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PARLIAMENT OF INDIA
RAJYA SABHA

DEPARTMENT-RELATED PARLIAMENTARY
STANDING COMMITTEE ON HOME AFFAIRS

EIGHTY-FOURTH REPORT

ON

LOKPAL BILL, 2001

(PRESENTED TO HON'BLE CHAIRMAN, RAJYA SABHA ON 31 DECEMBER, 2001)
(FORWARDED TO HON'BLE SPEAKER, LOK SABHA ON 31 DECEMBER, 2001)

(LAID ON THE TABLE OF RAJYA SABHA ON 2002)
(LAID ON THE TABLE OF LOK SABHA ON 2002)



RAJYA SABHA SECRETARIAT
NEW DELHI
DECEMBER, 2001/ PAUSA, 1923 (SAKA)

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*To be appended at the printing stage

COMPOSITION OF THE COMMITTEE (2001)

1. Shri Pranab Mukherjee - *Chairman*

RAJYA SABHA

2. Shri Hansraj Bhardwaj
3. Shri Hiphei
4. Shri Surendra Kumar Singh
5. Shri Sangh Priya Gautam
6. Dr. L.M. Singhvi
7. Shri S. Ramachandran Pillai
8. Shri K.M. Saifullah
9. Shri C.M. Ibrahim
10. φShri Raj Mohinder Singh
11. Shri C.P. Thirunavukkarasu
12. Shri Drupad Borgohain
13. Shri Kuldip Nayyar
14. *Dr. (Smt.) Joyasree Goswami Mahanta
15. Shri Jayanta Bhattacharya
16. ©Shri Pritish Nandy
17. ®Shri B.S. Gnanadesikan

LOK SABHA

18. Shrimati Jayashree Banerjee
19. Shri S.K. Bwiswmuthiary
20. ▲Shrimati Nisha Chaudhary
21. **Shri Samar Chaudhary
22. Shri M.O.H. Farook
23. #Shri Vijay Goel
24. Shri Rajen Gohain
25. Shri Suresh Ramrao Jadhav
26. Shri Vinay Katiyar
27. Shri Arun Kumar
28. Shri Ram Nagina Mishra
29. Shri P.H. Pandian
30. Shri Dayabhai Vallabhai Patel
31. Shri Shrinivas Patil
32. ***Shri Jitendra Prasada
33. Shri Subodh Ray
34. Shri N. Janardhana Reddy
35. Dr. Jayanta Rongpi

φ Ceased to be Member w.e.f. 1 March, 2001.

* Ceased to be Member w.e.f. 14 June 2001 on expiry of term as Member of Rajya Sabha.

© Nominated w.e.f. 3 August 2001.

® Nominated w.e.f. 20 August 2001.

▲ Expired on 30 January, 2001.

** Expired on 10 September 2001.

Ceased to be Member w.e.f. 1 September 2001 on being appointed Minister.

*** Expired on 16 January, 2001.

37. Shri Iqbal Ahmed Saradgi
38. Shri Manabendra Shah
39. Shri Raghuraj Singh Shakya
40. §Shri Vishnu Datta Sharma
41. Dr. Raghuvansh Prasad Singh
42. Shri Lal Bihari Tiwari
43. Shri Prakash Mani Tripathi
44. ¶Dr. S. Venugopal
45. Shri Beni Prasad Verma
46. Shri Raj Kumar Wangcha
47. ♦Shri Harin Pathak
48. ♥Shri E. Ponnuswamy
49. ## Shri Jaisingrao Gaikwad Patil

SECRETARIAT

Shri Satish Kumar, Additional Secretary
Shri Tapan Chatterjee, Director
Shri A.K. Singh, Under Secretary
Shri Narendra Kumar, Research Officer
Shri Ashok Kumar Sahoo, Committee Officer

§ Ceased to be Member w.e.f. 19 March, 2001 on being nominated to Committee on Human Resource Development.

♦ Ceased to be Member w.e.f. 15 October, 2001 on being appointed as Minister.

♥ Nominated w.e.f. 8 March, 2001.

¶ Expired on 27 November 2001.

Nominated w.e.f. 21 November 2001.

INTRODUCTION

I, the Chairman of the Department-related Parliamentary Standing Committee on Home Affairs having been authorised by the Committee to submit the Report on its behalf, do hereby present this Eighty-fourth Report of the Committee on the Lokpal Bill, 2001*.

2. In pursuance of the Rules relating to the Department-related Parliamentary Standing Committees, the Chairman, Rajya Sabha in consultation with the Speaker, Lok Sabha referred ** the Lokpal Bill, 2001, as introduced in the Lok Sabha on 14 August, 2001 and pending therein, to the Committee for examination and report.

3.0 The Committee considered the Bill in six sittings held on 15 and 19 October, 1 November and 4, 11 and 19 December 2001.

3.1 The Committee took oral evidence of the Secretary, Ministry of Personnel, Public Grievances and Pensions in its sitting held on 15 October 2001.

3.2 In its sittings held on 19 October, 1 November and 4 and 11 December 2001, the Committee had internal deliberations on the various provisions of the Bill.

3.3 In its sitting held on 11 December 2001, the Committee took up clause-by-clause consideration of the Bill.

3.4 The Committee considered the draft Report in its sitting held on 19 December 2001 and adopted the same. It also decided that the evidence tendered before the Committee may be laid on the Table of both the Houses of Parliament.

4.0 In the course of its deliberations, the Committee has made use of the Background note on the Bill received from the Ministry of Personnel, Public Grievances and Pensions, Note on the Lokpal Bill, 2001 received from Shri Hansraj Bhardwaj, M.P., Erskine May's Parliamentary Practice Twenty-second Edition, Butter worth, London, 1997, First Report of the Committee on Standards in Public Life (Nolan Committee) 1995, Seventh Report of the Committee on Standards in Public Life (Neil Committee) 2000. The Committee took note of the recommendations of the Committee contained in its Fortieth Report (1997) on Lokpal Bill, 1996 and Fiftieth Report (1999) on Lokpal Bill, 1998, replies to queries raised by the Members on the Bill in the meetings, submitted by Ministry of Personnel, Public Grievances and Pensions, Interim Report of Administrative Reforms Commission on Problems of Redress of Citizens' Grievances, (October, 1966), Background Note on Lokpal (Ombudsman) for India, Lok Sabha Secretariat (August 2001). The Prevention of Corruption Act, 1988, The Commissions of Inquiry Act, 1952, First (1998) and Second (1999) Reports of Ethics Committee (Rajya Sabha), Report on Ethics, Standards in Public Life, Privileges, Facilities to Members and other Related Matters of Committee on Privileges (Lok Sabha) (November, 1997) and Supreme Court Judgements in the case of K. Veeraswamy versus Union of India and others (1991)3 Supreme Court cases 655 and P.V. Narsimha Rao versus State JT 1998(3)S.C 318.

5. For facility of reference and convenience, observations and recommendations of the Committee have been printed in bold letters in the body of the Report.

NEW DELHI

December 19, 2001.

PRANAB MUKHERJEE

*Chairman
Committee on Home Affairs*

* Bill Published in the Gazette of India Extraordinary Part II, Section-2, dated 14 August, 2001.

** Rajya Sabha Parliamentary Bulletin Part II, No.39150 dated 7 September 2001.

REPORT

The Lokpal Bill, 2001 (Annexure-I) proposes to put in place a special statutory institution called Lokpal to inquire into allegations made in complaints against certain categories of public servants (i.e. Prime Minister, present and past Ministers, Ministers of State and Deputy Ministers of the Union and present and past Members of Parliament) defined as public functionaries.

2.0 The term "*Lokpal*" is the Indian version of "*Ombudsman*". *Ombudsman* is a Swedish term meaning "one who represents someone else". In other words, the term means a 'grievance man'. *Ombudsman* is an official who is appointed to investigate complaints against the administration. More specifically, he is an officer who investigates complaints of citizens of unfair treatment meted out to them by Government Departments and suggests remedy thereof, if he finds that a complaint is justified.

2.1 The concept has Scandinavian origin. Sweden is the first country to have institution of *ombudsman*, established by legislature¹ in 1809. Other Scandinavian countries followed the model of Sweden almost after a century. Amongst other countries², New Zealand was the first country outside Scandinavia to institute an *ombudsman* in 1962.

2.2 Office of *ombudsman* was established under the provisions of constitutional law in Austria, Burkina Faso, Denmark, Finland, the Netherlands, Poland, Portugal, Spain and Sweden. While in the countries³ belonging to Anglo-Saxon legal traditions, the office is generally regulated under ordinary statute law.

3.0 The genesis of Indian *Ombudsman* goes back to 3 April 1963, when Dr. L.M. Singhvi (currently Member of Rajya Sabha and a member of the Committee) participating in the discussion on Demands for Grants of the Ministry of Law and Justice stressed⁴ the need for setting up of some sort of a Parliamentary Commission on the pattern of *Ombudsman* in Scandinavian countries.

3.1 Dr. Gajendragadkar, the then Chief Justice of India in his convocation address at Indian Institute of Public Administration (IIPA) in July 1963 had highlighted⁵ the need for *Ombudsman* for ventilation of citizen's grievances.

3.2 The terms "*Lokpal*" and "*Lokayukta*" were coined by Dr. L.M. Singhvi as the Indian model of *Ombudsman* for redressal of public grievances.

¹ The oldest institution devised for the purpose was by King Charles XII of Sweden through his Order of Chancery in 1713 and was known as the "Chancellor of Justice" to act as invigilator to look into the functioning of the War Time Government

² Finland in 1919, Denmark in 1953, Norway in 1962, Britain in 1967, Israel, Zambia, Portugal, Spain, South Africa in 1970s, Iceland, Ireland, Netherlands and Poland in 1980s, Slovenia in 1993, Burkino Faso in 1994 and Belgium in 1995

³ Great Britain, Iceland, Ireland, Israel, New Zealand, Norway, Slovenia, South Africa and Zambia

⁴ "I should like to mention another matter which is of very great importance to our country in particular. It is the matter of having a sort of a Parliamentary Commission on the pattern of *Ombudsman* in Scandinavian countries. This is an institution which may be the real solution for the various problems which arise in respect of the injustice being done in particular cases. This institution would be securing to the common citizen a forum wherein his grievances can be effectively ventilated. This would be securing for the Parliament an institution through which it can effectively function in individual cases."

⁵ "As in the case of the administrative law, so in the case of public administration in general, the confidence of the public is the main asset and it may well be that if an *Ombudsman* or an authority corresponding to him is appointed in this country, citizens would feel that their grievances against corrupt officials can be speedily ventilated before such an authority. As the experience of the Scandinavian countries shows, once the *Ombudsman* begins to function, his existence turn out to be more a source of strength to the public servants than a source of weakness."

3.3.0 The proposed legislation on Lokpal has a chequered history, beginning from the year 1966, when the Administrative Reforms Commission (ARC) was set up⁶ by the then President of India.

3.3.1 One of the ten listed terms of reference of the ARC was “problem of redress of citizens’ grievances”. The Commission which was chaired by late Shri Morarji Desai, presented its interim⁷ report on Problems of Redress of Citizen’s Grievances on 20 October, 1966. A draft Bill titled as “Lokpal Bill, 1966” containing ten clauses on the basis of its recommendations was appended to the said report.

3.3.2 The Commission had recommended a two-tier mechanism designated as Lokpal at centre and one Lokayukta each at State level for redressal of citizens’ grievances. As per the system recommended by the ARC, the Lokpal should look into complaints against administrative acts of Ministers and Secretaries to Government at the Centre as well as the States and the Lokayukta, one in each State and one at the Centre to look into complaints against the administrative acts of other officials.⁸

3.4.0 As a follow up action to the aforesaid recommendations of ARC, the Union Government has made seven attempts to introduce the legislation on Lokpal. All the proposed legislations that are precursors to the Lokpal Bill, 2001, were introduced in the Lok Sabha in the years 1968, 1971, 1977, 1985, 1996 and 1998. (See **Annexure-II** for chronological events of various Bills). Except the Bill introduced in the year 1985 (i.e. Lokpal Bill, 1985), which was withdrawn upon its introduction, all other Bills lapsed on the dissolution of concerned Lok Sabhas.

3.4.1 Out of seven Bills, five Bills were referred to the Committees of Parliament - three to Joint Select Committee⁹ and two to the predecessor Committees on Home Affairs¹⁰.

4.0 Though the attempts at federal level to institute Lokpal were unsuccessful for one reason or other, some State Governments have set up Lokayuktas/Upa-Lokayuktas for redressal of public grievances against administrative acts of that Government in pursuance of the recommendations of ARC. The States like Orissa, Maharashtra, Rajasthan and Bihar were the leading States¹¹ in setting up the institution of Lokayuktas. As per the information made

⁶ Government of India Notification No.40/3/65-AR (P), 5 January, 1966.

⁷ Final report thereon was not presented as Shri Morarji Desai, resigned from Chairmanship of the Commission on joining the Union Cabinet as Deputy Prime Minister on 13 March, 1967.

⁸ Interim Report of ARC on Problems of Redress of Citizen’s Grievances (1999) p.18, (para 28).

⁹ (a) Chaired by Shri M.B. Rana, MP (LS) on the Lokpal and Lokayuktas Bill, 1968, presented its Report on 26 March, 1969

(b) Chaired by Shri Shyamadani Mishra, MP (LS) on the Lokpal Bill, 1997, presented its Report on 20 July, 1978

(c) Chaired by Shri Somnath Rath MP (LS) on the Lokpal Bill, 1985, presented its Report on 6 December, 1988.

¹⁰ (a) Chaired by Shri Sompal MP (RS) presented its Fortieth Report on the Lokpal Bill, 1996 on 9 May, 1997.

(b) Chaired by Shri Pranab Mukherjee, MP (RS) presented its Fiftieth report on Lokpal Bill, 1998 on 25 February, 1999

¹¹ Orissa became the first State to enact the Lokayukta Act i.e. Lokpal and Lokayukta Act, 1971, which came into force in October, 1983 and abolished in August, 1992. Maharashtra was the first State to appoint a Lokayukta by enacting the Maharashtra Lokayukta and Upa-Lokayukta Act, 1971 in September, 1971.

available to the Committee by the Ministry of Personnel, Public Grievances and Pensions, at present the institution of Lokayukta/Upa-Lokayuktas are functioning in fifteen States¹². The issue relating to establishment of the institution of Lokayuktas in the remaining States has been raised in the Writ petition No.26 of 1995 filed by Shri H.D. Shourie, Director, Commoncause vs Union of India filed before Supreme Court and pending with it and is thus sub judice.

4.1.0 It may be highlighted that Lokayukta legislation is not uniform in India. The jurisdiction of Lokayuktas over the Members of State Legislatures and Chief Ministers is not also uniform and can be observed from the accompanying Table

TABLE - I

| Sl.No. | Name of the State | Whether elected representatives covered or not | Whether Chief Minister covered or not. |
|--------|--|--|--|
| 1. | Assam | Yes | No |
| 2. | Andhra Pradesh | Yes | No |
| 3. | Bihar | No | No |
| 4. | Gujarat | No | Yes |
| 5. | Haryana | Yes | Yes |
| 6. | Himachal Pradesh | Yes | Yes |
| 7. | Karnataka | Yes | Yes |
| 8. | Kerala | Yes | Yes |
| 9. | Madhya Pradesh | No | Yes |
| 10. | Maharashtra | No | No |
| 11. | Orissa | No | Yes |
| 12. | Punjab (with nomenclature as "Lokpal") | Yes | Yes |
| 13. | Rajasthan | No | No |
| 14. | Uttar Pradesh | Yes | No |
| 15. | National Capital Territory of Delhi | Yes | Yes |

(Source: Ministry of Personnel, Public Grievances and Pensions)

5.0 The Lokpal Bill, 2001 has thirty clauses divided into four chapters and a Schedule. Following are the salient features of the Lokpal Bill, 2001:-

- (i) Setting up the office of Lokpal for a fixed tenure. The Lokpal is a plural body consisting of-
 - (a) a Chairperson who is or has been a Chief Justice or a Judge of the Supreme Court; and
 - (b) two Members who are or have been the Judges of the Supreme Court, or the Chief Justices of the High Courts.
- (ii) With a view to ensuring that the Lokpal is able to act independently and discharge its functions without fear or favour, the Bill provides that the Chairperson or a Member of Lokpal shall not be removed from his office, except by an order made by the President on the ground of proved misbehaviour or incapacity, after an inquiry made by a Committee consisting of the Chief Justice

¹² Assam, Andhra Pradesh, Bihar, Gujarat, Haryana, Himachal Pradesh, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Orissa, Punjab (with nomenclature as Lokpal), Rajasthan, Uttar Pradesh, National Capital Territory of Delhi.

of India, two other Judges of the Supreme Court next to the Chief Justice in seniority in which the Chairman or Member, as the case may be, had been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

- (iii) To enable the Lokpal to function effectively and in a quasi-judicial manner, the powers of the civil court in respect of summoning and enforcing the attendance of any person and examining him on oath, requiring the discovery and production of any document and receiving evidence, etc. have been conferred on the Lokpal.
- (iv) The Chairperson and other Members shall be appointed by the President by warrant under his hand and seal on the recommendations of a Screening Committee consisting of the Vice-President of India, as Chairman, prime Minister, Speaker of the House of the People, the Minister in charge of the Ministry of Home Affairs in the Government of India, Leader of the House other than the House in which the Prime Minister is a Member of Parliament, the Leader of Opposition in the House of the People and Leader of Opposition in Council of States, as members.
- (v) The Members of Parliament, Prime Minister and Ministers have been brought within the purview of the Bill but other constitutional functionaries such as Judges of the Supreme Court, the Chief Election Commissioner, Election Commissioners; etc. have been kept out of the purview of the Bill.
- (vi) The Lokpal will inquire into complaints alleging that a public functionary as defined in the Bill has committed an offence punishable under the Prevention of Corruption Act, 1988 and the expression "public functionary" covers the Prime Minister, the Ministers, the Ministers of State, the Deputy Ministers and the Members of Parliament.
- (vii) The Bill also seeks to make special provisions for discouraging frivolous, and false complaints.

5.1.0 The Lokpal Bill, 2001 is modelled on the basis of recommendations/observations of the Committee as contained in its Fiftieth Report on Lokpal Bill, 1998.

5.1.1 The earlier Committee had suggested re-examination of seven clauses out of thirty two clauses of the Lokpal Bill, 1998. The basic issues raised in that Report hovered around the following points:-

- (i) Rationality of bringing Members of Parliament within the purview of the Lokpal, in view of the Supreme Court judgement in the case of Shri P.V. Narsimha Rao Vs. State, wherein the court has held MPs and MLAs as public servants who could be prosecuted under the Prevention of Corruption (PC) Act, 1988;
- (ii) Views and recommendations of the Committee of Privileges of Lok Sabha regarding procedure to be followed by Lokpal in investigating cases of corruption against Members of Parliament under the PC Act; and
- (iii) Views of Ethics Committee of the Rajya Sabha wherein it had not favoured the idea of subjecting the Members to the disciplinary authority of an agency outside the jurisdiction of the House.

5.1.2 The Secretary (Personnel) in his deposition before the Committee on 15 October 2001 had stated that the Government while finalising Lokpal Bill, 2001 on the lines of Lokpal Bill, 1998, constituted a Group of Ministers (GOM) to consider certain issues i.e. implications of the inclusion of Prime Minister within the purview of Lokpal and the question of bringing Members of Parliament within the ambit of the Lokpal. The Government also took into consideration the three basic issues mentioned in para 5.1.1 and decided that clause 18 of Lokpal Bill, 1998

relating to declaration of assets and liabilities by the Members of Parliament should not be included in the 2001 Bill and other consequential amendments have also been reflected in Lokpal Bill, 2001.

5.1.3 The Committee of Privileges (Eleventh Lok Sabha) (under the Chairmanship of Dr. Mallikarjun) in its Report on "Ethics, Standards in Public Life, Privileges, Facilities to Members and Other Related Matters" (1997) was of the opinion that Lokpal may be empowered to deal with only those complaints falling under the provisions of Prevention of Corruption Act, 1988. After investigation on those complaints, Lokpal may forward its Report to the Speaker, Lok Sabha, who may refer the same to the Committees on Ethics and Privileges for suggesting action. The Committee in turn may report back to the Speaker with its suggestion and actions in such matters. The said report had not been adopted by the Lok Sabha.

5.1.4 The First Report of Ethics Committee of Rajya Sabha, was presented to that House on 8 December 1988. The Report had been adopted by the Rajya Sabha 15 December 1999. The Committee did not favour the idea of subjecting the Members to any disciplinary authority of an agency outside the jurisdiction of the House. Moreover, the Committee was in favour of making the Ethics Committee a permanent institution of the Rajya Sabha.

5.1.5 In regard to the issue of the rationality of bringing MPs within the purview of Lokpal, the Secretary informed the Committee that the matter was deliberated upon by the Group of Ministers, which recommended exclusion of the MPs from the purview of Lokpal to the Government. But the Cabinet decided to retain the MPs along with the Prime Minister within the ambit of Lokpal. However, the Cabinet in conformity with the recommendation of the Group of Ministers had agreed to delete Clause 18 of Lokpal Bill, 1998 which has the provision about the declaration of assets by the Members of Parliament.

6.0 The Lokpal Bill, 2001 is the eighth attempt in a series by the Government¹³ to establish the institution of Lokpal at the federal level during the last four decades. Upon a perusal of all eight Government Bills, it appears to the Committee that there is perceptible shift in the central focus of the legislation from the issue of redressal of public grievances to corruption at high places. This radical departure can be observed from the Lokpal Bill, 1977 and Bills introduced thereafter which have no provision for redressal of citizens' grievances and thereby stripped off Lokpal its intrinsic concept. In the first two Bills (Lokpal and Lokayuktas Bill, 1968 and Lokpal and Lokayuktas Bill, 1971) clause 2 contained definition of the terms 'grievance' and 'maladministrations' which were conspicuously missing in the proposed legislations introduced from 1977 onwards. Rest of the Bills in their clause 2 had *inter-alia* the definition of the terms 'complaint' or 'corruption' instead of 'grievance' or 'maladministration'.

6.1 The Committee posed the query to know the reason for such shift in the subsequent proposed legislations, from the Ministry. The Ministry in its reply has recounted the functions of three existing grievances mechanisms i.e. (i) Internal Grievance Redressal Machinery within each Ministry/Department (ii) External Grievance Redressal Machinery in the Department of Administrative Reform and Public Grievances; and (iii) Directorate of Public Grievances, Cabinet Secretariat, without answering the query of the Committee.

6.2.0 With the shift in focus from redressal of public grievances against injustice caused by maladministration, Members of Parliament, Members of Legislative Assemblies of Union Territories, in addition to Ministers of the Union, were brought within the ambit of Lokpal whilst Government Servants were excluded from its purview, as clearly envisaged in the 1977 Bill.

6.2.1 It may be highlighted that the first two Bills (1968, 1971) had the provisions for keeping Ministers of the Union and Government Servants under the purview of Lokpal and the term "public servant" was used to denote them. But the 1977 Bill used the term 'public man' *inter alia* to denote Ministers, MPs and Chief Ministers. In subsequent Bills, the term 'public functionary' was used to denote Ministers, MPs and even the Prime Minister. Whether the

¹³ Six times Private Member Bills were also introduced in Lok Sabha in 1967, 1977, 1982, 1983, 1984 and 1998, first attempt being by Shri Pratap Keshari Deo followed by Shri Ram Jethmalani.

purview of Lokpal extends to the Prime Minister and the Members of Parliament has been given in the accompanying table Bill-wise:-

TABLE – II

Inclusion/Exclusion of the Prime Minister and Members of Parliament within the ambit of Lokpal (Bill-wise)

| Sl.No. | Title of the Bill | Whether Prime Minister covered or not | Whether MP's covered or not |
|--------|--------------------------------------|---------------------------------------|-----------------------------|
| 1 | The Lokpal and Lokayuktas Bill, 1968 | No | No |
| 2. | The Lokpal and Lokayuktas Bill, 1971 | No | No |
| 3 | The Lokpal Bill, 1977 | No | Yes |
| 4. | The Lokpal Bill, 1985 | No | No |
| 5. | The Lokpal Bill, 1989 | Yes | No |
| 6. | The Lokpal Bill, 1996 | Yes | Yes |
| 7. | The Lokpal Bill, 1998 | Yes | Yes |
| 8. | The Lokpal Bill, 2001 | Yes | Yes |

(Source: Ministry of Personnel, Public Grievances and pensions)

6.3.0 The Committee wishes to point out that the Members of Parliament have been declared as public servants in the case P.V. Narasimha Rao versus State, JT 1998(3) S.C.318, by the Supreme Court although the definition laid down in Section 21 of the Indian Penal Code or in Section 2(c) of the Prevention of Corruption (PC) Act, 1988 implicitly mention about them. The Committee wanted to know the rationale for using the term “public functionary” for the Members of Parliament, who have been declared as public servant by the Supreme Court and can be tried under the P.C. Act, 1988, like other Government Servants, by the ordinary Court of Law. So, in the Committee’s view, the Members of Parliament, as a consequence, would be subjected to one more enquiring agency i.e. Lokpal, in addition to the Central Bureau of Investigation/Police, Ethics/Privileges Committee of respective Houses, whereas public servant committing offences under P.C. Act, 1988 would be subjected to only one investigating agency i.e. Police/CBI. From that angle, the Committee wanted to know whether subjecting Members of Parliament to multiplicity of authorities would not violate the principle of equality before law (Article 14) or whether it would not run contrary to the spirit of Article 20 of the Constitution.

6.3.1 The Ministry in its written submission has stated that the term “public functionary” is used in the Bill to distinguish certain category of public servants from the rest of the public servants. The term “public functionary” is used for limited purpose of conducting enquiries by Lokpal. Further, Lokpal is not a prosecuting agency rather it is a fact-finding body. The appropriate action is to be taken as per the normal law of the land after Lokpal submits its inquiry report to the competent authority as prescribed in the Bill. Therefore, the inquiry by Lokpal into the allegations against Members of Parliament is not violative of the principle of equality.

6.3.2 Though the Committee understands that Members of Parliament are public servants *visu generis*, yet on the issue of keeping the Members of Parliament within the ambit of the Lokpal, divergent views were expressed. One strand of view was that the Members of Parliament should

not be brought within the ambit of Lokpal as

- (i) it would subject them to the authority of an agency, other than the House, which enjoyed broad autonomy under the scheme of Constitution and may amount to encroachment upon the authority, autonomy, privileges and dignity of Parliament;
- (ii) it would make them subject to multiplicity of authorities – Ethics/Privileges Committees of the House, Police/CBI, Court of Law, Lokpal;
- (iii) they may be made to appear before Second Class Magistrate as the Supreme Court has power to transfer cases from the Lokpal to the Court of Sessions in accordance with clause 22 of the Bill, which may impinge upon the dignity and privileges of Members and thereby of the House; and
- (iv) the proposed legislation does not provide safeguards nor any safeguard exists to protect the Members of Parliament from simultaneous investigation by Police/CBI and inquiry by Lokpal for the same offence.

This strand of opinion was supported by the suggestion that instead of keeping Members of Parliament within the ambit of Lokpal, they should be under the Privileges/ Ethics Committees of their respective Houses as precedents galore where the functioning of those Committees were better than any Commissions of Inquiry.

6.3.3 The other strand of opinion was that the Members of Parliament were accountable to the public and should be brought within the ambit of the Lokpal. They felt the need for Lokpal due to the following reasons :

- (i) general perception about prevalence of corruption amongst Members of Parliament especially after Jharkhand Mukti Morcha bribery case is undisputedly low and are held so in public esteem..
- (ii) by instituting the institution of Lokpal, the supremacy of Parliament would not be eroded as it is the creation of Parliament and would help the latter, being an expert body.

6.4.0 The office of Prime Minister was brought within the ambit of Lokpal by the Government headed by Shri V.P. Singh through the Lokpal Bill, 1989. In the subsequent legislations, the Prime Minister have been proposed to be placed under the purview of Lokpal.

6.4.1 The Committee underscores the point that though the Prime Minister is *primus inter pares* (first amongst equals), virtually, he is more than that and enjoys the highest authority in Indian democratic system as long as he enjoys the confidence of the House of the People. The Committee deliberated at length on the implications of bringing the institution of Prime Minister within the purview of Lokpal, which privy to so many secret and sensitive issues of national importance/interest.

6.4.2 One group of opinion was that the Prime Minister being privy to vital information should not be brought under the jurisdiction of Lokpal, as the constitutional process i.e. no confidence motion is available in the Lok Sabha for removing him. They wondered how the Prime Minister could function, when allegations were brought to the notice of Lokpal and that body initiates inquiry. Furthermore, situations may arise, where opposition may demand the resignation of the Prime Minister pending inquiry by Lokpal. That would bring instability to the democratic set up evolved during last fifty two years.

6.4.3 The other strand of opinion was that no one is above the law of the land and the Prime Minister, thus, should be brought within the purview of Lokpal. A view amongst this section was that the Prime Minister may be brought within the ambit of Lokpal with some sort of checks and balances – providing concurrence of the President of India for initiating inquiry against him by Lokpal.

6.5.0 The Committee also deliberated on the issue of extending the jurisdiction of Lokpal to the judiciary. The Committee feels that the judiciary is not as clean and as respectable as it used to be in the past. Their accountability has been insulated by the deterrence of the inherent power of judiciary i.e. contempt of the Court. The Supreme Court has evolved safeguards for the judges with the pronouncement of its judgment in *K. Veeraswamy vs Union of India and others (1999)*, in terms of which no FIR could be registered against a Judge of a High Court, Chief Justice of a High Court or Judge of the Supreme Court without the clearance of the Chief Justice of India and sanctions for launching prosecution against them could not be granted by the President of India without the concurrence of the Chief Justice of India. In the light thereof, the Committee is of the view that judiciary ought to be made accountable to the public for their conduct.

6.5.1 While referring to one of the observations of the ARC that *in the discretionary field, matters involving acts of justice or injustice, corruption or favoritism were to be inquired into by the Lokpal*, a view was expressed that since the judiciary had been at times passing orders in a discretionary manner, it should be brought under the Lokpal. One section of opinion was that the ambit of Lokpal should be broadbased enough to cover Judges including Chief Justice of India. It was also felt that the Chief Justice of India may be brought within the ambit of Lokpal with some checks and balances i.e. by making the President of India as sanctioning authority for granting permission for initiation of inquiry by Lokpal.

6.5.2 The other section of opinion desires that since in the scheme of the present Bill, Judges would not fit in, another piece of legislation may be brought to make the Judges accountable.

6.5.3 The Committee was, however, of the unanimous view that a separate legislation may be brought forward to set up appropriate institutional mechanism to ensure accountability of Judges.

7.0 Be that as it may, the Committee regards the Bill as an half -baked measure and which contains the following serious anomalies and inconsistencies which needed to be addressed before enacting the law on Lokpal:-

- (i) Connotations of the two terms i.e. 'Public functionary' and 'complaint' detailed in clause 2 of the Bill are incoherent with the scheme of Bill to the extent that complaint against the offences under the PC Act, 1988 have to be investigated not inquired. Further inquisitioning of the said offences committed by public functionaries (who have been declared as public servant by the Supreme Court) by the Lokpal, put the public functionaries in double jeopardy vis-a-vis public servant (bureaucrats), and is therefore, against the principle of equality before the law.
- (ii) The term "public functionary" in the Bill included those who have been declared as 'public servant' by the Supreme Court and has not been explained, rationale of using the term 'public functionary' in the place of 'public servant'.
- (iii) The term 'inquiry' had not been defined in the Bill whereas the inquiry as defined by Cr.P.C. meant inquiry by a Magistrate.
- (iv) Inquiry into the complaint under the PC Act, 1988 by Lokpal as envisaged under clause 10 of the Bill may create a situation where two parallel authorities would be inquiring and investigating into the same offence as the Magistrate and Police were not duty bound to keep the complaint pending till the matter was finalised by the Lokpal and the provisions of Chapters XII and XV of the Cr. P.C. could not be kept in abeyance during that

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- period.
- (v) Provisions in the Bill particularly in Clauses 10 to 17 were a queer mixture of provisions of Commissions of Inquiry Act, 1952 and Code of Civil Procedure, 1908. It amounted to civil trial of corruption cases by an inquiry officer which ought to have been done by an investigating officer.
 - (vi) Taking evidence on oath at inquiry stage by the Lokpal (which is usually done at the time of trial) amounts to putting the cart before the horse.
 - (vii) Further the Lokpal cannot compel a person who is not willing to appear before him but is willing to give evidence before the Court of Law.
 - (viii) The Legislation has dangerous portend by clubbing provisions of Commissions of Inquiry Act with the provision of Code of Criminal Procedure.
 - (ix) The Lokpal has no nexus with Parliament as has been the Swedish Ombudsman and Parliamentary Commissioner in U.K.
 - (x) The Legislation does not address public grievances; rather focusses its attention on bribery and corruption at high places,
 - (xi) Ranks of Officers to assist Lokpal in conducting inquiry are not specified in the Bill.

8.0 The Committee considered amendments (Annexure -III) moved by a member of the Committee, while taking up clause-by-clause consideration of the Bill in its sitting held on 11 December 2001 in the presentation of Secretary (Personnel) and representatives of Legislative Department and Department of Legal Affairs who clarified certain queries of the Committee.

Clause 2

8.1.0 The clause seeks to define certain expressions used in the Bill.

8.1.1 While drawing attention to the justification given by the Ministry for not including the judiciary within the ambit of the definition of public functionary that since the Lokpal was a fact-finding and a non-constitutional body, the constitutional functionaries (Judges) could not be brought within the purview of Lokpal, a point was raised whether the MPs, the PM were constitutional bodies or not. The Secretary (Personnel) in reply has stated that the Bill was not exhaustive as far as public functionaries were concerned. It covered some of the constitutional bodies included in the definition of public functionaries. The replies of the Ministry are incoherent and do not convince the Committee.

8.1.2 The Committee, however, adopted the clause without any change.

Clause 3

8.2 The clause seeks to provide for the establishment of the institution of Lokpal and its composition and qualifications for the Chairperson and Members of the Lokpal.

8.2.1 A point was raised as to the desirability of appointment of a sitting Judge of Supreme Court or Chief Justice of a High Court, as members of Lokpal in the present scenario of huge pendency of cases. Another query was raised as to the rationality of appointing retired Judges as members of Lokpal. The Secretary (Personnel) clarified that considering retired Judges alongwith sitting Judges to be members of Lokpal was to have a wider choice and appointment of serving Judges would not affect pendency of cases.

8.2.2 The Committee, however, adopted the clause without any change.

Clause 4

8.3.0 The clause seeks to provide for the appointment of Chairperson and Members of Lokpal, on the basis of recommendations of a high profile screening Committee consisting of the Vice-President of India, the Prime Minister, the Speaker of the House of the People, the Minister in-

charge of Ministry of Home Affairs in the Government of India, the Leader of the House other than the House in which the Prime Minister is a member of Parliament, the Leader of the Opposition in the House of the People and the Leader of the Opposition in the Council of States.

8.3.1 A point was raised about the necessity of consultation with the Chief Justice of India in the case of appointment of Lokpal, as the high profile collegium headed by the second citizen of the country would make recommendations for the appointment of the same.

8.3.2 The Secretary clarified that the screening committee had no representation from Judiciary and the consultation with Chief Justice of India was required in case of appointment of sitting Judges of the Supreme Court or Chief Justice of High Court, as Chairperson or members of Lokpal.

8.3.3. The Committee, however, adopted the clause without any change.

Clause 5

8.4.0 The clause seeks to provide that the Chairperson and the Members shall be ineligible to hold other offices.

8.4.1 The Committee adopted the clause without any change.

Clause 6

8.5.0 The clause deals with the term of office and other conditions of service of the Chairperson and Members of the Lokpal. The conditions of service, salary, allowances and pension of the Chairperson shall be the same as those of the Chief Justice of India and of other Members as those of a Judge of the Supreme Court.

8.5.1 The Committee adopted the clause without any change.

Clause 7

8.6.0 The clause deals with the removal of Chairperson and Members.

8.6.1 The Committee adopted the clause without any change.

Clause 8

8.7.0 The clause seeks to provide that the senior-most Member shall act as the Chairperson or discharge his functions in certain circumstances.

8.7.1 The Committee adopted the clause without any change.

Clause 9

8.8.0 The clause deals with the staff of the Lokpal and the powers of the Lokpal to utilize the services, *inter alia*, of any investigating agencies of the Central Government or State Government and of the services of any other persons or agencies.

8.8.1 The Committee observed that the staff of the Lokpal could be used for collection of evidence and making inquiry. The Committee was of the view that it may not be proper for the Lokpal to utilise the services of persons or agencies other than those of Central Government or State Government, keeping in view the fact that it would inquire into complaints against top public functionaries i.e. the PM, Ministers and MPs. Therefore, the

Committee recommended for deletion of sub-clause (2)(ii) so as to remove the provision for securing the services, of any other person or agency, by the Lokpal. The Committee also recommended that consequential amendments in sub-clauses (3) and (4) may be carried out.

8.8.2 The Committee adopted the clause as amended.

Clause 10

8.9.0 The clause deals with the jurisdiction of the Lokpal. Sub-Clause (1) seeks to provide that the Lokpal may inquire into any matter involved in, or arising from or connected with any allegation made in a complaint. Sub-Clause (2) seeks to provide that the Lokpal may inquire into any act or conduct of any person other than a public functionary if it considers necessary to do so for the purposes of its inquiry into any allegation. Sub-clause (3) seeks to provide that no matter in respect of which a complaint may be made under the proposed enactment shall be referred for inquiry under the Commissions of Inquiry Act, 1952.

8.9.1 The Committee adopted the clause without any change.

Clause 11

8.10.0 The clause seeks to provide that the Lokpal shall not inquire into any matter concerning any person if the Chairperson or any other Member has any bias in respect of such matter or person. The clause also seeks to provide that the Lokpal shall not inquire into any complaint made after the expiry of a period of ten years from the date on which the offence mentioned in such a complaint is alleged to have been committed.

8.10.1 The Committee adopted the clause without any change.

Clause 12

8.11.0 The clause seeks to provide that any person other than a public servant as defined therein may file a complaint which shall be in the prescribed form and shall be accompanied by an affidavit. This clause also seeks to provide that the complainant shall deposit such sum of money in such manner and with such authority or agency as may be prescribed and the certificate for such deposit shall be furnished in the prescribed form.

8.11.1 The *Explanation* below sub-clause (1) defines "public servants" for the purposes of that sub-clause, who can make a complaint to the Lokpal. According to the definition, "public servant" includes *inter alia* any person in the service of any other institution, concern or undertaking which is established by or under a Central, Provincial or State Act or which is controlled, or financed wholly or substantially by funds provided, directly or indirectly, by the Central Government or a State Government.

8.11.2 The Committee was of the view that persons only in the service of an institution, concern, or undertaking which was funded directly by the Central Government or a State Government should be treated as "public servant" for the purposes of sub-clause (1).

8.11.3 Accordingly, the Committee recommended that the words "or indirectly" appearing in sub-section (c) of the *Explanation* below sub-clause (1) may be deleted.

8.11.4 Sub-clause (4) provides that a letter written to the Lokpal, or as the case may be, to the appropriate authority, as defined in the *Explanation* below sub-clause (5), by a person in any jail or other place of custody or in any asylum or other place for insane persons may, if the Lokpal or the appropriate authority is satisfied that it is necessary so to do, treat the letter as a complaint.

made in accordance with the provisions of clause 12.

8.11.5 The Committee was of the view that only the Lokpal and no other authority should be entitled to receive letters from persons in jail, custody, asylum, etc.

8.11.6 Accordingly, the Committee recommended that the words "or, as the case may be, to the appropriate authority", wherever these occur in sub-clause (4) may be deleted. The Committee further recommended that consequential amendments may be carried out in sub-clause (5). The Committee also recommended deletion of *Explanation* below sub-clause (5) as it would become redundant in the light of amendments suggested in sub-clauses (4) and (5).

8.11.7 The Committee adopted the clause as amended.

Clause 13

8.12.0 The clause deals with the preliminary scrutiny of complaints by the Lokpal.

8.12.1 The Committee adopted the clause without any change.

Clause 14

8.13.0 The clause seeks to provide for the procedure for making inquiries into the complaints by the Lokpal. This clause also seeks to provide that the Lokpal shall complete the inquiry within six months from the date of the receipt of the complaint, which could be extended for a further period of six months by the Lokpal for reasons to be recorded in writing.

8.13.1 The Committee adopted the clause without any change.

Clause 15

8.14.0 The clause seeks to provide that the Lokpal shall have all the powers of a civil court in respect of summoning and enforcing the attendance, receiving evidence and issuing commissions for the examination of witnesses or documents, etc. This Clause also seeks to provide that the proceedings before the Lokpal shall be deemed to be judicial proceedings within the meaning of section 193 of the Indian Penal code.

8.14.1 The Committee recommended deletion of sub-section (b)(v) of sub-clause (1) regarding issuing of commission for the examination of witnesses or documents as the Committee felt that the demeanor of the witness could be better observed by the Lokpal itself.

8.14.2 The Committee adopted the clause as amended.

Clause 16

8.15.0 The clause seeks to confer powers of search and seizure on the Lokpal.

8.15.1 The Committee adopted the clause without any change.

Clause 17

8.16.0 The clause relates to reports of the Lokpal and action taken thereon. Sub-clause (1) seeks to provide that after inquiry the Lokpal shall communicate its findings to the complainant, the public functionary and the competent authority. This clause also seeks to provide that the annual consolidated report shall be presented by the Lokpal to the President on the administration of the proposed enactment.

8.16.1 The Committee adopted the clause without any change.

Clause 18

8.17.0 The clause seeks to provide that the salaries, allowances and pensions payable to the Chairperson and Members of the Lokpal shall be charged on the Consolidated Fund of India.

8.17.1 The Committee adopted the clause without any change.

Clause 19

8.18.0 The clause seeks to provide for punishment for intentional insult or interruption to the Lokpal.

8.18.1 The Committee adopted the clause without any change.

Clause 20

8.19.0 The clause seeks to confer powers on the Lokpal to try summarily and punish those persons who intentionally offers any insult, or causes any interruption, to the Lokpal.

8.19.1 The Committee adopted the clause without any change.

Clause 21

8.20.0 The clause seeks to provide for the disposal of deposits made by the complainants under clause 12. This clause also seeks to provide for action to be taken by the Lokpal in the case of *mala fide* complaints.

8.20.1 The Committee adopted the clause without any change.

Clause 22

8.21.0 The clause provides for application of certain provisions of the Code of Criminal Procedure, 1973 to the proceedings before the Lokpal.

8.21.1 The Committee took exception to the provision for transferring cases from Lokpal to Court of Sessions in accordance with section 406 of Cr. PC.

8.21.2 Accordingly, the Committee recommended deletion of the entire clause.

Clause 23

8.22.0 The clause seeks to provide for the conferment of additional functions by the President on the Lokpal.

8.22.1 The Committee adopted the clause without any change.

Clause 24

8.23.0 The clause provides that if at any stage of inquiry, any person is likely to be prejudicially affected shall be afforded an opportunity of being heard.

8.23.1 The Committee adopted the clause without any change.

Clause 25

8.24.0 The clause provides for protection from legal proceedings, etc., for the action taken in good faith.

8.24.1 **The Committee adopted the clause without any change.**

Clause 26

8.25.0 The clause deals with the delegation of certain powers by the Lokpal.

8.25.1 **The Committee recommended deletion of the words “and agencies” occurring in the clause as a consequence of the amendment suggested by it in clause 9 (2).**

8.25.2 **The Committee adopted the clause as amended.**

Clause 27

8.26.0 The clause seeks to confer power on the President to make rules.

8.26.1 **The Committee adopted the clause without any change.**

Clause 28

8.27.0 The clause makes it clear that the Lokpal shall not have any jurisdiction to conduct any inquiry into any allegation against or any act or conduct of the President, the Vice-President or the Speaker of the House of the People, the Chief Justice or any other Judge of the Supreme Court, the Comptroller and Auditor-General of India, the Chief Election Commissioner or other Election Commissioners or the Chairman or any other Member of the Union Public Service Commission. It also provides that the Lokpal shall not make any inquiry upon its own knowledge or information.

8.27.1 **The Committee adopted the clause without any change.**

Clause 29

8.28.0 The clause provides that the provisions of the proposed enactment shall not affect the constitution of, or the continuance of functioning or exercise of powers by, any Commission of Inquiry appointed under the Commissions of Inquiry Act, 1952 before the coming into force of the provisions of the proposed enactment.

8.28.1 **The Committee adopted the clause without any change.**

Clause 30

8.29.0 The clause seeks to make a consequential amendment in the Commissions of Inquiry Act, 1952.

8.29.1 **The Committee adopted the clause without any change.**

Schedule

8.30 The Schedule appended to the Bill contains the oath to be taken by Chairperson or Members of Lokpal.

8.30.1 The Schedule to the Bill was adopted without any change.

Clause 1, the Enacting Formula and the Title

8.31 Clause 1, the Enacting Formula and the Title were adopted without any change.

9.0 The Committee recommends that the Bill may be passed as reported by it.

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