LOK SABHA

LOKPAL BILL, 1977

(REPORT OF JOINT COMMITTEE)

LOK SABHA SECRETARIAT
NEW DELHI

JOINT COMMITTEE ON THE LOKPAL BILL,1977

LIST OF MEMORANDA/COMMENTS/SUGGESTIONS RECEIVED AND CIRCULATED

CONTENTS

MEMO. NO. 1.

Comments and suggestions of the Bihar State Bar Council on the Lokpal Bill, 1977 received from the Secretary, Bihar State Bar Council, Patna.

(a) This Council is generally in agreement with the provisions contained in the Lokpal Bill, 1977 and strongly feels that it should be on the statute in the interest of the people.

(b) Some comments or suggestions are given below for the consideration of the Joint Committee on the Lokpal Bill, 1977:-

(i) Provision has been made in Section 4 with respect to manner of the appointment of the Lokpal or Special Lokpals. It may be useful to mention therein qualification of person or persons for appointment as Lokpal or Special Lokpals. The appointment may be limited to a Judge of the Supreme Court or the Chief Justice of State High Court, whether in active service or retired.

(ii) In clause(g)of Section 2 in the definition of "public man" mention has not been made of a State Minister although specifically Deputy Minister has been mentioned. If necessary Minister of State may also be mentioned.

(iii) In sub-section (3) of section 12 instead of the prescribed sum of Rs. 1,000/-, it may be Rs.500/- to facilitate the sending of the complaint by persons of limited means.

(iv) In section 24 of the Bill provisions have been made generally for the conduct of the inquiry in camera unless the Lokpal for reasons to be recorded in writing determines otherwise. This Council is of the opinion that the normal procedure should be of open inquiry for proper publicity and in public interest. The Council is not oblivious of the position that some persons may not be willing to depose in an open enquiry in some circumstances. The Lokpal has discretion to hold the inquiry in camera. Even in other circumstances, the Lokpal may decide to hold the inquiry in camera.

(v) Apparently there is no provision limiting the period of inquiry and report by a Lokpal or Special Lokpals. The tendency generally is to protract such an inquiry. In order that this may not happen, it may be necessary to fix a statutory period for completion of inquiry and report with specific power to the Lokpal or Special Lokpals for reasons to be recorded in writing to extend the period so prescribed.

MEMORANDUM

Suggestions on the Lokpal Bill, 1977.

The following suggestions are made for the consideration of the Joint Committee of both houses of Parlimament : -

1. Appointment of Lokpal (claus 4).

This clause does not prescribe any qualification for eligibility for appointment as Lokpal. As the clause stands, anybody would be eligible for such appointment. The job of a Lokpal being to conduct inquiries will be of a judicial nature and by and large involve appreciation of evidence. It would therefore be desirable that only those persons who have had some judicial background should be made eligible for appointment. It is, therefore, suggested that it may be provided in this clause that those who are holding or have held a judicial office of the level of a High Court Judge or above or who are eligible to be appointed a Judge of the High Court shall be appointed to this office.

2. Pension payable to Lokpal (clause 6(5)).

Under clause 6(1) the tenure of a Lokpal is 5 years. Under clause 6(2) a Lokpal will be ineligible for future employment to any office of profit under the Government of India or the Government of a State. The tenure of a Lokpal being limited to a short period and the disqualification of ineligibility to hold any office of profit thereafter being attached thereto, it is not only desirable but necessary that he should be well provided for after the expiry of that term. To attract talented and persons of merit for holding this august office, it may be provided that a Lokpal shall be paid emoluments and other allowances etc prescribed under sub-clauses (3) and (4) of clause 6 during his life time.

3. Eligibility of the Lokpal to contest elections after the expiry of his term.

The Bill does not debar a Lokpal to contest an election after the expiry of his term. He can, therefore contest election aftef the expiry of the term and thereby can aspire to become a Minister or Chief Minister etc. This aspiration may not be conducive to independence and impartiality on his part. It may, therefore, be fair to debar him from contesting elections after ceasing to be a Lokpal.

4. Inclusion of State Ministers in the definition of Public man. (clause 2(g)).

A minister in the Council of Minister in a State is not included in the definition of "Public man" as given under clause 2(g). Under clause 10(1) a complaint to the Lokpal can be made against a public man as defined in the Bill with the result that the Lokpal shall have no competency to entertain a complaint against a Minister of a State. The Chief Ministey of a State is included in the definition of public man. On the same analogy it will be appropriate to include a Minister of a State in the definition of "public man," which may be amended accordingly.

5. Complaints by public servants.(clause 12).

Under clause 12 (1) a public servant cannot lodge a complaint with the Lokpal. Exclusion of Government servants in the matter of lodging complaints with the Lokpal may be violative of Articles 14 and 16 (equality provisions) of the Constitution. The Government of India may be asked to consider this aspect.

6. Camera proceedings in respect of inquiries (clause 14 (2)).

Inquiry proceedings before the Lokpal shall be conducted in camera unless for reasons to be recorded in writing, the Lokpal determines otherwise. Keeping in view the high ideals of the new institution, it may be desirable that normally inquiry proceedings should be open unless the Lokpal, for reasons to be recorded, determines otherwise.

7. Whereas a time limit has been prescribed for the competent authority to take action on the report of Lokpal, no such time limit is prescribed for completing the enquiries or finalising the complaints instituted or pending before the Lokpal. Unless some time limit is prescribed, the purpose of this Act is likely to be defeated. If for any reason, the enquiry cannot be completed with in a time limit which may be prescribed, the Lokpal may be required to submit an interim report to the competent authority giving progress of such an enquiry & detailing reasons for its non- completion within the prescribed time limit.

-1-1-1-1

Confidential

No.5009-Pol(1P)-77/ 33134

From

The Chief Secretary to Government,Haryana.

To

Shri Y.Sahai,
Chief Legislative Committee Officer,
Lok Sabha Secretariat,
(Committee Branch-II),
Parliament House Annexe,
New Delhi- 110001.

Dated Chandigarh the 13th October,1977.

Subject:- Joint Committee on the Lokpal Bill,1977.

Sir,

In continuation of Haryana Government letter No. 4447-Pol(1P)-77/28839, dated the 23rd, September,1977, on the subject noted above, I am directed to say that on reconsideration the Chief Minister Haryana has proposed the following amendments:-

Section 10(1) of Lokpal Bill,1977, confers jurisdiction on the Lokpal to enquire into any matter involved in, or arising from or connected with any allegation of mis-conduct against a public man made in a complaint under this Act.

Section 2(g) defines the public man as under:-

Public man means a person who is or who has been—

i) . . .
ii) . . .
iii) The Chief Minister of a State.
iv) . . .
v) . . .
vi) . . .

History of the functioning of the constitution has clearly shown that the Prime Ministers belonging to the Congress Party have consistently mis-used and abused the constitutional provisions,especially Article 356 through the Governors for the purpose of dis-lodging the Chief Ministers of the States and toppling their Ministries who belonged either to the Opposite Parties or were disliked by them irrespective of the Party labels.

It is clear from the experience of the last 30 years that these malafide actions of the Ex-Prime Ministers have terribly distorted and obstructed the development of the democratic process of the formation and functioning of the State Governments and converted practically the

It is also likely that in future, the Prime Minister and the Chief Ministers may not belong to the same party. In this situation the possibility of the danger of mis-using and abusing of Constitutional provisions cannot be ignored and it cannot be ensured that the power under this Act will also not be mis-used by future Prime Minister against the Chief Ministers in politically tempting conditions.

Therefore, it is suggested that item No.(iii) in Section 2(g) of this Bill may be deleted and the Chief Minister may be taken out of its scope.

The suggestion to include Ministers in the Council of Ministers in a State in the definition of public men as conveyed vide Para 4, of the Memo sent with the letter under reference may also ~~the~~ ipso facto be considered as withdrawn. It is also suggested by the Chief Minister that the States should legislate their own Lokpal Acts after the model of this Bill.

Yours faithfully,

(R.D.Garg)

Deputy Secretary Political & Services,
for Chief Secretary to Government, Haryana.

MEMO NO. 3.

Suggestions of the Chief Minister of Himachal Pradesh on the Lokpal Bill, 1977.

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1. Lokpal should have jurisdiction to inquire into any misconduct on his own initiative as is the law in Swedon, Denmark, Newzealand and Norway.

2. Vice-Chancellor of a University, Head of any Institution, Chairman of any public undertaking, Nationalised Bank, Boards and Corporations under the control of Government of India should be included within the purview of public man as has been done in Newzealand and United Kingdom.

3. Lokpal should be given the power to investigate the administrative action taken by or on behalf of the Government of India or public authority under the control of the Government of India like Denmark, Norway, Newzealand and United Kingdom.

4. Lokpal should have power to pay to the complainant or any person who gives information to the Lokpal, the sums in respect of expenses properly incurred by them if they are unable to meet the expenses as has been done in the United Kingdom.

5. Lokpal should be given power to undertake inspection tours to make spot checks to find out the cases of irregularity, negligence and faults like Swedon.

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this kind will put him in a position of ease in the performance of his duties in an otherwise thankless job.

<u>This aspect needs the most careful attention.</u>

5. Under section 12 of the proposed Bill, "any person other than a public servant may make a complaint under this Act to the Lokpal". This again is discriminatory and against the concept of equality before Law.

This may further be illustrated by practical difficulties. Suppose a Minister is guilty of misconduct against his lady stenographer, then the aforesaid lady stenographer cannot make a complaint under this Act.

Suppose a public man physically assaults a public servant on duty, then he cannot make any complaint under this Act.

Instances of this kind have taken place & are not unheard of. Similar other examples can also be cited.

In other words a public servant is relegated to a position of second rate citizenship, if he loses the right to complain under this Act, equality before law is also infringed. If this act is challenged before the Supreme Court this provision is likely to be quashed as illegal.

6. If the allegations against the publicmen are found to be true in substance by the Lokpal, it shall be binding on the competent authority to make a reference to a Court of Competent jurisdiction for taking cognizance of the same. If, however, the offence committed is not criminal in nature but is otherwise serious, it shall also be obligatory on the competent authority to place the same on the table of Parliament.

7. The proposed Act envisages that the Lokpal will not enquire into grievances. Sometimes grievances may be more important in public interest than an isolated act of corruption. The Lokpal should therefore be given adequate discretion to inquire into grievances, if the Lokpal is satisfied that it is necessary to do so in public interest.

...3/-

8. Unfortunately, it is a settled fact that barring exceptions, the bureaucracy has made concerted efforts to fortify its privileges even at the cost of national interest by misleading ministers and public man. The secretaries and official heirarchy are not directly accountable to Parliament. The brunt of the defence of their misdeeds often falls on Ministers who are exposed to criticism in Parliament. It would therefore, be an unwise act not to put the Secretaries, the Director of C.B.I., the Director of Intelligence Bureau, the Director General of Boarder Security Force, Chief Secretaries and Inspectors General of Police of States under the institution of Lokpal. Recent events are quite fresh in public memory in this regard.

9. Whereas the working of the C.B.I. has been better than that of the other departments of the Government, it would be in greater public interest if the general supervision of the Central Vigilance Commission and the C.B.I. is placed under the concurrent jurisdiction of both the Lokpal and the Government. This will add a new dimension to the democratic functioning of the Government and inspire greater confidence in the minds of the people.

If the above suggestions meet the approval of general public opinion the drafting of the proposed Bill may be recast accordingly.

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From :

Shri R. B. BIDARI; Ex M. P.,
B. A., LL. B.

To

The Chairman,
Joint Select Committee on "Lok Pal" Bill,
Parliament House, New Delhi.

Dear Sir,

I am grateful to the Joint Select Committee for inviting public and individual comments on the Lok Pal Bill.

The Prime Ministers, Chief Ministers Ministers and Members of Parliament and State legislatures are the servants of the people and as such are bound by the ordinary law of the land

The very idea of appointing a Lok Pal or Lok Ayukta is repugnant to the provisions of the Constitution and damages the image of our Country's democracy in the eyes of the World I feel no propriety in creating new Institution at the cost of scarce resources

We have bitter experience about the behaviour and utility of the Anti-corruption Committees, Vigilance Commissions, Enquiry Commissions, Public Service Commissions Employment Exchange Offices and Land Tribunals. "We hang little thieves and take off our hats to great ones. "

Men at the highest level have been prone to malpractices Even chief Justices have been trying to influence High Court Judgements.

The Report of the Lok Ayukta of Maharashtra Govt. against two of its Ministers was turned down and the Lok Ayukta had to send his Report to the Governor.

After Chowla's case, the peoples' Representation Act was so amended as to legalise the corrupt practices by the Congress by excluding the expenditure incurred by the Congress from the accounts of the candidate The measure was given retrospecsive effect since the Prime Minister's case was pending before the Court.

It is the Party in power, that has been all along making ineffective the reports of various inquiry commissions by not only condoning the mal-practices of men at higher levels but rewarding them with higher posts for fear of disintegration of the Party

The Lok Pal is after all a human being. It may not be wrong to anticipate the appointmeat of a "Dev Pal" in future to supervise the affairs of the Lok Pal

Prevention is better than cure Conditions have vastly deteriorated since the recommendations of the Administrative Reforms' Committee. No Country can be great by imitation.

No party is against eradication of corruption. Purification of the parties is the condition precedent to do that. Eyery party should impose ban on selection of men of doubtful character " Forcible ways make not an end of evil but leave hatred and malice behind them " Moral regeneration is the only Panacea under the present conditions.

The present administrative system should be completely overhauled by adopting the following measures as early as possible.

1) Decensralisation of Power.
2) Abolition of Upper Houses
3) Constitutional celling on the number of Ministers.
4) Electoral Reforms.
5) Change in the system of education.
6) Cancellation of Reservations at all levels.
7) Immediate enforcement of Prohibition.
8) Educate the masses about the importance of their right to vote.

Gandhiji advocated direct election by adult franchise only at Panchayat levels and indirect elections at higher levels With the Decentralisation of Power and indirect elections at higher levels, more than fifty percent of the members of Parliament and assemblies can be relieved of their inertia and enforced idleness and their Talents utilised for strengthening the base

I am totally against the creation of an unwanted, extra constitutional and permanent institution with a burden on the exchequerwith avoidable expenditure. So, I am not inclined to enter into the details of the Bill

If the Joint Selection Committee decides to recommend the adoption of the Bill, I leave it to their good sense to make it fool proof.

Yours faithfully,

R.B. Bidri

(R. B. Bidri)

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(Shree Sudarshana P. B.)

Memo. No. 6

GOVERNMENT OF JAMMU AND KASHMIR.

The Chief Legislative
Committee Officer,
Parliament House Annexe,
New Delhi.

No : 6130- CS/77 Dated : 23.9.1977.

Sir,

The draft bill will not apply to J & K and we do not propose to request the Government of India to extend the application of the law (when enacted) to the State, for the present. Accordingly we have no comments to make in this behalf.

Yours faifhfully,

Sd/-
(Pushkarnath Kaul)
Chief Secretary.

Memo. No. 7

Nageshwar Prasad Shahi,
Member of Parliament,
(Rajya Sabha)

211, North Avenue,
New Delhi,
30.9.1977

Shri Y. Sahai,
Chief Legislative Committee Officer,
Lok Sabha.

Sir,

With reference to your letter, I am of the view that the Members of Parliament should be kept outside the jurisdiction of Lokpal because the office of an M.P. is not an executive office.

Yours faithfully,

Sd/-

(Nageshwar Prasad Shahi)

MEMO No. 8

PROF. DR. LOKESH CHANDRA
MEMBER OF PARLIAMENT
(RAJYA SABHA)

J 22 Hauz Khas Enclave,
New Delhi 16 (India).

29.9.1977.

Dear Sir,

Please refer to your letter of 27.9.1977, regarding the Joint Committee on the Lokpal Bill, 1977.

The Lokpal will ultimately become a counter productive institution by the crushing load of its fast accumulating work. Inter alia, a candidate loosing in an election will be able to utilise it against the person who wins to give vent to personal animosities and political vendetta. How far it will help to create a healthy political climate is doubtful. Thousands of people approach MPs with 'unreasonable' requests. If they are not obliged, they will threaten MPs with a complaint to the Lokpal. It may ultimately defeat democratic purposes by scaring away honest persons, who would not like to undergo character assasination through false and cooked up charges. Already politics is maligned as the 'last resort of scoundrels'. The Joint Committee should take the realities of the misuse of the Bill into account and specifically provide for the exclusion of prima facie frivolous complaints.

Yours truly,

Sd/-Lokesh Chandra
DR. LOKESH CHANDRA, M.P.

Chief Legislative Committee Officer
Lok Sabha Secretariat,
Committee Branch-II,
Parliament House Annexe,
NEW DELHI-1.

MEMORANDUM NO. 9

G.S. Reddi, B.A. LL.B.,
MEMBER OF PARLIAMENT
ANDHRA PRADESH

H.No.1-9-34/4/C
Fatima nivas, Ramnagar,
HYDERABAD-48.

To

Shri Y. Sahai,
Chief Legislative Committee Officer,
Lok Sabha Secretariat.

SUBJECT: Joint Committee on the Lokpal Bill 1977.

With reference to your circular asking for comments, I wish to state that inclusion of Members of Parliament in the Bill is a very retrogade step for the following reasons:-

1. Members of Parliament are not executive members. Therefore, they cannot commit any illegality, indiscretion or irregularity, punishment of which is the object of the Bill.

2. Even without inclusion, they can be tackled for commissions and omissions by the ordinary laws existing.

3. If we take the example of other countries, my point is borne out by the practices prevailing.

4. The Prime Minister, Council of Ministers and the Chief Ministers are vested with powers, which unless they are controlled are likely to exercise arbitrarily or illegally which is the purpose serving the public cause. More powers, more control should be our aim.

5. Inclusion of officers to a certain level of taking decisions at the Secretariat level may be desirable. It may also not be desirable as there are ways and means of punishing them. We have to strike a balance.

Yours sincerely

Sd/-
(G.S. Reddi)

MEMORANDUM NO. 10

Bhairab Chandra Mahanta
MEMBER OF PARLIAMENT
(Rajya Sabha)

35 MEENA BAGH
NEW DELHI-110011.

To

Shri Y. Sahai,
Chief Legislative Committee Officer,
Lok Sabha Secretariat (Committee Branch II),
Parliament Annexe - New Delhi.

Sir,

Sub: Joint Committee on the Lokpal Bill, 1977.

Ref: Your letter dated September 27, 1977.

I give below my first reactions to some of the provisions of the Lokpal Bill, 1977, which may be taken as my comments/suggestions. I may send more at a later date.

1. The 1971 Bill also covered Lokayuts. Why is it omitted in this Bill? Lokayuts have been appointed in some of the States. A uniform pattern should be there for the whole country to come into force at one and the same time.

2. Section 4(1) provides for consultations at too many points. The President being the Constitutional Head has to take the advice of the Prime Minister (which also means the approval of the Cabinet). This is implied. Over and above, he is to consult the Chairman of the Council of States and Speaker of the House of the People. Too many consultations may lead to too many views, one differing from the other. I would, therefore, suggest dropping the Chairman of the Council of State and retaining only the Speaker as he is one who has to be elected by the direct vote of the people.

3. Section 9(3) - The staff of the Lokpal should be non-transferable to any Department of the Executive, as in the case of High Courts and the Public Service Commission, so that they may work with an open mind and with a sense of freedom from fear.

4. Sec.11(2): No jurisdiction has been conferred on the Lokpal to make enquiries against public servants independently. Assuming that all public men are corrupt, when some of them are in power, they utilise or are utilised by public servants for purposes of corruption. They are

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in most cases, as experience shows, complementary and supplementary to each other. Therefore, at least the Secretaries to Government and Heads of Departments should also be included under this Section.

5. Section 12 - No jurisdiction has been conferred to make suo motu enquiry into misconduct without complaint. For the fear of victimisation, people do not want to expose themselves by bringing cases of corruption to the notice of the Authorities concerned. To guard against this, power for suo motu enquiry should be provided and if after an enquiry based on some information, it is found out to be a baseless one, then further action will not be called for, but the provision should be there.

6. Sec. 17(1)(6) - The recommendations provided for must imply proposal of the action to be taken against the public man, otherwise responsibility given is not discharged in full.

7. Sec. 25(2) - It has now been authoritatively settled that a statutory ban cannot stand in the path of exercise of jurisdiction under Art. 226 of the Constitution. Therefore constitutional amendment is necessary. Without constitutional amendment imposing a ban under Art. 226, the High Courts can interfere.

Thanking you.

Yours faithfully,

Sd/-
Bhairab Chandra Mahanti .

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Memo No. 11

G. NARSIMHA REDDY
MEMBER OF PARLIAMENT
(LOK SABHA)

132, North Avenue
NEW DELHI
4.10.77.

To

The Chief Legislative Committee Officer,
NEW DELHI :

Dear Sir,

With reference to your Circular dated 27th September, 1977 I am sending my following suggestions to be considered during the discussion of Lok Pal Bill :

1. APPOINTMENT OF LOK PAL :- Any person who is not a member of any political organisation since last ten years only should be appointed as Lok Pal :

2. Members of Parliament may be deleted as they do not have any executive powers where they can misuse :

Yours Sincerely,

Sd/-
(G. NARSIMHA REDDY)

Memo No. 12

GOVERNMENT OF ARUNACHAL PRADESH

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No. Jud-71/77 Dated : Itanagar, the 4th Oct,'77

To

Shri Y. Sahai,
Chief Legislative Committee Officer.
Parliament House Annexe.
NEW DELHI - 110001.

Sir,

I am directed to say that the Chief Minister has seen and considered the Lokpal Bill, 1977, and has directed to convey that he would like to consult the Members of the Legislative Assembly, for their views and comments, and that, meanwhile he does not see any reason why Lokpal Bill, 1977 which is designed to achieve very laudable objectives, may not be processed further.

2. He has also suggested for consideration whether a specific clause should not be added providing for deterrent penalty of imprisonment against false and frivolous complaints.

Yours faithfully,

(IP Gupta)
Chief Secretary,
Government of Arunachal Pradesh,
ITANAGAR.

21 Memo No. 13

The Lok Pal Bill, 1977.

Views of Shri Jaganath Rao, M.P. for consideration of the Joint Select Committee.

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This Bill is welcomed but needs improvement in several ways :

1. Clause 2(e) and Clause 3 } misconduct definition - A code of conduct of Political ethics and public morality is to be framed by all Political Parties and approved by Parliament. So that any deviation from that standard may constitute mis-conduct. This is necessary to make the implementations of this Act effective.

2. Clause 2 (g) : Public man - definition.

The definition should include Secretary of a Ministry or Department of the Government because it is through him that a Minister operates.

The definition should include all Ministers of the State Govts and MLAs of State Legislatures also which are left out in the present definition.

3. Clause 4, 5 & 6 LOKPAL

The Lokpal should not be eligible for re-appointment after the expiry of the term of five years.

4. Clause 12 Complaints

The present provision does not ensure against frivolous and vexatious complaints. The deposit of Rs. 1,000/- and an affidavit of the complaint is not a sufficient guarentee. The charges should be supported by the affidavits of at least 10 M.Ps. or 10 MLAs of the State. This amendment will give dignity and seriousness to the complainant before Lokpal.

Sub-Clause 4 of Clause 12 empowers even an insane person to make a complaint against a public man. This particular privilage to a lunatic should be withdrawn.

This Bill does not provide for any specific punishment against a Public Man found guilty. The report is sent to the competent authority to take necessary action. If a criminal offence is proved, he can be prosecuted. If improprities are committed, what is the punishment ? Should the Public Man be disqualified to become a Member or Minister for a period of 5 or 10 years should be provided.

Sd/- Jaganath Rao, M.P.
9.10.1977.

MEMO. NO. 14

Comments of the Chief Minister,
Goa, Daman and Diu, Panaji

1. Section 2 (c) - The Bill seeks to give effect to the 'misconduct' committed even before the commencement of the Act. We feel, the Act may not be given retrospective effect. Only the 'misconducts' committed after the commencement of the Act be covered under the Act. In other cases, the general penal laws would take care.

2. Section 2 (g) - The definition of 'Public man' does not include the members of the State Legislature. The members of the State Legislature may also be covered under this term.

3. Section 5. Qualification of Lokpal - The Bill does not prescribe any qualification for the appointment of Lokpal and special Lokpal and therefore, the same may be prescribed. In this connection, a reference may be invited to Section 3 (c) (1) of the Bill introduced by the House of Representatives of U.S.A. on 7.3.1967 wherein the qualifications of similar officer have been laid down in the bill.

4. Section 11 (4). Limitation - The limitation period of 5 years provided under sub-section (4) of Section 11 is too long. The shorter period of limitation may be imposed. Perhaps two years may be a reasonable period, when memories of the witnesses may be comparatively fresh.

5. Section 12 (3) Deposits - The deposit of Rs. 1000/- to be made by the complainant is too high. In such an event, no common man will be able to redress his grievances as the financial constraints would be prohibitive. In the result, the very purpose of the Act will not be achieved. Besides, such a provision is not found in British Parliamentary Commissioner Act, 1967, Alberta's Ombudsman Bill (Approved 1967) Hawaii's Ombudsman Bill (Approved 1967) and the Bill introduced by the House of the Representatives of U.S.A.

6. Section 26. Power to delegate - The Lokpal should not be empowered to delegate his powers to any officers, as contemplated. If it is so expedient to equitably distribute the work, additional posts of Lokpal may be created.

7. It is not clear whether a complaint would lie to Lokpal when alternative remedy is available to the complainant. This may specifically be embodied in the scheme of the proposed enactment.

27

Memo. No. 15

D. D. DESAI
MEMBER OF PARLIAMENT
(LOK SABHA)

24, SAYED ABDULLA BRELVI RD.
FORT, BOMBAY-400001.

Ref : 01/

October 10, 1977

The Secretary,
Lok Sabha Secretariat,
Parliament House Annexe,
New Delhi.

Dear Sir,

Please refer to your letter dated September 27, 1977, regarding the Lokpal Bill, 1977.

I shall be grateful if you can pass on the following views of mine regarding the Lokpal Bill to the Joint Select Committee on the Bill for its consideration :

(1) Definition of misconduct seems defective. Men in authority have often to do unpopular things. They should not be subjected to taxing enquiries for that. There should be some protection for actions taken in good faith which might have harmed somebody. Hence Clause 3 should be amended as shown in the enclosure.

(2) To make the Lokpal effective, the employees in his office should be directly under him and not under the administrative control of the Government. Hence amendments to Clause 9(1) and (3) as shown in the enclosure.

(3) The provision requiring a deposit of Rs. 1,000/- for filing complaints is too harsh. At the same time, frivolous complaints should be eliminated. Therefore, I have suggested that this amount be reduced to Rs. 500/-. This is with reference to Clause 12(3) for which an amendment has been suggested in the enclosure.

(4) The enquiry conducted by the Lokpal should be open unless there is compelling reason to do otherwise. Hence an amendment has been suggested to Clause 14(2).

(5) It is not enough if the Lokpal merely reports about the misconduct of the Prime Minister and the Prime Minister is obliged to call a meeting of the Council of Ministers to consider this report. This Council is after all his creation. So it may tend to support him. Hence the suggested amendment to Clause 18 to force the Prime Minister to place this before Parliament for its consideration.

Thanking you,

Yours sincerely,

Encl: Amendments suggested
to Lokpal Bill.

Sd/-
D. D. DESAI

LOKPAL BILL 1977

Amendments suggested by Shri D. D. Desai, M.P.

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Clause	Amendment
3(1)	For existing words, substitute :-
	A Public man commits misconduct -
	(a) if he acts in the discharge of his functions by motives of pecuniary benefits directly or indirectly either to him or to his relatives or associates; or
	(b) if he abuses his position as a public man to cause financial or personal loss or deliberate hardship to any other person, or
	(c) if he directly or indirectly allows his position as such public man to be taken advantage of by any of his relatives or associates for his or their benefit or for depriving others of their due benefits or cause harm to them in any manner; or
	(d) if any act or omission by him deliberately constitutes corruption.
9(1)	After the words "under this Act" add :-
	"and these employees shall be under his direct supervision and control during their term of service under the Lokpal".
9(3)	drop this sub-clause.
12(3)	For "one thousand rupees" substitute "five hundred rupees".
14(2)	For words "in camera" substitute "openly".
18	After the words "for the Union" add "and the Council of Ministers shall, within fifteen days of their meeting to consider the said report, place the same with its recommendation to both the Houses of Parliament which shall be called into session, if necessary, to consider this report".

Memo. No. 16

Suggestions received from Shri Yamuna Prasad Shastri, M.P.

1. The provision with regard to the appointment of Lokpal should include the leader of the Opposition as well for consultations.

2. There is a provision in the Bill that the Lokpal could investigate into the misconduct of the Prime Minister, members of the Central Cabinet, Chief Ministers of the State and Members of Parliament. I have to suggest that top Officers of Indian Services should also be brought under its purview. Similarly investigations with regard to misconduct of I.A.S., I.P.S., I.F.S. officers and similar other officers of all India Services and Gazetted officers should also come under the purview of Lokpal.

3. There is a provision in the pooposed Bill that Lokpal would submit its report about investigations to the 'Prescribed Authority' i.e. the Prime Minister. I have to suggest that the Lokpal should be empowered to take decisions as well and it should not merely be authorised to submit its report. There is no sense in submitting its report to those against whom it would investigate. Therefore, the Lokpal should be empowered to award punishment in case the charges are proved.

4. There should be a provision in this Bill that if a charge of acquiring through corrupt practices is proved against any person, his entire property shall be confiscated, so that corruption could be eradicated from the country in the real sense.

I have given some of my suggestions in brief. I request that I may kindly be given an opportunity to appear before the Select Committee constituted on the Lokpal Bill, so that I may submit my suggestions, in detail, before the hon'ble Members of the Select Committee.

With regards,

Yours faithfully,

Dated the 9th Oct., 1977. Sd/- Yamuna Prasad

26 Memo.No.17

J.N. BHARDWAJ
MEMBER OF PARLIAMENT
(Rajya Sabha)

3 M.P.Flats, Meena Bagh,
NEW DELHI-110011

October 14, 1977.

The Secretary,
Lok Sabha,
Parliament House Annexe,
NEW DELHI.

Subject : The Lokpal Bill, 1977.

Sir,

In response to your circular letter dated 27.9.77 on the above subject addressed to all M.P.s., I have to submit for the consideration of the Joint Committee as below.

1. Whereas I agree that the conduct of Public men should be above reproach but I don't think that the Lokpal will be able to raise the standard of thinking of Public men and also of others in high positions and of still others working under the spirit of self-motives and sense of vengeance. Unless there is some psychological change in the ways of our people and also of the people of other countries, the law and the new institutions will not ease the situation and on the other hand still more and more confusion will be created. The vicious circle will be created. To avert the chaos the need of the hour is self searching, judicious and upright thinking and actions on the path of realism against the vain and utopian idealism.

Creation of the Institution of Lokpal will be still an other step in complicating the administrative structure. The Britans were net unwise in not even recording their Constitution. Their working on conventions indicates that for successful democracy brevity and simplicity of law is most essential. Ours is a large democracy and for its success it is very much desirable that we should make realities of life as our guide and foot-hold.

In our country there is very high institution of Presient. He can very well look into the allegations, of mis-conduct against the public men. On judicial side there is Supreme Court. Thus I am of the strong view that there is no need to create the institution of Lokpal because in the inherent complications of our big democracy this institution can be a tool for our enemies for creating of confusion atmosphere of distrust against public men. Such a situation leads to nothing but civil war.

2/-

As far my little knowledge goes there are some similar institutions in other countries but these have their start from colonies like Newzealand. It needs deeper study to know as to what exactly was the purpose behind creation of such institutions. May be these were meant to serve the ends of their Supreme rulers. It is need-based or sentiments based. In case in their wisdon the Government think it necessary to push this Bill through I would suggest as under :

(i) The tenure of Lokpal should be three years only. A Committee with composition as under should appoint and control the working of Lokpal.

(a) President of India.
(b) Vice President of India.
(c) Prime Minister of India.
(d) Speaker of Lok Sabha.
(e) Chief Justice of Supreme Court.
(f) Leader of Opposition.
(g) One public person to be co-opted by the above.

(ii) Heads of Public Sector and Government Undertakings should be included in the definition of public-men.

(iii) M.Ps who don't have any administrative and financial powers should not be included in the definition.

(iv) The Lokpal should only be a Commission of inquiry. His findings and decisions should be subject to review by the President of India.

(v) There should be punishment for false and baseless allegations.

(vi) Cognisance of only those cases be taken where there are tangible and reliable proofs and clear violation of rules and laws and established practices.

Hoping the Committee will give their due thought to above submission.

Thanking you,

Yours faithfully,

Sd/-J.N. BHARDWAJ

MEMO. NO. 18.

Comments and Suggestions of the Lokayukta, Maharashtra, on the Lokpal Bill, 1977 (Bill No.88/77)

Part I : General Remarks.

The preamble of the Bill states that it is drafted in order to provide for "inquiry into allegations of misconduct against public men and for matters connected therewith." 'Misconduct' is defined in cl.2(e) read with cl.3(1) and cl.2(c). If one compares this definition of 'misconduct' with the definition of 'allegation' in the original Lokpal and Lokayukta Bill, 1968, which was passed by the Lok Sabha, one finds it virtually the same except for the addition of one fresh ground in cl.3(1)(c) in the present Bill which one may generally refer to as nepotism. In short, the present Bill is, broadly speaking, confined only to corruption and contains no reference to what was referred to in the Lokpal Bill,1968, as 'maladministration'.Vide cl.2(g) of the 1968 Bill. Taking their cue from the Lokpal Bill of 1968 most of the States which enacted their Lokayukta Acts included 'maladministration' in the State Acts (Maharashtra being the first in India) and I think after almost five years of experience one can say with confidence that the provision has conferred much benefit on the poor citizen and caused no difficulties of any import to the Administration. Now by this Bill we are,

I am afraid, starting to reverse the process all over India and depriving the citizen of a very valuable right.

2. Now 'corruption' or 'misconduct' is seldom (I should say 'never') found in isolation. It is not found in a written document. It has to be inferred from the evidence and a number of circumstances, as for example the conduct of the public man compared to the norms of his service; on whether the evidence of the person practising 'corruption' or 'misconduct' on the one hand or the word of the complainant on the other can be believed; the previous and subsequent conduct of the alleged delinquent; ancillary documents, and, of course, the files pertaining to the transaction or the action taken.

3. For this purpose, ample powers, of course, have been given to the Lokpal in cl.15, but these powers are in the nature of powers in aid of the collection of evidence to show that corruption or misconduct has taken place, but what is necessary is to pinpoint corruption and pinpoint the delinquent. Despite all these powers, it seems to me that it will not be possible thus to fix responsibility unless and until the Lokpal is given powers to probe into maladministration such as was defined in the Lokpal Bill, 1968, in cl.2(g). The files and all the evidence that the Lokpal has power to collect, will never show whose was the motivating force in the taking of any 'corrupt' action especially when one considers that the final will is that of a Minister in most of the important cases, but the formal order is, under the rules of business, always

issued under the signature of the Secretary. As the A.R.C. in its Interim Report on the "Problems of Redress of Citizens' Grievances" has observed :

> " No minister has any authority to pass executive orders. All enforceable orders are issued under the signature of Executive Officers in the name of the Head of the State." (para 17(c) page 14.)

4. That is why in the first report of the Select Committee appointed by Parliament the eminent Chairman of the Committee on Prevention of Corruption Shri K.Santhanam observed that 'maladministration' is the root cause of corruption. In a celebrated letter D.O.No. 1/4/63-C.P.C. dated 22nd February 1963, written to the then Prime Minister Shri Lal Bahadur Shastri, Shri K.Santhanam observed in para 3 :

> "3. The present arrangements consisting of the Administrative Vigilance Division in the Home Ministry and Vigilance Officers in all the Ministries and Departments are mainly intended to investigate and punish corruption and misuse of authority by individual members of the civil services under the Government of India. While this is indispensable, the Committee feels that the Central Vigilance Organisation should be expanded so as to deal with complaints of failure of justice or oppression or abuse of authority suffered by the citizens though it may be difficult to attribute them to any particular official or officials. These abuses may result from the procedures and attitudes of

particular departments or sets of officials. The Committee considers that the problem of maintaining integrity in administration cannot be viewed in isolation from the general administrative processes. In order to deal effectively with the problem, it is necessary to take into account the root causes of which the most important is the wide discretionary power which has to be exercised by the executive in carrying on the complicated work of modern Administration. Also, the lack of any high-level agency to whom the aggrieved citizen may resort and the discontent caused thereby tends to exaggerate the problem of corruption in his mind."(The underlining is mine.)

He reinforced the point in para 7 when he stated :

" The Committee feels that the time has come to put the entire Vigilance Organisation on a proper and adequate basis without in any way undermining the general principle that the Secretaries and Heads of Departments are primarily responsible for the purity, integrity and efficiency of their departments."

This report was accepted by Parliament and as a result there came to be appointed the Administrative Reforms Commission under the Chairmanship of Shri Morarji Desai, our Prime Minister to-day.

5. In their interim report dated 20th October 1966 intituled "Problems of Redress of Citizens' Grievances"

referred to above the A.R.C. not only accepted the above point made in the Santhanam Committee's report but enlarged upon it, In para 8 they said :

" In essence, therefore, the main issue before us is how to provide the citizen with an institution to which he can have easy access for the redress of his grievances and which he is unable to seek elsewhere. In such cases, the fact remains that the individual himself has a feeling of grievance whatever the nature of the grievance may be, and it is up to the State to try to satisfy him, after due investigation, that the grievance is untenable in which case no action is called for, or false in which case he must answer for having made a baseless accusation. The fact that he has had a reasonable opportunity of presenting his case before an authority which is in a different hierarchy from the authority which passes the order and which is independent and impartial, would in itself be a source of satisfaction to the citizen concerned even where the result of investigation is unfavourable to him. In the circumstances of to-day with the expanding activities of Government, the exercise of discretion by administrative authorities, however large the field may be, cannot be done away with nor can it be rigidly regulated by instructions, orders or resolutions. <u>The need for ensuring the rectitude of the administrative machinery in this vast discretionary field is not only obvious but paramount.</u> " (underlining is mine)

A little later they added :

" Nor have the various administrative tiers, and hierarchies proved adequate for the purpose. A tendency to uphold the man on the spot, a casual approach to one's own responsibilities, an assumption of unquestionable superiority of the administration, a feeling of the sanctity of authority and neglect or indifference on the part of a superior authority may prevent a citizen from obtaining justice even at the final stage of the administrative system."

Ultimately (see paragraphs 22, 23 and 24) the system which they have recommended was that :

" There should be one authority dealing with complaints against the <u>administrative acts of Ministers or Secretaries to Government at the Centre and in the States</u>. There should be another authority in each State and at the Centre for dealing with complaints against the administrative acts of other officials. All these authorities should be independent of the executive as well as the legislature and the judiciary." (the underlining is mine).

6. Unless, therefore, jurisdiction is given over maladministration it seems to me futile to set up a highly paid authority who will only investigate corruption or misconduct. As I have already said, there is no written proof of corruption or misconduct, and it has to be inferred from a variety of circumstances which I have indicated.

In law itself, we say that gross delay may be evidence of fraud but before a conclusion of fraud can be drawn several other circumstances have to be taken into account and it has to be found on whose part the delay was and for what reason - and that too beyond doubt - and here it is that it will be impossible upon the definition of misconduct and corruption to fix the responsibility whereas if maladministration is included, the officers responsible for the action would themselves have to explain the delay or negligence as the case may be or face a possible conclusion of maladministration itself and, in some cases, of corruption. They are the true repositories of the knowledge of what happened in the Secretariat which is not on the files also.If we omit them we cut off from the Lokpal the main source of evidence.

7. If maladministration is the subject of investigation then necessarily the Secretaries must be brought within the jurisdiction of the Lokpal. Here again, the A.R.C.(Administrative Reforms Commission) has considered all the possible objections to this scheme and tabulated them in paragraph 17 of the report. The A.R.C. explained the reason why they desired that the Secretaries should be included in paragraph 24 of their report which will repay reading and one of their reasons was as follows:-

> " A word may be said about our decision to include Secretaries' actions along with those of Ministers in the jurisdiction of the Lokpal.We have taken this decision because we feel that at the level at which Ministers and Secretaries function, it might often be difficult to decide where the role of one functionary ends and that of the other begins. The line of

demarcation between the responsibilities and influence of the Minister and Secretary is thin; in any case much depends on their personal equation and personality and it is most likely that in many a case the determination of responsibilities of both of them would be involved."

8. As stated above since no Minister has any authority to pass an executive order, and all enforceable orders are issued under the signature of the executive officers in the name of the head of the State though they act in accordance with the direction of the Minister, no court can inquire into the question as to what advice has been tendered by the Minister to the head of the State. I cannot, therefore, understand how the Lokpal can function even in the limited area of corruption or misconduct unless the Secretary who issues the orders is allowed to be made a party. One must look at the problem from the point of view of a citizen who only receives an order not even signed by the officer passing it but him by a subordinate without any inkling as to what is in the file or whose is the will that resulted in the order and it is at any time poor solace to a citizen alleging corruption if his grievance remains because the Minister says that he did not authorise the passing of that order or that what he authorised was misunderstood.

9. Cl. 11(2) of the Bill moreover says that

" The Lokpal shall not inquire into any act, or conduct, of any person other than a public man except in so far as he considers it necessary so

to do for the purposes of his inquiry into any allegation of misconduct against a public man."

If in the course of a complaint against a Minister or a Member of Parliament the Lokpal finds that indeed the Member of Parliament did not require any action to be taken or did not authorise it, according to the section he would merely have to say so and say nothing about the person really responsible for such action however much it may amount to misconduct. This will leave the citizen's grievance where it was. I have actually found within my experience in several cases which passed through my hands in the Maharashtra State that initially a citizen always complains against the Secretary, but because the order issues under his signature when I called for the file and examined the Secretary concerned, the conclusion to which I came was that the action taken by the Secretary was not his and in such cases I have directed that party to be joined. But under the Lokpal Bill that cannot be done and I think it is likely to work much injustice. Unfortunately, by virtue of Sections 10(2) and 14(1) my Act forbids reference to the facts of these cases. (See the Maharashtra Lokayukta and Upa-Lokayuktas Act, 1971, otherwise I could give details.)

10. This leads me to make one more observation. In the entire 5 years of the functioning of the office of the Lokayukta in Maharashtra though the Secretary or Deputy Secretary has invariably been made a formal party because the order is signed by him, excepting in one or two cases there was not even a suspicion that such Secretary or

Deputy Secretary was guilty of corruption or maladministration. There have been occasions in half-a-dozen cases where Secretaries of different ranks have come to me and asked whether they cannot have a copy of the order or of the gist of my findings so that their good name can be cleared. Of course, the Act forbids it but I say this here because I think in most of the cases the Lokayukta has helped to clear the good name of a Secretary and there has not been a single case where the Lokayukta has held a Secretary guilty so far as any corruption or maladministration is concerned. It is a tribute to our permanent service and for this very reason I say that it will be more for the benefit of the Secretaries in most cases to have their action scrutinised by a high authority independent of the legislature, the executive or the judiciary. They need not fear that it will recoil against their interest.

11. One of the stock arguments which is always advanced and was advanced when we asked for amendments to our Act (as our annual reports will show) is that giving jurisdiction over maladministration and including Secretaries within the ambit of the Lokayukta's jurisdiction would lead to such a spate of work before the Lokayukta that he would not be able to cope with it. A similar argument was advanced regarding the Lokpal and I think was sufficiently repelled by the A.R.C. itself in para 19 of its report when they said :

" We do not, therefore, anticipate that the institution would be overwhelmed by the number of complaints it would

be receiving. Over a period of a few years, the general public will become accustomed to the working of the system and realise the futility of approaching the institution in cases which do not need its attention or in which the complaints are not genuine. Apart from this, we consider that by a suitable division of functions between the institution and other functionaries to deal with citizens' grievances, it would be possible to distribute the workload in such a manner that all the functionaries can do adequate justice to the complaints they receive."

Throughout these five years the Lokayukta and the Upa-Lokayukta have been able to cope with all the work that has come before them and no significant arrears have been left over at the end of each year. Of course, the Lokpal's jurisdiction will be over a much wider territory but the number of persons placed under his jurisdiction would be very much smaller -not exceeding ten thousand at the most whereas the Lokayukta and the Upa-Lokayukta's jurisdiction covers nearly 200,000 "public servants."

12. The other objection also originally raised in the case of the Maharashtra Act was that the jurisdiction over maladministration would lead to serious interference with governmental work in the Secretariat and at least in developmental activities. This objection was also considered by the A.R.C. and they categorically turned it down in the following words :-

"Nor are we impressed by the argument that regulatory

check on the actions of the executive in the discretionary field will lead to serious delays in developmental activities or will promote a feeling of demoralisation in, or ha-ve a cramping effect on the administration. We strongly feel that this malaise in administration mainly arises more from a sense of frustration or lack of appreciation of good work done and from an exaggerated image of corruption, inefficiency and lack of integrity current in the public mind than from actual investigation into complaints submitted by citizens. We have every reason to believe that the working of such an institution will in the long run rectify and thus restore the correct image of the administration, create public confidence in its integrity, and thereby promote, rather than impede, the progress of our developmental activities.....The institution will thus be a protection for, and a source of strength rather than a discouragement to an honest official whose susceptibilities alone are germane in this context." (para 19).

13. I have dwelt at some length on this point because it seems to me that this Bill makes a radical departure from the thinking on the question of citizens' grievances of at least the last 15 years without assigning any reasons or meeting any of the points made by the Santhanam Committee or the A.R.C. report for making such a departure. It seems to me that without including the subject of maladministration and giving

the Lokpal jurisdiction over the Secretaries the Act will never achieve the object which it is intended to achieve. Indeed the experiment in a way has already been tried by the establishment of the Vigilance Commission and every time Parliament considered the subject they found that the Vigilance Commission had failed to eradicate corruption. The principal reason is that their jurisdiction was very limited. It has to be enlarged as the Santhanam Report and the A.R.C. both impress upon us.

14. Then I turn to another aspect to which we have also drawn the attention of the State Government when we suggested amendments to the Maharashtra Lokayukta and Upa-Lokayuktas Act, 1971. In foreign countries, apart from independent investigative agencies the ombudsman is assisted by a powerful set of researchers and legal advisers which experiment has not been tried in any State in India nor is it to be found provided for, in the present Lokpal Bill or in any other previous Bills. Of course, the Lokpal will be a high judicial authority who is expected to know the law and does know it in large measure , but functioning as a judge one has most often the advantage of listening to powerful arguments on either side in a case and determining which side is right. The process of arriving at the truth is much simplified thereby. Occasionally also grave questions of doubt or difficulty have arisen under the Lokayukta Acts and will arise under the Lokpal Act if passed.To many such questions, the answer is sometimes uncertain to the best legal minds,for instance, whether a man is a public servant within the meaning of/

section 21 of the Indian Penal Code (see cl.2(h)), or the exact meaning of the word 'associates' in clause 3(1)(c). It is too generic an expression and the explanation does not resolve the difficulty but perhaps makes it all the greater by saying that he would be "any person in whom such public man is interested." How difficult it will be to determine this may be seen from one of the cases before me which has now become public and which I refer to in para 18 at Sig. below. Innumerable such questions could be suggested on a perusal of the Bill. To avoid such possible errors or wrong decisions, which affect his jurisdiction I would strongly suggest that the Lokpal should be given authority as has been done in many cases in foreign countries to refer the matter for the opinion of the Supreme Court. In our Second Annual Report (vide para 14 p.7), we have made this recommendation to the State Govt. and I am happy to state that the State Government accepted it and/has even sent us a draft Bill though it has not yet been placed before the Legislature. It appears from the correspondence that the Central Government has agreed to the amendment. I enclose copies of the Bill to include Section 18-A in the Maharashtra Act as drawn up by the Maharashtra Government. Similar provision in the Lokpal Bill, I think, would not only save time and energy of the Lokpal but eliminate any attempt to cause delay by the 'public man' concerned. This was suggested by me to the Government on the basis of the Ombudsmen's Acts of New Zealand, Alberta and Manitoba. The originals of the

said Ombudsmen's Acts as well as copies of our annual reports have been sent for the perusal of the Addl.Solicitor-General which can be obtained from him. The correspondence marked 'C' will also answer some of the possible objections to such a course.

15. The Bill purports to give some protection to the Lokpal in cl.25. Sub-cl.(1) is the normal protection given to any judicial or quasi-judicial authority, but I am not so sure that sub-clause (2) will save the Lokpal from proceedings being taken by way of a writ under the Constitution to a High Court or the Supreme Court. All these constitutional powers as hitherto interpreted by the courts are considerable and wide. What is more, they are often attempted to be misused in many cases in order to delay decision or defeat the findings of the Lokayukta by either stating half truths or concealing facts, and obtaining snap stay orders, as witness, what has happened in the latest case (paragraphs 18 to 22 below).

16. What I have said above may be looked into and no Lokpal deciding fairly should be harried and delayed by such possible proceedings in the Supreme Court or the High Court. But I am here on another and a more important point. It is with the extra-judicial criticism and virtual decisions of cases by the Press and the complainant or the delinquent -sometimes even before the Lokayukta or Lokpal applied their minds to it -that I am concerned. Though there is a bar of secrecy against the Lokayukta and Lokpal there is none against a party. The Bill as drawn up at present, clearly fixes the number of persons who would be subject to the Lokpal's jurisdiction. The principal group consists of all the members of both the Houses of

Parliament (I do not mention 'Ministers' because they are included in the above) and the legislators and other officials of the Union territories. Since in a democracy there is always Government by party and alignments quickly take place on any subject, I am afraid that as soon as the Lokpal gives a decision against a Member of Parliament or a Union territory legislator and especially a Minister, immediately the Lokpal's report will become the subject of the most acute political controversy in Parliament or the relevant legislature, and as a necessary corollary, in the public and the press. On giving his findings the press will utilise it either to condemn or congratulate the Lokpal. Much of this criticism is hastily made, ill-informed and without reading the entire text of his findings once they become published. While the Lokpal is directed to keep any information obtained by ~~the~~ him in the course of any verification or inquiry confidential by virtue of cl.20, there is nothing to prevent the party arraigned from giving the widest possible publicity, and this is what I have noticed in a number of cases before me and the Upa-Lokayukta in Maharashtra. As soon as a complaint is filed the gist of it appears in the press even before the Lokayukta's office processes it and the Lokayukta or the Upa-Lokayukta know about it often in garbled words from the Press first of all. Some provision should be made that both sides before the Lokpal as also servants of Government shall keep the information referred to in cl.20 confidential.

17. What is still worse are the political overtones that findings will immediately and inevitably attract once the Lokpal refers the matter to the President and it is placed

on the table of the Houses of the legislature.

18. Our experience of five years in this respect has not been happy. Recently I had occasion to give a finding that in granting a licence to start a rice mill in Bhandara district of Maharashtra State to a person - who certainly could not be commended for uprightness - two Ministers of the State acted malafide. The licence had previously been very legitimately refused by a Secretary but the Minister concerned granted the licence because the applicant was a powerful leader of a certain community in order to secure votes of that community in the 1972 elections since one of them (who was not a minister during the time of the trial) was standing for election from that very constituency during the last elections. The application was recommended by an M.L.C. who had made a written endorsement on it and two M.L.A.s had written a letter to the Minister concerned, all of which were on the file. One of the Ministers had ceased to be a Minister and so under the provisions of the Act could not be given notice because of the curious definition of 'Minister' in section 2(h) of the Maharashtra Lokayukta and Upa-Lokayuktas Act, 1971. The person to whom the licence was granted was certainly not a person whose honesty could be commended as can be seen from paragraphs 7 to 23 of my Special Report appended hereto. The malafides will be found discussed in paragraphs 24 to 33 of the report.

19. The competent authority to whom the report was sent on 1st July 1976 and who was bound under section 12(2) to intimate or cause to be intimated to the Lokayukta..... the action taken for compliance with the report (underlining

is mine) sat tight over the report until July 1977 and then too he being the competent authority did not write to the Lokayukta but his Secretary wrote a letter containing legal arguments showing why the order was wrong and called upon the Lokayukta to reconsider it. That was certainly not intimating or causing to be intimated "the action taken for compliance with the report" but an outright criticism of the report and a challenge to it on the merits. What is still worse is that the Secretary's letter completely ignored the main finding that the action of the two Ministers was malafide and for that reason the grant of the licence should be set aside. When this was pointed out (see pages 31 to 38) no reply was ever sent and to this day, section 12 has never been complied with by the competent authority. I must add that the Chief Ministers changed during the time. Ultimately the Lokayukta had no course left open to him except to make a special report under section 12(5) to the Governor who under section 12(7) of the same Act was bound to have it placed before each House of the State Legislature. This he did.

20. By then the competent authority had changed in that a new Chief Minister had come as I have said and in the explanatory note appended to the report he simply negatived all the findings of the Lokayukta (vide sub-para 2 of para 3) which in the law he had no jurisdiction to do. He merely substituted his own opinion (See para 3 (2nd sub-para) and para 4) for that of the Lokayukta (see pages 3 and 4). What is more they appended to the explanatory note the explanations of the two arraigned Ministers and to my

amazement one of them said that my report was otivated and the motive suggested has only to be read to see how puerile it is. (Vide p.14 paragraph 3 of Shri N.K.Tirpude's letter to the Chief Minister dated 11th July 1977.) In the first place there is no provision for appending documents to the explanatory note like this but virtually the former Minister suggested that I was prejudiced against him because when I was practising as an advocate I used to appear as Counsel on behalf of the Nagpur Electricity Co. and against the Company's Labour Union, and in some cases (he does not specify the number or the names of the parties or any facts from which such cases can be identified) "there used to be clashes in the court between him and the office bearers of the Workers' Union". He does not say that he was an office bearer but what he says is that the Union was working under his guidance "and therefore I was prejudiced against him."

21. How ridiculous the motive suggested is can be gauged from the fact that I was appointed a judge in 1955, became Chief Justice in 1966, retired in 1972 and have been working as Lokayukta since the last five years. That makes more than 22 years. Moreover, before I took over as a Judge, for a considerable number of years I had ceased to take cases in the Industrial courts nor do I remember the particular case or cases which the ex-Minister has accurately remembered but of which he gives no details. Not a single paper was produced and no reference was made beyond mere allegations. Now this undoubtedly amounts to attributing a foul motive to the Lokayukta. The report

immediately became the subject of an acute political controversy between the ruling party in the State and the Opposition and the press on either side took it up with equal alacrity, and repeated the allegations.

22. The debate in the assembly was acrimonious in the extreme and several unworthy allegations were made against the Lokayukta. I carefully considered these allegations but I was helpless because saying anything against the discussion in the assembly would immediately amount to a breach of privilege of the House and I had to keep absolutely quiet with the result that the press and the public thought that I had nothing to say. The press was equally vehement in condemning the Lokayukta perhaps egged on by some of those Ministers. To this day I have not issued any statement or said a single word against any comment in the press because judges do not enter into 'the arena of controversy' except in one particularly scurrilous case. There I issued notice under section 15(2) of the Maharashtra Act and the editor and publisher has virtually expressed regret though he has qualified it by saying "if the Lokayukta feels insulted !" This is truly a trial by Press and the legislature of a person who cannot defend himself and is wholly undemocratic.

23. Now if this is the position of the Lokayukta in a State upon what the Chief Minister himself dubbed was a minor matter, I wonder what is going to be the position of the Lokpal who has jurisdiction only to try political leaders of Parliament and Union administered state legislatures. I feel

very strongly that some provision must be made that Parliament and legislatures will not discuss the merits of the case nor any matter extraneous to the report such as the attribution of motive to him after a report is made. If Parliament says so everyone would be of course bound by the legislation but if any dignity is to be imparted to the high office of Lokpal, such controversy should not be permitted under the law.

24. In this connection I may also make another observation that though later I propose to discuss the Bill clause by clause, it is clearly suggested by cl.6(5) of the Bill, that the Lokpal will be of the status of the Chief Justice of India and yet one finds that in clause 22(4) his decision at a trial held under that section is by sub-clause (4) thereof made appeallable to "the High Court". This, in the first place, is derogatory of the high office of the Lokpal and instead of "the High Court", "the Supreme Court" should be substituted if at all. Secondly, the question arises which High Court ? The Lokpal will sit at Delhi, I presume, and is it to be supposed that every citizen convicted under section 22 will have a right of appeal to the Delhi High Court ? No other High Court can have jurisdiction. Of course, if my first suggestion is accepted, the second may not be considered. This is also the reason why I have mentioned only the Supreme Court in my suggestion in para 14 above.

25. Similarly in cl.21 which incidentally is identical with section 15 of the Maharashtra Lokayukta and

Upa-Lokayuktas Act, the Lokpal is given authority to file a complaint if offences under clauses 21(1) and (2) are committed. Should such an occasion arise, it will immediately result in the Lokpal being called in evidence and if for no other reason, for the reason that he will have to appear as a witness presumably before a Magistrate is calculated to deter him from ever using such a provision and to detract from his high office. He may be cross-examined for considerable lengths of time before a magistrate. In my case most of them were my subordinates at one time and I must have appointed them too. All this is, I think, extremely improper having regard to the high office of the Lokpal. Imagine a Chief Justice of India being called as a witness before a Magistrate in a complaint sanctioned to be filed by him and being cross-examined by the accused's counsel. Perhaps, a better provision would be to simply say that the Contempt of Courts Act shall apply to the Lokpal as it applies to courts, an appeal lying to the Supreme Court. Since the Lokpal will most probably be a judge there should be no fear that the power to commit for contempt would ever be abused but the present provisions of cl.21 are virtually a deterrent to the Lokpal to make use of them.

Part II : Some Comments clausewise

26. Clause 5: I can understand other clauses regarding the ineligibility mentioned in cl.5, but in the opening words of cl.5, I am of opinion that the words underlined are hardly necessary in the clause and ought to be deleted:

" and shall not hold any office of trust."

That he shall not hold any office of profit is understandable, but I cannot see what is the reason why he should not hold any office of trust. Such a provision was in the draft suggested by the A.R.C. itself in their Interim Report. See clause 3(3)(b) of that draft. I see no reason to depart from that draft. The effect of the present draft provision will be drastic in the extreme. It is identical with section 5(b) of the Maharashtra Act, and to give one example -my own- it has had the following results so far as I am concerned. Prior to acceptance of the office of Lokayukta I was very much interested in women's education and in work for the blind.

1. I was an honorary member of the governing body of the Central College for Women at Nagpur which I helped to establish more than 40 years ago.

2. I was also an honorary trustee and member of the governing body of the J.N.Tata Girls High School at Nagpur.

3. I was the Honorary Chairman of the Victoria Memorial School for the Blind at Bombay,

and

4. a life member of the National Association for the Blind at Bombay of which I was offered the chairmanship and had agreed but upon taking office as Lokayukta I had to decline.

Now all these were in the nature of purely social work

cl. 5 contd.

and honorary but I had to resign or refuse to accept these offers. I do not see what possible connection such offices can have with adjudicating upon the conduct of public servants as defined in the Maharashtra Act. Is it the purpose of this law to isolate the Lokayukta and a fortiori the Lokpal from all social intercourse and beneficent activities and make a machine out of him ? I very strongly suggest that the words "of trust" should be deleted. This will also bring it in line with the A.R.C. draft. Of course if it involves payment it will come under the words "office of profit" which I can agree should not be permitted. I have felt very much the severance of my connection with the above organisations some of which were more than 35 or 40 years old. As a judge and as Chief Justice of Bombay I held these offices for over 17 years but I am not supposed to do so as Lokayukta. Such offices are open today to Judges of the Supreme and High Courts. I can see no reason why such a ban should be put upon the Lokayukta except to make it as difficult as possible for a person to hold these offices.

27. Clause 6(2) I do not also see any reason for putting this clause in and making the Lokpal ineligible for any further employment under the Government of India or the Government of the State on ceasing to hold office of Lokpal. I suppose the provision

Clause 6(2) contd.

springs from an apprehension that the Lokpal will make use of his influence towards the end of his tenure to further his own end by canvasing for further employment under the Government of India. But once again let me remind those who have drafted this Act that there is no such bar on equally high offices such as Judges and Chief Justices of the High Courts and Judges of the Supreme Court and the Chief Justice of India. Moreover, I am sure, Parliament will agree that within these last 30 years after Independence there has rarely been a case where a Judge has ever utilised his high office to canvas directly or indirectly for another appointment on his retirement. Why is the office of the Lokpal alone singled out for the ban ? In all probability a judge alone will be appointed to the office of Lokpal and if Parliament and those who made the Constitution could trust the Judges of the High Courts and Supreme Courts, why not trust the Lokpal also ? The distrust shown in this clause itself derogates from the dignity of the office.

No doubt in the Maharashtra Act also there is an identical provision in section 4(b) and none the less I did accept the office of Lokayukta but that was because there was no

Clause 6(2) contd :

other office higher than that of Chief Justice which I could possibly have accepted and the Lokayukta was by express orders of Government ranked equal to the Chief Justice. The position is different so far as the Lokpal is concerned. Why should he not subsequently be appointed to one of the many offices to foreign countries or as Governor of a State which to-day, a Judge of the High Court or of the Supreme Court can be. I suggest deletion of clause 6(2).

What I have said above must also be viewed in the light of the provisions of cl.6(1). In the original Lokpal Bill of 1968 there was provision for appointment to a second term (vide Clauses 3(1) and cl.5(1)) which at least off-set the stringent provisions of cl.5(3)(i) thereof. But that provision has now been dropped. I doubt if a really capable person will ever accept the office with such limitations - an office which by its very nature is going to be a crown of thorns.

28. Clause 9(2)(ii) requires a little consideration. It permits the Lokpal to secure the services of any other person or agency. Identical provision is to be found in the Maharashtra Act in section 13(3). The wording of the provision is all right so far as it goes but, in practice, the clause will prove almost useless because before engaging the

clause 9(2)(ii) contd:

services of any other person or agency the Lokpal will have to secure the financial sanction from Government (as the Lokayukta has been required to do) and immediately the Lokpal asks for that sanction he is asked to explain most often by a Deputy Secretary why he requires the sanction and as often than not, the sanction takes several months to be granted. Is he to keep a case pending till he gets the sanction or himself run the risk of securing the person or agency first and hope for payment of the additional expenditure involved later on. Secondly, is he expected to explain why he needs such a person or agency which goes to the very root of the confidential nature of the inquiry he is to make. I think some provision must be made by the Bill itself to ensure that the expenditure incurred by Lokpal under cl.9(2)(i) will be reimbursed by Government upon a certificate issued by him without giving reasons.

What I have said above also gives rise to another problem which experience tells me, often arises For several items of petty expenditure one has first to go to Govt. for sanction, and it all depends upon the mood in which the Finance department is at that time whether they will sanction it or not. All this is a severe clog upon the independence of the Lokpal's

clause 9(2)(ii) contd:

functioning. Fortunately, in Maharashtra we have succeeded in one small matter in getting a sumptuary allowance at least to entertain the visiting dignitaries such as Ombudsmen of foreign countries but I am not here on that minor question. I am here upon an important matter of principle. In the High Courts we make out an annual budget and send it to the Government and the Government sanctions it subject to a discretion with the Chief Justice to utilise moneys under one head if they can be spared under another head, and, therefore, the High Court is not required to go to the Government every time for some new item of expenditure. Some such provision should be made in the case of the Lokpal who should not be made to depend for every rupee he spends upon several individual sanctions to be obtained from the Finance department for each item. This is, in my opinion, a matter of vital importance and can cause much irritation and worry to the Lokpal and ~~mar~~ undermine/his independence and judgment especially if an inquiry is pending against a powerful Minister.

29. In the provisions of clause 12(1) one finds the words "other than a public servant" which means that one member of Parliament cannot complain against

clause 12(1) contd.

another. Why ? I have not been able to understand. They have plenty of complaints to make against each other in Parliament which we read about in the papers but before the Lokpal they are barred from making a complaint against another M.P. Such a provision may perhaps be supportable if civil servants are included within the ambit of the Lokpal's jurisdiction on the ground that the Civil Service is a hierarchy and it is disruptive of the discipline of such a service if a junior officer is allowed to complain against a senior officer but such a principle cannot apply in the case of any category of "public man" as defined in the Lokpal Bill. In the Maharashtra Act there is a similar provision in sec.9(1)(b) but

(A) there civil servants (vide sec.2(i) read with 2(k) are included, and

(B) the rigour or the provision is considerably diluted by giving powers to the Lokayukta to initiate proceedings suo motu (see Sec.7(1); Sec.12(1) and sec.12(3).

On a comparative study of legislation concerning Ombudsmen in the world, I find that in no Act in other countries are public servants debarred from complaining to the Ombudsman against public servants.

On the other hand if one scrutinises the British Act establishing the Parliamentary Commissioner's office, one finds that the very reverse

clause 12(1) contd.

is the case. There the complaint can only be made to the Parliamentary Commissioner if a Member of Parliament first scrutinises the complaint and sponsors it on behalf of the citizen. We may with profit follow a middle course by deleting the words "other than a public servant" in clause 12(1).

In dispensing this clause I am aware that the words used are "public servants" (as defined in clause 2(h)) as opposed to "public man" (as defined in clause 2(g)). But "public servant" is given the same meaning as in Section 21, Indian Penal Code and if one considers clause 12(a) of Section 21 of Indian Penal Code I should think M.P.s and members of the legislature of Union territories would be included unless the very tenuous distinction is sought to be drawn between fees and allowances.

30. Clause 12(3)

I am strongly opposed to the provisions of this clause. A citizen of our country being required to deposit Rs.1000 as a stake to vouch for the authenticity and genuineness of his complaint is virtually going to take away the great benefits which the Act will confer upon him. How many people in India own or can afford to stake Rs.1000/- even if their grievance is genuine,

especially when they have to complain against an M.P. or a Minister or other high official included in the definition of "public man." And it must be remembered that the citizen (I won't use the malodorous term "common man") will have to travel to Delhi perhaps from far off places and incur the cost of staying in Delhi which itself will entail prohibitive costs. Moreover, I think the Government of India itself has several times opposed the move of the States to increase the court-fees payable for a writ petition before a High Court under Article 226 of the Constitution. These have been deliberately kept low to permit a poor citizen to approach the High Court. Why Rs.1000 should be demanded for an inquiry before the Lokpal it is difficult to understand. Under the Maharashtra Act no fees whatever are charged except the cost of Rs.5 entailed in making an affidavit. If it is the intention to penalise frivolous complaints as the reference to clause 24 suggests, power may be given under cl.24 to award costs not exceeding Rs.1000. One can well understand a provision for compensation to a person falsely involved or succeeding in his complaint but to ask him to deposit such a sum or any sum in advance of the enquiry or trial is virtually in the nature of a stake or gamble. There is no provision also in clause 24 for splitting up the amount of Rs.1000/-

clause 12(3) contd.

and awarding anything less than Rs.1000. Either it stands forfeited under clause 24(a) or it is paid as compensation to the public man under cl.24(b) or is refunded to the complainant under cl.24(c). There is no provision for part-forfeiture or part-compensation or part-refund of the amount of Rs.1000. In my opinion , a simple provision for awarding costs and/or compensatory costs not exceeding Rs.1000/- will overcome all these difficulties and better fulfil the object of the Act.

In this connection another point must be taken into account viz. that the Act when passed will be a new one; will be little understood by citizens and there is no aid or representation by lawyers provided for, with the result that clause 24 will still operate even though the complaint never comes to be decided on the merits but is dismissed merely on a preliminary objection such as limitation or other similar ground.

31. While dealing with clause 12, I notice with regret that there is no power in the Lokpal to conduct an inquiry suo motu. This is very essential where for instance a Member of Parliament files a complaint against another Member of Parliament it is prohibited however

genuine and important it may be. In such a case why should the Lokpal not inquire into it if sufficient and accurate facts come to his knowledge ? In such a case a power to take action suo motu in the Lokpal is a very useful power. We have such power given under section 7(1) read with section 12(1) and 12(3) of the Maharashtra Act.(See the last sentence of sec.7(1).) I think a provision to this effect should be incorporated in the Lokpal Bill.

32. Clause 17(2) After the inquiry is concluded the findings and/or recommendations have to be sent to the competent authority in case the complaint is substantiated and the competent authority has to examine the report and communicate to the Lokpal "within 3 months of the date of the receipt of the report, the action taken or proposed to be taken on the basis of the report." Our experience of 5 years of working identical provisions in sections 12(2) and (4) of the Maharashtra Act is that the Competent Authority seldom complies within the time mentioned. One finds in several cases moreover that it is not the competent authority who replies to the Lokayukta but his Secretary and sometimes even the "Desk Officer" as he is called in the new set-up in the Secretariat here. This has actually happened in the case which I have already referred to in paragraph 18 above. It must be ensured that the

clause 17(2) contd:

competent authority alone replies and replies within the time limit. Secondly, what if he does not reply within the time specified in clause 17(2) ? This again happened in the same case which I have referred to in para 18 above. The Secretary to the competent authority replied after nearly seven and a half months. There is no sanction behind the time limit specified in clause 17(2).

33. Regarding clause 17(5):

It opens with the words "As soon as may be" and no time is specified. Our experience in Maharashtra shows that the laying of these reports before the Houses of the Legislature is inordinately delayed. I do not for a moment suggest that the Governor or the President has anythin to do with but ~~when~~ the delay takes place after the Governor passes the order, under section 12(7) of the Maharashtra Act and the provisions of clause 17(5) are identical with that section. For example, we give the actual facts as under:

1. The First report was sent to the Governor on 17th November 1973 and was laid on the table of the Houses of the Legislature on 16.12.1974
2. The Second report was submitted to the Governor on 30th November 1974 and was put up on 9.3.1976
3. The Third Report was made on 19th March 1976 and has not yet been putup.
4. The Fourth Report was made on 28th April 1977 and has not yet been put up.

For these reasons I submit that some specific time limit should be mentioned by which the reports must be put up so that their utility and value is not impaired by coming up for consideration in Parliament years after they are made when they have become stale and have lost all meaning.

34. Regarding clause 21(3):

I have already made my comments in para 25 above.

35. Similarly regarding clause 22(4) I do think that the appeal should not be to the High Court but to the Supreme Court in keeping with the status of the Lokpal or alternatively if the High Court is insisted upon, then the High Court should be specified. The latter position if taken up in the Act is going to cause untold difficulty, cost and hardship to the poor citizen.

Correspondence marked 'C'.

S.P.KOTVAL
LOKAYUKTA
A-4 Madame Cama Road,
Opp. Sachivalaya, Bombay-32.

My dear Dalal,

Enclosed is the letter and report of the Ombudsman of Alberta about which I just spoke to you.

I would very much wish that in our Act some provision like Sec.12(2) of the Alberta Act (p 5) could be inserted. It would avoid quite unnecessary effort and expense in having determined controversial questions of jurisdiction.

Yours sincerely,

sd. S.P.Kotval.

Shri B.P.Dalal,
I.C.S.,
Secretary,
Law & Judiciary,
Sachivalaya,
Bombay -400 032.

Address all correspondence
to the Ombudsman.

OFFICE OF THE OMBUDSMAN

729 Centennial Building
10015-103 Avenue
Edmonton, Alberta
T5J0H 1

Phone: 423-2251

Our File: P.O.53

February 26, 1973.

Mr.S.P.Kotval,
Lokayukta for Maharashtra
Cottage A4, Madame Cama Road,
Opp. Sachivalaya,
Bombay 32, India.

Dear Mr.Kotval,

I now have your letter of February 16,1973 and also your letter of January 29,1973, which must have crossed my letter to you.

I have looked at the four questions which you asked in your letter of January 29, and I believe my previous letter has answered all of these except possibly #3 and #4. I will try and answer these here.

I am sending you herewith, in connection with your question #2, Special Report No.1 of the Ombudsman to the Legislature. This deals with an application I was required to make for a "Declaratory Order", as laid down in Section 12(2) of my Act.

I think you will find the judge's finding self-explanatory.

This application arose from a challenge to my jurisdiction by the Attorney General of the Province on behalf of the Minister of Municipal Affairs.As you will see, the learned Chief Justice found that I indeed had jurisdiction to proceed, and in due course I won a good settlement on this case.

I would draw to your attention the final remarks of His Lordship at the bottom of page 19. We feel here that they are about as good a definition of the role of the Ombudsman as we have seen anywhere.

I would only ask that you return this copy of the report to me when it has served its purpose. There was such a great demand for it that we only have a very few copies left, which we require for reference in this office. I have removed one from our precious supply, so would you be kind enough to return it when you have finished with it.It may be that you would wish to have it copied before you return it.

Incidentally, I believe I am the only Ombudsman in the Commonwealth who, so far, has had to go to Court on a matter of jurisdiction. I may add, that having this judgment at hand has removed all doubt in a number of other cases where I am quite sure

my jurisdiction would have been challenged, were there not infact a judgment on file in this province, made by the Chief Justice, which has not been appealed.

Now, as to question # 4 of your letter of January 29, I think I have already sent you a list of all publications on the Ombudsman. You asked particularly, however, about any books on the working of Ombudsman in Canada. I would recommend to you Professor Rowatt's book, which you will find listed in the bibliography I sent you.

If there is anything further I can do to assist, please do not hesitate to let me know.

Yours very sincerely,

sd. Geo.B.McClellan
Ombudsman.

67 39

L.N.Nadkarni
Chief Secretary

D.O.No.LPL-1173-D-I
General Administration Department,
Sachivalaya, Bombay-400 032
Dated the 29th June 1973.

My dear Lok Ayukta,

Please refer to your letter to Dalal suggesting incorporation of a provision on the lines of Section 12(2) of the Alberta Ombudsman Act of 1967 in the Maharashtra Lok Ayukta and Upa-Lokayuktas Act, 1971.

Government is considering amending the Maharashtra Lok Ayukta and Upa-Lokayuktas Act, 1971, so as to incorporate the provision suggested by you. A draft Bill prepared in this connection along with a statement of objects and reasons is enclosed. You may kindly go through the Bill and let me know at an early date whether you consider it suitable or would like to suggest any modifications.

I understand from Dalal that you had mentioned to Dhotre, his Joint Secretary, that our Act requires further amendments to remove the difficulties experienced by you. I should be glad if you would kindly forward your suggestions in the matter so that the necessary legislation for amending the Act can be introduced during the winter session of the Legislature.

Kindl regards,

Yours sincerely,

sd.

29.6.73
(L.N.Nadkarni)

Shri S.P.Kotval,
Lok Ayukta, Maharashtra State,
A-4, Madame Cama Road,
Bombay.

L.A.Bill No. of 1973.

A BILL

to amend the Maharashtra Lokayukta and Upalokayuktas Act, 1971.

Mah.XLVI

Whereas, it is expedient to amend the Maharashtra Lokayukta and Upa-Lokayuktas Act, 1971, for the purpose hereinafter appearing: It is hereby enacted in the Twenty-fourth Year of the Republic of India as follows-

Short title

1. This Act may be called the Maharashtra Lokayukta and Upa-Lokayuktas (Amendment) Act, 1973.

Mah.XLVI of 1971 Insertion of sec. 18A in Mah. XLVI of 1971.

2. After section 18 of the Maharashtra Lokayukta and Upa-Lokayuktas Act, 1971, the following section shall be inserted, namely :-

Statement of case to the High Court on the question of jurisdiction.

"18A. If at any time it appears to the Lokayukta that a question of jurisdiction has arisen, or is likely to arise, in any case or class of cases, the Lokayukta may draw up a statement of the case and refer the question to the High Court. The High Court shall, after such hearing as it deems fit, decide the question referred to it and deliver its judgment thereon. Every such reference shall be decided as expeditiously as possible and endeavour shall be made to deliver the judgment within six months from the date on which the reference is made to the High Court. A copy of the judgment shall be sent to the Lokayukta under the seal of the Court and the signature of the Registrar. The Lokayukta or an Upa-Lokayukta shall then dispose of the case or class of cases accordingly."

Statement of Objects and Reasons.

Under Section 16(2) of the Maharashtra Lokayukta and Upa-Lokayuktas Act, 1971, except on the ground of jurisdiction, no proceedings or decision of the Lokayukta or the Upa-Lokayukta is liable to be challenged, reviewed, quashed or called in question in any Court. In order to avoid quite unnecessary effort, expense and delay, in having determined controversial questions of jurisdiction by the ordinary Courts, it is considered necessary to enable the Lokayukta himself to make a reference to the High Court in suitable cases and to provide for inexpensive and speedy disposal of such references.

To

The Under Secretary to the Government
of Maharashtra,
General Administration Department,
Sachivalaya, Bombay-32.

Subject:- Maharashtra Lokayukta &
Upa-Lokayuktas Act 1971

Amendment to -

Reference:- Your letter No.LPL-1173-D-I,
dated 12th November 1973.

Sir,

I am directed to refer to your aforesaid letter and to state as follows:-

So far, the jurisdiction of the Lokayukta or the Upa-Lokayukta has not been challenged in any court. But several limitations, as mentioned below, are placed by the Maharashtra Lokayukta and Upa-Lokayuktas Act,1971,upon the powers of the Lokayukta and the Upa-Lokayukta to investigate and most of them affect their very jurisdiction to deal with such cases. These limitations are laid down in Section 8(1)(a) read with the Third Schedule, Section 8(1)(b), Section 8(3) so far as public servants referred to in sub-clause (iv) of clause (k) of Section 2 are concerned; Section 8(5), Section 8(6) and Section 21, The frustrating efforts of these limitations as far as bona fide complainants are concerned have been fully explained in the Annual consolidated Report of the Lokayukta and the Upa-Lokayukta presented recently to the Governor of Maharashtra, and a number of suggestions have also been made for other amendments. It may also be noted that the limitations do not find a place in the Rajasthan Lokayukta and Upa-Lokayuktas Act.

In order to avoid unnecessary effort and expense in having determined controversial question of jurisdiction and the consequential delay involved a suggestion was made by the Lokayukta to incorporate this amendment in the Maharashtra Lokayukta and Upa-Lokayuktas Act. It was suggested on the lines of the provisions in the Acts governing the Ombudsman in Alberta(Canada) and New Sealand Copies of the relevant extracts of the Alberta (Canada) and New Zealand Acts are enclosed.

Yours faithfully.

sd.
(D.B.Deshpande)
Registrar

Encls: Copies of the relevant
extracts of the Alberta
(Canada) & New Zealand Acts.

Alberta Act : Section 12(2)

If any question arises as to whether the Ombudsman has jurisdiction to investigate any case or class of cases under this Act, he may, if he thinks fit, apply to the Supreme Court of Alberta for a Declaratory Order determining the question.

.....

New ~~Zea~~ Zealand Act: Section 11(7)

If any question arises whether the Commissioner has jurisdiction to investigate any case or class of cases under this Act, he may, if he thinks fit, apply to the Supreme Court for a Declaratory Order determining the question in accordance with the Declaratory Judgments Act, 1908, and the provisions of the Act shall extend and apply accordingly.

No. 16/50/75-Judl.
Government of India,
Ministry of Home Affairs.

To

The Secretary to the Government of Maharashtra,
General Administration Department,
Sachivalaya, Bombay-32.

New Delhi 110001, the 15th November, 1973,
Kartika, 1895.

Subject:- The Maharashtra Lokayukta and Upa-Lokayuktas(Amendment) Bill,1973.

...

Sir,

I am directed to refer to your letter No.LPL-1173-D-I, dated thirteenth August, 1973, on the subject mentioned above and to say that there is no objection to the State-Government sponsoring the Maharashtra Lokayukta and Upa-Lokayukta (Amendment) Bill, 1973. The following observation is, however, made for the consideration of the State Government :-

> The amendments proposed seem to empower the Lokayukta to make a reference to the High Court where a question of jurisdiction of the Lokayukta or Upa-Lokayukta arises. Consequently, changes relating to non-disclosure of the identity of the complainant and public servants, where such a reference becomes necessary are also being made. So far as the question of doing away with the secrecy of the parties or public servants is concerned, while there may not be any objection legally, the propriety of doing so, when generally these are protected, seems open to question. It may be desirable to explore the possibility whether a reference in such circumstances cannot be made without disclosing the names. The persons in such reference could be mentioned as A,B,C,D to consider whether secrecy can still not be maintained of the parties or the public servants.

Yours faithfully.

sd.
(R.Vasudevan)
Deputy Secretary to the Govt. of India.

Draft.

Alberta Act Section 12(2)

If any question arises as to whether the Ombudsman has jurisdiction to investigate any case or class of cases under this Act, he may, if he thinks fit, apply to the Supreme Court of Alberta for a Declaratory Order determining the question.

...

New Zealand Act: Section 11(7)

If any question arises whether the Commissioner has jurisdiction to investigate any case or class of cases under this Act, he may, if he thinks fit, apply to the Supreme Court for a Declaratory Order determining the question in accordance with the Declaratory Judgments Act, 1908, and the provisions of that Act shall extend and apply accordingly.

...

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No. POL 2273

December 13, 1973.

To

Shri K.P.Nadkarni
Deputy Secretary to the Government
of Maharashtra,
General Administration Department,
Sachivalaya, Bombay-32.

Subject:- Maharashtra Lokayukta and Upa-Lokayuktas Act 1971.
Amendment to the --

Reference:- Your letter No.LPL-1173-D-I
dated 10th December 1973.

Sir,

With reference to your aforesaid letter I am directed by the Lokayukta and the Upa-Lokayukta to state as follows:-

Even as it is, as the proposed amendment stands a reference can be made to the High Court without any further amendment by mentioning the names as A,B,C,D etc in the reference that is to be made by theLokayukta or theUpa-Lokayukta to the High Court, and this will serve the purpose as stated in the letter by the Government of India in this respect.

Yours faithfully,

sd. P.K.Gupte
Registrar.

D.O. No.POL 2275

June 25, 1975.

My dear Ginwala,

During the recent discussion which we had with the Minister of Law, we had not discussed amendment to Section 18 by the addition of Section 18 A(1), the text of which is appended, on the assumption that the Bill, which had already introduced the amenement in the Legislature, was pending and that only its passage was awaited. We understood thereafter from Dhotre that the bill had lapsed as apparently the Government did not want to make piecemeal amendment to the Maharashtra Lokayukta and Upa-Lokayukta Act. I have spoken to Dhotre and he has assured me that the amendment will be included in the set of amenements which are being drafted. We would be glad to see the entire set of amendments before they are finalised for being placed before the Legislature.

Kind regards,

Yours sincerely

sd.

25.6.75

(L.M.Nadkarni)

Encl. As above

Shri A.A.Ginwala,
Secretary to Government,
Law & Judiciary Department,
Sachivalaya,
Bombay -32.

After section 18 of the principal Act, the following section shall be inserted , namely:-

"18-A(1) If at any time it appears to the Lokayukta or, as the case may be, the Upa-Lokayukta that a question of juris-diction has arisen, or is likely to arise, in any case or class of cases, the Lokayukta or, as the case may be, the Upa-Lokayukta may draw up a statement of the case and refer the question to the High Court. The High Court shall, after such hearing as it deems fit, decide the question referred to it and deliver its judgment thereon. Every such reference shall be decided as expeditiously as possible and endeavour shall be made to deliver the judgment within six months from the date on which the reference is made to the High Court. A copy of the judgment shall be sent to the Lokayukta or, as the case may, the Upa-Lokayukta under the seal of the Court and the signature of the Registrar. The Lokayukta or the Upa-Lokayukta shall then dispose of the case or class of cases accordingly.

(2) The provisions of sub-section (2) of section 10 relating to proceedings being conducted in private and non-disclosure of identity of the complainant and public servant shall not apply to such a reference."

77

MEMO NO. 19

JOINT COMMITTEE ON THE LOKPAL BILL, 1977

Memorandum on the Lokpal Bill, 1977, submitted by the Chief Executive Councillor, Delhi.

.....

The provisions of the Lokpal Bill, 1977 have been examined. It is felt that the definition of the "public man" as given in clause 2(g) of the Bill may be widened so as to include the Members of the Delhi Metropolitan Council and the Councillors of the Delhi Municipal Corporation within its ambit. Besides this no other comments are offered in the matter.

Memo. No. 20

SUGGESTIONS RECEIVED FROM SHRI A.G. NOORANI, BOMBAY

A.G. Noorani, Esquire.

93A Miramar,
3, Nepean Sea Road,
Bombay-400036.

24th October, 1977.

Mr. Shyam Nandan Mishra,
Chairman,
Joint Committee of Parliament
on the Lokpal Bill,
New Delhi.

Dear Sir,

I have perused the Lokpal Bill introduced in the Lok Sabha on July 28, and wish to make a few submission on it for consideration by your Committee. The Bill seems to me on the whole to be a salutary measure and the following comments are made in regard to a few features which I feel can be improved upon. I should also like to take this opportunity of commenting on some of the points which have been made in the press comment in regard to the Bill for consideration by your Committee.

I submit that the definition of "misconduct" in Clause 3 of the Bill should be amended. Sub-clause (b) which covers abuse of position to cause harm or undue hardship to any other person should be extended expressly to include conferment of improper benefit or favouritism as well. It should not be left to be inferred from the general definition in sub-clause (a). I might point out that the concept of favouritism has by now acquired a precise meaning as a result of the labours of various Commissions of Inquiry. Clause (c), it would seem, makes the actual acquisition of benefit to the relative or associate of a public man or actual infliction of harm or undue hardship to another person as an essential ingredient of the offence of misconduct. It is submitted that a public man who consciously allows his position to be abused is culpable enough. The fact that the abuse of his position by his relative or associate eventually fails in its purpose should be immaterial. It is, therefore, submitted that Clause (c) should simply read : "If he directly or indirectly allows his position as a public man to be taken advantage of by any of his relatives or associates". The second part of definition which follows in the Bill should be deleted.

It has been said that Clause (b) is vague since the norms of integrity and conduct which are to be followed by

...2/-

the class of public man to which the public man belongs is vague. I submit this is not so. Section 45 of the Army Act of 1950 makes it an offence for any officer, Junior Commissioned Officer, Warrant Officer to behave "in a manner unbecoming his position and the character expected of him". Section 35 of the Advocates Act 1961 renders an advocate liable to disciplinary proceedings if he has been guilty of "professional or other misconduct". The expression has not been defined by statute by the Act because it is not susceptible to precise definition. On the other hand the norms of conduct expected of an advocate or that of an army officer or a public man are fairly well-known. The expression "misconduct" is fairly well understood as a result of judicial pronouncements.

In this context, a point has also been made that the definition of "public man" in Clause 2(g) should not include legislators as they have no executive powers. The Mudgal case shows the necessity for such a provision. Moreover, the importance of the M.P. and the M.L.A. has far increased in recent years. What happened recently in England alone suffice to prove the necessity for including the Legislators in the definition of public man. On November 1, 1976, the House of Commons appointed a Select Committee to "enquire into the conduct and activities of members of this House in connection with the affairs of Mr. J.G.L. Poulson; to consider whether any such conduct or activities amounted to a contempt of the House or was inconsistent with the standards which the House is entitled to expect from its members; and to report". This proves, both, that the definition of misconduct in Clause 3(d) in the Bill is not vague and, secondly, the necessity for including Legislators within the ambit of the Lokpal Bill as public men. The Select Committee of Parliament, it is respectfully submitted, might in a given case divide on party lines. The Lokpal on the other hand, will be able to conduct proceeding in a quiet and impartial manner, thoroughly, and free from glare of publicity. The fact remains that in the wake of the Poulson affair the conduct of some M.Ps was considered questionable even in a Legislature which is known for its high standards of conduct. Now that we are appointing a fine institution like the Lokpal, it would be in the fitness of things to include with-in the scope of his jurisdiction the behaviour of Legislators as well. They have every thing to gain and nothing to lose by such inclusion. For he will be able to probe into the charges quietly and impartially. On the other hand exclusion of Legislators from the scope of the Bill now will only invite public criticism and rightly so. I might invite attention to the editorial in

...3/-

"The Times" (London) of October 20, 1976 entitled "Policing Parliament" which elaborately discussed how M.Ps guilty of misconduct can be brought to book. In our case we had opportunity of laying down an excellent mechanism of the office of Lokpal who is, it must be borne in mind, essentially a Parliamentary Institution. He reports to Parliament and is essentially an overseer on behalf of the Parliament who conducts investigation and reports the facts to Parliament. Finally, it has been said that the Chief Ministers ought not to be brought within the purview of the Act as it offends against the federal principle. I may point out that the code of conduct for Central and State Ministers published by the Government of India on October 29, 1964 in terms provides in paragraph 6 as follows:-

"The authority for ensuring the observance of the code of conduct will be the Prime Minister in the case of Central Ministers and the Union Home Minister in the case of Chief Ministers, and the Union Home Minister and the Chief Minister concerned in the case of State Ministers. The said authority would follow such procedure as it might deem fit, according to the facts and circumstances of each case, for dealing with or determining any alleged or suspected breach of this code". This code has been followed to this day and it is only an extended application of it to include the Chief Ministers within the ambit of the Act. The Supreme Court Judgement in the case filed by the Chief Minister of Karnataka on the Grover Commission is eagerly awiated. If it should hold the appointment of the Commission to be valid, it would be incongruous to exclude the Chief Ministers from the scope of the Bill while allowing the Centre to set up Commissions of Inquiry against the Chief Ministers. On the other hand, if the court holds the appointment of a Commission of Inquiry against the Chief Minister to be illegal, there will be no question then of including the Chief Ministers within the scope of the Lokpal Bill.

I am grateful to the Committee for this opportunity to make the foregoing submissions.

I remain Sir,

Yours faithfully,

Sd/-A.G. Noorani

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Memo. No. 21

DR. RAM JEE SINGH
MEMBER OF PARLIAMENT
(Lok Sabha)

92, South Avenue,
New Delhi-110011.

Comments and Suggestions on the Provisions of the Lokpal Bill, 1977 received from Dr. Ram Jee Singh, M.P.

1.	Appointment :	The Lokpal be appointed by the President of the Indian Union on the basis of Joint consultation of the Chief Justice of India, the Prime Minister and the Leader of the Opposition.
2.	Jurisdiction :	The Lokpal will be empowered to enquire into the allegations of misconduct, misuse of power of the Prime Minister, Members of the Council of Ministers and the Minister of State, Members of the Parliament, Chief Minister etc.
3.	Report :	The Reports of the Lokpal will be presented before the Parliament within 2 months of their submission which will be discussed. If there is a clear charge of financial misappropriation against anybody, he will tender his resignation from the post.
4.	Courts:	The report of the Lokpal shall not be challenged in a Court of Law.
5.	Removal of Lokpal:-	The Lokpal may be removed from his office in the manner a Chief Justice is removed.
6.	Lokpal	The Lokpal Secretariat shall be independent and completely under the authority and control of the Lokpal.
7.	Enactment:	The Lokpal Bill 1977 shall be enacted and enforced from the 1st Jan.,1978.

Sd/-Dr. Ram Jee Singh.

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MEMORANDUM NO. 22

JOINT COMMITTEE ON THE LOKPAL BILL, 1977.

No.....

CHIEF MINISTER
TRIPURA

Agartala, the th Oct. 1977.

MEMORANDUM

The Lokpal Bill, 1977 (Bill No. 88 of 1977) as introduced in Lok Sabha on the 28th July, 1977 has been examined by the State Government. The following suggestion is being given for the consideration of the Joint Committee.

It appears that according to sub-clause (3) of clause 12 of the Bill the complainant making a complaint to the Lokpal is required to deposit a sum of one thousand rupees and according to the provision of clause 24 the said sum shall stand forfeited to the Central Government where the complaint is dismissed under clause 13(1)(C) i.e. when the complaint is frivolous and vexatious or is not made in good faith. Forfeiture is a penalty and the rules of Natural Justice demand that a person should not be penalised unheard. In case of forfeiture of the amount deposited an opportunity of being heard should be made compulsory.

Therefore, it is suggested that since dismissal of a complaint under clause 13(1)(C) is visited with the penalty of forfeiture of the amount one thousand rupees under clause 24, deposited in making complaint, it is advisable to make a provision in the Bill for giving the complaint a reasonable opportunity of being heard before such forfeiture takes place.

Sd/-R. R. Gupta.

Memo. No. 23

No.LL.167/77/27
Government of Meghalaya
Law Department
....

Dt. Shillong, the 1st November, 77.

From :- Shri Ramesh Chandra, I.A.S.,
Chief Secretary,
Government of Meghalaya,
SHILLONG.

To :- The Chief Legislative Committee Officer,
Lok Sabha Secretariat (Committee Branch II),
Parliament House Annexe,
NEW-DELHI-110001.

Reference :-Lok Sabha Secretariat No.3/4/77/CII, dated September 19, 1977.

Subject :- JOINT COMMITTEE ON THE LOKPAL BILL, 1977.

Sir,

With reference to the above, I am directed to say that the State Government broadly agree to the provisions of the Lokpal Bill, 1977. However, it has been observed from the perusal of the Bill that only Chief Ministers and M.Ps. from the States have been brought under the purview of the Lokpal excluding the Ministers, members of State Legislatures and other public men. The State Government feel that such a situation will not be desirable and suggest for the consideration of the Joint Committee that the provisions relating to inclusion of Chief Minister of the State under the authority of Lokpal may be deleted. The State Government is separately examining the question of setting up a suitable machinery for looking into the complaints against Chief Minister/Ministers of the State Government and other public men on the lines of similar arrangements in some other States.

Yours faithfully,

Sd/- Ramesh Chandra
Chief Secretary.

MEMO NO. 24.

IMMEDIATE

REGISTERED POST WITH ACK. DUE.

S
E
A
L

Fort St. George
Madras-9

LAW DEPARTMENT

Lr. No. 1108/Secy./77-3

From

S. VADIVELU, B.A., B.L.,
Secretary to Government.

To

The Chief Legislative Committee Officer,
Parliament House Annexe,
NEW DELHI-110001.

FORT ST. GEORGE, MADRAS-600009, DATED THE 21ST NOVEMBER, 1977.

Sir,

Sub:- Joint Committee on the Lokpal Bill, 1977.

Ref:- 1. This Government's D.O. Lr.No.6235/67-11, dated 28.5.1969 addressed to the then Union Home Minister.

2. Your Lr. No.3/4/77/CII, dated 8.9.1977 addressed to the Chief Secretaries of all the State Governments.

With reference to your letter second cited, I am directed to convey the comments of the Chief Minister of this State on the Lokpal Bill as hereunder.

2. The definition of 'public man' under the Lokpal Bill, 1977, includes among others the Chief Minister of a State who will become subject to the jurisdiction of the Lokpal and the Prime Minister. Under clause 17(2) of the Bill, in case of complaint against the Chief Minister of a State, it is the Prime Minister, who has to examine the report of the Lokpal and take action on the basis of the report. It will be seen that the Chief Minister of a State is made subject to the control of the Prime Minister under the Bill. The placing of the Chief Minister under the jurisdiction of the Lokpal appointed by the Government of India as well as under the control of the Prime Minister is not acceptable for the reasons indicated below:-

(i) Under the Constitution of India, the federal system is envisaged by which the Central Government and Parliament have defined jurisdiction and the State Government and the State Legislature have their powers enumerated. In other words, in respect of the allotted sphere, the Central Government is independent of its functions and the State Government is independent of its functions. Except where the Constitution specifically provides, the Central Government have no supervisory or disciplinary control over the State Government. The federal structure embodied in the Constitution is the very basis of the Indian Constitution. The provisions of the Bill which make the Chief Minister subject to the control of the Prime Minister in the form of competent authority is opposed to the federal structure embodied in the Constitution.

(ii) The Constitution does not vest any supervisory or disciplinary control by the Union Executive over the Council of Ministers of a State enjoying the confidence of the State Legislative Assembly. Placing the Chief Minister under the control of the Prime Minister is therefore against the scheme embodied in the Constitution. Under article 164(2) of the Constitution, the Council of Ministers shall be collectively responsible to the Legislative Assembly of a State. The Chief Minister and his Council of Ministers are, therefore, responsible only to the Legislative Assembly of a State and not to anybody else. The Chief Minister of a State is not responsible to the Prime Minister of India. The Cabinet system of Government under which the Council of Ministers is responsible to the Legislature of the State and not Parliament, will be rendered a nullity if the Prime Minister assumes to himself the power of taking action in respect of a complaint against the Chief Minister of a State as envisaged in the Bill. So long as the Chief Minister and his Council of Ministers enjoy the confidence of Legislature, while in office, they are accountable only to the Legislature of the State.

(iii) The Bill seeks to make an inroad into the Constitutional concept of federal structure vesting in the Prime Minister disciplinary and administrative control over the Chief Minister in respect of complaints against the Chief Minister, and it is ultra vires the provisions of the Constitution. The Constitution, as framed by the founding fathers, is a Union of States and each State has a specified territory and population and has separate executive, responsible to its own Legislature. Taking into account this basic concept embodied in the Constitution, the validity of the Bill in so far as it includes within its ambit the Chief Minister, cannot be sustained. The Constitution does not assign the responsibility of calling into account an erring Chief Minister to the Central executive or even to Parliament.

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3. I am directed to invite your attention in this connection, to the D.O. letter first cited, addressed to the Government of India, wherein it has been specifically pointed out that it will be constitutionally improper for the Chief Minister of a State to become responsible to any one other than the Legislature of that State. It was also pointed out in the said letter, that it was doubtful if any Chief Minister belonging to a party different from the party to which the prime Minister belonged would agree to make himself responsible to the Prime Minister or the Union Home Minister.

4. Further, complications are likely to arise if the prime Minister belonging to one political party is asked to sit in judgement over the conduct of a Chief Minister-belonging to an entirely different party. This is stated as a general possibility and not at all as a reflection of any one's attitude. Hence, the provision in the Lokpal Bill that the prime Minister should control the Chief Minister is likely to lead to curious difficulties.

5. I am to add that there is a proposal under the active consideration of this Government to bring in a legislation in the place of the Tamil Nadu Public Men (Criminal Misconduct) Act, 1973 since repealed, to set up a statutory machinery to inquire into the complaints against public men in this State which would include the Chief Minister. Suitable provision would be duly made in the proposed legislation that any complaint against the Chief Minister would be placed without delay before the Council of Ministers.

6. In the circumstances, the inclusion of the Chief Minister within the scope of the Lokpal Bill is not acceptable and the Bill may be amended suitably.

Yours faithfully,

Sd/-
for SECRETARY TO GOVERNMENT.
24.11.77.

87.

Memo. No. 25

JOINT COMMITTEE ON THE LOKPAL BILL,1977.

COMMENTS RECEIVED FROM LOKAYUKT
UTTAR PRADESH

I have seen the Lokpal Bill sent to me for comments. Broadly speaking two shortcomings have come to my notice. The first is that the jurisdiction of Lokpal will cover complaints against publicmen only. I feel that it should have covered high officials of Central Government also because there is very little provision to exercise control over the actions of many high officials.

2. As provided in the Bill, the jurisdiction of Special Lokpal will cover such complaints as may be specified in the warrant of his appointment. It has not been made clear as to how it will be decided that so and so complaints come under the warrant. I am of the opinion that two problems will arise in this regard. Firstly, without consulting Lokpal it will not be possible to take a decision in regard to a matter not enumerated in the Act. Secondly, in case a complaint is specified in the warrant and the class of complaint thus covered are not sufficient Special Lokpal will not be fully occupied although the number of other classes of complaints may be quite large with the Lokpal which if otherwise sent to Special Lokpal will streamline the work. Therefore, either a provision should be made that complaints covered under the warrant will be subject to change from time to time or the question of referring complaints to Special Lokpal should be left to Lokpal who would assign the work to Special Lokpal from time to time as may be required.

Sd/-
(Bishamber Dayal)
Lokayukt
Uttar Pradesh

(Original in Hindi)

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Memo. No.26.

JOINT COMMITTEE ON THE LOKPAL BILL, 1977.

Comments on Lokpal Bill, 1977 received from Shri M.Ram Gopal Reddy, M.P.

The present Bill is more comprehensive in its scope and differs in material respects from the earlier legislation. The Prime Minister and other Central Ministers, M.P's and the State Chief Ministers are among the public men who will be brought within the purview of the proposed legislation.

Position of M.Ps. and Chief Ministers

The Members of Parliament should be excluded from the purview of the Bill. The M.Ps. do not have to perform any executive functions, and, as such, they should not be made to answer before Lokpal. They should be answerable only to Parliament and not to any outside authority.

The conduct of M.Ps. is governed by the rules of business of the House and the intrusion of any other agency would amount to interference in their unfettered freedom to discharge their functions in Parliament. Secondly, M.Ps. besides being legislators are themselves instrumental in establishing the Government's accountability to the people through their questions etc.

As regards Chief Ministers any enquiry into their conduct by a central agency would mean an attack on federal principles. The Chief Ministers may be better left to be taken care of by the Lokayuktas of the respective states.

Inclusion of State Ministers and Secretaries

Departmental heads like Secretaries of the Government should be brought under the jurisdiction of Lokpal. Often the Ministers act on the advice given by the Secretaries and if it leads to misconduct Secretaries should suffer. Likewise Lokpal's jurisdiction should cover Managing Directors of public Corporations.

Retrospective effect

The Bill should not take cognisance of complaints about misconduct by the Prime Minister, Ministers and other high-ups merely during the last five years. If at all retrospective effect is to be given to the provisions of the Bill, it should be done from the date of the commencement of the Constitution. Alternatively, it would be better to drop the five year time limit altogether and let the Lokpal start with a clean slate on new charges of corruption.

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Provision for Investigating Machinery

The most welcome aspect of the Bill is the provision that the Lokpal will have his own investigating machinery which will enable him to conduct enquiries independently of the States' investigating agencies. He will have all the powers of a civil court for summoning any person, receiving evidence or affidavits and for the production of any document. One of the reasons for the ineffective functioning of the Lokayukta in Maharashtra is that he has to depend on the State's investigating machinery which may not always be above board for obvious reasons.

Opposition to be consulted in Lokpal's appointment

The new Bill provides for consultations, before the appointment of the Lokpal by the President, with the Chairman of the Rajya Sabha and the Speaker of the Lok Sabha. It is not known why this earlier commendable idea of consulting the Leader of the Opposition has been given up? It should be revived.

It will no doubt enhance the prestige of Lokpal if his selection has also the approval and support of the oprosition.

Cases excluded from Lokpal's jurisdiction

There are other infirmities in the new Bill. Two specific categories of cases are sought to be excluded from the Lokpal's jurisdiction, those alleging public misconduct that occurred more than five years ago and those that already form the subject matter of the current spate of special investigations under the Commission of Inquiry Act.

Competent authority to whom the Lokpal would submit his report

The Lokpal should submit his report to the Speaker of the Lok Sabha or to the House itself any report on the Prime Minister. It would defeat the very purpose if the report is sent to the Prime Minister himself for placing before the Union Cabinet.

Likewise the Lokpal's report on a Chief Minister should be submitted to the Speaker of the State Assembly or the Assembly itself.

Three Lokpals

It will be desirable to have atleast three individuals to exercise the powers of Lokpal instead of one as proposed, considering the vastness of the country and the political power which Central Ministers and the Chief Ministers could wield. The appointment of three Lokpals could be made on the lines of a bench of the Supreme Court consisting of more than one judge. The principles underlying such constitution should also govern the constitution of Lokpal.

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: 3 :

Punishment for frivolous complaints

Under the provisions of the Bill the maximum a person loses when he makes a false or frivolous complaint is Rs. 1000/-. Under Section 211 of the Indian Penal Code the punishment fixed for making such frivolous complaints is from 2 to 7 years as the case may be. It may be proper to fix more or less the same punishment for making false or frivolous complaints to the Lokpal in view of the gravity of the allegations that may be made and the personalities against whom such complaints may be made.

Sd/-M.Ram Gopal Reddy,M.P.

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MEMO NO. 27

JOINT COMMITTEE ON THE LOKPAL BILL, 1977.

Comments and suggestions on the Lokpal Bill, 1977 received from Shri B.K. Nair, M.P.

1. The Lokpal should be an institution consisting of three persons.

2. Qualifications: The qualifications should be defined in a positive way. Should be men of irreproachable character, proven ability and long experience. Should be either sitting Judges of the Supreme Court or Chief Justices of High Courts or men qualified to hold these posts. The functions and procedure being judicial in character, only such persons can be suitable. Leaders of opposition also to be consulted for appointment.

3. Members of Parliament to be excluded as otherwise, their free, fearless functioning will be hampered. So also Chief Ministers of States as otherwise it violates the principle of federalism. Already, loud clamour for more and more powers for States and complaints against constraints from Centre. Clause 3 Sub-clause (3) to be deleted. States to evolve their own machinery.

4. Misconduct: To be clearly defined. As it is, with "relatives" "associates", "any other person", "undue pressure", "undue gains", and "hardships", the position remains extremely vulnerable.

5. Staff: The staff should be independent and free from Government control. Their terms and conditions to be governed by rules laid down by Parliament.

6. Period of Limitation: Five years too short. To be extended to twenty years, or to apply only to future cases.

7. Amount of deposit: To be raised to Rs. 5000/- to check frivolous, malicious complaints. Otherwise any interested person with a few lakhs of rupees to lay by can make life miserable for any number of public men out of political motivations or personal vendetta or just for the fun of it.

8. Period of Enquiry: The enquiry should be completed expeditiously. Period not to exceed one year in any case.

9. Competent authority: In respect of enquiries concerning the Prime Minister the competent authority should be a body consisting of the Chief Justice of India, the Speaker of the Lok Sabha, the Chairman of the Rajya Sabha and the Leaders of opposition in the two Houses.

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10. Punishment: For frivolous and false complaints punishment should be on the lines as laid down in Section 211 of the Indian Penal Code, although it calls for something more deterrent looking to the gravity of the offence.

Sd/- B.K. Nair.
13.12.77

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MEMO. NO. 28.

COMMENTS OF THE CHIEF MINISTER OF WEST BENGAL.

GOVERNMENT OF WEST BENGAL

HOME DEPARTMENT
CS BRANCH.

No. 22/78-CS
JIA-29/77.

From: Shri A.K. Sen,
Chief Secretary to the Govt. of West Bengal.

To: Shri Y. Sahai, Chief Legislative Committee Officer,
Lok Sabha Secretariat (Committee Branch-II),
Parliament House Annexe, New Delhi-110001.

Dated Calcutta, the January, 1978.

Sub: Joint Committee on the Lokpal Bill, 1977.

Sir,

With reference to your letter No. 3/4/77/CII dated September 8, 1977, I am to convey the following comments of the Chief Minister of West Bengal on the draft Bill:

(i) Clause 4(1) of the draft Bill provides that the President shall, after consultation with the Chief Justice of India, the Chairman of the Council of States and the Speaker of the House of the People, appoint the Lokpal for the purpose of making inquiries in respect of complaints against public men, including the Chief Minister of a State. Thus, it will be entirely a centrally organised institution. There is no provision for consultation with a State Governor or the elected representatives of the people of a State in the matter of holding inquiries against a Chief Minister. In ignoring the State Government, the federal structure of the Constitution will be impaired.

(ii) Further, the Lokpal will be inquiring into the affairs of public men, duly elected by the people. In effect, an executive authority is being set up to probe into allegations made against public men elected by popular vote. It has been found in the case of appointment of Judges that consultation by the President with the Chief Justice of India, etc., may not, in effect, amount to much, if the Central Executive takes a determined stand in respect of a particular Judge. It would be proper, therefore, to set up a broadbased electoral college for election of the Lokpal. There should also be provision for his recall if his misconduct is established.

...2/-

(iii) Under clause 12 of the Bill it is proposed that the complainant shall deposit one thousand rupees when he lodges a complaint, unless the Lokpal, for sufficient cause to be recorded in writing, exempts the complainant. This provision may actually work to the detriment of poor people in the matter of seeking redress of their grievances.

(iv) Under clause 14, the Lokpal is to forward a copy of the complaint to the competent authority. Competent authority has not been prescribed in the case of some public men under clause 2 of the Bill. It is absolutely necessary that competent authority is specified in respect of all public men in the Bill itself.

(v) Under clause 26, the Lokpal may, by general or special order, delegate his powers to unspecified officers or agencies. It is necessary to specify the officers or agencies, so that there is no scope for misuse of this provision.

Yours faithfully,

Sd/-A.K. Sen
Chief Secretary to the Govt. of West Bengal.

MEMO. NO. 29.

JOINT COMMITTEE ON THE LOKPAL BILL, 1977.

Comments of the Chief Minister of Maharashtra.

GOVERNMENT OF MAHARASHTRA

No.LPL-1077/3875/129/XI
General Administration Department
Mantralaya
Bombay 400032, 21st Jan.1978.

To

The Chief Legislative Committee Officer,
Lok Sabha Secretariat (Committee Branch-II),
Parliament House Annexe,
New Delhi-110001.

Subject:- Joint Committee on Lokpal Bill,1977.

Reference:- Your letter No. 3/4/77/CII dated the 8th September,1977.

Sir,

I am directed to state that the Government of Maharashtra has no modification to suggest in the Lokpal Bill, 1977. The Chief Minister of Maharashtra has informed the Union Home Minister accordingly.

Yours faithfully

Sd/-
Under Secretary to the Govt.of Maharashtra,
General Administration Department.

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MEMO. No. 30.

JOINT COMMITTEE ON THE LOKPAL BILL, 1977.

[Copy]

CITIZENS' ADVICE BUREAU
(Regd.)

Director:
Shri D.D. Diwan.

Community Hall
(Opposite Super Bazar)
East Patel Nagar,
New Delhi-110008.

Dated the 14th March, 1978.

The Chairman,
Joint Committee on the Lokpal Bill,
Parliament House, NEW DELHI.

MEMORANDUM REGARDING LOKPAL BILL.

Sir,

I beg to submit the following for your and other members' of the Select Committee consideration.

Our organisation which I represent was the first to be called to tender evidence before the Joint Select Committee which was constituted in 1971 to consider the Lokpal Bill introduced then. However, this time I understand that no person or organisation is being invited to do so. We however feel that the case of the citizens whom of course you also represent may in some repsects go by default particularly on some points on which we feel strongly and which could perhaps if incorporated in the Bill to improve it would give full relief to the citizens in the redressal of their grievances.

(i) The wholesome feature in the previous Bill was 'consultation' with the leader of the Opposition which has been omitted in clause 4 of this Bill. No particular reason has been given for this omission. It is suggested that the leader of the opposition should also be one of the consultants along with others.

(ii) In clause 5(d) the ownership in any business by the Lokpal is kept in tact. This will give him some kind of vested interest still. It is, therefore, suggested that he should divest himself of this ownership within a certain limited period of time.

(iii) In clause 8, for appointment of the Special Lokpals and Lokpals there is no provision for consultation with the Lokpal. It is suggested that in the appointment of any additional Lokpal he should also be consulted.

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(iv) In clause 12(1) public servants have been excluded from making any complaints. Surely their complaints as ordinary citizens should receive as much consideration as those made by fellow 'public men' citizens. Of course the administrative matters will be excluded from being taken to the Lokpals.

(v) Clause 12(3) any kind of deposit prescribed for lodging a complaint will deter many weaker section citizens to approach the Lokpal howsoever small the amount may be. Besides it will increase the work of the Lokpal to sift cases for exemption. The Lokpal can of course award deterrent punishment or fines if unfounded or fabulous complaints are made and it would be a healthy check on such complaints. As the effectiveness of the institution is established the work load will automatically go down.

(vi) In clause 14(1)(a) the word 'shall' may be changed to 'should' so that the Lokpal exercises his discretion in regard to sending the case to the competent authorities which might in certain cases prejudice the impartial investigation of the case.

(vii) In clause 17(a) it should be added that when informing the complainant about the closing of a case, full information with reasons should be afforded to him so that if any further material is available with the complainant he could re-submit the case to the Lokpal.

(viii) Clause 24(a) should be changed into a "fine" instead of 'deposit'.

(ix) Note on clause 9 - It should be provided that Lokpal may be able to indent the services of the officers to assist him with or without the concurrence of the authorities above them.

It is submitted further that the following steps may also be indicated in the Rules to make work of the Lokpal more effective and publically recognised:

(a) He should be able to institute cases as <u>suo moto</u> or as reported in newspapers etc.

(b) The completed cases should be thrown open to the public and the press for study.

(c) Note 1, Clause 7 provides for the removal of the Lokpal as in the case of the judges of the Supreme Court and as a statutory authority it is suggested that his removal should also be on par with the Chief Justice of India.

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(d) It should also be provided that the Lokpal should have the power to inspect all the offices including courts to see that proper procedures are followed and also enable him thus to suggest improvements in the laws, delays and expense. He could even inspect hospitals, jails etc. etc. to see that citizens are getting proper services.

(e) Lastly the Lokpal be enjoined and also suggest in all cases time bound procedures to afford quick relief to the citizens.

I would very much appreciate and be grateful if an opportunity is afforded to me personally to discuss the above Memorandum as also further matters arising out of the same.

Thanking you,

Yours faithfully,

Sd/-D.D. Diwan
Director.