

REPORT NO.

77



PARLIAMENT OF INDIA

RAJYA SABHA

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

SEVENTY-SEVENTH REPORT

**The Lokpal and Lokayuktas and Other Related Law
(Amendment) Bill, 2014**

(Presented to the Rajya Sabha on 7th December, 2015)

(Laid on the Table of Lok Sabha on 7th December, 2015)



Rajya Sabha Secretariat, New Delhi
December, 2015 / Agrahayana1937 (Saka)



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CONTENTS

	PAGES
1. COMPOSITION OF THE COMMITTEE	(I) - (II)
2. INTRODUCTION	(III) - (V)
3. REPORT	1 - 22
4. RECOMMENDATIONS/OBSERVATIONS AT A GLANCE	23 - 30
*5. RELEVANT MINUTES OF THE MEETINGS OF THE COMMITTEE
*6. ANNEXURE	
(I) LOKPAL AND LOKAYUKTAS AND OTHER RELATED LAW (AMENDMENT) BILL, 2014	
(II) LOKPAL AND LOKAYUKTAS ACT, 2013	

* To be appended at printing stage.

COMPOSITION OF THE COMMITTEE
(Constituted on 1st September, 2014)

1. Dr. E.M. Sudarsana Natchiappan — *Chairman*

RAJYA SABHA

2. Ms. Anu Aga
3. Shri Majeed Memon
4. Shri Parimal Nathwani
5. Smt. Rajani Patil
6. Shri Sukhendu Sekhar Roy
7. Shri Ramchandra Prasad Singh
8. Dr. Abhishek Manu Singhvi
9. Shri K.T.S. Tulsi
10. *Shri Bhupender Yadav

LOK SABHA

11. Shri Suwendu Adhikari
12. Shri Subrata Bakshi
13. Adv. Sharad Bansode
14. Shri P.P. Chaudhary
15. Shri Abu Hasem Khan Chowdhury
16. Choudhary Mehboob Ali Kaiser
17. Shri Shanta Kumar
18. Shri Santosh Kumar
19. Shri S. Bhagwant Mann
20. Shri Anoop Mishra
21. Shri B.V. Naik
22. Shri Vincent H. Palla
23. Shri V. Panneerselvam
24. Shri Vithalbhai Hansrajbhai Radadiya
25. Dr. A. Sampath
26. Shri Bharat Singh
27. Shri Udhayakumar M.
28. Shri Varaprasad Rao Velagapalli
29. Dr. Anshul Verma
30. #Shri Tariq Anwar
31. \$Adv. Joice George

* Nominated vice Shri Aayanur Manjunatha w.e.f. 30th September, 2014.

Vacancy existing since the constitution of the Committee and filled-up on 11th September, 2011.

\$ Change in the nomination of Shri Innocent w.e.f. 22nd December, 2014.

COMPOSITION OF THE COMMITTEE
(Re-constituted on 1st September, 2015)

1. Dr. E.M. Sudarsana Natchiappan — *Chairman*

RAJYA SABHA

2. Ms. Anu Aga
3. Shri Majeed Memon
4. Shri Parimal Nathwani
5. Shrimati Rajani Patil
6. Shri Sukhendu Sekhar Roy
7. Shri Ramchandra Prasad Singh
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22. Shri B.V. Nayak
23. Shri Vincent H. Pala
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25. Shri V. Panneer Selvam
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27. Shri Bharat Singh
28. Shri M. Udhayakumar
29. Shri Varaprasad Rao Velagapalli
30. Dr. Anshul Verma
31. *Shri Shanta Kumar

SECRETARIAT

Dr. D.B. Singh, Secretary
Shri K.P. Singh, Joint Secretary
Shri Ashok K. Sahoo, Joint Director
Smt. Niangkhanem Guite, Assistant Director

* Resigned from Committee w.e.f. 9th October, 2015.

INTRODUCTION

I, Chairman of the Department-related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice, having been authorised by the Committee on its behalf, do hereby present the Seventy-Seventh Report on the Lokpal and Lokayuktas and Other Related Law (Amendment) Bill, 2014.

2. In pursuance of the Rules relating to the Department-related Parliamentary Standing Committees, the Hon'ble Chairman, Rajya Sabha referred the Lokpal and Lokayuktas and Other Related Law (Amendment) Bill, 2014 (**Annexure-I**), as introduced in the Lok Sabha on the 18th December, 2014 to the Department-related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice on the 25th December, 2014, for examination and report to Parliament within three months *i.e.* by the 24th March, 2015. In order to solicit the views of stakeholders, the Committee issued a Press Communiqué on 7th January, 2015. In response thereto the Committee received several memoranda containing suggestions from various organizations/ individuals / experts. Comments of the Department of Personnel and Training on the views/suggestions so received, were placed for the consideration of the Committee.

3. The Committee heard the views of Secretary, Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pensions and Director , Central Bureau of Investigation during its meeting held on 8th January, 2015. The Committee then heard the views of Secretary, Central Vigilance Commission and Director of Prosecution of Central Bureau of Investigation during the meeting held on 3rd March, 2015.

4. The Committee heard Dr. Jayaprakash Narayan, General Secretary, Lok Satta on 26th May, 2015. The Committee also heard the views of Shri Ashok Kapur, Director, Institute of Directors; Professor, K Elumalai, Director, School of Law, Indira Gandhi National Open University; Smt Anjali Bhardwaj and Shri Nikhil Dey of National Campaign for Peoples' Right to Information and Ms Guninder Gill during its meeting held on the 15th April, 2015.

5. The Committee again heard the Secretary, Department of Personnel and Training and Director, Central Bureau of Investigation; Chairperson, Central Board of Direct Taxes; Secretary, Central Vigilance Commission and Director, Enforcement Directorate on 16th July, 2015.

6. The Committee wrote to all the recognised National and State Political Parties to hear their views on the Bill and particularly on Clause 6. The Committee received written views from Bharatiya Janata Party, Communist Party of India, Shiromani Akali Dal, YSR Congress Party, All India Trinamool Congress, All India Anna Dravida Munnetra Kazhagam, Indian National Lok Dal and Aam Aadmi Party. All India Anna Dravida Munnetra Kazhagam, All India Trinamool Congress and Indian National Lok Dal presented their views on the Bill during its sittings held on 14th October and 16th November, 2015.

7. The Committee also heard the views of Indian Revenue Service Association, Indian Civil Accounts Service Association, Confederation of Central Government Gazetted Officers' Organisations and Confederation of Civil Service Association during the meeting held on 14th October, 2015. It has received written views of Central Secretariat Non-gazetted Employees Union, Central Secretariat Service Group-A Officers Association and Central Secretariat (Promotee) Assistants' Association.

(iii)

8. The Committee during its local study-visit on 8th April, 2015, visited the Central Vigilance Commission Headquarters in New Delhi, interacted with the Chief Vigilance Commissioner. The Committee, during its study visit from 14th to 23rd June, 2015 to Kolkata, Mumbai, Hyderabad, Tirupati and Chennai, interacted with management together with Chief Vigilance Officers (CVOs) of Steel Authority of India Limited (SAIL), Allahabad Bank, UCO Bank, Balmer Lawrie & Company, Oil and Natural Gas Corporation(ONGC), Union Bank of India, Shipping Corporation of India (SCI), Life Insurance Corporation, New India Assurance Company Ltd., Central Bank of India, State Bank of Hyderabad (SBH), National Mineral Development Corporation (NMDC), Bharat Dynamics Limited (BDL), Electronics Corporation of India Limited (ECIL), Mishra Dhatu Nigam Limited (MIDHANI), Andhra Bank, National Atmospheric Research Laboratory (NARL), Chennai Petroleum Corporation Limited (CPCL), Hindustan Petroleum Corporation Limited (HPCL), Bank of Baroda and Madras Fertilisers Limited. It also heard views of Defence Research and Development Organization (DRDO), Bharat Heavy Electrical Limited (BHEL) and THDC India Limited during its study-visit to Dehradun, Mussoorie and Haridwar on 4th to 7th November, 2015.

9. The Committee had final consultation with Department of Personnel and Training, Legislative Department and Department of Legal Affairs on certain issues connected with the provisions of the Bill and the Lokpal and Lokayuktas Act, 2013 on the 26th November, 2015.

10. While considering the Bill, the Committee took note of the following documents/information placed before it:-

- (i) Background note on the Bill submitted by the Department of Personnel and Training;
- (ii) Views/suggestions contained in the memoranda received from various organisations/institutions/individuals/experts and recognized National and State Political Parties on the provisions of the Bill and the comments of the Department of Personnel and Training thereon;
- (iii) Comments of Department of Personnel and Training to the questionnaire made by the Secretariat;
- (iv) Replies of Public Sector Undertakings, Financial Institutions and Department of Personnel and Training to questions raised by Members of the Committee during its meetings and study-visits;
- (v) Views expressed during the oral evidence tendered before the Committee by various official and non-official witnesses;
- (vi) Views of Justice M.L. Tahaliyani, Lokayukta, Maharashtra;
- (vii) Representation of Peoples Act, 1951;
- (viii) The Salary and Allowances of Leader of Opposition in Parliament Act, 1977;
- (ix) Central Vigilance Commission Act, 2003;

(iv)

- (x) The Members of Rajya Sabha (Declaration of Assets and Liabilities) Rules, 2004;
- (xi) All India Service (Conduct) Rules, 1968; and
- (xii) Central Civil Service (Conduct) Rules, 1964.

11. The Committee considered and adopted its Report in its meeting held on the 3rd December, 2015 and decided to present verbatim proceedings of the meetings held to examine the Bill.

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

New Delhi;
3rd December, 2015

(Dr. E.M. SUDARSANA NATCHIAPPAN)
Chairman,
Department-related Parliamentary Standing
Committee on Personnel, Public Grievances, Law and Justice

REPORT

Lokpal and Lokayuktas Act, 2013 was enacted to setup an independent and empowered anti-corruption institution, namely, Lokpal at union level and for making enabling provision for establishment of Lokayukta for States for prompt inquiry and investigation into allegation of corruption by public functionaries and to fulfil the obligations of our country under the United Nations Convention Against Corruption (UNCAC). The Lokpal and Lokayuktas Act, 2013 came into force w.e.f. 16th January, 2014. Pursuant thereto the Union Government framed and notified the following Rules thereunder to implement the provisions of the said Act:-

- (i) The search Committee (Constitution, Terms and Conditions of Appointment of Members and the Manner of Selection of Panels of Names for Appointment of Chairperson and Members of Lokpal) Rules, 2014; and
- (ii) The Public Servants (Furnishing of Information and Annual Returns of Assets and Liabilities and Limit for Exemption of Assets in Filing Returns) Rules, 2014

In order to remove certain difficulties in making Lokpal functional and to make certain other changes, amendments to the Lokpal and Lokayuktas Act, 2013 have been proposed under the Lokpal and Lokayuktas and Other Related Law (Amendment) Bill, 2014 (**Annexure-I**).

2. The Lokpal and Lokayuktas and Other Related Law (Amendment) Bill, 2014, seeks to amend the Lokpal and Lokayuktas Act, 2013 (**Annexure-II**) and the Delhi Special Police Establishment (DSPE) Act, 1946. The relevant Sections of the abovesaid Acts along with corresponding Clauses of the Bill making amendments in those Sections, are presented below in a tabular form:-

Amendments Proposed to the Lokpal and Lokayuktas Act, 2013 and Delhi Special Police Establishment Act, 1946 - At a Glance

Sl. No.	Area of Concern	Provisions in the Lokpal and Lokayuktas Act, 2013 & Delhi Special Police Establishment Act, 1946	Relevant Section	Provisions in the Bill	Relevant Clause	Extent of Amendment proposed
1.	Composition of Selection Committee	Prime Minister, Chief Justice of India or Judge of Supreme Court, Speaker, Lok Sabha, Leader of Opposition, Lok Sabha and eminent jurist	4(1) of Lokpal and Lokayuktas Act, 2013	Prime Minister, Chief Justice of India or Judge of Supreme Court, Speaker, Lok Sabha, <u>Leader of largest Opposition Party, Lok Sabha</u> and eminent jurist	2(a) (i)	Inclusion of Leader of largest Opposition Party in Lok Sabha <i>in lieu</i> of Leader of Opposition in Lok Sabha in Selection Committee
2.	Tenure of eminent jurist in Selection Committee	No mention of tenure	4(1)(e) of Lokpal and Lokayuktas Act, 2013	Fixed tenure of three years with no renomination	2 (b)	Limiting tenure of eminent jurist to single term in the Selection Committee
3.	Proceedings of Search and	Proceedings not to be invalidated due to	4(2) of Lokpal and	No invalidation of proceedings of Search	2(b) &	To validate the proceedings of Search

	Selection Committees	vacancy in the Selection Search Committees	Lokayuktas Act, 2013	and Selection Committees due to vacancy or <u>absence</u> therein	2 (c)	and Selection Committees in the event of <u>absence or vacancy</u> of any member arising therein in future
4.	Rank of Secretary to Lokpal	Secretary to Government of India	10 (1) of Lokpal and Lokayuktas Act, 2013	Additional Secretary to Government of India	3(a)	Rank reduced.
5.	Rank of Director of Inquiry and Director of Prosecution of Lokpal	Additional Secretary to Government of India	10(1) of Lokpal and Lokayuktas Act, 2013	Joint Secretary to Government of India	3(b)	Ranks reduced by one level.
6.	Disclosure of assets and liabilities by public servants	All Public servants to declare assets and liabilities of self, spouse and dependant children in the manner provided under the Act within 30 days of the Act coming into force to their Competent Authority and to file Annual Return of movable and immoveable assets and liabilities of self, spouse and dependant children as on 31 st March by 31 st July of that year to the Competent Authority which is to be put in public domain by 31 st August of that year.	44(1) & 44(2) of Lokpal and Lokayuktas Act, 2013	Public servants to declare the (i) immovable assets owned/acquired/inherited by the public servant in his/her name, in the name of any member of his/her family or in the name of any other person; (ii) movable property owned/acquired/inherited by him/her and; (iii) Debts and other liabilities incurred by him/her directly or indirectly. Such declaration to be made to Competent Authority under Act/Rules/ Regulations governing their appointment/ election. The Competent Authority to publish the declaration filed by public servant in prescribed manner by 31 st August of that year.	6(a)	Immovable assets acquired by the public servant whether in his/her name or in the name of any family member or any other person to be declared. Movable assets of only public servant to be declared.
7.	Seat of Lokpal	New Delhi	16(f) of Lokpal and Lokayuktas Act, 2013	NCR of Delhi.	4	To facilitate setting up of Headquarters in the NCR of Delhi.
8.	Eligibility Criteria of Director of Prosecution (DoP) of CBI	Rank of Director of Prosecution is Joint Secretary to Government of India	4BA of DSPE Act, 1946	Indian Legal Service Officer eligible to be appointed as Special Public Prosecutor. In absence of such officer, an advocate having at least 15 years of practice, and experience in handling Government cases relating to offences related to economic	9(a)	Makes the eligibility criteria more stringent. Allows only officers with legal background to head the prosecution wing of the Central Bureau of Investigation

				offences and corruption.		
9.	Difference of opinion between Director, and Director of Prosecution of CBI	No provision	4BA of DSPE Act, 1946	To be settled by Attorney General for India whose decision would be binding.	9(b)	New provision.

Leader of Single Largest Opposition Party to be Part of Selection Committee in the Absence of Leader of Opposition (LoP) in Lok Sabha

3.0. Clause 2 *inter alia* seeks to amend Section 4 of the Lokpal and Lokayuktas Act, 2013 allowing the leader of the single largest opposition party in the House of People (Lok Sabha) to be part of the Selection Committee for Lokpal when there is no recognized Leader of Opposition (LoP) in that House.

3.1. The Department of Personnel and Training (DoPT) has stated that the amendment is necessitated keeping in view the political exigencies which emerged after the Sixteenth General Election to Lok Sabha as there is no Leader of Opposition in Lok Sabha in the current Lok Sabha. Similar amendment was made to Section 4A of the Delhi Special Police Establishment (DSPE) Act, 1946 in November, 2014 enabling leader of largest opposition party to be part of the selection process for appointment of a new Director of CBI. Similar provisions also exist for the appointment of Chief Vigilance Commissioner (CVC) under Section 4 of CVC Act, 2003.

3.2. Several Members of the Committee raised questions regarding a situation wherein two or more parties have the same strength in the House of People and wondered, in that situation, who would become a part of the Selection Committee for Lokpal. In response thereto, the DoPT has submitted that such a situation is a rare one. In such a situation, the selection of Lokpal can either be made by treating the position of Leader of Opposition (LoP) as vacant and proceeding with making the selection or to wait for the decision of the Hon'ble Speaker, Lok Sabha to recognise the leader of one party as per the provisions of the Salary and Allowances of Leader of Opposition in Parliament Act, 1977. The Explanation to Section 2 of the Salary and Allowances of Leaders of Opposition in Parliament Act, 1977 permits the Presiding Officer of the House (Lok Sabha/ Rajya Sabha) to recognize the leader of one political party in opposition to the Government as Leader of Opposition when there are two or more parties having similar numerical strength in that House.

3.3. Most of the non-official witnesses who appeared before the Committee also agreed with the amendment.

Recommendations / Observations of the Committee

3.4. The Committee notes that in the present Lok Sabha, there is no recognized Leader of Opposition and such a situation can arise in future as well. In the absence of Leader of Opposition it is not possible to constitute the Selection Committee of Lok Pal as per provisions of the Lok Pal and Lokayuktas Act, 2013. In order to overcome such a situation, amendment is proposed to provide that the Leader of Opposition recognised as such in the Lok Sabha or where there is no such Leader of Opposition, the leader of the single largest

opposition party in that House shall be a Member of the Selection Committee. Similar provision exists for the appointment of Chief Vigilance Commissioner (CVC) under Section 4 of CVC Act, 2003. The Committee is of the view that the amendment is both necessary and appropriate and accordingly recommends it.

Fixed Tenure for the Eminent Jurist in Selection Committee of Lokpal

4.0. Clause 2 of the Bill proposes to amend Section 4 (1) (e) of the Lokpal and Lokayuktas Act, 2013 to insert a proviso which fixes a three year tenure for the eminent jurist with bar on re-nomination.

4.1. The DoPT has stated that it is essential to fix the tenure of the eminent jurist which was not provided in the Lokpal and Lokayuktas Act, 2013. The DoPT has further submitted that three years tenure has been prescribed in the case of the eminent jurist in the National Judicial Appointments Commission (NJAC) by the Ninety-ninth Constitution Amendment Act, 2014.

4.2. Some non-official witnesses suggested that the post should not be of a permanent nature and that the eminent jurist should be invited only when the Selection Committee meets for the purpose of making the appointments of Members of Lokpal. Suggestions have also been received for fixing qualification for the eminent jurists.

Recommendations/ Observations of the Committee

4.3. The Committee is in agreement with the proposed amendment.

Validity of proceedings of Selection and Search Committees

5.0. Clause 2 of the Bill seeks to amend Sections 4(2) and 4(3) of the Lokpal and Lokayuktas Act, 2013 to provide that nomination of an eminent jurist or the appointment of Chairperson or a Member either in the Lokpal or in the Search Committee or the proceedings of Search Committee shall not become invalid merely by reason of any vacancy or absence of a member in the Selection/Search Committee.

5.1. The DoPT has stated that the clause has been introduced to address a situation when a member is not able to participate in the proceedings of the Selection or Search Committee due to any reason or unforeseen circumstances, and the appointment process cannot be delayed any more.

5.2. Some stakeholders suggested prescribing a quorum in Selection/ Search Committee for the meeting. It was also suggested that the absentee members of the Selection Committee may also be given adequate opportunity to present their views in writing to the Chairman. Some other stakeholders have submitted that this provision may be misused to bypass particular member of the Selection Committee especially when that member is of an opinion which is not to the liking of some others.

Recommendations/ Observations of the Committee

5.3. The Committee is of the view that whenever a Member is unable to attend the meeting either of the Selection Committee or of the Search Committee, he/she should be accorded adequate opportunity to send his/her views in writing to the Selection/Search

Committee and such views of the absentee Member should be taken into account while taking a decision by the Committee. Only in rare situations where despite affording adequate opportunities to the absentee Member, he/she fails to send his views to the Search/Selection Committee in writing, decision may be taken in absence of views of the absentee Member after recording the reasons for non-availability of views of the absentee Member.

5.4. The Committee, however, is firmly of the opinion that Search/Selection Committee should not take any decision unless vacancy, if any, in Search/Selection Committee is filled up. The Committee sees no reason for not filling any vacancy quickly that may arise in the Search/Selection Committee. The Committee accordingly recommends that the Bill may be modified accordingly.

Unified Structure for Anti Corruption Setup

6.0. The Committee observes that with the setting up of Lokpal, multiple agencies such as Lokpal, Central Vigilance Commission (CVC), Central Bureau of Investigation (CBI), Chief Vigilance Officers (CVOs) of concerned organisation would be dealing with complaints of corruption. The Committee notes that the Lokpal and Lokayukta Act, 2013 and amendments proposed thereto make an attempt to integrate CVC and CBI (anti corruption functions) with Lokpal, but it falls short of a fully integrated setup for dealing with corruption cases.

6.1. The Committee notes that there is an overlapping between the functions of CVC and Lokpal. For example, Section 20 of Lokpal and Lokayuktas Act, 2013 provides that Lokpal, if it decides to proceed with the preliminary inquiry shall refer the complaint in respect of public servants belonging to Groups 'A', 'B', 'C' or 'D' to the Central Vigilance Commission who shall after making preliminary inquiry submit a report to Lokpal in case of public servants belonging to Groups 'A' and 'B' and shall deal with complaints in respect of other two groups as per the provisions of CVC Act, 2003. Under Section 25(1) of Lokpal and Lokayuktas Act, 2013, Lokpal has also been made competent to exercise powers and superintendence and to give directions to CBI. Under Sections 8(1)(a) and 8(1)(b) of CVC Act, 2003, CVC is empowered to exercise superintendence over the function of Delhi Special Police Establishment (CBI) and to give it directions in relation to the investigation of offences alleged to have been committed under Prevention of Corruption Act, 1988. Similarly, under Sections 8(1)(c) and 8(1)(d) of CVC Act, 2003, CVC can inquire or cause an inquiry or investigation to be made for alleged offences under Prevention of Corruption Act, 1988 against an official. Further, under Section 14(1) of the Lokpal and Lokayuktas Act, 2013, Lokpal can also inquire or cause an inquiry to be conducted in such cases. Complaints of corruption against any government servants may be lodged with Lokpal, CVC, CBI or the vigilance department of the concerned organization. This may give rise to same complaint being examined by different organizations and may cause unnecessary harassment of public servant apart from causing functional problems. The Committee notes that Section 15 of the Lokpal and Lokayuktas Act, 2013 provides that after commencement of the said Act, if any matter or proceedings related to allegation of corruption under the Prevention of Corruption Act, 1988 is pending before any authority prior to commencement of any inquiry it shall continue with such authority. It is, however, not clear how other authorities would have such knowledge until concerned public servant

is informed of it and he takes up with such authorities. The position, therefore, as it exists provides for overlapping of functions and powers of CVC and Lokpal in certain areas.

6.2. The Committee notes that under the second proviso to Section 20(1), the Central Vigilance Commission is required to submit a report to the Lokpal. Under Section 25(1), the powers of Lokpal override Section 8 of the Central Vigilance Commission Act, 2003 and under sub-Section 2 of Section 25, the Central Vigilance Commission is required to send a statement to the Lokpal at such intervals as the Lokpal may direct in respect of action taken on complaints referred to it and Lokpal is made competent to issue guidelines for effective and expeditious disposal of such cases. Further, power to grant prosecution has been vested in Lokpal under Section 20(7) of the Lokpal and Lokayuktas Act, 2013. This sub-Section provides that a Bench consisting of not less than 3 members of Lokpal shall consider the investigation report received by it from any investigating agency including CBI and after obtaining the comments of the Competent Authority and the public servant, shall decide the further course of action i.e. either to grant sanction for prosecution or direct the closure of report before the Special Court or direct the Competent Authority to initiate the departmental proceedings or any other appropriate action. These provisions show that the scheme of Lokpal and Lokayuktas Act, 2013 places Lokpal on a higher pedestal than CVC notwithstanding overlapping of jurisdictions and functions as stated above.

6.3. The Committee is of the view that institutions of CVC and the CBI (in so far as its anti corruption functions are concerned), be fully integrated with Lokpal and the institution of anti corruption watchdog may be architecturally created vertically with the Lokpal at the apex level and CVC and CBI (anti-corruption wing) working directly under its command and control. The functions of Lokpal and CVC be clearly specified and overlap between functions and powers of CVC and Lokpal be addressed. Lokpal in turn should utilize these organizations for conduct of inquiry, investigation and prosecution.

6.4. The Committee notes that a post of Director of Inquiry was created in CVC by inserting Section 11A in the Central Vigilance Commission Act, 2003 through the Lokpal and Lokayuktas Act, 2013. On such integration, the post of Director of Inquiry which is available in CVC can be utilized by the Lokpal and there would be no need for creation of another post of Director of Inquiry for Lokpal as provided under Sections 10(2) and 11 of the Lokpal and Lokayuktas Act, 2013. The Committee is also aware that apart from anti-corruption, the Central Bureau of Investigation is also handling cases relating to economic offences, special crimes, bank security and fraud and cyber-crime, etc. The Committee is only recommending integration of Anti-corruption Branch of CBI with Lokpal which on such integration may be placed under the Director of Inquiry of Lokpal. For investigation of crimes, other than corruption crimes, the existing structure and procedures may continue to operate. The Government if it so considers necessary for the purpose, may come up with a comprehensive legislation on CBI for effective performance of other functions of the agency as recommended in the Twenty Fourth Report of this Committee on 'Working of CBI' (2008). The Committee feels that such an integrated structure would be more practicable setup and cause least financial burden on the exchequer.

Rank and Status of Secretary to Lokpal, Director of Inquiry and Director of Prosecution of Lokpal

7.0. The Clause 3 of the Bill proposes amendment to Sections 10 (1) and 10 (2) of the Lokpal and Lokayuktas Act, 2013 to reduce the rank and status of Secretary to Lokpal from the rank of Secretary to Government of India to Additional Secretary. Similarly, the rank and status for Director of Inquiry (DoI) and Director of Prosecution (DoP) of Lokpal, is proposed to be reduced from Additional Secretary to Joint Secretary.

7.1. The DoPT has stated that a Secretary rank officer generally serves for a year or two before his/her retirement. In order to provide continuity, a minimum tenure of three to four years for Secretary to Lokpal is required which is possible if he is of the rank of Additional Secretary. Correspondingly, the ranks of DoI and DoP of Lokpal have been reduced to the level of Joint Secretary.

7.2. Members, however, felt that the rank and status of Secretary to Lokpal should be of the rank of Secretary to the Government of India and Director of Inquiry and Director of Prosecution of Lokpal should not be less than the rank and status of Additional Secretary to the Government of India. Further these officers may be provided fixed tenure.

7.3. The Committee took note of the fact that a Director of Inquiry was created in CVC by inserting Section 11A in the Central Vigilance Commission Act, 2003 by the Lokpal and Lokayuktas Act, 2013.

Recommendations/ Observations of the Committee

7.4. The Committee is of the view that since the Secretary to Lokpal would be dealing with high ranking officials of the Government of India, and as such it is absolutely necessary that he/she should not be lower than the rank and status of Secretary to Government of India so that he is not unduly influenced by his/her seniors or colleagues from the Civil Service and is able to function independently. The Committee is further of the view that for effective functioning the Director of Inquiry and the Director of Prosecution of Lokpal, they should not be lower than the rank and status of Additional Secretary to the Government of India. The Committee does not favour the changes proposed by Clause 3 of the Bill. The Committee further recommends that Director of Inquiry created in CVC by insertion of Section 11A in the Central Vigilance Commission Act, 2003 should be used for purposes of inquiry by Lokpal and there is no need for creation of another Director of Inquiry in Lokpal.

Omission of Mention of Section 6A of DSPE Act,1946

8.0. The Clause 5 seeks to amend Section 23 (1) of the Lokpal and Lokayuktas Act, 2013 to delete the Section 6A of the DSPE Act, 1946 from therein.

8.1. The DoPT has stated that in view of the decision of Supreme Court of India invalidating Section 6A of DSPE Act, 1946, this provision in the Lokpal Act has become infructuous. The amendment is thus only a sequel to the judgement of the Apex Court.

Recommendations/ Observations of the Committee

8.2. The Committee agrees with the proposed amendment.

Declaration of Assets and Liabilities by Public Servants

9.0. The Clause 6 seeks to amend Section 44 of the Lokpal and Lokayuktas Act, 2013 relating to declaration of assets and liabilities by public servants. The Section provides for declaration of assets and liabilities to the Competent Authority for all categories of public servants including Union Ministers and Members of Parliament within thirty days of affirmation of oath or assuming office. In accordance with the Lokpal and Lokayuktas Act, 2013 all public servants are required to provide an Annual Return of their assets and liabilities as on 31st March of every year by 31st July of that year. The same needs to be published in the websites of the organizations by 31st August of that year by the Competent Authority concerned. The declaration would comprise the details of the both movable and immovable assets and liabilities of the public servant and his/her spouse and dependent children.

9.1. Clause 6 of the Bill seeks to provide that the asset-liability declaration should be filed by the public servants in the manner prescribed under the provisions of the existing Statutes/ Rules/ Regulations governing their service conditions or election. This means that the manner and form of such declaration will be governed by respective Statute/ Rules/ Regulations. For instance, the Union Ministers and Members of Parliament currently declare their assets and liabilities within ninety days from the date of taking oath of affirmation by them in the manner prescribed under the Section 75A of Representation of People Act, 1951 and Rules made thereunder, to Presiding Officer of the respective House. Rules have accordingly been framed under Section 75A of Representation of People Act, 1951 viz. The Members of Rajya Sabha/ Lok Sabha (Declaration of Assets and Liabilities) Rules, 2004, which prescribes the manner and form of such declaration. Such declaration is akin to the provisions of Section 44 of the Lokpal and Lokayuktas Act, 2013.

9.2. Rule 3 of The Members of Rajya Sabha/ Lok Sabha (Declaration of Assets and Liabilities) Rules, 2004 stipulates that:-

- “(1) Every member of the Council shall, within ninety days from the date on which he makes and subscribes an oath or affirmation for taking his seat, furnish as in Form-1 the following information as required to be furnished by him to the Chairman in pursuance of sub-Section (1) of Section 75A, namely:-*
- (i) The movable and immovable property of which he, his spouse and his dependent children are jointly or severally owners or beneficiaries;*
 - (ii) His liabilities to any public financial institution; and*
 - (iii) His liabilities to the Central Government or to the State Governments.*
- (2) Every Member shall notify changes, if any, in the information furnished by him under sub-rule (1) as on 31st day of March every year, by the 30th June of that year.”*

9.3. The declaration of assets and liabilities by government servants are currently regulated by All India Services (Conduct) Rules, 1968 (framed under the All India Services Act, 1951) and Central Civil Services (Conduct) Rules, 1964 (framed under Articles 148 and 309 of the Constitution of India). Rule 16 of All India Service (Conduct) Rules, 1968 which applies to the officers of Indian Administrative Service (IAS), Indian Police Service (IPS) and Indian Forest Service (IFoS) and Rule 18 of Central Civil services (Conduct) Rules, 1964 which applies to all other officials of the Union Government, provide for manner and form of particulars that are required to be submitted.

9.4. Existing provisions for government servants under the All India Service (Conduct) Rules, 1968 and Central Civil Services (Conduct) Rules, 1964 require the public servant to submit a return, giving the full particulars regarding:-

- a. *“The immovable property owned by him, or inherited or acquired by him or held by him on lease or mortgage, either in his name or in the name of any member of his family or in the name of any other person;*
- b. *Shares, debentures, postal Cumulative Time Deposits and cash including bank deposits inherited by him or similarly owned, acquired or held by him;*
- c. *Other movable property inherited by him or similarly owned, acquired or held by him; and*
- d. *Debts and other liabilities incurred by him directly or indirectly.”*

9.5. It may be pointed out that the information required to be submitted by Members of Parliament under Representation of People Act, 1951 is broadly similar to the provisions of Section 44 of the Lokpal and Lokayuktas Act, 2013 whereas the information required to be furnished under the Lokpal and Lokayuktas Act, 2013 is substantially different from that of the information required to be furnished by government servants under the aforesaid Conduct Rules, applicable to them. Under Representation of People Act, 1951, every elected Member of Parliament is required to furnish the information relating to moveable and immoveable property of which he, his spouse and his dependent children are jointly or severally owners or beneficiaries whereas under Conduct Rules applicable to government servants, they are not required to furnish information of moveable and immoveable assets owned by their family members if those have not been acquired from the income of government servant.

9.6. The Lokpal and Lokayuktas Act, 2013 though has an over-riding effect over Section 75A of the Representation of People Act, 1951, it does not repeal Section 75A of the Representation of People Act, 1951. An elected Member of Parliament, therefore, may be required to furnish information of assets and liabilities both under Section 75A of the Representation of People Act, 1951 as well as under Lokpal and Lokayuktas Act, 2013. Further, under Representation of People Act, 1951 they would be required to furnish information in ninety days from the date on which they take oath while under the Lokpal and Lokayuktas Act, 2013, they may be required to do so within thirty days. Similarly, there may be difference in manner and content of declaration of assets and liabilities under Conduct Rules or other Rules applicable to other public servants. This is not a desirable situation and a uniform system of declaration of assets and liabilities should be made applicable to all public servants. The Committee further observes that Section 75A of the Representation of People Act, 1951 is applicable only to elected Members of the

Parliament. It has no application to nominated Members. Nominated Members may also be required to file a declaration of their assets and liabilities similar to the one to be filed by elected Members of Parliament. Necessary provision in this regard may be incorporated in the Bill and the Committee recommends accordingly.

9.7. In DoPT's view, Rule 16 of All India Services (Conduct) Rules and Rule 18 of the Central Civil Services (Conduct) Rules which are in operation for the last fifty years have been operating successfully. These Rules provide for declaring movable and immovable assets acquired by the public servant in the name of any other person. The same is also reflected in the Bill. However, the Rules do not cover any property which is held/acquired independently by any family member.

9.8. The Department further is of the view that putting the details of assets and liabilities of public servants in public domain may jeopardize the security of government servants. The Secretary of DoPT in his deposition before the Committee stated that they had received representations from several Civil Services Officers' Associations stating that putting the details of officers in the public domain has the potential of hampering their effective working. They have stated that this can also compromise the personal security of the government servants as well as that of their family members. This is especially true for the civil servants posted in sensitive institutions like Indian High Commissions in various countries and sensitive national security related agencies and installations.

9.9. The Secretary, Central Vigilance Commission has supported the amending Clause.

9.10. The Chairperson of Central Board of Direct Taxes (CBDT), in her deposition, stated that as per the Income Tax Act, 1961 and the rules framed thereunder, every person having a Permanent Account Number (PAN) is considered as a separate individual. The returns filed by individuals are confidential and are held by the department as a safe keeper of this information. The Income Tax Returns thus filed cannot be disclosed to any third party (including the spouse of the filer). Such details can be shared only when a larger public interest is involved. The Chairperson applied the same analogy to the Lokpal and Lokayuktas Act, 2013 and said that the Government cannot bind the spouse of a public servant to disclose information related to his/her assets and liabilities as the contract of employment and related service conditions binds only the public servant and not his/her spouse. Therefore, the amendment is necessitated. Only the assets acquired by the public servant using his/her funds in his name or in the name of anyone of his family members or in the name of any one else must be disclosed. The Chairperson further stated that the information regarding the assets and liabilities of public servants must not be put in the public domain as this could jeopardize the security of the public servant as well as the members of the family.

9.11. The Director of Enforcement Directorate (ED) during his deposition stated that the Directorate is in agreement with the views of CBDT on Clause 6 and stated that the amendment would bring it in consonance with the existing provisions which have stood the test of time. He, however, stated that the manner of publication of information filed by the public servant must not be left to the discretion of the Competent Authority and must be clearly defined in the Act itself.

9.12. Some Non Government Organisations (NGOs) have suggested that the declaration of assets and liabilities of the public servant, his/her spouse and children made by the public servant should be published in the website and therefore opposed the amendment. They have also suggested that the existing manner of disclosure as prescribed under Section 44 of Principal Act appears to be better than those prescribed under their respective Statutes/ Rules/ Regulations governing their service conditions.

9.13. Some employees associations during their depositions have stated that the Immovable Property Return (IPR) is furnished by the government servant every year along with submission of Annual Performance Appraisal Report (APAR) to the Competent Authority. In case of complaint to Lokpal, such information may be forwarded to the Lokpal by the Competent Authority. Alternatively, the Central Vigilance Commission may audit property returns of government servant every year in the manner Comptroller and Auditor General carry out audit of government accounts. The CVC may refer disproportionate assets cases to Lokpal to take appropriate action against corrupt government servants. They have also cited several barriers in submitting the declaration of movable assets of their spouse and dependent children. Firstly, it would be difficult for a public servant to correctly assess the value of movable property owned by him or his spouse and dependent children every year. Assessing the correct value of goods like gold and valuable metals would require the services of a professional valuator. This would entail a recurrent expenditure on the part of the government servant. Secondly, in the case of *streedhan*, the Supreme Court in the case of Pratibha Rani Vs. Suraj Kumar (1985 AIR 628), has held that the position of the *streedhan* in Hindu marriage is clear and unambiguous and she is the absolute owner of such a property and deal with it in any manner she likes without any reference to her husband. Thus, keeping this in mind, a public servant may not be in a position to reveal the correct information regarding the *streedhan*. Thirdly, the spouse of a government servant is an independent entity and cannot be forced by the government to reveal personal information relating to his/her property. The Section 44 of the Lokpal and Lokayuktas Act, 2013 has already been challenged by Mrs. Vinita Singla (spouse of a government servant), who has approached the Hon'ble High Court of Delhi. That Court in an interim observation on 9th September, 2014 has held that:-

".....prima facie, there is merit in the petitioner's contention that as a private citizen, the indirect method adopted by Section 44 in compelling disclosure, which is essentially falling within her exclusive control, results in violation of Article 21....."

Lastly, even if the spouse of the government servant reveals some information to him/her, there is no method available with him/her to verify the authenticity of the information provided. Holding a public servant accountable for such information is harsh and impractical. On the issue of publishing the declaration of assets and liabilities filed by the public servant to the competent authority, the Convener of Confederation of Civil Services Associations, made the following submission before the Committee:-

"...If we start giving each and every information in the public domain and on the website, what will happen is that this information will not only be there for each and every member of the public, it will also fall into the hands of all sorts of criminal elements. As of now, it is very difficult to perceive as to what assets each person may be having. Once it is out in the public domain, it will be very easy to target the person and the victims would be his family

members, his children who can be kidnapped. There could be extortions and there could be dowry demands. Right now any father can just say that he does not have anything and somehow can escape any dowry demand. There can be very specific dowry demands. This new provision about revealing of such information may cause problems. There are some officers who are tackling Naxalism, Maoism and terrorism. Their details and their whereabouts may lead to revealing of other information about them, about their family members and that will pose a threat. Then, particularly, the officers who are tackling such sorts of crimes, the forest officers who are deep in the forests, plus revenue officers who are collecting revenue from other people, may be targeted. Also, once the information is there, there will be a plethora of false and malicious complaints. Anybody can take the information from the net, add something to it and file a complaint. Once a complaint is lodged, it takes years and years, and, in fact, the entire career of an officer can be marred. It is very different for a bureaucrat because for government servants, with the system of constant appraisals and promotions, once some allegation about corruption is made, some false allegation is made, it takes years before it is finally settled. Right now, any person, having a genuine complaint can come forward. But if we start giving all the information, people having mala fide intentions take information from the net, add something to it and start filing false complaints. And that complaint cannot be brushed aside because there will be so much of data in the complaint that it will not be entirely baseless...”

Thus, they have opposed the publication of asset-liabilities of the public servant and his/her spouse. Baseless allegations of corruption levied on the public servant will reduce his efficiency and make his work suffer due to the proverbial Damocles’ sword of vigilance inquiry.

9.14. The Committee during its study visit, interacted with several public sector banks and Public Sector Undertakings (PSUs) on the provisions of the Bill. All the stakeholders have agreed to the clause in principle. They are of the view that asset and liability statement of public servants should be with the competent authority, rather than putting them in public domain, sensing threat to the members of the family by anti-social elements. The Defence Research and Development Organisation (DRDO) has stated the following in respect of Clause 6 of the Bill:-

“...(a) DRDO is a sensitive organization. It is engaged in research and development of critical/frontier defence technologies. Publication of assets/liabilities of self and dependent family members on websites may make them vulnerable to anti-social elements with social repercussions.

(b) It may lead to invasion of privacy or intrusion into details of family’s assets and liabilities acquired through inheritance/gift with which the general public may have no concern. While these details may be kept with the Govt for vigilance purposes, but sharing these confidential information especially relating to movable assets viz gold/ jewellery with general public may amount to violation of confidentiality.

(c) Quantifying gold/silver jewellery (especially streedhan) of spouse which are inherited through generations, may be difficult, due to prevailing customs/traditions. Possibility of family disputes cannot be ruled out and may lead to harassment of govt servant by disgruntled elements. There may also be reluctance on the part of the spouse to share details of her assets/liabilities including jewellery with the govt servant, with which the general public may have no concern...”

9.15. The Lokayukta, Maharashtra, in his written submission made to the Committee, has appreciated the concerns raised by public servants and stated that:-

“.....I have come to the conclusion that there is nothing wrong in the amendments, particularly considering the provisions of the Old Conduct Rules of 1935. However, the apprehension of certain sections of public servants with regard to the Sub Section 6 appears to be reasonable. In my opinion, publication of the information is not necessary to achieve the ends which the Act is seeking to achieve. The provisions of Sub Section 6 may be used by some unscrupulous persons for dubious purposes. In brief, publication in respect of assets of public servants and his family members may be avoided to be published.....”

9.16. As per the current rules, Immovable Property Returns of the government servant are to be filed by 31st Jaunary every year to the Competent Authority without which, vigilance clearance is denied and promotion and empanelment to higher grades is withheld. The Immovable Property Returns of All India Services Officers have been uploaded by the Competent Authority even though their Conduct Rules have no specific provisions for such disclosure. However, as per data available, 23.98% of Indian Police Service (IPS) Officers, 8% of Indian Administrative Service (IAS) Officers and 54% of Indian Forest Service (IFoS) Officers have not disclosed details of their immovable property returns for the year 2014 to the Competent Authority under their Conduct Rules.

9.17. The Committee also reviewed certain other barriers which discourage *suo-motu* disclosure of assets by public servants. Chief among them are the myriad of complex rules and regulations which govern such disclosures. For example, the acquisition of movable property by the Government servant is governed by Rule 18(3) of the Central Civil Services (Conduct) Rules, 1964 which states:-

“(3) Where a government servant enters into a transaction in respect of movable property either in his own name or in the name of the member of his family, he shall, within one month from the date of such transaction, report the same to the prescribed authority, if the value of such property exceeds two months’ basic pay of the government servant:

Provided that the previous sanction of the prescribed authority shall be obtained by the government servant if any such transaction is with a person having official dealings with him”.

This rule is antiquated and not in line with the current reality of price rise and market dynamics. This rule would cover almost all consumer durable items that a government servant would purchase. Keeping a track of all such purchases would be a tedious task for the government servant. Further, the time limit prescribed of one month is illogical and too short. Failure to

comply with the instructions within the prescribed time frame results in disciplinary proceedings against the official. Thus, public servants do not disclose purchase of movable items. The rule also does not take into cognizance, the existence of finance schemes, which make several consumer durables accessible to people with limited incomes. The procedures and practice in governing the conduct of public servants reflect the colonial mentality of doubt and mistrust which the colonial masters had upon its employees wherein, the government servants were viewed with suspicion. The rules thus drafted were meant to harass the public servant. The complicated procedures set by the various conduct rules act as barriers to self disclosure. Even if a public servant makes a *suo motu* disclosure, more often than not, he is harassed on some procedural issue. If a government servant has acquired an asset with just means, he should not be harassed unnecessarily. Thus, rules need to be made user-friendly, simplified and easy to comply with.

9.18. The Committee approached all the recognised National and State Political Parties to hear their views on the provision of the Bill particularly on Clause 6. Amongst the National Parties, Bharatiya Janata Party (BJP) and Communist Party of India (CPI) responded to the request and submitted written memoranda. While BJP has extended support to the Bill, the CPI has objected to the provisions of the Bill and has stated that:-

“...This amendment will defeat the purpose of declaration of assets.”

All India Anna Dravida Munnetra Kazhagam (AIADMK) has agreed in principle but has proposed some amendments to Clause 6. The Party in its written submission has stated the following:-

“...party proposes a modification to sub-clause (6) of Clause 6 of the amendment Bill which relates to publication of the returns filed under this provision of the Lokpal Act. It is essential to place restrictions on the disclosure of the property returns filed, in keeping with the privacy and security issues of the individuals concerned which would be in the overall public interest. Hence, the property returns may be disclosed by the competent authority only in specified cases where enquiry into disproportionate assets cases or similar issues are involved and not as a matter of routine under the Right to Information Act. The proposed amendment may be modified to this effect.”

Aam Aadmi Party (AAP) while supporting the amendment has suggested that the salary of public servant may be stopped in case Immovable Property Return is not submitted by 31st January of that year. In case any property is not disclosed by the public servant, if found to be his at a later date, it may be confiscated by the Janlokalpal. The All India Trinamool Congress (AITC) has stated the following:-

“...This clause is irrational and unreasonable in view of the following reasons:-

- a. Assets and liabilities of an independent child and/or any other person of family, excluding dependent children, cannot be assets and liabilities of public servant. Independent children enjoy all statutory or constitutional rights which cannot be surrendered for controlling a public servant under any statute.*

- b. *A public servant does not have any control over his independent children. Public servant cannot force his independent children and/or like others to disclose such assets and liabilities to him.*
- c. *Independent children of public servants do not derive any benefits of government concession or allowance or medical benefits, since he/she is children of public servant.*

We are therefore of the view that independent children and like others cannot be included in declaration of public servant's assets and liabilities but declaration of such assets and liabilities of the dependent children should remain as stands today."

The Indian National Lok Dal (INLD) has suggested that the movable and immovable property returns of the public servant and his family members may be filed every year on affidavit. Shiromani Akali Dal (SAD) has supported the proposed amendment. YSR Congress Party has also agreed with the amendments.

Recommendations/ Observations of the Committee

9.19. Clause 6 of this Bill seeks to amend Section 44 of the Lokpal and Lokayuktas Act, 2013 to provide for declaration of assets acquired by the public servant using his/her funds in his/her name, in the name of any of his/her family member or in the name of any other person. The Committee notes that under the provisions of the Income Tax Act, 1961, every person who files an income tax return is regarded as a separate entity and details of his/her return are not disclosed to anyone else including his/her spouse unless it serves some public good. Further, a public servant cannot compel his/her spouse or child to disclose to him the details of assets acquired by them independently of the public servant. In today's world considering increasing avenues available in the fields of arts, entertainment and even business ventures even minor children of a public servant may have income of their own. Moreover, more and more spouses of public servants are working and having their independent sources of income. In such a scenario, compelling declaration of assets acquired by the spouse or children of a public servant from his/her own income may even be held to be in breach of their right to privacy guaranteed under Article 21 or even violative of Article 14 of the Constitution of India. As such any provision that seeks declaration of assets acquired by family members of public servant through their own income may not be legally sustainable. Family members of public servant are under no obligation to disclose to him/her, the assets acquired by them through their own income and it may, therefore, not be appropriate to even expect that all public servants would have knowledge of assets acquired by his/her family members through their own incomes. It may, therefore, not be feasible to hold the public servant accountable in case the information furnished by him regarding assets of his family members turns out to be factually incorrect and, therefore, any exercise of compelling a public servant to declare assets of his/her family members independently acquired by them, may turn out to be an exercise in futility. The Committee, therefore, agrees with the proposed amendments in so far as the declaration of assets acquired by the family members of the public servants through their own income or from sources independent of the public servant is sought to be excluded from disclosure to be made by the public servant.

9.20. The Committee further agrees that the public servant should declare the assets and liabilities to their Competent Authority. The Committee, however, is of the opinion that the Competent Authority of the public servant should forward a copy of the assets and liabilities so declared by the public servant to the Lokpal who shall keep these declaration in a fiduciary capacity. Both competent authority of public servant and Lokpal would be competent to review the returns filed by the public servants particularly in suspicious cases including through use of digital surveillance software to detect any disproportionate growth in assets and liabilities of a public servant beyond his known sources of income. This, however, should be done in a professional manner so as not to give rise to a feeling that every government servant is suspect and under surveillance. Further, it should be ensured that government servants are not subjected to unnecessary clarifications/queries as a result of such scrutiny. Any feeling amongst public servants that they are not trusted and are working under surveillance is bound to affect their morale and productivity and would not be in public interest.

9.21. The Committee is further of the opinion that the provision of double scrutiny by the Competent Authority of the public servant and by the Lokpal would serve the purpose sought to be achieved by making such declarations public while at the same time it would safeguard the public servant from the misuse of such information by miscreants and criminals and avoid any danger to the security and safety of the public servants and their family members.

9.22. The Committee, therefore, feels that public disclosure of assets and liabilities of public servants may not be necessary and recommends accordingly.

9.23. The Committee is further of the view that public servants need to spend less time on routine and non-productive activities and more time on productive activities. It is in this light that the Committee feels the need to revisit the rules which currently govern the manner and form of declaration of assets and liabilities by a government servant as these rules reflect the colonial mindset of doubt and mistrust which the colonial masters had regarding their employees. The extant Rules and procedures are at present being used more to harass government servants than as a safeguard against corruption and often act as barriers against true and fair disclosure by government servants.

9.24. Clause 6 of the Bill seeks to amend Section 44 of the Lokpal and Lokayuktas Act, 2013 and *inter alia* provides that the public servants referred to in Clauses (a) to (f) of sub-Section 1 of Section 14 shall disclose their assets and liabilities in the manner provided under the relevant provisions, rules or regulations of the Act applicable to them and for other public servants in the manner specified by Lokpal. As stated in para 9.6 above, this would not lead to uniformity either in the contents or form or manner of declaration of assets and liabilities by the public servants.

9.25. The Committee is accordingly of the view that a uniform provision may be made and incorporated in the Lokpal and Lokayuktas Act, 2013 for declaration of assets and liabilities by the public servants and contents, format, manner of declaration and other details thereof may be specified in the rules made under the Act. Existing provisions for declaration of assets and liabilities made under any Act, Rules, Regulations or Instructions may be omitted so that there is no duplication in declaration of assets and liabilities by

public servants. The Committee further recommends that a public servant may be required to furnish declaration of assets and liabilities owned by him/her, his dependent spouse, dependent children and any other person dependent on him/her. In addition, he may also be required to declare assets acquired by him/her from his/her income/resources in the name of any other person. The first declaration may be made within ninety days of coming into force of the Lokpal and Lokayuktas and Other Related Law (Amendment) Act, 2014 or joining public service or taking oath as a public servant. Thereafter, such declaration may be made every year and the last date for filing such a declaration may be kept a month after the last date for filing Income Tax Return.

Amendments to Delhi Special Police Establishment Act, 1946

Eligibility Criteria for Director of Prosecution, Central Bureau of Investigation

10.0. The Clause 9 seeks to amend Section 4BA (1) and 4BA (2) of the Delhi Special Police Establishment Act, 1946 to provide eligibility conditions for the appointment of Director of Prosecution. The amendment prescribes that an officer from the Indian Legal Service, holding the post of Joint Secretary and who is eligible for appointment as Special Public Prosecutor as per Section 24 (8) and Section 24 (9) of the CrPC, 1973, shall be eligible for appointment as a Director of Prosecution of CBI. In the absence of such an officer, an advocate with minimum fifteen years of experience in handling cases relating to Prevention of Corruption Act, 1988, Prevention of Money Laundering Act, 2002 and other such laws relating to economic offences on behalf of the government, may be appointed.

10.1. The DoPT has provided historical background leading to the creation of an independent Directorate of Prosecution. The DoPT has stated that before the enactment of CrPC, 1973, even police officers officiated as public prosecutor. Subsequently, the Law Commission in its Fourteenth Report on 'Reforms of the Judicial Administration' (September, 1958) recommended that prosecutors should be lawyers and the prosecuting agency must be independent of the police. CrPC, 1973 made it mandatory that a public prosecutor must be a lawyer. The Supreme Court reiterated this in the SB Shahane case (AIR SC 1628). Similar recommendation was also made by the Second Administrative Reforms Commission. Several State Governments have established a separate Directorate of Prosecution manned by either an officer belonging to Higher Judicial Service or by IPS Officers.

10.2. Some Members of the Committee suggested raising the rank of the Director of Prosecution to the level of Director of CBI to ensure independence of Director of Prosecution in the Bill. Some Members raised concerns about limiting the zone of consideration to advocates handling only economic offences. Keeping in mind the myriad nature of cases being referred to the CBI by the Judiciary, they felt that it is not appropriate to limit the zone of consideration to specified areas.

10.3. The CVC has stated that it would be prudent to set up an independent Director of Prosecution. It feels that in view of the responsibilities of the post, the post should be atleast of the rank of Additional Secretary or above. In amendment clause (b), the CVC feels that a minimum experience should be 20-25 years as this is usually the time taken by Government officers to reach the rank of Additional Secretary. Further, maximum age limit should be fixed at 55-58.

10.4. The CBI has not made any comments on Clause 9(a) about the eligibility norms. CBI feels that in view of the sensitive nature of the cases handled by the organization where several sensitive documents pertaining to national security are handled, the appointee should not be on contractual basis as this may compromise national security. It further suggested that law officers holding analogous rank and working in State Vigilance and Anti Corruption Bureaus should also be considered.

10.5. The Committee in its Twenty-fourth Report on 'Working of CBI' (March 2008) had observed the following:-

"...The Committee observes that autonomy of the Directorate of Prosecution will guarantee independence of the prosecution, thereby clearing out many bottlenecks existing in the present system which result in acquittal in many cases.

16.4.1. The Committee strongly feels that the decision as to whether prosecution should be initiated against the accused on the basis of evidence gathered during the investigation and whether the case under consideration is sustainable in Court of law should be left solely to the Directorate of Prosecution. The Committee is of the view that the Prosecutors are the best judge in this regard and any interference in this process should be avoided to the extent possible.

16.5. The Committee recommends that the observation of the Supreme Court in Vineet Narain's case that a panel of competent lawyers of experience and impeccable reputation shall be prepared with the advice of the Attorney General and that their services shall be utilised as Prosecuting Counsels in cases of significance and that even during the course of investigation of an offence, the advice of a lawyer chosen from the panel should be taken by the CBI/Enforcement Directorate, should be examined by the Government and appropriate action should be taken in this regard...."

Recommendations/ Observations of the Committee

10.6 The Committee is of the opinion that in order to secure effective functioning and independence of the Director of Prosecution, his rank should be at par with that of Director, CBI and it recommends accordingly. The Committee further is of the opinion that field of selection for appointment to the post of Director of Prosecution of the CBI or of the Lokpal should also extend to the Advocates having at least fifteen years experience of conducting criminal cases on behalf of the Government in the capacity of Public Prosecutor, Assistant Solicitor General, Defence Lawyer, etc. The Committee is of the view that practical knowledge of conduct of criminal cases in the court should be preferable to desk knowledge. The Committee further feels that officers of Indian Legal Service in order to be eligible should also have experience of at least fifteen years of handling cases on behalf of the Government under the Prevention of Corruption Act,1988, Prevention of Money Laundering Act, 2002 and other laws relating to economic offences or criminal cases. Considering that the Committee has recommended that the rank of Director of Prosecution should be at par with the rank of Director, CBI, it is of the opinion that eligibility conditions as proposed in the Bill should be revised to bring them in consonance with the level of the post of Director of Prosecution and experience of at least fifteen years.

10.7. The Committee further recommends that appointment to this post should be made through detailed and proper enquiry into integrity, credibility and competence of the persons in the zone of consideration for the post.

Resolution of Difference of Opinion between Director, CBI and Director of Prosecution, CBI

11.0. Clause 10 seeks to insert sub-Section (5) after sub-Section (4) in Section 4BA of the Delhi Special Police Establishment Act, 1946 to provide that in case of difference of opinion between the Director and the Director of Prosecution of CBI, the matter shall be referred to Attorney General for India for his advice and such advice shall be binding.

11.1. The DoPT has expressed its view that this amendment would help in establishing independence of the Directorate of Prosecution of the CBI and at the same time would eliminate departmental dysfunctionality by providing for faster and efficient resolution of differences between the two functionaries. The Department believes that the Attorney General being a constitutional authority with sufficient legal background, will be in a better position to arbitrate differences between the two functionaries. The Department has cited landmark judgements of the Supreme Court, namely, (i) Sushil Kumar Modi Case (AIR 1999 SC 500) and (ii) ML Sharma Case (Writ Petition (CRL.) No. 120 of 2012), wherein, similar views have been expressed by the Supreme Court.

11.2. Several Members of the Committee have however expressed their opinion against this provision of the Bill. The Members feel that referring a matter to the Attorney General, may result in undue interference from the Government as the Attorney General is an appointee of the Union Government and is its chief law officer.

11.3. The CBI has stated that as per the provisions of the CrPC, there is no mandate for the role of a prosecutor at the stage of investigation, i.e., till filing of the final report before the competent court. The role of the prosecutor commences thereafter. This position has been stated by the Supreme Court in the MC Mehta Case, R Sarala Case, Nirmal Yadav Case etc. The CBI has also quoted the OM of DoPT dated 9th July, 2001 which provides that in important cases where the Director, CBI disagrees with the advice of the Director of prosecution, the decision taken by the Director, CBI after consulting the Attorney General for India shall be deemed to be final.

11.4. The CVC does not agree with the amendment. It believes that the amendment would affect the independence of both Director CBI and Director of Prosecution, CBI. The Commission has stated that this would invite undue interference from the Government. The Commission feels that in case of difference of opinion, the opinion of the Director, CBI should prevail and no reference should be made to the Attorney General.

Recommendations/ Observations of the Committee

11.5. The Committee has already recommended that anti corruption wing of the CBI should be integrated with Lokpal and in that situation, Director of Prosecution of Lokpal should handle cases under the Prevention of Corruption Act and if there is a difference of opinion between the Director of Enquiry of Lokpal and Director of Prosecution of Lokpal, the difference would naturally be resolved by Lokpal under whom both of them would work. For cases other than those under the Prevention of Corruption Act, the resolution of

differences between Director of Prosecution, CBI and Director, CBI may be done as per advice of Attorney General for India. The Committee recommends accordingly.

Annual Performance Appraisal Report (APAR) of the Director of Prosecution of Central Bureau of Investigation

12.0. Clause 9 further seeks to insert sub-Section (6) in Section 4BA of Delhi Special Police Establishment Act, 1946 to provide that the Annual Performance Appraisal Report of the Director of Prosecution of CBI shall be recorded and maintained in the Ministry of Law and Justice in such a manner as may be prescribed.

12.1. The DoPT has expressed the view that this measure shall help in ensuring independence of Director of Prosecution of CBI. Director, Central Bureau of Investigation would be the reporting authority and Secretary, Department of Legal Affairs would be the reviewing authority for recording the APAR of Director of Prosecution. The Department also cited the affidavit filed by the Government of India in Supreme Court in the course of the M.L. Sharma Case (Coal Mines Case). In that affidavit, it has been stated that the Annual Confidential Report (ACR) of the Director of Prosecution shall be written by the Director of CBI and the Secretary, Department of Legal Affairs shall be the reviewing authority. Necessary administrative orders in this regard have already been issued by the CBI on 10.10.2013 on DoPT's advice.

12.2. The CVC has said that it is opposed to the changes being made by the Bill. It has suggested that the APAR of the Director of Prosecution of CBI should be recorded and maintained by the Director, CBI. The Commission has also objected to the dropping of the words "the Director of Prosecution shall function under the overall supervision and control of the Director" from the Section 4BA (2) of the Delhi Special Police Establishment Act, 1946 via the amendment. The Commission believes that the Director of Prosecution should function under the supervision of the Director of CBI.

12.3. The CBI is also opposed to this Clause and state that the Supreme Court of India in the matter of Manohar Lal Sharma v/s Union of India vide its order dated 10th September, 2013 has directed the Government of India to issue orders to provide for writing of APAR of Director of Prosecution by Director, CBI and submission to Law Minister directly. The CBI has further stated that the provision is in contravention of the existing law and Government Instructions. The Section 4BA (2) of the Delhi Special Police Establishment Act, 1946 states that the DoP shall function under the overall supervision and control of Director, CBI.

12.4. The Director of Prosecution has stated that he is in agreement with the amending clause and that such a move would be one of the steps required for ensuring independence of the Director of Prosecution.

12.5. Some other Stakeholders have opposed to the clause and stated that the APAR of the DoP should be maintained by the Lokpal.

Recommendations/ Observations of the Committee

12.6. The Committee is of the view that Director of Prosecution of Lokpal should be responsible for handling all cases under the Prevention of Corruption Act, 1988 being handled by it and his Annual Performance Appraisal Report is to be recorded by the

Lokpal. The Committee is further of the view that cases other than those falling under the Prevention of Corruption Act, 1988 should be handled by Director of Prosecution of CBI for purposes of deciding the prosecution and the Annual Performance Appraisal Report of the Director of Prosecution of CBI may be recorded and maintained in the Ministry of Law & Justice in such a manner as may be prescribed.

Headquarters of Lokpal

13.0. The Bill seeks to amend Section 16 (1)(f) to provide that the location of the Headquarters should be in NCR of Delhi.

13.1. The DoPT has stated that the provision will allow for setting up the Headquarters of Lokpal at any location in National Capital Region of Delhi. In case land is not available in Delhi or is prohibitively expensive, the Headquarters may be set up anywhere in NCR area.

Recommendation/ Observation of the Committee

13.2. In view of the recommendations of the Committee to have an integrated setup for anti corruption watchdog, the Committee is of the view that the Headquarters of the Lokpal should be established within the CVC Headquarters.

13.3. The Committee, therefore, recommends that the Headquarters of the Lokpal should be established within the CVC headquarters as the apex body of anti-corruption setup with CVC, CBI, Director of Prosecution (CBI) providing support to it.

Other Observations of the Committee

13.4. The Committee during its interactions with the political parties received suggestions from the All India Trinamool Congress to review the role and functioning of the Central Bureau of Investigation (CBI). The AITC stated that the CBI is an extra constitutional body and that there is a need to review the Delhi Special Police Establishment Act, 1946. The party questioned the practice of referring law and order related cases to the Bureau as a matter of routine. The party also said that the agency has already been provided enough independence to investigate cases which is unwarranted and unconstitutional. Thus, there is a need to create another independent pool of investigators which would work under the overall supervision of the Lokpal.

13.5. The Committee notes that various High Courts and Supreme Court of India are frequently issuing directions to CBI to handle cases relating to Prevention of Corruption Act, 1988 as also of "Public Order". As a result, the jurisdiction and powers of CBI have widened and deepened and have far exceeded than what was contemplated under the Delhi Special Police Establishment Act, 1946. The superior courts who are courts of appeal under Section 374 of the Code of Criminal Procedure, 1973 are even directing CBI in a number of cases to report day-to-day progress in a sealed cover bypassing Sections 172 and 173 of the Criminal Procedure Code, 1973 and performing functions envisaged under the criminal justice system of the country for the lowest rung of criminal court and also appreciating the evidence which under Section 173 of Criminal Procedure Code is required to be done by the Magistrate. Judicial activism of higher judiciary by taking pains of overseeing an investigation and passing interim directions to CBI and even pre-empting the rights and remedies available to affected persons under criminal justice system. It may, therefore,

appear to affected persons as a pre-emptive and colourable exercise of power by the superior courts. The Committee also notes that CBI Courts are being established in various districts of the States giving rise to a new culture of "Federal Criminal Investigation Agency and Federal Criminal District Courts" akin to the system prevailing in USA. This in effect is leading to introduction of dual judicial system which is not contemplated under our Constitution. This is not only encroaching upon the constitutional powers and jurisdiction conferred by the Constitution upon the States but also obliterates their obligations and accountability in the subjects allocated to them under the Constitution. It impinges upon the division of power and the Federal character of our Constitution and destabilises the Seventh Schedule of the Constitution. This trend is making CBI as the most sought after investigating agency for investigation of all sorts of crimes and is relegating the State Police to the mere level of Home Guards. The Committee is afraid that this trend if allowed to persist may lead to inversion of pyramidal structure of governance provided under the Constitution of India and it may get crumbled under the weight of over-burdened Judiciary, Executive and Parliament. The Committee, therefore, feels that there is a need to revisit Delhi Special Police Establishment Act, 1946 which was enacted for the limited purpose of dealing with corruption cases. The Committee feels that with the setting up of institution of Lokpal and in the light of its suggestion that anti-corruption set up of the country may be unified by creating an architecture in which Lokpal is at apex level and CBI and CVC as its arms to carry out inquiry, investigation and prosecution etc. in offence relating to corruption under Prevention of Corruption Act, 1988. The Committee is of the opinion that Delhi Special Police Establishment Act, 1946 may be repealed and suitable provisions incorporated in the Lokpal and Lokayuktas Act, 2013 to set up a unified architecture for the purpose. The Committee further notes that under Section 3 of the Lokpal and Lokayuktas Act, 2013, the Chairperson of the Lokpal would be a serving or former Chief Justice of India or a judge of the Supreme Court and at least 50% of its members would be judicial members who are serving or former judges of Supreme Court or Chief Justices of High Courts. The Committee feels that with setting up of such an institution of Lokpal there should be no occasion in cases under Prevention of Corruption Act, 1988 for the judiciary to issue directions to CBI of the nature referred to above and to monitor the progress of investigation which is essentially the job of a Magistrate or a lowest rung of criminal court. In the proposed set up, the Lokpal would have sufficient powers to monitor the investigation being carried out by its agencies as the agencies would only be its organs. For other type of cases now being conducted by the CBI, a separate legislation may be brought and a new agency created for those purposes. This new agency may use the existing infrastructure, personnel, etc of CBI.

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OBSERVATIONS/RECOMMENDATIONS AT A GLANCE

1. The Committee notes that in the present Lok Sabha, there is no recognized Leader of Opposition and such a situation can arise in future as well. In the absence of Leader of Opposition it is not possible to constitute the Selection Committee of Lok Pal as per provisions of the Lok Pal and Lokayuktas Act, 2013. In order to overcome such a situation, amendment is proposed to provide that the Leader of Opposition recognised as such in the Lok Sabha or where there is no such Leader of Opposition, the leader of the single largest opposition party in that House shall be a Member of the Selection Committee. Similar provision exists for the appointment of Chief Vigilance Commissioner (CVC) under Section 4 of CVC Act, 2003. The Committee is of the view that the amendment is both necessary and appropriate and accordingly recommends it. [Para 3.4]
2. The Committee is in agreement with the proposed amendment. [Para 4.3]
3. The Committee is of the view that whenever a Member is unable to attend the meeting either of the Selection Committee or of the Search Committee, he/she should be accorded adequate opportunity to send his/her views in writing to the Selection/Search Committee and such views of the absentee Member should be taken into account while taking a decision by the Committee. Only in rare situations where despite affording adequate opportunities to the absentee Member, he/she fails to send his views to the Search/Selection Committee in writing, decision may be taken in absence of views of the absentee Member after recording the reasons for non-availability of views of the absentee Member. [Para 5.3]
4. The Committee, however, is firmly of the opinion that Search/Selection Committee should not take any decision unless vacancy, if any, in Search/Selection Committee is filled up. The Committee sees no reason for not filling any vacancy quickly that may arise in the Search/Selection Committee. The Committee accordingly recommends that the Bill may be modified accordingly. [Para 5.4]
5. The Committee observes that with the setting up of Lokpal, multiple agencies such as Lokpal, Central Vigilance Commission (CVC), Central Bureau of Investigation (CBI), Chief Vigilance Officers (CVOs) of concerned organisation would be dealing with complaints of corruption. The Committee notes that the Lokpal and Lokayukta Act, 2013 and amendments proposed thereto make an attempt to integrate CVC and CBI (anti corruption functions) with Lokpal, but it falls short of a fully integrated setup for dealing with corruption cases. [Para 6.0]
6. The Committee notes that there is an overlapping between the functions of CVC and Lokpal. For example, Section 20 of Lokpal and Lokayuktas Act, 2013 provides that Lokpal, if it decides to proceed with the preliminary inquiry shall refer the complaint in respect of public servants belonging to Groups 'A', 'B', 'C' or 'D' to the Central Vigilance Commission who shall after making preliminary inquiry submit a report to Lokpal in case of public servants belonging to Groups 'A' and 'B' and shall deal with complaints in respect of other two groups as per the provisions of CVC Act, 2003. Under Section 25(1) of Lokpal and Lokayuktas Act, 2013, Lokpal has also been made competent to exercise powers and superintendence and to give directions to CBI. Under Sections 8(1)(a) and 8(1)(b) of CVC

Act, 2003, CVC is empowered to exercise superintendence over the function of Delhi Special Police Establishment (CBI) and to give it directions in relation to the investigation of offences alleged to have been committed under Prevention of Corruption Act, 1988. Similarly, under Sections 8(1)(c) and 8(1)(d) of CVC Act, 2003, CVC can inquire or cause an inquiry or investigation to be made for alleged offences under Prevention of Corruption Act, 1988 against an official. Further, under Section 14(1) of the Lokpal and Lokayuktas Act, 2013, Lokpal can also inquire or cause an inquiry to be conducted in such cases. Complaints of corruption against any government servants may be lodged with Lokpal, CVC, CBI or the vigilance department of the concerned organization. This may give rise to same complaint being examined by different organizations and may cause unnecessary harassment of public servant apart from causing functional problems. The Committee notes that Section 15 of the Lokpal and Lokayuktas Act, 2013 provides that after commencement of the said Act, if any matter or proceedings related to allegation of corruption under the Prevention of Corruption Act, 1988 is pending before any authority prior to commencement of any inquiry it shall continue with such authority. It is, however, not clear how other authorities would have such knowledge until concerned public servant is informed of it and he takes up with such authorities. The position, therefore, as it exists provides for overlapping of functions and powers of CVC and Lokpal in certain areas.

[Para 6.1]

7. The Committee notes that under the second proviso to Section 20(1), the Central Vigilance Commission is required to submit a report to the Lokpal. Under Section 25(1), the powers of Lokpal override Section 8 of the Central Vigilance Commission Act, 2003 and under sub-Section 2 of Section 25, the Central Vigilance Commission is required to send a statement to the Lokpal at such intervals as the Lokpal may direct in respect of action taken on complaints referred to it and Lokpal is made competent to issue guidelines for effective and expeditious disposal of such cases. Further, power to grant prosecution has been vested in Lokpal under Section 20(7) of the Lokpal and Lokayuktas Act, 2013. This sub-Section provides that a Bench consisting of not less than 3 members of Lokpal shall consider the investigation report received by it from any investigating agency including CBI and after obtaining the comments of the Competent Authority and the public servant, shall decide the further course of action i.e. either to grant sanction for prosecution or direct the closure of report before the Special Court or direct the Competent Authority to initiate the departmental proceedings or any other appropriate action. These provisions show that the scheme of Lokpal and Lokayuktas Act, 2013 places Lokpal on a higher pedestal than CVC notwithstanding overlapping of jurisdictions and functions as stated above.

[Para 6.2]

8. The Committee is of the view that institutions of CVC and the CBI (in so far as its anti corruption functions are concerned), be fully integrated with Lokpal and the institution of anti corruption watchdog may be architecturally created vertically with the Lokpal at the apex level and CVC and CBI (anti-corruption wing) working directly under its command and control. The functions of Lokpal and CVC be clearly specified and overlap between functions and powers of CVC and Lokpal be addressed. Lokpal in turn should utilize these organizations for conduct of inquiry, investigation and prosecution.

[Para 6.3]

9. The Committee notes that a post of Director of Inquiry was created in CVC by inserting Section 11A in the Central Vigilance Commission Act, 2003 through the Lokpal and Lokayuktas Act, 2013. On such integration, the post of Director of Inquiry which is available in CVC can be utilized by the Lokpal and there would be no need for creation of another post of Director of Inquiry for Lokpal as provided under Sections 10(2) and 11 of the Lokpal and Lokayuktas Act, 2013. The Committee is also aware that apart from anti-corruption, the Central Bureau of Investigation is also handling cases relating to economic offences, special crimes, bank security and fraud and cyber-crime, etc. The Committee is only recommending integration of Anti-corruption Branch of CBI with Lokpal which on such integration may be placed under the Director of Inquiry of Lokpal. For investigation of crimes, other than corruption crimes, the existing structure and procedures may continue to operate. The Government if it so considers necessary for the purpose, may come up with a comprehensive legislation on CBI for effective performance of other functions of the agency as recommended in the Twenty Fourth Report of this Committee on 'Working of CBI' (2008). The Committee feels that such an integrated structure would be more practicable setup and cause least financial burden on the exchequer. [Para 6.4]

10. The Committee is of the view that since the Secretary to Lokpal would be dealing with high ranking officials of the Government of India, and as such it is absolutely necessary that he/she should not be lower than the rank and status of Secretary to Government of India so that he is not unduly influenced by his/her seniors or colleagues from the Civil Service and is able to function independently. The Committee is further of the view that for effective functioning the Director of Inquiry and the Director of Prosecution of Lokpal, they should not be lower than the rank and status of Additional Secretary to the Government of India. The Committee does not favour the changes proposed by Clause 3 of the Bill. The Committee further recommends that Director of Inquiry created in CVC by insertion of Section 11A in the Central Vigilance Commission Act, 2003 should be used for purposes of inquiry by Lokpal and there is no need for creation of another Director of Inquiry in Lokpal. [Para 7.4]

11. The Committee agrees with the proposed amendment. [Para 8.2]

12. The Lokpal and Lokayuktas Act, 2013 though has an over-riding effect over Section 75A of the Representation of People Act, 1951, it does not repeal Section 75A of the Representation of People Act, 1951. An elected Member of Parliament, therefore, may be required to furnish information of assets and liabilities both under Section 75A of the Representation of People Act, 1951 as well as under Lokpal and Lokayuktas Act, 2013. Further, under Representation of People Act, 1951 they would be required to furnish information in ninety days from the date on which they take oath while under the Lokpal and Lokayuktas Act, 2013, they may be required to do so within thirty days. Similarly, there may be difference in manner and content of declaration of assets and liabilities under Conduct Rules or other Rules applicable to other public servants. This is not a desirable situation and a uniform system of declaration of assets and liabilities should be made applicable to all public servants. The Committee further observes that Section 75A of the Representation of People Act, 1951 is applicable only to elected Members of the Parliament. It has no application to nominated Members. Nominated Members may also be required to file a declaration of their assets and liabilities similar to the one to be filed by

elected Members of Parliament. Necessary provision in this regard may be incorporated in the Bill and the Committee recommends accordingly. [Para 9.6]

13. Clause 6 of this Bill seeks to amend Section 44 of the Lokpal and Lokayuktas Act, 2013 to provide for declaration of assets acquired by the public servant using his/her funds in his/her name, in the name of any of his/her family member or in the name of any other person. The Committee notes that under the provisions of the Income Tax Act, 1961, every person who files an income tax return is regarded as a separate entity and details of his/her return are not disclosed to anyone else including his/her spouse unless it serves some public good. Further, a public servant cannot compel his/her spouse or child to disclose to him the details of assets acquired by them independently of the public servant. In today's world considering increasing avenues available in the fields of arts, entertainment and even business ventures even minor children of a public servant may have income of their own. Moreover, more and more spouses of public servants are working and having their independent sources of income. In such a scenario, compelling declaration of assets acquired by the spouse or children of a public servant from his/her own income may even be held to be in breach of their right to privacy guaranteed under Article 21 or even violative of Article 14 of the Constitution of India. As such any provision that seeks declaration of assets acquired by family members of public servant through their own income may not be legally sustainable. Family members of public servant are under no obligation to disclose to him/her, the assets acquired by them through their own income and it may, therefore, not be appropriate to even expect that all public servants would have knowledge of assets acquired by his/her family members through their own incomes. It may, therefore, not be feasible to hold the public servant accountable in case the information furnished by him regarding assets of his family members turns out to be factually incorrect and, therefore, any exercise of compelling a public servant to declare assets of his/her family members independently acquired by them, may turn out to be an exercise in futility. The Committee, therefore, agrees with the proposed amendments in so far as the declaration of assets acquired by the family members of the public servants through their own income or from sources independent of the public servant is sought to be excluded from disclosure to be made by the public servant. [Para 9.19]

14. The Committee further agrees that the public servant should declare the assets and liabilities to their Competent Authority. The Committee, however, is of the opinion that the Competent Authority of the public servant should forward a copy of the assets and liabilities so declared by the public servant to the Lokpal who shall keep these declaration in a fiduciary capacity. Both competent authority of public servant and Lokpal would be competent to review the returns filed by the public servants particularly in suspicious cases including through use of digital surveillance software to detect any disproportionate growth in assets and liabilities of a public servant beyond his known sources of income. This, however, should be done in a professional manner so as not to give rise to a feeling that every government servant is suspect and under surveillance. Further, it should be ensured that government servants are not subjected to unnecessary clarifications/queries as a result of such scrutiny. Any feeling amongst public servants that they are not trusted and are working under surveillance is bound to affect their morale and productivity and would not be in public interest. [Para 9.20]

15. The Committee is further of the opinion that the provision of double scrutiny by the Competent Authority of the public servant and by the Lokpal would serve the purpose sought to be achieved by making such declarations public while at the same time it would safeguard the public servant from the misuse of such information by miscreants and criminals and avoid any danger to the security and safety of the public servants and their family members. [Para 9.21]

16. The Committee, therefore, feels that public disclosure of assets and liabilities of public servants may not be necessary and recommends accordingly. [Para 9.22]

17. The Committee is further of the view that public servants need to spend less time on routine and non-productive activities and more time on productive activities. It is in this light that the Committee feels the need to revisit the rules which currently govern the manner and form of declaration of assets and liabilities by a government servant as these rules reflect the colonial mindset of doubt and mistrust which the colonial masters had regarding their employees. The extant Rules and procedures are at present being used more to harass government servants than as a safeguard against corruption and often act as barriers against true and fair disclosure by government servants. [Para 9.23]

18. Clause 6 of the Bill seeks to amend Section 44 of the Lokpal and Lokayuktas Act, 2013 and *interalia* provides that the public servants referred to in Clauses (a) to (f) of sub-Section 1 of Section 14 shall disclose their assets and liabilities in the manner provided under the relevant provisions, rules or regulations of the Act applicable to them and for other public servants in the manner specified by Lokpal. As stated in para 9.6 above, this would not lead to uniformity either in the contents or form or manner of declaration of assets and liabilities by the public servants. [Para 9.24]

19. The Committee is accordingly of the view that a uniform provision may be made and incorporated in the Lokpal and Lokayuktas Act, 2013 for declaration of assets and liabilities by the public servants and contents, format, manner of declaration and other details thereof may be specified in the rules made under the Act. Existing provisions for declaration of assets and liabilities made under any Act, Rules, Regulations or Instructions may be omitted so that there is no duplication in declaration of assets and liabilities by public servants. The Committee further recommends that a public servant may be required to furnish declaration of assets and liabilities owned by him/her, his dependent spouse, dependent children and any other person dependent on him/her. In addition, he may also be required to declare assets acquired by him/her from his/her income/resources in the name of any other person. The first declaration may be made within ninety days of coming into force of the Lokpal and Lokayuktas and Other Related Law (Amendment) Act, 2014 or joining public service or taking oath as a public servant. Thereafter, such declaration may be made every year and the last date for filing such a declaration may be kept a month after the last date for filing Income Tax Return. [Para 9.25]

20. The Committee is of the opinion that in order to secure effective functioning and independence of the Director of Prosecution, his rank should be at par with that of Director, CBI and it recommends accordingly. The Committee further is of the opinion that field of selection for appointment to the post of Director of Prosecution of the CBI or

of the Lokpal should also extend to the Advocates having at least fifteen years experience of conducting criminal cases on behalf of the Government in the capacity of Public Prosecutor, Assistant Solicitor General, Defence Lawyer, etc. The Committee is of the view that practical knowledge of conduct of criminal cases in the court should be preferable to desk knowledge. The Committee further feels that officers of Indian Legal Service in order to be eligible should also have experience of at least fifteen years of handling cases on behalf of the Government under the Prevention of Corruption Act, 1988, Prevention of Money Laundering Act, 2002 and other laws relating to economic offences or criminal cases. Considering that the Committee has recommended that the rank of Director of Prosecution should be at par with the rank of Director, CBI, it is of the opinion that eligibility conditions as proposed in the Bill should be revised to bring them in consonance with the level of the post of Director of Prosecution and experience of at least fifteen years.

[Para 10.6]

21. The Committee further recommends that appointment to this post should be made through detailed and proper enquiry into integrity, credibility and competence of the persons in the zone of consideration for the post.

[Para 10.7]

22. The Committee has already recommended that anti corruption wing of the CBI should be integrated with Lokpal and in that situation, Director of Prosecution of Lokpal should handle cases under the Prevention of Corruption Act and if there is a difference of opinion between the Director of Enquiry of Lokpal and Director of Prosecution of Lokpal, the difference would naturally be resolved by Lokpal under whom both of them would work. For cases other than those under the Prevention of Corruption Act, the resolution of differences between Director of Prosecution, CBI and Director, CBI may be done as per advice of Attorney General for India. The Committee recommends accordingly. [Para 11.5]

23. The Committee is of the view that Director of Prosecution of Lokpal should be responsible for handling all cases under the Prevention of Corruption Act, 1988 being handled by it and his Annual Performance Appraisal Report is to be recorded by the Lokpal. The Committee is further of the view that cases other than those falling under the Prevention of Corruption Act, 1988 should be handled by Director of Prosecution of CBI for purposes of deciding the prosecution and the Annual Performance Appraisal Report of the Director of Prosecution of CBI may be recorded and maintained in the Ministry of Law & Justice in such a manner as may be prescribed.

[Para 11.5]

24. The Committee is of the view that Director of Prosecution of Lokpal should be responsible for handling all cases under the Prevention of Corruption Act, 1988 being handled by it and his Annual Performance Appraisal Report is to be recorded by the Lokpal. The Committee is further of the view that cases other than those falling under the Prevention of Corruption Act, 1988 should be handled by Director of Prosecution of CBI for purposes of deciding the prosecution and the Annual Performance Appraisal Report of the Director of Prosecution of CBI may be recorded and maintained in the Ministry of Law & Justice in such a manner as may be prescribed.

[Para 12.6]

25. In view of the recommendations of the Committee to have an integrated setup for anti corruption watchdog, the Committee is of the view that the Headquarters of the Lokpal should be established within the CVC Headquarters. [Para 13.2]

26. The Committee, therefore, recommends that the Headquarters of the Lokpal should be established within the CVC headquarters as the apex body of anti-corruption setup with CVC, CBI, Director of Prosecution (CBI) providing support to it. [Para 13.3]

27. The Committee notes that various High Courts and Supreme Court of India are frequently issuing directions to CBI to handle cases relating to Prevention of Corruption Act, 1988 as also of "Public Order". As a result, the jurisdiction and powers of CBI have widened and deepened and have far exceeded than what was contemplated under the Delhi Special Police Establishment Act, 1946. The superior courts who are courts of appeal under Section 374 of the Code of Criminal Procedure, 1973 are even directing CBI in a number of cases to report day-to-day progress in a sealed cover bypassing Sections 172 and 173 of the Criminal Procedure Code, 1973 and performing functions envisaged under the criminal justice system of the country for the lowest rung of criminal court and also appreciating the evidence which under Section 173 of Criminal Procedure Code is required to be done by the Magistrate. Judicial activism of higher judiciary by taking pains of overseeing an investigation and passing interim directions to CBI and even pre-empting the rights and remedies available to affected persons under criminal justice system. It may, therefore, appear to affected persons as a pre-emptive and colourable exercise of power by the superior courts. The Committee also notes that CBI Courts are being established in various districts of the States giving rise to a new culture of "Federal Criminal Investigation Agency and Federal Criminal District Courts" akin to the system prevailing in USA. This in effect is leading to introduction of dual judicial system which is not contemplated under our Constitution. This is not only encroaching upon the constitutional powers and jurisdiction conferred by the Constitution upon the States but also obliterates their obligations and accountability in the subjects allocated to them under the Constitution. It impinges upon the division of power and the Federal character of our Constitution and destabilises the Seventh Schedule of the Constitution. This trend is making CBI as the most sought after investigating agency for investigation of all sorts of crimes and is relegating the State Police to the mere level of Home Guards. The Committee is afraid that this trend if allowed to persist may lead to inversion of pyramidal structure of governance provided under the Constitution of India and it may get crumbled under the weight of overburdened Judiciary, Executive and Parliament. The Committee, therefore, feels that there is a need to revisit Delhi Special Police Establishment Act, 1946 which was enacted for the limited purpose of dealing with corruption cases. The Committee feels that with the setting up of institution of Lokpal and in the light of its suggestion that anti-corruption set up of the country may be unified by creating an architecture in which Lokpal is at apex level and CBI and CVC as its arms to carry out inquiry, investigation and prosecution etc. in offence relating to corruption under Prevention of Corruption Act, 1988. The Committee is of the opinion that Delhi Special Police Establishment Act, 1946 may be repealed and suitable provisions incorporated in the Lokpal and Lokayuktas Act, 2013 to set up a unified architecture for the purpose. The Committee further notes that under Section 3 of the Lokpal and Lokayuktas Act, 2013, the Chairperson of the Lokpal would be a serving or former Chief Justice of India or a judge of the Supreme Court and at least 50% of its

members would be judicial members who are serving or former judges of Supreme Court or Chief Justices of High Courts. The Committee feels that with setting up of such an institution of Lokpal there should be no occasion in cases under Prevention of Corruption Act, 1988 for the judiciary to issue directions to CBI of the nature referred to above and to monitor the progress of investigation which is essentially the job of a Magistrate or a lowest rung of criminal court. In the proposed set up, the Lokpal would have sufficient powers to monitor the investigation being carried out by its agencies as the agencies would only be its organs. For other type of cases now being conducted by the CBI, a separate legislation may be brought and a new agency created for those purposes. This new agency may use the existing infrastructure, personnel, etc of CBI. [Para 13.5]