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LOK SABHA

**JOINT COMMITTEE
ON
THE LOKPAL BILL, 1985**

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JOINT COMMITTEE ON THE LOKPAL BILL 4455

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JOINT COMMITTEE ON THE LOKPAL BILL, 1986

COMPOSITION OF THE COMMITTEE

*Shri Somnath Rath—Chairman@

MEMBERS

Lok Sabha

- *2. Shrimati Basavarajeswari
3. Shri T. Basheer
4. Shri H. K. L. Bhagat
5. Shri Manoranjan Bhakta
6. Shri P. Chidambaram
7. Shri K. P. Singh Deo
8. Shri Sharad Dighe
9. Shri Indrajit Gupta
10. Prof. M. R. Halder
- *11. Shri R. S. Khirhar
12. Shri P. Kolandaivelu
13. Shri Y. S. Mahajan
14. Shri Braja Mohan Mohanty
15. Shri Priya Ranjan Das Munsi
16. Shri D. K. Naikar
17. Shri C. D. Patel
18. Shri Aziz Qureshi
- *19. Shri Ram Swarup Ram
20. Prof. N. G. Ranga
21. Shri C. Madhav Reddy
- %22. Shri S. Jaipal Reddy
23. Shri Ebrahim Sulaiman Sait
24. Shri G. G. Swell
25. Shri K. P. Unnikrishnan
- \$26. Shri Ram Singh Yadav
27. Shri Shyam Lal Yadav
28. Shri Zainul Basher
- £29. Shri Zainal Abedin
30. Shri Asoke Kumar Sen

Appointed as Chairman *w.e.f.* 24-7-1986 *vice* Shri Brahma Dutt resigned from the Committee.

£Appointed *w.e.f.* 23-7-1986 *vice* Shri B. V. Desai died and Sarvashri Brahma Dutt, Eduardo Faleiro and Prof. K. K. Tewari resigned from the Committee.

%Appointed *w.e.f.* 26-2-86 *vice* Pro-. Madhu Dandavate resigned from the Committee.

\$Appointed *w.e.f.* 6-4-87 *vice* Shri Mool Chand Daga died.

£Appointed *w.e.f.* 9-3-88 *vice* Shri Ajit Jumar Saha resigned.

Rajya Sabha

- £ £ 31. Shri Lal K. Advani
 **32. Shri Aladi Aruna alias V. Arunachalam
 33. Shri Anand Sharma
 £ £ 34. Shri Hansraj Bhardwaj
 35. Shri Darbara Singh
 36. Shri Baharul Islam
 37. Shri Murasoli Maran
 38. Shri N. K. P. Salve
 39. Shri P. Shiv Shanker
 **40. Shri Bir Bhadra Pratap Singh
 41. Shri P. N. Sukul
 42. Shri Parvathaneni Upendra
 @43. Shri Raoof Valiullah
 44. Shri Virendra Verma
 @@45. V A C A N T

SECRETARIAT

1. Shri K. C. Rastogi—*Joint Secretary.*
2. Shri G. S. Bhasin—*Deputy Secretary.*
3. Shri Swarn Singh—*Officer on Special Duty.*

LEGISLATIVE COUNSELS

1. Shri S. Ramaiah—*Secretary.*
2. Shri C. Raman Menon—*Additional Secretary.*
3. Shri B. K. Samaddar—*Deputy Legislative Counsel.*

REPRESENTATIVES OF THE DEPARTMENT OF PERSONNEL AND TRAINING

1. Shri Manish Behl—*Secretary.*
2. Shrimati B. Sen—*Joint Secretary.*
3. Shri Hazara Singh—*Deputy Secretary.*

**Appointed w.e.f. 22-5-86 vice Sarvashri R. Mohanarangam and Sultan Singh retired from Rajya Sabha.

@Appointed w.e.f. 7-5-87 vice Shrimati Pratibha Devi Singh Patil resigned from the Committee.

+Shri P. Shiv Shanker, on this retirement from Rajya Sabha, ceased to be member of the Committee w.e.f. 13-8-87. Re-appointed w.e.f. 27-5-87.

££Sarvashri Lal K. Advani and Hansraj Bhardwaj on their retirement from Rajya Sabha ceased to be members of the Committee w.e.f. 2-4-88. Re-appointed w.e.f. 13-5-88.

@@Shri Dipin Ghosh resigned w.e.f. 12-5-88.

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	(ii) Shri Chaman Lal, Vice-Chairman		
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JOINT COMMITTEE ON THE LOKPAL BILL, 1985

RECORD OF EVIDENCE TENDERED BEFORE THE JOINT COMMITTEE ON THE LOKPAL BILL, 1985

Monday, the 29th June, 1987 from 1500 to 1710 hours in Committee Room 'C',
Parliament House Annexe, New Delhi.

PRESENT

Shri Somnath Rath—*Chairman*

MEMBERS

Lok Sabha

- 2 Shrimati Basavarajeswari
3. Shri Manoranjan Bhakta
4. Shri Sharad Dighe
5. Shri Indrajit Gupta
6. Shri R. S. Khirkar
7. Shri P. Kolandaivelu
8. Shri Y. S. Mahajan
9. Shri Braja Mohan Mohanty
10. Shri D. K. Naikar
11. Shri C. D. Patel
12. Shri Aziz Qureshi
13. Shri Ram Swarup Ram
14. Prof. N. G. Ranga
15. Shri C. Madhav Reddy
16. Shri Ajit Kumar Saha
17. Shri Shyam Lal Yadav
18. Shri Zainul Basher

Rajya Sabha

19. Shri Lal K. Advani
20. Shri Aladi Aruna *alias* V. Arunachalam
21. Shri Anand Sharma
22. Shri Hansraj Bhardwaj
23. Shri Darbara Singh
24. Shri Dipen Ghosh
25. Shri Baharul Islam
26. Shri Bir Bhadra Pratap Singh
27. Shri P. N. Sukul
28. Shri Parvathaneni Upendra
29. Shri Raoof Valiullah
30. Shri Virendra Verma

SECRETARIAT

1. Shri K. C. Rastogi—*Joint Secretary*
2. Shri G. S. Bhasin—*Chief Legislative Committee Officer.*
3. Shri R. S. Mani—*Senior Legislative Committee Officer.*
4. Shri S. P. Gaind—*Senior Legislative Committee Officer.*

REPRESENTATIVE OF THE DEPARTMENT OF PERSONNEL AND TRAINING
Smt. K. N. K. Karthayani—*Director (Vigil).*

REPRESENTATIVES OF THE MINISTRY OF LAW & JUSTICE
(LEGISLATIVE DEPARTMENT)

1. Shri S. Ramaiah—*Secretary*
2. Shri B. K. Samaddar—*Deputy Legislative Counsel.*
3. Dr. D. K. Jain—*Joint Secretary and Legislative Counsel.*

WITNESS EXAMINED

Shri U. C. Agarwal, Central Vigilance Commissioner, Government of
India, New Delhi.

MR. CHAIRMAN: Now, the hon. Members might be knowing that we have postponed our visit to Gujarat on the advice of the State Government. Today, we will take the evidence of Shri Agarwal, Central Vigilance Commissioner. He has already given a note on Ombudsman which has already been circulated among the Members. Now, after taking his evidence, we can call the Bar Council of India and also the representatives of the Indian Institute of Public Administration in the month of July 1987. If it is not suitable, we can call them after the monsoon Session.

SHRI P. UPENDRA: You can call them for giving evidence some time in the middle of July, that is, on 15th of July or so.

MR. CHAIRMAN: Yes, we can call them on 15th afternoon. The hon. Members will be informed of this well in advance.

(The witness was then called in and he took his seat)

MR. CHAIRMAN: Mr. Agarwal, your note on the Lokpal Bill has been received and it has been circulated to the Members of the Committee. Now, the questionnaire has also been sent to you which will form the basis for evidence you will be giving this afternoon. Now, before we take up the questions before we proceed, may I draw your attention to Direction 58 of the Directions by the Speaker which reads as follows:

"58. Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall however, be explained to the

witnesses that even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament."

SHRI U. C. AGARWAL: There are a number of questions given in the questionnaire eliciting views. They indicate that the scope of the Bill could be widened and the definition of "public functionary" could be wider and the allegations which are confined only to corruptions could also be more. I understand from some of the questions that the scope of the legislation could be wider. Now, this Bill indicates that the purpose is only one and that is regarding the allegations of corruption and the persons covered are only the Union Ministers, Ministers of State, Deputy Ministers, etc. Now, if you take that into account perhaps the scheme of this legislation is all right. In one of the States, that is, in Kerala; they have enacted a legislation for prevention of corruption among the "public men" and the scope of the persons who are within the ambit of this Act is wider. That includes not only the Ministers but also the Members of the State Legislature, Trade Union Leaders, and even those holding office of President, Vice-President, Secretary, etc. of various political parties. But here in this Bill the intention is only to confine the Jurisdiction to the Union Ministers and the complaint also has to relate only to complaints of corruption and nothing else.

Well, one of the questions is whether mis-conduct, mal-administration, grievances, abuse of power, etc. could also be included in the scope of the Bill. Now, if you do that, perhaps the scope will be too wide and the scheme of things would be quite different. The examination of mal-practices and mal-administration, their investigations and enquiry are

of a different type. For mal-administration and grievances, the enquiry should be less formal. This is distinct from the formal procedure in case of allegations of corruption where a complainant who has to file an affidavit, and is also liable to be punished in case the complaint is false. The general practice in case of mal-administrative inquiry in that the complaint is dealt with in a more speedy manner, in a less formal procedure. Normally there is no provision for punishment in such cases. While complaints of malpractice and allegations of corruption are a more serious affair. Naturally the complainant also must have some fear to avoid making a false complaint. The legislation therefore says that in case the complaint of corruption is found false, the complainant is liable to punishment. Therefore, the inquiry procedure that has been laid down in the Bill is more formal and perhaps more time taking. Therefore, perhaps rightly in the same Bill 'grievances and mal-administration' has not been included. It deals only with malpractice or corruption and only with regard to Ministers. There is also a suggestion as to whether officers of the level of Joint Secretary and above may not be included. Here again for the same reasons I would suggest, perhaps they may be kept out. Moreover already there is arrangement to deal with complaints against Government servants, whether they are Secretaries or Joint Secretaries. Another scheme of things and arrangements are already there and there are competent authorities to deal with them in this new scheme. From that angle there is no need to include them. If we widen the scope of the present Bill to include others, perhaps the focus may become different.

Another point that I would suggest for consideration is with regard to the provision that the Lokpal is to be a Judge of the Supreme Court.

MR. CHAIRMAN: It is mentioned here, 'or a person qualified to become'.

SHRI AGARWAL: The legal expertise of this person appears to be the main idea behind this, but the experience of other countries has been that there are equally competent persons in other fields who can perform these functions as well. Some critics have even said that the non-lawyer Ombudsman is generally better than the lawyer Ombudsman. There is no hard and fast rule laid down that he has to be a Supreme Court Judge or a legal expert because the Lokpal is only an investigating agency. If the complaint is found to be genuine and some action is recommended by the Lokpal, the matter has in any case to go before a court of law. If it is a matter of corruption and if the allegation of corruption is established by the Lokpal, then that is not the end of the matter. It has to go to a law court for trial and punishment. Therefore, the Lokpal himself need not be a judicial officer; he must apply a broad administrative view in his investigation of the truth of the complaint. Of course, the natural justice aspect has to be kept in mind. He should be in a position to competently investigate the complaint by virtue of his experience of administration. He must also have to keep in mind the various considerations that go into the decision making in Govt. Everything is not always recorded in writing before taking a decision in Govt. Some times only broad points are indicated as to why a decision has been arrived at. From that angle it is not necessary that the Lokpal investigating this must be a lawyer or a Judge. So, it is for consideration whether it can be left to the Government to appoint a Lokpal without restricting the choice to a Judge. I would also suggest that instead of "a Lokpal" perhaps the provision should be 'one or more Lokpals'. There are other things where action is required by him. So, perhaps more than one Lokpal is better. In some cases the Judgment of more than one person would be desirable rather than of one man.

One more aspect that has been thought is this. The question that has been raised is whether the proceedings should be in camera or private. Normally in this kind of legislation, in other countries also the inquiries are private, but at the end of the Inquiry, after the report is drafted, the Ombudsman normally prepares a summary of his inquiry. When he sends it to a competent authority, there is a summary of it giving the allegations and his findings. That summary is released to the press after the required time so that people are in a position to know what were the allegations and what were the findings. Public cannot be totally kept in dark. It is true that an open inquiry is likely to vitiate the atmosphere and create prejudice in the public mind. Therefore, it is desirable that the Lokpal should proceed without the glare of publicity, should calmly apply his mind and come to the conclusions. It should not only be fair, but it should also appear to be fair to the public and from that angle the report should be published. It should be obligatory on the part of the competent authority to publish the Lokpal's report maybe after 90 days. So, after 90 days his report should be published while the inquiry should be in camera, as has been mentioned in the Bill.

The action starts on the basis of a complaint. Unless there is a complaint, the Lokpal does not take action. On the other hand the Government may refer something to Lokpal for inquiry. In some cases there is a provision that Ombudsman can *suo motu* act if there are complaints in the press or elsewhere but nobody is coming forward with a specific complaint. Then he may come forward and investigate it. So, it is for consideration whether that power can be given to Lokpal.

MR. CHAIRMAN: What is your view?

SHRI AGARWAL: I think it would be desirable to give the power of taking *suo motu* action. Under certain circumstances he may take *suo motu* action. If there are more than one person as Lokpal perhaps it would be desirable that the power to investigate on his own should also be there.

MR. CHAIRMAN: You say more than one. How many persons should be there?

SHRI AGARWAL: Three should be all right. One of them may be called Mukhya Lokpal. This man must be politically distinguished person from any field may even be politics. He may be a man from Finance or from persons who are experts in management, finance and administration.

It need not be that the decision must be always by the three persons. The three may themselves investigate or divide the work. The Mukhya Lokpal may also investigate in a particular case of importance. In all the cases it is not necessary that all should investigate. The appointment may be for a term of 4-5 years. But the person be made eligible for re-appointment for two terms. That is to give stability to the institution. One acquires experience if there are two terms of 5 years. It is more convenient.

Another point raised is with regard to punishment to the complainant—whether it should be two years imprisonment in case the complaint is found to be false, the minimum punishment is of 1 or 2 years and a fine of Rs. 50,000. To me it appears to be rather on high side. The punishment should not be more than 6 months imprisonment and fine should not be more than Rs. 2000 or Rs. 3000. Of course, it is true that in all cases, there should not be punishment. Punishment should be only in cases where the complainant has knowingly and intentionally made a false complaint. Sometimes, a complaint may be false but he may genuinely believe that the allegations are

true but the investigation has not found it to be true. In such cases, there should not be any punishment.

There is also a question whether he should have his own investigating agency. Normally he should depend on the Government investigating agency—CBI and other police agency. It would be desirable if he has a small nucleus of his own so that they are able to give technical guidance to the investigating agency and provide some sort of continuity. He should have a small cell of his own for investigation. When important inquiries are undertaken, he may temporarily take more staff under him or take the assistance of investigating agency of the State or the Centre. But he himself should have a small investigating cell of his own. In the Vigilance Commission, we have our own investigating agency so far as engineering works are concerned. Whenever investigations relating to construction works are undertaken, we have our own Engineers to investigate. As and when we require more people, we also ask for extra help. Similarly, the Lokpal should also have a small investigating cell of their own with Police Force. But in addition to that, the Lokpal may ask for more staff when he requires.

MR. CHAIRMAN: What is your experience as the Central Vigilance Commissioner?

SHRI U. C. AGARWAL: It is good to have a small investigating cell with the Lokpal of his own. Of course, persons can come on deputation. Some posts can be I.G. (Police) etc. But he should be given extra help as and when required.

MR. CHAIRMAN: Do you think whether an appeal to the High Court and the Supreme Court against the order of the Lokpal is in order?

SHRI U. C. AGARWAL: There has to be some appeal provision against his order when he punishes a person.

I think, this has to be there because there has to be some appellate authority.

Another point is regarding removal of Lokpal. It is said here, it is on the basis of enquiry by a Supreme Court Judge. Since his status will be that of the Chief Justice of the High Court, perhaps his removal should be in the same manner as that of a judge of the Supreme Court. Only Parliament should have the power to remove him on the basis of Address passed in both Houses of Parliament.

MR. CHAIRMAN: In your article you have referred to the Ombudsman's jurisdiction to investigate against the judiciary. Do you want that this power should be given here?

SHRI U. C. AGARWAL: That is in regard to Ombudsman. But Lokpal is to investigate only cases of corruption and that too against the limited number of political executives. If the judiciary aspect is also included, then the scope becomes much wider.

There has to be some machinery to investigate allegations of corruption against the judiciary. At the moment, we do not have any satisfactory arrangement. However, since this scheme is meant only for the political executives, perhaps the combination of the judiciary may not be required. That may require a different kind of machinery.

MR. CHAIRMAN: In the proposed Bill, the Government servants have been debarred from making complaint to the Lokpal.

SHRI U. C. AGARWAL: This is a correct provision. In the other legislations also, normally Government servants are excluded from making complaints in order to maintain their non-political status. They should not enter into this kind of

political controversies or making allegations, since they work under the political executives. They should maintain their neutral and non-political identity.

SHRI H. R. BHARDWAJ: The existing laws in the country, deal with the cases relating to bribery and corruption. They have adequate provision for punishing even a Minister, a Minister of State or a Deputy Minister, after the Supreme Court verdict in Antulay's case. Would this institution of Lokpal give any additional provision in law to take care of cases of bribery and corruption among the public functionaries? Any public person can move straight-away the court and prosecute a public servant. In that background, I want to know whether the Lokpal would be doing any additional service to the society.

SHRI U. C. AGARWAL: It will be helpful because here the investigation would be by any independent agency who will go into the official records. The court procedure is different. Here, it is not that formal. When a complaint is made, he makes a preliminary verification with regard to the complaint and he himself goes through the public records and documents. Here the procedure is not same as that of the court. That is why, I suggested that the Lokpal need not be a judge because ultimately, the matter has to go to the court for punishment. There may not be really any illegal act but some impropriety might have been committed by a public servant. In that context, the Lokpal may make a recommendation to the effect that the public functionary is not fit to hold the post. The court comes into it when there is really corruption and some punishment has to be inflicted. But the acts of impropriety could also be looked into by the Lokpal.

SHRI H. R. BHARDWAJ: You may recall that under Section 2(b) a complaint has been defined which in-

cludes evidence under Chapter 9 of Prevention of Corruption Act.

SHRI U. C. AGARWAL: This is true. The point is that allegations relating to corruption and bribery should be investigated. While investigating such allegations, the Lokpal may come to some conclusion. He may say that while there is no case for prosecution as the evidence is not adequate for prosecution but still there is a strong probability that some mischief has taken place. He could, in that event, recommend that the person is not fit for holding that high office.

SHRI H. R. BHARDWAJ: You may kindly recall that under the present system for punishment of bribery and corruption, we have a special provision under Section 5(a) in the existing statute which requires investigation by a designated superior officer—normally a Deputy Superintendent of Police in the normal areas and the S.P. in the towns. So, actually speaking while he is holding an investigation he will also hold an enquiry. After the enquiry, if he is satisfied with the charges made, then investigation by the police will still be necessary. Please explain.

SHRI U. C. AGARWAL: Of course, investigation will still be necessary. We have the investigation of the Lokpal and there is also the enquiry. But it is really not a binding enquiry. In my own opinion it is not a binding one. It is not as binding as an order of the Court. He merely gives a report that action should be taken on such and such lines; that the person should be prosecuted or he opines that impropriety has been committed and so some other punishment should be inflicted on that person. But his report is not a binding report. He comes to the conclusion on the basis of his own enquiry, which, you may really call as an investigation. But the thing is that the police is only assisting him in the investigation. Further, normally the process of the law Court has to be gone through.

The Lokpal is really a Commission of Enquiry. That is all.

SHRI H. R. BHARDWAJ: In spite of the enquiry made by the Lokpal, in spite of the findings of the Lokpal, still investigation, and trial will be necessary for the punishment of the public servant regarding certain charges. Will you agree with me?

SHRI U. C. AGARWAL: I think it is so. That process has to be gone through Lokpal cannot punish on the basis of his findings.

SHRI H. R. BHARDWAJ: About the judiciary, will you agree with me that the judiciary is independent in this country and the administration of the subordinate judiciary is under the control of the High Court? Further, no other functionary can punish them, unless we have the concurrence of the High Court. About the High Court and the Supreme Court, we have got the constitutional protection given to them. We have to follow that special type of a procedure which has been prescribed under the Constitution. Without such special powers, the Lokpal may not be able to deal with judiciary.

SHRI U. C. AGARWAL: With the present scheme of things, it may not be possible to deal with the judiciary. In fact, the functionary to take up cases against judges has to be a Constitutional Authority. Perhaps, it may be difficult to bring the judiciary under the Lokpal's purview. That may require a constitutional institution of Lokpal, where the power has to be given under the constitution so that he can also deal with the allegations of corruption against the judiciary. For example, in the Swedish Constitution, the Ombudsman in Sweden deals with the judiciary. He has the power even to prosecute the judges of the Supreme Court. That power has been given to him under the Constitution. Whether Parliament can give that power under the Constitution needs examination. The

fact is that the judiciary at present has a different status.

SHRI H. R. BHARDWAJ: So far as the Lokpal is concerned, all that we can say is that he will still be bound to the two things that have been given under the General law i.e. before the public servant is prosecuted, he must have the protection of an investigation by a superior authority and also the protection or sanction by the Head of the Department who is competent to remove him from service. In this case also, those protections are mandatory. Please comment on it.

SHRI U. C. AGARWAL: That can be amended once there are the findings of the Lokpal. Further permission may not be necessary for prosecution. The law itself can give power to Lokpal and the Lokpal may direct prosecution. Suppose, if the Lokpal comes to the conclusion that there is evidence against a person, then he may order prosecution, i.e. a view should be taken whether the decision should be left to the Competent Authority or the Lokpal can be given that power.

SHRI H. R. BHARDWAJ: I am not talking of the Government servants. According to the present definition, the Minister is a public servant.

SHRI U. C. AGARWAL: There is no permission as such required. The sanction can be amended.

SHRI H. R. BHARDWAJ: In this context, I would like to remind you about the case of Mr. Karunanidhi and Mr. Antulay...

SHRI U. C. AGARWAL: For example, if the Lokpal recommends prosecution, prosecution can be done without going through all the other procedures. That, perhaps, can be provided in the present law itself.

SHRI H. R. BHARDWAJ: Please comment about the power of sanction or the power of investigation?

SHRI U. C. AGARWAL: Investigation is different from the point of view of law. If the evidence available is not adequate and if there are certain lacunae in the evidence, further evidence is required and further investigation is necessary to fill in the gap. But it is not that the investigation, *ab initio*, has to be done for prosecuting a person. If the evidence available before the Lokpal is not adequate or if it is inadequate in certain respects, to that extent further investigation can be done. If the Lokpal will also come to the conclusion, on the basis of the evidence before him, he may suggest as to whether any further investigation is to be done before making any recommendation regarding prosecution.

SHRI MANORANJAN BHAKTA: Lokpal is not a court.

SHRI U. C. AGARWAL: It is not a Court. In that sense, he cannot himself punish. Only a normal law court can punish.

SHRI H. R. BHARDWAJ: Regarding the case of bribery and corruption, investigation requires a special skill to catch a person red-handed, to recover certain documents. Don't you think Lokpal will seriously handicapped in going into all these things? Because, as it is, there is a fullfledged machinery.

SHRI U. C. AGARWAL: The point is that he uses the same machinery i.e. he uses the C.B.I. The C.B.I. prepares the case.

SHRI H. R. BHARDWAJ: Could you tell under what provision it can be done?

SHRI U. C. AGARWAL: That has to be given under the law.

SHRI H. R. BHARDWAJ: My point is that it requires some special investigative skill to lay a trap against a Minister or a public servant. That must be there.

SHRI U. C. AGARWAL: Those things are normally available with the police. He uses all the powers available with these agencies.

SHRI H. R. BHARDWAJ: Under the statute, you will have to give all those powers which have been given in the Cr. P.C. When you are laying a trap against a Minister or a public servant, you must proceed very carefully to catch him red-handed. How will the Lokpal deal with this matter?

SHRI U. C. AGARWAL: This question will not arise. It is done only on the basis of the decision taken already. He only goes into whatever document or evidence is available. On the basis of this, decision is taken. He studies those charges, takes the views of the officers dealing with this matter. On that basis, he proceeds further in the matter. The point is that unless power is given to him, he may also find it difficult to proceed. Suppose, if it is a property case he can call for the property statement. That power has been given to these people in the Kerala Legislation. They may call for the statement of movable or immovable property. If power is given to the agency which the Lokpal utilises, they will come with all the powers available under their respective laws. In that event, C.B.I. will not require further power. It uses the power which is available.

SHRI H. R. BHARDWAJ: If a case is registered, they will have the provisions to proceed further. In that event, the Lokpal's role will be meaningless. Will you agree with this proposition?

SHRI U. C. AGARWAL: No; not meaningless, because the Lokpal himself will then supervise, he himself will give directions to the CBI as to what more it to be done and then the CBI will submit the report to the Lokpal. Here it is a question of public confidence. Such independent Institutions are created because the

public do not have the confidence in the Government agencies; they think that a complaint made against a Minister is just filed and no investigation is done, no impartial mind is applied to that complaint. There may be truth in it or there may not be any truth in it. Now an independent agency i.e. the Lokpal will look into the complaint whether there is some truth in it or not. From that angle it is something which will inspire public confidence in the probity of administration, in the integrity of the persons holding high office.

SHRI H. R. BHARDWAJ: Suppose the Lokpal sends somebody to record the statement of a Minister and he refuses to make a statement. What will happen?

SHRI U. C. AGARWAL: If the person against whom a complaint is made refuses to make any statement, he cannot do anything. But then he will draw his own conclusion.

SHRI MANORANJAN BHAKTA: So, Lokpal will only be a supervisory body.

SHRI U. C. AGARWAL: Not only supervisory, but he will also give his final view. When an independent authority gives a view saying "Yes; there is something in this complaint", it means something. Of course, his recommendation is not binding. It is not a recommendation on the basis of which alone punishment will be inflicted. The normal court procedure has to be gone through.

SHRI H. R. BHARDWAJ: Kindly read Clause 14 of the proposed legislation. This is hardly in consonance with what you say—that the CBI and the other agencies will be operative under this. All that is envisaged is that it can order an investigation by itself and that investigation will hold good.

SHRI U. C. AGARWAL: This is an additional power. Whenever the CBI wants to arrest somebody, they go to a court of law to get the warrant of

arrest. Here the Lokpal will give that warrant of arrest. He will give the order that the document be seized. The CBI, for investigating a complaint before the Lokpal, need not go to any other court to take the power of investigation for seizure or search. The Lokpal will exercise that power. Lokpal is a court for that purpose.

SHRI H. R. BHARDWAJ: Then it will be an inquiry not by the CBI but by the Lokpal himself.

SHRI U. C. AGARWAL: The police investigation is different from the investigation that the Lokpal will do. The Lokpal's investigation would be on the basis of the documents available and also the investigation done by the police. Just as a Magistrate makes up his mind, the Lokpal will make up his mind.

SHRI H. R. BHARDWAJ: I do not know whether there is any provision...

SHRI U. C. AGARWAL: This law gives the power that he may use a Central agency or a State agency, and the intention is to use the Central police agency or the State police agency.

SHRI H. R. BHARDWAJ: Which provision are you relying on?

SHRI U. C. AGARWAL: Clause 7. When you secure the services of an agency, it is implied that the agency comes with the powers available to that.

SHRI H. R. BHARDWAJ: If an Inspector-General of Police goes to serve on a Commission of Inquiry, he does not necessarily carry the same powers with him.

SHRI U. C. AGARWAL: Where it is required, the Lokpal will give that power that he is authorised to search or seize a document.

SHRI H. R. BHARDWAJ: The consequences of search are very grave.

SHRI AGARWAL: The Lokpal will give that authority. Whatever power the court can give to a police officer, the Lokpal will give that to him.

SHRI P. UPENDRA: We have gone through your paper—India needs an Ombudsman. What made you come to this conclusion that India needs this institution? Is it because of the fact that more and more people are involved in corruption or is it because that, while investigating into the charges of corruption against high officials, you have found that you could not proceed with the investigation because of certain things?

SHRI U. C. AGARWAL: The Ombudsman that I have suggested is not a person to investigate corruption cases like maladministration, delay, inefficiency, discriminatory treatment—that kind of a thing. He will not deal with corruption cases you require a more formal procedure. The Lokayuktas that the States have set up have combined both corruption and non-corruption cases with the result that they are not able to do justice, because corruption case inquiry has to be a more detailed and a more formal one. In the case of a non-corruption case, for example, if somebody is not doing a particular thing and there is delay or discrimination, then he can even telephone and ask the officers as to what is happening. A call from Ombudsman would speed up the machinery, would activate the machinery. No formal procedure or evidence will be required. He may call for the file and ask why action has not been taken. Of course, there are official supervisors. But they are within the hierarchy. The Lokpal will be a person who will also be an administrative supervisor but he will be outside the hierarchy. He will be an official of the Parliament; on behalf of the Parliament, he will see that the executive carries out the acts without delay, without harassment, and that the action is not improper, unjust or harsh.

SHRI P. UPENDRA: The Bill as it covers roughly 55 to 66 Ministers. Do you think that the work would justify creation of such a large set-up which you have envisaged?

SHRI AGARWAL: Somehow there is a feeling—it may be true or may not be true—that there is large scale corruption. Everybody admits that corruption is rampant. But the difficulty is to prove that corruption against individuals. There is also no public faith that the existing machinery is able to investigate the complaints independently, fairly and objectively. In regard to corruption against public servants, there is some kind of a machinery to investigate, there is an independent authority in the Vigilance Commission. It has been set up by a Government Resolution. It could be given a statutory status to deal with complaints against government servants. But there is no machinery now to deal with complaints against public men. From that angle, it does make up for that omission and perhaps it is necessary. If an independent authority, after going through a complaint says that there is no case or that the complainant is misinformed or that the complaint is malicious, if an independent authority says so and his conclusion is published—as I said, his report should be published; it should not be kept confidential; it may be confidential upto a point, but after that it should be published—there would be public confidence. Sometimes there may not be any substance in the allegation, but where there is a free press and this kind of thing is circulated, there has to be an independent agency to see whether there is any truth in that or not. From that angle it will be desirable proposition if this first step is taken. Later on, we may include the judiciary and what should be the mechanism we will require for that, can be thought of later.

SCHRI P. UPENDRA: In the present scheme of government work, all

vital decisions are taken at the highest level—at the Centre at the Prime Minister's level and in the State at the Chief Minister's level. Most of the vital decisions are taken with their concurrence and approval. How then do you justify this Bill excluding the Prime Minister or the Chief Minister from the purview of this legislation?

SHRI AGARWAL: That has to be a political decision.

SHRI P. UPENDRA: What is your own view?

SHRI AGARWAL: My own personal view right from the beginning has been that the Prime Minister should be kept outside the scope of this legislation. There has to be at least one person who can fearlessly take a decision. There are bound to be false and motivated complaints from political angle, and whatever may be the result of the inquiry, till the inquiry is over there would be some kind of a fear and the government will become weak. There will be enemies of the country who may try to see that false complaints are sent one after another and the government will be under fear. Therefore, at least one person should be above fear and he should be answerable only to the people. Since the Ministers in the Council of Ministers are appointed by the Prime Minister, he should be satisfied whether a Minister has functioned honestly or dishonestly. Whether he has taken a decision *bona fide* or *mala fide*, the competent authority should be advised by an independent authority. Therefore, the Prime Minister should be kept out of this.

SHRI P. UPENDRA: The Chief Ministers also occupy a similar position.

SHRI AGARWAL: Chief Ministers and Prime Minister are not really comparable.

SHRI P. UPENDRA: What about members holding offices in cooperat-

ive institutions? Should they be included or excluded? What about the public sector? There was also a suggestion that Members of Parliament should be excluded. What is your view on these?

SHRI AGARWAL: In the Kerala legislation they have included practically all elected persons holding public office in cooperatives and even trade union leaders of political parties. But that has gone a little wider.

With regard to the public sector, they come under the purview of the Vigilance Commission. There is a machinery, and one can strengthen that machinery. It is not that there are no complaints. Complaints do come. But there is not enough evidence available to punish a person. It is not that when Lokpal comes it will be adequate. He may also find himself in the same position.

With regard to MPs, again, a political decision has to be taken whether they should be or should not be included. One view is that they really do not hold any office and that their independent criticism may be weakened if they become a subject-matter of inquiry. One cannot really say that it will improve the climate of integrity if the MPs are brought within the purview of this. Public perception is that there is lot of malpractice even among the representatives of the people, they do use their influence for their personal benefit. This kind of allegation is there. But whether it will be wise to include them, one has to consider. In my opinion, this is not the time when we should really weaken the hands of the Members of Parliament to criticise the Government boldly. They are also put through analysis.

SHRI P. UPENDRA: My last question is, when the Secretaries, Additional Secretaries and Joint Secretaries are involved in the legislation making and there is a charge against

a Minister of *mala fide* intention, naturally, these people are also involved in that.

Is it not desirable to include them also under the purview of all that is provided here?

SHRI AGARWAL: No, the Officers are not covered. Where after going through the complaint against the Minister, it comes to light that officers are also connected, he can investigate against those officers to a limited extent. When the complaint against the Minister is made, those officers are also to be investigated.

SHRI L. K. ADVANI: Shri Agarwalji what is your position in the Central Vigilance Commission in respect of complainant? If the complainant or if the complaint proves to be false, is there any penalty provided?

SHRI AGARWAL: The Vigilance Commission recommends to the Department where he is employed or to the police if he is a private person that they may file a case against him. In the case of Departmental false complainant, he can be taken departmentally and in case of the private person, the Commission can recommend that a complaint for a case may be filed against him but then the police has to take the action to collect the evidence.

SHRI L. K. ADVANI: So, this perhaps would be the case of its kind where the Lokpal, as you rightly pointed out, has only recommendatory authority in respect of the persons complained against, but in respect of the complainant, he has authority to send him to jail for three years and can ask for Rs. 50,000 fine. In these circumstances, on the basis of your own experience, do you think there will be any complaint?

SHRI AGARWAL: As I have mentioned, Sir, that is why the power to

investigate is the *suo-moto* by the Lokpal should be provided. Because in all likelihood the private complaints may not be many because of the fear of punishment. It is difficult, unreasonable also, to expect for a private person that he will be able to muster evidence against a Minister and prove the charges. It will be very difficult for a private individual to do so.

SHRI L. K. ADVANI: Now, Agarwalji because you have experience in this field, that is why I have posed this question. To say that complaints in such a situation would not be many is an under-statement. So far as I can see, I would think that any person who has a complaint—it is not easy for him to muster evidence—would confine himself going to Members of Parliament or Members of State legislature. Raising a matter in that way would be a more simpler way rather than going to the Lokpal. So, in this situation apart from the difficulties that have been pointed out by the Minister, I would once again pose a question which Upendraji has posed that is it worth-while having Lokpal of this kind which is supposed to be a reflection and which you have so strongly advocated in the context of mal-administration grievances which have been totally excluded from the purview of this Lokpal and this situation has been confined to only Ministers, that too excluding the Prime Minister and Supreme Court judge or that kind of office. Is the whole thing worth-while? Is the exercise worth-while when there is likely to be no complaint or very few complaints?

SHRI AGARWAL: No, Sir, the experiment is worth-while, even the Lokpal is worth-while because it also says that Government may refer a complaint, may themselves refer a case to the Lokpal. The Members of Parliament should compel the Government to refer a case to the Lokpal and then the power should also be

given to Lakpal that he himself can investigate the case on his own.

MR. CHAIRMAN: So, after a Tea-Break the participants can again assemble.

(The Committee then adjourned for Tea)

(The Committee reassembled after Tea)

SHRI D. K. NAIKAR: When a question was posed to you by the Law Minister about the advancement of the position, as a result of the introduction of this Bill, you did not say anything definitely about it. The offences coming under Section 160 to 171 of the Cr. P. C. and under the provisions of the Prevention of Corruption Act are those triable by Magistrates under the ordinary procedure of the Cr.P.C.; and so far, not a single case against a public servant has resulted in conviction. Do you agree with this proposition?

SHRI AGARWAL: I do not know the factual position.

SHRI D. K. NAIKAR: Many cases are not tried by the Magistrates at present, though the Ministers and MLAs are also held to be public servants. Even when the sanction is given by Government, cases are not tried.

SHRI AGARWAL: Here, the position is that the complaint is not independently examined. No action is taken to launch a case, under the Prevention of Corruption Act. People make a complaint, and no action is taken. The case is filed. To avoid this, an independent authority will now examine the complaint, and he will advise on whether action is to be taken, or not to be taken on it. So, by creating this institution, Government will bring about some confidence in the minds of the people. Whether or not the complaint will be proved, is a different matter. When it goes to the institution if the recom-

mendation is to launch the case, it will be difficult for Government to say no. Otherwise, there will be criticism, and adverse Press publicity. In a democracy, the pressure of public opinion matters a lot. So will the opinion of an independent Ombudsman.

SHRI D. K. NAIKAR: Under the earlier laws, no complainant was asked to deposit the money. But in this Bill, depositing of money is necessary.

SHRI AGARWAL: To avoid frivolous complaints, some check is necessary. The amount may be made less. But there has to be some check. Otherwise, people will file a complaint and forget about it. This will increase the work of the Lokpal, and waste his time.

SHRI D. K. NAIKAR: You say that for avoiding frivolous complaints, this provision is necessary. Under another provision, the Lokpal is empowered to examine complaints, and see whether they are false or frivolous. Without scrutiny he cannot entertain them. What more powers do you want to give him?

SHRI AGARWAL: It is there only to avoid frivolous complaints.

SHRI D. K. NAIKAR: That discretion is also given to him.

SHRI AGARWAL: If frivolous complaints are not filed, even that stage of scrutiny will not be necessary.

SHRI D. K. NAIKAR: Apart from the deposit, if an apprehension is created in the minds of the complainants viz. that if they are told that they will be jailed for three years, and that penalty would also be there, will it be helpful?

SHRI AGARWAL: Somebody's reputation is involved, when a baseless and malicious complaint is made. There should be a responsibility cast

on the complainant, if one wants to make use of a public institution. The complainant should have some reason to make a complaint.

SHRI D. K. NAIKAR: Then instead of protecting the morals, you would be giving more protection to the persons against whom the charges are made.

SHRI AGARWAL: If complaints are proved to be true, action will be taken. The law provides for it. We are taking about action against false complaints.

SHRI D. K. NAIKAR: In the ordinary law i.e. under IPC and Cr.PC such a provision is not there; and the complainant is not asked to make a deposit. Even punishment is not there. Under Cr.P.C., there is punishment provided for false evidence. What is not provided there, has been provided here. Protection here is more for the public servant than for the complainant.

SHRI U. C. AGARWAL: One could say: why ask for a deposit when we say that if a complaint is proved false, there will be punishment?

SHRI D. K. NAIKAR: The concept of punishment refers to the harm inflicted by an authority on a person adjudged to have violated the norm. Here, you name a person as a dog and kill him.

SHRI U. C. AGARWAL: I think that if somebody's reputation is being harmed, the person who so harms the reputation, must also undertake some risk of punishment.

SHRI D. K. NAIKAR: It is a question of raising the morals and protecting people, and a question of eradicating corruption.

SHRI U. C. AGARWAL: But by making a false complaint, we do not end corruption. Otherwise, it would appear that honest persons were being victimized and the real culprits were not being punished.

SHRI D. K. NAIKAR: You said that the Prime Minister should be excluded altogether. Constitutionally, he cannot be governed by this Bill.

SHRI AGARWAL: I do not know the legal position.

SHRI D. K. NAIKAR: In Karnataka, the Lokpal Bill, having been passed, is in force. Under that Bill, the Chief Minister is also covered, who is the competent authority, to whom a report is to be submitted. Can he take action against himself?

MR. CHAIRMAN: We are concerned with this Bill. He has already answered that.

SHRI SHARAD DIGHE: You have mentioned that not only the Supreme Court Judges or the ex-judges or the persons qualify to be Supreme Court Judges should be appointed but also other persons should be eligible to become Lokpals. In that case, should it be left open saying that any citizen of India can become a Lokpal or some qualifications should be laid down for any other person to become a Lokpal?

SHRI U. C. AGARWAL: In Britain, there is no qualification. In Sweden, there is also no qualification. In U.K. also there is no qualification. But the person is to be appointed in consultation with the Chief Justice. In those countries, no doubt, they take into consideration, what type of a person would be more suitable. They do not believe in laying down all kinds of qualifications. On each occasion, they find out who would be the right man. Now, the question is whether we should leave it that free or we should make a very narrow definition or lay down qualifications. Ultimately, it depends on the appointing Authority. It is perhaps necessary not to lay down so many qualifications.

SHRI SHARAD DIGHE: Basically, it appears to be a judicial function. You have to make investigations; than

you have to give a report and examine the witnesses also. Then we have also give him the status of the Chief Justice by way of a salary. For his removal, some procedure is laid down in the Constitution. In view of this basic structure of the whole Act and the status which we want to give him, nearly to the Chief Justice of India, don't you think that to allow anybody else than the Supreme Court Judge or ex-judge or a person who is eligible to become a Judge of the Supreme Court, would be a dangerous proposition? The status will be reduced, as far as that position is concerned.

SHRI U. C. AGARWAL: This status does not depend upon a person or a category of persons but in the office one holds or what is given in the law. The members of various Tribunals, are not always judges but they enjoy the status of the Chief Justice Election Commissioner or Chairman, UPSC, Controller and Auditor General also enjoy high status. That depends upon the law. The procedure need not be the court procedure in the strict sense; of course, natural justice has to be there. Even others can also apply their mind. C&AG also applies his mind before he gives his Report. He also enjoys a certain status. He is also removed by Parliament. The removal is like a Supreme Court Judge or a High Court Judge. So, the removal procedure or the status, etc., it is a matter of relevant law. For that, one need not be a Judge. The enquiry is not really in that sense—judicial enquiry. Then he can make a recommendation. It is not a binding order, except in the case of those who commit an act of Contempt. In their cases, he has the power. If there is a contempt of his office, contempt of the Lokpal, then he can punish them. But the other officers—Enforcement Officers, Income Tax Officers—that kind of enquiry they also hold.

SHRI SHARAD DIGHE: Without reference to the competent authority, if the Lokpal is allowed to take any

action, will it not create confrontation between this authority and the Prime Minister?

SHRI U. C. AGARWAL: Then again a decision has to be taken. I don't think there will be a confrontation because only in case. Where the evidence is established, he will order a prosecution. Where the evidence is strong, misconduct is bad, he may, of course, exercise his power; he may give a binding recommendation of prosecution or he may leave it. In some cases he recommends some action. There may be a boarder line case where he leaves it to the competent authority to prosecute or not to prosecute. It could be in any way.

SHRI SHARAD DIGHE: There should be a separate investigating call available to the Lokpal. According to this clause, is it sufficient? It can appoint any Secretary. I think this clause will not cover all this.

SHRI U. C. AGARWAL: Well, that really is meant for office side. If that can be meant to include investigating agency, well and good. Otherwise, it should be separately mentioned that he may have a small investigating agency of his own. But he should also have the opportunity to secure the services of the investigating agencies as the law already provides.

SHRI SHARAD DIGHE: That is all.

SHRI BRAJAMOHAN MOHANTY: The present legislation is a very serious piece of legislation the object of which is to eliminate corruption. You have expressed the view that the courts would make recommendations. How do you suggest it? How to make the recommendations binding?

SHRI U. C. AGARWAL: His recommendation—the Lokpal's I mean—would be to the competent authority, in the report. It can be said that his recommendation or some of his recommendations, where he feels that

action must be taken, he can make that recommendation binding.

SHRI BRAJAMOHAN MOHANTY: If it is a recommendation, it is a recommendation.

SHRI U. C. AGARWAL: Then it need not be called recommendation. His report can be a directive.

SHRI BRAJAMOHAN MOHANTY: I would like to be enlightened on three points. One is about the sanctity of the order given by the Lokpal. Secondly, persons who are often involved in any impropriety or against whom the charge has been substantiated, that they are guilty, should they be completely eliminated from the political force or how should they be handled? Thirdly, please see Clause 9(2) which says that the Lokpal shall not inquire into any matter which has been referred for inquiry under the Commissions of Inquiry Act, 1952, or any recommendation without his prior concurrence. You see Clause 9 also. You know about the orders given by the Commissioner of inquiry. They are treated as *prima facie* conclusions, and subject to further inquiry by the competent authority. So, as such, it has no sanctity. In that background what is the sanctity attached to the Lokpal's recommendations or findings? Is it less than the finding under the Commissions of Inquiry Act, or has some conclusiveness in it?

I would also invite your attention to Clause 16, which is categorical. The 'Complaint' must specify that the public functionary has committed an offence punishable under Chapter 9 of the IPC or under the Prevention of Corruption Act, 1947. You know that these are cognizable offences. The problem is, if the complaint has been substantiated the *prima facie* case is under the IPC or the Prevention of Corruption Act, which has to be made out. So, his recommendation will be to prosecute. Removing from the Council of Ministers or refusing him

a ticket next time, all those are political actions and not permissible. The offence has been made out. And they are all cognizable offences. Only action open is prosecution. So, I would like to know about the sanctity of the report.

Suppose, the Lokpal reported against him because he is one of the members of the Council of Ministers. You are thinking of appropriate perspective, namely, mis-conduct. It is a criminal offence, pure and simple. So, in that case the only way open if it is substantiated, is to prosecute. Suppose, the Lokpal submits the report and the findings, where further investigation has to be made. It is an inquiry by the court. We have seen under Clause 9(2). Lok Pal can also refer the matter to the Commissioner of Inquiry. What is the sanctity of the findings of the Lok Pal? Whether, it is not a *prima facie* case or not, I want to know. Secondly after he finds that the complaint has been substantiated, the only course open will be prosecution.

SHRI U. C. AGARWAL: This scheme visualises an independent authority to examine the complaint of corruption. At the moment there is no independent agency. That independent agency may be the Commissioner and he may come to the conclusion that there is case for prosecution and he makes a recommendation to that effect.

SHRI BRAJA MOHAN MOHANTY: Can he withhold that recommendation to prosecute?

SHRI U. C. AGARWAL: The recommendations would be to prosecute. But then the competent authority may accept, or may not accept. Or he may find good reasons why he committed or he may think that there is no *mala fide*. The Lokpal may feel that there is *mala fide*. There may be impropriety but no *mala fide*.

SHRI BRAJA MOHAN MOHANTY: Is it open to him?

SHRI U. C. AGARWAL: Once we say that the competent authority has to decide, it is open to him. But if it is decided by Parliament that his position has to be binding, then he has only to file prosecution. It is left to the Committee. As such, it is not binding. What I suggested in answer to another question is that the recommendation can be a binding law or a directive where the Lokpal so decide in any case. He may leave it to the judgment of the competent authority in other cases, where he is one hundred per cent satisfied that there is a case for prosecution he gives a directive. Where he is not satisfied fully, but he has a strong suspicion or a strong probability the probability that perhaps mala fide action has been taken, he may like to examine it. Cross-examination etc. to a lengthy procedure. Then it can be left. If he finds a strong *prima facie* case he may leave it to the competent authority to take a final view.

SHRI BRAJA MOHAN MOHANTY: Another point is, suppose a person is found guilty of the offence. What punishment should be given to him?

SHRI U. C. AGARWAL: Recommendation so far as the criminal action is concerned, the punishment has to be on the basis of Court judgment. Other things are left to the Prime Minister, the competent authority in this case, to decide. For example if somebody is found guilty he could be dropped if there is not sufficient evidence to prosecute.

SHRI BRAJA MOHAN MOHANTY: Temporarily dropped and he will contest again. What is the practice being followed in other countries?

SHRI U. C. AGARWAL: Regarding contesting, again; there is no provision. Unless he is punished criminally under the Representation of the Peoples Act, he can contest. Otherwise, it is a political decision. Really, public opinion will be created through publicity. The strong support for

this legislation would be the public opinion. This public opinion would be based on the basis of a decision of an independent authority. The public opinion without any decision is just hearsay or may be based on rumour. But if independent authority has found a person to have committed misconduct and yet no action has been taken, the public opinion would be very strong and very injurious to the party in power. Finally, the competent authority may not be able to brush aside the recommendation.

SHRI BRAJA MOHAN MOHANTY: Another thing is about the effectiveness of Lokpal Enactment that is under operation in different States. Have you examined this; and if not, why not?

SHRI U. C. AGARWAL: A study has been made by an independent agency, which I have referred to in my article. They have found that they have mixed up the grievances arising out of the maladministration or allegations of malpractices.

MR. CHAIRMAN: In the article, you have suggested two things.

SHRI U. C. AGARWAL: Those are two different things. That is the view of the people who have done research on this.

SHRI P. N. SUKUL: Will you agree with the suggestion that a Government Servant should also be permitted to file a complaint? Secretary to a Minister or Personal Assistant to a Minister knows whether he is corrupt or to what extent he is corrupt. Do you agree that he knows the things as much and as well as that person?

MR. CHAIRMAN: He can pass on the information through somebody else to file a complaint.

SHRI P. N. SUKUL: Do you want him to behave like a political man?

SHRI U. C. AGARWAL: It will not be conducive to discipline. There has to be mutual trust amongst the people who work together. I do not mean the trust of malpractices, but the general trust and confidence in each other will be undermined if one feels that somebody is keeping a watch over him. The administration, to that extent, will not be very smooth. There may be some political controversy and Govt. servants should be kept out of such things.

SHRI P. N. SUKUL: As Chairman said, from your article, it seems that you prefer to have Lok Adhikari instead of having Lokpal.

SHRI U. C. AGARWAL: Lok Adhikari deals with the public grievance cases which may relate to delay or may be of a discriminatory nature, like some discriminatory treatment in the allotment of DDA flats. There may not be any corruption or malpractice as such. Somebody has shown some favour. Such cases are to be dealt with by Lok Adhikari.

SHRI P. N. SUKUL: Discriminatory cases can be filed in a court of law.

SHRI U. C. AGARWAL: It will be a long drawn out process.

SHRI P. N. SUKUL: Do you mean to say that Lok Adhikari would be in addition to Lokpal?

SHRI U. C. AGARWAL: Lok Adhikaris would have to be many and not one and different from the Lokpal.

SHRI RAOOF VALIYULLAH: The point that was repeatedly made by several of my colleagues is that this Bill at present is quite vague against the complainant. Now if you go through the various Clauses, you will notice that there is a Clause 27 which speaks about the reward and compensation. While the penalty is specified, the reward and compensation is not specified. The penalty should be left to the Lokpal. The

reward and compensation should be specified so that there would be more complainants who can come out daringly and say that this man is corrupt. Do you agree with this?

MR. CHAIRMAN: He wants compensation to be specified.

SHRI U. C. AGARWAL: It all depends upon the nature of cases. It will be very difficult to say. The penalty should not be defined and should be left to the Lokpal. It can be a fine or imprisonment or both for making a false complaint. At the moment, the law lays down a minimum sentence of one year and a minimum fine of Rs. 50,000/-. It is deterrent. The quantum may be reduced. There must however, be some deterrent against false complaints. We must also see from the angle of the honest man.

SHRI RAOOF VALIYULLAH: This clause be totally deleted, Clause 11 says:

"that the complaint is frivolous or vexatious or is not made in good faith the Lokpal should dismiss the complaint after recording its reasons therefor and communicate the same to the complainant and to the competent authority".

SHRI U. C. AGARWAL: People may not have the sense of responsibility.

SHRI BIR BHADRA PRATAP SINGH: The Ombudsman deals with the services whereas this Act deals with the Ministers. After putting the complaint in the box it is taken but by the Ombudsman and he examines it whereas in this country article 311 is there. So far as the complainant is concerned, there is a complete code. Appeal and all the other things are there. But so far as the person for whom the Act is meant everything is left vague. What shall be the specific role of the prescribed authority? Is it possible that he is to decide as to what course of

action has to follow? If that is the possibility, then why not select another authority as prescribed authority? So far as the procedure to punish a man who is found guilty by the Lokpal is concerned, if we have to follow the same course of law, then why to take the enquiry from such a big judge and put it in an ordinary court of law? Can you suggest any other way after this enquiry? What is your opinion about the prescribed authority's functioning, his decision making power and about the procedure that is to be followed in order to implement the findings given by the Lokpal?

SHRI U. C. AGARWAL: I have already given my views on it. Here the Lokpal's findings go as a recommendation to the competent authority. Here the competent authority is the Prime Minister because the Council of Ministers are involved. Under our scheme of administration it is the appointing authority which can take action against the person found guilty by the Commission. Here the Prime Minister is the appointing authority. Naturally the recommendations go to the Prime Minister. The recommendations in some cases could be a directive to this competent Authority or in some cases left to him. The doubt is, he may or may not act. Where in such a situation the strength of the schedule lies in the public opinion. If the Lokpal has independently concluded that the complainant has substance and there is some malafide, then it will be very difficult to brush aside that recommendation by the competent authority. In these legislations although the language is polite there is an element of compulsion. Moreover, the reports are to be laid before Parliament.

SHRIMATI BASAVA RAJESWARI: Before the Lokpal recommends any penal action against any person, I feel the affected person should be given an opportunity to say what he wants to say.

SHRI U. C. AGARWAL: The law already provides for that.

SHRIMATI BASAVA RAJESWARI: Are there any instance of any persons having been convicted?

SHRI U. C. AGARWAL: To the best of my knowledge, there has been no case of prosecution. Only the political punishments are there.

SHRI C. MADHAV REDDI: With regard to the disagreement of the Prime Minister with the report, you said that the report comes before Parliament. It is only an annual report which comes before Parliament and it may enumerate a number of cases. There is an opinion expresses earlier that in every case of disagreement the report should be placed before Parliament. What is your opinion on that?

SHRI U. C. AGARWAL: In the other legislation there are provisions to make special reports apart from annual reports. Ombudsman can make special reports where he has reasons to believe that action will not be taken on his report. In other countries, there is a parliamentary committee which deals with the Ombudsman's report.

SHRI C. MADHAV REDDI: Do you think that such a provision should be there?

SHRI U. C. AGARWAL: It will improve the legislation. It should be a desirable provision to provide for special Reports to Parliament and a Parliamentary Committee to deal with the Reports of the Lokpal.

SHRI C. MADHAV REDDI: What is your view regarding limitation? Do you think it should be that long or it should be three years?

SHRI U. C. AGARWAL: Perhaps it has been kept five years because the term of the legislature is five years.

SHRI C. MADHAV REDDI: Is there any other logic also?

SHRI U. C. AGARWAL: That is the logic because the term of the legislature is five years. In other countries it is two to three years.

SHRI C. MADHAV REDDI: We would be proceeding against the ex-Ministers also.

SHRI U. C. AGARWAL: That is a part of this legislation. The law

provides that a complaint can be filed within a period of five years. The limitation period is five years because the term of the legislature is five years.

MR. CHAIRMAN: So thank you very much. We will now assemble on 15th July at 3.00 p.m.

(The Committee then adjourned)

RECORD OF EVIDENCE TENDERED BEFORE THE JOINT COMMITTEE ON THE LOKPAL
BILL, 1985

Wednesday, the 15th July, 1987 from 1500 to 1715 hours in Committee Room
'B', Parliament House Annexe, New Delhi.

PRESENT

Shri Somnath Rath—Chairman

MEMBERS

Lok Sabha

2. Shri T. Basheer
3. Shri H. K. L. Bhagat
4. Shri Sharad Dighe
5. Shri Indrajit Gupta
6. Shri Y. S. Mahajan
7. Shri Braja Mohan Mohanty
8. Shri D. K. Naikar
9. Shri Aziz Qureshi
- 10.. Shri Ram Swarup Ram
11. Prof. N. G. Ranga
12. Shri C. Madhav Reddy
13. Shri S. Jaipal Reddy
14. Shri Ajit Kumar Saha
15. Shri Ebrahim Sulaiman Sait
16. Shri G. G. Swell
17. Shri .K P. Unnikrishnan
18. Shri Ram Singh Yadav
19. Shri Shyam Lal Yadav

Rajya Sabha

20. Shri Anand Sharma
21. Shri Darbara Singh
22. Shri Baharul Islam
23. Shri Murasoli Maran
24. Shri Bir Bhadra Pratap Singh
25. Shri P. N. Sukul
26. Shri Parvathaneni Upendra
27. Shri Raoof Valiullah
28. Shri Virendra Verma

SECRETARIAT

1. Shri K. C. Rastogi—*Joint Secretary*
2. Shri G. S. Bhasin—*Chief Legislative Committee Officer.*
3. Shri S. P. Gaiind—*Senior Legislative Committee Officer.*

REPRESENTATIVES OF THE DEPARTMENT OF PERSONNE & TRAINING

1. Shrimati B. Sen—*Joint Secretary (Vigil).*
2. Shri G. Sitaraman—*Under Secretary (Vigil.)*

REPRESENTATIVE OF THE MINISTRY OF LAW & JUSTICE

(LEGISLATIVE DEPARTMENT)

Shri B. K. Samaddar—*Deputy Legislative Counsel.*

WITNESSES EXAMINED

The Indian Institute of Public Administration, New Delhi

1. Prof. K. S. Shukla
2. Dr. S. S. Singh

(The witnesses were called in and they took their seats)

MR. CHAIRMAN: Hon. Members may recall that we had decided to call the representatives of the Bar Council of India to take their evidence. But they wanted time. They have suggested 24th July or a subsequent date. Now the representatives of the Indian Institute of Public Administration have come. Prof. Shukla and Dr. S. S. Singh will record their evidence. The memorandum sent by them has just now been circulated among the Members. Now I request them to speak about their memorandum in a nutshell.

MR. CHAIRMAN: Before we proceed, may I draw your attention to Direction 58 of the Directions by the Speaker which reads as follows:

"58. Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to Members of Parliament."

PROF. K. S. SHUKLA: Thank you Sir. Our first point is about the deletion of "Elected Members". It should read "Members of Parliament" and not "Elected Members".

SHRI P. N. SUKUL: Do you mean to say that it should include the nominated members also?

PROF. K. S. SHUKLA: Yes, Sir. There is no provision for *Sah Lok Pal* or *Up Lok Pal*. We feel that one post of Lok Pal is not enough. At

least two more posts of *Sah Lok Pal* or *Up Lok Pal* should be there. The term "Public Functionaries" should be properly defined or elaborated.

Our next point is about the scope of functions. This is in accordance with the questionnaire which has been sent by the Committee. The scope of functions of the Bill is restricted. This may include complaints of mis-conduct, grievances, allegations, mal-administration and abuse of power. We would like to suggest that the Heads of Public Undertakings or Government Companies may also be included in the Bill. The qualifications for the Lok Pal and *Up Lok Pal* should be that the person who will occupy that position should have been or should be the Chief Justice of India and is or has been a judge of the Supreme Court respectively. We have suggested that one *Up Lok Pal* should be or has been a Secretary to the Government of India or the Chief Secretary of a State.

Our next suggestion is that the public servants may also be allowed to make complaints to the Lok Pal. The decision to conduct an inquiry should be taken by the Lok Pal. However, when they conduct an inquiry in open, the reasons for enquiring in open should be recorded and there should be a mandatory provision for this.

We have conducted a study among Lok Ayuktas in ten States. On the basis of our discussions with them and other functionaries in the State and other informed persons, we have formed an opinion that the Lok Pal should have an infrastructure of his own with the administrative control. Other Government agencies or Government offices could be invited or could be called to assist the Lok Pal from time to time. The Lok Pal should be given the Constitutional

Status. We feel that if the Lokpal is given the Constitutional Status, he will have greater credibility, respectability and administrative stature.

DR. S. S. SINGH: In addition to the points covered and just stated before all of you by Prof. Shukla, I would like to cover only three points which are not covered by the provisions of the Bill.

The first one is about the *suo motu* power of the Lok Pal. There is no such provision under the Bill in the present form where the *suo motu* power is given to the Lok Pal to initiate an inquiry or investigation. But type of power is needed looking at the nature of responsibilities, the high office and the independence which has been given or desired to be given to such an institution. So we feel strongly that such type of power is very much desirable for this institution.

Our second point is about the provision of filling up of the vacancy. If there is a vacancy in the office of the Lok Pal, under the present Bill there is no provision with regard to the time limit for filling up of that vacancy. So, there should be a provision to this effect in the Bill.

PROF. K. S. SHUKLA: We would like that this post should be filled in within a period of six months.

DR. S. S. SINGH: I have just tried to draft an additional clause after Clause 6 of the present Bill, which reads as:

"A vacancy occurring in the office of the Lok Pal or Up Lok Pal by reason of his death, resignation or removal shall be filled in as soon as possible but not later than 6 months from the date of occurrence of such vacancy".

We feel that there should be a specific provision under the Bill as to who will look after the work of the

Lok Pal/Up Lok Pal when his office is vacant or when he is on long of 30 days or more. This provision is required to be inserted in the form of a sub-clause after sub-clause(1) of clause 5. It should read as under:

"If the office of the Lok Pal or an Up Lok Pal becomes vacant or if the Lok Pal or Up Lok Pal is by reason of absence or for any other reason whatsoever, unable to perform the duties of his office, those duties shall, until some other person appointed under section 3 enters upon such office or, as the case may be until the Lok Pal or such Up Lok Pal resumes his duties, be performed:—

(a) where the office of the Lok Pal becomes vacant or where he is unable to perform the duties of his office, by an Up Lok Pal as the President of India may by order direct;

(b) where the office of an Up Lok Pal becomes vacant or where he is unable to perform the duties of his office by the Lok Pal himself, or if the Lok Pal so directs by the other Up Lok Pal."

These are our suggestions in addition to the 16 questions that have been raised in the questionspire of the Committee.

MR. CHAIRMAN: So you have completed your submission. Now the Members will ask certain clarifications and questions from you.

SHRI PARVATHANENI UPENDRA: I want to draw your attention to page 1 item 2. Here while defining the 'public functionary' you have said public functionary may mean Minister, MP, Secretary, Head of Public Undertaking and Government Company. Now in certain States the Chief Ministers are not covered by the Lokayukta. Do you feel that they should be covered by Lokayukta or they should be covered by Lokpal?

Should we have one National Law where Chief Ministers can be included and they need not be covered under Lokayukta?

PROF. K. S. SHUKLA: There should be uniformity. Either all Chief Ministers should be included or they are not included.

SHRI PARVATHANENI UPENDRA: In case they are not covered in the Lokayukta should we put them here in the Central Act?

PROF. K. S. SHUKLA: In the States where they are covered by Lokayukta they will have to be taken out from there and brought to Lokpal.

SHRI P. N. SUKUL: So you prefer them to be covered under the Lokayukta.

PROF. K. S. SHUKLA: Yes, they should remain to be covered under the Lokayukta.

SHRI PARVATHANENI UPENDRA: Now I will put you another question. I invite your attention to page 4—item 7. You have said that public servants should be allowed to make complaints to the Lok Pal. Don't you think that it will lead to indiscipline among the services?

PROF. K. S. SHUKLA: This suggestion we have made because the public servant has more precise and intimate knowledge of the various acts being done. In case we do not give him this right then he may be approaching Members of Parliament that such and such point may be raised in the Parliament. So our point is why should you give that kind of scope to such a public functionary?

SHRI PARVATHANENI UPENDRA: Then how do you take care of the discipline aspect in the services?

PROF. K. S. SHUKLA: For that Conduct Rules are already there.

DR. S. S. SINGH: May I also add that there are various provisions in the Bill which will take care of the discipline aspect. There is provision of imposition of penalty and imprisonment. He will be treated on equal footing with the common man. So our suggestion is that why should he be debarred from making complaints?

SHRI PARVATHANENI UPENDRA: Do you think it is conducive for a public servant to make complaints against the Minister incharge of the same Department?

PROF. K. S. SHUKLA: The public functionary will be making complaints to the Lokpal and the Lokpal will be maintaining secrecy.

SHRI RAM SINGH YADAV: Sometimes the official himself may be a corrupt officer and even then he may make complaints against the Minister to the Lokpal.

PROF. K. S. SHUKLA: A public functionary can make complaints under the Lokayukta Act.

SHRI PARVATHANENI UPENDRA: Under the Lokayukta Act the Government servants are not allowed to make complaints.

PROF. K. S. SHUKLA: Our point is why should he be debarred from such a right.

SHRI RAM SINGH YADAV: As a citizen a person has full freedom but when a person joins Government service then this freedom has to be curtailed to some extent. He has to keep the secrecy of the information available with him. A Minister also takes oath under the Constitution. Now many important and secret information are kept with the Secretary. If a Secretary can make a complaint against the Minister then the information which is sometimes not even in the knowledge of the Minister, the Secretary has a privilege to make the

complaint against him at any time. Should this upper hand be given to the Secretary?

PROF. K. S. SHUKLA: Now, about any person who is making a complaint, we should not take him to be an irresponsible person. A person will be making a complaint with all sense of responsibility. If we put this bar then we question his right to complaint.

SHRI RAM SINGH YADAV: Since the Government servant has also taken the oath of secrecy and all the information is available with him and he has to maintain secrecy can he be allowed to make complaints to the Lokpal?

PROF. K. S. SHUKLA: We felt that one of the major considerations was that public servant has been selected through a particular procedure. He is not inferior intellectually, conduct-wise, and so on. Government servants are responsible persons. On the contrary, there are certain rules and regulations already available which restrict his actions. I think the public servants should behave in a more responsible manner than most of the other people, who can act irresponsibly. Had they been acting in an irresponsible manner in the Government of India, the Secretariat, there would have been a chaos.

SHRI RAM SINGH YADAV: Suppose a clerk working under you complained. If a statutory power is given to him, whether you will be able to function in your office?

PROF. K. S. SHUKLA: On the contrary, I will be keeping my conduct so clean as not to give him an opportunity to make a complaint.

SHRI PARVATHANENI UPENDRA: You had said that you are in favour of 'no fee' approach. If there is no fee, anybody can write one-line complaint. Then there will be a lot of baseless complaints.

PROF. K.S. SHUKLA: In our study about the Lokayukta, we felt that a citizen may not be able to know the intricacies of the Government functioning. Therefore, he may not be able to collect as much proof as is required. But he has got a feeling, certain idea or certain information. So, should we not allow him? In the present economic structure a person may be earning Rs. 1,000 per month and a large majority is like that. We are not giving him an opportunity to file a complaint although he has a very serious complaint to make. He cannot afford to send Rs. 500 with the complaint and keep his family starving for the whole month. So, keeping in view that a large majority of people in India are poor, if they have any doubt, let it be verified by a proper functionary.

SHRI PARVATHANENI UPENDRA: You say the staff working under the Lokpal will scrutinise such complaints?

PROF. K. S. SHUKLA: Yes, they will take care of that.

SHRI H.K.L. BHAGAT: You must have made a study. What is your impression about the Lokayuktas who have been appointed in certain States?

PROF. K. S. SHUKLA: We have certainly undertaken a study. It is already with us. Sir, the Lokayukta institution is very effective in some States whereas in others it is not very effective. It very much depends on who exactly is occupying the position of Lokayukta. The institution has given results and public are very satisfied with the institution. The institution has not been able to create an impact in the States where proper enactment are not there as it has been able to do in other States.

SHRI H. K. L. BHAGAT: Would you say that the institution as a

whole in different places, by and large, has not succeeded in creating the desired impact?

PROF. K. S. SHUKLA: Sir, we feel it has succeeded. The desired impact will be there...

SHRI H. K. L. BHAGAT: What impact would you expect from Lokayukta?

PROF. K. S. SHUKLA: Sir, basically this institution has been created for public men. It has been able to create a certain fear. They are cautious in their approach. Even public functionaries are cautious in their approach. It has been able to create a kind of psychological climate. It has also been able to try certain cases—in one or two States, even Ministers.

SHRI H. K. L. BHAGAT: What is the main objective for which the Lokayukta was created?

PROF. K. S. SHUKLA: Sir, the main objective is to keep the public life clean and, therefore, to keep a watch on the actions and the decisions...

SHRI H. K. L. BHAGAT: How far that purpose has been served? Would you say that because of the Lokayukta the public life has become purer?

PROF. K. S. SHUKLA: Sir, I do not know what was level of corruption in public life exist. I can't say whether it has cleaned or not but we can say that it has created an impact on at least the public men. They are cautious in their approach.

SHRI H. K. L. BHAGAT: My friend was asking about the frivolous complaints. You have said that a man should be punished only if it is proved that he has deliberately made a false complaint. You know it is not easy to prove the false complaint made deliberately. As a Minister, I receive complaints some of which are correct and some are absolutely false.

Making false as well as correct complaints is the process. Are you very sure that what is supposed to be kept secret will remain secret? By the time a judgment is given by the Lokpal, the man against whom the complaint is made will be finished. You are suggesting involvement of responsible functionaries. I am talking of practical considerations. There are so many innocent people being attacked. When a person makes a complaint, it should be presumed that he does that with full knowledge and satisfaction; no question of 'deliberately'. He must be punished if it is false. A person should make a complaint only when he is hundred per cent sure. What are you suggesting to safeguard the reputation of an innocent man?

PROF. K. S. SHUKLA: Firstly, everyone may not be that organized, articulate and may not have proper source of information.

SHRI H. K. L. BHAGAT: Do you rule out the possibility of so many complaints by proxy?

PROF. K. S. SHUKLA: This institution will provide him another forum. Secrecy of proceedings has already been highlighted. Moreover, the Lokpal has been authorised to say that this particular portion will be published and will not be published. This provision is already there. The Bill takes care of that. There are functionaries in the judiciary and police; let them scrutinize the complaints. If there are, say, 1000 complaints, let those be scrutinized and only ten may be proceeded with. Nine hundred and ninety will automatically be disposed of. A number of provisions are already there.

SHRI PARVATHANENI UPENDRA: What is the percentage of frivolous complaints with the Lokayuktas?

PROF. K. S. SHUKLA: We are not aware of that, and we have not been told also that the Lokayuktas have been dealing with false complaints.

SHRI H. K. L. BHAGAT: You are judging the efficacy of the institution by the statement that they have disposed of the complaints, not from the nature of the complaints or the number of complaints.

PROF. K. S. SHUKLA: If we are appointing a high official of this stature, a certain amount of credibility has to be given to this office.

SHRI SHARAD DIGHE: You have suggested that there should be power for the Lokpal to proceed *suo motu*. The very idea of establishing this institution is to establish a machinery for redressal of public grievances. Why do you want to give this power to Lokpal? On what material can he proceed? On newspaper reports?

DR. S. S. SINGH: The very concept of *suo motu* power is inherent in the concept of Ombudsman itself of which Lokpal is a part and the Ombudsman was defined by the International Ombudsman Steering Committee and proceeding on its own is considered within the ambit of the Ombudsman institution. Moreover, in three or four similar Acts such type of power is already there. In addition to that in the previous Bills of 1968, 1971 and 1977 there was already a *suo motu* provision.

PROF. N. G. RANGA: That does not justify this.

DR. S. S. SINGH: But that gives us a thinking. Then, there is a limitation on the *suo motu* power. Whenever the Lokpal initiates proceedings on its own, he should prepare a statement, forward it to the competent authority as well as to the person against whom the enquiry is going to be instituted.

SHRI SHARAD DIGHE: How does he get that material? Nobody may own it.

SHRI RAOOF VALIULLAH: And if the complaint is false.

DR. S. S. SINGH: There is already a provision of the removal of Lokpal. It may be construed a misconduct.

SHRI SHARAD DIGHE: You have suggested that the vacancy be filled in six months or in his absence somebody should act. What makes you think that? It is not an institution which is to perform day to day duties, so that if it is absent, then the whole thing will collapse. Nothing will happen like that. Vacancy does not mean that we must immediately fill it up; he can be appointed within a reasonable time, another man can be appointed as and when vacancy arises. So, if there is casual absence, nothing happens because day-to-day duty is not there at all.

DR. S. S. SINGH: On the basis of our experience and the working of the Lokayuktas in different States, we are of the opinion that there is day-to-day duty and the Lokayukta and the Up-Lokayukta sits in the office and there are written complaints. There is one point more in this connection. There is a specific provision similar to this regarding the filling of vacancies of the Lokayuktas, recently added by amendment under the Madhya Pradesh Lokayukta and Up-Lokayukta Act, i.e. Clause 2(c). This has been recently added by the 1986 amendment, which got the assent of the Governor on 4th June, 1987. But, the authorities, which are interested in making this institution strong, efficient and independent, are feeling that such type of provisions should be incorporated within the legislative frame.

PROF. K. S. SHUKLA: Sir, one point I would like to clarify about this. There are two sides of your question; one is filling up of vacancies. We found in our study that in some States the vacancy of Lokayukta has not been filled up for more than a year or two and, therefore, as a consequence of this the Madhya Pradesh Government has come with an amendment that this

vacancy should be filled up within a period of 6 months. So, this is one part.

The other part is, supposing I go as a complainant from a remote corner of Bastar to the Jagdalpur Head-quarter, which is about 100 Km away, and I find that the Lokpal is absent for 30 days. Do you expect me to go every 3rd day to the office of Lokpal? There ought to be some responsible functionary; I am talking of the Lokpal or Up-Lokpal to be available every day so that a person who comes can make a complaint.

So, there are two sides of your question; the first is that the vacancy should be filled up because this is not a continuous office, a post may be lying vacant for years. And the second thing is that if the Lokpal is absent for 30 days, the administrative work is there inside the office and in addition the complainants also come, there should be someone who can carry out the work in his absence.

SHRI SHARAD DIGHE: Of course, the first comes within the mistrust of the Administration and secondly the casual absence is there. I can understand that the complainant does not want to speak to anybody else and that he wants to put his complaint in the ears of Lokpal only.

PROF. K. S. SHUKLA: But, that is not provided. Absence for 30 days and more does not mean casual absence; casual means for one or two days.

SHRI SHARAD DIGHE: Alright, I leave it there.

Then, in your memorandum, you have suggested that the penalty for false complaints should not be more than Rs. 50,000. Now, do you also support the penalty of imprisonment or do you think it should be deleted?

DR. S. S. SINGH: No, that should be there, Sir. I think this decision particularly when you are curtailing someone of his liberty, should be taken by Lokpal or the Up-Lokpal.

SHRI SHARAD DIGHE: We are also responding to the Question No. 13 of the questionnaire which was supplied to us. About this imprisonment...

PROF. K. S. SHUKLA: Sir, it is Question No. 10 and there it has been suggested that,

"Penalty for false complaints, which can be up to Rs. 50,000, is too heavy and should be reduced."

SHRI SHARAD DIGHE: But do you want the imprisonment clause or not?

PROF. K. S. SHUKLA: Yes, we support the imprisonment.

SHRI BIR BHADRA PRATAP SINGH: Now, don't you find from the framework of the Act that the provisions are more against the complainant? So, what is your impression about that?

PROF. K. S. SHUKLA: Sir, that part we have not considered. We didn't think on that lines.

SHRI BIR BHADRA PRATAP SINGH: My second point is, in paragraph 13 of your suggestion, you have suggested that the appellate power should be exercised as it is given in Article 136 of the Constitution. You must be aware that Article 136 has its own limitations, whereas the nature of the complaints made to Lokpal would be mostly on facts and findings will be on facts. So, when we make it in consonance with Article 136, don't you think that this exercise must not be done in the appellate jurisdiction?

PROF. K. S. SHUKLA : Sir, the question which was asked whether the right should be given to persons to appeal in the High Court as well as to the Supreme Court or this should be restricted only to the Supreme Court and not to the High Court? Then, our choice was in favour of the Supreme Court only.

SHRI BIR BHADRA PRATAP SINGH: Supreme Court exercises

many other appellate jurisdictions. It is not only the writ jurisdiction and appeal.

DR. S. S. SINGH: Certainly, Sir, but the appellate right cannot be given against the decision of the Lokpal because the Lokpal is not an institution or a forum to which an appeal can be allowed. This can only be accepted as an authority for the purpose of Article 136 which is also within the jurisdiction of Article 136. The courts and authorities functioning in the territory of India are subject to the jurisdiction of the Supreme Court with special leave to appeal. If there is a writ case then Supreme Court can entertain any petition.

PROF. K. S. SHUKLA: There have been so many cases where there was no appeal against the decisions taken by the Lok Ayukta. But people who are engaged in corrupt practices do devise ways in order to gain time and they go to Courts in terms of jurisdiction of the Lok Ayukta. We cannot totally bar the right of a person to go to the Supreme Court or High Court, against the decision of the Lok Ayukta. But between the two institutions, we prefer that the appeal against the decision of the Lok Pal should only be in the Supreme Court.

SHRI P. N. SUKUL: Lok Pal has to be a man who is or has been a judge of the Supreme Court. So naturally, the appeal against him must go to the Supreme Court only.

SHRI BIR BHADRA PRATAP SINGH: The appeal under Article 136 is merely discretionary in nature.

PROF. K. S. SHUKLA: The institution of Lok Pal is for a particular purpose. By creating this institution, we are not taking away the fundamental rights of an individual, even though we may be taking a decision on certain corrupt practices of that individual. Even if it is discretionary, how does it matter?

SHRI C. MADHAV REDDI: Lok Pal is mainly an investigating officer.

He takes up the investigation on a particular complaint and sends his report to the competent authority. That competent authority may or may not agree with the Lok Pal's report. If the competent authority does not agree with the report, what will happen? Should there be some sort of a special report in all such cases where there is disagreement between the Lokpal and the competent authority?

PROF. K. S. SHUKLA: The Lokpal performs three functions. He is an investigating officer, prosecuting officer and an adjudging officer. Therefore, whatever decision he has taken is a well-thought decision based on certain facts. The only distinction is that the High Court Judge announces his judgment and the Lok Ayukta writes about the judgment to the competent authority. In case the competent authority does not agree with it, the explanatory memorandum of the competent authority along with the Lokpals or Lok Ayukta's findings are to be placed on the floor of the House. And in addition, here is also the provision of placing the Annual Reports on the table of the House.

SHRI C. MADHAV REDDI: Annual Reports are not presented to Parliament on time. Moreover, no particular or individual case is going to be pinpointed in Annual Report, because it is statistical in nature.

DR. S. S. SINGH: On this power of investigating and making recommendations, there is a very interesting case in Bombay High Court, which is reported on page 136 AIR, 1985. This is the case of Visweswara Rao *versus* Lok Ayukta, Maharashtra. In this case, a very remarkable observation was made by the High Court that all recommendations cannot be categorised in just one group.

SHRI C. MADHAV REDDI: In your study with regard to the performance of the Lok Ayuktas, have you come across any cases where the competent authority did not agree with the

Lok Ayukta and then as a result of which, the recommendation was rejected?

PROF. K. S. SHUKLA: There has been some amount of disagreement between the two. But the culture of our country is such that we would like certain issues to be settled in some other way than putting everything on record.

SHRI C. MADHAV REDDI: I am asking you a hypothetical question. If this Committee or the Government in their wisdom decide that there is no need for such a Bill as this and if this Bill is shelved, how do you feel about it? What would be its impact in the country?

PROF. K. S. SHUKLA: I may hypothetically answer that there will be a lot of chaos.

SHRI RAM SINGH YADAV: In reply to question 12, you have said that there should be an independent machinery for making investigations and so on. Should there be some parallel police administration in each and every State? Or should there be some Investigating agency like Central Investigating Agency? What type of agency do you have in mind?

PROF. K. S. SHUKLA: There is an infrastructure comprising three wings—the legal wing, the investigative wing and the Chief technical examiner's wing—under some Lok Ayuktas. Wherever there is some infrastructure, maybe of a module shape, the efficiency of the Lok Ayukta increases. But wherever the Lok Ayukta has to depend totally on the State functionaries, the request from the Lok Ayukta is normally relegated to a rear seat without any priority.

SHRI RAM SINGH YADAV: Your suggestion is that there should be an agency independently under the Lok

Ayukta. If this sort of set up is allowed to be created in each and every State, I think there will be some sort of confrontation with the State machinery. Will you examine this issue again in this particular light?

PROF. K. C. SHUKLA: We have made this observation with all sense of responsibility. We would like to reassert that we would recommend that there ought to be a capsule type of structure available to the Lok Pal so that he need not depend on State Government or Central Government functionaries for his requirements.

SHRI RAM SINGH YADAV: When a magistrate inquires into a matter under Section 202 of the Criminal Procedure Code, he can inquire into it himself. Similarly, the Lokpal also may be competent to inquire. Investigation, as a matter of fact, is not a must in each and every case and the law is very clear on this point. Secondly, you have said that there should be one appeal to the Supreme Court. We have given this constitutional guarantee to every citizen. Are you of the opinion that the citizen should be deprived of this right?

PROF. K. S. SHUKLA: The institution of Lokpal is new. Police or other organisations may not be aware of the charter of its duties. If there is a capsule type of structure under the Lokpal, we do not feel that there would be great strain on the exchequer of the country. It is necessary to make the institution of Lokpal efficient. Secondly, about appeals, we are not taking away the fundamental right of the citizens. We only felt that the appeal should be made only to the Supreme Court and not in the High Courts.

The Committee then adjourned for Tea.

The Committee re-assembled after tea break

SHRI T. BASHEER: What have you to say about the controversy which is going on about the Prime Minister?

DR. S. S. SINGH: The President of India is the competent authority to pass on this information. The final report is made by the Lokpal against the Prime Minister to both the Houses which are in fact the supreme bodies. It is for the House to decide, to take action; it is not for the President to take action.

PROF. K. S. SHUKLA: The competent authority means to whom the report will be sent. It does not mean that he is taking action also.

MR. CHAIRMAN: The Bill envisages that the competent authority would take action.

SHRI T. BASHEER: They should take action and inform the Lokpal.

PROF. K. S. SHUKLA: In the case of the Prime Minister, I don't think there will be frequent situations of this kind. So, a proviso can be made that the President will be taking action only with the approval of the Parliament.

MR. CHAIRMAN: That is why he says that if the President is becoming a competent authority, he has to take action.

PROF. K. S. SHUKLA: That is why a proviso could be added that against the Prime Minister the President can take action only with the approval of the Parliament.

SHRI T. BASHEER: It means that this report will come to Parliament and the Parliament has got a right to discuss it. That means that we are getting a right to discuss the President's action in the House.

PROF. K. S. SHUKLA: You are not discussing the President's action; you are discussing the Lokpal's decision.

DR. S. S. SINGH: There are provisions in the Lok Ayukta Act in different States where the Chief Ministers have been brought within the purview of this Act. In the case of a Chief Minister, the competent authority is the Governor. Recently, an act has been passed in the Gujarat State Legislature explaining that in the case of the Chief Minister, the report will be submitted to the Chief Minister himself subject to the condition that that report will be placed before the Cabinet as soon as possible. So, in between these two provisions, we prefer the first one. In the case of a dissenting note, we think the President of India is the competent authority. So, these provisions were the motivating factors.

SHRI P. N. SUKUL: According to clause 16(2) a report will be submitted to the competent authority. Then the competent authority shall examine the report and communicate to the Lokpal within three months the action taken or supposed to be taken on the basis of some evidence. It means the competent authority will take action. Now, the report mentioned in para 3 is the annual report. It is not the report that every time he will be sending to Parliament. Just like the Public Service Commissions an annual report is submitted. Similarly the Lok Pal also will be submitting an annual report for the information of the President and Parliament. But in each case separately when action has been taken a consolidated report has to be presented to Parliament. So, it means, once the Lok Pal recommends action against the Prime Minister, as you contemplate, then the President has to take action.

PROF. SHUKLA: Clause 16(2) says "action taken" or "action to be taken."

SHRI P. N. SUKUL: He is not going to be guided by you. First part

is "action taken". He will not be guided by me or by you at that time when he wants to take action.

DR. SINGH: Let us come to the problem, if the President is the competent authority.

SHRI RAOOF VALIULLAH: The position of the Governor in the State is not the same as that of the President in the Centre.

SHRI C. MADHAV REDDI: Whether that requires an amendment of the Constitution, is the question.

PROF. SHUKLA: We felt that such consideration should be there because there are social considerations, political considerations and an executive consideration. Here is a political consideration, which means, here an executive has to consider the political question. Then automatically the seriousness of this Bill in our opinion, may go down. The social consideration is in India, howsoever it is viewed corruption will never be a virtue. Every citizen talks only of an honest or non-corrupt person. The Lok Pal Bill also takes up discussion on this issue so are the Lok Ayuktas in the country. During our field work we found that some people were jittery as to why the Prime Minister has been excluded.

The third point is, we know, how the Ministries function. When the political executive is not within the purview of the particular Bill or Act, adequate importance may not be given by the functionaries to that Bill or Act. It is known.

As regards the constitutional position we are not the Constitutional experts. We have constitutional experts in the country. They may be consulted provided we agree in principle with the suggestions. We are not competent people. There are other people with constitutional wisdom. Let the people with Constitutional wisdom and political wisdom sit and decide.

SHRI T. BASHEER. You should understand the system under which we are working and you must try to suggest this amendment based on that system. That is what I feel.

DR. SINGH: The system, constitutional system, that is there. The uncertainty over the issues has been going on. There is no final word about it. Keeping all those things in view, the democratic system and political system, we have to think of the system which has been there, by the concept of justice, rule of law and fairness. Under the impact of all these things, we have to devise ways and means how that can be achieved. In the process we thought it proper and expressed our opinion that this office should also be brought within the purview of the Lok Pal, keeping in view the very high objectives, independence and the purpose of this institution, because under all these circumstances our system is supposed to run; and if one man will be excluded only on the plea of constitutional limitations or anything else then these things are bound to create some sort of confusion in the minds of others. This was our objective.

SHRI INDRAJIT GUPTA: Even if for argument's sake, it is accepted that the Prime Minister should be brought within the purview of this Lok Pal, as you know it does not need a Constitutional expert to know it. At present the scheme under which we function the Prime Minister is responsible and answerable only to Parliament. He is not responsible to anybody else. He is responsible to Parliament. And what you are suggesting here, unless it is modified, would mean that the status of the sovereign Parliament is being subordinated to that of the President. The President can act, the President can take action on his own, against the Prime Minister, who is responsible only to the Parliament. Therefore, if we accept your suggestion it would mean quite a basic change we would

have to make in the Constitution itself. Alternatively, if you consider, as we were asking a little while ago, even if the President is made the competent authority, and decides that he proposes to take certain action that action cannot, in fact, be taken unless it is approved by Parliament.

PROF. SHUKLA: The second provision that we had already submitted can be considered now.

SHRI INDRAJIT GUPTA: Is the Parliament out of your picture, altogether?

PROF. SHUKLA: In accordance with the approval of Parliament the President will take action.

SHRI S. JAIPAL REDDY: Under our system, I do agree that the Prime Minister and the Government are responsible to the Parliament. But we are not discussing political accountability or answerability or administrative answerability. We are discussing a crime, or an offence, under the Prevention of Corruption Act. A person may have overruling majority in the Parliament, may even have overruling majority support in the people of India. But if he is found guilty of a crime, he cannot be above the law. Here, I do not know why the witnesses are so anologetic. Here the President of India is not sought to be authorised to take action in his own wisdom. It is only after an adverse report is submitted to the President by the Lok Pal when the Lok Pal has considered the matter and a report. It is only on that basis that the President is being empowered or a suggestion is made for empowering the President to take action against the Prime Minister. As things stand today, the President can sanction prosecution against the Prime Minister. That is without this piece of law. Against the Chief Minister the Governor can sanction prosecution and against the Prime Minister, the legal position is, the President can sanction prosecution. I still feel that the President can sanction prosecution of the Prime Minister in his own wisdom. In this

case he cannot take action against the Prime Minister but only in the light of the report submitted by the Lokpal. I do not think, in respect of crime the Prime Minister may have committed, the majority in Parliament may have consideration.

SHRI P. N. SUKUL: Earlier you were saying that there were political considerations and administrative considerations. So far as this Bill is concerned, there is no mention of political considerations. Why the Prime Minister has been made the competent authority because here we are dealing with the Ministers and for Minister the Prime Minister is the appointing authority. So in their case Prime Minister is the competent authority. But Prime Minister is not appointed by the President.

PROF. K. S. SHUKLA: Any one appointed to any government service. President of India is the appointing authority and not the Prime Minister. Secretary to the Government is appointed by the President and not by the Prime Minister.

SHRI P. N. SUKUL: You have suggested that public functionaries should also be included in the purview of this Bill. Members of Parliament are not supposed to hold office of profit and that is why, Members of Parliament have not been brought under the purview of the Bill. As regards the officers, there is a separate machinery i.e. the Vigilance Commission. Bringing those people under the purview of this Bill will be duplication of work only. And the Lokpal will not be able to cope up with the entire work which you envisage. You have suggested that Special Secretary, Secretary and Joint Secretary should be brought under the Lokpal. Then why not Deputy Secretary, Under Secretary and Director? Why upto Joint Secretary only?

PROF. K. S. SHUKLA: The questionnaire that has been circulated to us, that was the point mentioned to us. Joint Secretaries in Government of India are appointed as heads of departments whereas Directors are not

appointed as heads of departments. Our idea is that the Heads of departments should be brought under the purview of this Bill.

SHRI K. P. UNNIKRISHNAN. Essentially the Bill is based on the concept of Ombudsman and it is not, as has been explained by some of my distinguished friends, based on some kind of supervisory jurisdiction. So this concept of law is quite different from the Anglo-Saxon concept. I would like you to explain how this concept of Ombudsman, which is gaining increasing acceptance as a part of important adjunct of rule of concept, is functioning in Scandinavian countries?

PROF. K. S. SHUKLA: Initially it was not a very popular concept but gradually it has been adopted by many countries. The reason being in all the developing countries in particular, since more and more government resources are coming on the field level, therefore, the decision making power of various functionaries of government has increased. And as a consequence the abuse and misuse of funds is also very high. Therefore, by and by it is getting roots in other countries like Fiji, Ghana maybe because to keep up the developmental activities more and more funds are being handled by the Government functionaries from Ministers and down below. For Government functionaries we have institutional structure, but for public men there were not many institutions. Therefore, it has been considered that the one who has credibility and respectability in public, let him decide the conduct of public men.

Developmental activity in developing countries is so extensive that the country is feeling the need of the institution. If we see the Budget of the First Plan and that of the Seventh Plan, we find that the Planning Commission has started handling directly or indirectly a lot of money.

SHRI RAOOF VALIULLAH: On page 3, in para 5 (ii) you have suggested 'appointment procedure' of the Lokpal. You have suggested that the panel of three names should be given by the Prime Minister — Chairman (Rajya Sabha), Speaker (Lok Sabha), Leaders of Opposition in Rajya Sabha and Lok Sabha. You are very well aware that this will be politically motivated—so far as Prime Minister and the leaders of opposition of both the Houses are concerned. The Speaker and the Chairman are supposed to be above party politics. Would you, therefore, consider to leave the political angle out because there will be no unanimity. You think panel of three names. Will it be of the same type as the Prime Minister or the leaders of both the Houses want? Would you suggest the appointment of High Court Judge, Chief Justice of the High Court, the Chief Minister, Chief Justice of the Supreme Court! You leave political angle out of it. You may leave it to have procedure other than what you have suggested.

PROF. K. S. SHUKLA: We have considered both the view points. We have said, at least three names should be there. The kind of procedure of appointment of judges and the kind of allegation coming in the newspaper and other fora—that they are politically motivated. So many other things are said. So, we thought that this authority be appointed through a slightly different procedure. Leader of the Opposition, Lok Sabha, Leader of the Opposition, Rajya Sabha are there. Automatically these three names will be decided through majority means.

The other procedure we had in mind was that we have the seniority list — that one person be appointed the Chief Justice of India and next to him be appointed the Lokpal. We know this seniority list in the Supreme Court of India. A person may be appointed as the Lokpal and another the Chief Justice.

SHRI RAOOF VALIULLAH: Here you have included the Leader of Opposition in both the Houses. You have equated the Prime Minister on the one hand and on the other hand you have two names from the Opposition—the leader of the Opposition in the Lok Sabha and the leader of the Opposition in the Rajya Sabha. On the other hand the Chairman, Rajya Sabha and the Speaker, Lok Sabha, are supposed to be above party politics. Why should the leader of the House, Lok Sabha and the Leader of the House, Rajya Sabha not be there?

PROF. K. S. SHUKLA: If your proposal is considered, the number becomes even. We want odd number. Even number may create problem. Only to keep the number odd we have excluded others.

SHRI C. MADHAV REDDI: The Leader of the Opposition is only a myth.

SHRI DARBARA SINGH: The Prime Minister is answerable to the Parliament and not to anybody else. This must be kept in mind.

SHRI S. JAIPAL REDDY: On page 2, your suggestion is to expand the scope and function of the Lokpal. The idea is to uproot corruption in high places. Once 'maladministration' is included, in competence, delay are also covered. Then the functions of the Lokpal may become unweildy. I want to know have you considered this aspect?

PROF. K. S. SHUKLA: This is the wide debate that has been going on. On the one hand in the name of expediency, some lokayuktas have been given 'corruption' as duty and maladministration has not been covered. We have seen from 1972 Lokayukta have been appointed and the major charge 'corruption' was given. It has not been expanded. Once you agree that we will include 'corruption', corruption in high places may not be only monetary corruption. It may be of

different type. Therefore, we are not talking of ordinary corruption which is inspected by the police. The decision in which there is no record and that is why we have appointed such a high functionary. There may be corruption or an abuse of authority. Therefore, we thought that for such things a functionary limited to such a thing may not be desirable.

SHRI S. JAIPAL REDDY: We have discussed the role of the competent authority. I may draw your attention to Andhra Pradesh Lokayukta Act wherein the competent authority has been dispensed with. Here the report is submitted to the competent authority. Even if the report is totally unfavourable to the public function, the competent authority can turn a blind eye. Now, the ultimate discretionary authority rests with the competent authority though the judgement is pronounced by the Lokpal. As a consequence of this, a very unacceptable contradiction has arisen. A particular person who made a complaint is found to have made a complaint falsely, as you have said deliberately, then he can be straightway punished by Lokpal. But if the Lokpal finds somebody corrupt, Lokpal cannot punish him. Lokpal can only make a report. Therefore, how do you react to a suggestion that let the Lokpal be armed with a prosecuting authority in case it finds a functionary corrupt? After all the Lokpal cannot punish.

MR. CHAIRMAN: What the hon. Member means is that you can as well give that competent authority if the Lokpal finds that a particular Minister is found guilty, he should be punished.

SHRI S. JAIPAL REDDY: I draw a distinction that in the case of a mala fide complainant, he can be straightway punished. That means the Lokpal not only investigates but it sanctions prosecutions also and it also punishes. My question is: can we not dispense with the competent authority? Can we not say that the

Lokpal will be the competent to sanction prosecution both against a corrupt public functionary and against the mala fide complainant? The Lokpal should be endowed with the power to punish even in the case of a mala fide complainant.

PROF. K. S. SHUKLA: I would like to draw your attention to two points. The philosophy of the Lokpal is that he exercises moral authority. But mere finding from a Lokpal that a Minister or a functionary is corrupt is not going to have a considerable social impact, because once its report is submitted to the Parliament or to the Legislatures in the case of Lok Ayukt, it becomes a public document and the people will refer to it.

SHRI S. JAIPAL REDDY: There is a slight misunderstanding. It is not as though every judgement of the Lokpal is submitted to the Parliament. What the Lokpal under the Bill is to do is to submit an annual report which would merely refer to the number of cases dealt with. It would choose not to furnish to Parliament a particular judgement.

PROF. K. S. SHUKLA: First of all, if a Minister is involved and if there is a disagreement between the competent authority and the Lokpal, a Special Report can be submitted. There is a provision. Even in the annual report a certain gist of important cases is given and therefore those cases will automatically be covered. The Ministers may not be the lower functionary hence they may be mentioned in the Report.

SHRI S. S. SINGH: The very idea of this institution of Lokpal has been

derived from the Swedish concept of Ombudsman which means the man of Parliament. The Lokpal is a man of Legislature or Parliament. So, he is responsible to the Parliament and is acting for the Parliament. It is a body composed by the educated Members of the people of the country, people of the society, etc. so, the final power — power of prosecution or passing the judgement — is not desirable or rather we can say that in consonance with the very philosophy and ideology of this institution of Ombudsman itself the power of prosecution cannot be given to the Lokpal. This is our view.

SHRI S. JAIPAL REDDY: Do you think that the Lokpal should be given the power to punish the mala fide complainant?

SHRI S. S. SINGH: The Lokpal institution which is proposed to be created has been conferred the status of a Court for the purpose of conduct of Proceeding for the purpose of maintenance of discipline, for the purpose of regulating its conduct in an orderly manner. For that purpose the power was given to pass a sentence or prosecute the guilty for the purpose of maintenance of that high and independent office visualised by the highest authority of the country.

PROF. K. S. SHUKLA: Finally, the Ombudsman's idea was for enhancing the accountability of the administration to the Legislature. That is the philosophy.

MR. CHAIRMAN: Thank you very much. You can send your note afterwards.

(The Committee then adjourned.)

RECORD OF EVIDENCE TENDERED BEFORE THE JOINT COMMITTEE ON THE LOKPAL
BILL, 1985

Thursday, the 10th September, 1987 from 1600 to 1730 hours in Committee
Room 'C', Parliament House Annexe, New Delhi.

PRESENT

Shri Somnath Rath—Chairman

MEMBERS

Lok Sabha

2. Shri K. P. Singh Deo
3. Shri Sharad Dighe
4. Shri R. S. Khirhar
5. Shri Braja Mohan Mohanty
6. Shri C. D. Patel
7. Shri Ram Swarup Ram
8. Prof. N. G. Ranga
9. Shri S. Jaipal Reddy
10. Shri C. Madhav Reddy
11. Shri Ebrahim Sulaiman Sait
12. Shri G. G. Swell
13. Shri Ram Singh Yadav
14. Shri Shyam Lal Yadav

Rajya Sabha

15. Shri Lal K. Advani
16. Shri Anand Sharma
17. Shri Darbara Singh
18. Shri Baharul Islam
19. Shri Bir Bhadra Pratap Singh
20. Shri Raoof Valiullah
21. Shri Virendra Verma

SECRETARIAT

1. Shri G. S. Bhasin—Chief Legislative Committee Officer.
2. Shri S. P. Gaiind—Senior Legislative Committee Officer.

REPRESENTATIVE OF THE DEPARTMENT OF PERSONNEL AND TRAINING
Shrimati C. R. Chibber—*Deputy Secretary (V).*

REPRESENTATIVE OF THE MINISTRY OF LAW & JUSTICE

(LEGISLATIVE DEPARTMENT)

Shri S. Ramaiah—*Secretary*

Shri B. K. Samaddar—*Deputy Legislative Counsel.*

WITNESSES EXAMINED

Bar Council of India, New Delhi

1. Shri V. R. Reddy—*Chairman*
2. Shri Chaman Lal Sachdeva—*Vice-Chairman*
3. Shri O. P. Sharma—*Coopted D.C. member*

(The witnesses were called in and they took their seats)

MR. CHAIRMAN: Shall we start now? I welcome the hon. members of the Bar Council to this Committee. I think you are prepared to give evidence. Before we proceed, may I draw your attention to Direction 58 of the Directions by the Speaker which reads as follows:

"58. Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament." Please introduce yourself to the Members of the Committee.

SHRI V. R. REDDY: After we received your notice, the Council had no occasion to meet. So, the Council as such could not deliberate upon this Bill to formulate its views. In fact, the Council is to meet on the 19th and 20th of this month and by the time we could communicate this to you, it was a little late. So, we are here as individual members of the Council. The Council will, in the course of time, deliberate upon and will submit its views on this particular Bill in writing.

MR. CHAIRMAN: So, what do you propose now?

SHRI V. R. REDDY: As I said, none of us can express our views on behalf of the Council. That is our difficulty.

SHRI RAM SINGH YADAV: There are two aspects of this matter. One is what are the personal views of the

members of the Council, and the other is what are the collective views of the Council itself. So, you can very well say what approach you have got to this as individuals. As regards the collective thinking of the Council, that can be sent in writing by way of a resolution.

SHRI V. R. REDDY: Well, in deference to the wishes of the Members, we would certainly express our views. If we have any difficulty in expressing our views on a few issues, we would rather await the deliberations of the Council on those. But on most of the other issues I am sure we should be able to respond to your questions.

MR. CHAIRMAN: That will be all right. Whatever evidence you give here is to be treated as confidential. So, you can give your views.

SHRI V. R. REDDY: I wish to know from the Chairman whether he would like us to address ourselves to the points raised in the questionnaire.

MR. CHAIRMAN: If you have any extra points, you can speak on those as well. There is no problem.

SHRI V. R. REDDY: The first point for discussion, as set out in the questionnaire, relates to the scheme as envisaged in the proposed Lokpal Bill. The remaining points are more specific and I think when we deal with the remaining points one after the other, perhaps we would have articulated our views regarding the scheme itself. All the same, from the point of view of the scheme, there are two questions which, according to us, arise. First is the area of operation of this institution of Lokpal envisaged under this Bill, and the second will be the functionaries which will be amenable to the jurisdiction of this institution. In so far as

the first aspect is concerned, we find that under the proposed Bill, the area of operation is confined only to allegations pertaining to offences under part IX of the Indian Penal Code and the Prevention of Corruption Act. If one is to consider the Administrative Reforms Committee's initial Report, to which the objects of the Bill advert to, perhaps what was envisaged under that Report was an institution which was to have a far wider area of operation than what is sought to be presented through this Bill in our opinion may go we might like to advert to when we go to the individual points. The second aspect is the question relating to the functionaries who will be amenable to the jurisdiction of this Lokpal institution. Here, particularly the functionaries of the administration like the Secretaries and others have been left out and what we notice is that under this Bill, it is only the allegations pertaining to the Ministers, Deputy Ministers and Parliamentary Secretaries that can be considered by the Lokpal authority. These are the two aspects pertaining to the scheme of the Bill which we might like to advert to as we proceed point by point.

In point 2, the terms 'public functionary' and 'competent authority' have been defined. This perhaps can be considered along with point 4 where there is a more specific suggestion to the effect that whether the 'public functionary' should not include the officers of the Government of India, of the rank of Joint Secretary and above, involved in the process of decision-making. It is our view that more often than not, if there are any instances of either misconduct or maladministration or even corrupt practices invariably those officers as well are involved, apart from the Ministers concerned. So, the Bill, if it is to be a comprehensive enactment, should, in our view, extend to these functionaries as well, as set out in point 4. Insofar as 'competent authority' is concerned, it is specifically defined in the Bill

itself and we have nothing to comment.

Point 3 relates to scope and functions of the Bill, whether they should be restricted in the manner in which it is envisaged or whether they should include complaints of misconduct, grievances, maladministration and abuse of power. Insofar as misconduct, maladministration and abuse of power are concerned, these are the aspects which, in our opinion, ought to be brought within the purview of the Lokpal. Insofar as grievances are concerned, though we quite agree that the concept of Ombudsman is essentially an instrument for redressal of public grievances, if we employ this expression 'grievances' in a very general sense, we are not very sure whether the institution of Lokpal will not be flooded with these public grievances, whether any institution of that nature, regardless of what kind of administrative facilities they have, will be able to cope with this. So, on that aspect our view is that grievances arising out of misconduct, maladministration, abuse of power or corruption would perhaps be more appropriate than leaving it wide open for the people to believe or expect that the Lokpal is there to attend to any kind of grievances, also envisaged under this particular clause that the notice must go to the Lokpal and an opportunity should be given for the allegation made against him. The procedure appears to be, in our view, wholesome and may not warrant any particular change.

Point No. 7 relates to the public servants being debarred from making complaints to Lokpal. On this we are in agreement with what is provided in the Bill. Since this institution of Lokpal is to oversee the administration, it is perhaps not appropriate to expect the public servants to make any complaints before the Lokpal. In so far as the grievances of these public servants, in their individual capacity, are concerned, perhaps it may stand slightly on different footing. But it

can be said that having regard to adequate safeguards, these public servants have by way of various service rules and regulations and tribunals being available to them to agitate their grievances, and it may not be necessary to permit the public servants to ventilate their grievances even if they concern them, as an individual.

The next point is about the fee to be deposited before one makes a complaint. One thousand rupees is the fee fixed. But we are more impressed with the proviso which enables the Lokpal to waive this condition in order to exempt the complainant from satisfying the requirement if there are such grounds for such waiver. So, having regard to this if there are any such cases, it is open to the Lokpal to waive or exempt a person. We think that this fee prescribed, that is, Rs. 1000 may not be excessive. Now, it concerns the authorities and he might think that Lokpal is the answer. That kind of situation can be obviated because the whole thrust and emphasis should be on the conduct and administration. When we confine it to the misconduct, maladministration and abuse of power and grievances arising out of such conduct, I think the purpose can be adequately achieved.

Then the next point is regarding the minimum qualification for appointment of Lokpal. Mr. Chairman, the Bill already provides for the qualifications, in the sense that it has to be a person who has been or is qualified to be a judge of the Supreme Court. Now, we necessarily refer to the Constitution and the Constitution is more explicit on this aspect, that is, with respect to the qualifications for appointment of the judge of the Supreme Court. This, in our view, might suffice and this is what the Bill contains.

The next point relates to the procedure for removal which we find in Clause 6 of the Bill. No doubt, there is the deviation from the procedure envisaged under the Constitution for

removal of a judge of the Supreme Court. In so far as the Clause 6 of the Bill is concerned, we do not however see anything particularly objectionable or any particular need to deviate from what has already been suggested in Clause 6 because Clause 6 confers the power of removal, upon to the President and this removal can be on the ground of proof of misbehaviour or on any other ground. The principle of natural justice is. But more perhaps a more contentious matter is the provision relating to the penalty proposed in case of a complaint being found to be false. You will find that there are two clauses which are relevant in so far as this particular aspect is concerned. We have clause 22 and Clause 11. Clause 22 provides—

“22. (1) Every person who makes any complaint which is held by the Lokpal to be false shall be punishable as provided in sub-section (2).”

In so far as this expression is concerned, if it found to be held false, We do not find much assistance from the remaining portions of the Bill. On the other hand, we find that Clause 77 provides for dismissal or rejection of the complain under such a situation Clause 11 reads like this.

“11 (1) If the Lokpal is satisfied, after considering a complaint and after making such verification as he deems appropriate,

(a) that the complaint is not made within the period of five years specified in sub-section (3) of Section 9; or

(b) that he cannot make an inquiry in respect of the complaint by reason of the provisions of sub-section (1) or sub-section (2) of section 9 or any other provision of this Act; or

(c) that the complaint is frivolous or vexatious or is not made in good faith; or

(d) that there are no sufficient grounds for inquiring into the complaint,...."

Now, one question that immediately arises is whether the punishment provided for under Clause 22(1) is contemplated to only complaints with respect to which there is an inquiry or an investigation by the Lokpal or whether the punishment under Clause 22(1) applies even to cases where a complaint is rejected under clause 11(1)(c) or (d) for that matter. Now, if clause 11(1) (c) and (d) do not come into the picture insofar as punishment under section 22 is concerned, we would very respectfully submit that it might lead to incongruous result for the simple reason that there is a case where the complaint is rejected on the ground that it is frivolous, vexatious and not made in good faith but all the same there is no provision for punishment. But insofar as the cases where the Lok Pal is *prima facie* of the opinion that it ought to be proceeded and ought to be investigated and after investigation, for want of material or whatever, the complaint is false, one can proceed against him and punish him. That is one incongruous result due to the ambiguity of the provisions. The other aspect is whether this punishment which is provided for under section 22(2) (i) will not act as some kind of deterrent preventing persons to have recourse to Lok Pal authority. For example, there is a finding that the complaint is false or perhaps which is found to be not proved is deemed be a case of complaint rejected as false or held to be false. If that assumption is right, then in every case, where the complainant is not able to establish his complaint or allegations, it will tantamount to a case of false allegations and then he will expose to this kind of punishment. Our suggestion is, borrowing the language of section 11(i) (c), perhaps one should confine this punishment to cases where a com-

plaint is found not to have been made in good faith. We are not going into the question whether a false statement has been made wilfully with the knowledge that it is a false statement. We are not going into the logic of mens rea. I think, it would be very very difficult to prove that in such cases. So, more appropriate would be to confine this punishment to cases where a complaint is not made in good faith. That could be better.

The provision as it exists, in our view, if there is any complaint which is liable to be thrown out, the complainant himself is exposed to punishment. We may limit this power of punishment by saying that unless there is a proof that this is a complaint made in lack of good faith which is manifest from the complaint, one does not expose oneself to punishment.

With regard the quantum of punishment, what is provided for under the clause appears to be excessive. Firstly, there is no discretion insofar as the authority is concerned. "shall be punishable" is the expression used. Second aspect is, imprisonment also appear to be a must. Here, in our submission, it would perhaps be more appropriate to award the punishment of imprisonment and/or fine. Insofar as the quantum of fine is concerned, Rs. 50,000 appears to be the maximum. One can perhaps expect the Lokpal authority to exercise this discretion judiciously.

The next point is, whether the proceedings should be held *in camera* or this ought to be an open investigation. We look at this institution of Lokpal as, in a way, an instrumentality of Parliament essentially intended to assist Parliament and perhaps to consolidate the concept of accountability of the Executive to Parliament. Perhaps, *in camera* investigation is more appropriate than an open investigation. But however, I would like to suggest that though *in camera* investigation may be the rule, as an

exception, it may be left to the Lokpal in cases where he thinks that it is a case of immense public interest or important, to throw open this investigation for reasons to be recorded.

The next question is about the investigation agency. Whose assistance can be sought for by the Lokpal? This scheme does not appear to provide for any independent machinery to be available to the Lokpal. While approving what is provided in the Bill, we would like to suggest that such an independent machinery should also be made available to the Lokpal. In all cases, it may not be necessary for one to proceed with the investigation through the investigation agency or machinery available with him but in certain cases, it may become necessary.

About point No. 13 concerning appeal to High Court and Supreme Court, we are not able to appreciate why it is found not to be appropriate. We think that since the status of a Lokpal is that of a high judicial officer, the appeal to the High Court and the Supreme Court as provided under the Bill is quite proper.

In the event of disagreement between competent authority and the Lokpal in the matter of recommendations, what is the procedure to be adopted appears to be the next point for consideration. Clause 16 provides for a report to be submitted by the Lokpal to the President. It is called a consolidated report on administration of this Act. Perhaps the expression 'employment' is vague here and susceptible for consideration, indicating that the consolidated report will be a report of a generic nature. If that is the case, it is advisable to have the power of a Lok Pal in case where the executive authority or the competent authority does not agree with the recommendations of the Lok Pal so that the focus of the attention of the Parliament is brought on to that particular issue. If it is dealt with or referred to in a consolidated report, the Parliament, in all likelihood,

may not be able to perceive this as essentially a case of disagreement between the two authorities.

So far as the rule-making power is concerned, we agree with the suggestion here that it may be more appropriate to leave the rule-making power with the Lok Pals themselves, with the rider that the rules so made shall be laid on the Table of the House of Parliament because such power with the President normally appears to be a bit of a deviation from the normal practices which one is used to except in the cases where the Constitution itself provides for the President to make rules under Article 309 in case of service conditions. We do not come across a case where normally the President himself makes the rules. Unless there is any particular purpose which we are not aware of, we do not see any reason why this power should be left with the President. It may be that the purpose would be served just as well if one leaves this power with the Lok Pal himself. One national law is the last point for consideration. It would certainly be better perhaps if there could be a uniform national law on this particular aspect. Now the tendency is that each state has its own Bill on very many important aspects. Perhaps a uniform policy could have evolved in so far as Bills on the Lok Pal and Lok Ayukt are concerned.

These are our views on the points specifically posed by you in this Questionnaire.

MR. CHAIRMAN: Have you any further views on the Bill itself?

SHRI REDDY: On that aspect, we would reserve our views to the date when we come before you as a Council.

SHRI S. JAIPAL REDDY: Thank you for your lucid and luminous presentation. I would like to seek some suggestions and clarifications.

You suggested that the Office of Secretary and Joint Secretary could be brought within the purview of the institution. You did not make any reference to the Office of Prime Minister and the Chief Minister. You might well be aware that when the present Bill was originally presented in the Parliament, the offices of Chief Ministers were included. They were excluded later on. So, I thought it would be necessary for you to express your views now in a personal capacity or later as Chairman of the Council.

Secondly, what is your view for a national law. Would you prefer national law to be adopted through a Constitution amendment or through a mere enactment? If mere enactment is resorted to, one anomaly will be that the Lok Pal institution can be abolished through one Ordinance. The procedure that is adumbrated here for removal of Lok Pal need not be resorted to. The whole Act can be repealed by an Ordinance. How do you react to the suggestion of a Constitution amendment?

Coming to competent authority, if an allegation is made against a Minister and the Lok Pal finds the allegation to be true, the competent authority here is the Prime Minister and the Prime Minister can differ with the Lok Pal for reasons to be recorded by him and that is the end of the matter. While the complainant can be punished by the Lok Pal, the Lok Pal for the complainant can convert itself into a criminal court. In the case of the functionary, it is merely a fact finding committee. How do you seek to resolve this anomaly?

SHRI REDDY: In so far as the first question is concerned, perhaps he has left it to us to advert to it if we so desire after we are able to evolve a consensus in our Council but I could say that firstly, I suppose, I am not very clear in my mind about the object we are seeking to achieve by this Lok Pal Bill. Frankly speaking, the Bill as it stands today concerns only

with the issues of corruption for which we do have the law of the land which provides for such cases. This again is confined only to persons holding ministerial positions. One part of the Objects or perhaps the concluding part of the Objects is that for "enabling the citizens to have recourse to a convenient and effective forum for determination of complaints and thereby save him from pursuing the remedy through the process of courts which may prove expensive or dilatory or may not facilitate any speedy determination."

Perhaps one thing that occurs to me is if these are the trivials of those who have recourse to courts, why not we try to find solutions within the framework of courts.

The second aspect of this particular observation is that these are aspects which are already covered by the existing law but courts can attend to these matters. But then the process of going through the courts is likely to be proved expensive and dilatory. It is in that context we are coming forth with this kind of an institution. This is something which occurs to me.

The third aspect is if this concept is to have some kind of a bearing on the concept of Ombudsman, then, I suppose that the scope of this particular legislation ought to be wider than what is conceived now. Surely to have an establishment of a Lok Pal merely to hopefully attend to a few cases of corruption alleged against Ministers, may not be a worthwhile proposition and if it is to be meaningful, the scope of Ombudsman is much wider. Even if we make it wider, the executive is accountable to the Parliament. You got this as an agency of the Parliament to enable the Parliament to more effectively exercise the power of superintendence.

SHRI G. G. SWELL: The actual concept is that we are not an agency of the Parliament.

SHRI V. R. REDDY: I may be wrong. I am going by the concept of Ombudsman. I stand corrected. It is in that context the competent authority here is the Prime Minister. If there are any things, it is the Prime Minister who is to rectify the defects, who can take action on the basis of the recommendation. That is what is conceived under this Bill apparently. In this form, if the object of the Bill is limited as it is and even if we widen the scope a little more, I would still think that perhaps the office of the Prime Minister need not be brought or for that matter the office of the Chief Minister need not be brought within the purview of this enactment for achieving the object, which, according to me, is eventually a recommendatory process on which the Executive takes some action. If the Executive is not taking any action, then it is open to the Parliament or to the State Legislature to deliberate upon it.

SHRI BRAJA MOHAN MOHANTY: What is the position of the Leader of the Opposition? Why I am asking this question is because in India the Leader of the Opposition has got the privileges of a Minister and suppose we know that there are certain powers to pass final orders and suppose if he is involved in some *malafide* act either indirectly or obliquely, whether he should be treated as a separate category as Member of Parliament or he should be included within the statute of this Act.

SHRI G. G. SWELL: They do not exercise that power. They are Members of Parliament like other Members.

SHRI RAM SINGH YADAV: There is already a definition of a public functionary. The public functionary is a Minister, Deputy Minister etc. of the State or the Centre and not the Leader of the Opposition.

SHRI V. R. REDDY: We have got some of the State Acts which do

take, within their purview, the Members of the Legislature.

SHRI G. G. SWELL: And the Chief Minister also.

SHRI V. R. REDDY: Yes, the Karnataka Act is an example.

SHRI RAM SINGH YADAV: Already, in some of the States, they have been covered. They do not exercise the executive powers. Therefore, they are not within the purview of this Act.

SHRI V. R. REDDY: The second question raised by the hon. Member was with respect to some kind of a national law on this particular aspect and whether it is not appropriate or more appropriate to think of a Constitutional provision. Also by repealing it, by an Ordinance, the whole thing can be set at nought. Here again, in my view, this is essentially to aid the Parliament that this piece of legislation is envisaged. If tomorrow, supposing in a particular situation, in one's wisdom, one thinks of abolishing or repealing such an Act by an Ordinance, still we can fall back on the existing law and there may not be any particular crisis which emerges out of the situation. This is my view and perhaps at this juncture to think of a Constitutional amendment may not be necessary. It may suffice even if it is by way of an Act of Parliament or that of the individual legislature.

SHRI G. G. SWELL: This enactment may be redundant in that case.

SHRI V. R. REDDY: As I already submitted, this is dealt with in the Objects Clause of the Bill. It proceeds on the premise that the law is available; the forum by way of a Court is available. But it is more to ensure that since the remedy is through a process of Court, it may prove to be expensive and dilatory. It is inherent in the very object itself that we do have some other measures to which we can take recourse. The

third point raised by the hon. Member relates to the powers of the Lokpal that he can only recommend on the basis of a complaint which may be accepted, may not be accepted by the competent authority and why is it that such authority be given or entrusted, who may be lacking power to prosecute and to award punishment. That view is well taken. I have not examined it from that particular angle. However, that view of the hon. Member is taken note of.

SHRI G. G. SWELL: Do you think that it makes better if we go in for a kind of an enactment that will create an office of Ombudsman? You know the Ombudsman is an officer of Parliament, one who is appointed by Parliament. Do you think that would be the best answer?

SHRI V. R. REDDY: No. I think, we do have certain limitations so far as our Constitutional framework is concerned.

SHRI G. G. SWELL: That is why I talk of amendment of the Constitution.

SHRI V. R. REDDY: That is essentially a policy decision. I have understood the point made by Shri Reddy. The question raised was: would not a Constitution Amendment put it more on a sounder and stronger footing?

SHRI SHYAM LAL YADAV: Some members talked about the punishment provided for, for the complaint which is so motivated, in the present Indian situation. You know that in politics, it is a common practice to hurl abuses, make accusation against the opponents, against persons in authority without any evidence. The privilege is there and such persons who make false allegations know that nothing can be done against them. So, there is a vicious atmosphere obtaining in this country today. In view of this fact, is it not proper to have some type of a deterrent action against people who are out to make false allegations? Now, a tendency

has been developed that they get a complaint from a person who is nothing in the society and you cannot take any action against him. Even if he is sent to jail, nothing happens. Is it not proper to have some type of a deterrent action against such people till the society develops and makes responsible allegations?

SHRI G. G. SWELL: It is not for what he has said in Parliament...

SHRI SHYAM LAL YADAV: I am not talking as to what is said in Parliament. I am talking of what is said outside the Parliament. I was elucidating all these aspects. Nobody is punished for making false allegations. But, in England, there is a practice in vogue.

SHRI G. G. SWELL: Already, the law provides for it.

SHRI SHYAM LAL YADAV: What I am saying is that there are so many false allegations. In that aspect, would you agree to some sort of a deterrent punishment?

SHRI V. R. REDDY: I agree with you that there is this kind of a thing in the society. I do not know whether this is one of those inevitable prices that we have to pay for the development of the society. Whatever it is, I do agree with you. I have been conscious of that and we have not suggested that one should do away with the punishment.

SHRI G. G. SWELL: Here it is a question of providing against abuse or misuse of the executive authority. This is the scope. For whatever a person says inside the House, the House will find a remedy. For what a person says outside the House, you take action for 'libel'. We are not talking here about what a particular individual says. We are talking here about abuse or misuse of executive authority by people holding ministerial offices.

SHRI V. R. REDDY: I have particularly confined my answer only to a complaint before the Lokpal. That is why I did not comment upon what transpires in Parliament.

SHRI RAM SINGH YADAV: You have just now mentioned that Joint Secretary and Secretary should also be brought within the purview of this Bill. Being a member of the Bar, you are quite aware of the fact that at present there are laws which are dealing with corruption or abuse of powers or taking illegal gratification by the government servants. We have the Prevention of Corruption Act and the relevant provisions under the Indian Penal Code. If we include Secretaries and Joint Secretaries here also, don't you think that this provision will be overlapping? Provision exists already in the Indian Penal Code which has been passed by Parliament; provision exists in the Prevention of Corruption Act which has also been passed by Parliament. Again another law is being passed by Parliament. Which law will be applicable? Therefore, the suggestion of yours that Secretaries and Joint Secretaries may also be included cannot have a valid ground here.

SHRI V. R. REDDY: So far as overlapping is concerned, to an extent it is inherent in this Bill. The laws which you referred to do apply even in cases of Ministers. So, overlapping is inherent. Leaving aside even the Prevention of Corruption Act, the service rules are also quite stringent. If my recollection is right, I think, this measure provides that in the context of a complaint against a particular authority, the other connected matters can also be gone into. In many cases, ultimately the decision that is communicated may be that of the officer concerned, and it is our view that the purview of this enactment should be extended as far as possible to all the functionaries who play a pivotal role in the decision-making process.

SHRI G. G. SWELL: Some times the file stops at the level of Joint Secretary or at the level of Secretary who takes the decision. All matters do not necessarily come up to the Minister, but the Minister bears the responsibility. Suppose in the course of an investigation against a Minister for certain abuse, it is found that the Minister himself is not responsible but the person who has taken the decision is a Joint Secretary or a Secretary, and suppose the Lokpal comes to that conclusion or finds that out, then is it not a case for the Lokpal to proceed against that particular officer?

SHRI V. R. REDDY: Yes. Actually, Clause 8 of the Bill, as it is, does provide for such a thing; Clause 8(2) reads:

"The Lokpal may inquire into any act or conduct of any person other than a public functionary in so far as he considers it necessary so to do for the purpose of his inquiry into any such allegation."

As you have very rightly pointed out, the scope of the investigation would necessarily extend to the other authorities like Secretary.

SHRI G. G. SWELL: What about prescription of punishments?

SHRI RAM SINGH YADAV: If it is an officer who has abused the power, who has been instrumental in the passing of such an order and the Minister acted *bona fide* on the advice of that Secretary or Joint Secretary, in that case the Lokpal will give his finding and it will be sent to the appropriate authority for necessary action to be taken.

SHRI L. K. ADVANI: Clause 8 of the Bill refers to the jurisdiction of the Lokpal and it includes even Secretary or Joint Secretary. If the Lokpal comes to that conclusion, he would report. He cannot punish him. He would report to the competent authority that in this particular case

he has found that this particular officer has done this.

SHRI RAM SINGH YADAV: The second point is, you have pointed out some inconsistency in the provisions in Clause 11 and Clause 22. Under Clause 11 the Lokpal has got the power to dismiss a complaint on preliminary scrutiny of the complaint. Under Clause 22 also he can dismiss or accept a complaint after recording the evidence, whatever he deems necessary. Your contention is that in Clause 11, no punishment has been provided for making a complaint which is baseless; whereas in Clause 22, the punishment has been provided for the complainant. You are quite aware of the provisions of the Criminal Procedure Code under sections 200 and 202 that recording of the evidence of the complainant is not obligatory upon the trial magistrate if he comes to the conclusion on a preliminary scrutiny that the complaint is false. Suppose it is a complaint which has already been decided by a competent court and again he files a complaint. The point is whether the Lokpal has the jurisdiction to say, "No; at the outset itself, I come to the conclusion by going through the previous judgment that this is false and, therefore, I do not entertain it". So, how do you say being a member of the Bar that these are inconsistent provisions. I think the provisions are quite consistent both in Section 11 and Section 22. They are not overlapping.

SHRI V. R. REDDY: I am sorry I have not made myself clear on this. I am proceeding initially on the premise that this Clause 22 when it refers to a complaint being found to be false does not take within its ambit cases of rejection of a complaint. If that assumption is correct then my submission was...

SHRI RAM SINGH YADAV: That may be one of the interpretation.

SHRI V. R. REDDY: That is why I said it may be possible. If that assumption is correct then our submission is that here is a case where under Clause 11 if at the threshold you are rejecting a complaint on the ground that it is not made in good faith even in such cases one does not expose oneself to any complaint. After all Lokpal is not going to say by having one look that this is a complaint which is not made in good faith. There may be preliminary investigation. In the case where the complaint is rejected after this kind of preliminary evaluation under Clause 11, the person goes scot free. Where initially the Lokpal is satisfied that *prima facie* there is some substance in the complaint and he proceeds but later on for want of evidence he wants the complaint to be rejected, in such cases there is automatically punishment. So it appears to be incongruous.

SHRI SHARAD DIGHE: You are on Clause 11 and Clause 22. I may point out for your consideration that as far as Clause 11 is concerned, you feel that if the complaint is frivolous and not made in good faith, it goes unpunished. But I think if you refer to Clause 26, you will find there is power to forfeit his deposit of Rs. 1,000. So some punishment is there. It is not that it goes absolutely unpunished.

SHRI V. R. REDDY: I agree.

SHRI SHARAD DIGHE: Therefore, when at the preliminary stage it is found to be frivolous and no further steps are taken at all by referring it to the person against whom the complaint is made then the Bill suggests only a lenient punishment, viz., forfeiture of his deposit but after going through the full inquiry if it is found to be false, then there are further punishments. Now I would like to know your views as to what should be the punishment, or no punishment if proved false ultimately.

SHRI V. R. REDDY: have suggested two things. First, if a complaint is liable to be rejected, then the complainant should not expose himself to punishment. I agree that punishment is necessary but all the same the other extreme is not the answer.

SHRI SHARAD DIGHE: Another point that has emerged is that this Bill punishes the complainant and as far as the accused are concerned, only recommendations are made. So, I would like to ask from you: what is the alternative? What do you suggest that Lokpal punishes the complainant and makes recommendations as far as Ministers are concerned? What would be the best thing?

SHRI V. R. REDDY: Sir, I have earlier also said that I have not applied my mind to this aspect. I am not able to find an answer even after you have analysed it further.

SHRI G. G. SWELL: If a complaint is not sustained, does it mean that the complaint has not been made in good faith?

SHRI V. R. REDDY: It is not.

SHRI SHARAD DIGHE: I would like to ask that ultimately if Lokpal institution is to be established, then something has to be provided for frivolous complainants in order to discourage them. So, they have to be punished. At the same time, the Ministers or whoever you may include in this cannot be punished directly by Lokpal because ultimately Ministers are under the Prime Minister. So, the person who can punish is only the Prime Minister. Is there no other alternative which you can suggest?

SHRI V. R. REDDY: I suppose the other thing is that the Act should itself make an offence punishable.

SHRI SHARAD DIGHE: You have also suggested that apart from Ministers, other persons may also be got in. Which should be the competent authority for them?

SHRI V. R. REDDY: Prime Minister.

SHRI SHARAD DIGHE: You have suggested that an independent investi-

gating agency should be there. But I think that Clause 7 provides for such an investigating agency. Is it not sufficient?

SHRI V. R. REDDY: By independent authority, I had in mind an authority which has a disciplinary jurisdiction also.

SHRI SHARAD DIGHE: About rule-making power, will it not mean that rule-making power by President means rule-making by the executive? When they use the word 'President', it means executive and not the President himself.

SHRI V. R. REDDY: Frankly, Sir, this reads a bit unusual and I am not quite able to figure out any particular purpose.

SHRI SHARAD DIGHE: But President will mean the same thing which we use in the other Act.

SHRI V. R. REDDY: The office of the President, as such, is not conferred with the rule-making power in any Act. So, I also do not see any particular reason or an object which is sought to be achieved by conferring power. I thought it can be properly met by conferring this power on the Lokpal and insisting upon the rules to be placed on the Table of the House.

SHRI SHARAD DIGHE: Your suggestion is that the rule-making should be left to Lokpal. But here also I will say that it is unusual. Generally, when the legislation is made by Parliament, the delegated legislation is made by the executive. That is placed before the House so that the House analyses it. Its Subordinate Legislation Committee goes into it and makes suggestions to the executive. Then it gets done according to the wishes of the House. If wishes of the House have any significance and if they are to be placed before the House, then it is proper that executive makes the rules and not the Lokpal. What do you say?

SHRI V. R. REDDY: In such an event, there is a likelihood of criticism that the purpose of the Act is

sought to be whittled down by the executive by employing the rule-making power. That's why I thought that this could be done by the Lokpal.

SHRI L. K. ADVANI: Would it be right in concluding or summarising your views as being that the Bill as presently framed is not very meaningful because of its limited scope to which you have said that it would be better if the Bill was not restricted merely to corruption but cover also grievances arising out of misconduct, maladministration and abuse of power because this widens the scope of the whole Bill?

The other suggestion that you have made is that we could suitably bring in the Secretaries, Joint Secretaries within the scope of the Bill. You have also made other comments. Would it be right for us to conclude that according to you, the Bill as presently framed will not serve a very useful purpose? We have to view it from the point of view that a new institution is being created and that institution is being created for the purpose of providing to the citizen recourse to convenient and effective forum for determination of complaints and thereby save him from pursuing his remedy through the process of courts which may prove expensive or dilatory and may not facilitate in speedy determination. This is the purpose of creating this institution. Frankly, if I were a citizen and if I had this particular Bill before me which opens me to the risk of being punished by the Lokpal, I would prefer to go to a Member of Parliament and give him my complaint. I would prefer to go to a newspaper and give it my complaint. I would be willing to face defamation. Does this institution, as conceived in this Bill, serve the purpose for which it is intended?

SHRI V. R. REDDY: Sir, my view is that having regard to the object, it would perhaps be more meaningful if the scope of the Act is expanded in the manner we suggested.

SHRI L. K. ADVANI: You suggested enlargement of its scope. The moment a complaint is rejected, the complainant is open to the charge that he has made a false complaint. He is open to the liability of being sent to prison. Do you think that this is just and fair? It surprises me.

SHRI V. R. REDDY: That is why we suggested this, Sir.

SHRI L. K. ADVANI: We had discussions among ourselves that only when it is proved to be deliberately false the complainant should be liable to be punished and you in your opening remarks said that we should not bring in the question of *mens rea*.

SHRI G. G. SWELL: The dividing line is very blunt.

SHRI L. K. ADVANI: A complainant when he thinks that so and so is responsible, he makes a complaint but because it was not proved, he is likely to be punished, he feels that some injustice is being done to him.

SHRI V. R. REDDY: It is rightly submitted that he cannot get rid of the punishment.

SHRI L. K. ADVANI: But your earlier interpretation was that the moment a complaint is proved to be false it is rejected. Unless the word is deliberately false, it would be unjust...

SHRI V. R. REDDY: That is my understanding of the clause. I quite agree with you.

SHRI L. K. ADVANI: I am not a lawyer, but I would like to know: is there any other law where a complaint is made in good-faith and only because the person complained against is a Minister, therefore, the complainant is likely to be penalised. Should this kind of law be framed?

SHRI V. R. REDDY: We would be surprised, if there is one such law, Sir.

SHRI DARBARA SINGH: Section 122 is already there. In the Criminal

Procedure Code also a provision is there. I would like to know as to what should be the definition of the good-faith?

SHRI S. JAIPAL REDDY: In other words, is there any substantial difference between the lack of good-faith and *mens rea*?

SHRI V. R. REDDY: It is possible for one to contend if the expressions used are "deliberately or wilfully knowing the allegations to be false", these are the cases where the concept of *mens rea* comes into play. Well that is other extreme position. The other via media which we suggested was the lack of good-faith. We were tempted to borrow this expression and these are few thoughts that should suffice.

SHRI S. JAIPAL REDDY: But what is the substantive difference when it comes to actual operation between the lack of good-faith and the *mens rea*? Does it not the same thing?

MR. CHAIRMAN: Instead of discussing among ourselves, let us know from the witness.

SHRI V. R. REDDY: There is a distinction and these expressions have been the subject matter of interpretation in many decisions. I am afraid I will not be able to provide all these decisions but there is a definite distinction between the two as held by the court and I very respectfully agree that the distinction is very subtle.

SHRI RAM SINGH YADAV: Since it is your view and it has come in previous discussions also that the jurisdiction of courts should be extended to the persons to be covered under this law, so, my question is why not the Directors of Public Corporation should also be included into it? Take the case of Chernobyl accident which took place due to the negligence of duties by Directors and everybody there after have been punished. Don't you think that the present law does not cover such a situation and if it does not what should be done to include such people?

Secondly, it has been said by many persons here and you have replied it also that in case of false complaints the provision of law has more to do with the complainant and very less for the person for whom the law is meant. Now, have you given any suggestion that we can bring within the ambit of this law some provision of punishment also because the law is not meant primarily for the complainant. The law is there to eradicate corruption from public life. Is there any possibility to include such punishment against such persons within the ambit of this law?

SHRI V. R. REDDY: Taking the second question first, if such a body is to have the authority to punish a person against whom a complaint is lodged then I am afraid it will be a totally different concept than what is envisaged in this Bill. Secondly, we do have various authorities like the courts, the disciplinary action with respect to public servants and so on and so forth. So, to have another authority clothed with the very same power might result in duplication.

SHRI RAM SINGH YADAV: Likewise we have provision of law to deal with the false complaints also.

SHRI V. R. REDDY: Precisely it is possible that this law can declare it to be an offence and leave it for the concerned authority to prosecute in the criminal code. That is a policy decision.

Regarding your first question, these public corporations are instrumentalities of the State's jurisdiction. These are not amenable to the direct administrative control of the Government as such. So, the question of bringing these corporations within the sweep of this enactment, according to us is a little inappropriate.

MR. CHAIRMAN: Thank you.

(The Committee then adjourned.)

RECORD OF EVIDENCE TENDERED BEFORE THE JOINT COMMITTEE ON THE LOKPAL
BILL, 1985

Tuesday, the 12th January, 1988 from 1615 to 1815 hours in Committee Room
'D', Parliament House Annexe New Delhi.

PRESENT

Shri Somnath Rath—Chairman

MEMBERS

Lok Sabha

2. Shri H. K. L. Bhagat
3. Shri Indrajit Gupta
4. Shri P. Kolandaivelu
5. Shri Braja Mohan Mohanty
6. Shri D. K. Naikar
7. Shri Aziz Qureshi
8. Shri Ram Swarup Ram
9. Prof. N. G. Ranga
10. Shri C. Madhav Reddy
11. Shri S. Jaipal Reddy
12. Shri Shyam Lal Yadav

Rajya Sabha

13. Shri Lal K. Advani
14. Shri Anand Sharma
15. Shri Baharul Islam
16. Shri Bir Bhadra Pratap Singh
17. Shri P. N. Sukul
18. Shri Parvathaneni Upendra
19. Shri Raoof Valiullah
20. Shri Virendra Verma

SECRETARIAT

Shri G. S. Bhasin—Chief Legislative Committee Officer.

REPRESENTATIVE OF THE DEPARTMENT OF PERSONNEL AND TRAINING

Shrimati C. R. Chhiber—Deputy Secretary (V)

REPRESENTATIVE OF THE MINISTRY OF LAW & JUSTICE

(LEGISLATIVE DEPARTMENT)

Dr. D. K. Jain—Joint Secretary and Legislative Counsel (O.L. Wing).

Shri B. K. Samaddar—Deputy Legislative Counsel.

WITNESS EXAMINED

Dr. L. M. Singhvi

(The witnesses were called in and they took their seats)

MR. CHAIRMAN: I wish you all A Happy and Prosperous New Year.

Before we proceed, may I draw your attention to Direction 58 of the Directions by the Speaker which reads as follows:

"58. Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament."

DR. L. M. SINGHVI: I consider this a great honour and privilege to be asked to make my submissions on this very important Bill. I come to this Committee with a deep sense of history with a deep sense of involvement in the under lying idea of this Bill and if I may say so, with a sense of nostalgia.

For the first time, I had the privilege to move on the floor of Lok Sabha that we should provide for what I then called a people's tribune or a public procurator for redress of public grievances. I also used the Scandinavian term "ombudsman". Pandit Nehru, who was the Prime Minister then, asked me: "What zoo does this animal belong to? Why can't you have a sensible Indian name if you want this institution in India." He also wanted me to send him a note on the role and functions of the proposed institution in the context of our Indian System and problems. I coined the word Lok Ayukta and I suggested it to him and I also used it

on the floor of the House. Panditji said: "I like the idea and I like your nomenclature because it has 'lok' in it." That word has now become a part of India's Legislative Vocabulary.

Even though the idea seemed to come to fruition on many occasions, it was painfully demonstrated to us that there are indeed many a slip between the cup and the lip.

It is true that the institution of Lok Ayukta for redress of public grievances in a variety of situations has been implemented in several States. But the working of this institution in different States has nothing much to offer so far. By and large, this institution has not proved the premise and the promise on which I and many of my colleagues at that time, in Rajya Sabha and Lok Sabha, had put forward the proposal. I would like to bring to your attention, before I give my specific comments on the specific queries, a book by Dr. M. P. Jain, called 'Lokpal Ombudsman in India'. My distinguished friend Mr. Nitu Srinivas Rao—the first Central Vigilance Commissioner and a former Chief Justice of Karnataka—and I were associated in the study project and he very kindly agreed to write a prefatory foreword, as I had also done, to this book. Dr. M. P. Jain is a well-known scholar of legal history and constitutional law and I commend this book, Mr Chairman, to your and your distinguished colleagues' attention because it has dealt with a number of issues which are now raised in the framework of extremely relevant, pertinent and pointed queries which your secretariat has so kindly sent to me. When I wrote my preface to this book, I had perhaps expressed too much optimism. It was written in 1970. I had said and I quote:

"Several years ago, when in April, 1963 I made the, proposal for

an Ombudsman system in India, for the first time on the floor of the Lok Sabha, it appeared somewhat futuristic. It is a tribute to Indian parliament and its effectiveness that the proposal I had then hopefully made....is now on the threshold of being translated into an institutional reality. No doubt, there was a somewhat rare and remarkable combination of a variety of diverse factors producing an extraordinary consensus of views on the aforesaid proposal, but the initial momentum and the sustained pressure on the proposal came largely from Parliament. The proposal for Lok Ayukta received nearly unanimous support in the Lok Sabha in 1964 from all sections of the House. It was reinforced by the sub-Committee of the Special Consultative Group of Members of Parliament appointed by Mr. Gulzari Lal Nanda, the then Home Minister. The Administrative Reforms Commission, consisting mainly of Members of Parliament, presented an Interim Report before the Fourth General Elections, to recommend the establishment of the Lokpal and Lok Ayukta institution. Above all, the fact that the Ombudsman idea got the imagination of the people and the Parliament of India and made rapid strides towards public approval and legislative acceptance, justifies eloquently, with intrinsically powerful hope, the question of redressal of grievances as on the public mind and in democratic countries."

As I said, perhaps in 1970 I was more optimistic than I had reason to be for even today that idea is struggling to be born. I only hope that this Committee would be able to mother this great and noble concept to give it a much wider reach and sweep, if it is to be an institution not merely confined to a very limited area to which the present Bill appears to address itself. With these preliminary remarks, with your kind permission, I would like to submit my responses to some of the basic queries which, as I said

earlier, have been very pointedly and very pertinently formulated and within the framework of which I would like to make my further submissions.

First of all, without going into the somewhat less significant nuts and bolts of this piece of legislation, I wish to say that it does not answer the more perennial and persistent need for redress of citizens grievances. It addresses itself to a problem which is no doubt of great importance, but its approach is primarily negative and not positive. I say so with great respect that a Bill which addresses itself only to allegations of corruption against Union Ministers and for matters connected therewith, is not in any sense of the word, truly speaking, an Ombudsman proposal or a proposal for redress of public grievances. There is no doubt that from the time Mr. Santhanam was asked to make a report, this problem had occupied the public mind and we have been anxious to create an appropriate institutional vehicle for inquiry into allegations of corruption. But I have the feeling that if that is the sole purpose and rationale of the present Lokpal Bill, as it appears to be, it is taking an extremely limited and an extremely negative view of public life and of political aspirations. A larger question looms before you, Mr. Chairman, and this would be a question of perspective. I find this question reflected in the points for discussion on the provisions of the Lokpal Bill in which one of the questions is whether the Bill should be more widely conceived and envisioned. Query No. 3 in the points for discussion raises this issue squarely and, if I may say so, rightly—"Do you think that the scope and functions of the Bill are restricted and should include complaints of misconduct, grievances, mal-administration and abuse of power, etc.". My answer is a very emphatic 'yes'. Making Ministerial corruption accountable is not be all and end all of public life. It seems to me that an obsessive concern with just one dimension of our public life, and the neglect and

exclusion of what is very much more fundamental in the work a day life of the citizen, is, in my respectful submission, very disappointing, indeed injurious to the very cause with which the whole idea and the movement of Lokpal and Lok Ayukta was started by some of us. I wish to mention to this august Committee my experience of knowing personally the Swedish and the Danish Ombudsmen of that era, Mr. Bexelius and Mr. Hurwitz. They were the two most distinguished Ombudsmen in the world and they did much to bring this idea to the attention of the rest of the world. Indeed, both New Zealand and the United Kingdom owe their inspiration to the wonderful projection which these two great Ombudsmen from Scandinavia gave to this institution. As you know, the institution goes back to much more than hundred years ago and has been a very effective forum for redress of public grievances in matters of mal-administration, misadministration abuse of power, application or operation of rules regulation and procedures which are inherently bad or which are lacking in their concern for the common man. And I think it is in this context that the words 'Lokpal' and 'Lok Ayukta' had captured the imagination of our people. If you were now to consider this whole concept of Lokpal and Lok Ayukta merely as a measure of control or inquiry into the corruption of Union Ministers only, I think we would be missing yet one more opportunity. In fact, historically speaking, the Lokpal-Lok Ayukta idea at the Union level has been a history of missed opportunities. One more opportunity, which is now presented to the nation and the Parliament through this Bill, would be missed if a constructive and forward-looking view of the matter is not taken. I am also of the view, that an Ombudsman institution would best function if you were to make a provision for it in the Constitution of India itself rather than merely by means of a piece of legislation. My reasons for saying so are two. Firstly, Parliamentary Legislation of this

kind would invariably and inevitably—lead to jurisdiction conflicts—conflicts with other authorities and courts and these would be best resolved if the authority of the Lokpal is put beyond the pale of everyday controversy in different courts of law. It is conceivable that anyone who is likely to be adversely affected by the enquiry of the Lokpal would easily hold up any progress on such an enquiry by going to courts of law. There are provisions in this Act, but they are inadequate. The result then, Mr. Chairman, would be that there may be a spate of challenges to the exercise of the jurisdiction of the Lokpal and if that happens it would create a situation of this institution becoming ham-strung by that kind of litigation. Here I should also like to make a submission that it would be ideal if a common framework of Ombudsman institution for the whole country could be evolved. That is possible only if there is a constitutional amendment; that is possible only if the State Governments are made partners in this whole exercise of redress of public grievances, including public grievances arising out of cases of corruption. If the State Governments are made co-ordinate partners in this enterprise and if an All India framework is evolved, then the Lokpal-Lok Ayukta institution would answer to the abiding needs and the deeper aspirations in Indian life.

MR. CHAIRMAN, the Constitution refers to public grievances. Indeed the words 'redress of public grievances' are in fact used in our Constitution in Article Those words are used in the context of the language to be used for such purposes. But it is an expression used, if I may say so, to make the Government concerned more and more with redress of public grievances today and therefore, that is an issue which should occupy the forefront of Parliamentary concerns; that is an issue which ought not be allowed to be sidelined or marginalised or put in the back-seat because the question of corruption

looms large in the public mind and its sensations tease and tickle the public mind.

Mr. Chairman, there is a query in respect of qualification for the appointment of Lokpal. While I do not think that one can provide for any detailed inventory of qualifications for an institution such as Lokpal, I would like very much to make a submission to this Committee that the conception underlined in this Bill is once again falling into the trap of over-judicialising public institutions. I believe that ultimately democratic institutions and democratic accountability are the bulwark any of democratic system and therefore even though I am deeply committed to the judicial institutions, to the rule of law, to the prime importance of our judiciary I would like to submit that over-judicialisation or over-involvement of the judiciary is not the way one should go about it. Indeed if one might say so quite frankly, I do not think that it is right for us to look only for a judge or a retired judge to fill such a post. The two Ombudsmans in Denmark and Sweden I mentioned earlier were not judges, but they proved to be exceedingly good Ombudsman. Nor are many of the Parliamentary Committees and Ombudsman in other countries retired or sitting judges. We may insist on legal background training and experience but not necessarily on a retired or sitting judge. The reason is this. Ombudsman system or any system of redress of public grievances functions best if there is a certain informality of atmosphere, if there is a certain sensitive concern for the rights of the people, if there is a certain willingness to go beyond the rigid framework of the law to which the judges become tied by force of habit. I think that it is very necessary to see that there is vibrant and constructive approach to the Ombudsman institution and that approach has to be practised, not by confining ourselves to a rigidly formal judicial attitude as it were in judicial proceedings, but to an approach of solving the problem

which arise for a variety of reasons and in a variety of ways. For instance, when one is trying to solve the problem say and when one is trying to understand public grievances; one cannot afford to be tied to the text of an existing rule or to an existing situation. There is need for a constant, responsive rapport to the system and the Lokpal-Lokayukta should be a vehicle for such responsive rapport. I would like to stress that the laws of the country, the Subordinate Legislation of the country and the administration have to be humanised. That is why we want to go beyond the ever-ready adherence to the status quo of a formal system and a formal or rigid style. That is why the country should have an institutional mechanism which is inexpensive, which is effective and informal and which goes beyond the conventions of the rigidities and formalities of laws and rules. This is a creative task.

I feel therefore that in defining the qualifications for the office of the Lokpal, we should be able to go beyond retired judges. There are many persons who have legal training who have served in Parliament and who have the necessary skill, ability and disposition to fill that office. There are many who have served in Parliament, even representatives of this or that party. There are many men and women in this country who are capable of rising to the occasion of inspiring the confidence of the people and helping to redress public grievances in an informal sense of the word.

Through the Lokpal-Lokayukta system, we want a swift, somewhat informal, judicious and resourceful solution of problems rather than a tardy, formal and judicial verdict in an adversarial setting.

Now, coming to question No. 5, I would like to emphasise that too much bias or predilection of choosing judges to man these posts should be abandoned. The Bill should create a democratic institution in a democratic

system and therefore, the Lokpal-Lokayukta system should have an element of being related to the people to the "Lok". It is in this context, I remind you what Panditji told me:

"I like the idea, I like your nomenclature because it has "Lok" in it."

I would suggest that a linkage between the Lokpal-Lokayukta and a Joint Committee of the two Houses on petitions should be established roughly on the analogy of the Public Accounts Committee and the Comptroller and Auditor General.

Mr. Chairman, there are certain provisions to which I should make a reference because, I think, they are also based on a somewhat narrow judicial conception of the office of the Lokpal. It is welcome that the Lokpal is to have the status of the Chief Justice of India. But functionally speaking, he is not. Take for instance, clause 6 of the Bill which provides that the Lokpal may be removed by an order, by the President, on the ground of misbehaviour or incapacity after the inquiry made by the Chief Justice of India or such other Judges of the Supreme Court, as the Chief Justice nominate in this behalf. I submit that if that is to be a people's institution, then the ultimate accountability, should be by means of article 124, namely impeachment in the two Houses of Parliament I think, it is inappropriate that a person on whom you are conferring the status of Chief Justice of India should be subject to an inquiry by the Chief Justice or any other judge nominated by him. It is ultimately in democratic accountability and sensitivity of this institution that we would be contributing something to the institutional framework in our country. There are two models, in our Constitution for removal procedure. There is a model for removal of judges and there is the procedural model for removal of members of the Public

Service Commission. One should opt for either of the two procedures but I am personally of the view that it would be more appropriate for this great institution to be accountable, in terms of impeachment procedure.

There are two other questions which raise functional issues. One is with regard to the fee to be deposited while making complaints as prescribed in the Bill. I am of the view that it is on the high side and that access should not be made onerous, certainly not onerous in monetary terms. India is a poor country and we do not like too high a price tag for the redress of grievances or solving of problem which arises in public life.

There is also a question raised with regard to the penalty proposed to be imposed in case of a complaint which proves to be false, and that this ought to be reduced or done away with. I hold the view that there are far too many irresponsible allegations today, far too much character assassination far too much willingness to tarnish the image of some one. There is need for inculcating through our laws and culture of politics and public life a more responsible attitude. But I would not suggest a very high monetary deterrent for arresting or discouraging this tendency. I personally think that while this statute should strongly subscribe to the idea of making a complainant responsible and accountable for what he says, and it is proved to be a deliberately and wilful falsehood, it ought to be dealt with not primarily in terms of very high amount of money as a penalty—although some amount of penalty must be imposed—but also by public censure. Indeed this is a matter which perhaps requires some consideration from the point of view of protection of public morality. It is easy to make a complaint but difficult to substantiate it. But if at the end of

it all, if you find that the complaints were made *mala fide* and maliciously to assassinate the character of someone, then, of course, we must have some in built recourse within the system. I am, therefore, all for a provision such as the one we have. I believe, however, that the quantum of money, Rs. 50,000 is excessive. It is not merely monetary punishment which entails or represents censure. What should be done is the publication everywhere of the censure of the complainant who has filed wilfully a complaint and maliciously.

The question of proceedings of inquiry to be conducted *in camera*, I believe is an important one. It is necessary that there ought to be reasonable amount of confidentiality in the proceedings of the Lokpal. Vying for public attention and paying to the gallery is a bane from which every institution can come to suffer. At an early stage the proceedings must certainly not made public because, making allegations against a Minister, making him a target of criticism and then getting publicity mileage is a reward which should be denied to a complainant at that stage not right. His reward if any should be at the end of the proceedings rather than *ad interim* or in advance. If the complainant has made a good complaint, he should be rewarded obviously with a finding, which will then inspire greater confidence. But it should not be allowed merely for mud-slinging. I find in many cases that even before a matter reaches the proper tribunal, the person publishes it in the newspapers. His real interest is to attack someone under the cover of a statutory complaint. This is considered now-a-days a fair game though it cannot ever be so. Time was when it was not considered so generally a permissible practice. I am, for maintaining confidentiality in the proceedings of the inquiry until it so far as the Lokpal is concerned. No doubt, the Institution should be open; it should be fully accessible and its course must be free,

but interior confidentiality would protect the working of Lokpal. Eventually, the Lokpal's reports should be published and should never be allowed to gather dust on the shelves of the secret. But giving premature publicity is injurious to the very cause that such an institution is meant to serve.

There are two other aspects of the matter on which I would like to make brief submissions. One is the rule-making power of the Lokpal. It is an extremely difficult question. I would suggest that the Committee should consider incorporating a Chapter which would serve as a framework of rules for the Lokpal and which should be given to him by Parliament, not by subordinate legislation of any kind or colour. My own experience as a Member of the Lok Sabha was that Parliament never had the time and did not command enough expertise to really scrutinise subordinate legislation which is made from time to time. I think that it will be much better that for an institution such as the Lokpal, we should incorporate in the Bill itself a Chapter which prescribes more or less the entire framework of rules and regulations and then leave further directions or instructions or forms to be published by the Lokpal himself to be laid on the Tables of the Houses, subject to parliamentary modifications but not as an exercise in subordinate or delegated legislation by the executive.

The last question is one on which I have referred en passant in the earlier part of my submission and that is with regard to a national framework for Lokpal and Lok Ayukt institutions. I have already submitted that I am in favour of a national framework protected and provided for by our Constitution itself, a framework in which the Parliament, the national executive at the Union level and the State executive at the State-level and the State legis-

latures, would be partners in the enterprise of providing a new sensitive vibrant and forward-looking mechanism for redress of public grievances. It leads me once again to the question of the extremely limited purview of the present Bill and its prepossession, if I may say so, with great respect, with the idea of corruption of Ministers only. If we are trying to create an institution for investigation into corruption, why then the corruption among Ministers only? Why not others? I think there is too much concern with corruption only and too little concern with something more positive which is what will give us a better administration and will reduce corruption. A more citizen-oriented administration, a more responsive, a more humane, a more concerned administration, that is where you would be offering to the country a model for redress of the grievances of the people.

It is in this perspective that I suggest that the Committee might reconsider the definition of public functionary which now delimits the whole scope of the Bill as it is before you. The Committee might reconsider Clause (3) because it provides at present that "the President shall, after consultation with the Chief Justice of India, appoint, by warrant under his seal, a person who is, or has been, or is qualified to be, a Judge of the Supreme Court as the Lokpal." My submission is that you need not opt only for the judicial basket so far as the selection of Lokpal is concerned, nor need you go to the Chief Justice and burden him with any participation in the choice. The leaders of the two Houses and a leader of the entire opposition in each of the Houses headed by the Speaker can join in the exercise of nominating or electing the Lok Pal that provisions should be recast even though it is inclusive enough as it stands because I would like to see a change of orientation. Perhaps that orientation can also be achieved without a change in the language of clause 3 itself. But I do

not think it necessary to have a judge only and that too chosen in consultation or after consultation with the Chief Justice only. I also do not think that you should ask a would-be Lokpal not to hold any office of Trust. An office of profit should be strictly excluded from, no doubt. But an office of trust is not something which needs necessarily to be excluded. There are many institutions in which persons are helping a number of good causes and I do not think you want a Lokpal who is isolated and insulated from the perceptions of public life. It is enough to provide that Lokpal should not hold any office of profit.

With regard to the pension provision, I would like to say that if a person comes to occupy that position and retires after five years, and if he has not held any other office earlier in public employment, he would be entitled to a very paltry amount of pension. I think you must make a specific provision for pension to the extent of two-thirds of his salary last drawn or whatever the current salary of the Lok Pal may be so that he may have at least enough to keep his body and soul together after he retires from that office.

So far as the question of Clause 7 and its various sub-clauses are concerned, there are two specific suggestions which I would like to make. First of all, it should be possible to make a provision on the analogy of Article 144 of the Constitution somewhere in or near abouts Clause 7 of the Bill. Article 144 of the Constitution is the kind of provision which is required when the jurisdiction as large and as far-reaching as I envisage is to be exercised by the Lokpal. Article 144 will have to be adapted for the Lokpal of course, provides:

"All authorities, civil and judicial in the territory of India shall act in aid of the Supreme Court."

The Committee should make a provision that all authorities shall act in

aid of Lokpal because otherwise the statute might create a helpless and helpless institution which will not be able to put its mandate, its fiat and its legal and moral Authority across effectively.

My other suggestion is with regard to the powers of investigation. It may be that in Clause 7(1), the word "inquiry" is inclusive enough but if elucidation is required, it should be possible for the Lokpal to have the assistance of persons not only in matters of verification and inquiry but also investigations at a preliminary stage because Clause 7(1) is at a preliminary investigation. Even at that stage, to have some assistance for preliminary investigation may be necessary.

There are several other minor matters. I would particularly like to mention one point and if you so desire I would send you comments on others.

Once again, on the question of the jurisdiction of the Lokpal, on an allegation of bias by him, it is provided for in the Bill that when a dispute arises, the President shall, by an application made by the party aggrieved, obtain in such manner as may be prescribed, the opinion of the Chief Justice of India and decide the dispute in conformity with such opinion.

When a question of bias arises, no doubt every citizen is entitled to raise that issue before the Lokpal himself in the first instance. If a dispute arises, which should be resolved not by any single judge of the Supreme Court or even by the Chief Justice of India but by a bench of at least three judges, I do not think it should be subject to a judicial decision of a single Supreme Court Judge who is nominated by the Chief Justice of India, if you want to protect and preserve the status that the Bill confers upon the Lokpal. The Supreme Court does not ordinarily sit in a bench of one judge and I think in respect of bias which is a judicial matter, an advisory opinion

should be sought from the Supreme Court. A bench of the Supreme Court should be invited to give an opinion in such matters and the President should act in accordance with that opinion.

With these words, may I say that the country looks upon this new fledgling initiative with great hope. I believe that if this Bill is revised and offers a meaningful machinery to the country for redress of grievances and if we are able to go beyond the mere question of corruption of Union Ministers, that would be a real positive contribution to our democratic system.

I would like to reiterate the suggestion that this Committee should explore the possibilities of establishing a linkage between the reports of the Lokpal and the Joint Committee or Committees of Parliament like the C&AG's reports and the Public Accounts Committee. It would be very useful if you have a Committee consisting Members of both the Houses of Parliament like the Committee on Petitions or Committee on Redressal of Public Grievances. It could be forum where that report could be considered. There should be some parliamentary nexus and foot hold for this Institution. Without this Parliamentary linkage, the Institution would be in danger of becoming one more bureaucratic appendage. That Parliamentary connection and nexus may make it the People's Tribune.

Finally, I would like to express my gratitude to the Committee for having invited me to put forth my views on the Bill.

MR. CHAIRMAN: At the outset, I thank you Dr. Singhvi for your presence here and for making your statement. First, I would like to put certain questions for clarification and later on other hon. Members would also put their questions to you. In your statement, you have stated that the sitting Judge of the Supreme Court or a retired Judge of the Supreme Court

ought not to be appointed as Lokpal. In the very same clause in the Bill, there is a provision that a person having requisite qualifications to be appointed as Judge of the Supreme Court can be appointed as Lokpal. What have you to say in this matter?

DR. L. M. SINGHVI: First of all, I would like to put the record straight. I am not saying that a sitting Judge or a retired Judge should necessarily be excluded. My perception is that we should cast the net much wider. Secondly, if we are going to cast the net much wider, then we would not confine ourselves to a person who is or has been a Judge of the Supreme Court. Legal training is necessary. The point is that Prof. Ranga may be more suitable than a person entitled to be appointed as a Judge of the Supreme Court and that public person may command much confidence among the public. Moreover the way the clause is worded, we would inevitably drift towards retired judges.

MR. CHAIRMAN: You have also stated that the Constitution may be amended suitably and you have opined that there ought to be a National Act. We all know that in some States, there is the Lokayukta and in some States Chief Minister are included within its purview and in other States they are not included. So, will you please clarify whether we should amend the Constitution or we should have a National Act and if so is it necessary that we should wipe out this Lokayukta?

DR. L. M. SINGHVI: My submissions are two-fold. A Constitutional amendment is necessary because I believe that this Institution should receive the protection of the Constitution partly because there will be a number of problems of jurisdictional conflicts in which it is likely that it could not protect its independence without a constitution sanction and ultimately it may be relegated to the status of a subordinate authority of

the High Court, under Article 227. Let me be frank in answering this question. We, the lawyers, may bring up a situation where we will say: "Here is the authority created by the State. This authority is doing this, that and the other and is accountable under Article 226, 227 or 32 or 136." I would like to mention that Article 227 is an Article of very wide ambit. So also, there is Articles 226, 32 and 136. Therefore, it would be possible for challenges to be made to the authority of the Lokpal unless you exclude the jurisdiction of Article 226, Article 227 and also Articles 136 and 32 of the Constitution. Why I am saying this is because of the fact that if you have the Lokpal constantly fighting for the survival and protection of his jurisdiction in the Courts of Law, then you are not creating the kind of apex authority which you have envisioned in this Bill. That is one reason. The other reason is that if you want to provide an all India National framework for this machinery for redressal of public grievances, you cannot do so today by a mere act of Parliament so far as the States are concerned. That is obvious. When I first put the suggestion in 1963 in the Lok Sabha, I had in mind a partnership of the Union and the State Legislatures and the two sets of Executives under the umbrella of the Constitutional provision. The question is do we want to create a national framework. The other point is whether a Constitutional provision and protection for this authority is necessary if it is to be confined merely to enquire about the corruption of Union Ministers, as it is now. Then, of course, there is no such need. It is a simple matter of a Parliamentary legislation confined to a very narrow area. As I hinted earlier. I suffered for many years, from what I used to describe light heartedly as Ombudsmania. It became of a hobby horse. But Lokayukta institutions are far from satisfactory. The Institution has not given a good account of itself. We spend far too much money and get too little out

of this institutional mechanism in the States. Unless there is a different kind of institution and unless there is a redressal of grievances mechanism with a wide enough reach the people and their imagination would not respond to any such thing. There is very limited scope, as reflected in the Bill. As I said, checking of corruption is not the end-all-and-be-all of public life, a very important task though it is.

SHRI D. K. NAIKAR: I will ask a very simple question. This question arose on certain disputes out of bias. The point is that reference should be made to a Bench of Judges of the Supreme Court and not to refer to a single Chief Justice. I remember to have read in the deliberations of the Constituent Assembly while discussing an Article — article 222 on transfer of judges. The point is that transferring power was given to the Head of the Executive. There was a Committee and the Chairman of that Committee mentioned that sufficient care had been taken in giving this power to the Head of the Executive because the transfer is effected only in consultation with the Chief Justice of the Supreme Court. The view is that the Chief Justice of India is a trustworthy man of the nation. This point was expressed in the deliberations of the Constituent Assembly's debate. What do you say about this?

DR. L. M. SINGHVI: I believe that the distinguished Member is referring to Clause 9 of the Bill which says: "The Lokpal shall not inquire into any matter concerning any person if he has any bias in respect of such matter or person and if any dispute arises in this behalf, the President shall, on an application made by the party aggrieved, obtain, in such manner as may be prescribed, the opinion of the Chief Justice of India and decide the dispute in conformity with such opinion".

Firstly, I have made it clear that I do not think that it should be decided

by a reference only to the Chief Justice of India. This is a matter of a judicial nature. The question of bias is a classic concept in the field of administrative law. In Latin, there is a phrase, *Nemo Index Sua cause*.

As I said, if there is a question of allegation of bias, in the first place, Lokpal himself will decide and in the second place, if there is a dispute it should be decided, as a judicial matter, by a Bench of the Supreme Court and not by the Chief Justice, or one of his nominees, acting obviously not in a judicial capacity because this does not confer a judicial capacity clause of it confers an advisory jurisdiction which falls outside the scope of the Constitution. It is a statutorily-conferred advisory power. I am opposed to it. I submit that it is far better to say that on this matter the advisory opinion of the Court will be sought. This is the submission I had made.

There is another aspect of the matter and that is, that if it is found, or if the Lokpal himself finds, that he cannot deal with a particular matter because of bias, then some provision has to be made to deal with the matter. There is the doctrine of necessity no doubt, but the doctrine of necessity is not accommodated in Clause 9. The doctrine of necessity provides that, if there is only one authority, even though a person may have an interest, he may proceed to decide the matter. This doctrine is not accepted here.

SHRI D. K. NAIKAR: Is it not sufficient if an opinion is given by the Chief Justice of India instead of its being determined by a Bench of this?

DR. L. M. SINGHVI: I think, I will adhere to what I have said.

SHRI P. UPENDRA: Can you be more specific in your answers to Ques-

tions 2 and 4 regarding categories of persons to be included?

DR. L. M. SINGHVI: I thought I had answered in a different way. I had answered by saying that I find the perspective of the Bill to be very restrictive. It addresses itself only to ministerial corruption as if there is nothing else we are concerned with as if the rationale of Lokpal mechanism is only uni-dimensional country. Some one might say lightheartedly that if you when there are no complaints of ministerial corruption, the institution would have to justify itself in Parkinson's terms and find some complaints. One should not assume that corruption is the only thing with which the country is concerned the country is concerned with many other things. Unless one feels that one institution for ministerial corruption alone should be created and that would be sufficient. I suggest that it should certainly be extended. The problem however, is this. The Lokpal institution cannot function effectively if it has too much to do. I think, one of the distinguished members here who has been a judge of the Supreme Court will agree with me that sometimes even the Supreme Court finds that it cannot do full justice because it has far too much to do. I think, there has to be a certain amount of scientific and rational limitation on the work load. This can be done by limiting the extent of the jurisdiction. We have in this country the Central Vigilance Commission. There are various matters which go to the Central Vigilance Commission. But even that institution, I am afraid, is more rigidly conceived and administered than it ought to be, because the citizen is not interested in all these hair-splitting discussions about how a rule should be interpreted. The citizen is interested in substantial justice. I hope, as between the Lokpal and the Central Vigilance Commission, there is a possibility of dividing up the jurisdiction in such a way that all situations of maladministration, grievances and complaints of misconduct are covered. How

one devises it is not very difficult to answer. For instance, Qn. 4 itself may be answered in the affirmative and then you have to come to a solution. But then the question will arise: what then has the Central Vigilance Commission to do. We must so carve our jurisdiction that there is the minimum of conflict between them, ostensible or potential. Therefore, it is important to carve out the jurisdiction. Whatever you say will be alright. After all, everything in life is an experiment. But it has to be borne in mind by this august Committee that giving too much jurisdiction or too narrow a jurisdiction to this institution would not be the best way of adding to our democratic mechanisms for redressal of grievances.

SHRI P. UPENDRA: What about the penalty clause, Qns. 9 and 10?

DR. L. M. SINGHVI: I have already said that the monetary limit is not the only way. Public sanction is far more important. For a person who has lodged wilfully a false and deliberately-misleading complaint, only to get some kind of a publicity against a Minister or against a public servant, I think, the penalty clause should be retained. The amount is quite high. It should be reduced. An amount of Rs. 50,000 is a lot of money for someone who may have to pay—someone who may have lived a life of great austerity. The penalty clause is a must. But the amount is something that you can determine. I am for reducing that amount. That is one thing. Secondly, I am for a thorough publication of the censure recorded by the Lokpal. Wide publicity given to the censure will have a deterrent effect over wrong kind of complaining.

SHRI BRAJAMOHAN MOHANTY: I want to seek one clarification. You were very much apprehensive about jurisdictional conflict between the courts and this institution. You were also suggesting protecting this institution from the mischief of articles 226 and 227. What is the way by which you can protect this institution

from the mischief of articles 226 and 227?

DR. L. M. SINGHVI: One aspect of the question is answered with reasonable clarity by a recent decision of the Supreme Court. It was an occasion to deal with the replacement of the 226-jurisdiction by the Central Administrative Services Tribunal. The Court said, and rightly, that under article 226, judicial review, is a basic feature of the Constitution. The Court also said that the provision for a proper adjudication through Tribunal does not affect the protection. Therefore, with certain modification in the scheme of the Administrative Services Tribunal, certain very important modifications, the Court accepted it. As the hon. Members are aware, this was an Act under a provision made by adding in the Constitution provisions enabling Parliament to create Tribunals. I would prefer specific provisions in the constitution. There is, however, this question which is a very important one...

SHRI BRAJAMOHAN MOHANTY: In this particular case, the Bench consisted of how many judges?

DR. L. M. SINGHVI: The Bench was presided over by Mr. Justice Bhagawati. This matter has come up more than one occasion and the Bench consisted of a different number of judges; at one time it was there at another time it was 5, at another time it was 2, because they made several orders interim and otherwise. But that will not make a difference because the article does not make a distinction between the law declared by the Supreme Court either in a Bench of five judges or in a Bench of two or three judges. That would be an internal matter; the Supreme Court can always reconsider its judgement. My submission is that the Lokpal Bill which seek to provide an efficacious remedy and which does not supplant judicial remedies—because it provides an option will not run the risk of being invalidated as

unconstitutional, on the ground that it violates a basic feature of the constitution. When you are making this provision you are not saying that you cannot go to court. You may not go to court. But there is provision here; there is an option provided which will be acceptable to the court. One can make a prognosis, that our courts will respond to such legislation in positive terms. I would make bold to say that a scheme for redress of grievances or even for dealing with corruption at one or the other level would be found broadly acceptable. It requires constitutional protection for other reasons which I have mentioned.

SHRI BRAJĀ MOHAN MOHANTY: The term 'judicial system' is also changing from time to time. Do you feel that it would be satisfactory arrangement which would protect the institution?

DR. L. M. SINGHVI. I should think so.

SHRI S. JAIPAL REDDY: I find you have not made any comment on the competent authority and its role. In the instant case, the competent authority is the Prime Minister. You have also referred to the need for retaining penal provisions for discouraging false and malicious complaints. You may have noted that under the present scheme the complaint needs to be only false and need not be malicious for inviting penalty. Why the decision of the Lok Pal on public functionary is not found? The decision of the Lok Pal on the false complaint is fine. How do you see it?

DR. L. M. SINGHVI: I did not comment on the definition of competent authority for the simple reasons that I take the view that the Bill ought not to have been framed only for corruption at the level of union ministers which is the conception of this Bill. In my view, this would then not be a part of the mechanism because this comes into play only because of the extremely limited conception of this present Bill.

So far as penalty is concerned, I think, there is nothing wrong in it because the Bill makes the final determination with regard to the falsity of the complaint. It cannot be otherwise unless we are prepared, unless the Parliament decided that the reports will be subject to the rigmarole, of long and cumbersome procedures which would take various tribunals and courts prove that the complaint was false. That would create a situation of considerable embarrassment to an institution of this kind. May I say, that I would like to see this institution function as an institution that redresses public grievances. Making a false complaint accountable is a very small part of it. A false complaint should be made accountable; it should be made punishable. I believe, that Lok Pal should enjoy the confidence of the country as a whole. I would also like to say that the punitive approach in this matter is not really wholesome. The Lok Pal would have to acquire the confidence of the public mind. I would like him to be one who can see as a sensitive tribune of the people, for the people and on behalf of the people without yielding to public pressures, without playing to public gallery and yet discharging the role which is very vital in our national life. But if the very limited purpose which is now suggested for is taken into account, it is not a Bill on which I have very much to say. I have come to this august Committee to make a plea as strongly as I can to enlarge the conception of this Bill and to give to the people of India what they truly deserve, and need a machinery for the redress of their grievances.

SHRI S. JAIPAL REDDY: I would request you to clarify the distinction between false complaint and false and malicious complaint. Is there a distinction? If there is, what is that?

DR. L. M. SINGHVI: In all judicial matters, there is an element of discre-

tion whether there is a statutory distinction or not.

SHRI S. JAIPAL REDDY: I am not talking of discretion. I am asking about difference.

DR. L. M. SINGHVI: Yes, there is a difference. There is difference between false, willfully false and maliciously and willfully false.

SHRI S. JAIPAL REDDY: What is the difference between false and maliciously false? In the instant case, the penalty has been provided for mere false complaint.

DR. L. M. SINGHVI: Yes. In the instant situation, it should be up to the Lok Pal to award no punishment at all or to award a very light punishment. You would not like to punish a man for something which is innocuously false, which is not motivated. There is a possibility of a thing which is ultimately proved to be wrong but no Lok Pal worth the name in this country would or should give punishment.

SHRI S. JAIPAL REDDY: But the scheme does not leave any discretion to Lok Pal in this matter. It only says "Lok Pal shall punish."

DR. L. M. SINGHVI: "Lok Pal shall punish" Still leaves a measure of discretion in the matter of quantum. Clause 22 provides that he shall punish. Hon. Members may recall that on many occasions when judges find that something wrong has been done but it was not wrong enough to punish a person with imprisonment. In that case, Judges may overlook the wrong or may award the punishment till the rising of the court only. There is a measure of discretion always and the Lok Pal can always match the punishment with the magnitude of falsehood or the malice and motivation of the falsehood.

That is as it should be. One cannot always judge a situation in advance and give a slotting machinery to the Lokpal that 25 per cent or 50 per cent or 75 per cent or 100 per cent falsehood would be given so much punishment. That discretion has to be left to him so far as the quantum is concerned. I need hardly repeat that irresponsibility in matters of public life is something which is eating into the vitals of our body-politic because credibility and responsibility are very important in public life.

SHRI RAOOF VALIULLAH: Will this not be a deterrent?

DR. L. M. SINGHVI: To an extent, yes I would say that nobody has a fundamental right to make a false complaint. I would like to make the point that it is wrong to think that a false complaint is better than no complaint at all. One of the problems is that a large number of the so called complaints are made casually and are ultimately found not to have been researched properly. I need not say anything more in this respect except that we ought to develop a climate of care and responsibility in matters of public vigilance.

Afterall a person who makes a complaint owes it to himself and also owes it to the society to look properly and with due care into the facts, verify the sources and the basis and then make a complaint. If the Lokpal finds that it was a bonafide complaint, no punishment at all should be awarded until it surfaces as a public proceeding, it must be a confidential matter. That would resolve the problem. In case the Lokpal comes to the conclusion that the complaint is a wilfully or maliciously false complaint, there should be provision for awarding graded penalties.

SHRI VIRENDRA VERMA: While you were in Parliament from 1962

onwards, you discussed about this type of Bill with Pandit Nehru. I would like to know whether he agreed with you that the Prime Minister should be included in the Lokpal Bill.

DR. L. M. SINGHVI: At that time there was no proposal for the exclusion of anyone.

SHRI VIRENDRA VERMA: That means the Prime Minister was also included in the Bill. But you have not said anything about it.

DR. L. M. SINGHVI: I want a comprehensive machinery for redressal of public grievances. Firstly I want to shift the whole focus from Ministers and the Prime Minister and corruption. I am looking for solutions to the problems of our citizen, rather than for targets on the political scene. Having said that, I would not like any particular inclusion or exclusion. This is a Bill which is conceived differently. In this particular Bill obviously you cannot have the Prime Minister accountable for any corruption because the Bill designates the Prime Minister as the competent authority.

I disagree that corruption should be the main or only rationale for a Bill of this kind. What will the Lokpal do after 20 years if there would be no corruption? I am suggesting that the focus should be shifted. It should be universalised for all kinds of public grievances in the

matter of mal-administration. Corruption can also be dealt with today under the prevalent rules and regulations. Indeed, the Supreme Court has permitted even private complainants to prosecute public functionaries under certain circumstances.

SHRI VIRENDRA VERMA: For Point 8 of the questionnaire you said that the fee for a complainant is on the very high side. What should be the fee according to you and what should be the penalty because again you said that the penalty also is on the high side? What should be the maximum ceiling in your opinion?

DR. L. M. SINGHVI: One hundred rupees for filing a complaint and Rs. 10,000 to Rs. 15,000 as the maximum penalty.

श्री लाल कृष्ण अडवाणी : डा० सधवी तो इस विधेयक पर कम बोलना चाहते हैं। उन्होंने दुरुस्त कहा कि वे चाहेंगे कि इसका क्षेत्र व्यापक हो। शायद हम में से बहुत सारे लोग इस बात से सहमत होंगे कि ओरिजनली जो कल्पना है वह भ्रष्टाचार के खिलाफ संस्था को बनाने की नहीं है। अभी तक जो विधेयक बना है, उसमें आपकी कल्पना का कुछ अंश है कि नहीं है? क्योंकि आपकी पूरी बात सुनने के बाद मुझे लगा कि पहली बात जो आपने कही वह यह है कि इस विधेयक का कोई अर्थ ही नहीं है और ऐसा विधेयक बनाना, उसके लिए इतनी बड़ी संस्था खड़ी करना और उसका उद्देश्य केवल मंत्रियों तक सीमित हो और उनके भ्रष्टाचारों तक सीमित हो, और दूसरा जो उत्तर आपने दिया मि० जयपाल रेड्डी के जवाब में, उससे तो लगा कि आप उसमें पूरी तरह भ्रष्टाचार की समस्या से पीड़ित हैं। ग्रीवेंसेस तो कोई फाल्स नहीं होगी, लेकिन लोकपाल के पास जाते हुए कोई व्यक्ति मन में यह जरूर सोचेगा और डरेगा कि कहीं मेरे ऊपर तो दोष नहीं आ जाएगा। इस लिए वह लोकपाल के पास न जाकर मैं समझता हूं कि और संस्थाएँ हैं जिनके पास वह जाएगा और अपनी शिकायत करेगा। वह पत्रकारों के पास जाएगा, लोक पाल के पास क्यों जाएगा।

मेरे पास पिछले दिनों कुछ लायर्स आये थे, मैं उनसे बात कर रहा था तब यह बात आई कि कम्प्लेन्ट जो करेगा वह इसी आशंका से ग्रस्त रहेगा कि कहीं मेरे ऊपर तो कोई दोष नहीं नहीं आ जाएगा और जिसकी कम्प्लेंट वह करेगा यदि उसके खिलाफ दोष साबित भी हो जाएगा तो लोकपाल उसके खिलाफ रिपोर्ट ही दे सकता है और रिपोर्ट तो रद्दी की टोकरी में भी जा सकती है। इसलिए मैं इस विधेयक के बारे में जानना चाहता हूँ कि क्या इतनी बड़ी संस्था खड़ी कर के उसके सामने जाने वाले के मन में पूरी आशंका बनी रहे कि उसे तीन साल के लिए जेल में डाला जा सकता है और आपने इसमें यह भी नहीं कहा कि इस प्रावधान को बदलना चाहिए जिसमें "फाल्स" शब्द है। क्योंकि मैं मानता हूँ जब तक विलफुली फाल्स नहीं कहा जाएगा तब तक आशंका बनी रहेगी। क्योंकि विलफुली फाल्स नहीं होगा, कहीं मैलेशीयस फाल्स तो नहीं है। अगर मेरा आरोप साबित नहीं हुआ तो मेरे ऊपर दण्ड लगेगा। अब कोई अच्छा जज होगा तो वह एक रुपया फाइन कर देगा या कोर्ट उठने तक की सजा दे देगा, लेकिन यह जरूरी नहीं है, कोई जज ऐसा भी हो सकता है जो 3 साल की सजा भी दे सकता है और 15 हजार रुपया दण्ड भी दे सकता है। इसलिए इसको आप बताइए?

डा० लक्ष्मीमल्ल सिंघवी : अध्यक्ष महोदय, मैं सबसे पहले सबसे अन्तिम प्रश्न का उत्तर देना चाहता हूँ। सबसे अन्तिम प्रश्न यह था कि क्या आनुपातिक दृष्टि से जो व्यवस्था इस विधेयक में है उसका असर यह नहीं होगा कि कोई शिकायत करने वाला व्यक्ति उस प्रयत्न से मानसिक रूप से विमुख होगा, डरेगा, आतंकित होगा। मेरा यह मानना है कि अगर ऐसी कोई गंभीर आशंका है तो इस प्रावधान में अनुपातिक परिवर्तन होना चाहिए। जब मैंने कहा कि शिकायत करने के लिए कम से कम शुल्क लगे हो, जब मैंने कहा कि धनराशि के रूप में जो दण्ड दिया जाता है, उसका भी परिणाम कम हो मेरा आशय और संकेत यही था

श्री लाल कृष्ण अडवाणी : क्योंकि प्रश्न 9 में आपसे स्पेसिफिकली यह पूछा गया था कि क्या यह लिया जाना जरूरी नहीं है कि डैलीब्रेटली...

डा० लक्ष्मीमल्ल सिंघवी : मैंने श्री रेड्डी के प्रश्न के उत्तर में कहा था, इसमें जिन शब्दों का प्रयोग किया उनमें दो इसलिए ठीक हैं कि अगर कम्प्लेण्ट बोनाफाइड नहीं है, सदाशयता से रहित...

श्री लाल कृष्ण अडवाणी : इस प्रावधान में एक प्रिलिमिनरी स्कूटनी वाला है उसमें कहा गया है कि

If the complaint is frivolous or vexatious or not made in good faith.

उस सूरत में तो वहीं का वहीं डिसमिस कर सकता है लोकपाल, फिर तो इन्क्वायरी की जरूरत ही नहीं लेकिन इन्क्वायरी के बाद यह नतीजे पर आये कि कम्प्लेण्ट ठीक नहीं थी तो दंड दे सकता है, एक परस्पर विरोधी स्थिति है कि अगर नोट इन गुड फेथ है, यह भी कहा गया है तो आगे चलकर यह प्रावधान होने से इस स्थिति में आता है कि कम्प्लेण्ट फाल्स थी तो अमुक-अमुक दंड दे सकता है।

डा० लक्ष्मीमल्ल सिंघवी : जहां तक क्लोज 11 का प्रश्न है उसमें यह बात साफ तौर से कही गई है कि प्राथमिक सोपान पर ही अगर यह पाया जाये कि शिकायत निराधार है या कि सदाशयता से रहित है तो उसको वहां पर निरस्त कर दिया जाए किन्तु कई ऐसी शिकायतें होती हैं जिनमें सदाशयता का अभाव बाद में प्रकट होता है। अगर मान लीजिए कि सदाशयता का अभाव बाद में प्रकट होता है तब यह अधिकार लोकपाल को होना चाहिए कि उसकी सजा का प्रावधान करे। मैं मानता हूं कि अगर शिकायत सदाशयता से रहित है या दुराशयपूर्ण है या फरेब पर है, विफली या मेलिशियशली जालसाजी पर आधारित है जान बूझकर बनई गई है फाल्स है तो सभा या सांवेनिक निन्दा का प्रावधान आवश्यक है, चाहे उस प्रावधान का प्रयोग कम से कम हो। क्योंकि इसमें 3 प्रकार हो सकते हैं फाल्स, विलफुली फाल्स और मिलिशियशली फाल्स, उनक लिए उचित यह

प्रावधान किया जा सकता है। मेरा यह मानना है कि सजा का प्रावधान अवश्य होना चाहिए। यह सही है कि हमको शिकायत के निवारण की ऐसी सस्थायें नहीं बनानी चाहिए जिससे शिकायत करने वाला उससे दूर भागे किन्तु यह भी नहीं होना चाहिए कि यह एक ऐसी व्यवस्था हो जिसमें कोई आदमी कुछ भी कहे या करे उसमें सजा का फिर भी कोई प्रावधान न हो इस लिए संतुलन की आवश्यकता है। संतुलन की दृष्टि से तीन सम्भव कदम उठाए जा सकते हैं। एक तो जो सजा है उसी को आप कुछ कम रखें क्योंकि मेरा मानना है कि बहुत बड़ी सजा देने से कोई बात नहीं बनती या सुलझती है, बात तब बनेगी जब सजा कम रखेंगे लेकिन लोक प्रभाव को अधिक महत्व देंगे।

दूसरी बात यह है कि अगर यह पाया जाये कि शिकायत सदाशयता से रहित थी या कहा जाये कि दुराशयपूर्ण थी और झूठमूठ जान बूझकर की गई थी तब ही ऐसी सजा दी जाएगी, किन्तु मेरे कहने का अभिप्राय यह नहीं है कि कोई व्यक्ति केयरलैसली, बिना पूरा ध्यान दिए, बिना किसी के खिलाफ चाहे जैसे शिकायत करे, और उसके खिलाफ सजा का प्रावधान न हो, कुछ न कुछ सजा हो यह अवश्य होना चाहिए कि आदमी जिम्मेदारी के साथ अपने कर्तव्य का पालन करे। यह भी नहीं हो कि हम ऐसी व्यवस्था बना दें जिसमें आदमी को दूर से कह दिया जाये कि यहां पास नहीं आना वरना बिजली का करन्ट लग जाएगा क्योंकि यहां बड़ी भारी सजा का प्रावधान है। इस कानून में आप यह कह सकते हैं कि जब तक यह न पाये कि शिकायत दुराशयपूर्ण थी और जान बूझकर झूठमूठ की गई थी या सदाशयता से रहित थी, (दोनों में फर्क भी है) तब सजा का प्रावधान होना चाहिए। इसमें कोई शक नहीं है कि फाल्स, विलफुली फाल्स और मिलिशियसली फाल्स में एक अन्तर है और उस अन्तर को कानून के लिए मद्देनजर रखना जरूरी है।

अब तक मैं पहले सवाल का जवाब नहीं दे पाया। उसका उत्तर बहुत संक्षिप्त है। वह यह है, मेरी मान्यता है, कि

यह विधेयक आदर्श संकल्पनओं का उत्तर नहीं है जिनको लेकर इस विचार को मैंने और कई लोगों ने देश के सामने रखा था क्योंकि भ्रष्टाचार का निवारण और केवल मंत्रियों के भ्रष्टाचार का निवारण मेरी राय में एक सीमित जगह रखते हैं मैं चाहता हूँ कि नागरिकों की शिकायतों लिए एक व्यवस्था हो।

PROF. N. G. RANGA: We have taken such a long time over this particular concept. When the Janata Government was there we had a Bill like this. Things are changing all over India during this period with the result we begin to wonder whether this kind of a thing would be of any use at all. Therefore, would it not be better first of all to divide the two things—political decision and administrative decision?

श्री एल० एम० सिंघवी : क्या आप इस बात से सहमत हैं कि हर बात को सजा के रास्ते से तय नहीं किया जा सकता है। मेरा तो मानना है कि कई बार जब हम चाहे अदालतों में, चाहे अन्यत्र इस बात को मानकर नहीं चलते कि किसी व्यक्ति ने, चाहे गलत फैसला किया हो लेकिन दुराशयपूर्ण फैसला नहीं है तो हमको दूसरे तरीके से सोचना होगा, क्योंकि मेरा मानना है कि शासन में एक स्वायत्तता होनी चाहिये।

There has to be some autonomy in administration. Therefore, I entirely agree that there are decisions of a particular nature which do not lend themselves to be examined as merely matters of citizens' grievances but it even in a political decision a grievance arises that grievance has to be resolved. You have to find an answer to the extent possible. In the system of Lokpal the real solution has to be found by an informal intervention of a sensitive informed authority. That kind of swift intervention for the common citizen who cannot afford to go to the court is what I am looking for the redressal of grievance mechanism. That's not what I find in this Bill. That's why my sense of disappointment.

PROF. N. G. RANGA: You remember what happened over the Mundhra affair. The Minister had to resign. One big administrative officer had also to resign. But Shri H. M. Patel was able to sustain his own case by drawing the attention of the Public Service Commission to the notice that he had been so courageously disagreeing with the decision that was being proposed and afterwards taken by the Minister concerned and then saying that he was not responsible for that at all because it was Minister who took the decision. Therefore, personally, I feel that the administrative officers are supposed to be brought within the ambit of this Bill. There should be two separate authorities. One, to deal with the administrative officers if they fail to state what they feel about it sincerely and fearlessly; and the other for political chiefs of these Governments. Otherwise there will be confusion as it happening now. Politicians can always impose their will on the officers and then they take decisions but they make the officers responsible. Sometimes the officers may do the other way about. So, I would like to know your views.

DR. L. M. SINGHVI: I think, Prof. Ranga has raised two very fundamental issues. One is, how does one determine the responsibility in our system of Government. In the case of the LIC (Mundhra affair), Mr. Krishnamachari owned the responsibility because of the principle of parliamentary government in terms of ministerial responsibility. However, in the situation that we are considering, no officer would be exonerated or can be exonerated on the part that the officer has played because that owning of responsibility by a Minister was of a very different kind.

I remember, Sir, an instance when I happened to be in Parliament. Shri Lal Bahadur Shastri decided to resign because there took place an accident with which his only connection was that he was the Minister of Railways

at that time. There is no doubt that there is, in a sense, a responsibility. But it is not the kind of responsibility which can possibly be actionable under a statute of this nature because that is a kind of remote nature. I believe that the question that Prof. Ranga has raised is very fundamental from another point of view.

Then, Prof. Ranga said that there should be two different authorities for dealing with the political masters and the bureaucratic masters of this country. Sir, so far as corruption is concerned, the Parliament may provide for such procedure as it likes or work out the existing legal procedures which are quite efficacious as found in the case of Maharashtra particularly when the Supreme Court said that a private complainant can make a complaint in a matter of corruption by a Chief Minister but, as I said, concerned more with the institutional working of the Government as a whole. The Minister is at the apex. He is not always responsible for everything that is done. But in a sense, he is responsible in a constitutional sense. Therefore, one is interested not merely in finding who is responsible and punishing him but also is interested in redress of grievances, for finding a solution. An ordinary man thought that the procedure is loaded against him. Where does he go to? Parliament has not got the time to consider the petition of this poor obscure citizen. Now, it should be possible, therefore, to have one common machinery; for the kind of matters of corruption there you can have 3-4 machineries. As a citizen, I am not really bothered for redress of grievances machinery for which there has to be one machinery because that one machinery alone can then answer for a decision of the administration which is essentially institutional. A common citizen is not interested whose fault it is so long as someone in this machinery is at fault. Therefore, that redress is possible without really broaching the whole matter in the psychology of

finding fault and finding persons guilty and putting them on the mat. Let this institution be used for resolving the problems or redress of public grievances in a positive manner. The Ombudsman in Denmark did not concentrate on censuring someone. A citizen had a problem and he came with the problem which the Ombudsman found to be a legitimate problem. He solved that problem. Therefore, so far as the redress of public grievances is concerned, there has to be one common machinery which makes the Government, as a whole, accountable — accountable not in an adversary fashion but in the sense of public obligation.

SHRI P. N. SUKUL: At the outset, you have said repeatedly that this Bill does not satisfy your aspirations. This Bill is one matter. The Bill or the legislation you want there to be is another matter.

At the moment, we are concerned with this Bill as it is and having it as it is perhaps there may be no objection to what is provided by way of penalties and all that. Here only Members and Council of Ministers are involved. One must be sure that he is not filing a wrong complaint against the Minister. It is not against any bureaucrat or any class of Government. If somebody is going to file a complaint against a Minister, he must be personally sure that it is not false. If he is not sure that it is not false, then he should not abuse the provisions.

You suggested that there should be an institution of Ombudsman which should consider whole categories of public grievances. Personally, I have a grave doubt about one Ombudsman in a country like ours with this population, with so many parties. There will be lakhs and lakhs of complaints, public grievances. Will that one Ombudsman be in a position to solve all those problems or you contemplate a hierarchy of Ombudsman in the country?

DR. L. M. SINGHVI: So far as the first question is concerned, I may have forgotten the functioning of a select committee. But with great respect, I will say that a select committee not only takes the Bill as it has been placed before it, but also has the jurisdiction and authority to alter it, to improve upon it and to give it a new orientation. That is my humble understanding of the functioning of the select committee. Because you are sitting here for the interests of the nation, therefore, it is appropriate that this committee takes a larger view and a positive view of its functions.

SHRI LAL K. ADVANI: This select committee can certainly widen the scope of the Bill. But the select committee cannot convert a simple statute in constitutional amendment. So, we can only make a recommendation to that effect. It could involve even the State Governments, the Chief Ministers and all that if there is to be a national law to set up an institution like this.

DR. L. M. SINGHVI: The suggestions I made are not as they were so dependent on each other that one cannot function without the other. The change in the constitution of the Bill is possible even without the constitutional amendment. But it is better if it is with a constitutional amendment and the constitutional provision and protection for who's machinery of Ombudsman. I think, it is important to remember that the select committee can take a larger view of all the problems it has to come to grips with. That is my humble submission.

The second answer is that this is too large a country. Therefore, Ombudsman cannot possibly cope with all the complaints that may arise. Sir, this objection was made even when we first made this proposal and put it forward. The idea was adopted although it has been indifferently im-

plemented in many cities. It is in most of the States with a population of several crores. It has got very little to do in the afternoons. Totally, there is very little work which has been generated. The ambit of the legislation so far as the States are concerned, is much wider because many of the State legislations include situations of mal-administration, abuse of power or authority, corruption and so on. Now, it can be said that they are deterred that no one will be willing to go to an Lokayukt. My submission is that the argument that this country is too large is not really a full answer. It is a very important denomination. I freely concede that our country is so large but you cannot afford to overburden like the Lokpal but having said that, my own feeling is that a competent man entrusted with the task and having suitable assistance will be able to do justice to his job. The first charge on the conscience will be the entire institutional democratic framework of India.

SHRI BIR BHADRA PRATAP SINGH: I wanted to know your practical suggestions as to what amendments should be incorporated in the Bill with regard to persons with whom we are going to deal with, about the person against whom we have to proceed. The next question is regarding the conflict of various jurisdictions but don't you find that there is a possibility of overlapping of jurisdictions. So what concrete amendments do you suggest to do away with the overlapping of the jurisdictions?

DR. L. M. SINGHVI: There are already several provisions which are designed in this regard as it is possible within the framework of this Bill. It is possible to consider situations under Articles 227 and 226, for instance, one can persuade not to stay the criminal proceedings. A Court of Law can be put in motion by an application to put an end to the con-

tinuance or at least an order of suspension made by the Lokpal. I have already several suggestions with regard to the conflict of jurisdictions but the most important of all is the Constitutional provision which protects the Lokpal and its jurisdiction and puts it beyond Articles 226 and 227.

SHRI B'R BHADRA PRATAP SINGH: I am concerned only about the overlapping of jurisdictions apart from conflicts.

DR. L. M. SINGHVI: It is resorted to by an option exercise. Under Article 226 or 32 a formula clause has always....

SHRI RAOOF VALIULLAH: If the remedy is available under other sections of other legislations, why would it come to the Lokpal?

DR. L. M. S'NGHVI: I think it is partly because the remedy elsewhere may be too cumbersome. Hence one would opt for Lokpal. It takes years together to come to conclusions. The system of trial which is quite different from the one that would be available for the Lokpal — I may mention a case in which several allegations were made against a Chief Minister of a State. I was appearing for that Chief Minister. I persuaded the Benches of the High Court to hold them since a remedy was available in the Lokayukt and the Court will not exercise its Article 226 to its jurisdiction because Courts are generally respectful of the principle of Committee of jurisdiction and in a given case a resort to informal jurisdiction is more swift and therefore preferable. But once an option is exercise, it should not be possible for a person to ride different horses at the same time and that can be easily resolved by provisions made in this Act and also in the Constitutional provision. The other question is a very important one. What should happen to a person complained against? It is not difficult to answer. I expect that in such an

event, the person concerned would resign. If that does not happen, the Parliament would make the person resign. It cannot be done without this Act because one requires a credible findings and this is the method of reaching credible findings in respect of mal-administration, abuse of power, etc. It has got to be translated by the resourcefulness to ensure our political culture of our democratic system.

SHRI RAOOF VALIULLAH: Clause 8 in the proposed Bill reads: 'The Lokpal may inquire into any act or conduct of any person other than a public functionary in so far as he considers it necessary so to do for the purpose of his inquiry into any such allegations.' How would you define misconduct where an offence is punishable under Chapter IX of the Indian Penal Code? Is there anything that this Bill should go beyond the issue on corruption and whether you would include abuse of power?

DR. L. M. SINGHVI: My answer is in the affirmative. So far as this Bill is concerned, the answer to the question put by the hon. Member is by Clause 2(b) because it confines to the definition of the offences as mentioned in Clause (e) under Chapter I of the Indian Penal Code or under the Prevention of Corruption Act, 1947. The perspective of the Act is quite clearly spelt out and with that perspective, I have a little respectful quarrel.

SHRI PARVATHANEN UPENDRA: After the Lokpal's verdict on a particular charge is against a public functionary, can it be a subject matter of another enquiry by a Commission of Enquiry or in a writ in the court?

DR. L. M. SINGHVI: As a lawyer, I should keep my options open, of course, but I think, it is possible to provide that repeated attempts at the same matter ought not to be permitted. Public policy requires that once a complaint has been suitably and properly gone into, then a quietus

ought to be given. There is a problem, however, that a person who might have been affected adversely, cannot be told that his resort to court is closed. Unless you put it we will find endless ways to doing that. However, that can be done only by a constitutional provision.

MR. CHAIRMAN: Thank you once again for coming and giving us your valuable views.

DR. L. M. SINGHVI: I am deeply beholden to you and the Members of the Committee for affording me this opportunity.

(The Committee then adjourned.)

RECORD OF EVIDENCE TENDERED BEFORE THE JOINT COMMITTEE ON THE LOKPAL
BILL, 1985

Monday, the 18th July, 1988 from 15.00 to 17.00 hours in Committee Room
C, Parliament House Annexe, New Delhi.

PRESENT

Shri Somnath Rath—Chairman

MEMBERS

Lok Sabha

2. Shri T. Basheer
3. Shri H. K. L. Bhagat
4. Shri K. P. Singh Deo
5. Shri Indrajit Gupta
6. Prof. M. R. Halder
7. Shri Braja Mohan Mohanty
8. Shri D. K. Naikar
9. Shri C. D. Patel
10. Shri Aziz Qureshi
11. Shri Ram Swarup Ram
12. Prof. N. G. Ranga
13. Shri C. Madhav Reddy
14. Shri S. Jaipal Reddy
15. Shri G. G. Swell
16. Shri K. P. Unnikrishnan
17. Shri Zainul Basher

Rajya Sabha

18. Shri Lal K. Advani
19. Shri Baharul Islam
20. Shri Bir Bhadra Pratap Singh
21. Shri P. N. Sukul
22. Shri Parvathaneni Upendra
23. Shri Virendra Verma

SECRETARIAT

1. Shri K. C. Rastogi—Joint Secretary
2. Shri G. S. Bhasin—Chief Legislative Committee Officer.
3. Shri Swarn Singh—Officer on Special Duty.

REPRESENTATIVES OF THE DEPARTMENT OF PERSONNEL & TRAINING
Shri Hazara Singh—Deputy Secretary.

REPRESENTATIVE OF THE MINISTRY OF LAW & JUSTICE
(LEGISLATIVE DEPARTMENT)

Shri B. K. Samaddar—Deputy Legislative Counsel.

WITNESSES EXAMINED

1. Justice P. N. Bhagwati (Retd.)

2. Shri P. M. Bakshi, Formerly Member Law Commission.

1. Justice P. N. Bhagwati (Retd.)

(The witness was called in and he took his seats)

MR. CHAIRMAN: I welcome all the Members of the Committee as well as Justice P. N. Bhagwati to this meeting. Before we proceed, may I draw your attention to Direction 58 of the Directions by the Speaker which reads as follows:

"58. Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament."

JUSTICE P. N. BHAGWATI: I have no objection at all.

MR. CHAIRMAN: It is up to you. I want to make it clear at the beginning itself. I think you would have received the copy of the Bill and also the relevant questionnaire. You may start now.

JUSTICE P. N. BHAGWATI: Sir, so far as the draft Bill is concerned, my view is that it will only have a cosmetic effect. There are really no teeth in the Bill. It is not adequate, in my opinion, to meet the needs of the situation. Perhaps, this is what the people have in mind. There are certain points to which I would like to draw the attention of this hon.

Committee. The first point is that the complaint which can be made to the Lokpal is only in respect of any offence punishable under the Indian Penal Code, Chapter IX or under the Prevention of Corruption Act, 1947. It does not take into account complaints in regard to misuse or abuse of authority. Misuse or abuse of authority is not necessarily an offence under the Indian Penal Code. This question has gone before the Supreme Court once or twice. Take for example, the Minister. He may tell somebody: "All right, you are entitled to a certain quota provided you give some money to another party or person". That may or may not be covered by Chapter IX of the Indian Penal Code. But still, it will be misuse or abuse of authority. Contracts are given. There may be favouritism and nepotism but not necessarily that may be termed as corruption. Apart from that, it is very difficult to establish corruption. But still misuse or abuse of authority may be very apparent. So, these are the cases which will not be within the purview of the Lokpal. That is my humble opinion. In my opinion, the complaint should also include a complaint in regard to misuse or abuse of authority, if we really want the Lokpal to be effective in the manner in which he is functioning in Sweden or Norway.

Then, the second point is about the Public functionary. The draft Bill includes the Minister, Minister of State, Deputy Minister or Parliamentary Secretary. I would suggest that why not we bring in the bureaucracy,

the Secretaries, Additional Secretaries and the Joint Secretaries and those who are highly placed in the Public Sector Corporations because if you really want to eliminate corruption, nepotism, favoritism, misuse or abuse of authority, it is not merely the Minister or the Deputy-Minister who may be guilty of these things. There are a large number of Public Sector Undertakings where large contracts are given. There are the Defence Establishment Contracts. I am told by a large number of people who deal in these things that there is corruption in the Defence Establishment also. It may or may not be true. I am not in a position to make any positive statement on that here. But I have heard about this from the people. So, all these people will be outside the purview of the Lokpal. So, in my humble view, all these people up to the Joint Secretary level and the Public Functionaries of the Public Sector Corporations and the Defence Establishment in so far as contracts are concerned, must be brought within the purview of the Lokpal.

As we proceed further, in Clause 4 of the draft Bill, there is a provision that before a person is appointed as Lokpal, he shall if he is carrying on any business, sever his connection (Short of divesting himself of ownership) with the conduct and management of such business. Here, I would like to ask as to why he should continue the ownership of his business. I think the whole idea is to insulate him together to ensure that he is free from any influence, if I may use the expression. If that is so, then the very fact is that he may not be in the conduct of management but he may still be the owner of the business establishment which will give an interest, a bias and sometimes exposure to influences etc. If once the right person is selected, there is no problem. But if we are going to have these safeguards with a view to insulate him from these influences, then why there is this "Short of divesting himself of ownership"?

Clause 4(2) says: "On ceasing to hold office, the Lokpal shall be ineligible for further employment to any office of profit under the Government of India or the Government of a State". My view is that he should not be eligible for being appointed as a Minister or State Minister or Deputy-Minister or Speaker or Governor. We have to ensure that he must not be looking forward to any promotion or any inducement. Once he retires as Lokpal, he must go out and take part in public life. For example, why should you give him Governorship of a State at all? The people must feel that we have here a Lokpal who is not looking forward to any betterment of his career or any other job. If he retires, he must take part in public life. It has been said by an American Judge about judges that judges are more bribed by their ambition than by money. Therefore, the same thing should not happen in regard to Lokpal also.

If you really want to give high status to the Lokpal, I would suggest that he must get the rank of the Chief Justice of India. He must be bracketed with the Chief Justice of India or the Speaker.

Then, proceeding further, in Clause 6, there is a procedure for removal. It has been stated in Clause 6 of the draft Bill about removal. Here, I would suggest very humbly that the same procedure must be adopted in regard to his removal as is provided for in regard to the removal of Supreme Court Judge because we are placing him almost at that level. Therefore, the same provision for impeachment, which is provided for in the case of Supreme Court Judges, should be provided for in the case of Lokpal also. Clause 7 reads:

"The Lokpal shall, for the purpose of assisting him in the discharge of his functions (including verification and inquiries in respect of complaints) under this Act, appoint a Secretary and such other

officers and employees as the President may determine, from time to time, in consultation with the Lokpal."

Of course, 'President' means the Government. It may be that the Lokpal needs certain employees and officers, but the Government may take a different view; Government—I am only talking about the theoretical possibility—can starve him of the staff so that he is not able to function effectively if he proves to be inconvenient. I am merely looking at the thing from a very broad angle. It is not that such things happen. Maybe, such things will not happen. But we have to provide against such things when we enact a legislation providing for a Lokpal who will really be occupying a very high position in public life and in whom people must have confidence that they can approach him and that he will act honestly, fairly and boldly. Therefore, that is some thing which I would request the hon. Committee take care of.

Not only this, I would suggest that a core investigative staff must also be given to him. Otherwise, he will have to secure the services of officers and others from the Government. So far as the other staff is concerned, that is alright but a core investigative staff, under his control completely and only at his disposal, must be there without his having to request the Government to spare the services of any particular member of staff.

I personally agree, so far as Clause 10 is concerned, that any person other than a public servant may make a complaint. A public servant may not be entitled to make a complaint, because it is possible that sometimes frivolous complaints may be made by persons who are disgruntled and aggrieved by the orders of their superiors. I know of such things happening. It may encourage indiscipline. Personally I am in agreement with Clause 10 that the right to make a complaint should not be given to a public servant. But any

other member of public should be entitled to make a complaint.

There is another thing: Clause 10, sub-clause (2), says that 'the complaint shall be in the prescribed form and shall set forth particulars of the offence alleged...'. I would suggest that we must add the words, after 'particulars of the offence', "so far as they are available to the complainant". If you insist on every detail, he may not be able to give; only very broadly he may be able to give. So, 'particulars so far as they are available to the complainant' should be there. Otherwise, it is possible that it may be said that he has not specified the date or time when a certain event is supposed to have taken place, and the complaint may be thrown out. Clause 12, sub-clause (2), reads:

"Every such inquiry shall be conducted *in camera*." I personally feel that it should be conducted *in camera* unless the Lokpal deems it otherwise. There may be a case where it may be necessary to have it in public. For example, in 1958 we had the Bose Commission. It was an inquiry held in public; any one could come and attend the inquiry; it went on for 57 days in all; it was an inquiry which was held not *in camera*. Ordinarily the Lokpal will hold it *in camera*, but the discretion must be given to him that in appropriate cases he may hold it in public because there is nothing like public glare in order to instil confidence in the public mind that everything is being done fairly and justly. That is why, the proceedings in courts are always required to be held in public. Of course, here the situation is different because inquiry is held. Therefore, it may be *in camera*, but the Lokpal should have the discretion to decide whether it should be held in public or not.

Going to Clause 14, with regard to evidence, I personally feel that it is a well-drafted provision. The only thing is that sub-clause (4) says:

"No person shall be required or authorised by virtue of this Act to

furnish any such information or answer any such question or produce so much of any document—

(a) as might prejudice the security, or defence, or international relations, of India (including India's relations with the Government of any other country or with any international organisation), or the investigation or detection of crime;"

"Projudice the investigation or detection of crime"—that may be too wide an expression. Security of State, defence, international relations—they are very valid reasons why certain documents should not be allowed to be produced or the information should not be given. There also, I am glad that ultimately the Lokpal has been made the sole judge. The documents may be shown to him in private and he can decide for himself whether it falls within the exceptions laid down and where it does not, he can direct it to be produced. But the expression 'the investigation or detection of crime', I feel, is very wide.

Coming to Clause 16, there is no provision in the draft Bill about the report being laid before Parliament and being made public. I would submit humbly that every report made by the Lokpal must be laid before Parliament and it must be made public. People must know what is the report which has been made because that is the surest guarantee of fair and just action. People must know whether those persons are guilty or not. Not only that, I would submit that, when a report is made, Government must act upon it. Otherwise, it will have no meaning; this will have only cosmetic effect. Therefore, it is necessary that, once the Lokpal makes a report, it should be acted upon, and if the Government thinks that the report is not correct, then the detailed reasons must be disclosed to the public...

MR. CHAIRMAN: There is a provision in the Bill that the report will be sent to the Prime Minister. What have you to say about that?

JUSTICE P. N. BHAGWATI: It goes to the executive. It should be laid before Parliament. I do not find that provision here. Every report must be laid before Parliament because ultimately Parliament is supposed to act as a check on the executive.

MR. CHAIRMAN: Please read sub-clause (3), Clause 16.

JUSTICE P. N. BHAGWATI: "The Lokpal shall present annually to the President a consolidated report on the administration of this Act..." That is different from the report itself. The report itself, every report, must come before Parliament. Parliament must know what is the report, why Government has not taken action, or if Government has taken action, whether the action taken is appropriate or adequate or not. It is absolutely essential, to my mind, that the report must be laid before Parliament and must be made public. Also the Government must act upon the report and if they do not, for any reason or reasons, they must disclose the reasons why the report has not been accepted so that, if necessary, the citizen may have the right to go to the court or seek any other appropriate remedy. Otherwise, there is no meaning in having a Lokpal. Therefore, my suggestion is that the Report of the Lokpal must be acceptable to the Government. If for any reason Government takes the view that the same cannot be accepted then the reasons for not accepting it must be disclosed to Parliament and also people at large. Somehow people today feel that Commissions of Inquiry are appointed only to bail out the executive Government. Somehow people have lost faith in Commissions of Inquiry. We do not expect this to happen to Lokpal. I do not say Government should always accept the Report. There may be exceptions. But in that case let the Government disclose the reasons to Parliament and let the people judge. Ultimately in

a democracy it is the people who are to decide. Democracy—according to me—consists not in merely electing representatives but democracy has to be participatory democracy where people participate at all levels of decision-making. I would even go to the extent and say when an important legislation has to be brought it must form the subject-matter of discussion, suggestions, comments and recommendations from the people and only then the Government should put forward that piece of legislation. This is happening in Soviet Union.

Now I would like to take up Clause 22. Here I would like to say that this provision is too wide. It may deter many persons from making a complaint. I would agree if a person knows that a particular information is false and yet makes a complaint then you may punish him. If a person does out of malice then obviously he must suffer and not otherwise. Let there not be provision for minimum punishment. Let us leave it to the discretion of the Lokpal.

SHRI VIRENDRA VERMA: Would you like to comment about the provision of quantum of punishment regarding wrong complaints?

SHRI P. N. BHAGWATI: I personally feel the punishment that has been provided for is too heavy. If it is a malafide complaint then, of course, I put it on a different footing. So there should not be provision for minimum punishment. We should leave it to the discretion of Lokpal. Maybe after two-three years if you find it is not working properly then you may re-consider. In many of the penal statutes we introduce the minimum punishment clause only at a much later stage. So you may provide a maximum of three years but not the minimum.

Further I find there is provision for an appeal straight to the Supreme Court. I do not know if appeal to the High Court would be enough. Supreme Court is already over-burdened.

Anyway it is a matter of policy with which I have nothing to do. I think appeal to the High Court should be enough.

Now, I come to Clause 23. Here you have dealt with the transfer of the case by the Supreme Court under Section 406 CrPC and for that purpose Lokpal should be deemed to be court of Session. Does it mean Supreme Court will transfer the case from Lokpal to some court of Session. This Clause provides that Supreme Court can transfer the case from Lokpal. That would not look nice. Here we have a very highly placed officer. We must trust his discretion. So, I feel Clause 23 should not be there.

In respect of Clause 24, I would like to say that it can happen that after the case is disposed of by the Lokpal some more evidence may come to light in support of those allegations. So it should be possible for him to file the proceedings in the court. I would suggest that at the end we may add 'unless new facts or evidence is discovered in support of those allegations'. If some new evidence is found then there is no reason why the public functionary should escape some prosecution. So, these are my suggestions which I put before you for your consideration.

SHRI D. K. NAIKAR: In making your submissions, you said that the report submitted to the Lokpal, should also be submitted to both the Parliament Houses. Otherwise, it has no effect in fact. You are aware that under Article 340, a Commission is appointed and it should submit a report. That report will be given to the Executive Head and it will be acted upon by the Government. Then, a copy of the report so presented together with a memorandum explaining the action taken thereon is to be laid before each House of Parliament. That procedure is not unknown as per our Constitution. Similarly, provision has also been provided in this case. Do you agree with this?

SHRI P. N. BHAGWATI: There is no difficulty in this regard. But it should not be too long. Now we are having a new provision by Lokpal which is really a provision of ombudsman who is going to oversee some of the things. It is the report which is made by a very high authority in the country. Then that report must be placed immediately within a month's time regarding what action to take or not to take. But it cannot be delayed too long, because time loss does affect things.

SHRI D. K. NAIKAR: In Clause 16 (3), it is given 'as soon as may be after, and in any case not later than ninety days from the receipt of such report...'

SHRI P. N. BHAGWATI: That is 'on the administration of this Act'. That does not deal with all the individual reports. You may at least give it in a summary but the question is that the whole report must come before the Parliament.

SHRI D. K. NAIKAR: You have rightly said that the allegations are referring to Section 160 to 170 of the Indian Penal Code which are contained in Chapter IX. Even as they are, it is possible for every citizen who is aggrieved to make a complaint before a magistrate. But no such cases are coming forward. Nobody is taking interest in filing such complaints and we have not come across any punishment in such cases. These are all the offences specifically made apart from the anti-corruption. Do you think that if a penalty is imposed on a person who makes a complaint and if there is an imposition on his part to deposit Rs. 1000, is it possible for any citizen to file any complaint with the risk of depositing Rs. 1000?

SHRI P. N. BHAGWATI: Of course, you have also made a provision which is good that even on writing a letter to the Lokpal, it can take action on it. If a citizen has to take the risk of Rs. 1000, then he will not think of doing it. The punishment is great

and it is debt on the people. That is why I said 'false'. I want to add the word 'false' in this connection. For example, one of the newspapers, let us say, publishes about corruption of a particular person. It may be wrong. On the basis of that information, suppose a citizen who is spirited, files a complaint before the Lokpal and supposing these facts are not correct, then he will run a risk of going to jail.

SHRI D. K. NAIKAR: Apart from that, there is a provision in the same Bill that when the Lokpal takes up the complaint, it can verify whether it is false or baseless and can reject unless there is a prima facie case to hold an inquiry. When the complaints are coming up, if it is a prima facie case, then only it can take up the inquiry. If the Lokpal pleases, then it holds an inquiry. If the complaint is false, why should he be punished?

SHRI P. N. BHAGWATI: This will be a case where it is absolutely mala-fide. Supposing some one is with a view to take vengeance against a particular public functionary and knowing that it is false, baseless, with no information and he makes a wild allegation and it is found to be false in a prima facie case—when the Lokpal is verifying, it should not encourage such people to come forward with such wild allegations. That is the object, as I see, of this particular provision. At the same time, merely it turns to be false should be no ground. The man should not be punished. But if it is false to his own knowledge, then Lokpal may make a fit case. There is no question of any trial then. It is a matter of a day's imprisonment so that he goes away in the evening.

SHRI D. K. NAIKAR: Lokpal has provisions to give punishment. In the case of public functionary, he has to simply make a report to the competent authority, and if he is guilty, then he has to be punished.

SHRI P. N. BHAGWATI: The public functionary will also be tried by the Lokpal and he may appeal to the Supreme Court also. But, I am keen that the Government must accept the report.

MR. CHAIRMAN: The report will be given to the Competent Authority. And it is defined here.

SHRI P. N. BHAGWATI: The report can be to the Competent Authority but what does the Competent Authority do regarding the report is the question. The report must be accepted. Otherwise, people will not come forward and the whole institution will die away.

MR. CHAIRMAN: Please see Clause 16(2). It says: 'The competent authority shall examine the report forwarded to it under clause (b) of sub-section (1) and communicate to the Lokpal, within three months of the date of receipt of the report, the action taken or proposed to be taken on the basis of the report.' What is your view in this regard?

SHRI P. N. BHAGWATI: That is all right. I stress that the report must be accepted. Action may be taken or may not be taken is secondary.

SHRI BIR BHADRA PRATAP SINGH: If under sub-clause 2, action is not taken, then what should be the safeguard? Otherwise, it will be defeated.

SHRI P. N. BHAGWATI: My view is that action must be taken; report must be accepted and if for any reason it is not accepted, then detailed reasons must be disclosed.

SHRI L. K. ADVANI: Are you satisfied, reasons being disclosed, because it is a contradiction? What you suggest amounts to Lokpal not being the final authority; final authority being the competent authority namely the Prime Minister and Lokpal merely being a recommendatory authority which recommendations may be accep-

ted or may not be accepted. All that you suggest is that in case it is not accepted, the reasons for non-acceptance must be given. That is a contradiction between the first stand that the report must be accepted. Lokpal, after all, we are creating an institution and if that institution after going through its elaborate process of investigation, etc. comes to conclusion that the complaint is correct and thereupon makes recommendation all that is expected is that the competent authority should act upon that finding of the Lokpal. Subsequently what you said amounted to say that he may act or may not act; in case he does not act he should give reason.

SHRI P. N. BHAGWATI: The reason why I say so is that there is no appeal or anything against the decision of the Lokpal and there cannot be by its very nature but if it is possible, you cannot rule out the possibility of fallibility on the part of Lokpal. Therefore, I am taking an exceptional case where Lokpal has come to a decision which is incorrect, let us say judges are also sometimes fallible and they make mistakes, then there must be some procedure by which the people can judge whether it is right or wrong. Unless you...

SHRI L. K. ADVANI: I follow your argument. All that I would like to point out is the scope of the Bill. I may recall that there was a Bill earlier in which the Lokpal's purview was extended to all Ministers including the Prime Minister. That was the Bill of 1977. In this particular Bill the Prime Minister has been excluded from the purview of the Lokpal. Who has been brought in; the Union Ministers, the Ministers of State, the Deputy Ministers and the Parliamentary Affairs Ministers but even otherwise if there is no Lokpal, and if the Prime Minister feels convinced on the basis of any complaint from any quarter that this person has been guilty of such and such act of corruption, the

Prime Minister can take action against him. Now, we are providing a special institution of Lokpal in which the person is, or a person who is qualified to be a judge of the Supreme Court or who is a judge of the Supreme Court, we have not touched that point whether the qualified judge of the Supreme Court is adequate or not.

SHRI P. N. BHAGWATI: You are right, I should have drawn your attention.

SHRI L. K. ADVANI: I have known cases, I am talking of the State Governments where appointments are to be made and any person who has put in 10 years of service will be qualified for a judge.

SHRI P. N. BHAGWATI: I think, I should be thankful to you for drawing my attention.

SHRI L. K. ADVANI: What I am saying is that if you believe that the Lokpal's institution would be purposeful only if it is provided that it should be accepted then there should be period after that. Then you cannot say that in case it is not accepted then he should give reasons because the person who is the competent authority happens to be in this case who even otherwise has complete authority over the person against whom the complaint can be filed. So, in this particular case what it need to be even more imperative that the Lokpal's word should be the final word.

SHRI P. N. BHAGWATI: I am afraid I would not subscribe to that view that the Lokpal word should be final but this point which is raised by you could be taken up and it is that in case the competent authority disagrees with it, the matter should go before the Supreme Court.

SHRI L. K. ADVANI: Incidentally, do you favour the 1977 Bill whereunder the Prime Minister was also under the purview of the Lokpal or

this particular Bill in which he is excluded? Which one would you favour?

SHRI P. N. BHAGWATI: I should like to know what is the position in other countries.

SHRI G. G. SWELL: I would like to ask the same question. You have been talking about the downward extension of the scope of the Lokpal. Have you got anything of the upward? Would you like to comment on this?

SHRI P. N. BHAGWATI: I would like to know wherever there is Lokpal in other countries what is the position.

SHRI G. G. SWELL: That is what we would like to know from you.

SHRI P. N. BHAGWATI: I am afraid, I do not know.

SHRI G. G. SWELL: Mr. Advani, I personally feel that no one should be outside the purview of the Lokpal.

SHRI INDRAJIT GUPTA: In earlier case who was the competent authority?

SHRI L. K. ADVANI: I think it was Speaker and Rashtrapati. Some small Committee was there.

SHRI G. G. SWELL: Whether the Lokpal would be a part of the Government?

SHRI P. N. BHAGWATI: Lokpal is an institution by itself. Originally it was not conceived as a recommendatory body which makes recommendation to the Executive. It is certainly not the case. In this case it happens to be a recommendatory body which investigates and makes recommendation to the Executive. Lokpal is not a part of the Government. He is a statutory authority created by law for the purpose of discharging certain important func-

tions of overseeing. Really the idea was overseeing the misuse or abuse of the authority but that apart, once the report is made it should be accepted and if it is not accepted then the decision of the Supreme Court should be final. There is a possibility of an error.

SHRI BRAJA MOHAN MOHANTY: I would like to invite your attention to sub-clause 2 of Clause 16. It says:

"The competent Authority shall examine the report forwarded to it under Clause (b) of Sub-Section 1 and communicate to the Lokpal within 3 months of the date of receipt of the report, the action taken or proposed to be taken on the basis of the report."

So, it does not leave any scope either for rejecting it, modifying it or not accepting it. I think he is bound by the Report. So, where is the scope that the Competent Authority can change or modify the report?

SHRI P. N. BHAGWATI: It is a view which you are taking. It is equally possible to say that action taken are proposed to be action taken.

SHRI BRAJA MOHAN MOHANTY: Action taken or proposed to be taken, on the basis of the Report does it leave any scope for the competent authority to modify it or not to accept it?

SHRI P. N. BHAGWATI: If that is made clear then there is no problem. This is highly debatable.

SHRI S. JAIPAL REDDY: Shri Bhagwatiji already observed that a mere false complaint should not invite instant punishment, as has been provided in the Bill. I may draw your attention to another anomaly. In the case of a false complaint, the Lokpal will not only find him guilty and try him and punish him, but in case the Lokpal finds a public functionary guilty of corruption, he can

do no more than recommend to a competent authority. So, this Bill in a way, has been so drafted as to deter false complainants than to punish public functionaries.

SHRI P. N. BHAGWATI: I said that there should be a provision to deter people from filing false complaints. This particular provision in the Bill is too vague and wide.

SHRI S. JAIPAL REDDY: For punishing a person for filing a false complaint, the complaint must not merely be false, but deliberately false. But the point I want to know is this. Should the Lokpal take upon himself the task of punishing a person for a false complaint, when he cannot do the same in respect of a public functionary who may be found guilty of corruption?

SHRI P. N. BHAGWATI: Otherwise, in every case, it has to be filed before the Magistrate's Court and the Magistrate will have to go into the question which has already been gone into.

SHRI G. G. SWELL: I have asked you about the upward extension of the scope of Lokpal. Have you no comments on that?

SHRI P. N. BHAGWATI: I have answered that no one should be outside the purview of it.

SHRI S. JAIPAL REDDY: My question is why a public functionary be treated on a higher footing than a complainant. Lokpal may not find a person guilty as such, but he may feel that there is a *prima facie* case for investigation. Then what will happen?

SHRI P. N. BHAGWATI: After the *prima facie* investigation, if the Lokpal feels that there is a good case, but still he is not in a position to say definitely that he is guilty, then he may make a report saying that that particular thing requires further investigation.

SHRI S. JAIPAL REDDY: Even in cases where he feels sure, the procedure open is that the public functionary must be prosecuted by a different court.

SHRI P. N. BHAGWATI: If the Lokpal comes to the definite conclusion that the public functionary is guilty, and if you give him the power to punish him, you should also provide him an opportunity to go on appeal to the Supreme Court. You cannot leave any person's fate in one individual's hands.

SHRI S. JAIPAL REDDY: I am not saying that in the case of public functionaries, the Lokpal should be empowered to try and punish. I am not speaking for that kind of instant justice. My only point is why there should be two different modes with regard to public functionaries and persons who may have filed a merely false or deliberately false complaint.

SHRI P. N. BHAGWATI: As far as the public functionary is concerned, I would not leave it to the Lokpal. He will not be able to investigate anything more. But I see your point and the logic behind it.

SHRI S. JAIPAL REDDY: Normally, in regard to procedure of appointment, it falls completely within the purview of the discretion of the Government. If it is not a satisfactory arrangement, what can be the alternative? Do you think that it is advisable to involve the opposition leaders in the process of appointment of the Lokpal?

Secondly, could the retired justices be thought fit for the job? Would it not be an out of the way favour for them?

Thirdly, should the institution be a single member body or a multi-member body?

SHRI P. N. BHAGWATI: So far as your first question about appointment is concerned, my personal view

has always been that the President should appoint the Lokpal in consultation with the leader of the Opposition and the Chief Justice. I expressed this view somewhere earlier also. Since you are appointing an ombudsman, the leader of the opposition who is recognised as the leader in the House, must be consulted. And the Chief Justice of India should also be consulted. But the appointment has got to be in the hands of the Government only because after all it is the Government of the day which is responsible to the people through Parliament. Secondly, when we say 'consultation', it must be 'effective' consultation and just not a formality. It should be effective as laid down in the Supreme Court in the case of H. S. Seth.

Now I come to your point on retired judges. This whole idea that a sitting judge is better than a retired judge in these matters is a wrong notion. Independence and character come from within. There can be a sitting judge who is not truly independent from within and he may be willing to oblige the government of the day. So also, there can be a retired judge, who is fiercely independent and who does not bother about any thing because he wants nothing.

SHRI BRAJA MOHAN MOHANTY: He may be feeling lonely and he may feel obliged for his appointment.

SHRI LAL K. ADVANI: These days very few judges are lonely and very few judges who are retired want anything. The point is not that a sitting judge is more capable than a retired judge. It is not a comparison of character at all. You have yourself seen a particular Bill and you didn't have any objection. You see Section 5. It says: "On ceasing to hold office, the Lokpal shall be ineligible for further employment to any office of profit under the Government of India or the Government of a State."

SHRI P. N. BHAGWATI: I wanted this to be amplified.

SHRI LAL K. ADVANI: The contention was that the person who occupies the Office of the Lokpal should not be in any way exposed to the temptation of seeking a job later on. It is in this context that the retired judges are being objected to. A person who is a Supreme Court judge, after his retirement, he should not be exposed to this temptation. It is in this context we are pointing out and not because of his merit, etc.

SHRI P. N. BHAGWATI: Supposing a Sub-Judge has just two or three months to go and he is appointed as a Lokpal, will he not continue for another five years? Unless you say that a judge who has at least five years to go will be appointed, then I will entirely agree with you.

SHRI LAL K. ADVANI: These are matters about whom details cannot be written into the law. It is very much dependent upon the ethics of the executive as well as the person receiving an office.

SHRI P. N. BHAGWATI: It will also depend upon the ethics of the Chief Justice of India and also the Leader of the Opposition. Therefore if you provide that a judge who has at least three or four years to go he alone be appointed, then I have no objection. I entirely agree with you.

SHRI P. N. SUKUL: That is why it is provided that only the one who is qualified should be appointed.

SHRI S. JAIPAL REDDY: There should be a single member body not a multi-member body.

SHRI P. N. BHAGWATI: If you are going to have an Ombudsman practice as in the case of all the countries to have a single person, then I would say, give him a very high position—the same position as of the Chief Justice of India. If you really select such a person, then it is going to be difficult to find more than one or two persons who can reach the peak. The

man must have great juristic competence, a tremendous force of character, fearless, independent and so on. Then one person to my mind is enough. If the Leader of the Opposition is consulted, if the Chief Justice of India is consulted, then there will be no problem.

In New Zealand and Australia, they are having only one person.

SHRI P. N. SUKUL: You have mentioned earlier that every report of the Lokpal should be laid before the Parliament and should be made public.

As soon as you lay the Report before the Parliament, it is made public. Therefore presentation to the Parliament and making it public is one and the same thing.

SHRI P. N. BHAGWATI: That is what I meant.

SHRI P. N. SUKUL: You also said in your very learned speech that officers should also be included such as from Joint Secretaries to Secretaries. For these officers, the vigilance organisation is there. If they indulge in corruption or nepotism, abuse or misuse of power on the other hand for Ministers, there is no such organisation. That is why we are making these provisions. That is why there is an institution of Lokpal.

SHRI P. N. BHAGWATI: But without meaning any disrespect, the only difficulty is that, if you are going to have the Indian Penal Code, then it is all right, but my humble suggestion is, apart from misuse or abuse of authority, in how many cases have we been able to detect them and brought them into book. Let us have the statistics. I am requesting you to look into the statistics for the last 5 years. I think there is something wrong with the machinery or with the mechanism. We cannot say that there is no corruption. There is corruption in many areas, including the judiciary also to some extent. Here you have highly

placed persons who can look into all these things. They can even supervise the investigation.

SHRI P. N. SUKUL: You said right to complaint should not be therefore a public servant. He may be much better aware of the dealings of a Minister.

SHRI P. N. BHAGWATI: It often encourages frivolous things and also at the sametime indiscipline. But if he has definite information, he can pass it on to somewhere else. What is your difficulty, otherwise? Can people get information from any other source? It is only through bureaucracy, they can get information.

SHRI P. N. SUKUL: You take for example appeals to the High Court.

MR. CHAIRMAN: Regarding this, you send a memorandum to us. Let us circulate the same to all the hon. Members

SHRI P. N. BHAGWATI: Yes.

SHRI BRAJA MOHAN MOHANTY: Would you recommend that a distinguished and an eminent jurist be appointed in the Lokpal?

SHRI P. N. BHAGWATI: It will be very subjective as who is a distinguished jurist or not or who is an eminent jurist.

SHRI BRAJA MOHAN MOHANTY: So far as the jurist is concerned, I would say a man of very high integrity should be appointed.

SHRI P. N. BHAGWATI: Theoretically it is all right that he should be capable. Here it is the objective test and in the other case it is the subjective test. But in appointing the Lokpal, I would rather go by objective test than by subjective test. Selection of an individual is subjective but not the test who is or has been. There is no scope of subjectivity in the sense that you may say that he is a distinguished person and on the other hand I may say that he is not a distinguished person. There is no dispute about it.

SHRI G. G. SWELL: There is a consensus in the country as to who is distinguished?

SHRI BRAJA MOHAN MOHANTY: Another point: About including the Prime Minister, you have already expressed your personal opinion that the Prime Minister should be included. But would you like that a democratically-elected Prime Minister who has to handle the business of the State, conduct external relations and all that, should be kept under a cloud for years? Will it promote the cause of the nation?

You must also have come across the comments of Mr. Seervai in his 'Constitutional Law', about the powers of the President in giving sanction for the prosecution of the Prime Minister. He has expressed his reservations. The democratically-elected Prime Minister will be crippled by the President. In that background, what will be your reaction?

JUSTICE BHAGWATI: Firstly, if there is a cloud, it is necessary that the cloud should be cleared at the earliest date. If the Lokpal can clear it up immediately, it would be a good thing for the nation. Secondly, Mr. Seervai of course, goes on changing his opinion off and on. If you see his first and second editions, you will know this. First he was in favour of full Parliamentary sovereignty. But he changed.

SHRI BRAJA MOHAN MOHANTY: He has a dynamic mind.

SHRI P. N. BHAGWATI: It is highly subjective. Some people may believe that it is so. Some of us do not think so.

MR. CHAIRMAN: Let us now break for Tea. Mr. Bhagwati, you also please join us.

II—Shri P. M. Bakshi, Formerly Member Law Commission.

(The witness was called in and he took his seat)

MR. CHAIRMAN: Mr. Bakshi, I welcome you to this sitting of the

Committee. Before we proceed, may I draw your attention to Direction 58 of the Directions by the Speaker which reads as follows:

"58. Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament."

I hope our office has supplied to you the bill as well as the questionnaire. What have you to say about it?

SHRI P. M. BAKSHI: I have got the papers.

SHRI G. G. SWELL: You may generally give your views.

SHRI P. M. BAKSHI: The first comment I would like to make, is that the provisions of the Bill, drafted as the Bill is, and focusing upon mainly corruption, really need to be extended to cover other types of maladministration which I have set out in my written comments, primarily for the reason that at the moment there is no adequate machinery, under the Government for investigating into cases of unjust administrative action or delay or unimaginative approach or arbitrariness or even excessive amount of red-tape, all of which come under the name of maladministration. This is the first major comment I would like to make.

The second major comment, I would submit, is that the procedure for inquiries before the Lok Pal needs to be streamlined and one or two matters, for example, the right to legal assistance or at least the right

appear through counsel, should be given in the Bill itself, rather than to be left to the rules, because it is common experience that in the first place, many matters may not receive that much attention and the rule making stage as they can receive attention here in Parliament, secondly, these are basic matters, when a person is being charged before the Lok Pal, or before any other body, with serious misconduct, then it is fair that whatever legal right he has, should be spelt out in the Act itself.

The third major comment which I would like to make is that, in regard to the provision for removal by the Lok Pal, on the ground of proved misbehaviour or incapacity, the removal should be only if there has been a recommendation for removal by the Chief Justice. Probably, that is the intention, but it seems to me that this intention has not come out very clearly in the Bill. My point is, that as it is drafted, the Bill leaves the impression that three things are necessary before removal can be ordered. The first is an inquiry, the second is that the inquiry must be held by the Chief Justice or a nominated Judge and, of course, after following natural justice. If these two requirements are satisfied then, as the language of the Bill now stands, it is for the President to order removal. But the link between the inquiry by the judicial person and the final Presidential Order, the link between the two is not made very explicit. So, it is possible, to construe the relevant clause as authorising removal, provided the inquiry has been held. But that does not require the recommendation of the inquiring authority. These are the major submissions which I would like to make here, apart from any questions which the Committee may like to put.

SHRI S. JAIPAL REDDY: You said that the scope of the Lok Pal must be expanded so as to cover cases of maladministration. The idea was to tackle the problems of corruption in high places and if the scope is ex-

panded, is there not a danger of Lok Pal being inundated by all kinds of complaints? Will not such inundation lead to its ineffectiveness?

SHRI P. M. BAKSHI: The danger which you are suggesting would be there. Notwithstanding that danger, this is an aspect of administration which somehow has not received the attention which it deserves. For a case of corruption, of course, there is the Indian Penal Code; one can go to the court and the other agencies also. But right now, serious cases of injustice, oppression and unreasonable action or action taken without imagination, which might affect millions or at least thousands of persons in a particular sphere of life, are left out. Does it not mean that the problem is not getting the attention that it deserves? So, even if the danger is there, one has to face that danger. The experience of some other countries, which one reads in the literature does not seem to indicate that it will be a burden too much for the Lok Pal to manage.

SHRI S. JAIPAL REDDY: In case the scope is expanded in the Lokpal to provide relief to the victims of maladministration, then what are the modalities of granting relief. Because it is not a court, even if a direction is given in the Lokpal, it is again subject to the discretion of the competent authority.

SHRI P. M. BAKSHI: I would answer this question in two parts. The very fact that there is a Lokpal with august personality and with a good staff, acts as a preventive check upon serious cases of maladministration, if an application complaining of maladministration apart from corruption comes within the purview of the Lokpal, you are right that he makes recommendation to the Government, but I believe it would carry much weight. Also, there will be other channels for ventilating it, if it is not promptly redressed.

SHRI S. JAIPAL REDDY: Do you think an ordinary legislative action will do or do you think a comprehensive constitutional amendment is required for this purpose?

SHRI P. M. BAKSHI: Are you speaking of the Bill as it now stands or of the Bill as it might be widened to cover maladministration?

SHRI S. JAIPAL REDDY: Both.

SHRI P. M. BAKSHI: So far I gather from the tenor of the Bill, it does not require constitutional amendment. It does however, require a strong will to implement the result of the inquiry.

SHRI BRAJAMOHAN MOHANTY: Mr. Bakshi, in our democratic system, the legislative apparatus is there. It scrutinises the executive action. So, you feel for maladministration, that apparatus is inadequate. Why do you think the present apparatus is inadequate? Another thing is about maladministration. It has two aspects. One aspect is wrong formulation of policy, for which ultimately executive is accountable to the Parliament and the people. Policies have been framed but not properly implemented. So, when you say maladministration, do you mean that formulation of policy comes within its purview? In that case, the democratic apparatus will be meaningless. Every political party gets a mandate from the people on the basis of its policy. So far as the policy is concerned, the Lokpal or any other authority cannot scrutinise it. It can scrutinise the implementation part of it only. What is your idea about this?

SHRI P. M. BAKSHI: Your question does deal with two competing, contesting, aspects. The first part of the question deals with the legislature. How far the Lokpal should be in competition with the legislature? The second part of your question is about the antithesis between policies and its implementation.

I would like to explain in some greater detail what exactly is to be covered by maladministration." I have said it in the note sent to you. I would like to quote the same here.

"If the scope of the Bill is to be expanded as per (i) above, the grounds on which a complaint can be made to the Lokpal would be that the decision—whether it is in the form of action or inaction—

(a) was contrary to law or based on a misconception of the law; or

(b) was unreasonable, unjust, oppressive or improperly discriminatory; or

(c) involved the exercise of a discretionary power for an improper purpose or on irrelevant grounds or by taking irrelevant considerations into account; or

(d) gave no reasons, when reasons should have been given; or

(e) indicates undue delay; or

(f) suffers from arbitrariness."

In dealing with the first part of your query, it seems to me that the legislature, whether it is at the Union level or at the State level would be concerned with certain major issues, sometimes they may be issues of policies. It would not be physically possible to bring pressure before Parliament in respect of all the minute instances of maladministration which unfortunately are occurring everyday in various parts of this vast country.

While giving this jurisdiction to the Lokpal, it would not be the intention to sidetrack or modify or truncate or restrict the functioning in a democratic country by Parliament.

The second part of your question is concerned with the distinction between policies and their implementation. By and large, the Lokpal would not be concerned with policy. There

are so many instances where the policy is clear, but the implementation suffers from any of the six difficulties which I have just read out. Suppose, there is a women's institution managed by the official agencies under an Act of Parliament. Of course, the policy is quite good, namely, that there must be a shelter, decent and good working place for destitute women. Having laid down that policy, it is for the concerned Department to see to its implementation in a proper manner and to carry out the welfare objectives. Suppose, a number of complaints regarding hygienic condition of the institution are made and they do not bring any result. In such cases, an institution like the Lokpal would not challenge the policy, but even while keeping within the framework of the policy, it would be able to suggest corrective action. At the same time, in the course of its experience, it may be able to give suggestions as to the needed changes in the policy.

When the policy is framed, it is not permanent. It also changes with changing conditions.

Therefore, the Lokpal would be able to give a good feedback in Parliament in formulating, re-formulating and reviewing its own policy decisions.

SHRI BRAJA MOHAN MOHANTY: The manner in which you have given your suggestions, will it not emerge as an institution higher than the Cabinet?

SHRI P. M. BAKSHI: I do not think so. The main function of the Lokpal even with the expanded version would, after all, be to make suggestions. He will not take a final decision. He will not give a distinctive judgement like a court. I do not apprehend that he will emerge as a super cabinet. It is, of course, possible that a gentleman or lady holding the office of Lokpal might be able to influence the Government or even those who formulate the policy, but

that will be a legitimate and proper thing. I do not apprehend any such danger from that institution.

SHRI L. K. ADVANI: You have said in your Memorandum that Government officers of the rank of Joint Secretary and above should be covered within the scope of the Bill. You must have seen the earlier Bill which preceded this in which officers upto

the Joint Secretary were covered. Another major difference was that the Prime Minister also was within the scope of the Bill. Would you like the Prime Minister also to be included in it or not?

SHRI P. M. BAKSHI: On principle, I would agree with the suggestion.

(The meeting then adjourned)

RECORD OF EVIDENCE TENDERED BEFORE THE JOINT COMMITTEE ON THE LOKPAL
BILL, 1985

Tuesday, the 19th July, 1988 from 15.00 to 17.00 hours in Committee Room
'C', Parliament House Annexe, New Delhi.

PRESENT

Shri Somnath Rath—Chairman

MEMBERS

Lok Sabha

2. Shrimati Basavarajeswari
3. Shri K. P. Singh Deo
4. Shri Indrajit Gupta
5. Prof. M. R. Halder
6. Shri R. S. Khirhar
7. Shri Braja Mohan Mohanty
8. Shri C. D. Patel
9. Shri Aziz Qureshi
10. Shri Ram Swarup Ram
11. Prof. N. G. Ranga
12. Shri C. Madhav Reddy
13. Shri S. Jaipal Reddy
14. Shri G. G. Swell
15. Shri Zainul Basher

Rajya Sabha

16. Shri Lal K. Advani
17. Shri Aladi Aruna alias V. Arunachalam
18. Shri Anand Sharma
19. Shri Hansraj Bhardwaj
20. Shri Darbara Singh
21. Shri Bir Bhadra Pratap Singh
22. Shri P. N. Sukul
23. Shri Parvathaneni Upendra

SECRETARIAT

1. Shri K. C. Rastogi—Joint Secretary
2. Shri G. S. Bhasin—Chief Legislative Committee Officer.
3. Shri Swarn Singh—Officer on Special Duty.

REPRESENTATIVE OF THE DEPARTMENT OF PERSONNEL & TRAINING
Shri Hazara Singh—*Deputy Secretary.*

REPRESENTATIVE OF THE MINISTRY OF LAW AND JUSTICE
(LEGISLATIVE DEPARTMENT)

Shri B. K. Samaddar—*Deputy Legislative Counsel.*

WITNESSES EXAMINED

1. Shri D. Sen, Formerly Director (CBI)
2. Dr. P. N. S. Patro, Head of the Department of Political Science, KSUB College, Bhanja Nagar (Orissa).

I—Shri D. Sen, Formerly Director (CBI)

(The witness was called in and he took his seat)

MR. CHAIRMAN: I welcome you Mr. Sen to this august Committee for giving evidence on the points that may be put before you here.

Before we proceed, may I draw your attention to Direction 58 of the Directions by the Speaker which reads as follows:

“58. Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall however be explained to the witnesses that even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament.”

Now, you have got the Questionnaire supplied to you by our Secretariat. Have you got anything to add, apart from what you have already submitted to us?

SHRI D. SEN: Sir, I have two points to make with regard to the Bill. One is a drafting point and it is a short point. The Bill seems to be too long and I personally think that some of the provisions relating to the appointment of Lokpal, except those relating to pay and tenure could go under the rules to be made under Clause

30. The second thing is rather important. It has not been clarified in the Bill what recommendations the Lokpal can make after coming to a finding on a complaint made to it. This point is very important from the point of view of subsequent action to be taken. Now, for example, while I was Director, CBI, or Additional Director, CBI, there were a number of enquiries made against Ministers on the basis of the findings of the Commission of Enquiry. Now, prosecutions were also launched. But in the end, I think all these cases faded out and this was due to the fact that first the Commission of Enquiry took a long time and the only action which could be taken on the basis of the report of the Commission of Enquiry was registration of a case for investigation to see if the evidence is sufficient to take it to the court of law. Now, this takes so much time that in the end, I think, all the labour was infructuous. So, my own feeling was that Lokpal should have certain powers by which swift action would be possible. By this I meant that when the Lokpal comes to a finding that the allegations are baseless, then of course, he will say that the allegations are baseless, but if he finds substance in the allegations and comes to the conclusion that there has been a wrong doing he should be able to recommend immediate action which may meet the ends of the case and which will not be prolonged by prosecution in a court of law.

Now, the next thing is important. It has been included in the Bill about the Chief Minister and the Prime Minister. In fact, I had written about this in an article which was published some years ago in the Hindustan Times under the caption "political corruption" and I said that there should be a Lokpal and a Lokayukt in the State but neither the Prime Minister nor the Chief Ministers should be under the jurisdiction of the Lokpal and Lokayukts respectively.

My next important point is that the Prime Minister as the competent authority has been made the final arbitrator. Now, there is a case against his own Minister and the Prime Minister may correctly say and agree with the findings or may disagree with the Lokpal, but because of all these cases being politically very explosive, the Prime Minister will be brought into a controversy. I think when there is a disagreement in this, as has been suggested by some writers also on this subject, then the case should go to the President and the President should pass the final orders. Well, these are broadly the points about the Bill.

There is one point also about the appointment of the Lokpal. Here the terms of appointment are such that even somebody without having any judiciary or executive experience can become the Lokpal. Also he can be somebody who has had a long political affiliation. Of course it is true that after becoming Lokpal he will have to give up the affiliation. So my suggestion was that the Lokpal should be appointed from amongst retired Supreme Court Judges or retired Chief Justices of High courts. Then probably any such condition that they should give up political affiliation will not be necessary. Then clause 4 would become infructuous.

Then about this bar on subsequent appointment after somebody has become Lokpal I am not quite clear to what extent this bar will operate because there is a bar on any Govern-

ment appointment to Members of the Union Public Service Commission but they have been appointed as Governors, some others for whom also it is not considered desirable that they should have any subsequent appointment, were also appointed as Governors. So, I think it should be made specific that after the Lokpal retires after his five years' tenure, he should not be appointed either a Governor or Chairman of any Inquiry Committee. This is all what I have to say. If I have to explain anything, I am prepared to do it.

SHRI G. G. SWELL: Why do you think that the Prime Minister and the Chief Minister should get out of the purview of the Bill?

SHRI SEN: My reasons are these. I think all writers on political subjects even about England and other places have written that the parliamentary type of Government now has become a Prime Ministerial form of Government and if the Prime Minister himself is put under a cloud, then the Government cannot function.

In Sweden all Ministers are out of the purview of the Ombudsman. In Denmark the Ministers are under the purview of the Ombudsman. But so far the Ombudsman has not recommended any action against any Minister.

SHRI G. G. SWELL: Then in that case the Bill is unnecessary because if it is only action against the Minister and it cannot be action against any Prime Minister, this Bill is not necessary at all.

SHRI SEN: Well, I personally feel that this Bill is still useful because when there is some hue and cry against a Minister the people say that the Prime Minister is not taking any action, but if there is a Lokpal he can be moved and he will take action.

SHRI G. G. SWELL: He will take years.

SHRI SEN: It should not take years for him. As soon as the Lokpal comes to the conclusion, he should not wait, for example, the disproportionate assets of a Minister can be investigated. While investigating the disproportionate assets, suppose he comes to some conclusion that some assets had been acquired in a wrongful way, he should recommend action immediately.

SHRI G. G. SWELL: Why do you have this witch hunting of a particular Minister in public? Do you feel that the Bill is necessary at all for that purpose?

SHRI SEN: In Britain and in New Zealand, the two countries which have a parliamentary form of Government like ours, the Ministers have been kept out of the purview of their Ombudsman on the ground that for Ministers there should be political processes. Here it has been considered probably necessary that there should be a Lokpal.

SHRI G. G. SWELL: Here also there is a political process. As you know, we have had 25 changes in the Cabinet in the course of the last four years. Political action in India is much swifter.

SHRI BRAJAMOHAN MOHANTY: Mr. Sen, you have submitted a Memorandum. In clause 3 of your Memorandum you have suggested that the Lokpal must be above suspicion. There is no doubt about it, there is no controversy about it. But why are you confining only to retired Supreme Court Judges? Serving Supreme Court Judges can also be there. Why do you exclude the jurists?

SHRI SEN: I think I can quote it as my personal view.

SHRI BRAJAMOHAN MOHANTY: Simply because somebody is or was sitting as a Supreme Court Judge, is he impartial? Should he not be subject to influence? Why do you pre-

sume like that? It is a question of individual personal integrity of a man who is chosen as Lokpal. But as a matter of fact somebody should be considered for this post.

SHRI SEN: Can I be allowed to put a counter-question? Who you would say is above integrity? Who is beyond doubt?

SHRI BRAJAMOHAN MOHANTY: So, according to you only sitting or retired Supreme Court judge you have given but you have not given any other category. That is why, I have put this question.

SHRI SEN: I have put it for two reasons. One is he should have judicial knowledge. He should generally be considered as unbiased and a man of integrity in public. Another reason is that he should have no political affiliation.

SHRI BRAJAMOHAN MOHANTY: Your proposition is all right. Is it wise to confine only to retired Supreme Court or sitting Supreme Court judge? Even the Supreme Court judges, if you analyse the position given during the last 25 years, how much have they been influenced by their determined views and even today they are influenced by the cultural heritage that they have. How could you say that because somebody is retired Supreme Court Judge, he will not have any obligation?

SHRI SEN: Supreme Court judges also are not above bias. They are least amenable to influence and they are least biased.

MR. CHAIRMAN: That is the view of the witness.

SHRI BRAJAMOHAN MOHANTY: Distinguished tourists never adorn the Bench because they are distinguished in their own field and contribute to the science of law. Even the Supreme Court Judge has politi-

cal affiliation. Even Ministers have been Supreme Court judges. Will you give clarification on Clause 9 of your memorandum? Will you give some clarification on "dismissed", not "discussed"?

SHRI SEN: I want to give an example. After 1977, some case was registered against Minister. One case was filed against Mr. V.C. Shukla. I do not know much. This case was that he got a poster designed by somebody in office. According to the CBI, if the poster had been designed by commercial artist, it would have cost Rs. 1,500/-. This was a petty case of corruption. By that standard, any Secretary to the Government of India or any Minister can be hauled for corruption because there is nobody who does not ask for his PA private to typing of work of some kind or the other. That is why, I said that petty and trivial allegations should also be shown be dismissed.

SHRI BRAJAMOHAN MOHANTY: You have to define them. You might have heard the story of Victor Hugo who stole a piece of bread to feed his children and his sister's child for which he was convicted for many years. In the Indian Penal Code, there is a Clause for petty offence. A theft is a theft, petty or trivial. So far as punishment is concerned, it will be considered as a very small item.

SHRI SEN: It is too legalistic a view. To dictate private letters to Steno. is also corruption. Whether it is petty or trivial will be decided by the Lok Pal himself.

SHRI BRAJAMOHAN MOHANTY: You do not want to provide any definition to 'petty' and 'trivial'.

SHRI SEN: You cannot define them like this.

SHRI BRAJAMOHAN MOHANTY: You have never come across any-

where about the definition of 'petty' or 'trivial'.

SHRI SEN: When the Bill of Ombudsman was being debated in UK some said that he should be able to investigate all kinds of misconduct. Somebody said how you would define misconduct. The hon. Member who raised the point said "We may not be able to define misconduct. But when we come across something which is misconduct, we can easily recognise it."

SHRI BRAJAMOHAN MOHANTY: Discretion to decide whether it is petty or trivial or whether any action would be taken will be left to the discretion of the Lok Pal.

SHRI BIR BHADRA PRATAP SINGH: You have said that in case of disagreement between Lok Pal and the competent authority, it should be referred to the President of India. Certain people expressed the view that in case of disagreement, it should go to the Chief Justice of India. What is your reaction to this view?

SHRI SEN: I think the Chief Justice of India will look at it from the purely evidence point of view. No Chief Justice of India or judicial authority has got the entire perspective also. I would like to cite an example here. There was a case in which shares were sold at a very high value. Many authorities came to the conclusion that this was a case of corruption because they were sold by somebody who had some political influence and sold to a firm. But somebody with wider perspective said: 'No, when somebody has such a number of shares, then somebody will pay high price for them for just getting the control over the Company.' Coming to the point, I would like to say that after all, Lokpal will have the same status as the Chief Justice and if the Prime Minister does not agree with him there should be somebody higher and that authority, I thought could be only the

President. When we consider the President above all, it can be done. We all recognise that the President is not the President of a Party but he is the President of the entire country. He will take all the factors into consideration before giving his finding.

MR. CHAIRMAN: Don't you think that the President has to act as per the advice of the Prime Minister?

SHRI D. SEN: In certain cases, if he can act without this limitation, then you can take it that he can act on his own initiative in such a case.

SHRI LAL K. ADVANI: My view is, according to the Constitution it is not possible. This proposal that you make is to be put into implementation. It has to be by virtue of the Constitution itself and not by virtue of a statutory provision of this kind because according to the scheme of the Constitution, the President has no such discretion in matters of this kind. He has some little discretion, that too implicit, when he is choosing the person as to who is to be the Prime Minister etc. Except that very limited field, which too derives from the Constitution itself, no statute can give him any authority more than what is given in the Constitution. Even, in this matter if it is written only into the Lokpal, he will have to act by the aid and advice of the Council of Ministers which mean the Prime Minister. Here, you have taken objection to the proposal which my hon. colleague referred to. This was brought in by a witness yesterday viz. that if the competent authority does not agree with the recommendation of the Lokpal, in that case the matter ought to go to the Chief Justice. Your objection was that the Chief Justice is inclined to view it legalistically. Secondly, the Lokpal, according to the statute, is being chosen from among the retired or the present judges. Of course, it has been said that he is to be a qualified judge of the Supreme Court.

You have not agreed with my proposal and many others have not agreed. But basically, it is a judicial outlook that is expected of anybody. Therefore the judicial outlook has to be there. If a matter goes to the Chief Justice of this kind, I am sure he will take an objective approach. There should be no objection to that. If at all an appellate authority is needed, the Chief Justice would be a better authority. That is what immediately occurs to us. Certainly, you cannot undo the Constitutional frame by a simple law.

SHRI D. SEN: I get your point. Under the Constitution, the President has to act by the advice of the Cabinet.

SHRI LAL K. ADVANI: You have also suggested that the scope of the Bill in regard to complaints should not be widened but should include 'complaint' of any kind of misconduct which in the opinion of the President, should be enquired into by the Lokpal. It is like giving full discretion to the President as to what he regards as misconduct and said to be enquired into by the Lokpal. Whereas, some witnesses have suggested that why should we confine the purview of the Lokpal simply to violation of IPC or the Prevention of Corruption Act. The origin of the entire concept of misconduct, abuse of power, abuse of authority is not a criminal offence but it perpetrates great injustice on the society among the citizens. It is really the starting point of misconduct. That should be more specific rather than leaving it to the President to decide what is misconduct said to be enquired into by the Lokpal because you yourself have suggested about widening.

SHRI D. SEN: I have not suggested anything about widening.

SHRI LAL K. ADVANI: If you write into the statute that not merely violation of IPC or Prevention of Corruption Act but also abuse of authority

is an offence, then the term 'abuse of authority' has a very definite connotation. Whereas misconduct, in the opinion of the President, needs to be enquired into by the Lokpal, is a very widefield.

SHRI D. SEN: The Ombudsman was created to look into the cases relating to same people. But, to cite an example, even when the British Bill was being debated in the Parliament they have the Parliamentary Commissioner who is equivalent to Ombudsman—both the parties agreed on one thing i.e. the jurisdiction should be as limited as possible. So, if you want to omit this, it is all right, this may be omitted. I will prefer that President should have no powers to decide anything rather than widen the scope of allegations. But in my personal view, the Lokpal being a new institution, there will be much better chances of its being established firmly if his scope is limited.

SHRI LAL K. ADVANI: I would like to put one last question. Your comments do not refer to the specific questions that have been posed. Under this Bill, a complainant would have to deposit Rs.1000/- with the Lokpal and if the complaint is proved to be wrong, he runs the risk of being jailed for three years and Rs. 50,000/-. With this kind of a provision, do you expect complaints would be forthcoming?

SHRI D. SEN: The safeguard against this will be that if the complaint is bonafide Lokpal will not launch a complaint. We should expect this from a person that he will not launch a complaint unless that person thinks that the complaint was *malafide*.

SHRI LAL K. ADVANI: There is nothing of that kind in the Bill which says about that. The Bill simply says: "if the complaint is proved to be false." The word 'false' does not mean deliberately false. The word 'false' does not mean *mala fide*. The word 'false' can be interpreted as being proved untrue. So, if the complaint

is proved untrue though the complaint is *bona fide*, on the basis of his information he made the complaint—he is not in a position to prove it. If he is in a position to prove it, he would straight go to the court and prosecute a person under IPC or the Prevention of Corruption Act or anything of that kind. The point is that he has merely asked for an enquiry. There is a provision also. If the complaint is frivolous, it might be rejected on the face value. After the enquiry, if the Lokpal comes to the conclusion that it is wrong and not true, on that basis alone he is liable to be jailed, to be fined. With such a situation, do you think complaints are likely to be forthcoming?

SHRI D. SEN: My view is based on my practical experience. There were two cases in which there were very wild allegations made against to Speakers of Lok Sabha. I would not name them. We investigated the cases. Though the allegations were false—and those people had made the complaints at the instigation of somebody—we could not prosecute them because under Section 182 IPC it is necessary to prove *mala fide* which is very difficult to prove. So, I thought it would be better to give the discretion to the Lokpal that when he feels that a complaint has not been made *malafide*, he will refrain from prosecution.

SHRI LAL K. ADVANI: My question was different. It was not from the point of view of the person complained against. My question was whether, with this scheme, it is likely that there would be complaints. Because there are already other avenues open. Ours is an open society. The press is there, Parliament is there, for me to ventilate my grievance against that person or Minister. Why should I knock at the doors of Lokpal and expose myself to this kind of risk?

SHRI D. SEN: I think, this is the object of the Bill itself that people

will have greater faith in Lokpal than in district courts.

SHRI P. N. SUKUL: I agree with you when you say that the Lokpal must be above suspicion and I also agree with you when you say that the Supreme Court judges are supposed to be, by and large, people above suspicion. But I want to seek a clarification on this point. Suppose a Supreme Court judge becomes a Member of Parliament. Can he be appointed as Lokpal?

SHRI D. SEN: I have said, though I have not suggested as to how the Act should be amended to provide for it, that nobody with political affiliation should be appointed.

SHRI P. N. SUKUL: I agree with you when you say that the Prime Minister should be out of the purview of this Bill. But I do not agree as, Mr. Advani also did not, that in the event of a difference of opinion between the Lokpal and the Prime Minister, the case should be referred to the President, because the competent authority is the Prime Minister for appointment of Ministers. It is his Government. He is the competent authority. If he agrees, it is allright.

SHRI D. SEN: My objection was only this: the Prime Minister should, as far as possible, remain above controversy in regard to decisions taken by the Lokpal.

SHRI P. N. SUKUL: It amounts to forfeiture of his right to take a final view.

SHRI D. SEN: If the Constitutional position is that, then I have nothing to say.

SHRI P. N. SUKUL: Here is a case of a member of the Council of Ministers who is appointed by the Prime Minister. That is why Prime Minister is the competent authority for the Council of Ministers. Since this Bill deals with the Council of Ministers, it is entirely in the fitness of things that the Prime Minister has the right and the power to decide about the fate of that case eventually.

SHRI D. SEN: If that is, Constitutionally, not possible, then I would prefer this Clause regarding difference of opinion to remain as it is drafted in the Bill.

SHRI P. N. SUKUL: My next question is whether, in your opinion, a public servant should have a right to complain.

SHRI D. SEN: In my opinion he should have no right to complain, because it will seriously undermine the working of the Ministry if he is given that right.

SHRI H. R. BHARDWAJ: You will agree that in our country the law on Prevention of Corruption has travelled a distance where all persons occupying high places can be prosecuted by an ordinary citizen through the ordinary process of law by filing a complaint.

SHRI D. SEN: Yes, that is right.

SHRI H. R. BHARDWAJ: No forum, what to speak of an Ombudsman or a Commission of Inquiry, can prosecute and punish a person in high office unless he undergoes a trial prescribed under the common law. Is that true?

SHRI D. SEN: That is true.

SHRI H. R. BHARDWAJ: Therefore, so far as Ministers are concerned or any person occupying a high place is concerned, there is already a forum in the country where a citizen has the opportunity to prosecute the person who is having assets disproportionate to his income or who has committed misconduct under section 5 of the Prevention of Corruption Act. But there is no forum in the country to attend to public grievances. I do not find any system where there is a complaint against an officer sitting in the Department over the file of a citizen unless it is physically detected. Don't you think that there is a serious need for such a public grievance redressal system in the country, our country being so vast and large?

SHRI D. SEN: In fact, if you remember, the Santhanam Committee had recommended that the CVC should have two branches, one for cases relating to integrity and the other for cases relating to grievances, and when Shri G. L. Nanda was the Home Minister there was a Commissioner for public grievances. Coming to the practical side, he received a number of complaints, a number of petitions, about grievances from the people. It is not true that there is no machinery in the Government for attending to grievances. In fact, every Department has its own machinery for looking into public grievances. The Commissioner for public grievances received hundreds of complaints and it was ultimately found that over 90 per cent of the complaints which had gone to him were from those persons whose complaints had already been looked into. But because the Ministries found that nothing could be done and his request was unjust, his petition had been rejected and as a last resort he filed a complaint. It is the duty of every Department of the Government to look into every kind of public grievances. If they cannot look into them, I don't think any outside machinery will be able to do very much.

For example, you would know that there was a letter from the widow of a Government servant from the UP. She wrote in the letter that although the family pension had been increased she had not received the enhanced family pension. The short reply was that her husband belonged to UP Government and the UP Government had still not issued orders similar to that of the Central Government enhancing the pension. What can you do in this situation? She is legitimately complaining. What happens is that in most of these cases the complaints are like this. Due to some technical reasons they remain and they cannot be satisfied.

I think what is necessary is, the Ministries should not abrogate their responsibility. If they fail to look into any public grievance or in taking action on it, then the responsibility should be fixed. In fact, the first principle of vigilance is that the vigilance is the responsibility of the Department itself. Outside agencies can only help. That is what the Santhanam Commission also said. After that the vigilance in every Ministry was strengthened. The Santhanam Commission Report also said that the vigilance is a part of the functioning of a Ministry. Similarly redressal of grievances also is a part of the functioning of the Ministry itself.

SHRI H. R. BHARDWAJ: Have we achieved some success by opening vigilance cells in the Ministry itself and getting the public grievances redressed? My personal view is wholly different. We have not achieved even 50 per cent success in redressing the public grievances by the method which you have explained. There is a lot to be done. We must have a broader and more organised public grievance redressal system. If so, what can be that? My personal view is that public still have very valid grievances, genuine grievances and we look at them as silent spectators. Now the system is such that it does not even come to our notice. We come to know about them only when we meet the public.

SHRI D. SEN: If you want to have such a machinery for redressal of public grievances, it will have to be almost as big as the Government of India itself. I can foresee what would happen also. There will only be friction and arguments between the Departments and the public grievance redressal machinery. The result will be that whatever is being done will also not be done, unless that machinery is given powers of an institution.

SHRI H. R. BHARDWAJ: Either we have to sit back and say that this is an utopian concept or once we come to a conclusion that something needs to be done, we have to make serious efforts by this Bill or by some other mechanism where at least the majority of the citizen feel that their voice is being heard and when something goes wrong, there is a mechanism to help them. I don't think that in the present system poor men have any say except in the Parliament.

SHRI D. SEN: You have to look at it from the practical point of view also. For example, take the case of Delhi Police. There would be hundreds of complaints everyday. How will they be looked into, who will look into them?

SHRI H. R. BHARDWAJ: The Home Ministry should look into them. It should be brought to the notice of the Home Ministry.

This is a very successful democracy and the people's rights and aspirations have to be borne in mind always. It is not that the Ministers and MPs are the governing class and there is nothing beyond them.

Mr. Sen, you have the widest experience in Police and CBI and we very greatly value your evidence. We are prepared to have a view on all these aspects. My personal feeling is that by catching or punishing the 30 or 50 Ministers, the entire country's problems will not be solved. We are looking at a very major problem that the public should feel that we have been able to remove their grievances at various levels and our anxiety is to have a workable mechanism.

SHRI D. SEN: May I draw your attention to the statement of Objects and Reasons of this Bill? It says:

"In its interim report on the Problem of Redress of Citizens' Grievances submitted in 1966, the Administrative Reforms Commission recommended, *inter alia*, the setting up of an institution of Lokpal."

This does not refer to problems of corruption. This forms the basis of the Lokpal Bill.

SHRI BRAJAMOHAN MOHANTY: If the charges are not established, if the charges are not proved, in that case, are the not proved and not false charges not synonymous? They are different.

SHRI D. SEN: Not proved charges mean that there is not sufficient evidence to prove them.

SHRI BRAJAMOHAN MOHANTY: Naturally, when they are not proved, there will be no prosecution. The positive requirement is that it must be false and something which is false, there is an inherent malafide.

SHRI D. SEN: My own thinking is just because of difficulty to prove malafide in court of law, this clause should remain as it is because the Lokpal Bill will be able to judge whether any malafide is involved. Whether it can be proved or not is a different thing.

SHRI D. SEN: I have not understood the question.

SHRI BRAJAMOHAN MOHANTY: Cases not proved and cases where the finding is false, these are two different kind of cases. Shall I presume that, just on malafide, not false, allegation can be considered bonafide?

SHRI D. SEN: Well, this a question which is highly realistic.

SHRI PARVATHANENI UPENDRA: Mr. Chairman, before you call the next witness, we can discuss internally for ten minutes.

SHRI D. SEN: There is one point which I forgot to mention in my note. Mr. Bhardwaj mentioned the cases of Ministers. We have got dozen of cases of the Ministers, but nothing has happened. If this happen in the case of Lokpal, I think Lokpal Institutions will not get established.

SHRI H. R. BHARDWAJ: There is a judgment of the Delhi High Court on

which controversy had arisen. So far as political people are concerned, naturally people decide their fate. Unless there is a specific charge of corruption where it can be prosecuted, mostly it happens that the Ministers meet their fate in the Parliament. My personal view is that this Bill is wholly redundant; it does not serve any public good at all. We must find out something basic for the society so that people can say that something has been given to them.

SHRI S. JAIPAL REDDY: But the sounding is for a different reason.

PROF. M. R. HALDER: You know that in a parliamentary democracy there are Joint Secretaries and Chairmen of the Public Undertakings who are so powerful. Will you propose to include Joint Secretaries, Additional Secretaries, Secretaries of the Ministries along with Chairmen of the Public Undertakings under the purview of the Lokpal?

SHRI D. SEN: There is already an authority for them—CVC.

MR. CHAIRMAN: Thank you very much Mr. Sen. Let us break for tea.

MR. CHAIRMAN: I request Mr. Upendra to express his views.

SHRI PARVATHANENI UPENDRA: Mr. Chairman, I want to know what is the time limit, within which we have to submit our report. Also, I would like to know whether we propose to ask for another extension. In my view, we have already finished examining the witnesses. There will be many eminent people. If we start taking evidences of all these people, we may not be able to submit our report on time. In my view, we have taken the evidence of the Chief Ministers, Opposition leaders, and others and nothing is left now. If the Government is not able to make up its mind, we shall submit our report. We should not be accused that this Committee has taken four or five years and still it could not submit the report. If it goes on like this, some of the members might leave the Committee.

SHRI LAL K. ADVANI: Mr. Chairman, this is a Bill, even before it was introduced, was discussed by Government with the opposition. We have expressed our views and our reservations about the proposed draft, etc.

In the course of the discussions, we have been expressing so many reservations. I found that in these discussions, the Government is also not happy with the Bill. So, if the Government has any second thought, then the Government can introduce certain amendments, which would change the basic character of the whole Bill or make it really purposeful. The amendments should be brought early by the Government.

So far as the evidence part is concerned, it is almost over.

On the basis of all the discussions that had taken place, I feel this is how we can make this particular Bill purposeful, meaningful and really something worthwhile. There is a no point in dragging on like this.

SHRI P. N. SUKUL: Once we have further amendments, then we may have to take evidences from the eminent people again.

SHRI PARVATHANENI UPENDRA: The Government has given a Bill and asked for our opinion. We are concerned with the present Bill and we have to complete our report. Let us do it.

SHRI S. JAIPAL REDDY: The general impression is that, nobody is interested in getting business transacted by the Committee. Even the press has made adverse comment on the indefinite longevity of this Committee. Therefore, it is for the Government to make up its mind and we as members belonging to the opposition parties cannot be privy to this indefinite process. My feeling is that we should not go before the House for another extension. I would like to bring to your notice that the Speaker himself said 'there shall be no more extension'. Even while the extension was granted, the Speaker made this observation that no more extension would be granted.

SHRI C. MADHAV REDDI: We have been given a task and the Bill is before us. Let us finish that. Why should we go on examining the witnesses? I do not think, there is any need for us to further examine the witnesses. Let us discuss the Bill clause by clause, prepare the report and submit it before Parliament.

SHRI S. JAIPAL REDDY: Do we take that the Committee resolves that it will not seek any further extension?

SHRI H. R. BHARDWAJ: I think, it is better if you leave this to the Chairman.

SHRI P. UPENDRA: Let us decide on two things that no more witnesses be called and fix a date today itself for examination of the Bill clause by clause.

SHRI P. N. SUKUL: As per the decision taken by this Committee when we started our work, we have yet to go to a few places and collect evidence from there like the Chief Minister of J and K, Chief Ministers of Haryana and Gujarat. Do as per your own decision.

SHRI L. K. ADVANI: We must submit our report this time and there should not be any more extension and no more tours. I suggest that let us adopt a practical approach. The Government is always at liberty to come forth with any amendment, if it wants to. If it does not want to do so, then let us go through the Bill and clause and finalise our report.

SHRI G. G. SWELL: What about the views of the author of the Bill?

SHRI INDRAJIT GUPTA: If you want to examine the three gentlemen, then let us examine Shri Asoke Sen also.

SHRI H. R. BHARDWAJ: It is always the administrative Ministry which is responsible for the Bill. It gives the view point and then a cabinet note is circulated. We only draft the Bill. But it is for the Committee to decide.

PROF. N. G. RANGA: Would it not be possible for us to request three or four Chief Ministers to come down here and give their views?

SHRI PARVATHANENI UPENDRA: I suggest that the views of the three Chief Ministers be obtained by post.

SHRI S. JAIPAL REDDY: We are not in favour of any extension to this Committee.

SHRIMATI BASAVARAJESWARI: Let us go to other two States and record evidence there. Every time we have been telling that the Committee would visit Haryana and Jammu & Kashmir States and take evidence there. If they want to suggest some amendments to the Bill during their evidence and in that case if the Government feel that some amendments should be brought in the Bill, then let the Government take its own time and do so.

MR. CHAIRMAN: I have taken note of all the suggestions given by the hon. Members.

SHRI S. JAIPAL REDDY: Sir, Mr. Upendra has suggested on our behalf that we would not be available if you are seeking extension to the life of the Committee.

MR. CHAIRMAN: I have noted your point and I am thankful that all Members are very cooperative. I will certainly do all that is necessary. I have heard the views and noted the feelings expressed by the hon. Members and I will decide the matter. Now, we can call the witness.

II. (Dr. P. Shankar Narayana Patro, Head of the Department of Political Science, KSUB, College, Bhanjanagar, (Orissa))

(The witness was called in and he took his seat)

MR. CHAIRMAN: I welcome you Dr. Shankar Narayana Patro to this Committee. Before we proceed, may I draw your attention to Direction 58 of the Directions by the Speaker which reads as follows:

"58. Where witnesses appear before a Committee to give evidence, the Chairman

shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament."

Dr. Patro, I think, you have received a copy of the Bill and the Questionnaire from the Secretariat. Now, have you got anything to say on this Bill?

DR. P. SANKAR NARAYANA PATRO: Sir, I have submitted a paper entitled "Lokpal and Lokayuktas: a study of their need in the Democratic system of India". In this paper, Sir, I have, in the beginning highlighted on the necessity and relevance of Lokpal system and Lokayukt system in India, as we have gone in for a democratic set up in the country. In this connection, I have made a study of different countries where the system of Ombudsman is prevalent and it is known in different names in different countries. In this paper also, I have highlighted on the proposals which were given by Administrative Reforms Commission in 1966 and I find in the Bill which has been sent to me, some of the proposals of Administrative Reforms Commission have been incorporated in the Bill and in the Administrative Reforms Commission's report there were certain matters which were suggested to be excluded from the scope of Lokpal Bill. In that connection, I have made a reference to some points: These points are given below. The salient points which are touched upon in terms of Administrative Reforms Commission are:

(1) Action taken in a matter certified by a minister as affecting the relation or dealings between the Government of India and any foreign Government or any international organisation or State Government.

(2) Action taken under the Extradition Act, 1962, or Foreigners Act, 1946.

(3) Action taken for the purpose of investigating crime or protecting the

security of the State including action taken with respect to passports.

(4) Action taken in the exercise of power in relation to determining whether a matter shall go to the court.

(5) Action taken in matters which arise out of the terms of contract regulating purely commercial relations of the administration with customers or suppliers except complaint of harassment or delays in the discharge of contractual obligations.

(6) Action taken in respect of appointment, removals, pay discipline, superannuation or other personal matters.

(7) Grant of honours and awards.

(8) A decision made in exercise of his discretion by an administrative authority unless the elements involved in the exercise of discretion are absent to such an extent that no discretion has been exercised at all.

(9) Any action in respect of which the person aggrieved has or had a right of appeal, reference or review to or before a tribunal.

(10) Matters in respect of which a person aggrieved has or had a remedy by way of proceedings in any court of law.

(11) An administrative decision which was taken more than twelve months before the date of the complaint.

These are the matters which in terms of Administrative Reforms Commission are proposed to be excluded from the scope of Lokpal and these are my observations on the Lokpal Bill so far as the first question is concerned.

MR. CHAIRMAN: What have you to say about the Bill?

Regarding the scope and functions of the Bill, I would suggest that the mal-administration and abuse of power should be included in the scope. Of course, this might entail some consequential changes

in the Bill. I think these are the two things which should be inserted. This is one observation.

Another observation is, it has been suggested that the heads of the institutions, officers of the Government of India of the rank of Joint Secretary and above involved in the decision-making should be brought within the purview of the Bill. Regarding this point I humbly submit that this should also include the heads of the public sector undertakings.

SHRI JAIPAL REDDY: The question is whether the office of the Prime Minister should be brought under the purview of the Bill.

DR. SHANKAR NARAYANA PATRO: I have the Questionnaire with me. Accordingly I am giving the observations. Then it is open for discussion.

I am trying to project the reasons as to why I want to support it. It might be that the advice tendered by an official might be very much detrimental to the general interests of the community or might have tendered an advice which might be international. That is the reason why I think that the purview should extend to these officers.

In regard to the minimum qualification that has been raised in the Questionnaire, I don't think statutorily anything else to be inscribed because the provisions are very clear and it is very much there that either he may be a Judge of the Supreme Court or has the qualifications of Supreme Court. Judge I do not think any special qualifications should be prescribed for that because that itself is an expression of the qualifications which are required.

In regard to the procedure of removal, the procedure which is applicable in the case of a Judge of the Supreme Court should be also applicable in the case of the Lokpal. I agree with this suggestion. That is my humble submission.

Regarding Question No. 7 which speaks about public servants, in the proposed Bill the public servants have been debarred from making complaints to the Lokpal. In my opinion I would impress upon the hon. Chairman and Members that that is not in consonance with public interest that public servants should not be there or they should be barred from making any complaint. I agree with it because there may be some confidential matters, which it is very difficult to say that the confidential matters should not be disclosed when it comes to Lokpal. Certain confidential matters may be kept confidential in public interest and if they are exposed, it will jeopardise the national interests. That is why I desire that public servants should be debarred.

SHRI P. N. SUKUL: For the confidential matters, the Official Secrets Act is there.

DR. SHANKAR NARAYANA PATRO: But one thing is that if that is to be there, then a clause is to be inducted in my opinion that what advices have been tendered in the process of public functionary should not be divulged under any circumstances.

Another question is regarding the fee to be deposited while making complaints prescribed in the Bill. Regarding this, I would support for a nominal deposit. The deposit which has been prescribed may not be in the reach of a common man and I think we should exercise our imagination for this and I hope the hon. Chairman and Members would exercise imagination in this matter.

Another thing is regarding Question No. 9 pertaining to the penalty proposed to be imposed in the case of a complaint proving to be false would discourage the complainants to lodge complaints. In this matter I would say that this matter should be left to the Lokpal and he alone should decide what should be the type of a punishment if that complaint is proved false.

Another question is regarding Rs. 50,000 for the false complaint if proved to be so.

In my opinion this is also too large an amount.

MR. CHAIRMAN: There is a minimum imprisonment of one year.

DR. SHANKER NARAYANA PATRO: That also I am putting forth before you. The amount should be minimum and in my opinion the provision for imprisonment should not be there. Penalty in terms of money should not be there.

Another thing is regarding the hearing of complaints *in camera* about which there is another question in the Questionnaire. Regarding this question I am of the opinion that if Lokpal thinks that the nature of the case is such which warrants the public hearing, there is no objection if he goes for it. But on the other hand, if the nature of the case is such that it does not warrant a public hearing, there is nothing which can prevent Lok Pal to hold a hearing *in camera*. That is my opinion.

Another thing is, in the provisions of the Bill it has been suggested that Lokpal would be empowered to secure the services of any officer of Central or State Government for making investigation. In this connection I would humbly submit to this learned Body that it would be better and pertinent if Lok Pal will have independent machinery in this country. Regarding provision for appeal, an appeal can lie to the High Court. I am one with it.

SHRI P. N. SUKUL: Members of Union Council of Ministers are all in Delhi. So, why not appeal lie to the Supreme Court? Why appeal should lie only to the High Court?

DR. P. SANKAR NARAYANA PATRO: Thereby we will be lightening the work of the Supreme Court.

It has been suggested that in the event of disagreement between competent authority and Lok Pal, the Lok Pal should be empowered to present a special report to the President which should be laid on the Table of both the Houses of Parliament and should be discussed by them. Regarding this, my view is that Lok Dal may be given power to submit special report straight and to the Parliament.

Regarding question No. 15 pertaining to Clause 30, it seeks to empower the President to make rules. I think in this context the Lok Pal himself should be allowed to make rules.

Regarding question 16, there should be one national law in this subject and it should be enacted in consultation with the State. In this connection, I am of the opinion that this is not possible. There may be a national law but you consult the State.

These are my humble observations.

(The Committee then adjourned.)

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