PARLIAMENT OF INDIA

RAJYA SABHA

DEPARTMENT-RELATED PARLIAMENTARY STANDING COMMITTEE ON HOME AFFAIRS

FI F I TIE H R E P O R T
ON
THE LOKPAL BILL, 1998

(Presented to the Rajya Sabha on the 24th February, 1999)
(Laid in the Lok Sabha on the 24th February, 1999)

RAJYA SABHA SECRETARIAT
NEW DELHI

February, 1999/Falgun 1920 (Saka)
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* To be appended at the printing stage.
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@ Nominated with effect from 26th June, 1998
REPORT

I, the Chairman of the Department-related Parliamentary Standing Committee on Home Affairs, having been authorised by the Committee to present the Report on its behalf, present this Fiftieth Report of the Committee, relating to the Lokpal Bill, 1998.

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, 1998, as introduced in the Lok Sabha on the 3rd August, 1998 and pending therein, to the Committee for examination and Report by the 11th December, 1998. It was also desired by the Chairman, Rajya Sabha that the recommendations of the Committee of Privileges (Eleventh Lok Sabha) as contained in its Report on “Ethics, Standards in Public Life, Privileges, Facilities to Members and other Related Matters”, relating to Lokpal and the Lokpal Bill, 1996, may also be considered by the Standing Committee.

2.1. The above reference was considered by the Committee in its meeting held on 8th December, 1998. The Committee recalled that the Lokpal Bill, 1996 containing 35 clauses was referred to the earlier Committee on 25th September, 1996. It was noted that the earlier Committee considered the Bill for seven and half months in twelve

1 Published in the Gazette of India Extraordinary, Part II, Section 2, dated the 3rd August, 1998.
2 Rajya Sabha Parliamentary Bulletin Part II, dated the 7th December, 1998.
sittings spread over nineteen hours. Hundred and ten Memoranda on the provisions of the Bill were received and sixteen witnesses were heard. The Committee presented its Fortieth Report on the Bill to Parliament on 9th May, 1997.

2.2. After some discussion the Committee felt that it would not be possible for it to complete examination of provisions of the Lokpal Bill, 1998 and submit its Report within the stipulated time i.e. 11th December, 1998. Accordingly, Chairman, Rajya Sabha was requested to grant extension of time to the Committee, upto the last day of the first week of the 1999 Budget Session of Parliament, for presentation of its Report on the Bill. The request for extension of time was kindly granted and notified in the Rajya Sabha Bulletin Part II No. 37154 dated 18th December, 1998.

3. 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

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Annexure:
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 1962, New Zealand also adopted the system of Ombudsman. A slightly modified version of the institution in the form of the office of Parliamentary Commissioner was adopted by Great Britain 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.

4. A study of the system of Ombudsman or similar institutions in Sweden, United Kingdom, Zambia and Nigeria brings into focus the fact that they mainly looked into complaints of mal-administration 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.

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Annexure

Fortieth Report of Committee on Home Affairs on the Lokpal Bill, 1996 presented to the Rajya Sabha on 9.5.97 and laid in the Lok Sabha on the same day, para 4.

Ibid, para 5
5. 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."

6. Taking cue from the recommendations of the Administrative Reforms Commission made in its interim Report, attempts were made by previous Governments to establish the institution of Lokpal by introducing Bills in the Lok Sabha in the years 1968, 1971, 1977, 1985, 1989 and 1996. However, on each occasion, except in the year 1985, the Bills lapsed due to dissolution of the concerned Lok Sabha before their enactment. The Lokpal Bill, 1985 was, however, withdrawn by the Government after its introduction.

7. The objective for setting up of this institution as stated in the Statement of Objects and Reasons appended to the Bill, is to enable the citizen to have recourse to a convenient and effective forum for determination of complaints and thereby save him from pursuing his remedy through the process of courts, which may prove expensive or dilatory and may not facilitate in speedy determination.

8. The Lokpal Bill, 1996, as introduced in the Lok Sabha on 13th September, 1996, was referred to the Department-related parliamentary Standing Committee on Home affairs for examination and report. The Committee after careful consideration of the provisions of the Bill and taking into consideration the views/suggestions received by it from different quarters, had made recommendations in 31 clauses of the Bill. As already stated earlier, the Bill in all contained 35 clauses.

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1 Quoted from para 6 op cit
9. Following are the salient features of the Lokpal Bill, 1998:

(i) The institution of Lokpal will be a three member body consisting of a Chairperson and two Members. The Chairperson and the Members shall be drawn from the judiciary.

(ii) The selection for appointment as Chairperson and other Members shall be made after obtaining the recommendations of a Committee consisting of the Vice-President of India as Chairman, the Prime Minister, the Speaker of the House of the People, the Home Minister, 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 Lok Sabha and the Leader of the Opposition in the Rajya Sabha, as members.

(iii) The appointment of the Chairperson and Members of the Lokpal shall be made by the President by warrant under his hand and seal.

(iv) The following categories of persons have been brought within the purview of the Lokpal:

(a) who holds or has held the office of the Prime Minister, Minister, Minister of State or Deputy Minister of the Union;

(b) who is or has been a member of either House of Parliament.

(v) The Lokpal will deal with complaints against the public functionaries, as mentioned above, for commission of any offence punishable under the Prevention of Corruption Act, 1988.

(vi) The Chairperson or the Member, as the case may be, shall have to resign before entering upon his office, if he is a Member of Parliament or of the Legislature of any State.
or Union Territory; or if he holds any office of trust or profit. In case he is connected with any political party he will have to sever his connection therewith.

(vii) The Chairperson and Member shall hold office for a term of 3 years from the date on which each enters upon his office or until attaining the age of 70 years, whichever is earlier. On ceasing to hold office the Chairperson and every Member shall be ineligible for reappointment in the Lokpal as well as further employment to any office of profit under the Government of India or the Government of a State.

(viii) The Chairperson or a Member shall not be removed from his office except by an order made by the President on the ground of proved misbehaviour or incapacity after inquiry made by a Committee as has been prescribed in Clause 7 of the Bill.

(ix) The Lokpal can requisition the services of any officers or investigating agencies of the Government for conducting the inquiries.

(x) The Lokpal will not look into a complaint which has been referred for inquiry under the Commissions of Inquiry Act, 1952.

(xi) The Lokpal shall not inquire into any complaint if the complaint is made after the expiry of 10 years from the date on which the offences mentioned in such complaint is alleged to have been committed.

(xii) Every inquiry shall be conducted by the Chairperson and the Members sitting jointly and the place in which such inquiry is conducted shall be deemed to be an open court. In exceptional circumstances and for reasons to be recorded in writing, such inquiry may be conducted in camera.
(xiii) The Bill lays down a specific time frame of six months within which the Lokpal should complete the inquiry to ensure that action on the complaint is taken to its logical conclusion without much delay. This period of six months could be extended for a further period of six months for reasons to be recorded in writing to complete the inquiry.

(xiv) The Lokpal shall present annually to the President a consolidated report on the administration of this Act and the President shall as soon as may be and in any case not later than 90 days from the receipt of such report cause the same together with an explanatory memorandum to be laid before each House of Parliament.

(xv) The Bill makes it mandatory for the Members of Parliament and their families to declare their assets and liabilities annually.

(xvi) The Bill has a provision to deal with situation where intentional insult or interruption is caused to the Lokpal. It also contains provisions relating to power of the Lokpal to try certain offences, to take action in case of false complaints and also conferment of additional functions on the Lokpal by the President.

(xvii) It has been ensured that the Lokpal functions without fear or favour.

10. A comparison of the Lokpal Bill, 1998, and Lokpal Bill, 1996, in the background of recommendations of the previous Committee on Home Affairs on the 1996 Bill shows that the Lokpal Bill, 1998, incorporates several recommendations of the previous Committee. While the earlier Committee made recommendation in 31 clauses of the 1996 Bill, in 21 clauses, Government have fully accepted the recommendations of the Committee. In respect of 2 clauses
recommendations of the Committee have been accepted with some modifications while in case of 3 clauses recommendations have not been accepted. In respect of 3 clauses, provisions of two Bills, are identical. 2 clauses in the 1998 Bill are new.

11. A scrutiny of the clauses of the two Bills shows that –

(i) Clauses 1, 3, 6, 7, 10 to 21, 23 to 25, 28 and 32 of the Lokpal Bill, 1998, are exactly in accordance with the recommendations of the previous Committee on the corresponding clauses of the Lokpal Bill, 1996;

(ii) Provisions relating to clauses 2, 29 and 31 of the Lokpal Bill, 1998, are the same as they were in the Lokpal Bill, 1996;

(iii) Clauses 8 and 26 are new provisions incorporated in the 1998 Bill. Under clause 5 of the 1998 Bill which pertains to provision regarding ineligibility of Chairperson and Members of Lokpal to hold other offices, membership of the Legislature of a Union Territory has been added to the existing provisions of clause 5 of the Lokpal Bill, 1998. The provision relating to holding the office of Lokpal by Chairperson and Members up to the maximum age of seventy years is also a new provision under clause 6 of the Bill.

(iv) As regard clauses 4 and 27 of the Lokpal Bill, 1998, recommendation of the predecessor Committee in the matter have been accepted with some modifications. In clause 4, two more members besides those suggested by the previous Committee, viz. The Minister in charge of the Ministry of Home Affairs in the Government of India and the Leader of the House other than the House in which the Prime Minister is a Member of Parliament have been included in the Committee which is to recommend names of the Chairperson and Members of Lokpal. In clause 27, the previous Committee had recommended
deletion of sub-clause (2) of the corresponding clause 30 of the Lokpal Bill, 1996. In the 1998 Bill, slight modification has been made in the sub-clause to the effect that instead of the provision "Save as otherwise provided in this Act, no proceedings or decision of the Lokpal shall be liable to be challenged, reviewed, quashed or called in question in any court", the provision "Save as otherwise provided in this Act, no proceedings or decision of the Lokpal shall be called in question in any Court" has been made.

(v) The recommendations of the previous Committee with regard to corresponding provisions of clauses 9, 22 and 30 of the Lokpal Bill, 1998 have not been accepted by Government and they stand as they existed in the Lokpal Bill, 1996.

With regard to corresponding clause 9 of the 1998 Bill, the Committee had recommended that in order to remove any apprehension regarding delay in providing services of any officer from concerned Governments, 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. With regard to corresponding clause 22 of the 1998 Bill, the previous Committee had recommended that the clause may be deleted and in respect of corresponding clause 30 of the present Bill, the Committee had recommended deletion of sub-clause (b) of that clause (i.e. Cl-33). The Committee had recommended that powers may be given to Lokpal to take suo moto notice of cases of corruption by public functionaries.

11.1 A statement captioned "Statement on the Lokpal Bill, 1998" received from the Ministry of Personnel, Public Grievances and Pensions indicating therein the provisions in the 1996 Bill, recommendations of the Committee made thereon and the
decisions taken by the Government to accept/reject/modify the recommendations, may be perused at Annexure III.

12. In its meeting held on 5th January, 1999 the Committee set down to consider the Lokpal Bill, 1998 and also the recommendations of Committee of Privileges (Eleventh Lok Sabha) as contained in its Report on `Ethics, Standards in Public Life, Privileges, Facilities to Members and Other Related Matters', relating to Lokpal, as desired by the Chairman, Rajya Sabha.

12.1 The relevant recommendations of the Committee of Privileges (Eleventh Lok Sabha) as contained in its report cited above, have been reproduced below:

"It is the considered opinion of the committee of Privileges that the Lokpal may be empowered to deal only with the complaints which fall under the provisions of the Prevention of Corruption Act, 1988.

The Committee recommends the following procedure for investigation of the above mentioned complaints under the Prevention of Corruption Act:-

(i) Lokpal may enquire into all cases against Members of Parliament falling under the provisions of the Prevention of Corruption Act;

(ii) Complaints may be filed with the Lokpal either directly or through the Committee on Ethics and Privileges or may be referred to the Committee by the Speaker/House;"
(iii) Where complaints under the Prevention of Corruption Act are filed with the Committee on Ethics and Privileges, the same may be straightaway referred by the Chairman of the Committee to the Lokpal for investigation and report.

(iv) After due investigation on all such complaints, the Lokpal may forward its report and findings to the Speaker, Lok Sabha;

(v) The Speaker may refer all such reports to the Committee on Ethics and Privileges for suggesting requisite action;

(vi) The Committee on Ethics and Privileges may report back to the Speaker with its suggestions for action on such matters; and

(vii) The Speaker may then cause the Report of the Lokpal with due suggestions for action made thereon by the Committee on Ethics and Privileges, on the Table of the House.

In view of the foregoing the Committee of Privileges recommends that the Lokpal Bill, 1996 may be suitably amended.

The Committee of Privileges also recommends that all other ethics related complaints may be solely dealt with by the Committee on Ethics and Privileges.

12.2 The Committee then heard the Secretary, Ministry of Personnel, Public Grievances and Pensions on the various provisions of the Bill. The Secretary informed the Committee that all the recommendations of the previous Committee have been taken into consideration while drafting the Lokpal Bill, 1998 and in fact the majority of the recommendations have been accepted and
incorporated in it. The Secretary then went on to make a brief presentation on various provisions of the Bill.

13. In the said meeting of the Committee reference was also made to the observations and recommendations as contained in the First Report of the Ethics Committee of the Rajya Sabha presented to the House on 8th December, 1998. The following observations/recommendations of the Ethics Committee were particularly cited in the Committee's meeting:

"6. The Committee does not favour the idea of subjecting the Members to the disciplinary authority of an agency outside the jurisdiction of the House. The Committee has noted the provisions existing in this regard in several commonwealth countries and in the U.S. Congress and is in favour of making the Ethics Committee a permanent institution in the Rajya Sabha. It is the considered view of the Committee that it should be made compulsory for the Members to declare their assets and liabilities and those of their immediate family which includes spouse, dependant daughters and dependant sons before the Committee. The Committee should place these statements on the Table of the House. The Committee would constantly guide and give advice to the Members on question of propriety and conduct."

14. The Committee then drew the attention of the Secretary of the Ministry to the Supreme Court judgement dated 17th April, 1998 in the case of P.V. Narasimha Rao vs. State wherein it has been pronounced as follows:

"We have reached the conclusion that Members of Parliament and the State Legislature are public servants liable to be prosecuted for offences under the said Act (Prevention of Corruption Act, 1988) but that they cannot be prosecuted for offences under Sections 7, 10, 11 and 13 thereof because of want of an authority competent to
grant sanction thereto. We entertain the hope that Parliament will address itself to the task of removing this lacuna with due expedition."

15. It was then stated in the meeting of 5th January, 1999 that since the presentation of the Report of the previous Committee on the Lokpal Bill, 1996, three important developments have taken place, namely:

(a) Report of the Committee of Privileges (Eleventh Lok Sabha) as cited above;

(b) Supreme Court judgement dated 17th April, 1998 adjudging the Members of Parliament as public servants; and

(c) The First Report of the Ethics Committee of the Rajya Sabha wherein it had *inter alia* observed that it did not favour the idea of subjecting the Members to the disciplinary authority of any agency outside the jurisdiction of the House and that it was in favour of the Ethics Committee as a permanent institution in the Rajya Sabha.

15.1 The Committee was thus of the view that the Lokpal Bill, 1998 should be considered in the light of these developments and Government should formulate its views on each of the above items before proceeding further with the Bill.

16. Committee then discussed and raised queries on various provisions of the Bill namely – establishment of Lokpal (Clause 3), appointment of Chairperson and Members of Lokpal (Clause 4),
ineligibility of the Chairperson and other Members for further employment on ceasing to hold office of Lokpal (Clause 6 [2]), staff of Lokpal (Clause 9), jurisdiction of Lokpal (Clause 10), complaints made to Lokpal (Clause 12), submission of Report by Lokpal (Clause 17), punishment for failing to furnish returns of assets by Members (Clause 18), action in case of false complaints (Clause 22) etc.

16.1. The Secretary replied to the various queries.

17. The Committee further considered the Bill in its meeting held on the 18th January, 1999. The following three basic issues were raised therein:

(i) **Rationality of bringing Members of Parliament within the purview of Lokpal in view of the Supreme Court judgement dated 17th April, 1998 in the case of P.V. Narasimha Rao vs. State adjudging the Members of Parliament and State Legislatures as Public Servants liable to be prosecuted under the Prevention of Corruption Act, 1988;**

(ii) **Views and recommendations of the Committee of Privileges (Eleventh Lok Sabha) as contained in its Report on 'Ethics, Standards in Public Life, Privileges, Facilities to Members and other Related Matters' regarding procedure to be followed by Lokpal in investigating cases of corruption under the Prevention of Corruption Act; and**

(iii) **Views of Ethics Committee of the Rajya Sabha as contained in the First Report wherein it had not favoured the idea of subjecting the Members to the disciplinary authority of an agency outside the jurisdiction of the House.**
17.1 Members expressed differing views on these issues which *inter alia* included that:

(a) in view of the Supreme Court judgement bringing thereby Members of Parliament within the definition of Public Servant under the Prevention of Corruption Act there was no need for bringing the Members of Parliament within the jurisdiction of Lokpal as it would tantamount to double jeopardy;

(b) Members of Parliament should not be subjected to the disciplinary authority of an agency outside the jurisdiction of the House in consonance with the views of Ethics Committee which is a permanent institution of the House;

(c) subjecting Members of Parliament to an outside disciplinary authority would affect the supremacy of Parliament; and

(d) there was need for establishing the institution of Lokpal as corruption had increased manifold in high places after independence and there had been general perception that persons holding high offices were not being punished.

(e) by establishing the institution of Lokpal the supremacy of Parliament would not be eroded as it would be a creation of Parliament. The supremacy of Parliament would in effect be re-iterated with the establishment of Lokpal.

18. The Committee, accordingly, recommends to the Government to examine the three basic issues mentioned in para 17 above and the views expressed by the Members thereon (para 17.1 supra) before proceeding further with the Bill.
18.1 The Committee notes that the motions regarding consideration and adoption of the First Report of the Ethics Committee of the Rajya Sabha were moved in the House by the Chairman of that Committee on 17th December, 1998. However, the discussion thereon was deferred by the House. The Committee is of the view that it will be appropriate to let the House first resume discussion on the Report of the Ethics Committee and arrive at a decision on the recommendations contained therein before the Government proceeds further with the Bill.


20. The Committee considered and adopted the Report at its sitting held on the 19th February, 1999.

21. The observations of the committee with regard to the principal changes proposed in the Bill are given below:

**Clause 4**

21.1 Clause 4 provides that the Chairperson and other Members of Lokpal shall be appointed after obtaining the recommendations of a Committee consisting of the Vice-President of India, the Prime Minister, the Speaker of the House of the People, the Home Minister,
the Leaders of the Opposition in the House of the People and the Council of States and the Leader of the House other than the House in which the Prime Minister is a Member.

21.2 The Committee, however, observed that in the last five decades there had been Leader of Opposition in the Lok Sabha only for eleven years. The Committee noted that according to rules, any party failing to get less than ten percent of the total number of seats in the House could not be recognised as a party and the Leader of such single largest party in opposition to the Government could not be recognised as Leader of Opposition. The Committee further noted that there might arise a situation when there would be no Leader of Opposition in either of the Houses. **The Committee, therefore, recommends that an appropriate explanation should be added to this clause to suitably deal with such situation. The Committee feels that in such an eventuality the leader of the single largest group in opposition to the Government in the concerned House could be included in the Committee recommending the names of Chairperson and Members of Lokpal.**

21.3 **Subject to this, the clause is adopted.**

**Clause 6**

21.4 Clause 6 *inter alia* provides that on ceasing to hold office the Chairperson and every other Member of Lokpal shall be ineligible for reappointment in the Lokpal and further employment to any office
of profit under the Government of India or the Government of a State.

21.5 The Committee, however, recommends that along with these provisions, the Chairperson and Members of Lokpal should also be made ineligible for the gubernatorial posts and diplomatic assignments, like Ambassadors, High Commissioners, Administrators of Union Territories etc. after ceasing to hold their respective offices. In other words they should be debarred from holding any office under the Government of India.

21.6 Subject to this, the clause is adopted.

Clause 8

21.7 Clause 8 provides that due to occurrence of any vacancy in the office of the Chairperson by reason of his death, resignation or owing to his absence on leave or otherwise, the President may, by notification, authorise one of the Members to act as the Chairperson until the appointment of a new Chairperson/resumption of duties by the Chairperson.

21.8 The Committee feels that it will be better if some definite criterion be laid down for authorising a Member of Lokpal for acting as its Chairperson in the event of occurrence of vacancy therein. It recommends that in such a situation the senior most
Member should be authorised to discharge the functions of the Chairperson.

21.9 **Subject to this, the clause is adopted.**

**Clause 9**

21.10 Clause 9 deals with the staff of the Lokpal and the powers of the Lokpal to utilise the services, *inter alia*, of any investigating agencies of the Government and of any other agencies.

21.11 The Committee in its Fortieth Report on the Lokpal Bill, 1996 had *inter alia* 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.

21.12 The Committee noted that this recommendation of the previous Committee had not been accepted by the Government on the ground that the existing provisions were found to be more flexible.
21.13 In this context the representative of the Ministry submitted that the Lokpal was a new institution and was in the evolutionary stage. New conventions would have to be built by the State Governments and the Centre vis-a-vis the Lokpal.

21.14 The Committee, however, reiterates that necessary procedure in this regard may be provided in the rules to be framed under this Act so as to ensure that the services of officers, etc. to the Lokpal are provided with due promptness.

21.15 Subject to this, the clause is adopted.

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**Clause 18**

21.16 Clause 18 provides for declaration of assets and liabilities by Members of Parliament. Sub-clause (4) of the clause provides that if a Member of Parliament fails to furnish a return of all assets owned by him and members of his family and all liabilities incurred by him and members of his family before the Lokpal within the prescribed period he shall not sit or vote as a member of either House of Parliament until he furnishes such return and a written communication is received by the Speaker or the Chairman, as the case may be, from the Lokpal to that effect.
21.17 **Doubts were expressed about the constitutional validity** of sub-clause (4). It has been felt that the said provision will violate Article 105 of the Constitution dealing with Powers, Privileges and Immunities of Parliament and its Members. The Committee, therefore, recommends that this provision may be re-examined by the Government and opinion of Attorney General may also be obtained.

21.18 **Subject to this the clause is adopted.**

**Clause 22**

21.19 Clause 22 provides for action taken by the Lokpal in the case of false complaints. Sub-clause (2) of the clause provides for imprisonment for a term which shall not be less than one year but which may extend to three years and also to fine which may extend to fifty thousand rupees to the complainant in case of a false complaint.

21.20 Members expressed apprehension that due to the stringent provisions of punishment in case of a false complaint, people would not come forward to file complaints against public functionaries because the complainant would not be sure whether he would be able to prove the charges levelled against the public functionary or not. In this context it was stated that as per clause 13 the Lokpal would dismiss the complaint at the preliminary scrutiny stage if it was manifestly false and vexatious. If the complaint was not dismissed then the Lokpal would proceed with the enquiry and take
evidence etc. However, if the complainant was not able to produce sufficient evidence then his complaint may be held as false and attract punishment under clause 22.

21.21 In this context, it was also mentioned that the intention of clause 22 was to discourage frivolous complaint against the highest political functionaries like the Prime Minister and Members of the Council of Ministers and that was why deterrent punishment had been provided.

21.22 In the light of the propositions above, the Committee feels that there is a need for reconciling between discouraging the people from lodging complaint and protecting public functionaries from frivolous complaints. It is felt that the clause should attract punishment only in those cases where mala fide intention of the complainant in filing the complaint is proved. The Committee thus recommends that this clause may be suitably amended.

21.23 Subject to this the clause is adopted.

Clause 25

21.24 Clause 25 provides for the disposal of deposits made by the complainants in pursuance of the provisions of clause 12 and payment of compensation or reward to the complainant in case all or any of the allegations made by him in the complaint have or has
been substantiated either wholly or partly and having regard to the expenses incurred by him in relation to the proceedings in respect of such complaint and all other relevant circumstances of the case the Lokpal feels satisfied that he deserves to be compensated or rewarded.

21.25 A point was raised by some Members whether the provisions relating to criminal liability under clause 22 of the Bill where the complainant was required to pay fine if his complaint proved to be a false one and the civil liability under clause 25 where Lokpal decides to pay compensation to the complainant when the charges levelled by him against the public functionary are substantiated wholly or partly, could be brought under one clause. At this, the representative of the Ministry submitted that the Ministry would consider whether the two clauses could be brought together under one clause. The Committee directed the Ministry to examine the matter.

21.26 Subject to this, the clause is adopted.

Clause 30

21.27 Sub-clause (b) of clause 30 bars any inquiry suo motu by the Lokpal into cases of corruption by public functionaries coming to his notice through media or otherwise. It was brought out that the earlier Committee while examining the Lokpal Bill, 1996 had felt on this issue that the basic objective of the creation of an institution of Lokpal was 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. The Committee had, therefore, recommended that the Lokpal should be given powers to take suo motu notice of cases of corruption by public functionaries. The Government has, however, not accepted that recommendation of the Committee.

21.28 Citing the recommendation of the previous Committee an opinion was expressed that Lokpal should be given powers to make an inquiry suo motu.

21.29 The representative of the Ministry submitted that no court in the country could look into anything suo motu and give a verdict on that. In case of a grievance connected with an executive action redressal could be sought only on the basis of an application. The representative further explained that if some authority took cognizance of a case suo motu it would lead to the question of bias and other associated problems. That was why though the earlier Committee had recommended deletion of sub-clause (b), the Government retained the same.

21.30 After hearing the explanation of the representative of the Ministry another view was expressed that if sub-clause (b) were to be deleted it would cause serious problems. It was further argued that if this provision was taken away it would be interpreted as if the Lokpal had suo motu powers and could use it.
21.31 In view of the divergent viewpoints expressed in regard to sub-clause (b), the Committee is of the opinion that it will be better to leave the matter for the Parliament.

22. Clauses 2, 3, 5, 7, 10 to 17, 19 to 21, 23, 24, 26 to 28, 31 and 32 are adopted by the Committee without any change.

23. Clause 1, the Enacting Formula and the Title are adopted with some changes which are of consequential or drafting nature, namely `1998' and `Forty-ninth' to be substituted by `1999' and `Fiftieth', respectively.

24. Subject to paras 18 and 18.1 supra the Committee recommends that the Bill be passed after incorporating the amendments suggested by it."

New Delhi
February 25, 1999

[PRANAB MUKHERJEE]
CHAIRMAN
COMMITTEE ON HOME AFFAIRS