amendment.

2. As the powers of the investigative agencies with regard to deciding final outcome of the investigation are being retained, the same position needs to be maintained with regard to deciding the outcome of the preliminary inquiries. This would entail suitable amendments in sub-clause 20(2) and Clause 28.
3. Since the powers to accord sanction for prosecution under Section 19 of the PC Act 1988 are being proposed to be vested with the Lokpal, Clause 23 needs to be amended to clarify that the courts will take cognizance against the public servants only after previous sanction of the Lokpal, wherever required.
4. The existing Bill proposes amendments in the Section 8 of the CVC Act to give powers of deciding the outcome of inquiry/ investigation to CVC on the lines of proposed powers of the

Lokpal. As the Committee has already taken a view not to tamper with the existing arrangement as per the CrPC with regard to deciding the outcome of investigation, the proposed amendments in this section would need to be suitably redrafted.

5. Para 13.2 of the report mentions various recommendations by the Committee regarding Central Bureau of Investigation (CBI). However, it does not include any recommendation to strengthen the CBI by enhancing its financial and administrative autonomy. This may be considered for inclusion in the report, as mentioned in para 13.1 of the draft report. I am of the strong view that providing more financial and administrative autonomy to CBI is a prerequisite for ensuring its functional autonomy and thereby providing teeth to effective fight against corruption.

Sd/-

(D. P. Tripathi)

Member, Rajya Sabha

(F) Shri K.N. Balagopal:

#### I

The following points may be considered while finalising the Draft Report on Lokpal Bill by the Select Committee.

The Prevention of Corruption Act, 1988 has defined the offences that constitute a corrupt act. This definition requires to be widened. The linkage between misuse of public power for private gain or enrichment is a highly restrictive understanding of corruption. In many cases, power is misused to benefit an entity like a private company which is not a “person” as required under the PCA, 1988. Often, there may be no traceable kickbacks or embezzlement but there may be a huge loss to the public exchequer and breach of public trust for example through sale of PSUs due to a willful misuse of power.

The definition of corruption has to be widened to include “willfully giving any undue benefit to any person or entity or obtaining any undue benefit from any public servant in violation of laws or rules”.

Members of Parliament: At present, the scrutiny of the conduct of Members of Parliament with regard to any corrupt practice is weak and unsatisfactory. For Members of Parliament, article 105 of the Constitution provides protection with regard to freedom of speech and voting. The real issue is how to ensure that this freedom and protection does not extend to acts of corruption by Members of Parliament.

This can be done through an amendment to Article 105, on the lines recommended by the National Commission to Review the Working of the Constitution.

Alternatively, if feasible, there can be legislation that if any Member of Parliament indulges in any act of corruption that motivates his or her action in Parliament (voting, speaking etc.), then this act falls within the purview of the Prevention of Corruption Act and the IPC.

The recent exposures in the 2G spectrum allocation case, CWG scam etc. have shown how thousands of crores worth of public resources have been illicitly cornered by a section of corporates, bureaucrats and ministers. What is worse, tainted ministers have been allowed to remain in office for months and the investigations manipulated, in order to obstruct the course of justice. While corruption in high places has been a feature of our political system for many decades, what has emerged as a dominant trend in the post-liberalization period is a thorough distortion of the policy-making process at the highest levels of the government. A nexus of big corporates, politicians and bureaucrats have matured under the neoliberal regime and is threatening to subvert our democracy. It is clear that the current economic regime has made our system more vulnerable to cronyism and criminality.

Lokpal should be given powers to investigate cases which involve business entities and to recommend cancellation of licenses, contracts, lease or agreements if it was obtained by corrupt means. The Lokpal should also have the power to recommend blacklisting companies from getting government contracts and licenses. Similarly, if the beneficiary of an offense is a business entity, the Lokpal should have the power to recommend concrete steps to recover the loss caused to the public exchequer.

The corruption related to the PPP Projects (from allocation to operation) is to be viewed very seriously from the current revelations of unbelievable stories of corruption. The licensing and operation of rare monopolistic natural resources to private entities also needs specific inclusion under Lokpal provisions. Public sector and public properties are camouflaged from massive looting under the name PPP, which do not, at any moment, come under public scanner. This area needs special intervention. It is extremely necessary in such a time when almost all major infrastructure projects are going to PPP sector and which substitutes majority of the earlier sovereign functions of the State. Thus in a system where majority of the Government's activities are with private hands and if it is not properly safeguarded by Lokpal from corruption the Lokpal initiative will not serve its purpose.

## II

It has been the policy of Central and several State Governments to move away from building infrastructure and hand over the construction and management of ports, airports, highways, power projects, irrigation works and mines etc. to private players. There are information to prove that 90 per cent funds for the PPP projects were from public exchequer.

Regarding the public servant-corporate nexus and corruption, this Bill is very weak in ensuring the best possible punishment to what we call the “supply side” of corruption. A look at the recent scams like 2G, coal, PPP in airports, hydrocarbon production sharing contracts, Commonwealth Games and Ultra mega power projects, the beneficiaries had been big corporate like Reliance (firms run by both the brothers), GMR, Tatas and others. Credibility of such big industrialists are under question.

These companies were either awarded licenses to handle natural resources or were partners of the Government in PPP projects. Under the present Bill, Lokpal will not be able to take any action against private players involved in corruption using a PPP project. That is, the Lokpal will not be able to do anything to book the corrupt corporates or public servants in the above mentioned sensational scams. In fact the present wave of Lokpal Movement has got a momentum from the reports of various scams and corruption resulted from the PPPs and licencing of natural resources, which is a new kind of Delegation of Sovereign Rights to Private sector.

The Lokpal, now can investigate corruption charges against the private entities which receives Rupees Ten Lakhs of Government Funds, but can not investigate a PPP project of Rupees Ten Thousand Crores Government Assets!

There are no proper auditing mechanisms to find out how public funds are being utilised in PPP projects. The Comptroller and Auditor General has been demanding that it should be given the right to audit PPP projects too. PPP projects should be brought under Lokpal to check the flow of public money into the hands of private players through corruption. It is astonishing that today, PPPs are galvanised from RTI Act, and they are free to hide all matters which involves Tens and Thousands of Crores of Public Asset.

The trade of public resources has been a major source of corruption in the country. There should be provisions in the Bill to bring all institutions, be it private or public, that handle natural resources such as water, air, spectrum, forests and mines under the purview of the legislation. There is a big nexus between the private players and public servants so that the

natural resources, which belong to the people of this country, could be handed over to a few persons staying here and abroad. We have witnessed this in allotment of coal mines, iron ore and the spectrum. In the present policy scenario, the Lokpal must be able to investigate in cases which involve corporate houses, it should have the power to ask the Governments to cancel the licences, contracts and lease or agreements of companies indulging in corruption. The Lokpal could also be able to recommend blacklisting of such companies so that they will not get government contracts and licences in future.

Losses incurred to the public by such entities should be recovered on Lokpal's recommendation and there should be provisions in the Bill that the government should normally accept such recommendations from the anti-corruption panel and act upon it.

**Sd/-**  
**(K.N. Balagopal)**  
**Member, Rajya Sabha**

## **Annexure-X**

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**Synopsis of the Debate in Rajya Sabha on  
13 December 2013 and 17 December 2013 on  
the Bill as reported by the Select Committee**

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**RAJYA SABHA**  
**SYNOPSIS OF DEBATES\***

13 December 2013

**THE LOKPAL AND LOKAYUKTAS BILL, 2011**

THE MINISTER OF STATE IN THE MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS AND THE MINISTER OF STATE IN THE PRIME MINISTER'S OFFICE (SHRI V. NARAYANASAMY), moving the motion for consideration of the Bill, said: Lok Sabha passed this Bill. Then, it came to the Rajya Sabha. The Hon'ble Chairman constituted a Select Committee under the Chairmanship of Shri Satyavrat Chaturvedi. They recommended about 15 amendments. In Clause 3(4) of the Bill the Committee has recommended that the words "connected with any political party" may be replaced by the words "affiliated with any political party". In Clause 4(1)(e) of the Bill the Select Committee has recommended that the eminent jurist may be selected by four members of the collegium headed by the Prime Minister. It has been decided to accept the recommendation of the Select Committee made in Clause 14(1)(g). In Clause 14(1)(h), we have agreed to exempt only such bodies or authorities from the purview of the Lokpal. In Clause 20(1) of the Bill, the Select Committee has recommended that the Lokpal should be given the power to order an investigation straightway. Whenever the Lokpal orders investigation against an officer, his views are also to be heard. We wanted that to be retained. We want that grant of sanction for prosecution should remain with the Government.

(Speech unfinished.)

17 December 2013

**The Lokpal and Lokayuktas Bill, 2011 — Continued.**

THE MINISTER OF COMMUNICATIONS AND INFORMATION TECHNOLOGY AND THE MINISTER OF LAW AND JUSTICE (SHRI KAPIL SIBAL): I rise to commend this Bill to the distinguished Members of this House. I am sure that the distinguished Members of this House will collectively make history and not repeat it. I think that never before in the history of this country has such a Bill had such a wide public discussion. We introduced the Lokpal Bill, in the Lok Sabha on the 4th of August, 2011. Then, in the context of

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\* This Synopsis is not an authoritative record of the proceedings of the Rajya Sabha.



the recommendations of the Standing Committee, we withdraw the Bill and introduced a fresh Bill and a more comprehensive Lokpal and the Lokayuktas Bill in the Lok Sabha on the 22nd of December, 2011. It was passed on the 27th of December in the Lok Sabha.

It seeks to establish the institution of the Lokpal at the Centre and the Lokayukta at the level of the State. The Lokpal will consist of a Chairperson with a maximum of eight Members of which fifty percent shall be judicial Members and fifty percent shall come from amongst the SCs, the STs, the OBCs, minorities and women. A Search Committee will assist the Selection Committee in the process of selection. The Prime Minister has been brought under the purview of the Lokpal. Lokpal's jurisdiction will cover all categories of public servants. The Lokpal will have the power of superintendence and direction over any investigating agency including the CBI. A High-Powered Committee chaired by the Prime Minister will recommend the selection of the Director of CBI. The Bill incorporates provisions for attachment and confiscation of property acquired by corrupt means even while the prosecution is pending. The Bill proposes to enhance maximum punishment under the Prevention of Corruption Act from seven years to ten years. There is a general consensus that has emerged. The Select Committee has recommended to do away with Part III of the Bill. The Government has decided to accept this recommendation.

The Government has decided to accept recommendations of the Select Committee that the fifth Member of the Selection Committee for selection of Lokpal under the category of 'eminent jurist' may be nominated by the President; that in Clause 14(1)(g) of the Bill, the category 'institutions financed by Government' be retained under the jurisdiction of Lokpal, but 'institutions aided by Government' may be excluded; that in Clause 14(1)(h) of the Bill, bodies and institutions receiving donations from the public be excluded from the purview of Lokpal; that the Lokpal may be required to seek comments of the competent authority and the public servant before taking a decision with a slight modification that we want to give to that particular Government servant a hearing before that decision is taken by the Lokpal; that an amendment to Clause 23 of the Bill subject to the modification that an explanation by the public servant concerned will be called for before launching prosecution by the Lokpal or by the agency concerned. The Government has decided to accept a number of amendments recommended by the Select Committee in the Bill with a view to strengthening the CBI. The essence of this legislation is that the investigating agencies will be independent; the appointment of the CBI Director will be done through an independent and transparent process; all public functionaries would be under the Lokpal Bill; the prosecution under the control of the Lokpal will be done through the Director, Prosecution who

shall also be appointed independently. This is the time to celebrate that we have at last reached a consensus. I congratulate all those who participated effectively.

**THE LEADER OF THE OPPOSITION (SHRI ARUN JAITLEY):** Today's debate is an extension of the debate of 29 December, 2011. Government's understanding has somewhat changed and it understands the merit of things said on 29 December, 2011. After this debate that has been on for the last 46 years, we should pass the Lokpal Bill removing its shortcomings. Samjwadi Party's contention that people will be afraid to take decisions is unfounded. People will be afraid to take wrong decisions. This law will be a great contribution in the country's interest. The passage of this Bill will increase political credibility. The promise made by former Finance Minister that they will give an effective Lokpal Bill to the country has not been fulfilled. It requires improvements. Law regarding Citizens' Charter and grievances also needs to be passed in this House. There was promise of appointing Lokayukta in States. Fight against corruption can be carried out within the federal structure of the country. Central Government wanted to keep Lokpal or Lokayukta under its jurisdiction but other political parties believed that this law concerns the services of States. Therefore Select Committee suggested that appointment of Lokayukta in every State within one year will have to be made mandatory. Select Committee headed by our colleague Shri Satyavrat Chaturvedi improved the old draft of 29 December, 2011. We believe that by appointment of Lokpal in Centre by Central Government and in States by State Governments will lead to political misuse. Therefore we kept Chief Justice of India, Leader of Opposition, Speaker of Lok Sabha and Prime Minister as four Members and these four will select the fifth member who will be an eminent jurist. In Lokpal Bill moved by Government the power to remove Lokpal vested with Central Government. That provision was changed and process of removal of Lokpal by impeachment was brought in. Power of removal or suspension of Lokpal was also vested with Supreme Court for the purpose of impartiality. Only those institutions should be in the jurisdiction of Lokpal which are funded by Government money. Select Committee was of the view that keeping private institutions getting donation from public under the jurisdiction of Lokpal will over burden the Lokpal. You agree with this recommendation of the Select Committee. The Select Committee has simplified the process of investigation. I have some suggestions regarding amendment No. 6. The person under prosecution has the right to be heard. But there is an exception to that. If someone is to be caught red handed, prior notice need not be given. Lokpal should have the power to take action without hearing such a public servant. Section 26 provides that when investigation is ordered, search and seizure can be carried out. Permission for search and seizure should be without prior permission.

Amendment to this effect should be brought. This will help in checking corruption. Select Committee had suggested the appointment of a Director and appointment of Director of prosecution with regard to financial powers. I suggest that in case of matter being pending, if any officer is to be transferred then prior permission of Lokpal should be taken. The powers in Lokpal referred cases should vest in Lokpal itself as far as CBI is concerned. You have provided for religion based reservations in the matter of appointment. The Constitution does not permit this kind of religion based reservation. The Minister may kindly consider the language.

**SHRI SATISH CHANDRA MISRA:** Our leader Ms. Mayawati has made her stand clear that we are against corruption and hence welcome such a bill. Yesterday an all-party meeting was called by Rajya Sabha. And we were not informed about it. In media we were being blamed for boycotting it. A clarification to this effect should be issued.

I would like to say that the current Lokpal Bill is different from the previous one which was passed by the Lok Sabha. Even the Hon'ble Law Minister has admitted that the earlier bill was half-baked and toothless. The current bill has replaced old provisions which were referred to Select Committee for consideration. I am glad to be part of that Select Committee.

I thank you for giving representation to SCs/STs/OBCs and minorities in Select Committee and Search committee and making a provision for them in committee on Lokpal. Such a provision won't be unconstitutional. I also wish that such a representation should be extended to other important bodies too. Provision for such a representation should also be made in High courts and Supreme Court where it is inadequate as of now. I would also like to add that you have done a right thing by accepting Select Committee's recommendation so far as CBI's empowerment is concerned.

When Ms. Mayawati was Chief Minister of Uttar Pradesh she had introduced a law pertaining to Janhita Guarantee. A similar law should be brought here too. I would like to thank Shri Satyavrat Chaturvedi for being the chairman of the Select Committee and also for conducting it the way he has done.

There is no such provision that the draft which will be passed both by Lok Sabha and Rajya Sabha would be sent to the States and they will adopt this and also modify their acts. Discretion has been left on the State Governments to decide and frame their own act.

Therefore, I would suggest that after this Bill is passed, the Government must take the initiative of sending the Act as a model to all the states and ask them to adopt this and make a request to consider and adopt this within one year period. If they do not do it, then they will face the wrath

of public in their states. We should take all steps to ensure that the states adopt this particular Act.

**SHRI SITARAM YECHURY:** Today in terms of Lokpal we are talking about corruption in the country. Corruption has two sides—supply and demand. Why we are silent about the supply side of corruption? Funding of political parties by corporate houses is also responsible for corruption. We want it to be banned through amendment in the law. Without touching the supply side we cannot stop corruption. In 1968 the administrative reforms committee led by Shri Morarji Desai had suggested Lokpal.

We had proposed sending a model bill on Lokayuktas which has been accepted by both sides. We insist that based on this model states should bring a Lokayukta Bill within a year in keeping with constitutional structure. CBI's role with regard to Lokayukta is complex. Whether it would work under the directions of Lokayukta? Let's incorporate all the good points and make a new Lokpal law that will give us better accountability, transparency and better administration. Leader of the Opposition feels that bringing all the private agencies etc. into the ambit of the Lokpal would be unmanageable and it would be a gross interference into the democratic rights and privacy of such agencies. How can you have a Lokpal that will not investigate a private body that indulges in corruption in order to obtain a license? How can you keep that body out of the ambit of law? I think if you are really promising a better accountability, transparency and administration, this serious lacuna should be addressed.

The Government should accede to my amendment that this is not an encroachment upon the work of private corporates, private agencies or private bodies. The CAG have said that there is corruption in PPP. If you are keeping the same out of its ambit, you should take the nation into confidence as to how you are fulfilling the assurances you have given to the country. Although, it is a law against corruption, yet it is not effective one. How are you keeping the PPP out? Charitable institutions have been talked about. What is the definition of charitable? They are charitable only for the name sake, their work is something different. I would seriously urge upon you to reconsider dropping the 'charitable institution' part of that clause. Please bring into its ambit the corporate sector. What the Leader of the Opposition said about the 'Citizens' Charter' is absolutely correct. Along with this Bill the Whistleblowers' Bill should also come. Please do not talk of demand without supply. Please consider this amendment to Clause 14 that we have moved.

**SHRI SUKHENDU SEKHAR ROY:** Our Party, All-India Trinamool Congress, all along was in favour of a stringent law to wipe out corruption, particularly at the highest level. I am sorry for the fact that it was not enacted at the

appropriate moment. There is no such provision in this Bill accepting that the State Legislatures would enact appropriate legislation for establishment of Lokayukta at the State level. I want to put a serious question on Clause 3(2). Why all the time are such authorities headed by Judges only? The Clause 3(4) says, "The Chairperson or a Member shall not be a Member of Parliament or a Member of the Legislature of any State." I would request the Hon'ble Law Minister to remove this portion. Clause 45 talks about undisclosed assets. I think the word 'presumed' should be replaced with the word 'treated'. We wholeheartedly support this Bill.

**SHRI SHIVANAND TIWARI:** It gives me pleasure that it has been provided in the Bill that property of the person can be confiscated against whom the cases of corruptions are going on. This is a very good Bill. If the amendment moved by Shri Sitaram Yachuri is included, it could be much better. But inspite of all this we have suspicions whether we could have complete control over corruption by setting up Lokpal. My simple submission is that any legislation will not be a success so long as we do not create a conforming environment therefor. There is too much inequality in the country. If you want to check corruption, you cannot check it by merely enacting Lokpal. We support the Bill.

If somebody makes a complaint to the Lokpal and the person against whom complaint has been made indulges in violence against the complainant, then what is the provision for his protection? We had enacted the Right to Information Act to check corruption. The people, who want to highlight the incidents of corruption through the Right to Information, are being killed. You cannot eliminate the corruption through Lokpal only. We want you to try and control the circumstances responsible for spreading and strengthening corruption in our country.

**DR. V. MAITREYAN:** On behalf of my party, I support the Lokpal and Lokayuktas Bill, 2011. The Select Committee has got many of the amendments which the opposition had moved incorporated in its Report. It is the insincerity of the UPA Government which ignored the Report of the Select Committee for more than one year. However, it is better late than never. My party is of the strong view that the Lokpal Bill should exclude the Prime Minister since the Prime Minister is already covered under the Prevention of Corruption Act, and any misconduct by the Prime Minister can be investigated otherwise. Similarly, the Chief Minister of any State should also be kept out of the purview of the State Lokayukta. The choice of constituting the Lokayukta should be left to the State Government and the State Government may enact legislation if it deems it necessary. It should not be made mandatory by this present Act, but it should be left to the discretion of State Legislatures as to whether they want a Lokayukta or not.

**DR. K.P. RAMALINGAM<sup>1</sup>:** This Bill is of historic importance. As far as my party, DMK, is concerned, we wholeheartedly support this Bill. There are strong reasons behind our support to this Bill. Our leader, Dr. Kalaignar, who was the Chief Minister of Tamil Nadu in the year 1973 passed the Prevention of Corruption Act, in the legislative assembly of Tamil Nadu and brought the Chief Minister of the State under the ambit of that Bill. This Bill has given the authority to CBI to enquire politicians. Is CBI functioning in an efficient manner? During the last ten years, many cases filed by the CBI have been inquired by court. The accused have been acquitted in more than 90 per cent of these cases. That is, many of the people who have been imprisoned during the period of inquiry, are innocent people. Corrupt persons have to be brought to the book. But, at the same time, innocent people should not be affected. We support the view that the Chief Minister has to be brought under the purview of Lokayukta. But at the same time, care has to be taken that the law should not be misused. We also support the view that religious institutions and charitable institutions should not be exempted from this Bill. Some charitable trusts are misusing their money. They should also be inquired under this Bill. Corruption has to be eliminated. But, this law should not be misused.

**SHRI BAISHNAB PARIDA:** We must keep in mind that whenever any change or reform comes before this House or in the Lower House in the form of a Bill, it was only after long years of struggle. I agree that the Parliament has the supreme power to enact laws, but it is the people of India who have given this right to the Parliament. We must reflect the aspirations of the people. Corruption has engulfed the entire society, our entire political system, our democratic system and our party system. We must think and we must change all this. I must thank the Standing Committee for having presented their recommendations in such a way that we have arrived at a consensus. I feel it would be a great weapon in the hands of our people, our political parties and other institutions. But the question is, how far would we be able to utilize this mechanism in an efficient and honest manner? It is the bounden duty of all the political parties, the Government, all of us and of all the people of this country, to see to it that this Bill is implemented in letter and spirit. If we all work together in solving the very significant and important problems facing us, then, our country can really surge ahead.

**DR. YOGENDRA P. TRIVEDI:** We feel sad when India is ranked as 138th in the realm of corruption. Much has been said about the corruption. This Bill is a very brilliant and valiant effort. Amendment number 6 wherein, before an investigation takes place, the man should be asked if there is

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<sup>1</sup>Spoke in Tamil

a *prima facie* case against him. This is something which I don't understand. You may be trying to gather the documents, calling witnesses and thinking of a search at his place. Investigation is a criminal process. You are giving him an opportunity to destroy evidence by telling him in this manner. So, there is no question of giving an opportunity before investigation or gathering the evidence. As per amendment number 8, he should be given a chance to prove whether there is a *prima facie* case against him or not. These are criminal proceedings and if there is any infirmity anywhere, the benefit of doubt will go to the accused. This law is primarily aimed at Government funds. The public money is also Government's money to a certain extent. If there is a huge malpractice in some clubs or some NGOs and if the public is being fooled or cheated then the Lokpal should have the ability and the people should be able to approach the Lokpal. You might say here that you will keep a certain limit. The public should not be distinguished from the Government in such a manner.

**DR. ASHOK S. GANGULY:** I support this Bill. This historic Bill has been pending for a very long time. We have recognised the national importance of the Lokpal Bill. The Right to Information Act had already opened the door to transparency and accountability. The Lokpal Bill now finally fulfills India's desire to be a truly open society. The role of the State must neither be vetoed nor be undermined in the name of the Lokpal or the Right to Information Act. Openness must not be permitted in the name of neo-federalism. I welcome the march of social reform but with caution because we can very easily descend to a jungle state and we have to be cautious about it.

**SHRI RAJEEV CHANDRASEKHAR:** I support this historic legislation. Parliament, parliamentarians and indeed political parties have travelled a long distance from those early days of 2011 when the popular people's Jan Lokpal movement was treated with scorn and scepticism. The last two years have proved that the desire amongst all Indians for a change in our governance and our response to them as Parliament has been belated. It is this House that stopped the passage of the weak Bill that was passed in the other House and that further strengthens the prestige of this House and indeed its Members. This Bill lays the basis of a strong institution. Institutions must be given time to take birth, grow and evolve to the needs of the times. This is probably the single most important legislation that we are passing post-Independence on the issue of governance. Future and current generations will thank us for our near unanimous support for this Bill and our efforts at cleaning up governance.

**SHRI RAVI SHANKAR PRASAD:** We should introspect ourselves today while we are discussing on the Lokpal Bill. Country is changing and youth of the country have new expectations. BJP has always been in support of

Lokpal but country has to wait for two years. PILs were also seen as hurdles in the working of bureaucracy and administration but when someone is working honestly then there is no need to fear. Country has to face various scams because number of administrators have never deny to the wrong doing of their political bosses. I would like to thank Anna Hajare jee for inspiring us of by their movement and fasting unto death dharna for early passage of Lokpal Bill. The Whistleblowers' Bill should be passed early. Citizens' Charter has empowered people and it has led to development of a pro-welfare people initiative oriented bureaucracy.

An accused comes into focus only when a cognizance is taken, based upon investigation, filing of chargesheet and application of mind by the Magistrate so, by amendment number 6, you are making provision against the criminal procedure of the country. I want an explanation in this regard. I would also like to know about the time frame of trial as provisions have been made regarding time bound investigation and sanction. Stringent action should be taken against the corruption. There should be speedy trial of cases against the guilty public servants and it will also result in exonerating the innocent public servants. It is a historic victory of polity of India, Indian parliamentary traditions and awareness of country as Prime Minister has also been brought under the purview of Lokpal with some safeguards.

Today, this Parliament with a proud is bringing a Bill in which Members of Parliament are considered as a public servant and the same Parliament in one voice is going to pass a law which is certainly going to give a positive message to the country that the Parliamentarians can also rise to occasion when the situation arises. The responsible people of the country who understand the procedure of the country should be included in the Lokpal. Section 3 says that representation of the minorities should also be in the Lokpal, but our Constitution does not envisage representation for minorities and it is unconstitutional. Lokpal must understand the enormity of the power and the responsibility because they have accountability too. The issues of corruption must be taken very strongly and who are guilty must be punished.

**Dr. M.S. Gill:** We have put India's Prime Minister under this Bill like anyone else. I beg to differ. The Prime Minister is a very special person. If a Prime Minister is remiss on anything, there are other mechanisms to deal with him. India has a surplus of laws to deal with various problems. In every Act of this country, you straightaway say, ideally a Supreme Court Judge, or a Chief Justice of India should be the Chairman. You do not look for a distinguished Indian. Don't imagine all the time that everything can be solved by Judges though we admire them, but look at the rest of



Indians also. There is a provision for the Chairperson and Members of the Lokpal but who will take action against them if something goes wrong? This is all to catch and punish people. But you must take care of the people and their lives. There are lots of cases in our history where people have been smashed by misapplication of law. I support the Bill. But please look at other aspects of this issue and problems from other angle also. India needs growth.

**SHRI M.P. ACHUTHAN:** What is the root cause of corruption in India? It is the unholy nexus between Government, political leadership, corporate houses and the officialdom of bureaucrats. The question is that do we have the political will to break this nexus? Even in this Bill, the main drawback is that we did not have it. You are leaving the corporate houses and the private sector which is the main cause of corruption. Do you have the courage to touch them? Those entities which are getting concessions and money from the Government that section has to be included in this Bill. Then only will the people think that we are serious about curbing corruption of India. Clause 14 says that any such inquiry shall be held in camera and if the Lokpal comes to the conclusion that the complaint deserves to be dismissed the records of the inquiry shall not be published or made available to anyone. Why is there the provision of in camera? Why are we denying the people to know the complaint and the reasons for dismissal of that complaint? If we are sincere in rooting out corruption in public life then we have to be brought forward Citizens' Charter Bill and Whistleblowers' Bill. I fully support this Bill with some reservations.

**DR. BHALCHANDRA MUNGEKAR:** I strongly support the Bill. The corruption has become a way of life in the country. The entire political class in the country must introspect itself to what extent we are responsible for the corruption. In this country the source of corruption basically is absence of the rule of law. During the last 20 years, we are finding that corruption is rampant in the private sector. Judiciary itself is not free from corruption.

This country suffered because of non-implementation of the schemes. There are so many programmes. But the benefits of these programmes are not reaching the desired people and the targeted people only because of corruption. I am fully supporting this Bill, but including incumbent Prime Minister will be totally demolishing the moral authority of the Prime Minister.

**SHRI K.N. BALAGOPAL:** I would request the Government to accept our Amendments which we are moving here, and these relate to corporates, private sector and PPP which are involved with the business of the Government. After 1991, that is, the globalization era, a majority of the Government businesses have got transferred to private people. We can

see, in the last ten years, how many corruption cases have come up. But the Government is not taking any action.

I am very happy that hon. minister has brought another Amendment after hearing the discussions, and the total spirit of the Select Committee is accepted now. We have moved some amendments, related to Amendment No. 14. We are requesting the Government to accept that point. Otherwise, the Bill will not be successful.

**SHRI Y. S. CHOWDARY:** It is very unfortunate that even after 52 years of its first introduction; the Lokpal Bill is still not enacted in India. In our country, there is no dearth of laws. We have problems of implementation and execution. In fact, when every new law comes, every time corruption index goes up. From our party, we would like to support the Bill. My suggestion is, we can put a proper monitoring system, at least for the first five years, to report to Parliament about its implementation.

**DR. BARUN MUKHERJI:** I rise to support this historical Bill. We have been discussing about it for more than two years. It is one good example that how, through conflicts, debates and discussions, we can come to a near consensus. I believe, when it will be enacted, it will have enough scope and strength to fight corruption. But, this may not be foolproof. What are the reasons for exclusion of corporate sector or NGOs or PPPs? In PPP projects, mostly the private parties are extracting the major advantages and there is a lot of corruption through it. I request the hon. minister to think over it and include the PPP projects under this Bill.

**SHRI BIRENDRA PRASAD BAISHYA:** I rise here today to support the Bill. We have always advocated for a strong Lokpal. We have always taken the stand that the Prime Minister and Members of Parliament should be brought within the purview of the Lokpal. I want to emphasize that we should have strong Lokayuktas in all the States, simultaneously. Without Lokayuktas at the State level, we cannot curb corruption.

To curb corruption, a strong Lokpal and Lokayukta is the call of the hour. I must congratulate the Select Committee which has done a marvellous job. In the Bill, there is a provision that within a year, all the States shall have a Lokayukta. I hope, this provision would be implemented strongly in each and every State. I strongly support the Bill.

**SHRI ANIL DESAI:** I rise to oppose the Lokpal Bill. a more effective mechanism needed to be evolved to receive complaints relating to allegations of corruption against public servants and to inquire into them and take follow up actions. Creating extra constitutional authority like Lokpal would amount to blatant undermining the authority of Parliament and Constitution. If Lokpal errs, there seems to be no effective provision

in the Bill to remove him. By creating Lokpal, we should not jeopardize our democracy. We want that this power should be given to the President of the country so that democracy of this country be recognised with respect in the whole world.

**SHRI NARESH GUJRAL:** My party is fully supportive of the Lokpal. I think, this is a reaction to that strong civil society movement that has come about. I urge the Government to create a separate cadre for investigating officers and they be given specialized training. If guilty officers or public functionaries are not given exemplary punishment expeditiously, the institution of Lokpal would be totally ineffective. Investment has to be made to improve our judicial system. The office of the Prime Minister should have been kept outside the purview of this Bill. Kindly reconsider this and keep the Prime Minister out of its purview.

**SHRI RAM VILAS PASWAN:** The whole house should consider it seriously that whether the Prime Minister should be brought in its purview or not. In my opinion the Prime Minister should not be in its purview. There should not be politics in each and every thing. The Select Committee should be thanked for what it has done. With regard to Lokpal the opinion is emerging that all officers have become dishonest. I support this Bill with a heavy heart. All are afraid at heart. Why have you not included NGO and businessmen in it? Prepare a Citizens' Charter. If u do not have a clear intention, it will not solve any problem.

**SHRI RAM KRIPAL YADAV:** I would like that good people come in Lokpal. Lokpal becomes an example. I feel that it would not be effective. There is an apprehension that wherefrom you would bring honest men and how would you seek justice from them? It should be ensured that people would not be victimized by Lokpal. If inequality is not removed, democracy would go to come an end. The office of the Prime Minister should be kept outside the purview of this Bill. The minorities have played a key role in building this nation. They do be given rights. Until Lokayukta similar to Lokpal is not constituted, corruption would not come to an end. System has to be changed. I support this Bill with a heavy heart.

**SHRI RANBIR SINGH PARJAPATI:** Today the Government has brought this Lokpal Bill under the pressure of the people of the country. We have already told that the Prime Minister and CBI should be brought under the purview of the Lokpal. I am happy that CBI has been brought under its purview. On behalf of my party, I support the Bill.

**SHRI AMAR SINGH:** We are ourselves responsible for the degradation honour of politicians. We are involved in maligning each other. We are not united. After a long time, the House had come on a consensus over a Law. We must be united on this issue. I support the Bill.

**The Hon'ble Minister, replying to the debate, said:** I would like to thank the distinguished Members of this House who have supported this Bill. When I rose to initiate the debate, I tried to keep politics out of it. I will just refer to the points made by the distinguished Leader of the Opposition in this House. He made three distinct points. He said that he was a little concerned about the fact that at the time of initiating investigation, the delinquent officer is being given a right to represent. Though I am bringing the amendment to ensure that at the time of raid, seizure and search, there is no opportunity given to the officer. It would do some injustice to them if no explanation is sought from them. We are making sure that if the department or the investigating agency is to seize and search, there should be no impediment in their way and it is in that context, this particular provision was incorporated. Secondly, we hope that all State Governments would take note of the fact that we have passed a very strong, a very independent Lokpal Bill. We hope that every State Governments will take this as a model Bill. The third point was in respect of the reservation for religious minorities. I would like to draw the attention to Article 16(4) of the Constitution which provides reservation in the context of employment. The policy of reservation applies when you are serving under the State. The policy of reservation does not apply when you are not serving under the State. This is not service under the State. Sitaram ji raised the issue of demand and supply. We are dealing with the issue of supply in the Prevention of Corruption Act. As you are aware that Amendment Bill is already in place. That Bill actually deals with the supply side corruption. We are not bringing it under the Lokpal but we are bringing it under the Prevention of Corruption Act so that supply-side corruption can also be dealt with effectively. Sukhendu ji said, "Why should we have Judges appointed in the Lokpal? We believe that when we are dealing with complex legal issues, we need some legal training. What better training than that of a person who has been a Judge? He also mentioned about the fact as to why should we not have Members of Parliament or the Members of the Legislative Assemblies in the Lokpal. The reason is simple. The purpose of this law is to deal with the Members of the Parliament and the Members of the Legislative Assemblies, and, if they are the ones who are going to be represented in the Lokpal, there is going to be a problem, there is going to be a conflict of interest. Law alone will not ensure elimination of corruption. Unless we bridge the gap between the rich and the poor, we can not achieve our goal. As far as the issue of Prime Minister is concerned, this, is the consensus of the House that the Prime Minister should be included.

*The motion for consideration of the Bill, was adopted.*

*Clauses etc., as amended, were adopted.*

*The Bill, as amended, was passed.*



## **Annexure-XI**

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**The Lokpal and Lokayuktas Act, 2013**  
**(that received the assent of the President on 1 January 2014)**

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भारत का राजपत्र  
The Gazette of India

असाधारण

EXTRAORDINARY

भाग II — खण्ड 1

PART II — Section 1

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

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सं. 1 ] नई दिल्ली, बुधवार, जनवरी 1, 2014/पौष 11, 1935 (शक)  
No. 1] NEW DELHI, WEDNESDAY, JANUARY 1, 2014/PAUSA 11, 1935 (SAKA)

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।  
Separate paging is given to this Part in order that it may be filed as a separate compilation.

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MINISTRY OF LAW AND JUSTICE  
(Legislative Department)

*New Delhi, the 1st January, 2014/Pausa 11, 1935 (Saka)*

The following Act of Parliament received the assent of the President on the 1st January 2014, and is hereby published for general information:—

THE LOKPAL AND LOKAYUKTAS ACT, 2013  
(No. 1 OF 2014)

[1st January, 2014.]

An Act to provide for the establishment of a body of Lokpal for the Union and Lokayukta for States to inquire into allegations of corruption against certain public functionaries and for matters connected therewith or incidental thereto.



WHEREAS the Constitution of India established a Democratic Republic to ensure justice for all;

AND WHEREAS India has ratified the United Nations Convention Against Corruption;

AND WHEREAS the Government's commitment to clean and responsive governance has to be reflected in effective bodies to contain and punish acts of corruption;

NOW, THEREFORE, it is expedient to enact a law, for more effective implementation of the said Convention and to provide for prompt and fair investigation and prosecution in cases of corruption.

BE it enacted by Parliament in the Sixty-fourth Year of the Republic of India as follows:—

## PART I

### PRELIMINARY

Short title,  
extent,  
application  
and  
commence-  
ment.

1. (1) This Act may be called the Lokpal and Lokayuktas Act, 2013.

(2) It extends to the whole of India.

(3) It shall apply to public servants in and outside India.

(4) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

## PART II

### LOKPAL FOR THE UNION

#### CHAPTER I

##### DEFINITIONS

Definitions.

2. (1) In this Act, unless the context otherwise requires,—

(a) “bench” means a bench of the Lokpal;

(b) “Chairperson” means the Chairperson of the Lokpal;

(c) “competent authority”, in relation to—

(i) the Prime Minister, means the House of the People;

(ii) a member of the Council of Ministers, means the Prime Minister;

(iii) a member of Parliament other than a Minister, means—

(A) in the case of a member of the Council of States, the Chairman of the Council; and

(B) in the case of a member of the House of the People, the Speaker of the House;

(iv) an officer in the Ministry or Department of the Central Government, means the Minister in charge of the Ministry or Department under which the officer is serving;

(v) a chairperson or members of any body or Board or corporation or authority or company or society or autonomous body (by whatever name called) established or constituted under any Act of Parliament or wholly or partly financed by the Central Government or controlled by it, means the Minister in charge of the administrative Ministry of such body or Board or corporation or authority or company or society or autonomous body;

(vi) an officer of any body or Board or corporation or authority or company or society or autonomous body (by whatever name called) established or constituted under any Act of Parliament or wholly or partly financed by the Central Government or controlled by it, means the head of such body or Board or corporation or authority or company or society or autonomous body;

(vii) in any other case not falling under sub-clauses (i) to (vi) above, means such Department or authority as the Central Government may, by notification, specify:

Provided that if any person referred to in sub-clause (v) or sub-clause (vi) is also a member of Parliament, then, the competent authority shall be—

(A) in case such member is a member of the Council of States, the Chairman of the Council; and

(B) in case such member is a member of the House of the People, the Speaker of the House;

(d) “Central Vigilance Commission” means the Central Vigilance Commission constituted under sub-section (1) of Section 3 of the Central Vigilance Commission Act, 2003; 45 of 2003

(e) “complaint” means a complaint, made in such form as may be prescribed, alleging that a public servant has committed an offence punishable under the Prevention of Corruption Act, 1988; 49 of 1988

(f) “Delhi Special Police Establishment” means the Delhi Special Police Establishment constituted under sub-section (1) of Section 2 of the Delhi Special Police Establishment Act, 1946; 25 of 1946

(g) “investigation” means an investigation as defined under Clause (h) of Section 2 of the Code of Criminal Procedure, 1973; 2 of 1974

(h) “Judicial Member” means a Judicial Member of the Lokpal;

(i) “Lokpal” means the body established under Section 3;

(j) “Member” means a Member of the Lokpal;

(k) “Minister” means a Union Minister but does not include the Prime Minister;

(l) “notification” means notification published in the Official Gazette and the expression “notify” shall be construed accordingly;

(m) “preliminary inquiry” means an inquiry conducted under this Act;

(n) “prescribed” means prescribed by rules made under this Act;

(o) “public servant” means a person referred to in Clauses (a) to (h) of sub-section (1) of Section 14 but does not include a public servant in respect of whom the jurisdiction is exercisable by any court or other authority under the Army Act, 1950, the Air Force Act, 1950, the Navy Act, 1957 and the Coast Guard Act, 1978 or the procedure is applicable to such public servant under those Acts;

45 of 1950  
46 of 1950  
62 of 1957  
30 of 1978

(p) “regulations” means regulations made under this Act;

(q) “rules” means rules made under this Act;

(r) “Schedule” means a Schedule appended to this Act;

(s) “Special Court” means the court of a Special Judge appointed under sub-section (1) of Section 3 of the Prevention of Corruption Act, 1988.

49 of 1988

(2) The words and expressions used herein and not defined in this Act but defined in the Prevention of Corruption Act, 1988, shall have the meanings respectively assigned to them in that Act.

49 of 1988

(3) Any reference in this Act to any other Act or provision thereof which is not in force in any area to which this Act applies shall be construed to have a reference to the corresponding Act or provision thereof in force in such area.

## CHAPTER II

### ESTABLISHMENT OF LOKPAL

3. (1) On and from the commencement of this Act, there shall be established, for the purpose of this Act, a body to be called the “Lokpal”.

Establishment  
of Lokpal.

(2) The Lokpal shall consist of—

(a) a Chairperson, who is or has been a Chief Justice of India or is or has been a Judge of the Supreme Court or an eminent person who fulfils the eligibility specified in Clause (b) of sub-section (3); and

(b) such number of Members, not exceeding eight out of whom fifty per cent shall be Judicial Members:

Provided that not less than fifty per cent of the Members of the Lokpal shall be from amongst the persons belonging to the Scheduled Castes, the Scheduled Tribes, Other Backward Classes, Minorities and women.

(3) A person shall be eligible to be appointed,—

(a) as a Judicial Member if he is or has been a Judge of the Supreme Court or is or has been a Chief Justice of a High Court;

(b) as a Member other than a Judicial Member, if he is a person of impeccable integrity and outstanding ability having special knowledge and expertise of not less than twenty-five years in the matters relating to anti-corruption policy, public administration, vigilance, finance including insurance and banking, law and management.

(4) The Chairperson or a Member shall not be—

(i) a member of Parliament or a member of the Legislature of any State or Union territory;

(ii) a person convicted of any offence involving moral turpitude;

(iii) a person of less than forty-five years of age, on the date of assuming office as the Chairperson or Member, as the case may be;

(iv) a member of any Panchayat or Municipality;

(v) a person who has been removed or dismissed from the service of the Union or a State,

and shall not hold any office of trust or profit (other than his office as the Chairperson or a

Member) or be affiliated with any political party or carry on any business or practise any profession and, accordingly, before he enters upon his office, a person appointed as the Chairperson or a Member, as the case may be, shall, if—

(a) he holds any office of trust or profit, resign from such office; or

(b) he is carrying on any business, sever his connection with the conduct and management of such business; or

(c) he is practising any profession, cease to practise such profession.

4. (1) The Chairperson and Members shall be appointed by the President after obtaining the recommendations of a Selection Committee consisting of—

(a) the Prime Minister—Chairperson;

(b) the Speaker of the House of the People—Member;

(c) the Leader of Opposition in the House of the People—Member;

(d) the Chief Justice of India or a Judge of the Supreme Court nominated by him—Member;

(e) one eminent jurist, as recommended by the Chairperson and Members referred to in Clauses (a) to (d) above, to be nominated by the President—Member.

Appointment of Chairperson and Members on recommendations of Selection Committee.

(2) No appointment of a Chairperson or a Member shall be invalid merely by reason of any vacancy in the Selection Committee.

(3) The Selection Committee shall for the purposes of selecting the Chairperson and Members of the Lokpal and for preparing a panel of persons to be considered for appointment as such, constitute a Search Committee consisting of at least seven persons of standing and having special knowledge and expertise in the matters relating to anti-corruption policy, public administration, vigilance,

policy making, finance including insurance and banking, law and management or in any other matter which, in the opinion of the Selection Committee, may be useful in making the selection of the Chairperson and Members of the Lokpal:

Provided that not less than fifty per cent of the members of the Search Committee shall be from amongst the persons belonging to the Scheduled Castes, the Scheduled Tribes, Other Backward Classes, Minorities and Women:

Provided further that the Selection Committee may also consider any person other than the persons recommended by the Search Committee.

(4) The Selection Committee shall regulate its own procedure in a transparent manner for selecting the Chairperson and Members of the Lokpal.

(5) The term of the Search Committee referred to in sub-section (3), the fees and allowances payable to its members and the manner of selection of panel of names shall be such as may be prescribed.

Filling of  
vacancies of  
Chairperson  
or Members.

5. The President shall take or cause to be taken all necessary steps for the appointment of a new Chairperson and Members at least three months before the expiry of the term of the Chairperson or Member, as the case may be, in accordance with the procedure laid down in this Act.

Term of  
office of  
Chairperson  
and  
Members.

6. The Chairperson and every Member shall, on the recommendations of the Selection Committee, be appointed by the President by warrant under his hand and seal and hold office as such for a term of five years from the date on which he enters upon his office or until he attains the age of seventy years, whichever is earlier:

Provided that he may—

(a) by writing under his hand addressed to the President, resign his office; or

(b) be removed from his office in the manner provided in Section 37.

7. The salary, allowances and other conditions of service of—

(i) the Chairperson shall be the same as those of the Chief Justice of India;

(ii) other Members shall be the same as those of a Judge of the Supreme Court:

Salary, allowances and other conditions of service of Chairperson and Members.

Provided that if the Chairperson or a Member is, at the time of his appointment, in receipt of pension (other than disability pension) in respect of any previous service under the Government of India or under the Government of a State, his salary in respect of service as the Chairperson or, as the case may be, as a Member, be reduced—

(a) by the amount of that pension; and

(b) if he has, before such appointment, received, in lieu of a portion of the pension due to him in respect of such previous service, the commuted value thereof, by the amount of that portion of the pension:

Provided further that the salary, allowances and pension payable to, and other conditions of service of, the Chairperson or a Member shall not be varied to his disadvantage after his appointment.

8. (1) On ceasing to hold office, the Chairperson and every Member shall be ineligible for—

(i) reappointment as the Chairperson or a Member of the Lokpal;

(ii) any diplomatic assignment, appointment as administrator of a Union territory and such other assignment or appointment which is required by law to be made by the President by warrant under his hand and seal;

(iii) further employment to any other office of profit under the Government of India or the Government of a State;

(iv) contesting any election of President or Vice-President or Member of either House of

Restriction on employment by Chairperson and Members after ceasing to hold office.



Parliament or Member of either House of a State Legislature or Municipality or Panchayat within a period of five years from the date of relinquishing the post.

(2) Notwithstanding anything contained in subsection (1), a Member shall be eligible to be appointed as a Chairperson, if his total tenure as Member and Chairperson does not exceed five years.

*Explanation*—For the purposes of this section, it is hereby clarified that where the Member is appointed as the Chairperson, his term of office shall not be more than five years in aggregate as the Member and the Chairperson.

Member to act as Chairperson or to discharge his functions in certain circumstances.

9. (1) In the event of occurrence of any vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the President may, by notification, authorise the senior-most Member to act as the Chairperson until the appointment of a new Chairperson to fill such vacancy.

(2) When the Chairperson is unable to discharge his functions owing to absence on leave or otherwise, the senior-most Member available, as the President may, by notification, authorise in this behalf, shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties.

Secretary, other officers and staff of Lokpal.

10. (1) There shall be a Secretary to the Lokpal in the rank of Secretary to Government of India, who shall be appointed by the Chairperson from a panel of names sent by the Central Government.

(2) There shall be a Director of Inquiry and a Director of Prosecution not below the rank of Additional Secretary to the Government of India or equivalent, who shall be appointed by the Chairperson from a panel of names sent by the Central Government.

(3) The appointment of officers and other staff of the Lokpal shall be made by the Chairperson or such Member or officer of Lokpal as the Chairperson may direct:

Provided that the President may by rule require that the appointment in respect of any post or posts as may be specified in the rule, shall be made after consultation with the Union Public Service Commission.

(4) Subject to the provisions of any law made by Parliament, the conditions of service of Secretary and other officers and staff of the Lokpal shall be such as may be specified by regulations made by the Lokpal for the purpose:

Provided that the regulations made under this sub-section shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the President.

### CHAPTER III

#### INQUIRY WING

11. (1) Notwithstanding anything contained in any law for the time being in force, the Lokpal shall constitute an Inquiry Wing headed by the Director of Inquiry for the purpose of conducting preliminary inquiry into any offence alleged to have been committed by a public servant punishable under the Prevention of Corruption Act, 1988:

Inquiry Wing.

49 of 1988

Provided that till such time the Inquiry Wing is constituted by the Lokpal, the Central Government shall make available such number of officers and other staff from its Ministries or Departments, as may be required by the Lokpal, for conducting preliminary inquiries under this Act.

(2) For the purposes of assisting the Lokpal in conducting a preliminary inquiry under this Act, the officers of the Inquiry Wing not below the rank of the Under Secretary to the Government of India, shall have the same powers as are conferred upon the Inquiry Wing of the Lokpal under Section 27.

### CHAPTER IV

#### PROSECUTION WING

12. (1) The Lokpal shall, by notification, constitute a Prosecution Wing headed by the Director of Prosecution for the purpose of

Prosecution Wing.

prosecution of public servants in relation to any complaint by the Lokpal under this Act:

Provided that till such time the Prosecution Wing is constituted by the Lokpal, the Central Government shall make available such number of officers and other staff from its Ministries or Departments, as may be required by the Lokpal, for conducting prosecution under this Act.

(2) The Director of Prosecution shall, after having been so directed by the Lokpal, file a case in accordance with the findings of investigation report, before the Special Court and take all necessary steps in respect of the prosecution of public servants in relation to any offence punishable under the Prevention of Corruption Act, 1988.

49 of 1988

(3) The case under sub-section (2), shall be deemed to be a report, filed on completion of investigation, referred to in Section 173 of the Code of Criminal Procedure, 1973.

2 of 1974

#### CHAPTER V

##### EXPENSES OF LOKPAL TO BE CHARGED ON CONSOLIDATED FUND OF INDIA

Expenses of Lokpal to be charged on Consolidated Fund of India.

13. The administrative expenses of the Lokpal, including all salaries, allowances and pensions payable to or in respect of the Chairperson, Members or Secretary or other officers or staff of the Lokpal, shall be charged upon the Consolidated Fund of India and any fees or other moneys taken by the Lokpal shall form part of that Fund.

#### CHAPTER VI

##### JURISDICTION IN RESPECT OF INQUIRY

Jurisdiction of Lokpal to include Prime Minister, Ministers, Members of Parliament, Groups A, B, C and D officers and officials of Central Government.

14. (1) Subject to the other provisions of this Act, the Lokpal shall inquire or cause an inquiry to be conducted into any matter involved in, or arising from, or connected with, any allegation of corruption made in a complaint in respect of the following, namely:—

(a) any person who is or has been a Prime Minister:

Provided that the Lokpal shall not inquire into any matter involved in, or arising from, or

connected with, any such allegation of corruption against the Prime Minister,—

(i) in so far as it relates to international relations, external and internal security, public order, atomic energy and space;

(ii) unless a full bench of the Lokpal consisting of its Chairperson and all Members considers the initiation of inquiry and at least two-thirds of its Members approve of such inquiry:

Provided further that any such inquiry shall be held *in camera* and if the Lokpal comes to the conclusion that the complaint deserves to be dismissed, the records of the inquiry shall not be published or made available to anyone;

(b) any person who is or has been a Minister of the Union;

(c) any person who is or has been a Member of either House of Parliament;

49 of 1988 (d) any Group 'A' or Group 'B' officer or equivalent or above, from amongst the public servants defined in sub-clauses (i) and (ii) of Clause (c) of Section 2 of the Prevention of Corruption Act, 1988 when serving or who has served, in connection with the affairs of the Union;

49 of 1988 (e) any Group 'C' or Group 'D' official or equivalent, from amongst the public servants defined in sub-clauses (i) and (ii) of Clause (c) of Section 2 of the Prevention of Corruption Act, 1988 when serving or who has served in connection with the affairs of the Union subject to the provision of sub-section (1) of Section 20;

(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 the 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;

(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;

(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.

42 of 2010

*Explanation.*—For the purpose of Clauses (f) and (g), it is hereby clarified that any entity or

institution, by whatever name called, corporate, society, trust, association of persons, partnership, sole proprietorship, limited liability partnership (whether registered under any law for the time being in force or not), shall be the entities covered in those clauses:

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

(2) Notwithstanding anything contained in sub-section (1), the Lokpal shall not inquire into any matter involved in, or arising from, or connected with, any such allegation of corruption against any member of either House of Parliament in respect of anything said or a vote given by him in Parliament or any committee thereof covered under the provisions contained in Clause (2) of Article 105 of the Constitution.

49 of 1988      (3) The Lokpal may inquire into any act or conduct of any person other than those referred to in sub-section (1), if such person is involved in the act of abetting, bribe giving or bribe taking or conspiracy relating to any allegation of corruption under the Prevention of Corruption Act, 1988 against a person referred to in sub-section (1):

Provided that no action under this section shall be taken in case of a person serving in connection with the affairs of a State, without the consent of the State Government.

60 of 1952      (4) No matter in respect of which a complaint has been made to the Lokpal under this Act, shall be referred for inquiry under the Commissions of Inquiry Act, 1952.

*Explanation.*—For the removal of doubts, it is hereby declared that a complaint under this Act shall only relate to a period during which the public servant was holding or serving in that capacity.

Matters pending before any court or committee or authority for inquiry not to be affected.

**15.** In case any matter or proceeding related to allegation of corruption under the Prevention of Corruption Act, 1988 has been pending before any court or committee of either House of Parliament or before any other authority prior to commencement of this Act or prior to commencement of any inquiry after the commencement of this Act, such matter or proceeding shall be continued before such court, committee or authority.

49 of 1988

Constitution of benches of Lokpal.

**16. (1)** Subject to the provisions of this Act,—

(a) the jurisdiction of the Lokpal may be exercised by benches thereof;

(b) a bench may be constituted by the Chairperson with two or more Members as the Chairperson may deem fit;

(c) every bench shall ordinarily consist of at least one Judicial Member;

(d) where a bench consists of the Chairperson, such bench shall be presided over by the Chairperson;

(e) where a bench consists of a Judicial Member, and a non-Judicial Member, not being the Chairperson, such bench shall be presided over by the Judicial Member;

(f) the benches of the Lokpal shall ordinarily sit at New Delhi and at such other places as the Lokpal may, by regulations, specify.

(2) The Lokpal shall notify the areas in relation to which each bench of the Lokpal may exercise jurisdiction.

(3) Notwithstanding anything contained in subsection (2), the Chairperson shall have the power to constitute or reconstitute benches from time to time.

(4) If at any stage of the hearing of any case or matter it appears to the Chairperson or a Member that the case or matter is of such nature that it ought to be heard by a bench consisting of three

or more Members, the case or matter may be transferred by the Chairperson or, as the case may be, referred to him for transfer, to such bench as the Chairperson may deem fit.

17. Where benches are constituted, the Chairperson may, from time to time, by notification, make provisions as to the distribution of the business of the Lokpal amongst the benches and also provide for the matters which may be dealt with by each bench.

Distribution of business amongst benches.

18. On an application for transfer made by the complainant or the public servant, the Chairperson, after giving an opportunity of being heard to the complainant or the public servant, as the case may be, may transfer any case pending before one bench for disposal to any other bench.

Power of Chairperson to transfer cases.

19. If the Members of a bench consisting of an even number of Members differ in opinion on any point, they shall state the point or points on which they differ, and make a reference to the Chairperson who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other Members of the Lokpal and such point or points shall be decided according to the opinion of the majority of the Members of the Lokpal who have heard the case, including those who first heard it.

Decision to be by majority.

## CHAPTER VII

### PROCEDURE IN RESPECT OF PRELIMINARY INQUIRY AND INVESTIGATION

20. (1) The Lokpal on receipt of a complaint, if it decides to proceed further, may order—

Provisions relating to complaints and preliminary inquiry and investigation.

(a) preliminary inquiry against any public servant by its Inquiry Wing or any agency (including the Delhi Special Police Establishment) to ascertain whether there exists a *prima facie* case for proceeding in the matter; or

(b) investigation by any agency (including the Delhi Special Police Establishment) when there exists a *prima facie* case:



Provided that the Lokpal shall if it has decided to proceed with the preliminary inquiry, by a general or special order, refer the complaints or a category of complaints or a complaint received by it in respect of public servants belonging to Group A or Group B or Group C or Group D to the Central Vigilance Commission constituted under sub-section (1) of Section 3 of the Central Vigilance Commission Act, 2003:

45 of 2003

Provided further that the Central Vigilance Commission in respect of complaints referred to it under the first proviso, after making preliminary inquiry in respect of public servants belonging to Group A and Group B, shall submit its report to the Lokpal in accordance with the provisions contained in sub-sections (2) and (4) and in case of public servants belonging to Group C and Group D, the Commission shall proceed in accordance with the provisions of the Central Vigilance Commission Act, 2003:

45 of 2003

Provided also that before ordering an investigation under clause (b), the Lokpal shall call for the explanation of the public servant so as to determine whether there exists a *prima facie* case for investigation:

Provided also that the seeking of explanation from the public servant before an investigation shall not interfere with the search and seizure, if any, required to be undertaken by any agency (including the Delhi Special Police Establishment) under this Act.

(2) During the preliminary inquiry referred to in sub-section (1), the Inquiry Wing or any agency (including the Delhi Special Police Establishment) shall conduct a preliminary inquiry and on the basis of material, information and documents collected seek the comments on the allegations made in the complaint from the public servant and the competent authority and after obtaining the comments of the concerned public servant and the competent authority, submit, within sixty days from the date of receipt of the reference, a report to the Lokpal.

(3) A bench consisting of not less than three Members of the Lokpal shall consider every report received under sub-section (2) from the Inquiry Wing or any agency (including the Delhi Special Police Establishment), and after giving an opportunity of being heard to the public servant, decide whether there exists a *prima facie* case, and proceed with one or more of the following actions, namely:—

(a) investigation by any agency or the Delhi Special Police Establishment, as the case may be;

(b) initiation of the departmental proceedings or any other appropriate action against the concerned public servants by the competent authority;

(c) closure of the proceedings against the public servant and to proceed against the complainant under Section 46.

(4) Every preliminary inquiry referred to in sub-section (1) shall ordinarily be completed within a period of ninety days and for reasons to be recorded in writing, within a further period of ninety days from the date of receipt of the complaint.

(5) In case the Lokpal decides to proceed to investigate into the complaint, it shall direct any agency (including the Delhi Special Police Establishment) to carry out the investigation as expeditiously as possible and complete the investigation within a period of six months from the date of its order:

Provided that the Lokpal may extend the said period by a further period not exceeding of six months at a time for the reasons to be recorded in writing.

(6) Notwithstanding anything contained in Section 173 of the Code of Criminal Procedure, 1973, any agency (including the Delhi Special Police Establishment) shall, in respect of cases referred to it by the Lokpal, submit the investigation report under that section to the court having jurisdiction and forward a copy thereof to the Lokpal.

(7) A bench consisting of not less than three Members of the Lokpal shall consider every report received by it under sub-section (6) from any agency (including the Delhi Special Police Establishment) and after obtaining the comments of the competent authority and the public servant may—

(a) grant sanction to its Prosecution Wing or investigating agency to file chargesheet or direct the closure of report before the Special Court against the public servant;

(b) direct the competent authority to initiate the departmental proceedings or any other appropriate action against the concerned public servant.

(8) The Lokpal may, after taking a decision under sub-section (7) on the filing of the charge-sheet, direct its Prosecution Wing or any investigating agency (including the Delhi Special Police Establishment) to initiate prosecution in the Special Court in respect of the cases investigated by the agency.

(9) The Lokpal may, during the preliminary inquiry or the investigation, as the case may be, pass appropriate orders for the safe custody of the documents relevant to the preliminary inquiry or, as the case may be, investigation as it deems fit.

(10) The website of the Lokpal shall, from time to time and in such manner as may be specified by regulations, display to the public, the status of number of complaints pending before it or disposed of by it.

(11) The Lokpal may retain the original records and evidences which are likely to be required in the process of preliminary inquiry or investigation or conduct of a case by it or by the Special Court.

(12) Save as otherwise provided, the manner and procedure of conducting a preliminary inquiry or investigation (including such material and documents to be made available to the public servant) under this Act, shall be such as may be specified by regulations.

21. If, at any stage of the proceeding, the Lokpal—

Persons likely to be prejudicially affected to be heard.

(a) considers it necessary to inquire into the conduct of any person other than the accused; or

(b) is of opinion that the reputation of any person other than an accused is likely to be prejudicially affected by the preliminary inquiry, the Lokpal shall give to that person a reasonable opportunity of being heard in the preliminary inquiry and to produce evidence in his defence, consistent with the principles of natural justice.

22. Subject to the provisions of this Act, for the purpose of any preliminary inquiry or investigation, the Lokpal or the investigating agency, as the case may be, may require any public servant or any other person who, in its opinion, is able to furnish information or produce documents relevant to such preliminary inquiry or investigation, to furnish any such information or produce any such document.

Lokpal may require any public servant or any other person to furnish information, etc.

2 of 1974  
25 of 1946  
49 of 1988

23. (1) Notwithstanding anything contained in Section 197 of the Code of Criminal Procedure, 1973 or Section 6A of the Delhi Special Police Establishment Act, 1946 or Section 19 of the Prevention of Corruption Act, 1988, the Lokpal shall have the power to grant sanction for prosecution under Clause (a) of sub-section (7) of Section 20.

Power of Lokpal to grant sanction for initiating prosecution.

(2) No prosecution under sub-section (1) shall be initiated against any public servant accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, and no court shall take cognizance of such offence except with the previous sanction of the Lokpal.

(3) Nothing contained in sub-sections (1) and (2) shall apply in respect of the persons holding office in pursuance of the provisions of the Constitution and in respect of which a procedure for removal of such person has been specified therein.

(4) The provisions contained in sub-sections (1), (2) and (3) shall be without prejudice to the generality of the provisions contained in Article 311 and sub-clause (c) of Clause (3) of Article 320 of the Constitution.

Action on investigation against public servant being Prime Minister, Ministers or Members of Parliament.

24. Where, after the conclusion of the investigation, the findings of the Lokpal disclose the commission of an offence under the Prevention of Corruption Act, 1988 by a public servant referred to in Clause (a) or Clause (b) or Clause (c) of sub-section (1) of Section 14, the Lokpal may file a case in the Special Court and shall send a copy of the report together with its findings to the competent authority.

49 of 1988

#### CHAPTER VIII

##### POWERS OF LOKPAL

Supervisory powers of Lokpal.

25. (1) The Lokpal shall, notwithstanding anything contained in Section 4 of the Delhi Special Police Establishment Act, 1946 and Section 8 of the Central Vigilance Commission Act, 2003, have the powers of superintendence over, and to give direction to the Delhi Special Police Establishment in respect of the matters referred by the Lokpal for preliminary inquiry or investigation to the Delhi Special Police Establishment under this Act:

25 of 1946

45 of 2003

Provided that while exercising powers of superintendence or giving direction under this sub-section, the Lokpal shall not exercise powers in such a manner so as to require any agency (including the Delhi Special Police Establishment) to whom the investigation has been given, to investigate and dispose of any case in a particular manner.

(2) The Central Vigilance Commission shall send a statement, at such interval as the Lokpal may direct, to the Lokpal in respect of action taken on complaints referred to it under the second proviso to sub-section (1) of Section 20 and on receipt of such statement, the Lokpal may issue guidelines for effective and expeditious disposal of such cases.

(3) Any officer of the Delhi Special Police Establishment investigating a case referred to it by the Lokpal, shall not be transferred without the approval of the Lokpal.

(4) The Delhi Special Police Establishment may, with the consent of the Lokpal, appoint a panel of Advocates, other than the Government Advocates, for conducting the cases referred to it by the Lokpal.

(5) The Central Government may from time to time make available such funds as may be required by the Director of the Delhi Special Police Establishment for conducting effective investigation into the matters referred to it by the Lokpal and the Director shall be responsible for the expenditure incurred in conducting such investigation.

**26. (1)** If the Lokpal has reason to believe that any document which, in its opinion, shall be useful for, or relevant to, any investigation under this Act, are secreted in any place, it may authorise any agency (including the Delhi Special Police Establishment) to whom the investigation has been given to search for and to seize such documents.

Search and seizure.

(2) If the Lokpal is satisfied that any document seized under sub-section (1) may be used as evidence for the purpose of any investigation under this Act and that it shall be necessary to retain the document in its custody or in the custody of such officer as may be authorised, it may so retain or direct such authorised officer to retain such document till the completion of such investigation:

Provided that where any document is required to be returned, the Lokpal or the authorised officer may return the same after retaining copies of such document duly authenticated.

**27. (1)** Subject to the provisions of this section, for the purpose of any preliminary inquiry, the Inquiry Wing of the Lokpal shall have all the powers of a civil court, under the Code of Civil Procedure, 1908, while trying a suit in respect of the following matters, namely:—

Lokpal to have powers of civil court in certain cases.

5 of 1908

(i) summoning and enforcing the attendance of any person and examining him on oath;

(ii) requiring the discovery and production of any document;

(iii) receiving evidence on affidavits;

(iv) requisitioning any public record or copy thereof from any court or office;

(v) issuing commissions for the examination of witnesses or documents:

Provided that such commission, in case of a witness, shall be issued only where the witness, in the opinion of the Lokpal, is not in a position to attend the proceeding before the Lokpal; and

(vi) such other matters as may be prescribed.

(2) Any proceeding before the Lokpal shall be deemed to be a judicial proceeding within the meaning of Section 193 of the Indian Penal Code.

45 of 1860

Power of Lokpal to utilise services of officers of Central or State Government.

**28. (1)** The Lokpal may, for the purpose of conducting any preliminary inquiry or investigation, utilise the services of any officer or organisation or investigating agency of the Central Government or any State Government, as the case may be.

(2) For the purpose of preliminary inquiry or investigating into any matter pertaining to such inquiry or investigation, any officer or organisation or agency whose services are utilised under sub-section (1) may, subject to the superintendence and direction of the Lokpal,—

(a) summon and enforce the attendance of any person and examine him;

(b) require the discovery and production of any document; and

(c) requisition any public record or copy thereof from any office.

(3) The officer or organisation or agency whose services are utilised under sub-section (2) shall inquire or, as the case may be, investigate into any matter pertaining to the preliminary inquiry or

investigation and submit a report thereon to the Lokpal within such period as may be specified by it in this behalf.

**29. (1)** Where the Lokpal or any officer authorised by it in this behalf, has reason to believe, the reason for such belief to be recorded in writing, on the basis of material in his possession, that—

Provisional attachment of assets.

(a) any person is in possession of any proceeds of corruption;

(b) such person is accused of having committed an offence relating to corruption; and

(c) such proceeds of offence are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of offence,

the Lokpal or the authorised officer may, by order in writing, provisionally attach such property for a period not exceeding ninety days from the date of the order, in the manner provided in the Second Schedule to the Income-tax Act, 1961 and the Lokpal and the officer shall be deemed to be an officer under sub-rule (e) of rule 1 of that Schedule.

43 of 1961

(2) The Lokpal or the officer authorised in this behalf shall, immediately after attachment under sub-section (1), forward a copy of the order, along with the material in his possession, referred to in that sub-section, to the Special Court, in a sealed envelope, in the manner as may be prescribed and such Court may extend the order of attachment and keep such material for such period as the Court may deem fit.

(3) Every order of attachment made under sub-section (1) shall cease to have effect after the expiry of the period specified in that sub-section or after the expiry of the period as directed by the Special Court under sub-section (2).

(4) Nothing in this section shall prevent the person interested in the enjoyment of the immovable property attached under sub-section (1) or sub-section (2), from such enjoyment.



*Explanation.*—For the purposes of this sub-section, “person interested”, in relation to any immovable property, includes all persons claiming or entitled to claim any interest in the property.

Confirmation  
of  
attachment  
of assets.

**30. (1)** The Lokpal, when it provisionally attaches any property under sub-section (1) of Section 29 shall, within a period of thirty days of such attachment, direct its Prosecution Wing to file an application stating the facts of such attachment before the Special Court and make a prayer for confirmation of attachment of the property till completion of the proceedings against the public servant in the Special Court.

(2) The Special Court may, if it is of the opinion that the property provisionally attached had been acquired through corrupt means, make an order for confirmation of attachment of such property till the completion of the proceedings against the public servant in the Special Court.

(3) If the public servant is subsequently acquitted of the charges framed against him, the property, subject to the orders of the Special Court, shall be restored to the concerned public servant along with benefits from such property as might have accrued during the period of attachment.

(4) If the public servant is subsequently convicted of the charges of corruption, the proceeds relatable to the offence under the Prevention of Corruption Act, 1988 shall be confiscated and vest in the Central Government free from any encumbrance or leasehold interest excluding any debt due to any bank or financial institution.

49 of 1988

*Explanation.*—For the purposes of this sub-section, the expressions “bank”, “debt” and “financial institution” shall have the meanings respectively assigned to them in Clauses (d), (g) and (h) of Section 2 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993.

51 of 1993

31. (1) Without prejudice to the provisions of Sections 29 and 30, where the Special Court, on the basis of *prima facie* evidence, has reason to believe or is satisfied that the assets, proceeds, receipts and benefits, by whatever name called, have arisen or procured by means of corruption by the public servant, it may authorise the confiscation of such assets, proceeds, receipts and benefits till his acquittal.

Confiscation of assets, proceeds, receipts and benefits arisen or procured by means of corruption in special circumstances.

(2) Where an order of confiscation made under sub-section (1) is modified or annulled by the High Court or where the public servant is acquitted by the Special Court, the assets, proceeds, receipts and benefits, confiscated under sub-section (1) shall be returned to such public servant, and in case it is not possible for any reason to return the assets, proceeds, receipts and benefits, such public servant shall be paid the price thereof including the money so confiscated with interest at the rate of five per cent per annum thereon calculated from the date of confiscation.

32. (1) Where the Lokpal, while making a preliminary inquiry into allegations of corruption, is *prima facie* satisfied, on the basis of evidence available,—

Power of Lokpal to recommend transfer or suspension of public servant connected with allegation of corruption.

(i) that the continuance of the public servant referred to in Clause (d) or Clause (e) or Clause (f) of sub-section (1) of Section 14 in his post while conducting the preliminary inquiry is likely to affect such preliminary inquiry adversely; or

(ii) such public servant is likely to destroy or in any way tamper with the evidence or influence witnesses,

then, the Lokpal may recommend to the Central Government for transfer or suspension of such public servant from the post held by him till such period as may be specified in the order.

(2) The Central Government shall ordinarily accept the recommendation of the Lokpal made

under sub-section (1), except for the reasons to be recorded in writing in a case where it is not feasible to do so for administrative reasons.

Power of Lokpal to give directions to prevent destruction of records during preliminary inquiry.

33. The Lokpal may, in the discharge of its functions under this Act, issue appropriate directions to a public servant entrusted with the preparation or custody of any document or record—

(a) to protect such document or record from destruction or damage; or

(b) to prevent the public servant from altering or secreting such document or record; or

(c) to prevent the public servant from transferring or alienating any assets allegedly acquired by him through corrupt means.

Power to delegate.

34. The Lokpal may, by general or special order in writing, and subject to such conditions and limitations as may be specified therein, direct that any administrative or financial power conferred on it may also be exercised or discharged by such of its Members or officers or employees as may be specified in the order.

## CHAPTER IX

### SPECIAL COURTS

Special Courts to be constituted by Central Government.

35. (1) The Central Government shall constitute such number of Special Courts, as recommended by the Lokpal, to hear and decide the cases arising out of the Prevention of Corruption Act, 1988 or under this Act.

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(2) The Special Courts constituted under sub-section (1) shall ensure completion of each trial within a period of one year from the date of filing of the case in the Court:

Provided that in case the trial cannot be completed within a period of one year, the Special Court shall record reasons therefor and complete the trial within a further period of not more than three months or such further periods not exceeding three months each, for reasons to be recorded in writing before the end of each such three months period, but not exceeding a total period of two years.

2 of 1974

**36. (1)** Notwithstanding anything contained in this Act or the Code of Criminal Procedure, 1973 if, in the course of a preliminary inquiry or investigation into an offence or other proceeding under this Act, an application is made to a Special Court by an officer of the Lokpal authorised in this behalf that any evidence is required in connection with the preliminary inquiry or investigation into an offence or proceeding under this Act and he is of the opinion that such evidence may be available in any place in a contracting State, and the Special Court, on being satisfied that such evidence is required in connection with the preliminary inquiry or investigation into an offence or proceeding under this Act, may issue a letter of request to a court or an authority in the contracting State competent to deal with such request to—

Letter of request to a contracting State in certain cases.

(i) examine the facts and circumstances of the case;

(ii) take such steps as the Special Court may specify in such letter of request; and

(iii) forward all the evidence so taken or collected to the Special Court issuing such letter of request.

(2) The letter of request shall be transmitted in such manner as the Central Government may prescribe in this behalf.

(3) Every statement recorded or document or thing received under sub-section (1) shall be deemed to be evidence collected during the course of the preliminary inquiry or investigation.

#### CHAPTER X

##### COMPLAINTS AGAINST CHAIRPERSON, MEMBERS AND OFFICIALS OF LOKPAL

**37. (1)** The Lokpal shall not inquire into any complaint made against the Chairperson or any Member.

Removal and suspension of Chairperson and Members of Lokpal.

(2) Subject to the provisions of sub-section (4), the Chairperson or any Member shall be removed from his office by order of the President on grounds of misbehaviour after the Supreme Court, on a reference being made to it by the President on a

petition signed by at least one hundred Members of Parliament has, on an inquiry held in accordance with the procedure prescribed in that behalf, reported that the Chairperson or such Member, as the case may be, ought to be removed on such ground.

(3) The President may suspend from office the Chairperson or any Member in respect of whom a reference has been made to the Supreme Court under sub-section (2), on receipt of the recommendation or interim order made by the Supreme Court in this regard until the President has passed orders on receipt of the final report of the Supreme Court on such reference.

(4) Notwithstanding anything contained in sub-section (2), the President may, by order, remove from the office, the Chairperson or any Member if the Chairperson or such Member, as the case may be,—

(a) is adjudged an insolvent; or

(b) engages, during his term of office, in any paid employment outside the duties of his office; or

(c) is, in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body.

(5) If the Chairperson or any Member is, or becomes, in any way concerned or interested in any contract or agreement made by or on behalf of the Government of India or the Government of a State or participates in any way in the profit thereof or in any benefit or emolument arising therefrom otherwise than as a member and in common with the other members of an incorporated company, he shall, for the purposes of sub-section (2), be deemed to be guilty of misbehaviour.

Complaints  
against  
officials of  
Lokpal.

**38. (1)** Every complaint of allegation or wrongdoing made against any officer or employee or agency (including the Delhi Special Police Establishment), under or associated with the Lokpal

49 of 1988 for an offence punishable under the Prevention of Corruption Act, 1988 shall be dealt with in accordance with the provisions of this section.

(2) The Lokpal shall complete the inquiry into the complaint or allegation made within a period of thirty days from the date of its receipt.

(3) While making an inquiry into the complaint against any officer or employee of the Lokpal or agency engaged or associated with the Lokpal, if it is *prima facie* satisfied on the basis of evidence available, that—

(a) continuance of such officer or employee of the Lokpal or agency engaged or associated in his post while conducting the inquiry is likely to affect such inquiry adversely; or

(b) an officer or employee of the Lokpal or agency engaged or associated is likely to destroy or in any way tamper with the evidence or influence witnesses,

then, the Lokpal may, by order, suspend such officer or employee of the Lokpal or divest such agency engaged or associated with the Lokpal of all powers and responsibilities hereto before exercised by it.

49 of 1988 (4) On the completion of the inquiry, if the Lokpal is satisfied that there is *prima facie* evidence of the commission of an offence under the Prevention of Corruption Act, 1988 or of any wrongdoing, it shall, within a period of fifteen days of the completion of such inquiry, order to prosecute such officer or employee of the Lokpal or such officer, employee, agency engaged or associated with the Lokpal and initiate disciplinary proceedings against the official concerned:

Provided that no such order shall be passed without giving such officer or employee of the Lokpal, such officer, employee, agency engaged or associated, a reasonable opportunity of being heard.

## CHAPTER XI

## ASSESSMENT OF LOSS AND RECOVERY THEREOF BY SPECIAL COURT

Assessment  
of loss and  
recovery  
thereof by  
Special  
Court.

**39.** If any public servant is convicted of an offence under the Prevention of Corruption Act, 1988 by the Special Court, notwithstanding and without prejudice to any law for the time being in force, it may make an assessment of loss, if any, caused to the public exchequer on account of the actions or decisions of such public servant not taken in good faith and for which he stands convicted, and may order recovery of such loss, if possible or quantifiable, from such public servant so convicted:

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Provided that if the Special Court, for reasons to be recorded in writing, comes to the conclusion that the loss caused was pursuant to a conspiracy with the beneficiary or beneficiaries of actions or decisions of the public servant so convicted, then such loss may, if assessed and quantifiable under this section, also be recovered from such beneficiary or beneficiaries proportionately.

## CHAPTER XII

## FINANCE, ACCOUNTS AND AUDIT

Budget.

**40.** The Lokpal shall prepare, in such form and at such time in each financial year as may be prescribed, its budget for the next financial year, showing the estimated receipts and expenditure of the Lokpal and forward the same to the Central Government for information.

Grants by  
Central  
Government.

**41.** The Central Government may, after due appropriation made by Parliament by law in this behalf, make to the Lokpal grants of such sums of money as are required to be paid for the salaries and allowances payable to the Chairperson and Members and the administrative expenses, including the salaries and allowances and pension payable to or in respect of officers and other employees of the Lokpal.

Annual  
statement  
of accounts.

**42. (1)** The Lokpal shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government in

consultation with the Comptroller and Auditor-General of India.

(2) The accounts of the Lokpal shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him.

(3) The Comptroller and Auditor-General of India or any person appointed by him in connection with the audit of the accounts of the Lokpal under this Act shall have the same rights, privileges and authority in connection with such audit, as the Comptroller and Auditor-General of India generally has, in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Lokpal.

(4) The accounts of the Lokpal, as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf, together with the audit report thereon, shall be forwarded annually to the Central Government and the Central Government shall cause the same to be laid before each House of Parliament.

43. The Lokpal shall furnish to the Central Government, at such time and in such form and manner as may be prescribed or as the Central Government may request, such returns and statements and such particulars in regard to any matter under the jurisdiction of the Lokpal, as the Central Government may, from time to time, require.

Furnishing of returns, etc., to Central Government.

### CHAPTER XIII

#### DECLARATION OF ASSETS

44. (1) Every public servant shall make a declaration of his assets and liabilities in the manner as provided by or under this Act.

Declaration of assets.

(2) A public servant shall, within a period of thirty days from the date on which he makes and



subscribes an oath or affirmation to enter upon his office, furnish to the competent authority the information relating to—

(a) the assets of which he, his spouse and his dependent children are, jointly or severally, owners or beneficiaries;

(b) his liabilities and that of his spouse and his dependent children.

(3) A public servant holding his office as such, at the time of the commencement of this Act, shall furnish information relating to such assets and liabilities, as referred to in sub-section (2), to the competent authority within thirty days of the coming into force of this Act.

(4) Every public servant shall file with the competent authority, on or before the 31st July of every year, an annual return of such assets and liabilities, as referred to in sub-section (2), as on the 31st March of that year.

(5) The information under sub-section (2) or sub-section (3) and annual return under sub-section (4) shall be furnished to the competent authority in such form and in such manner as may be prescribed.

(6) The competent authority in respect of each Ministry or Department shall ensure that all such statements are published on the website of such Ministry or Department by 31st August of that year.

*Explanation.*—For the purposes of this section, “dependent children” means sons and daughters who have no separate means of earning and are wholly dependent on the public servant for their livelihood.

Presumption as to acquisition of assets by corrupt means in certain cases.

**45.** If any public servant wilfully or for reasons which are not justifiable, fails to—

(a) as declare his assets; or

(b) gives misleading information in respect of such assets and is found to be in possession

of assets not disclosed or in respect of which misleading information was furnished, then, such assets shall, unless otherwise proved, be presumed to belong to the public servant and shall be presumed to be assets acquired by corrupt means:

Provided that the competent authority may condone or exempt the public servant from furnishing information in respect of assets not exceeding such minimum value as may be prescribed.

#### CHAPTER XIV

##### OFFENCES AND PENALTIES

**46. (1)** Notwithstanding anything contained in this Act, whoever makes any false and frivolous or vexatious complaint under this Act shall, on conviction, be punished with imprisonment for a term which may extend to one year and with fine which may extend to one lakh rupees.

Prosecution for false complaint and payment of compensation, etc., to public servant.

(2) No Court, except a Special Court, shall take cognizance of an offence under sub-section (1).

(3) No Special Court shall take cognizance of an offence under sub-section (1) except on a complaint made by a person against whom the false, frivolous or vexatious complaint was made or by an officer authorised by the Lokpal.

(4) The prosecution in relation to an offence under sub-section (1) shall be conducted by the public prosecutor and all expenses connected with such prosecution shall be borne by the Central Government.

(5) In case of conviction of a person [being an individual or society or association of persons or trust (whether registered or not)], for having made a false complaint under this Act, such person shall be liable to pay compensation to the public servant against whom he made the false complaint in addition to the legal expenses for contesting the case by such public servant, as the Special Court may determine.

(6) Nothing contained in this section shall apply in case of complaints made in good faith.

*Explanation.*—For the purpose of this sub-section, the expression “good faith” means any act believed or done by a person in good faith with due care, caution and sense of responsibility or by mistake of fact believing himself justified by law under Section 79 of the Indian Penal Code.

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False  
complaint  
made by  
society or  
association  
of persons  
or trust.

47. (1) Where any offence under sub-section (1) of Section 46 has been committed by any society or association of persons or trust (whether registered or not), every person who, at the time the offence was committed, was directly incharge of, and was responsible to, the society or association of persons or trust, for the conduct of the business or affairs or activities of the society or association of persons or trust as well as such society or association of persons or trust shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a society or association of persons or trust (whether registered or not) and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of such society or association of persons or trust, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

## CHAPTER XV

## MISCELLANEOUS

- 48.** It shall be the duty of the Lokpal to present annually to the President a report on the work done by the Lokpal and on receipt of such report the President shall cause a copy thereof together with a memorandum explaining, in respect of the cases, if any, where the advice of the Lokpal was not accepted, the reason for such non-acceptance to be laid before each House of Parliament. Reports of Lokpal.
- 49.** The Lokpal shall function as the final appellate authority in respect of appeals arising out of any other law for the time being in force providing for delivery of public services and redressal of public grievances by any public authority in cases where the decision contains findings of corruption under the Prevention of Corruption Act, 1988. Lokpal to function as appellate authority for appeals arising out of any other law for the time being in force.
- 50.** No suit, prosecution or other legal proceedings under this Act shall lie against any public servant, in respect of anything which is done in good faith or intended to be done in the discharge of his official functions or in exercise of his powers. Protection of action taken in good faith by any public servant.
- 51.** No suit, prosecution or other legal proceedings shall lie against the Lokpal or against any officer, employee, agency or any person, in respect of anything which is done in good faith or intended to be done under this Act or the rules or the regulations made thereunder. Protection of action taken in good faith by others.
- 52.** The Chairperson, Members, officers and other employees of the Lokpal shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Act, to be public servants within the meaning of Section 21 of the Indian Penal Code. Members, officers and employees of Lokpal to be public servants.
- 53.** The Lokpal shall not inquire or investigate into any complaint, if the complaint is made after the expiry of a period of seven years from the date on which the offence mentioned in such complaint is alleged to have been committed. Limitation to apply in certain cases.

Bar of  
Jurisdiction.

**54.** No civil court shall have jurisdiction in respect of any matter which the Lokpal is empowered by or under this Act to determine.

Legal  
assistance.

**55.** The Lokpal shall provide to every person against whom a complaint has been made, before it, under this Act, legal assistance to defend his case before the Lokpal, if such assistance is requested for.

Act to have  
overriding  
effect.

**56.** The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument having effect by virtue of any enactment other than this Act.

Provisions  
of this Act  
to be in  
addition of  
other laws.

**57.** The provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being in force.

Amendment  
of certain  
enactments.

**58.** The enactments specified in the Schedule shall be amended in the manner specified therein.

Power to  
make rules.

**59. (1)** The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the form of complaint referred to in Clause (e) of sub-section (1) of Section 2;

(b) the term of the Search Committee, the fee and allowances payable to its members and the manner of selection of panel of names under sub-section (5) of Section 4;

(c) the post or posts in respect of which the appointment shall be made after consultation with the Union Public Service Commission under the proviso to sub-section (3) of Section 10;

(d) other matters for which the Lokpal shall have the powers of a civil court under Clause (vi) of sub-section (1) of Section 27;

(e) the manner of sending the order of attachment along with the material to the Special Court under sub-section (2) of Section 29;

(f) the manner of transmitting the letter of request under sub-section (2) of Section 36;

(g) the form and the time for preparing in each financial year the budget for the next financial year, showing the estimated receipts and expenditure of the Lokpal under Section 40;

(h) the form for maintaining the accounts and other relevant records and the form of annual statement of accounts under sub-section (1) of Section 42;

(i) the form and manner and the time for preparing the returns and statements along with particulars under Section 43;

(j) the form and the time for preparing an annual return giving a summary of its activities during the previous year under sub-section (5) of Section 44;

(k) the form of annual return to be filed by a public servant under sub-section (5) of Section 44;

(l) the minimum value for which the competent authority may condone or exempt a public servant from furnishing information in respect of assets under the proviso to Section 45;

(m) any other matter which is to be or may be prescribed.

**60. (1)** Subject to the provisions of this Act and the rules made thereunder, the Lokpal may, by notification in the Official Gazette, make regulations to carry out the provisions of this Act.

Power of Lokpal to make regulations.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—

(a) the conditions of service of the secretary and other officers and staff of the Lokpal and

the matters which in so far as they relate to salaries, allowances, leave or pensions, require the approval of the President under sub-section (4) of Section 10;

(b) the place of sittings of benches of the Lokpal under Clause (f) of sub-section (1) of Section 16;

(c) the manner for displaying on the website of the Lokpal, the status of all complaints pending or disposed of along with records and evidence with reference thereto under sub-section (10) of Section 20;

(d) the manner and procedure of conducting preliminary inquiry or investigation under sub-section (11) of Section 20;

(e) any other matter which is required to be, or may be, specified under this Act.

Laying of  
rules and  
regulations.

**61.** Every rule and regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation, or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

Power to  
remove  
difficulties.

**62. (1)** If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act, as appear to be necessary for removing the difficulty:

Provided that no such order shall be made under this section after the expiry of a period of two years from the commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

### PART III

#### ESTABLISHMENT OF THE LOKAYUKTA

**63.** Every State shall establish a body to be known as the Lokayukta for the State, if not so established, constituted or appointed, by a law made by the State Legislature, to deal with complaints relating to corruption against certain public functionaries, within a period of one year from the date of commencement of this Act.

Establishment  
of  
Lokayukta.



## THE SCHEDULE

[See Section 58]

## AMENDMENT TO CERTAIN ENACTMENTS

## PART I

## AMENDMENT TO THE COMMISSIONS OF INQUIRY ACT, 1952

(60 OF 1952)

Amendment  
of Section  
3.

In Section 3, in sub-section (1), for the words “The appropriate Government may”, the words and figures “Save as otherwise provided in the Lokpal and Lokayuktas Act, 2013, the appropriate Government may” shall be substituted.

## PART II

AMENDMENTS TO THE DELHI SPECIAL POLICE ESTABLISHMENT  
ACT, 1946

(25 OF 1946)

Amendment  
of Section  
4A.

1. In Section 4A,—

(i) for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) The Central Government shall appoint the Director on the recommendation of the Committee consisting of—

(a) the Prime Minister — Chairperson;

(b) the Leader of Opposition in the House of the People — Member;

(c) the Chief Justice of India or Judge of the Supreme Court nominated by him — Member.”;

(ii) sub-section (2) shall be omitted.

Insertion of  
new Section  
4BA.

2. After Section 4B, the following section shall be inserted, namely:—

“4BA. (1) There shall be a Directorate of Prosecution headed by a Director who shall be an officer not below the rank of Joint Secretary to the Government of India, for conducting prosecution of cases under this Act.

Director of Prosecution.

(2) The Director of Prosecution shall function under the overall supervision and control of the Director.

(3) The Central Government shall appoint the Director of Prosecution on the recommendation of the Central Vigilance Commission.

(4) The Director of Prosecution shall notwithstanding anything to the contrary contained in the rules relating to his conditions of service, continue to hold office for a period of not less than two years from the date on which he assumes office.”.

3. In Section 4C, for sub-section (1), the following sub-section shall be substituted, namely:—

Amendment of Section 4C.

“(1) The Central Government shall appoint officers to the posts of the level of Superintendent of Police and above except Director, and also recommend the extension or curtailment of the tenure of such officers in the Delhi Special Police Establishment, on the recommendation of a committee consisting of:—

(a) the Central Vigilance Commissioner—Chairperson;

(b) Vigilance Commissioners—Members;

(c) Secretary to the Government of India incharge of the Ministry of Home—Member;

(d) Secretary to the Government of India incharge of the Department of Personnel—Member:

Provided that the Committee shall consult the Director before submitting its recommendation to the Central Government.”.

## PART III

## AMENDMENTS TO THE PREVENTION OF CORRUPTION ACT, 1988

(49 OF 1988)

Amendment  
of Sections  
7, 8, 9 and  
12.

1. In Sections 7, 8, 9 and Section 12,—

(a) for the words “six months”, the words  
“three years” shall respectively be substituted;(b) for the words “five years”, the words  
“seven years” shall respectively be substituted.Amendment  
of Section  
13.

2. In Section 13, in sub-section (2),—

(a) for the words “one year”, the words  
“four years” shall be substituted;(b) for the words “seven years”, the words  
“ten years” shall be substituted.Amendment  
of Section  
14.

3. In Section 14,—

(a) for the words “two years”, the words  
“five years” shall be substituted;(b) for the words “seven years”, the words  
“ten years” shall be substituted.Amendment  
of Section  
15.4. In Section 15, for the words “which may  
extend to three years”, the words “which shall not  
be less than two years but which may extend to  
five years” shall be substituted.Amendment  
of Section  
19.5. In Section 19, after the words “except with  
the previous sanction”, the words “save as otherwise  
provided in the Lokpal and Lokayuktas Act, 2013”  
shall be inserted.

## PART IV

## AMENDMENT TO THE CODE OF CRIMINAL PROCEDURE, 1973

(2 OF 1974)

Amendment  
of Section  
197.In Section 197, after the words “except with  
the previous sanction”, the words “save as otherwise  
provided in the Lokpal and Lokayuktas Act, 2013”  
shall be inserted.

## PART V

AMENDMENTS TO THE CENTRAL VIGILANCE COMMISSION  
ACT, 2003

(45 OF 2003)

1. In Section 2, after Clause (d), the following clause shall be inserted, namely:—

Amendment  
of Section  
2.

‘(da) “Lokpal” means the Lokpal established under sub-section (1) of section 3 of the Lokpal and Lokayuktas Act, 2013;’.

2. In Section 8, in sub-section (2), after Clause (b), the following clause shall be inserted, namely:—

Amendment  
of Section  
8.

“(c) on a reference made by the Lokpal under proviso to sub-section (1) of Section 20 of the Lokpal and Lokayuktas Act, 2013, the persons referred to in Clause (d) of sub-section (1) shall also include—

(i) members of Group B, Group C and Group D services of the Central Government;

(ii) such level of officials or staff of the corporations established by or under any Central Act, Government companies, societies and other local authorities, owned or controlled by the Central Government, as that Government may, by notification in the Official Gazette, specify in this behalf:

Provided that till such time a notification is issued under this clause, all officials or staff of the said corporations, companies, societies and local authorities shall be deemed to be the persons referred in Clause (d) of sub-section (1).”.

3. After Section 8, the following sections shall be inserted, namely:—

Insertion of  
new Section  
8A and 8B.

“8A. (1) Where, after the conclusion of the preliminary inquiry relating to corruption of public servants belonging to Group C and Group D officials of the Central Government, the

Action on  
preliminary  
inquiry in  
relation to  
public  
servants.

findings of the Commission disclose, after giving an opportunity of being heard to the public servant, a *prima facie* violation of conduct rules relating to corruption under the Prevention of Corruption Act, 1988 by such public servant, the Commission shall proceed with one or more of the following actions, namely:—

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(a) cause an investigation by any agency or the Delhi Special Police Establishment, as the case may be;

(b) initiation of the disciplinary proceedings or any other appropriate action against the concerned public servant by the competent authority;

(c) closure of the proceedings against the public servant and to proceed against the complainant under Section 46 of the Lokpal and Lokayuktas Act, 2013.

(2) Every preliminary inquiry referred to in sub-section (1) shall ordinarily be completed within a period of ninety days and for reasons to be recorded in writing, within a further period of ninety days from the date of receipt of the complaint.

Action on investigation in relation to public servants.

8B. (1) In case the Commission decides to proceed to investigate into the complaint under clause (a) of sub-section (1) of Section 8A, it shall direct any agency (including the Delhi Special Police Establishment) to carry out the investigation as expeditiously as possible and complete the investigation within a period of six months from the date of its order and submit the investigation report containing its findings to the Commission:

Provided that the Commission may extend the said period by a further period of six months for the reasons to be recorded in writing.

(2) Notwithstanding anything contained in Section 173 of the Code of Criminal Procedure, 1973, any agency (including the Delhi Special Police Establishment) shall, in respect of cases referred to it by the Commission, submit the investigation report to the Commission.

2 of 1974

(3) The Commission shall consider every report received by it under sub-section (2) from any agency (including the Delhi Special Police Establishment) and may decide as to—

(a) file chargesheet or closure report before the Special Court against the public servant;

(b) initiate the departmental proceedings or any other appropriate action against the concerned public servant by the competent authority.”.

4. After Section 11, the following section shall be inserted, namely:—

Insertion of new Section 11A.

“11A. (1) There shall be a Director of Inquiry, not below the rank of Joint Secretary to the Government of India, who shall be appointed by the Central Government for conducting preliminary inquiries referred to the Commission by the Lokpal.

Director of Inquiry for making preliminary inquiry.

(2) The Central Government shall provide the Director of Inquiry such officers and employees as may be required for the discharge of his functions under this Act.”.

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**P.K. MALHOTRA,**  
***Secy. to the Govt. of India.***



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