Committee on Home Affairs

Fortieth Report

On

The Lokpal Bill, 1996

(Presented to the Rajya Sabha on the 9th May, 1997)

(Laid in the Lok Sabha on the 9th May, 1997)

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* Re-nominated w.e.f. the 25th April, 1997.

** Nominated w.e.f. the 8th October, 1996 vice Shri Tara Chand Baghora, M.P.
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Shri Satish Kumar, Joint Secretary
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Shri S. Jason, Committee Officer
REPORT

I, the Chairman of the Committee on Home Affairs, having been authorised by the Committee to present the Report on its behalf, present this Fortieth Report of the Committee, relating to the Lokpal Bill, 1996*.

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, 1996, as introduced in the Lok Sabha on the 13th September, 1996 and pending therein, to the Committee for examination and Report.

3. The institution of Lokpal, as the Statement of Objects and Reasons appended to the Bill says, has been sought to be established on the basis of the recommendations of the Administrative Reforms Commission (ARC) contained in its interim Report on the "Problem of Redress of Citizens' Grievances". This Report of the ARC was submitted in 1966 and the earlier attempts at legislation for setting up such an institution could not fructify in 1968, 1971, 1977, 1985 and 1989 for various reasons. The current Bill, as the Statement of Objects and Reasons goes on to say, seeks to carry out the object and purpose of the recommendations of ARC for enabling the citizens to have recourse to a convenient and effective forum for determination

*Published in the Gazette of India Extraordinary Part-II, Section 2, dated the 13th September, 1996.

of complaints and thereby save him from pursuing his remedy through the process of Courts, which may prove to be expensive or dilatory and may not facilitate speedy determination.

4. The concept of having an institution like the Lokpal arises from the need for redressal of citizens' grievances. The term Lokpal is akin to the English term 'Ombudsman' which has been described in Chamber's Dictionary as a 'grievance man'. Ombudsman means an official who is appointed to investigate complaints against the administration. In other words, Ombudsman 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. The institution of Ombudsman came into being in 1713 in Sweden when Chancellor of Justice was appointed by the King to act as an invigilator to look into the functioning of the war-time Government. In the year 1809, provision was made for the appointment of Ombudsman by the legislature. The institution remained mainly confined to the Scandinavian countries such as Finland and Denmark. In 1952 New Zealand also adopted the system of Ombudsman. Great Britain also did not lag behind and a slightly modified version of the institution in the form of the office of Parliamentary Commissioner came into being through an Act of Parliament in 1967. This was followed by other countries such as Canada, Australia, U.S.A., France and several newly independent countries of Africa and Asia.

5. A study of the system of Ombudsman or similar institutions in Sweden, United Kingdom, Zambia and Nigeria brings into focus the fact that mainly complaints of mal-administration are looked into by the Ombudsman there and Ministers etc. do not seem to have been brought within their purview. However, in Denmark all administrative matters concerning all units of State administration including Ministers and in Norway administrative aspects of acts of Ministers have been brought within the purview of Ombudsman. In Tanzania and Uganda the
areas of jurisdiction for the institutions which are known as Anti Corruption Squad and Inspector General of Government, respectively, are mainly targetted at corruption and abuse of public office. The thrust of the system of Ombudsman as obtaining in these countries is mainly on redressal of public grievances arising mainly out of their complaints of mal-administration.

6. In so far as India is concerned animated discussions both inside Parliament as well as outside took place preceding examination of the issue by the Administrative Reforms Commission on the need for setting up an Ombudsman like institution to investigate and report on complaints pertaining to corruption. Coupled with this was the felt necessity for the establishment of an independent authority for the redressal of public grievances. The idea, however, could not be formalised till the Administrative Reforms Commission in its interim Report submitted in 1966 suggested that:

"The special circumstances relating to our country can be fully met by providing for two special institutions for the redress of citizens' grievances. There should be one authority dealing with complaints against the administrative acts of Ministers or Secretaries to Government at the Centre and in the States. There should be another authority in each State and at the Centre for dealing with complaints against the administrative acts of other officials... The setting up of these authorities should not, however, be taken to be a complete answer to the problem of redress of citizens' grievances. They only provide the ultimate set-up for such redress as has not been available through the normal departmental or governmental machinery and do not absolve the department from fulfilling its obligations to the citizen for administering its affairs without generating, as far as possible, any legitimate sense of grievance. Thus, the administration itself must play the major role in reducing the area of grievances and providing remedies wherever necessary and feasible... When this machinery (in-built departmental machinery) functions effectively, the number of cases which will have to go to an authority outside the Ministry or the Department should be comparatively small in number."

7. The Administrative Reforms Commission thus contemplated a very limited role for the proposed creation of an institution like the Lokpal which would only inquire into complaints against a specified category of persons and not be a forum to deal with all complaints of
citizens' grievances. As the Administrative Reforms Commission itself emphasised that 'the responsibility of the Departments to deal adequately with public grievances must squarely be faced by them', the institution of Lokpal was thought of something in the nature of a set up for redress as has not been available through the normal departmental or governmental machinery. The Administrative Reforms Commission also underscored an important point when it referred to the special circumstances relating to our country's vastness and enormous size of population which would virtually make it quite stupendous, if not impossible, for a single agency to deal with the vast magnitude of complaints of public grievances and provide a remedy therefor. The proposed Lokpal Bill, therefore, has mainly been devised to provide a forum to the citizens to make complaints of corruption against public functionaries who have been defined to mean persons who hold or have held the office of the Prime Minister, Minister, Minister of State or Deputy Minister of the Union and are or have been Members of either House of Parliament.

8. The Committee held twelve sittings in all to consider and finalise its report on this Bill.

9. In its first sitting held on October 8, 1996 the Committee discussed the Bill in general and having regard to the special importance of the Bill which sought to establish an institution of this kind at the national level, the Committee decided to invite memoranda from the individuals/organisations/institutions etc. interested in the subject matter of the Bill. The Committee also decided to issue a Press communiqué in this behalf fixing November 18, 1996 as the last date for the receipt of memoranda. On the 10th October, 1996 the Directors General, Doordarshan and All India Radio were also requested to telecast/broadcast the matter repeatedly to give it wide publicity so as to elicit public opinion on the Bill.
10. In all 110 memoranda containing comments and suggestions* on
the provisions of the Bill were received by the Committee from various
organisations, associations and individuals etc. (see list of
organisations/individuals, etc. at Appendix-I). At its sitting held
on February 6, 1997 the Committee heard the Secretary of the
administrative Ministry concerned with the Bill, namely the Ministry
of Personnel, Public Grievances and Pensions on the Bill. At its
sittings held on the 19th February and 3rd, 4th, 17th, 18th, 19th and 20th
March, 1997, the Committee heard the views of some former bureaucrats,
journalists and representatives of various political parties and
institutions and organisations on the subject (vide list at
Appendix-III). The Committee wishes to express its thanks to all the
persons who either appeared before it or sent their valuable
suggestions/views on the provisions of the Bill for the benefit of the
Committee.

11. The Committee considered various papers and memoranda placed
before it and also the views expressed by the witnesses on the Bill. *

12. At its sittings held on the 29th April and 1st May, 1997 the
Committee took up clause-by-clause consideration of the Bill.

13. The Committee considered and adopted the Report at its sitting
held on the 6th May, 1997.

* Gist of suggestions/comments received on the Lokpal Bill, 1996 from
various organisation/associations/individuals at Appendix - II
The observations of the Committee with regard to the principal changes proposed in the Bill are given below:

Clause 3

The Committee is of the view that sub-clause (b) of clause 3(2) be substituted to read as follows:

"two Members who are, or have been, Judges of the Supreme Court or the Chief Justices of the High Courts"

Clause 4

The Committee notes that the seven Member Committee, which has been proposed for recommending the names for appointment as Chairman and Members of the Lokpal, seems to be heavily loaded in favour of the party/parties in Government, giving excessive leverage to the ruling party/combine in the appointment process, and as such it would not inspire public confidence. The Committee is, therefore, of the view that the first proviso to clause 4 (1) be substituted to read as follows:

Provided that every appointment under this sub-section shall be made after obtaining the recommendations of a Committee consisting of -

(a) the Vice-President of India - Chairman;
(b) the Prime Minister - member;
(c) Speaker of the House of the People - member;
(d) Leader of the Opposition in the House of the People - member;
(e) Leader of the Opposition in the Council of States - member.
Clause 6

The Members of the Lokpal have been ensured a fixed tenure of 5 years. The Committee feels that no mechanism has been envisaged in the Bill to evaluate the performance of the Lokpal and in that context the fixed tenure of 5 years appears to be rather too long. Besides, in case the retired Chief Justice or Judges of the Supreme Court are appointed as the Chairman/Members of the Lokpal well past the age of 65 years, their continuance upto the age of 70 years would perhaps be a factor to reckon with. The Committee, therefore, recommends that the term of office of the Members of the Lokpal be reduced to 3 years and Clause 6 be amended accordingly.

Clause 7

The Committee has noted that under this Clause a member of the Lokpal can be removed from his office only by an order made by the President on the ground of proved misbehaviour or incapacity after an inquiry made by the Chief Justice of India or as the case may be, by such other judge of the Supreme Court as the Chief Justice of India may nominate in this behalf. Clause 3(2)(a) stipulates that the Chairman of the Lokpal shall be a person who is or has been a Chief Justice or judge of the Supreme Court. Similarly, Clause 3(2)(b) prescribes that the members of the Lokpal shall be persons who are or have been or are qualified to be a judge of the Supreme Court (recommended by the Committee to be amended). The existing procedure for removal of judges of the Supreme Court and the High Courts as laid down under Articles 124 (4) and (5) read with Article 218 of the Constitution is by an order of the President on an Address being presented to him by requisite number of members of each House of Parliament. The Committee feels that the status of Chairman and the members of the Lokpal as envisaged under the scheme of the Bill is
akin to the Chief Justice/judges of the Supreme Court and hence the procedure for their removal should be more stringent if not analogous to the one as laid down in the Constitution. The Committee, accordingly, is of the view that the inquiry against a member of the Lokpal as contemplated under Clause 7 for his removal should be made by the Chief Justice of India and the two senior-most judges of the Supreme Court. Clause 7 may be amended accordingly.

Clause-8

The Committee has noted that the Lokpal has inter-alia been empowered vide Clause 8(2)(i) to secure the services of any officer or employee or investigating agency of the Central Government or the State Government with the concurrence of that Government for the purpose of dealing with any complaints or any classes of complaints. Similarly, it has been ensured vide Clause 8(2)(ii) that the Lokpal does not suffer in any way in the investigation of the complaints made to it and for that purpose, if need be, it can secure the services of any other person or agency which implies even private persons or agencies. The Committee expressed the apprehension that the provision relating to seeking the concurrence of concerned Governments for securing services of any officer may delay the investigation. Hence the Committee is of the view that in order to remove any apprehensions on this score, steps may be taken to ensure that the services of officers, etc. to the Lokpal are provided with due promptness and necessary procedure in this regard may be provided in the rules to be framed under this Act.
Clause 9

The Committee feels that the amplitude of the discretionary power vested in the Lokpal under Clause 9(1) by the usage of the words 'the Lokpal may' is far too large. The Committee is accordingly of the view that subject to the other provisions of this Act the Lokpal should be under a mandatory obligation to inquire into the subject matter of the complaint. The word "may" in sub-clause (1) of this clause may be substituted by the word "shall". The Committee also feels that when the complaints about allegations of corruption against public functionaries are sought to be brought within the purview of the Lokpal, there is no reason for such complaints being taken up at any other forum such as the Commissions of Inquiry. The Committee is, therefore, of the opinion that the amount of discretion conferred on the Lokpal vide sub-clause (3) of clause 9 in the matter of referring any complaint for inquiry under the Commissions of Inquiry Act, 1952, is not desirable and the words 'except on the recommendation, or with the concurrence, of the Lokpal' occurring therein be deleted. Clause 9 may be amended accordingly.

Clause 10

In view of the recommendation made by the Committee for omitting the discretionary aspect of Lokpal from sub clause (3) of clause 9, sub clause (2) of clause 10 becomes redundant and hence it may be deleted.

In terms of sub clause (3) of clause 10, the jurisdiction of Lokpal is restricted to inquiring into complaints in respect of offences which are alleged to have been committed during the previous five years. The Committee has, however, noted that some times information about corruption cases of immense proportions surfaces
very late and national interest demands that truth must come out and the guilty be brought to book. Besides, the Committee is given to understand that in some of the Lok Ayukta Acts in force in some of the States, the provision exists for inquiry into complaints in respect of offences alleged to have been committed up to ten years earlier. The Committee, therefore, is of the opinion that the period of five years occurring in sub-clause (3) of clause 10 be substituted to read as ten years.

Clause 11

The Committee has noted that under sub clause (3) of clause 11, it is enjoined upon the complainant to make a deposit of a sum of rupees one thousand but the manner of making this deposit and the authority or agency with which the deposit is to be made are left to be prescribed in the rules to be framed under clause 32. The Committee is of the opinion that if a fixed amount is prescribed in the Act itself, the concerned authority will have to come before Parliament every time they wish to enhance/modify the fee which very often becomes essential because of the changing value of money. Hence, the Committee is of the opinion that this can be taken care of in the rules. The Committee feels, that this provision should be amended accordingly.

Clause 12

In view of the change proposed by the committee in sub-clause (3) of clause 10 for raising the period of limitation for complaints from 5 years to 10 years, consequential change should be made in clause 12(1)(a) and the period of 5 years mentioned therein be substituted to read as 10 years. Likewise, since the Committee has recommended deletion of sub-clause (2) of clause 10, consequential
change in clause 12(1)(b) should also be effected.

The Committee is of the view that the wording of sub-clauses (c) and (d) of clause 12(1) confers unguided and arbitrary powers of in-limine rejection of complaints on the Lokpal. It is in public interest that the complaints should be properly investigated and disposed of rather than nipped in the bud. Sub-clause (1)(c) should accordingly be reworded to read 'that the complaint is manifestly false and vexatious' and sub-clause (1)(d) should be deleted in toto.

Clause 13

Sub-clause (2) of clause 13 stipulates that every inquiry shall be conducted in camera by the Chairman and the Members of the Lokpal sitting jointly. The Committee feels that this is not in consonance with the system of open court hearings currently prevalent in our country. One of the essential ingredients of democratic functioning of Government is increased participation of people in the governance of the country and their right to information. The very nature of conducting proceedings or trials by the judicial or quasi-judicial organs in camera leads one to believe that truth is being shrouded in mystery. The Committee, therefore, feels that people of the country have a right to know about the acts of the public functionaries and accordingly they should have access to the inquiries being conducted by the Lokpal. The Committee, therefore, recommends that sub-clause (2) of clause 13 be amended and the words in camera be substituted by the words in open and a proviso be added thereto as follows:

"Provided that the Chairman and the Members of the Lokpal may conduct an inquiry in camera in exceptional circumstances for reasons to be recorded in writing."
Clause 14

The Committee has noted that by the powers conferred under clause 14, the Lok Pal can stop investigations being pursued by the Police Officials under the Code of Criminal Procedure, 1973, solely on the ground that such investigations might prejudicially affect the conduct of inquiry in respect of complaints made to it. The Committee feels that it will not be proper to allow the Lokpal, whose jurisdiction is restricted to making inquiry into allegations of corruption, to hamper investigations being conducted under the normal criminal law of the country. The Committee is accordingly of the opinion that clause 14 be omitted from the Bill.

Clause 15

The Committee has noted that under sub-clause (4) of clause 15, information as may be relevant or useful to the conduct of an inquiry by the Lokpal can be withheld on various grounds as mentioned thereunder so much so that the Secretary to the Government of India or Chief Secretary of the State Government have been given extensive powers to refuse to make available necessary information to the Lokpal. The Committee is of the opinion that sub-clause (4) is inconsistent with the nature of the proceedings before the Lokpal. Denial of such information will reduce the institution of Lokpal to a mockery and will create doubts in the public mind. Therefore, sub-clause (4) of clause 15 should be deleted. In view of this recommendation of the Committee, sub-clause (3) of clause 15 should also be consequentially amended.
Clause 16

The Committee feels that the powers conferred on the Lokpal under the provisions of clause 16(1) and (2) for purposes of search and seizure of documents, which may be useful for or relevant to any inquiry being conducted by it, are quite adequate. The proviso may, however, be modified to read as follows:

"Provided that in cases where such documents are required to be returned, the Lokpal shall return the documents after retaining copies thereof with due authentication."

The Explanation added after the proviso appears to be unnecessary to the Committee and hence it should be deleted.

Clause 17

The Committee has noted that sub-clause (a) of clause 17 (1) confers power on the Lokpal to close the cases in the event of the allegations made in the complaint not being substantiated either wholly or partly. Sub-clause(b) of Clause 17(1), on the other hand, enjoins upon it to make a Report in writing to the competent authority in case all or any of the allegations made in the complaint have or has been substantiated either wholly or partly. The Committee feels that after inquiry, whether the offences alleged in the complaint are found to have been substantiated or not, either wholly or partly it should be incumbent upon the Lokpal to make a Report of its findings to the competent authority and intimate the complainant and the public functionary about its having made the Report.

The Committee is also of the view that the Lokpal should, while communicating its findings and recommendations in its Report to the competent authority, clearly specify the action to be taken against the public functionary, against whom the offence alleged in
the complaint has been found to be substantiated, either wholly or partly. Rather, the functioning of the Lokpal should be made more transparent and its pronouncements should be made public and under no circumstances it should be empowered to record a finding, closing the case which can at best be confined to stating that, upon inquiry the offences alleged in the complaint have not been substantiated, either wholly or partly. In this manner the public functionary would get due justice. The Committee, accordingly, recommends that sub-clauses (a) and (b) of clause 17(1) may be combined into one clause to read as follows:-

"At the conclusion of the inquiry, the Lokpal shall determine whether all or any of the offences alleged in the complaints have or has been proved to its satisfaction. The Lokpal shall report its findings to the complainant, the public functionary and the competent authority."

Consequential amendment in this clause be made accordingly to re-number it as 17(1) instead of 17(1)(a) and (b).

The Committee has noted that in terms of sub clause 17(2), the examination of a Report in respect of Prime Minister received from the Lokpal by the competent authority and communication of a decision thereon to the Lokpal within the prescribed period seems to have been precluded. The matter is left vide sub clause (3) of clause 17 to the discretion of the House of the People or the Council of States to which the Prime Minister belongs merely by the laying of the Report. The Committee feels that the Act has to be uniformly applicable to all the public functionaries including the Prime Minister and accordingly recommends that the words "other than the Prime Minister" occurring in sub-clause (2) of the clause 17 should be deleted. The Committee is also of the opinion that the period of 90 days prescribed under sub-clause (3) for laying of the Report of the Lokpal before the House of the People or the Council of States, as the case may be, read with the Explanation appended thereto, is quite unreasonable and it should
be omitted from the clause along with the Explanation. Instead sub-clause (3) may be amended to provide for laying of the Report after its receipt before the House of the People or the Council of States, as the case may be, within the first week on their assembling for a Session. The Committee feels that since sub-clause (3) of clause 17 relates to the laying of Reports in respect of complaints against public functionaries received from the Lokpal, it should have precedence for chronological reasons over sub-clause (2) and accordingly, sub-clause (3), as amended, be re-numbered as sub-clause (2) and sub-clause (2) be re-numbered as sub-clause (3).

Clause-18

In the view of the Committee, clause-18 which provides for declaration of assets by the Members of Parliament, before the Lokpal every year, should be amended to provide for furnishing of return by the members within a period of 90 days on their becoming members and annually thereafter, within 90 days of commencement of each Financial Year. An explanation should also be added to the clause to define the family as including both the spouse and dependent children.

The Committee has also noted that clause-18 is too general in nature and does not refer to the consequences as may flow in case the Members of Parliament either do not furnish a return of assets to the Lokpal or furnish incomplete or false return. The Committee accordingly recommends that a provision be made in the Bill to include, that the details of the returns filed by the Members of Parliament will be reported by the Lokpal to the Chairpersons of the House of the People and the Council of States. A deterrent clause may also be inserted to deal with cases of non-filing or delayed filing of returns by the Members of Parliament or their filing them in an incomplete or falsified manner.
Clause-19

The Committee feels that the language of clause-19 be slightly modified in the interest of clarity to substitute the words "the Members" with the words "the Chairman and the Members of the Lokpal"

Clause-20

This clause provides for secrecy of information and evidence collected during any inquiry by the Lokpal. Even courts also cannot have any access to this evidence. The Committee feels that this clause negates the concept of transparency in the functioning of the institution of Lokpal. There is no denying the fact that the evidence collected by the Lokpal will be at tremendous cost of men and material and keeping in view the fact that Lokpal under the proposed scheme of the Bill will not be the prosecuting or punishing authority against public functionaries held guilty, the bar placed on the use of evidence by the courts is not justified. On the contrary, allowing the Courts to have access to the evidence or information collected by the Lokpal will save them considerable time and botheration. Taking a view in its totality about clause 20, the Committee holds that as it is too secretive and bars flow of information, it should be deleted.

Clause-21

The Committee is in broad agreement with the provisions of clause 21 as the dignity of the office of the Lokpal is to be respected and protected. The Committee, however, is of the view that sub-clause (2) of Clause 21 is too wide in its language and may well be an unreasonable restriction on free speech. Besides, the purpose contemplated under sub-clause (2) is by and large achieved by
sub-clauses (1) and (3) and hence there does not appear to be any need to retain sub-clause (2). Hence, it should be deleted. Consequently, the reference to sub-clause (2) in sub-clause (3) be deleted.

Clause-22

This clause seeks to confer powers on the Lokpal to try certain offences summarily and punish the persons who tender false evidence before it. The Committee, however, feels that provisions for summary trials for offences of this nature already exist in the Code of Criminal Procedure, 1973 and there does not appear to be any need to specifically provide sub-clause(1) for this purpose. Hence, it should be deleted. Likewise, the Committee feels that in sub-clause(2) of clause 22 reference to sections 175, 178, 179 and 180 of the Indian Penal Code is unnecessary and the words occurring therein from "in Section 175, .......to the Indian Penal Code" be substituted by the words "in clause 21(1) of this Act".

The Committee has noted that under sub-clause (4) of clause 22 an appeal has been allowed to be made to the High Court by persons convicted under clause 22 by the Lokpal. This, however, does not appear to be proper as the status of the Chairmen and Members of the Lokpal is equivalent to the status of the Chief Justice and Judges of the Supreme Court and accordingly, an appeal against the conviction pronounced by the Lokpal should lie to the Supreme Court and not to the High Court. The Committee, therefore, recommends that sub-clause(4) may be amended to provide for appeals to the Supreme Court and the Explanation to this clause which consequently becomes redundant should also be deleted.
Clauses 23, 24 and 25.

Clause 23 makes printing or publication of any information in relation to any complaint before the inquiry under the Act has reached its definitive stage, an offence triable summarily by the Lokpal. The ground on which this is based is that disclosure of information in such a manner causes irreparable damage to the public functionaries, particularly, in cases where the public functionary has been absolved of the charges against him. Similarly, clause 24 provides for the punishment which may be awarded by the Lokpal to a person making a complaint which is found by the Lokpal to be false. In cases, both under clauses 23 and 24 provision for appeal against sentence of conviction pronounced by the Lokpal has been made to the Supreme Court. Clause 25 has been provided for the modified application of the provisions of the Code of Criminal Procedure for the trial of offences under clauses 22, 23 and 24.

The Committee has already recommended holding of inquiries by the Lokpal in the open, save in exceptional circumstances for reasons to be recorded in writing for in camera proceedings. The Committee has also stressed that there has to be transparency in the functioning of the Lokpal. Clause 23 on the contrary, seems to put unnecessary fetters on the right of expression and freedom of speech of the people by making the proceedings of the Lokpal too secretive and conferring extensive powers on it to punish the persons who may be adjudged guilty. Similarly, clause 24 is too severe. The Committee feels that the Lokpal should not convert itself into a criminal court except for the purposes of punishing ex-facie cases of contempt under clause 21(1). It sounds logical that if the Lokpal has no power to punish a guilty public functionary, he should have no power to prosecute and punish the complainant or any witness. Such persons may be left to be prosecuted under the Indian Penal Code in the normal course.
Therefore, in view of the recommendation of the Committee for open inquiry by the Lokpal and the fact that the sweep of the penal provisions under clauses 23 and 24 is too wide, the Committee recommends that clauses 23 and 24 may be dropped. As the Committee has recommended dropping of clauses 23 and 24, clause 25 consequentially becomes redundant and it may also be dropped.

Clause 26

Clause 26 places a bar on prosecution in respect of allegations not proved or not substantiated before the Lokpal. This clause appears to be too draconian in nature and substance as it makes the Lokpal or the competent authority the final arbiters in determining the complaints of corruption against public functionaries. It is well known that even under the ordinary law of the land appeals have been provided at various stages in the courts and here, under this clause, the complainants who may not be satisfied with the decision of the Lokpal have been left high and dry as they cannot approach any court against the decision of the Lokpal or the competent authority. The Committee, therefore, feels that this clause is not in consonance with the judicial system of a democratic polity and it may be dropped altogether. It should be left to the complainants to approach the courts against the decision of the Lokpal/competent authority to seek appropriate remedies.

Clause 27

Clause 27 requires the Lokpal to inquire into any allegation as may be the subject matter of a complaint under this Act on an order being issued by the President and subject to such conditions or limitations as may be specified therein notwithstanding anything contained in the Act. The implication of the wording of this clause
is perhaps that the only limitation of this Act which applies to the order issued by the President is that the allegation which is referred to the Lokpal for inquiry has to be only in respect of which a complaint may be made and no other provisions of the Act seem to apply while determining the truthfulness or otherwise of the allegation. It may perhaps be that the allegation cited in the complaint may relate to a matter more than 10 years old. The Committee is, therefore, of the view that the words "notwithstanding anything contained in this Act" occurring in clause 27 be substituted by the words "subject to the provisions of clause 12".

**Clauses 28 and 29**

Clause 28 provides for the disposal of deposits made by the complainants and clause 29 provides for compensation or reward or both, payable to complainant in the event of all or any of the allegations made in a complaint being substantiated. The Committee feels that the areas covered by clauses 28 and 29 are somewhat inter-linked and it will be more appropriate if both these clauses are combined into one and provision is made for the amount of compensation/reward or punishment to be decided by the Lokpal while concluding its findings. The Committee is also of the view that the words occurring at the end of clause 29 (which may be combined with clause 28 in appropriate form) viz. "and the Central Government shall pay, the amount or amounts so determined, to the complainant" be substituted by the words "and the Lokpal shall determine the person by whom the said compensation or award shall be paid after giving that person a reasonable opportunity of being heard".
Clause 30

The Committee has noted that sub-clause (2) of clause 30 bars court's jurisdiction on the proceedings or decisions of the Lokpal. The Committee understands that the Supreme Court under Article 32 and the High Court under Article 226 of the Constitution have inherent writ jurisdiction and aggrieved citizens can always approach these courts in matters where their rights have been encroached upon. Viewed in that context and in view of the fact that the Committee has already recommended deletion of clause 26, sub-clause (2) of clause 30 may be dropped.

Clause 31

The Committee feels that in view of the recommendation made by it for dropping sub-clause (1) of clause 22 and clauses 23 and 24, consequential changes may be made in clause 31.

Clause 33

Sub-clause (b) of clause 33 bars any inquiry suo-moto by the Lokpal into cases of corruption by public functionaries coming to his notice through media or otherwise. The Committee feels that the basic objective of the creation of an institution of Lokpal is to cleanse public life from the scourge of corruption and, therefore, the Lokpal should not be fettered in being barred from jurisdiction to make inquiry upon its own knowledge and information. It should be given powers to take suo-moto notice of cases of corruption by public functionaries and accordingly sub-clause (b) of clause 33 may be deleted.
Clause 35

The Committee feels that clause 35 be suitably amended to take care of the amendment suggested by it in sub-clause (3) of clause 9.

Clause 1, the Enacting Formula and the Title

The Committee is of the view that the consequential changes in respect of Clause 1, the Enacting Formula and the Title with reference to the year of enactment as indicated therein may also be carried out.

15. The Committee agrees with the provisions contained in the remaining clauses of the Bill.

16. In view of the above recommendations/observations some necessary changes of consequential or drafting nature may also have to be carried out in the Bill and some of the clauses may also have to be renumbered.

17. The Committee recommends that the Bill be passed after incorporating the amendments suggested by it.

NEW DELHI
MAY 5, 1997

SOM PAL
CHAIRMAN
COMMITTEE ON HOME AFFAIRS