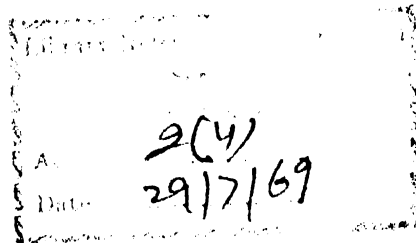


LOK SABHA
JOINT COMMITTEE
ON
THE LOKPAL AND LOKAYUKTAS
BILL 1968

EVIDENCE



LOK SABHA SECRETARIAT
NEW DELHI

March, 1969/Chaitra, 1891 (Saka)

Price : Rs. 2.85

COMPOSITION OF THE COMMITTEE

Shri M. B. Rana—Chairman.

MEMBERS

Lok Sabha

2. Shri S. A. Agadi
3. Shri K. Anbazhagan
4. Shri Frank Anthony
5. Shrimati Jyotsna Chanda
6. H. H. Maharaja Pratap Keshari Deo
7. Shri C. C. Desai
8. Shri Shivajirao S. Deshmukh
9. Shri Gangacharan Dixit
10. Shri Samar Guha
11. Shri Kanwar Lal Gupta
12. Shri Gunanand Thakur
13. Shri Hem Raj
14. Dr. Karni Singh
15. Shri Kinder Lal
16. Shri Thandavan Kiruttinan
17. Shri Amiya Kumar Kisku
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19. Shri V. Viswanatha Menon
20. Shri G. S. Reddi
21. Shrimati Uma Roy
22. Shri Narayan Swaroop Sharma
23. Shri Yogendra Sharma
24. Shri Shashi Bhushan
25. Shri Vidya Charan Shukla
26. Shri Ramshekhar Prasad Singh
27. Shri R. K. Sinha
28. Shri S. Supakar
29. Shri Tenneti Viswanatham
30. Shri Y. B. Chavan.

(i)

Rajya Sabha

31. Shri Gurmukh Singh Musafir
- *32. Shri Ram Niwas Mirdha
33. Sardar Joginder Singh
34. Pandit Sham Sunder Narain Tankha
- †35. Shri Ganeshi Lal Chaudhary
36. Shri Purnanand Chetia
37. Shri Akbar Ali Khan
38. Shri K. S. Ramaswamy
39. Shri V. T. Nagpure
40. Shrimati Pushpaben Janardanrai Mehta
41. Shri M. Ruthnaswamy
42. Shri Sundar Singh Bhandari
43. Shri Gaure Murahari
44. Shri Balachandra Menon
45. Shri A. D. Mani.

LEGISLATIVE COUNSEL

1. Shri V. N. Bhatia, *Secretary, Legislative Department Ministry of Law.*
2. Shri R. V. S. Peri-Sastri, *Additional Legislative Counsel, Ministry of Law.*

REPRESENTATIVES OF THE MINISTRY OF HOME AFFAIRS

1. Shri N. K. Mukerji—*Joint Secretary, Department of Administrative Reforms, Ministry of Home Affairs.*
2. Shri S. P. Mukherjee—*Joint Secretary (V), Ministry of Home Affairs.*
3. Shri J. M. Lalwani—*Joint Secretary (V), Ministry of Home Affairs.*
4. Shri S. P. Mukerji—*Director, Department of Administrative Reforms, Ministry of Home Affairs.*
5. Shri A. P. Veera Raghavan—*Deputy Secretary, Ministry of Home Affairs.*
6. Shri S. M. Chickermane—*Deputy Secretary, Department of Administrative Reforms, Ministry of Home Affairs.*

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

*Appointed *w.e.f.* 19th August, 1968 in the vacancy caused by the death of Shri Harish Chandra Mathur.

†Appointed *w.e.f.* 29th August, 1968 in the vacancy caused by the resignation of Shri Awadheshwar Prasad Sinha.

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JOINT COMMITTEE ON THE LOKPAL AND LOKAYUKTAS BILL, 1968.

**MINUTES OF EVIDENCE GIVEN BEFORE THE JOINT COMMITTEE ON THE LOKPAL AND
LOKAYUKTAS BILL, 1968.**

Thursday, the 4th July, 1968 at 15.00 hours.

PRESENT

Shri M. B. Rana—Chairman.

MEMBERS

Lok Sabha

2. Shri S. A. Agadi
3. Shri K. Anbazhagan
4. H. H. Maharaja Pratap Keshari Deo
5. Shri Shivajirao S. Deshmukh
6. Shri Gangacharan Dixit
7. Shri Samar Guha
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10. Shri Kinder Lal
11. Shri Thandavan Kiruttinan
12. Shri Bhola Nath Master
13. Shri V. Viswanatha Menon
14. Shri G. S. Reddi
15. Shri Narayan Swaroop Sharma
16. Shri Yogendra Sharma
17. Shri Shashi Bhushan
18. Shri Ramshekhar Prasad Singh
19. Shri R. K. Sinha
20. Shri Tenneti Viswanatham
21. Shri Y. B. Chavan,

Rajya Sabha

22. Shri Gurmukh Singh Musafir
23. Sardar Joginder Singh
24. Pandit Sham Sunder Narain Tankha
25. Shri Awadeshwar Prasad Sinha
26. Shri Purnanand Chetia
27. Shri Akbar Ali Khan
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30. Shri M. Ruthnaswamy

31. Shri Gaure Murahari
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33. Shri A. D. Mani.

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3. Shri S. P. Mukerji—*Director, Department of Administrative Reforms.*
4. Shri A. P. Veera Raghavan—*Deputy Secretary, Ministry of Home Affairs.*
5. Shri S. M. Chikermane—*Under Secretary, Department of Administrative Reforms.*

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

WITNESS EXAMINED

Shri D. D. Diwan—*Director, Citizens' Advice Bureau, New Delhi.*

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

MR. CHAIRMAN: Will you introduce yourself?

SHRI DIWAN: I am D. D. Diwan, Director, Citizens Advice Bureau. The Citizens Advice Bureau was started here actually about a year and a half ago and it is modelled on the British pattern where they have such Citizens' Advice Bureaus all over the country. At the moment, actually, these Bureaus are only in England, Wales and Scotland, and they have not made much headway elsewhere. We have two Bureaux here.

This organization was started in England to tackle the problems of rehabilitation of the war-affected people. But because of its utility it has become a part of life. It is being run by voluntary workers from all over the country. We are doing free service for the people who come to us for various problems—may be domestic, legal, educational or any other type.

Now, Sir, I would submit a few points before you ask me questions. Sir, the first thing that I wanted to lay stress was that this Lok Pal—actually whom I had named as 'Lok Sanrakshak'—should be considered as one of the most powerful, rather the most powerful limb of Parliament itself and that he should draw his emoluments and his bills should not be subjected to any control by any other Ministry and he should be directly answerable to Parliament because he has to make reports and he has to go over the irregularities of so many powerful people like Ministers and others and, therefore, he should be treated as a limb of Parliament; his reports should also go to the Parliament itself and his budget should only be seen or scrutinised by the PAC and no other Ministry should have any say in the matter.

Then the other thing was that what they have said about public servants. They should be brought under his purview. There is no mention about Chief Commissioners, Lieutenant

Governors and other people and also the MPs. Actually, with due deference to all of you, sometimes everybody is liable to error and there should be some agency to check everybody's deeds or irregular deeds, whatever you may call it.

Then the other vital point was the Second Schedule. The Second Schedule debars this officer who is going to be one of the judicial luminaries of the country and in whom you are going to place the most implicit trust and that he should not be debarred from scrutinising any action of any agency because eventually the Parliament being Supreme and his handling of the case would be in a judicial manner he would not be frivolous or go in an irregular manner. So he should have the facility or the right to scrutinise everybody's actions whether it may be a statutory body. This legal luminary with all judicial training of high status—naturally being of the status of Chief Justice of our Supreme Court, one of the highest respected courts anywhere in the world, should have that authority to go into it and then report to Parliament. And whenever there is difference of opinion, if it is so desired, it can again be adjudicated say by the Chief Justice. But the Second Schedule will take away a lot of utility and many things. Administrative action or discretionary actions should also be brought within his purview to see whether the discretion vested is correctly vested also and besides the discretion exercised has not been erroneously exercised and bonafide mistakes. I think a judicial authority of that calibre will certainly condone and he will merely suggest some kind of remedial action or remedial legislation or even remedial processes of exercising their discretion or where the discretion has to be exercised or in what manner or at what stage it should be exercised in a particular way.

Then, Sir, the most important thing which to my mind will be of creating a great amount of confidence in the citizens, for which we are all working, and that will be that the cases

once they have been decided by him should be made public. That is one thing which I lay great stress upon because that will sort of make alert everybody dealing with different cases. Of course, any security of State matter, foreign affairs or any matter that is in any way supposed to be secret for the security of the country those matters may be taken away from the file but from the very first application to the last phase of its dealing should be brought before the public to see that everybody is working properly and if there are some defects then well somebody or even the press can submit that the procedure requires some change. Suppression of facts can be brought out or seen because everybody cannot in the nature of things see that any suppression of facts has taken place or not. Because if a man is vitally concerned he may know more facts than they are brought on the file.

The other thing is that the Lokpal or Lokayukta should be able to send for the file straightaway on the receipt of the application because the fear is that many a time there is tampering of the file and sometimes even files are lost. Therefore, my submission is that if he wishes to call for the file before asking for explanation and then later on after studying the file he may do whatever he wishes to do either to call for explanation or in the manner he wishes to deal with these things.

Then, Sir, these public servants should be given equivalent rights like other citizens because after they had exhausted their efforts—say in the case of public enquiries or commissions or with other officers—and they still feel aggrieved in some manner and they think perhaps Lokpal may be able to deal better with the case they should have an equivalent right because they are also the citizens and should have equal rights to be able to see that nothing wrong is done because in many cases when there is any kind of personal animosity the man is not able to get his full share of justice. Since we are creating this Lokpal for this very reason that

he is to supersede all authority and will be an overseer on every department and he is being much talked about that we must see and place implicit trust in the judicial man. That he should be able to give justice to everybody and if there is a frivolous case, then naturally he can definitely while examining the file reject it saying that this is wrong and perhaps to this extent the Administration will come out with credit that they have dealt with the case in a very fair manner and therefore actually on seeing the number of cases he is able to reject in any respect & things can come to lime light. So, I submit, Sir, that he should have unfettered powers of seeing through everything barring, of course, security and foreign affairs.

He should also be allowed powers of inspection and to make surprise checks in any office or in any police station from where he can come to know what irregularities are going on and suggest remedial measures. He is judicial officer of the highest calibre. Naturally he will not impinge on any authority because of his status. He has no need to. Therefore, he would be able to correct where wrong things are being done and similarly in his report to Parliament he should be directed not only to refer to case work and give percentages and all that but also recommend out of his experience these inspection checks and things like that and by going through every phase of every department he should be able to suggest some amendments in legislation, some amendments in rules and regulations, in the way of working or in the exercise of discretion and all that.

He should take action through Press Report. If there are certain deficiencies somewhere and they require any kind of redress and remedy, then he should be able to suggest the actions or amendments whatever are required and wherever they are required.

I have been reading somewhere that there is fear of erosion of responsibility. But you must have studied in the histories or in the working of these institutions in other foreign

countries where they were initiated and they have taken on these institutions, there they have never complained about this and they have rather said that it strengthens their image because he is able to show that the working is so fair that there are only stray cases in the junior strata where some kind of erroneous working comes about in any kind of corruption or bad thing. So, I submit, Sir, that fear should not be there in any case. Anybody who is working sincerely and honestly should have no fear and particularly I again and again emphasise, Sir, he being a judicial officer of the highest calibre will not try to harass or implicate any person. Being a judicious man and having no fear from any side, nobody should be afraid that facts will be open and our Lokpal is going to say that this man has made a malafide mistake or is intentionally trying to do something wrong.

MR. CHAIRMAN: Anything more. Our members would like to ask some questions.

SHRI AKBAR ALI KHAN: You have studied your subject and you are a knowledgeable person. May I ask two or three questions. Have you given thought to the fact that even Lokpal will be subject to the jurisdiction of High Courts and Supreme Court under Article 226-

SHRI DIWAN: Yes, Sir, I do see that and of course that is not a bad check at all because he is going to check others. But as I said he should be subject to Parliamentary control and Parliament should sanction it. If he is going to Court, it must come to Parliament and Parliament's sanction should be sought before any kind of action is taken.

SHRI AKBAR ALI KHAN: Then your suggestion that the acts approved by the Judges—Supreme Court judges—should also come under purview. Do you not think it will conflict with the powers that the High Court and Supreme Court have already got. You have excluded that thing from

your mind. That is why I gave you the question. Let us keep the jurisdiction distinct so that there may not be any occasion for conflict or clash.

SHRI DIWAN: No, Sir, as I submitted, ordinarily there should be no clash because two highest authorities being of the highest calibre, it will be very very rare when that kind of thing comes in. If that comes in as an exception, there will be a check. Every human being is liable to error and therefore to safeguard against that contingency of human error at any stage if man goes temporarily insane and wants to commit suicide in insanity, there is and can be a check.

SHRI AKBAR ALI KHAN: Of course, we are a federal country. Have you given your thought in our case same institution, same procedure and same authority would not be easily exercised by the Lokpal?

SHRI DIWAN: Yes, Sir. My feeling is, if proper cooperation is given and particularly I feel it will be given because we are proud of this country and as you have thought of bringing this Bill there has been some recognition and thus I feel the cooperation will be forthcoming from all quarters. I feel that he will be able to function properly and if you arm him with those powers and all kinds of authority, if anybody is not giving him cooperation, Parliament can see that he is made to do that.

SHRI AKBAR ALI KHAN: It is true we are all anxious and see your anxiety also that at present we do require some authority who looks into these matters apart from the courts. But in that you have extended the scope so much that you want all the discretionary matters also. Is it advisable and would it not be difficult? You know our previous Home Minister had made the announcement that the people can come and place their grievances. He had to close his door very soon because it had become an impracticable proposition. So, let us not in anxiety give more power. The

very object that we have that there should be control on Ministers as well as Senior Secretaries, that object may remain unfulfilled.

SHRI DIWAN: It has started in certain promises and it has been accepted that some control is required. I think the best thing is that everybody should be above suspicion. By this, perhaps, his workload will be lowered down because of checks. You may call it fear complex which, of course, I do not think anybody has if he is working sincerely but for the very reason that his name is going to be made public that is going to exercise a very healthy check and by and by my feeling is, Sir that his work will diminish rather than expand because as our things become regular and people take more interest in the work and they have this little supervision over them, I do feel that there will be some kind of over-all check over everything. At the moment as you see, with all respect to you, you must have yourselves read in the papers one Minister criticising the other. The Planning Commission criticises the Minister. It is not healthy thing to do. If there is genuine criticism, which I feel perhaps there must be because if those people in authority themselves criticise their members in authority there must be some genuineness about it. Who is going to see to all these things? So far at the moment this thing is going on like that. With all deference to you, you yourself are losing so much of respect for every type of authority in the country. Some discipline must be found somewhere and we have got to exercise that discipline. That is my feeling.

SHRI M. RUTHNASWAMY: Is there any other country in the world where the Ombudsman has jurisdiction over decisions of courts of law?

SHRI DIWAN: They have got in Sweden or some other country which I cannot specify from memory. They are following the procedure.

SHRI M. RUTHNASWAMY: The whole idea of the Ombudsman is that he has jurisdiction over acts of executive, not over the courts of law.

SHRI S. S. N. TANKHA: You took objection to exclusion of the items mentioned in 2nd schedule. Would you tell which of these should be placed under Lokpal, and which of these subjects mentioned here may not be put under his scrutiny?

SHRI DIWAN: The whole section needs to be scrapped. There are competent authorities who will say such and such a thing comes under foreign affairs or within the ambit of State security. Only those should be excluded. But he should certainly have jurisdiction over every other fact of the administration.

SHRI S. S. N. TANKHA: There should be no restriction on any subject whatsoever, that is your view.

SHRI DIWAN: Excepting as I said these things where for example this aspect of security etc. comes in....

SHRI S. S. N. TANKHA: That is where a certificate is given. But all others he should look into.

SHRI DIWAN: He should be free to exercise his own jurisdiction. He will not see frivolous cases.

SHRI S. S. N. TANKHA: You must appreciate executive's difficulty also. Every thing cannot go before these officers.

SHRI DIWAN: Why should it, if the executive exercises its authority properly? I feel, with this supervision and with these checks and balances, perhaps they will become more alert. Workload should go down in course of time. Of course there may be a spate in the beginning, but later on it should go down.

SHRI S. S. N. TANKHA: Please look at Clause (e)—action taken in matters which arise out of transfer of contracts and commercial relations.

SHRI DIWAN: As soon as he sends for this thing, as soon as the Lokpal gets the case, and gets satisfactory answer the matter should end straightway and there is no reason for it to go any further. They can certify the contracts being foreign. But it may be indigenous, local or something of that type.

SHRI S. S. N. TANKHA: It cannot necessarily be local. The exclusion pointment of Lokayukta at initial types of contracts and commercial relation only.

SHRI DIWAN: This is what I foreign relations it need not go to him. We straightway certify that it involves foreign relations—it does not require any scrutiny.

SHRI S. S. N. TANKHA: I find that you have taken objection to appointment of Lokayukta at initial stage.

SHRI DIWAN: This is what I feel. Lokpal is going to be in overall charge of everything—therefore he should have a say in the matter—a delay of a month or two months in appointing the Lokayukta would not matter very much we have not had them for years for ever, so far. It is better he gets a man of his own choice, whom he knows to be able.

SHRI S. S. N. TANKHA: It is provided in the Bill. The idea is this Before the Act comes into force the Govt. will appoint a Lokayukta, who may be appointed after passing of the act as Lokpal. The procedure suggested is very good.

SHRI DIWAN: You may say like that but what I feel is that a delay of a month or two months would not matter very much. All the names would be ready and merely they have to be put up to him and he will give one of the names for appointment for each Lokayukta.

SHRI S. S. N. TANKHA: How can the scheme go through, or go ahead, unless an appointment of some person

is made, and some man is placed in charge, who can do that work, in its initial stage. Therefore the appointment of Lokayukta has to be made. That Lokayukta shall be the person who is likely to be appointed as Lokpal after passing of the act.

SHRI DIWAN: A few days delay will not matter much, Sir.

SHRI S. S. N. TANKHA: Do you want to prescribe any age limit for Lokpal? Do you want any maximum age to be prescribed over which he should not function?

SHRI DIWAN: Age average has gone up in the country and with our various health schemes, and a man is fit for quite a long time, and my feeling is that we should have such officers, more or less, for life time. We must have minimum age so that maturity of experience or training is brought about. Such a thing should be found in 50 years of age or so. My feeling is he should get life-term. Otherwise he has to depend on somebody else for extensions or there will be some manoeuvring or something and therefore it is better he is given one long term in which he can settle down to his work, discharge it properly. It may even be a life-term, unless there is reason to believe that he has failed in any manner. Otherwise, it is our feeling that he should be given long term, 8 years or 10 years or 12 years or life-term. He will be able to function effectively without any kind of pressure from any quarter or extensions. He should be given a long term or a life term.

SHRI S. S. N. TANKHA: Under the scheme of the Bill, the person can get one extension. Suppose the first term is extended from 5 years to 10 years as you desire, in that case the man who was appointed at the age of 65 will be 75 after ten years. Will it be desirable to give him another term beyond that?

SHRI DIWAN: It should be only one term. My feeling is that it should

be one term whether it is lifetime or 10 years. It should not be renewable more than that. That is my feeling.

Shri A. D. MANI: I would like to have your comments on clause 3 where it is stated that Lokpal should be appointed after consultation with the Chief Justice of India and the Leader of Opposition in the House of the People. When a political personality like the Leader of Opposition is consulted, it is likely that there may be difference of opinion between the Chief Justice and the Leader of Opposition in regard to the suitability of a particular nominee. Therefore, would you like the choice to be dictated largely by the advice of the Chief Justice of India leaving out the Leader of Opposition from this clause?

SHRI DIWAN: I think I had suggested in my memorandum—I do not know whether I have made it clear—that actually a panel of names should go to the President who should exercise his judgment without being influenced by the Cabinet. . . .

SHRI A. D. MANI: My question to you was slightly different. Panel, of course, is very desirable. But who will submit the panel? Should it be on the advice of the Chief Justice or the Chief Justice and the Leader of Opposition? You are aware that in regard to the suitability of the nominee for the Presidential election, there was difference of opinion even between judges and the person who stood for election. It is possible that the Leader of Opposition might not agree with the recommendation made by the Chief Justice whose inclination would be to choose either a serving Judge of the Supreme Court or one who has been a Judge there or anybody with a judicial background. The Leader of Opposition looks at Lokpal from a different angle, namely, of the capacity of the person to conduct an investigation based on his performance in Parliament, if he had been a Member of Parliament before. His capacity to unearth cases of corruption in Parliament might influence the advice

of the Leader of Opposition. Would you, therefore, like to leave it to the advice of the Chief Justice of India and leave out the Leader of Opposition altogether from this clause?

SHRI DIWAN: My view is that the Leader of Opposition must be consulted. But the Chief Justice will of course make the final recommendation giving his reason and he may also quote the Leader of Opposition.

SHRI A. D. MANI: Then in clause 10 where the investigation procedure is set out it is stated that the information collected by the Lokpal in the course of his investigation or the evidence shall not be published. I am not sure whether this is in conformity with the fundamental rights enjoyed by the Press which is supposed to be free. A newspaper can go and report the proceedings of a court of justice unless the proceedings are declared *in camera*. Now by putting a clause of this kind in this Bill, we are limiting the freedom of the press. It is certainly open to the Press to say that the Lokpal has taken up the case of Aluminium scandal, imagining that there is such a scandal. Would it be an offence under this Bill if the Press publish this information?

SHRI DIWAN: This is what I have myself said. He should be able to call for the file during investigation at any stage and he should also place all things before the Press and the public.

SHRI A. D. MANI: If this Bill is enacted, a newspaper cannot publish the report of the proceedings before the Lokpal unless authorised to do so. Suppose there is a big scandal which has broken out in the press and public are anxious to know what the Lokpal is doing. Cannot the newspaper publish this that it is being investigated by the Lokpal. Newspapers publish now that the Central Intelligence Bureau has taken up certain allegations made about corruption in regard to certain contracts. Under this Bill the newspapers cannot publish the activities of the Lokpal in

respect of an investigation or allegation unless that report is authorised by the Lokpal. This seems to be a restriction on the freedom of the press.

SHRI DIWAN: There I agree with the Bill. During the course of the proceedings, many delicate issues may come up. He has to go even beyond the courts. He may have to make certain enquiries about certain private agencies or private persons. He is going much beyond the courts. My submission is that he should have the final say as to whether during the course of the proceedings the Press or any other person can have access to any information. But after that, the whole thing should come before the public.

SHRI A. D. MANI: In regard to the fee that ought to be paid when a complaint is to be lodged with the Lokpal, there is a suggestion that as soon as this Bill is enacted into law there will be character assassination of a very big scale. Everybody has got a grievance and he can go to the Lokpal, file the necessary affidavits and make the lives of Ministers and public servants miserable. You know there is a deposit prescribed for standing for election. If a man wants the honour of representing a constituency, he has to make a deposit before the Election Commission. Would you like the complainant to deposit Rs. 1,000 with the complaint and if the complaint is proved to be frivolous that deposit shall be forfeited and the public servant or the Minister concerned who has to engage a Counsel to defend himself before the Lokpal should be reimbursed the Counsel's fee? This happens in a court of law. Why should it be different in the case of Lokpal just because it is a separate office created under this Bill?

SHRI DIWAN: Lokpal is going to be the people's man. People should have free access to him in every respect. Any frivolous complaint he will scotch straightway. This he can do by his experience and training. He can see through many applications. The fee should be only levied according to the

financial or monetary status of the complainant or the applicant. My submission is that we should not fetter in any way the citizens. It is for them that this institution of Lokpal is created. Many frivolous complaints will be thrown out. If people realise this, they will not come forward with frivolous complaints.

SHRI A. D. MANI: In the case of ordinary complaint, under the ordinary law the citizen has a remedy. He can file a case for malicious prosecution. But in the case of Lokpal where serious allegations are made against the integrity of Ministers or public servants and somehow these allegations can be publicised in some form or the other—whatever may be the...

SHRI DIWAN: It shall not be disclosed to the public or press during the investigation.

SHRI A. D. MANI: Whatever may be the secrecy ensured for this allegation under this Bill, once the name is tarnished, if he is a public servant he suffers. As long as he is a minister, he is in a position to defend himself in Parliament. For the public servant you must give some remedy who has been defamed. What is your opinion on this question? If a person makes a false allegation against a public servant, he should also be able to defend his case before the Lokpal.

SHRI DIWAN: If the complaints are frivolous then as I said, the man who has dealt with frivolous complaints certainly gives his findings; they go to the press and are known in public. Sometimes frivolous complaints are made against the Ministers or any Member. In order to strengthen the hands of the Ministers or the political parties, it should be seen that no wrong cases have come in. Before they are taken up, we should satisfy ourselves as to whether the complaint is genuine.

SHRI YOGENDRA SHARMA: On the first page, in para three of your Memorandum you have stated that the Bill, as published, there has been a

considerable whittling down of powers and functions of the Lokpal. You have included in that complaints against Ministers, Secretaries and other being brought under their purview. Politicians seem to have been made totally immune. The executive powers corrupt all of them. You seem to be under the view that the politicians are quite capable of being corrupt in their behaviour. In what way do you regard that the politicians should be brought under the purview of this act?

SHRI DIWAN: I don't think I have to labour very much on this point because, practically, everybody knows perhaps through contacts with many of the politicians that they can exercise influence on the administration to get some kind of accommodation—not for themselves but for some people whosoever they may be.

As I said we should make everybody aboveboard. If there is any kind of suspicion against anybody, that must be cleared. Just as gold is put in the fire and purified, similarly, everybody is to be purified by this process. Politicians, with all respect to you all, Sir, to-day, in our country, are looked upon as a kind of protector of rights. He should be a protector of rights. If anybody has worked honestly and faithfully, there should be no fear and no case is likely to come against him. Therefore, my submission is that the politicians too should be brought under the purview of this Bill.

SHRI SHIVAJI RAO S. DESHMUKH: Though the witness has not been administered the oath, I presume he is on oath. Therefore, before proceeding with my question, do I take it that he is on oath?

MR. CHAIRMAN: We do not take oath from the witnesses.

SHRI SHIVAJI RAO S. DESHMUKH: All right. I would like to enquire from the witness as to what statutory provision he has in mind to formalise relations of Lokpal and Lokayuktas with Parliament and the Stand-

ing Committees. What does he want to suggest?

SHRI DIWAN: Perhaps I have not touched upon that point in great detail. I have stated in my memorandum that the Lokpal/Lokayukta should be limbs of Parliament. Just as the Speaker of Lok Sabha, Lokpal's T.A./D.A. should also be debitable to Parliamentary Budget and there should be no control from any ministry about anything whether administrative or financial. He will report directly to Parliament about improvements that he wants to make in procedure or anything. For instance, if there is a sharp conflict between the administration and him, he will come to Parliament for anything. Just as you have appointed the Public Accounts Committee, similarly, my feeling is that Parliament may also appoint a Committee for the Lokpal which should of course consist of leaders of all parties. This should be one of the most important Committees. He can send his interim report to be considered by them and then, of course, Parliament can take action as and when the report comes. They (Parliament) can also advise the Administration through the Prime Minister or through anyone on anything which he considers important.

SHRI SHIVAJI RAO S. DESHMUKH: About the procedure, the witness has pleaded that Lokpal should be clothed with the power to call for any document or paper from any Department or a wing of the Government. What he has in mind perhaps is this. He wants the Lokpal to be clothed with powers empowering him to call for any document or information or paper on any matter connected with the investigation. Am I right? What specific amendments have you in mind in procedural clause 10?

SHRI DIWAN: This is what I had suggested. In some cases, there may be a dispute with the authorities—may be with the Secretary or anybody that such and such a file is subject to such and such secrecy.

If there is a dispute then only the conflict arises and as I submitted, you can empower the Attorney General to look into it or any one of the officers should be able to resolve the conflicts between the two authorities. Only where there is a conflict or difference of opinion, the powers should be used.

SHRI SHIVAJI RAO S. DESHMUKH: I presume that the Bill clothes the Lokpal with the power to summon the witnesses or to call for documents and papers. If in the event of a difference of opinion between the Lokpal and the subordinate officer to him will it not be a fetter to clothe the powers. In the event of difference of opinion between Lokpal and the officer subordinate to him, is the subject matter of investigation subject to the jurisdiction of the Chief Justice or Attorney General?

SHRI DIWAN: You have already got everything in the Bill. The Secretary will certify that. He can even refuse to certify if he wishes.

SHRI AKBAR ALI KHAN: He suggests that in the event of a difference of opinion, the matter should go to the Chief Justice.

SHRI SHIVAJI RAO S. DESHMUKH: I would like to enquire from the witness whether we should leave the nature of frivolous complaints and empower the Lokpal to discard them without investigation. This can itself be a source of injustice to an ordinary man and Lokpal may not have access to the common man. The witness has made a reasonable suggestion of the fact that all investigations and complaints forwarded to Lokpal should be investigated and should not be shut out. The access of people to Lokpal should be as broad and as liberal as possible. In that event, the witness has envisaged a position that the Lokpal by merely going through a complaint would discard a complaint if he feels that it is a frivolous complaint. That envisages the position that the Lokpal would be enabled to discard a complaint without any investigation.

SHRI DIWAN: I don't mean that he will not ask for the documents regarding complaints given to him. Naturally, his findings will be based on the information he gets from the documentary evidence and others that will be supplied to him. Then, he will investigate into the complaint and come to his findings. After all, it is a judicial enquiry into the facts of the case on the basis of documents supplied. If the Lokpal comes to the conclusion that it is a frivolous complaint, he will give a clean chit to the people who are concerned.

SHRI SHIVAJIRAO S. DESHMUKH: My next question is in connection with the tenure of the Lokpal. The witness believes that the tenure should be 10 years or even life tenure for him. The Lokpal is supposed to be the arm of Parliament and the constitution has provided that the life of Parliament will be five years. If Lokpal enjoys 10 years or a life term, will he not be a super-parliament and not a wing of Parliament?

SHRI DIWAN: If he is co-terminus with the Parliament, then he might become also limb of that political party or this political party which happens to be in power at that time. So he should have tenure which will make him free even from that kind of influence.

SHRI BALACHANDRA MENON: Mr. Diwan, you have stated that political leaders are unfortunately exempted from the purview of this provision. Will you be satisfied if the Members of Parliament and the M.L.As are brought in, because it will be difficult to bring in the rank and file of the parties.

SHRI DIWAN: To begin with that might be a very good idea. The wider the field is the better will be the result in the matter of purification of public life.

SHRI BALACHANDRA MENON: Lakhs and lakhs of members will be there belonging to different political

parties. It may not be possible to include some from among them.

SHRI DIWAN: You are quite right. To begin with the M.Ps and the M.L.As can be there. We are only concerned with purifying the power. Your suggestion will meet the ends of justice.

SHRI BALACHANDRA MENON: You have said that the President shall appoint the Lokpal, after consulting the Chief Justice of India and the Leader of the Opposition. If it is like this—the President shall appoint Lokpal from among a panel submitted by the Chief Justice of India after consulting the Leader of Opposition so that we can get people who have got the status—will you agree?

SHRI DIWAN: Even in what I have suggested the President has the unfettered choice.

SHRI BALACHANDRA MENON: You are agreeable for his selection from among the panel.

SHRI DIWAN: Yes.

SHRI G. S. REDDI: You have been telling that the politicians should be purified. Is it your conviction that this law will purify the politicians?

SHRI DIWAN: That is the attempt and the hope.

SHRI YOGENDRA SHARMA: The Lokpal is supposed to go into the allegations or complaints against the Ministers. In order to be able to impartially and fearlessly discharge his duties, how do you ensure that the appointment of Lokpal is not influenced by the Central Government in the context of parliamentary democracy in which you have to operate? You know that in our system even the President has to act on the advice of the Council of Ministers.

SHRI DIWAN: We have already discussed this question. His appointment will not be co-terminus with the life of Parliament. The Cabinet will

not be consulted in regard to this appointment. After taking into consideration the views of leader of opposition, the Chief Justice will make his final recommendation in the form of a panel of names to the President who in his own sole discretion will appoint the person from that panel.

SHRI Y. B. CHAVAN: Mr. Diwan, you are aware that the Chief Justice of the Supreme Court is appointed by the President on the advice of the Cabinet. Has this process come in the way of lowering the standard of justice in this country?

SHRI DIWAN: That is quite true. We are only strengthening the institution of Justice by this. The Lokpal has to go much beyond the Chief Justice and also investigate complaints against Cabinet Ministers.

SHRI Y. B. CHAVAN: All that is to be taken care of is the independence of the person after appointment the freedom that is given for his work, the mode of his removal, etc. The conditions of work are really more important. If you give complete freedom and complete independence during his period of office, I don't think there is any danger. The President has to function on the advice of the Council of Ministers. Now, instead of suggesting amendments to the Bill, you are suggesting amendment to the Constitution.

SHRI DIWAN: This Bill is a revolutionary measure, whatever revolution we can bring about, that will create confidence in the minds of the people.

SHRI AKBAR ALI KHAN: As the Constitution stands today, the President acts on the advice of the Council of Ministers. If there is anything wrong, the President will not be held responsible; either the Prime Minister or the Minister will be held responsible. That is the basis on which the democratic machinery work. You yourself agree that the Chief Justice of India, after his appointment, acts independently. What is the fear that you have here so far as the Lokpal is

concerned? The Ministers or the Prime Minister, should not be consulted and only the leader of the opposition and the Chief Justice should be consulted. It looks a little incongruous.

SHRI DIWAN: As you represent a certain section of people, we have also come across a cross-section of people. I am merely voicing their sentiments, as to what they feel.

SHRI YOGENDRA SHARMA: As you are aware, recently, a lot of contradictory opinions and divergent opinions have been expressed in regard to some of the acts of some Governors who are supposed to be free and impartial. That enjoins on us to give more thought to this problem, how best to appoint the Lokpal so that those things can be obviated.

SHRI DIWAN: You are more or less strengthening my argument. The less influence of politics or administration is exercised in regard to the choice of Lokpal the better perhaps it will be for his eventual working. That is the feeling.

SHRI YOGENDRA SHARMA: You know Lokpal is supposed to investigate allegations, etc. through other officers whom they may requisition from the various departments with the sanction of the authorities concerned. Now, if the service conditions of these investigating officers are governed by their Departmental heads, and the Lokpal is supposed to investigate into allegations against them, then how do you ensure that the investigation will be impartial?

SHRI DIWAN: That is where the experience, knowledge, etc. of the Lokpal or his assistant will come in.

As any judicial officer, they should be able to see through many things. Therefore, I have suggested that even before inviting these persons he should call for files so that he is able to see as to what is going on the file and what has happened before. From the notings he will know very much the context of the whole thing. Then, later on, of course, he can call them, and by his training and experience, I am sure, he should be able to sift the truth.

SHRI YOGENDRA SHARMA: Don't you think that the officers against whom investigations are made should be under the Lokpal—their Service conditions and other things?

SHRI DIWAN: No, Sir. Because the Lokpal has in any case to take the assistance of the various departments. He should have no connections with any kind of administration, because otherwise there is the danger of their again sinking back to that type of administration by usual contacts. So he must have an independent way of life, an independent outlook, so that he is able to call for the files, then call for the people and then be able to sift the truth.

SHRI SAMAR GUHA: Naturally all the Members of Parliament and the members of the Joint Committee will surely share the anxiety expressed by Mr. Diwan so as to clear the atmosphere of suspicion that is prevalent in the country. I would ask one question, with reference to paras 3 and 4 of his memorandum. Could you please highlight the points which you feel in this Bill as something like further agents of the Government?

SHRI DIWAN: Even for the sake of going for help from various agencies in regard to investigation of cases he has to get the sanction of the authorities, and these are things that are already hedging so many other things; they go on impeding the work of the administration and

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there is so called bureaucratic approach. Therefore, I said that this is more or less to hedge his authority, to hedge his discretion, to hedge his actions. The whole idea should be to make the whole administration naked to his eye. Therefore, he should have unfettered powers and unfettered facilities to work and ensure help of everybody.

SHRI SAMAR GUHA: By politicians, I believe, you mean the persons who have been elected to the legislatures, etc. On what specific points they can be pinpointed to have done certain things which are against...

SHRI DIWAN: They come as representatives of the people in Parliament and certainly they occupy their prestigious place or whatever you may call it, and some of them make their way to the administration or some sort of interference with the administration. I am sure the hon. Members cannot be unaware of many things that are being talked about.

SHRI SAMAR GUHA: I welcome the idea. The grievances of the Government employees may also come within the purview of the Lokpal. Would you please give us an idea as to how Govt. servants will be able to have redress of their grievances through Lokpal?

SHRI DIWAN: I have touched upon this already, if I may mention. First, he should exhaust all the remedies open to him under the Service rules. After exhausting all these remedies, he may feel that somebody somewhere has been inimical to him and therefore he has been harmed in that manner. The advice of the Union Public Service Commission, say, for instance, is obtained on the basis of the record that is sent to them. Many of the departmental promotions or punishments are more or less based on the concurrence of the Union Public Service

Commission and the documents supplied to them. Now, the data can be wrong or right. Similarly it can happen in other cases. So, unless the files could be probed into this man has no remedy to go anywhere and he becomes helpless because the Administration—even one man higher—give a series of bad reports and this man gets absolutely harmed in his service career. Maybe he is one of the hard-working but he has some animosity—either because of his personal behaviour or on the files. I know of a person—if you permit me to quote—he was a peon who was asked to bring meals from the officer's house. He said I am not going. Next day he was put on the dak distribution work and he was required to deliver the dak from New Delhi to Old Delhi Secretariat and as soon as he would come back there would be some other dak ready for being delivered. So, the third day he said to the Officer that he was prepared to bring the food and he may be saved from this. So, my submission is that even these things which can happen and legitimately can happen within the rules be liable for being probed into. Now, where is this little man going for help? So, he should know that I have got somebody to whom I can approach for correction. So, Sir, this is my submission that they should have—after they have exhausted all other remedies according to law, according to their service conditions—an ultimate man like Lokpal who should be accessible to everybody in every sphere of life.

SHRI SAMAR GUHA: I can appreciate the sentiments expressed by Mr. Dewan about the little man. Apart from the question of changing the Constitution when you suggest that the judiciary should be brought within the scope of Lokpal and Lokayukt, what is in your mind? Is it that the conduct of the judge or his judgement?

SHRI DIWAN: Not the judgement. I am not referring to case work at

all. I am referring only to procedure. There are so many things, for instance, everybody gets a notice to come at 10 O'clock and from 10 to 5 P.M. his case may not be taken up at all. They do not even break up the cases for being taken up before lunch and after lunch. Secondly, there is a man who wants a copy and he goes and wastes his time and unless he pays something he cannot get it. So, the procedures and ways of working in the courts are the things which he will be able to suggest improvement in. He cannot suggest in the case work. Those things can go in the regular course for appeal to the High Court, Supreme Court, etc.

SHRI HEM RAJ: Mr. Diwan you have just stated that the leaders of the Opposition should be consulted for appointing the Lokpal. Don't you think that in India there is multiplicity of parties and there may be no agreement between the different political groups, then in what manner you will try to solve the problem for the appointment of Lokpal. Have you any solution?

SHRI DIWAN: You have to come to some finality. Either political leaders do it or you can take the largest single party in Parliament or let some of the leaders agree and that may be accepted. You have to devise some form of opposition leadership in some manner and that will, of course, depend on the fact that if the Opposition wants to have a say in the matter surely they will also have to come to terms in some manner.

SHRI HEM RAJ: In the case of U.K. they have provided in the Act itself that the services of a lawyer can be engaged. Here the cases will be complicated and in the Bill no provision has been made for anybody to represent his case by a lawyer.

SHRI DIWAN: You can engage a lawyer if you wish to clarify further

but as the person will be knowing his case better . . .

SHRI HEM RAJ: Do you think the services of the lawyer will be required?

SHRI DIWAN: That depends on the nature of the case. It is difficult to say that every case will require the services of a lawyer.

SHRI HEM RAJ: You want to eliminate clause 8 sub-section 5. Now, even at the present moment the number of writ petitions in the High Courts is so big that the High Courts are not able to cope with the work. If your suggestion is accepted the Lokpal might be burdened with so many complaints and allegations that he might not be able to—if he does not use his discretion—finish the work. Do you not think that the present provision gives him sufficient power under clause 5 to exercise his power in proper cases.

SHRI DIWAN: No. I do not think so. It does not cover where erroneous discretion has been used; or he may not have exercised the discretion at all. But as I said the workload is bound to come down later on. To begin with although his jurisdiction may be restricted yet you will find there will be a flood of complaints because people are pinning great hopes on this office, and in our other Institutions you get away from most of the people. Everybody would like to go there and by and by norms and practice will be established and administration gets geared up either by fear or by any kind of restraint. Then, things, I think should straighten themselves out and there should not be so much workload.

SHRI HEM RAJ: In the Bill as it stands no positive qualifications have been fixed. Only negative things have been given i.e. such and such a person who belongs to a political party should sever his connection on becoming Lokpal. Do you think when you are talking that the Lokpal

will be the limb of the Lok Sabha, in that case when there are different political parties, will he not be influenced by the different political parties, if he is not an independent man?

SHRI DIWAN: His qualifications are laid down as those of the Chief Justice of India. Chief Justice of India, you know, has qualifications that he is a lawyer of so many years standing, so much academic qualification. All this you are going to have and then also as I have suggested only for this sake that his tenure should be long enough to give him independence from that control and since he is going to have control, high calibre appointment and experience and all that, I think that fear should not be there. But of course, exceptions can be there but we hope that when everybody exercises his best choice all round the country, you have light of that nature and that light will shine.

H. H. MAHARAJA P. K. DEO: You suggested that the action of the Governors should come under the purview of the Lokpal. Do you suggest that the action of the Governor under Article 356 of the Constitution while recommending the President that the situation has arisen in which the Government of a State cannot be carried on in accordance with the proviso of the Constitution and recommending the President's rule in a particular State also should come under the purview of Lokpal?

SHRI DIWAN: If it is of public grievance.

SHRI S. S. DESHMUKH: If really a citizen is effected by the report of the Governor that the Government of the State cannot be carried on under the Constitution, what more public thing can be?

SHRI DIWAN: What he has to see is that the discretion he has exercised has not been influenced by any kind of corruption.

H. H. MAHARAJA P. K. DEO: When the Governor is being influenced by some partisan interest and he is recommending to the President which is not above board, do you not think that such a kind of Governor should also come under the purview of the Lok Pal.

SHRI DIWAN: The process of impeachment is there.

H. H. MAHARAJA P. K. DEO: In the Constitution President can be impeached and not the Governor. Governor can hold office at the will of the President. Under these circumstances do you not think that such an action of the Governor is questionable and where *prima facie* he is acting on partisan-ship; should it be under the purview of Lok Pal?

SHRI DIWAN: Yes, I entirely agree with you.

MR. CHAIRMAN: We thank Mr. Diwan for coming over here and giving us instructive and valuable suggestions. We finish for the day. We shall meet to-morrow at 3 p.m. at the same place.

In the mean time may I remind all of you for dinner and request all of you to come.

SHRI DIWAN: You are the most important people in the country and I have come to beg of you just as you have put on the letter that you have sent to me in regard to the etiquette put in a detailed manner and I have appreciated it. Parliament may issue same instructions to the Government to send instructions in similarly detailed manner to the Administrative Officers, Administration and Offices to observe similar etiquette to the people because they are still working in that old bureaucratic British ways when the British were our master. I remember as an first officer when started Service not to keep chair in my room so that nobody could come and sit in my room. So, I would request some kind of detailed instructions because that will take away so much suspicion and even cuts half the workload by this very thing.

I have to request that a kind of—courtesy should be shown to the people when they come and that should be observed. They should keep a copy of the Circular and put it in their room just as you say. That is my submission and a little suggestion, if you could kindly do.

MR. CHAIRMAN: We shall keep that in mind.

(The witness then withdrew)

(The Committee then adjourned)

MINUTES OF EVIDENCE GIVEN BEFORE THE JOINT COMMITTEE ON THE
LOKPAL AND LOKAYUKTAS BILL, 1968

LOKAYUKTAS BILL, 1968.

Friday, the 5th July, 1968 at 15.00 hours.

PRESENT

Shri M. B. Rana—Chairman.

MEMBERS

Lok Sabha

2. Shri S. A. Agadi
3. Shri K. Anbazhagan
4. H. H. Maharaja Pratap Keshari Deo
5. Shri Shivajirao S. Deshmukh
6. Shri Gangacharan Dixit
7. Shri Samar Guha
8. Shri Gunanand Thakur
9. Shri Hem Raj
10. Shri Kinder Lal
11. Shri Thandavan Kiruttinan
12. Shri Bhola Nath Master
13. Shri V. Viswanatha Menon
14. Shri G. S. Reddi
15. Shri Narayan Swaroop Sharma
16. Shri Yogendra Sharma
17. Shri Ramshekhar Prasad Singh
18. Shri Tennesi Viswanatham.

Rajya Sabha

19. Shri Gurmukh Singh Musafir
20. Pandit Sham Sunder Narain Tankha
21. Shri Awadheshwar Prasad Sinha
22. Shri Purnanand Chetia
23. Shri Akbar Ali Khan
24. Shri K. S. Ramaswamy
25. Shrimati Pushpaben Janardanrai Mehta
26. Shri M. Ruthnaswamy
27. Shri Gaure Murahari
28. Shri Balachandra Menon
29. Shri A. D. Mani.

LEGISLATIVE COUNSEL

Shri R. V. S. Peri-Sastri—Addl. Legislative Counsel, Ministry of Law.

REPRESENTATIVES OF THE MINISTRY OF HOME AFFAIRS

1. Shri N. K. Mukarji—*Joint Secretary, Department of Administrative Reforms.*
2. Shri S. P. Mukherjee—*Joint Secretary (V), Ministry of Home Affairs.*
3. Shri S. P. Mukerji—*Director, Department of Administrative Reforms.*
4. Shri S. M. Chikermane—*Under Secretary, Department of Administrative Reforms.*

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

WITNESSES EXAMINED

Kendriya Sanatan Dharam Maha Sabha, Daryaganj, Delhi.

Spokesmen:

1. Shri Bhagwan Swarup Bhatnagar—*President.*
2. Shri Chandu Lall Gupta—*Vice-President.*
3. Shri Vidya Bhushan—*Member.*

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

Direction 58 of the Directions by the Speaker under the Rules of Procedure and Conduct of Business in Lok Sabha was read out to the witnesses by the Chairman.

MR. CHAIRMAN: Shri Bhatnagar, we have got your memorandum and if you want to explain it further or add to it, you may do so.

SHRI BHATNAGAR: I have only two amendments to the suggestions that I have given. The first one is that on page 2, paragraph 6, subparagraph (iv), before “;”, kindly insert—

“and the executive refuses to intervene because of these court proceedings”.

The second is that on page 4, subparagraph (viii), before “;”, kindly add—

“and where the mala fides of the complainant are evident, action shall be taken to proceed legally against him”.

I have nothing else to add to what I have said in the memorandum.

SHRI AKBAR ALI KHAN: How long has your organisation been working?

SHRI BHATNAGAR: For about ten years.

SHRI AKBAR ALI KHAN: Could you give us any idea of your membership?

SHRI BHATNAGAR: The organisation covers the whole of India and there are several hundreds of them.

SHRI AKBAR ALI KHAN: Have you not got a registered?

SHRI BHATNAGAR: It is a registered body.

SHRI AKBAR ALI KHAN: Can you not give an approximate figure?

SHRI BHATNAGAR: I shall supply it if you like.

SHRI AKBAR ALI KHAN: What are the aims and objectives of your organisation?

SHRI BHATNAGAR: To do good to the society.

SHRI AKBAR ALI KHAN: Now, I come to your Memorandum. On page 2, in paragraph 6, you have mentioned cases which should be investigated by the Lokpal and Lokayuktars. You want that all these cases should be looked into by the Lokpal?

SHRI BHATNAGAR: Yes.

SHRI AKBAR ALI KHAN: Have you got any idea as to how many cases are pending in our High Courts and other courts?

SHRI BHATNAGAR: I do not have any idea. But I can give an example . . .

SHRI AKBAR ALI KHAN: I want to know whether you have any idea as to how many cases are pending in High Courts and other courts.

SHRI BHATNAGAR: There may be several. But I have no idea.

SHRI AKBAR ALI KHAN: The judiciary starts from Munsif right upto the Supreme Court. Do you think that after all that it should again be investigated by the Lokpal?

SHRI BHATNAGAR: Yes.

SHRI AKBAR ALI KHAN: Now many lokpals do you envisage then? There are thousands of judgments and you want Lokpals to look into those judgments.

SHRI BHATNAGAR: There is a feeling in the minds of people that to get justice has become impossible. How to remove that feeling?

SHRI AKBAR ALI KHAN: You say that the judgments that have been given should be looked into and corrected by Lokpals. In that case have you any idea as to how many Lokpals will be required?

SHRI BHATNAGAR: Only one Lokpal and two or three Lokayuktas.

SHRI AKBAR ALI KHAN: You want the Lokpal to be an appellate court to the Supreme Court, the High Courts and other courts.

SHRI BHATNAGAR: In paragraph 7 of my Memorandum, I have stated:

"That, therefore, what is required is a machinery with Supreme and mandatory powers and

unless this is done, no ameliorative measures will yield any result."

SHRI AKBAR ALI KHAN: You want the Lokpal to give punishment also, say, 3 years or 6 years or whatever it is.

SHRI BHATNAGAR: Yes, if it is necessary.

SHRI AKBAR ALI KHAN: You want the Lokpal to be the appellate authority?

SHRI BHATNAGAR: Yes.

SHRI AKBAR ALI KHAN: You want the Lokpal to cancel whatever judgments the different courts have given with the best of intensions and you want the Lokpal to pronounce punishment and no appeal to that.

SHRI BHATNAGAR: Yes. It should be the final authority.

SHRI AKBAR ALI KHAN: How many cases do you think will go to the Lokpal?

SHRI BHATNAGAR: From the whole of India, it may be a thousand cases.

SHRI AKBAR ALI KHAN: That means you have no idea. You want a proper inquiry. That is what you have stated on page 5. What do you mean by it. Do you mean to say that before the Lokpal, the lawyers will appear and the evidence will be recorded?

SHRI BHATNAGAR: The lawyers need not appear. Only the documentary evidence will suffice.

SHRI AKBAR ALI KHAN: If somebody wants to have a lawyer, he should not be allowed. What is your view? Do you want the lawyers to appear and whether the oral evidence should be taken or not?

SHRI BHATNAGAR: Yes.

SHRI AKBAR ALI KHAN: Who will examine and cross-examine the witnesses?

SHRI BHATNAGAR: There is no need of cross-examining. The Lokpal can examine the documents and decide the case.

SHRI AKBAR ALI KHAN: You do not want oral evidence.

On page 7, you say that the procedure should be according to the Criminal Procedure Code.

SHRI BHATNAGAR: It is just a suggestion. I am not a technical person.

SHRI A. D. MANI: May I ask the witness whether he can bring forward before this Committee the cases where the judgment has been given but justice has not been done. You say that you have got a large number of cases. We would like to examine those cases.

SHRI BHATNAGAR: I have not used the word 'large' anywhere.

SHRI A. D. MANI: Even one case will do. You give us the documents to show that justice has not been done even though judgment has been delivered by an appropriate court in the country.

SHRI BHATNAGAR: You are referring to paragraphs 3 and 4 of my Memorandum.

SHRI A. D. MANI: This is what you have stated:

"That documentary evidence can be produced and copies thereof will be supplied to the Hon'ble Members if desired to substantiate the above and to show that the Government authorities and the Government advocates have been deceived the Hon'ble Supreme Court which is

the highest judiciary of the land."

This is a very serious charge. Apart from it being a contempt of the Supreme Court, to say that it has been deceived, we would like you to tell us what are those cases.

SHRI BHATNAGAR: I can produce the documents if you give me time.

SHRI A. D. MANI: You are making a very serious statement before the Parliament Committee that the Supreme Court has been deceived in some cases.

SHRI BHATNAGAR: I have documentary evidence. If you give me time, I can produce it.

SHRI A. D. MANI: When you come before Committee, you should be ready with the documents.

SHRI BHATNAGAR: I received the notice only day before yesterday.

SHRI A. D. MANI: This is a very serious statement about the Supreme Court. Mr. Chairman, this is a Parliamentary Committee before whom the Supreme Court is being attacked and the witness is not ready to produce evidence. I would suggest to the witness, in order to avoid complications, that either he should withdraw this statement because it is a serious reflection on the Supreme Court or produce documentary evidence.

SHRI SAMAR GUHA: The witness says that if the Members want, he can produce documents. If the witness insists on the observation that he has made—that is a serious observation—he should produce the documents and those documents should be circulated among the Members.

SHRI BHATNAGAR: I am ready to produce it.

SHRI AKBAR ALI KHAN: Does the witness realise its implications? He is before a very responsible Committee. He may think over it.

SHRI BHATNAGAR: I understand that.

MR. CHAIRMAN: A point of order has been raised. The Committee is not here to look into the judgments of the Supreme Court. That will be done by the Lokpal if and when an office is created. The evidence that you want to produce can be produced before the Lokpal and not before the Committee. The Committee here is only meant for formulating this law and after we have made this law and after it is passed into an Act by the Parliament, then only the Lokpal will come into existence. As I have warned you before, unless you say that it is a confidential matter, it will be publicised; then outside we do not know what will happen to you.

SHRI A. D. MANI: We have received a very serious allegation about the Supreme Court of India, that it has been deceived by government authorities and government advocates. It may or may not be true, but I feel that in the interest of the reputation of the Supreme Court, we would ask the witness to withdraw this paragraph.

SHRI SAMAR GUHA: It is not our business here to exonerate the Supreme Court. If the witness feels that he has got the documentary proof and that he can stand the result and reaction of that, I think, he should have the right and we should have the benefit of receiving the documents that he might send. But he must be conscious of the results and reactions.

MR. CHAIRMAN: I warn the witness. Whatever he states here will be, unless it is specified that it is a confidential matter, a public document and he has to bear the consequences of it.

SHRI BHATNAGAR: I have studied the matter. I have given in writing. If you give me time, I can produce the original documents.

MR. CHAIRMAN: We are not here to take such documents. We are a committee to go into the Bill and to make such amendments as we think proper, so that it will be produced before the House in a proper form. We are not supposed to look into such evidence or witness to see whether it is defamatory or not. I again warn you that this is the position. If you still want to withdraw this paragraph now, you can do so, or if you want to continue, you can, but we shall not be responsible for that.

SHRI A. D. MANI: One of the hon. members has suggested that the witness has got the evidence and that he could place it before us. He is not ready today with the evidence. Suppose the evidence comes. We are not a judicial body to sit in judgment over the Supreme Court. We have to refer the matter to the Supreme Court saying, 'this is the evidence that has come before us; please look into the matter'. Then the witness will get into trouble. In the interest of the witness himself, I would ask him to consider withdrawing the statement. If, however, he wants to stand by it, he can. But once the matter comes before us, it will be our duty to refer the matter to the Supreme Court.

SHRI TENNETI VISWANATHAM: The witness has said that he is ready to produce the evidence and that he stands by what he has said. It is, of course, good of you to have warned him once. That is alright. But when he is prepared to do that, I do not think that we should keep on saying, 'take care of the consequences'. Where does this lead to? The Lokpal Bill itself is intended for a certain purpose. Things are happening in this country which are not cognizable under the four corners of law. Therefore, we require certain other institutions, certain other authorities, to

be appointed. Now the witness is trying to build a case that such an institution is necessary. There are cases to his knowledge, as he says, that even the highest Court in the land has been deceived. What is the great seriousness about it? There are quite a number of cases where wrong judgments have been obtained. Sometimes the court makes an error. Therefore, please do not try to rub it into him saying that this is dangerous. This is a Committee where we should get into all the danger that is possible. There is no harm. Let him produce the evidence. We are not here to pronounce judgment on the correctness or otherwise of it. He says that he has certain papers to give us. What is the objection in taking them?

SHRI AWADHESHWAR PRASAD SINHA: As you have very rightly pointed out, Mr. Chairman we are here to see that this Bill is amended in a manner best suited to the objects. The witness has made rather serious allegations against the Supreme Court and he says that he is prepared to stand by them and he is prepared to produce the documents before us. But it is none of our business to gather papers from him and send to the Supreme Court as Mr. Mani has said. This is none of our business. This is perhaps the 60th Select Committee of which I am a member. This is never done by the Select Committee. These papers, if they come, have to be filed. That is all. If it goes out, then this will be a matter between him and the Supreme Court. We need not worry about that. It is not relevant here.

SHRI HEM RAJ: He says that he has got certain evidence in his possession. What he says is about facts and not anything about the legal aspect of it. On facts the judgment may go in favour of the appellant or complainant, but due to the law of limitations he may be barred. There

might be such cases. So, whatever facts he wants to put, let him put before the Committee. Of course, it is none of our business to refer them to the Supreme Court.

SHRI SAMAR GUHA: One of the members has pointed out that the matter is not relevant. It is quite relevant because even yesterday another witness suggested that the jurisdiction of Lokpal should be extended to judiciary also. That is a question which we shall take up ourselves. If certain documents are produced before us and are circulated among the members, that may even strengthen the logic of the suggestion that the jurisdiction of Lokpal should be extended to judiciary. Therefore, I consider that the documents cited are quite relevant.

MR. CHAIRMAN: Mr. Mani, you can ask your questions now.

SHRI AKBAR ALI KHAN: Will he produce the evidence?

MR. CHAIRMAN: If he wants, he can produce. We are not a Committee to pass judgments on such things. His idea is to strengthen his argument for creating a Lokpal. I think, this is all that he wants. If he makes certain allegations, we are not concerned with them.

SHRI BHOLANATH MASTER: There is no question of allegation in this. He says that there is a defect in the procedure of arguing the case before the court by our competent legal authorities, and he wants an improvement on that and he wants to produce some documentary evidence in support of that. If he is prepared to take the risk then he can substantiate the allegations.

SHRI BHATNAGAR: If you would give me a week's time, then I shall produce copies of the documents.

SHRI K. S. RAMASWAMY: What is the purpose of getting those documents?

MR. CHAIRMAN: Even if you produce evidence, it is not going to help us. We are sitting here in a committee to amend the Bill before us and to find out what the powers should be and so on. How things have happened in the High Court or the Supreme Court is no concern of ours. If you want to produce the document, we shall not deny you of the opportunity of producing it.

SHRI BHATNAGAR: If you want to be convinced, I am ready to produce it. If you do not want, then I would not produce.

MR. CHAIRMAN: Parliament is convinced that a Lokpal is necessary and that is how this Bill has come up. Further than that, I do not see the necessity to produce any such document.

SHRI BHATNAGAR: I do not insist that I should produce it. Unless I am asked I am not producing it. Therefore, I have said that if desired I shall produce it.

MR. CHAIRMAN: I warned you in the beginning, I warned you in the middle and again I am warning you. Certain allegations against the Supreme Court are being made, and they are a part of a document now. It is bound to go out. When it goes out. . .

SHRI BHATNAGAR: This is not secret.

MR. CHAIRMAN: If you are prepared to take the consequences; then we have no objection and we are not going to stand in your way

SHRI BHATNAGAR: These are hard facts.

SHRI A. D. MANI: I now go on to the detailed suggestion made by the witness. He says in paragraph that the Lokpal should not be over 60 years of age and no extension of service beyond the age of 65 should be granted. In this connection I would like to ask him whether in clause 5 of the Bill he would think of suggest-

ing a pension for the Lokpal so that the Lokpal will be the highest office in the country more or less, because a man holding office for five years and drawing a pension and higher than the Chief Justice of India would be the highest man in the land. Would he like to suggest a pension also, apart from the age limit that he has suggested?

SHRI BHATNAGAR: My humble suggestion is that he should be a social man of respect and should work honorarily.

MR. CHAIRMAN: Honorary workers have failed everywhere, as we have all experienced.

SHRI A. D. MANI: Does he want the Lokpal to be chosen on the advice of the Chief Justice and the Leader of the Opposition or only the Chief Justice of India? Or has he got any other suggestion to make about the choice of the Lokpal?

SHRI BHATNAGAR: This position would be a position of onerous responsibility and a religious-minded and God-fearing man should be appointed to that post.

SHRI A. D. MANI: I would now go on to page 5 of your memorandum regarding clause 8(4). You say that the time-limit should not apply to cases where the person has been seeking relief diligently. I think this section will not be in conformity with the procedures of the Income-tax Department in respect of investigation of offences. I believe that under the Income-tax Act, 12 years is the limit prescribed for investigation of offences. If a person honestly believes that a certain concern has defrauded the exchequer of large sums of money by forging incorrect returns and it goes beyond a period of five years prescribed in the Act, then the Lokpal will be prevented from inquiring into the allegation. May I know whether he would like the duration of the offence to be limited to the period

allowed under the income-tax rules so that the matter can be inquired into if it falls within the procedures and periods prescribed by the income-tax Department?

SHRI BHATNAGAR: There should be no time-limit, so far as the Lokpal is concerned.

SHRI A. D. MANI: Even for 100 years or 50 years.

SHRI BHATNAGAR: Very recently the President decided a 20-year-old case.

SHRI AKBAR ALI KHAN: Do you suggest that a man who does not believe in God should not be made Lokpal?

SHRI BHATNAGAR: I want a man of integrity.

SHRI HEM RAJ: Have you seen and studied the legislation enacted on this subject by other countries?

SHRI BHATNAGAR: No.

SHRI HEM RAJ: From what you have stated at page 7 of your memorandum in regard to clause 8, I find that you want both legislative as well as executive and administrative powers to be given to the Lokpal and Lokayuktas.

SHRI BHATNAGAR: Such power is already given in the Bill.

SHRI HEM RAJ: Under the Bill only recommendations are to be made by him but under your scheme you suggest that executive as well as judicial powers should be given to him.

SHRI BHATNAGAR: I am against recommendatory powers.

SHRI HEM RAJ: You want executive powers also. You say that so far as the complained is concerned, he should not send a copy of that complaint to the officer against whom the complaint is made.

SHRI BHATNAGAR: I say that when a complaint is filed, it should be sent to the Government servant concerned and as soon as his explanation is received, a copy of his explanation should be supplied to the complainant.

SHRI HEM RAJ: Under your scheme, it will apparently take a longer time.

SHRI BHATNAGAR: The complaint should be sent to the head of the office or secretary. Government procedure is such. If a complaint is made against a joint secretary, we cannot address it to the joint secretary.

SHRI SAMAR GUHA: You say in page 2 that "documentary evidence can also be produced to show that forts have been made even to destroy Government records to make evidence disappear". Have you any documents with you now?

SHRI BHATNAGAR: No, not just now. But if I am given time, I can produce them, say, on the 14th of this month.

श्री गुरगानन्द ठाकुर : अध्यक्ष महोदय, मैं समझता हूँ इससे सत्य का बहुत बड़ा रहस्योद्घाटन होगा। इस दृष्टिकोण से इस एक्टिबेन्स को समिति के सामने भ्रवश्य आना चाहिये। इसमें सुप्रीम कोर्ट के जजमेंट का प्रश्न नहीं आता है। इसके द्वारा हमें पता चल सकेगा कि किस तरह से धांधली होती है, गोलमाल का पता लगेगा।

MR. CHAIRMAN: I am prepared to receive any documents he produces. But I do not know whether we shall be able to pass any judgment on that.

SHRI SAMAR GUHA: It is not our business to pass a judgment on it. But it may help us to formulate the Bill in such a way as to be useful. For instance, we may know whether even little man in the Government should be included within the jurisdiction of this Bill.

SHRI A. D. MANI: Mr. Chairman, no Member is barred from putting a

question. But if you are opening a case decided by the Supreme Court and you are going into the motives of that decision that will be very much beyond our parliamentary privileges. You have told him that it is open to him to send any document. But we need not go out of the way to invite documents.

SHRI TENNETI VISWANATHAM: I think we are arguing a little too much on this point. If he wants to produce any document, we will do whatever is possible; if we could use it, we shall use it; if we could not use it, we need not use it.

श्री गुणान्द ठाकुर : अगर इस तरह की बात प्रकाश में आयेगी तो उससे अधिकारी भी सतर्क होंगे। अगर इस तरह से गोलमाल का पता चलता है, चाहे वह सुप्रीम कोर्ट में हो या हाई कोर्ट में हो तो मैं समझता हूँ भविष्य के लिये वह बहुत बड़ी पूंजी होगी। इस दृष्टिकोण से समिति को इस पर विचार करना चाहिये।

SHRI BHATNAGAR: I am ready to produce the documents if the Committee so desires. You may satisfy yourself whether the allegations are correct or not.

MR. CHAIRMAN: It is up to you; if you want, you may produce any document you like.

SHRI AWADHESHWAR PRASAD SINHA: Let us proceed with the Bill. It is for the witness to produce or not to produce the proof.

MR. CHAIRMAN: Yes, Mr. Tankha.

SHRI S. S. N. TANKHA: As I understand it, the witness has made certain allegations about what has happened either in the court or outside. This merely shows that he thinks that the appointment of Lokpal is necessary. Beyond that, we need not ask him to produce any evidence. If it is a statement of a matter of fact to show that the Government Advocate has acted wrongly or has misled the court, that fact has been given by him, and we need not ask him to

prove if such a thing has happened or not. There is no question of defamation. I am afraid Mr. A. D. Mani has wrongly understood the witness. The witness has stated that the Supreme Court has not done any wrong but that it is believed that those people who had put forward the case before the Supreme Court acted wrongly. This is a mere allegation. We need not enquire into it, or call him to produce any evidence. He has mentioned various irregularities. They may or may not have happened; we need not receive any document in that connection. Either you believe him or disbelieve.

SHRI TENNETI VISWANATHAM: When he says he has the document to prove it, and if you say that you do not want the documents, we are unnecessarily proceeding with that matter. Having invited him to give evidence on the Bill, let us hear what he has got to say on the Bill. Let us proceed with the Bill proper. I request the Chairman to proceed with the Bill.

SHRI SAMAR GUHA: The hon. witness has suggested that the Lokpal to be appointed should not be more than 60 years of age. That is the upper limit. I would like to ask him whether he feels that there should be a lower limit.

SHRI BHATNAGAR: It should be below 50.

SHRI SAMAR GUHA: What is the minimum? Not less than what?

SHRI BHATNAGAR: It should not be more than 60.

SHR SAMAR GUHA: Should it be not less than 30, 35 or 40? What should be the lower limit? For instance, after 65, one may lose one's powers of judgment. But, at the same time, there is the question of maturity. We are giving the responsibility to a person, almost parallel to the Chief Justice of the Supreme Court. Therefore, it is a question of maturity. So, at which age do you consider them to be mature enough to be appointed as Lokpals?

SHRI BHATNAGAR: According to our *Shastras*, a man should retire after the age of 50.

SHRI SAMAR GUHA: So far as the upper limit is concerned, it is quite clear. What should be the lower limit?

SHRI AKBAR ALI KHAN: Should you suggest the minimum age to be 25?

श्री गुरुरानन्द ठाकुर : आपने अपने मैमो-रेंडम में कहा है :

"That all complaints should receive highest priority and must be decided within a period of one month or two at the latest. No Government Servant should be allowed to keep the same with him for a period of more than a week:"

आपने कहा है कि सभी कम्प्लेंट्स को हाइएस्ट प्रायोरिटी दी जाए। आप जानते ही हैं कि हमारा देश बहुत बड़ा है। अब मान लो कि एक हजार या पांच सौ शिकायतें एक महीने में आ जाती हैं। लोकपाल या लोकायुक्त किस शिकायत को प्रेफरेंस दे? किसी को प्रायोरिटी दे?

SHRI BHATNAGAR: You can make it one month; I appreciate your idea.

श्री गुरुरानन्द ठाकुर : आपने समय बांध दिया है कि एक महीने या अधिक से अधिक दो महीने के अन्दर उनका निपटान कर दे। अब अगर एक हजार कम्प्लेंट्स आ जाती हैं तो कैसे सम्भव हो सकता है कि वह सभी को डिसपोज़ कर दे? अगर वह नहीं कर सकता है तो आपका क्या सुझाव है कि किस तरह की कम्प्लेंट्स को वह प्रायोरिटी दे?

SHRI BHATNAGAR: He has to pronounce judgment only.

श्री गुरुरानन्द ठाकुर : ऐसा भी हो सकता है कि उसके पास फ़िबोलस कम्प्लेंट्स कुछ आ जाए। फिर उसको उन कम्प्लेंट्स की छानबीन भी करनी होगी। क्या यह सम्भव है कि एक महीने में वह जजमेंट दे दे?

श्री भटनागर : उसको जजमेंट पाम करनी है। काम सब तैयार है। एकीडेंस सब मौजूद है। हो हैज टू प्रोनाउस बी अजमेंट प्रोनली।

श्री गुरुरानन्द ठाकुर : कम्प्लेंट का यह मतलब तो नहीं है कि पहले से उसके पास सब एकीडेंस मौजूद है और सब काम तैयार है। क्या आप यह चाहते हैं कि शिकायत आए और जिस आवसी के खिलाफ आए उसको तुरन्त सजा हो जाए? उसको छानबीन तो करनी ही होगी। तभी तो वह किसी निष्कर्ष पर पहुँच सकता है। आप कहते हैं आल कम्प्लेंट्स।

SHRI BHATNAGAR: But there should be some limit. The Lokpal makes recommendations to the Secretary, and if he takes three months' time and they do not agree to the recommendation, they can go to the President and the President may take up the matter with Parliament. That will take years then.

SHRI K. S. RAMASWAMY: Para 3 on page 3 relates to the complaints given to the Ministries and the departments. They are suggestions for improvement as to how deal with complaints. They do not deal with Lokpal.

SHRI BHATNAGAR: Yes; they are suggestions towards improvement.

SHRI K. S. RAMASWAMY: We are not going into the question as to how the departments are working.

SHRI TENNETI VISWANATHAM: According to you, the Lokpal will have jurisdiction over ministers, Government officials and Judges. That means, if he makes an adverse

remark against a Supreme Court Judge or a Minister, let alone a small fry like an MP, they will have to quit office.

SHRI BHATNAGAR: Yes.

SHRI TENNETI VISWANATHAM: So, you have in your view a very superior person whose word should veto everything that has happened. Do you think that a single man's judgment is so infallible as to be given such wide powers? Don't you think a tribunal will be better than a single man?

SHRI BHATNAGAR: That would be much better.

SHRI TENNETI VISWANATHAM: You know under the Constitution to safeguard democracy, courts were given a superior position. If you now put somebody over the Supreme Court, don't you think the safeguards of democracy will pass from courts to a single man?

SHRI BHATNAGAR: No.

SHRI G. S. REDDI: Do you think our santam dharma can be established by these amendments you have suggested?

SHRI BHATNAGAR: I think so.

SHRI YOGENDRA SHARMA: From your memorandum it appears you want the deletion of section 12, which lays down the procedure by which Parliament comes into the picture. Don't you want Parliament to come in the picture at any stage?

SHRI BHATNAGAR: I want that the Lokpal should have mandatory and not recommendatory powers. Otherwise, his recommendation may be rejected. If it goes to Parliament, it will take years. In the case of the Supreme Court also, Parliament does not come into the picture. Similarly here also Parliament should not come in. But if the Lokpal has done something wrong, then he should be pu-

nished. In that case Parliament comes into the picture, only when the Lokpal does not work satisfactorily. That is why I have suggested in page 4, para 9 (ii) that the words "showing partisan attitude" should be added after "misbehaviour or incapacity".

SHRI YOGENDRA SHARMA: Section 12 lays down the procedures through which Parliament may be seized of the matter. But you want its deletion.

SHRI BHATNAGAR: I want that Lok Pal shou'd have mandatory powers and Parliament should not interfere in his judgment.

SHRI YOGENDRA SHARMA: So, in the normal course, you want that Parliament should not interfere, but in certain cases you want Parliament to interfere.

SHRI BHATNAGAR: Parliament should interfere only when the Lokpal has done something wrong.

SHRI YOGENDRA SHARMA: You want section 20 to be deleted. It deals with the exclusion of judiciary, election machinery, etc.. In your amendment No. 12 you want that a person should be able to complain to the Prime Minister or the President against the Lokpal. If these two are taken together, what does it mean? According to you an authority should be created who will go into the conduct of everybody—the highest executive, the highest judiciary, the election machinery and all. At the same time you want that somebody should have the power to complain to the Prime Minister against this Lokpal. In a system of parliamentary democracy Prime Minister is the leader of the majority party. These two things taken together means that you make the leader of the majority party almost a dictator.

SHRI BHATNAGAR: My humble submission is that when the Lokpal will have mandatory powers para 20 has no force. Then I have suggested

that the words "misbehaviour or incapacity" may be substituted by "misbehaviour or incapacity or showing partisan attitude."

SHRI YOGENDRA SHARMA: On the one hand you want the Lokpal to be independent and invest him with the highest authority. On the other hand you propose an amendment which makes the Lokpal dependent on the Prime Minister. How do you reconcile the two?

SHRI BHATNAGAR: Then instead of "Prime Minister" you may say "President of India".

SHRI S. S. N. TANKHA: Your memorandum contains more or less objections to the procedure which is observed at various levels at present and from that I understand that you have suggested that these procedural things should be removed in order to make the functioning of the Lokpal more effective. Is that not so?

SHRI BHATNAGAR: Yes.

SHRI S. S. N. TANKHA: You have asked that mandatory powers should be given to the Lokpal. What are the restrictions in the Bill which according to you restrict the actions of the Lokpal.

SHRI BHATNAGAR: Look at page 7 of the Bill where in the bottom two lines it is said: "if the complainant has had any remedy by way of proceedings before any tribunal or court of law".

SHRI S. S. N. TANKHA: You must realise that the courts have various stages through which a person can go. If there is something wrong in the first judgment he can get it reversed in the second court. He can go higher up and ultimately go up as far as the Supreme Court. If a complainant is not satisfied with so many judgments one after the other what is the guarantee that a single judgment or a single order of the Lokpal will satisfy him.

SHRI BHATNAGAR: Then there is no need for a Lokpal.

SHRI S. S. N. TANKHA: He has been given unlimited powers to act in any manner he considers proper.

SHRI BHATNAGAR: His powers have been restricted.

SHRI S. S. N. TANKHA: The procedure for the Lokpal is mentioned in the Bill, that he will get files from anywhere he thinks proper and so on. Do you think any Lokpal will be a superman who will satisfy even member of the public? The moment you give him powers that you wish to be given he will become an obstacle and will be criticised by everybody.

SHRI BHATNAGAR: On page 8 of the Bill it is said that the Lokpal shall not take any action or conduct any investigation in the case of any complaint involving a grievance or allegation which has been enquired into or referred to a Commission of Inquiry under the Commission of Inquiry Act.

SHRI S. S. N. TANKHA: If a court or a tribunal has given a finding and you say that finding does not satisfy the complainant how then can you say that the finding of the Lokpal will satisfy him?

SHRI BHATNAGAR: So there is no need for Lokpal.

SHRI S. S. N. TANKHA: There are many other matters which he can do. The Lokpal has not been given the right to criticise the judgments of courts or take up matters which have already been gone into by the courts. But there are a lot of other things laid down in the Bill which he can do.

SHRI BHATNAGAR: Every person has a right and every action can be challenged in a court of law.

SHRI S. S. N. TANKHA: Such actions cannot be challenged in a court of law can go to him.

SHRI BHATNAGAR: For instance?

SHRI S. S. N. TANKHA: There are so many matters which cannot or may not go because there is no provision for them. But if the final judgement of the highest court does not satisfy a person, how are we to believe that the Lokpal's order will satisfy him?

SHRI BHATNAGAR: I have quoted instances in paragraph 6 of my suggestions.

SHRI S. S. N. TANKHA: I hope, you will agree with me that the best judgment of one person, however eminent he may be, cannot be or may not be as good as the final judgment of five eminent judges.

SHRI BHATNAGAR: But what is the remedy for cases which I have specified in paragraph 6 of my suggestions?

SHRI S. S. N. TANKHA: I do not challenge those facts. They may be true or may not be true; we do not know. But even if they are true, the Lokpal is being appointed to go into all those things where the matter cannot go to the courts of law.

SHRI BHATNAGAR: According to the statement of objects and reasons of this Bill the need for creating the post of Lokpal was felt because the Commission made an interim report in which it took note of the oft-expressed public outcry against the prevalence of corruption, the existence of wide-spread inefficiency and the unresponsiveness of administration to popular needs. How do we meet this need if the Lokpal is not given mandatory powers?

SHRI S. S. N. TANKHA: What do you mean by 'mandatory powers'? Whatever powers are given to him are mandatory. If he finds it reasonable he can at once refer to any authority or officer and that officer is bound to furnish the information.

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SHRI BHATNAGAR: What about the cases specified in paragraph 6 of my suggestions? Suppose, I have got a general grievance. I approach a court of law and the court says that it is not justiceable. I go to the High Court and the High Court rejects and the Supreme Court also rejects it. I do not get redress from any source. For that purpose the Lokpal is being appointed.

SHRI S. S. N. TANKHA: He is not being appointed to question the findings of the courts. He will exercise his authority where the courts do not come in.

Then, you have suggested that the maximum age of the Lokpal should be 65 years.

SHRI BHATNAGAR: You can fix any age. Any good man of any age can be appointed.

SHRI S. S. N. TANKHA: I will tell you what difficulties may arise in the appointment of a person with the maximum age of 65 years. The Supreme Court Judges go up to the age of 65 and the High Court judges up to the age of 60. The idea behind the provisions in the Bill is that the person to be appointed as Lokpal should be one who should hold the status of the Supreme Court Chief Justice. If the maximum age is 65, a retired Supreme Court judge cannot be appointed.

SHRI K. S. RAMASWAMY: You have levelled certain charges against Government servants, Government advocates and against the Home Ministry specially, that they have not brought forth certain documents in the court. Did you ever care to bring this matter to the notice of the Central Vigilance Commissioner, the President or any Member of Parliament?

SHRI BHATNAGAR: Now you have invited these suggestions and I have given them. It is up to you; you can bring them to their notice. This is the first time that I have brought them out.

MR CHAIRMAN: I thank you, Shri Bhatnagar, for coming over here and giving your suggestions. We shall look into all the suggestions that you have given and shall decide about it.

SHRI BHATNAGAR: I am also thankful to you for affording me an

opportunity to pay my respects to you and to make these suggestions.

(The witnesses then withdrew)

(The Committee then adjourns)

**MINUTES OF EVIDENCE GIVEN BEFORE THE JOINT COMMITTEE ON THE LOKPAL AND
LOKAYUKTAS BILL, 1968.**

Saturday, the 6th July, 1968 at 10.00 hours.

PRESENT

Shri M. B. Rana—Chairman.

MEMBERS

Lok Sabha

2. **Shri S. A. Agadi**
3. **Shri Frank Anthony**
4. **H. H. Maharaja Pratap Keshari Deo**
5. **Shri Shivajirao S. Deshmukh**
6. **Shri Gangacharan Dixit**
7. **Shri Samar Guha**
8. **Shri Gunanand Thakur**
9. **Shri Hem Raj**
10. **Shri Kinder Lal**
11. **Shri Thandavan Kiruttinan**
12. **Shri Bholu Nath Master**
13. **Shri G. S. Reddi**
14. **Shri Narayan Swaroop Sharma**
15. **Shri Yogendra Sharma**
16. **Shri Shashi Bhushan**
17. **Shri Ramshekhar Prasad Singh**
18. **Shri Tenneti Viswanatham**
19. **Shri Y. B. Chavan.**

Rajya Sabha

20. **Shri Gurmukh Singh Musafir**
21. **Pandit Sham Sunder Narain Tankha**
22. **Shri Awadheshwar Prasad Sinha**
23. **Shri Purnanand Chetia**
24. **Shri Akbar Ali Khan**
25. **Shri K. S. Ramaswamy**
26. **Shrimati Pushpaben Janardanrai Mehta**
27. **Shri M. Ruthnaswamy**
28. **Shri Balachandra Menon**
29. **Shri A. D. Mani.**

LEGISLATIVE COUNSEL

Shri R. V. S. Peri Sastri—*Adl. Legislative Counsel, Ministry of Law.*

REPRESENTATIVES OF THE MINISTRY OF HOME AFFAIRS

1. Shri S. P. Mukherjee—*Joint Secretary (V), Ministry of Home Affairs.*
2. Shri S. P. Mukerji—*Director, Department of Administrative Reforms.*
3. Shri A. P. Veera Raghavan—*Deputy Secretary, Ministry of Home Affairs.*
4. Shri S. M. Chikermane—*Under Secretary, Department of Administrative Reforms.*

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

WITNESSES EXAMINED

*Ministries of the Government of
India*

1. Ministry of Industrial Development and Company Affairs.
2. Ministry of Commerce
3. Ministry of Finance
4. Ministry of Home Affairs (Department of Administrative Reforms).
5. Ministry of Steel, Mines and Metals.

Spokesmen

- Shri N. N. Wanchoo, Secretary.
- Shri K. B. Lall, Secretary
1. Shri P. Govindan Nair, Secretary
 2. Shri M. S. Nanjundiah, Director
- Shri N. K. Mukarji, Joint Secretary
- Shri N. Luther, Deputy Secretary

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

MR. CHAIRMAN: Today we have the representatives of the Ministries of Commerce, Industrial Development and Company Affairs, Home Affairs, Finance and Steel, Mines and Metals. We shall start with Shri N. N. Wanchoo.

SHRI N. N. WANCHOO: I have already sent a note to the Committee expressing our views on this subject.

SHRI AKBAR ALI KHAN: We have gone through your note. Do you think in the best interests of the undertaking any public sector employee should be kept out of this Bill?

SHRI N. N. WANCHOO: As I have explained in this note, by and large,

we have been saying that the conditions of service of the employees in the public sector should compare with the conditions of service in the private sector because the two have to compete in the industrial field. While, therefore, on these general grounds I might even have suggested excluding public sector employees entirely from the scope of the Bill—we have not suggested that—the reasons for not doing so, as explained by me, are twofold. At present, the public sector employees come within the jurisdiction of the Central Vigilance Commission and the definition of 'public servant' in the Indian Penal Code has also been amended so as to include employees of public sector companies. That being the case, it could not, in our opinion, be quite consistent to exclude them entirely from the scope of this Bill.

We have noticed and observed that the Bill excludes the investigation of grievances relating to public sector companies but permits the Lokpal and Lokayuktas to investigate allegations against public sector employees. In my note, I have tried to point out that sometimes it may be quite possible, by a mere change in the wording to transform what is in substance a grievance into an allegation. Therefore, unless the definitions of grievances and allegations are carefully considered, the exclusion of grievances will have no meaning. That is why we have suggested that these definitions need to be looked into very carefully if that particular clause excluding grievances is to have any substantial significance.

SHRI AKBAR ALI KHAN: We would like to have your advice.

SHRI N. N. WANCHOO: One of the suggestions which we have indicated in our note is that in the definition of an allegation, in clause 2(b) if we exclude (i), it may be a little more difficult to transform, by mere wording, a grievance into an allegation and, in our opinion, sub-clause (i) does not substantially add to the definition. That is one suggestion.

I think this is a matter which could be looked into a little more closely by the legal experts, the object being that it should not be made easy to transform what is in reality a grievance into an allegation.

SHRI AKBAR ALI KHAN: You have also suggested that so far as the other subordinates are concerned, apart from the Secretaries and others there should be a limit of Rs. 1000 drawn as salary—it will be cumbersome to include them also.

SHRI N. N. WANCHOO: At present, the Central Vigilance Commission has the authority and the jurisdiction to inquire into the cases of employees of public sector companies. But by a secret convention which we have arrived at—I should have mentioned in my note that this is a secret con-

vention—they have agreed voluntarily not to inquire into cases of low-paid employees or employees below a certain level of salary, that is, Rs. 1000. We feel that is also right and proper. The Board of Directors of the Government Companies and Corporations can very well be trusted to see that employees of junior ranks are given due protection and are also punished where necessary. It is only in respect of the more senior people that it would seem to be necessary that there might be an independent authority, the Central Vigilance Commission at present or the Lokpal or Lokayukta in future, which could look into the matter. If you inquire into the grievances of all employees—there are thousands and thousands—it will become unwieldy.

SHRI AKBAR ALI KHAN: I would like to know, after bringing it under various Vigilance Commissions, whether the activity of the public sector been, in any way, adversely affected.

SHRI N. N. WANCHOO: In practice, as I have said, by convention the Vigilance Commission has excluded the lower-paid employees.

SHRI AKBAR ALI KHAN: I do not know if the Committee agrees to exclude them. Do you think the business activity, the production activity, of the public sector will be affected by bringing it under the Lokpal, as it is under the Vigilance Commission?

SHRI N. N. WANCHOO: This is a matter of opinion. To some extent, it might be affected. I would not say that it will not be affected at all. But considering the balance of advantage, I think, the high-paid officers may be allowed to remain under the jurisdiction of the Lokpal. This is our opinion.

SHRI YOGENDRA SHARMA: You are aware that from the discussions in Parliament and also from several reports of several parliamentary committees the picture emerges that

our public sector undertakings suffer from maladministration. One of the objects of this Bill is to see that this maladministration is reduced as far as possible. What is the basis for your presumption that if the public sector undertakings are brought within the jurisdiction of the Lokpal and Lokayukta the administration will suffer instead of its improving? If the various reports and discussions are true that our public sector undertakings suffer from maladministration, then the remedy lies in doing away with the maladministration and taking steps to improve the administration. One of the objects of the Bill is precisely this. So, why do you want the exclusion of the public sector undertakings?

SHRI WANCHOO: I have only suggested exclusion of the lower-paid employees but not of the higher-paid employees. I have also suggested that grievances should be excluded but not allegations.

I have tried to explain in my note that public sector undertakings are not normally expected to follow strictly the Government rules. For instance, while placing contracts, we may very often be justified in placing contracts by way of negotiations. It is a very common practice in business that if somebody has been a good supplier in the past, and the quality of the item has been good and the price also has been good and reasonable and delivery is also given in time, then we do not go for tender the next time, and he becomes the permanent supplier unless there is any reason to the contrary.

This is a common business practice which is followed in business. In the same way, the public sector undertaking may also well be advised to follow this practice. But somebody may have a grievance that no tender had been called for, and no enquiry was called and the order had been placed on so-and-so without any tender enquiry. This sort of thing which is common business practice may well become a grievance for a

particular contractor or a particular supplier on whom orders have not been placed. It would certainly affect the working of the public sector if all such complaints and grievances begin to be investigated. Therefore, I have said that while we take the position that allegations of corruption and so on against public sector employees should certainly be investigated, there does not seem much point in allowing such grievances also to be investigated. When we follow the normal business practice, somebody can still have a grievance that no tender had been called for. He might say that if the proper procedure had been followed and tenders had been called for, he would have been the supplier. It is a well known fact that many big business firms here have permanent suppliers. This is just an instance that I am giving.

SHRI GOVINDAN NAIR: May I add here that we have more or less been in agreement on the main note...

MR. CHAIRMAN: First, we shall finish the questions to be put to Mr. Wanchoo, and then we shall put questions to you.

SHRI YOGENDRA SHARMA: You have said that the public undertakings should not be in a disadvantageous position vis-a-vis the private sector. I very well appreciate that consideration. But, for the same consideration, what is needed must be done and the administration must be improved. You have raised a particular case of contracts. We know, and many Members here know, and there are many things which have already come on record that while entering into contracts, many malpractices are there, and this question of issuing contracts has become a big source of corruption. This cannot be tolerated. That being the case, why do you want to debar those contractors who suffer because the heads of public undertakings might have some abnormal relations with a particular contractor? In that case, it becomes a case of allegation, so far as the people are concerned. You have

no objection to the fact that people should have the right to place their allegations before the Lokpal or Lokayuktas. You have objection only to the placing of grievances. Why do you want to debar those contractors who suffer because of favouritism?

SHRI WANCHOO: If I may respectfully submit, you have answered the question yourself. If there is an allegation that something has been done which is the result of improper motives or improper conduct, then I have not the slightest objection to the matter being inquired into by the Lokpal or the Lokayukta in order to see that proper standards of morality and administration are maintained. But if there is no such allegation but only some party who has not got the contract has a grievance that he has not been awarded the contract, then I do not see what is gained by referring the matter to the Lokpal or the Lokayukta. If there is any suggestion of ulterior motives or improper motives, then by all means let the matter be inquired into.

SHRI YOGENDRA SHARMA: The people outside do not know about these things, but the parties who are interested in it know these things. They know who are being discriminated and who are being favoured. The people at large do not know, but the parties who are intimately connected with it know it. Why should they be debarred from raising it before the Lokpal and Lokayuktas?

SHRI WANCHOO: They are not debarred. If they claim that something has been done in an improper manner, then obviously there would be an allegation, and an allegation can certainly be investigated. I am not at all trying to restrict it. But there may be a case where a party may not have received the supply order. It need not necessarily be as a result of corruption, but the party may still plead that if tenders had been called he would have been selected as his tender would have been the lowest

and so on. It may well be that the reasons for non-selection may be very valid and may have been recorded namely that the party had not been a good supplier in the past and, therefore, no contract would be entered into with him.

Every day we have this problem where we have to decide whether we have to accept the lowest tender in cases where the party has not been known to have been a good supplier or has not had the necessary experience, or whether we should go on to the next higher tender.

Where there is no allegation of improper motives, I do not see what is to be gained by investigation. Even though the party may not have been a good supplier, still he may nurse a grievance that he has been discriminated. Such grievances, in my opinion, should not be inquired into, but if there is any allegation that the thing has been done with ulterior motives, then by all means let it be investigated.

SHRI FRANK ANTHONY: I myself doubt very much whether we should accept what Mr. Wanchoo has contended, because the public sector is growing, and according to some people growing unduly without showing any corresponding results.

But I would like Mr. Wanchoo to tell me whether a public sector undertaking comes within the purview of the High Courts under article 226. I have some doubt in my mind about it. So far as Government are concerned, they would come within the purview of the courts under article 226 when there are grounds which are justiciable such as by way of allegations etc. But so far as the public sector undertakings are concerned, I do not think that they come within the purview of the High Courts under article 226, because I remember one case where we were held out of court on the ground that the person had no remedy because a public sector undertaking was a statutory body

but it was not equated in law with Government. So, remedies would be available against only the Government servants or Government departments. So, there is all the more reason now for bringing the public sector undertakings within the purview of the Lokpal and the Lokayuktas.

With regard to 'allegation' and 'grievance', I would like to say this. A person may have the highest motive, but still he may have taken into account extraneous considerations which will be *mala fide* in law. So between 'grievance' and 'allegation', I do not think there is going to be much of distinction. My own feeling is that grievance can always be made an allegation without saying that there is improper motive, by saying that the authority has taken into account extraneous considerations.

Anyway, what I am concerned is with the principle. Why should you feel that the public sector undertakings should be in a position different from that of a government department?

SHRI WANCHOO: The public sector undertakings are intended to run a business. What we should really guard against is that its efficiency as a business is not affected. At the same time anything corrupt or improper should not be allowed. I submit with great respect that this distinction that we have made between 'grievance' and 'allegation' safeguards this. The normal business activities of the concerns should not be affected. There is also the concern of the Parliament and the people that they should run efficiently and produce profits. Therefore, while nothing should be done which will come in the way of the public sector undertakings performing their functions in such a manner, we should also at the same time make sure that nothing is done to protect or shield corrupt people. I would submit with great respect that this distinction that has been made is fully valid and will ensure that. We must not have only

one object in view, that the public sector employees must be equated in all respects with government employees. I would submit that that is a wrong way of looking at it. What we should do is that we should see that the efficiency of the public sector is fully safeguarded and yet, any corrupt or improper action in the public sector is not allowed. I would submit that this is what the Bill intends to do.

SHRI FRANK ANTHONY: What about my question whether a public sector undertaking comes within the purview of the provisions of article 226? My own feeling is that we can go against the Ministries' actions. Can we go against a public sector undertaking under article 226? I have got some doubt.

SHRI WANCHOO: The public sector is expected to function as well as the private sector. Why should we place further impediments in their way so long as corrupt and improper motives are not there?

SHRI SAMAR GUHA: Mr. Wanchoo has suggested that clause 2(b)(i) should be deleted. Clause 2(b)(i) says:

"...has abused his position as such to obtain any gain or favour to himself or to any other person to cause undue harm or hardship to any other person..."

I can understand if you say that the words "undue harm or hardship" might be deleted. But this clause also includes 'obtaining any gain or favour to himself or to any other person...'. There have been many allegations where government employees in important positions take undue advantage of their positions. I think, Mr. Wanchoo knows that there was a lot of discussion in Parliament about the contract given for the construction of revolving tower. Allegations were made that the person who was responsible for giving that con-

tract took advantage of his position to have a big building built by the contractors. Therefore, if this clause is deleted, it will defeat the very purpose of this Bill.

SHRI WANCHOO: I may submit with great respect that, I am not a lawyer and so I cannot claim to deal with this as a lawyer would. But I would say that, in my opinion, sub-clauses (ii) and (iii) cover clause (i) also; the cases referred to by the hon. Member will be covered by 'improper motives' or 'improper conduct'. If getting a house constructed for one's own use taking advantage of one's position, is not 'improper conduct', I do not know what will 'improper conduct' mean? So, the type of cases that the hon. Member referred to would be fully covered by clauses (ii) and (iii). This is one of our suggestions. If it is felt that clauses (ii) and (iii) do not cover fully such cases, the legal expert can certainly be asked to redraft those clauses suitably.

SHRI SAMAR GUHA: In your Memorandum you have expressed a lot of concern about the speed and efficiency in commercial transactions in the public sector and thereby you want to guard them at least from the charges of 'grievance'. Now what is the real difference between a private company and a public sector undertaking? They are concerned with sales, purchases and similar things. Suppose a demand is placed on a private concern. What happens? It is dealt with so promptly and so efficiently that it earns a goodwill for the private company. But what happens in a public sector undertaking? You find that the officers and employees are increasingly adopting a bureaucratic attitude. There is inordinate delay on their part in dealing with the demands. They create a condition which repels the purchaser. Therefore, it seems necessary that grievances against public undertakings should be included, so that a better goodwill can be created for the public undertakings.

SHRI WANCHOO: There can be no two opinions about the necessity of improving the speed and efficiency of public undertakings. But I cannot say whether the remedy which you suggest will achieve the object.

SHRI SAMAR GUHA: Is there not a difference between private sector and public undertakings in this respect?

SHRI WANCHOO: It differs from undertaking to undertaking. At the moment, I have complaints from various people of gross discourtesy and negligence by some private companies. If you say that some private undertakings are very efficient, I agree.

MR. CHAIRMAN: We shall look into it when we consider the clauses.

SHRI SAMAR GUHA: You have said in your page 4 of your memorandum:

"In order to discourage such complaints, it is suggested that a suitable penal provision should be made in the draft Bill against those who make such complaints."

You know the atmosphere of suspicion that is prevalent in the country today. Most of the cases of suspicion may not be true. But if you have a penal provision, it will discourage people to make complaints. Already there is a provision that the Lokpal or Lokayukta can refuse to investigate any complaint if he finds that it is frivolous or vexatious. In addition, why do you want a penal provision?

SHRI WANCHOO: Because of the very atmosphere of suspicion, too many false and frivolous and vexatious complaints are made with impunity. Unless we want to encourage this feeling of suspicion, we must take some action against those who make complaints frivolously and vexatiously. While we should not be tender to corrupt officials, we should not also be tender to people who frivolously and vexatiously make complaints to the Lokpal or Lokayukta and waste the time of these high officials.

SHRI S. S. DESHMUKH: Don't you agree that even if you make honest efforts to improve on the drafting and definitions of grievance and allegation, you are attempting an impossible thing, because you are trying to differentiate what is indiffereniable under any circumstances? What else can a grievance be except an allegation of injustice, malpractice or mal-administration, impropriety or victimisation?

SHRI WANCHOO: If grievance and allegation are quite the same, I submit there should not be two definitions at all in the Bill and we should forget about the distinction. But since a distinction has been made—I think there is something in the distinction—it is necessary for us to make the two definitions as mutually exclusive as possible, although there will always be an area where there will be a certain blurring.

SHRI S. S. DESHMUKH: It is said that public undertakings are run on business lines. But what exactly is meant by business line or commercial proposition is again a variable phenomenon. In fact, business practices and commercial relations are better known to the business people who work in the private sector rather than in the public sector. In the case of steel plants, the biggest allegation which came before the PAC was, where the heads of the steel plants had the discretion of going in for the manufacture of those items of steel which had better commercial demands, they preferred those items which had no market prospects. In this case, the only reasonable allegation or grievance that can be made on behalf of the tax-payer is that this is an exercise of jurisdiction in favour of a public undertaking and under no stretch of imagination can it be attributed to any *mala fide* intention nor can it be said that the sole intention of the exercise of discretion is that the private steel factories should profit. How can this sort of impropriety or misbehaviour or mal-administration be

brought before the Lokpal or Lokayukta? Should it or should it not be brought before the Lokpal.

SHRI WANCHOO: Certainly it should be brought. This should be covered by the definition of 'allegation'. Surely it is highly improper for an officer in Charge of a steel factory deliberately not to make things for which there is demand so that a rival private sector factory may benefit. An allegation to that effect should be certainly investigated. It may not be in his own interest, but if he is benefiting the whole private sector surely that is not the object with which he has been appointed manager of a public sector steel factory.

SHRI S. S. DESHMUKH: In that case it cannot be a grievance. In such cases if the defence of the officer is that he exercised his discretion, that because his is a State undertaking with a larger share of capital it could afford to lose whereas a private sector factory should not be made to lose and for this arrangement he went in for manufacture of these items what impropriety could there be?

SHRI WANCHOO: If I am placed in charge of the affairs of a steel factory my business is to run that factory profitably and it is not by business to see if any private sector factory is making a profit or not. It will be highly improper to be guided in my production programme by the consideration that some other factory in the private sector may gain or lose.

SHRI S. S. DESHMUKH: You are well aware that in the case of private sector there are standing contracts for supply, sales and purchase on behalf of private sector with the sole intention of having such permanent standing contracts in favour of particular concerns possibly because they are sister concerns. Secondly, it is the reasonable legal way out to farm out profits to sister concerns under the garb of purchases, supplies and even under the garb of services which a private sector industry may or may not need.

According to you, if a public sector factory also indulge in similar practices though it may not be directly possible to say that there is some sort of personal, impersonal, communal or even regional link between the officer in charge of the public undertaking and the possible beneficiaries of supply or service works or certain other private obligations for which a private party may be paid for, would it still be an allegation?

SHRI WANCHOO: While I would agree that in some cases private sector companies place orders on a particular firm because of the kind of considerations that you have mentioned, I think this is too sweeping a generalisation. I know many cases personally where orders are placed on firms only because they are good suppliers, prompt suppliers and suppliers of good products. It is this latter practice that I think should be followed with advantage by public sector companies. Certainly it is not my intention that public sector companies should place orders without calling tenders or without the normal procedures being followed on firms for motives other than the best and the highest.

SHRI S. S. DESHMUKH: Do I take it that the Lokpal who would be the highest official from the judicial side would be so short-sighted as not to appreciate this simple fact?

SHRI WANCHOO: It is very difficult to say what happens when things have to be justified in black and white. You may record reasons which may find conviction with you but with other people they may not find conviction. It seems to me that we should do nothing which would really hamper the functioning, efficient working of the public sector. If there is any impropriety by all means let it be investigated. But let us not also stultify the working of the public sector. Let us not place more obstacles. As it is, it is not performing too well. If we try to place more obstacles it

may result in great harm to the national economy.

SHRI S. S. DESHMUKH: In my appreciation the public sector is not performing so well not because of lack of authority to function but the will to function. If there would not have been any distinction whatsoever between the officials in charge of public sector and government officials or, let us say, employees of government in various departments or ministries and yet this Committee would keep it by way of an explanation that purely business, law or commercial acts of public sector undertakings which have been undertaken with the sole intention of protecting that particular public sector plan's interest shall be out of the purview of Lokpal and Lokayukta, would it meet your point of view?

SHRI WANCHOO: That meets my point of view, but the question is, how would you give it a legal shape and form. I am not asking for anything more.

SHRI TENNETI VISWANATHAM: The Indian Administrative Service is a well organised service. Do you think it is in any way less efficient than the Indian Civil Service of olden days?

SHRI WANCHOO: Why should I think so? I have no such thoughts.

SHRI TENNETI VISWANATHAM: Therefore, in a well organised service where everybody is doing his duty and where administrative procedures and machinery are adequate to go into all cases of allegations of the use of power or other things, do you think that the imposition of another officer is necessary?

SHRI WANCHOO: The view has been that in spite of our efforts to eliminate delays, delays do take place, and if there is an independent officer to look into those delays I would have no particular objection.

SHRI TENNETI VISWANATHAM: I think you will agree with me that the Administrative Services have been so well trained that they do not abuse their power?

SHRI WANCHOO: By and large it is correct.

SHRI TENNETI VISWANATHAM: If there is any single case of abuse of power there is enough machinery to go into that or set right the mistakes.

SHRI WANCHOO: There are various methods of setting right the mistakes.

SHRI TENNETI VISWANATHAM: What are the kind of machinery you have now to set right these things and which have proved inadequate so that Parliament considered it necessary to bring in this Lokpal?

SHRI WANCHOO: Apparently the general view has been that the present machinery although it has been there for a long time does require certain improvements and strengthening. That is why on the recommendation of the Administrative Reforms Commission it was felt necessary to introduce this.

SHRI TENNETI VISWANATHAM: So, you think that an independent outside officer will serve better than the trained administrative service personnel.

SHRI WANCHOO: An outside officer with proper qualifications, which I imagine the Lokpal and the Lokayuktas will have, will inspire greater confidence.

SHRI TENNETI VISWANATHAM: He would not be a member of the Indian Administrative Service; he will be a person without any administrative training.

SHRI WANCHOO: I presume, he will be some person with some kind

of judicial training, trained in the art of weighing evidence and so on.

SHRI TENNETI VISWANATHAM: You do not feel that there will be interference in the even tenor of administration if there is an outside officer coming in and calling for files now and then.

SHRI WANCHOO: I do not think so. Even now we have the Central Vigilance Commission. They are empowered to investigate various things but it has not seriously interfered in our work.

SHRI TENNETI VISWANATHAM: How long has the Central Vigilance Commission been there?

SHRI WANCHOO: Four or five years.

SHRI TENNETI VISWANATHAM: What improvement has it made?

SHRI WANCHOO: In certain cases they have made some improvement.

SHRI TENNETI VISWANATHAM: Do you think that the Lokpal will mean greater vigilance than the Central Vigilance Commission?

SHRI WANCHOO: In one form the Lokpal is really a transformed Vigilance Commission.

SHRI TENNETI VISWANATHAM: Therefore the whole scheme of the Bill is more or less renaming the Vigilance Commission.

SHRI WANCHOO: A little more than that.

SHRI TENNETI VISWANATHAM: Do you think that it will be really useful?

SHRI WANCHOO: On the whole, I think, it will be useful.

SHRI TENNETI VISWANATHAM: You think that there will be no resistance from the services.

SHRI WANCHOO: No, not at all.

SHRI TENNETI VISWANATHAM: Then, you are making such a huge distinction between 'allegations' and 'grievances' in the public sector.

SHRI WANCHOO: The Bill itself makes a distinction between 'allegations' and 'grievances'.

SHRI TENNETI VISWANATHAM: Who mans these public sector undertakings?

SHRI WANCHOO: People drawn from all spheres of the national life. At the moment they are recruiting more and more people direct.

SHRI TENNETI VISWANATHAM: I think, this is a new orientation. Originally, when they were started they were manned by public servants. Therefore, what is the great distinction which you want to make between the public sector undertakings' personnel and the Government of India personnel?

SHRI WANCHOO: There is no distinction in the personnel themselves; the distinction is in the nature of the duties they are expected to perform. In the public sector undertakings they are expected to go in for production and to produce goods. Government servants do not produce industrial goods. It is, therefore, the nature of the functions that they perform which requires a difference in the nature of the treatment to which they are subject.

SHRI TENNETI VISWANATHAM: They will also have rules.

SHRI WANCHOO: Yes, they have their rules.

SHRI TENNETI VISWANATHAM: Whether it is the Government in the Works, Housing and Supply Ministry that gives the contract or, assuming that it is transferred to a public corporation, the public corporation gives the contract, the companies are the same.

SHRI WANCHOO: The Government has in its wisdom decided to have a number of autonomous bodies called public sector corporations because it was considered that the ordinary methods in Government were not entirely suited for the needs of the situation. Therefore there is a essential difference between the public sector corporations and the working of departmental organisations.

SHRI TENNETI VISWANATHAM: Parliamentary control on Government departments is a little more and that vigilance has to be relaxed; therefore they were converted into corporations.

SHRI Y. B. CHAVAN: The real point that you have to get from them is whether grievances in the public sector are qualitatively different from the grievances that arise in State administrations.

SHRI WANCHOO: That is the very point that I have been trying to make. In my view they are qualitatively different because the criteria by which the working of a Government department is judged are different from the criteria by which the working of the public sector corporations are judged. They are expected to perform a certain service sometimes or to produce certain goods sometimes and also to make profits. That being the prime consideration, the main features of a business enterprise should be reflected there rather than the features of a Government department which are rather different.

MR. CHAIRMAN: The distinction is important from the point of view of the remedy. If a grievance is converted into an allegation, what will the party gain? He cannot get his grievance redressed. It will be investigated but only as an allegation.

SHRI WANCHOO: If the grievance is as a result of improper conduct which amounts to an allegation, then of course the proving of the allegation

itself is a gain. But if the grievance is not a result of improper conduct, it may well be found that there was really nothing and the party was feeling unnecessarily aggrieved.

SHRI AKBAR ALI KHAN: For instance, there is a contract given without any motive in the sense that there is no corruption but still it is given without tenders or without giving due consideration to the different parties. Although it may only be a grievance, do you not think that it is a matter which should be looked into?

SHRI WANCHOO: It all depends on what definition you give to improper conduct. It will be highly improper to award an important contract without due care and attention; it will be very negligent.

SHRI FRANK ANTHONY: Do these autonomous bodies come within the jurisdiction of the High Courts? Do the employees of the public sector corporations enjoy the guarantees under article 311? I have argued the case against a corporation and they said, "No".

MR. CHAIRMAN: We shall take up the next witness here. Shri Wanchoo has expressed his wish that he might be allowed to go for another meeting. So, we shall now address Shri Lall, if he is prepared to give some information to us, and later on we shall come to the other witnesses. I thank you very much, Shri Wanchoo.

[Shri Wanchoo then withdrew]

SHRI Y. B. CHAVAN: You will have to give a little more detailed explanation on this. This is going to be quite a controversial affair in the country. The point that in the case of the public sector while there is no question of redress the allegation could be enquired into will have to be explained in detail, with illustrations if possible so that the Members

can understand it well. The argument comes to this: that allegations against persons can be enquired into; but is there scope for redress of grievances? Are there no grievances in the public sector? What is your opinion?

SHRI K. B. LALL: The real difficulty in the handling of the case of the public sector undertakings is that (a) the form and nature of the working of the different corporations differ from one corporation to another and (b) the tendency to lump together the different types of corporations and treat all public sector undertakings, as one of the hon. Members was trying to imply, as an extension of Government, and consequently, liable to the same treatment and criteria and same responsibilities. It may go fundamentally against the wishes of Parliament namely that industrial undertakings and commercial undertakings in the public sector should be run on business and commercial lines and not on departmental lines. This was a very great change which the Parliament and Government of this country made over 10 to 15 years ago, and gradually there has been a growth in different directions. The difficulty that has arisen is, in some cases these public sector undertakings may have acquired, I concede the point, the character and functions and the powers of the Government. If they are monopolistic in their operations, then they must be liable to the same restraints and the same considerations of public propriety as the Government. But if they are not monopolistic in nature and if they do not have the same amount of power, then you are hampering their day-to-day working and efficiency. That is one distinction that I would like to make.

The second distinction that I would like to make is that when you judge a Government servant—I am not saying public servant within the definition as given here—of a State

Government or the Government of India, you are judging him not merely from the point of view of efficiency. You are judging him from the point of view of fairness and from the point of view of equity and therefore the grievances arising out of discriminatory treatment or partiality or favouritism become a very important matter, because the whole working of Government is involved in it. But where an industry or a commercial undertaking is concerned, there, the criterion differs somewhat. Efficiency of operation is more important than fairness as between individuals. Now, the legal difficulty is this; as the Home Minister was trying to ask us to elucidate and go into detail and to find out how the public aspects to be applicable to the public sector undertakings can be brought within the control of the Lokpal and Lokayukta, and how the aspects of business efficiency can be kept out of it. That has really been a very difficult task for the framers of the Bill and I am quite sure it will be very difficult for the Committee and Parliament to wrestle with. The only suggestion which occurs to us is that these two should be more closely defined and in actual working, if discretion could be given to Government or the rule-making authority subject to approval of Parliament to make distinctions in the different types of corporations which I am mentioning, it would perhaps be possible to achieve the purpose which all of us wish to see achieved without interfering with the efficiency and the working of the public sector.

SHRI Y. B. CHAVAN: You made one distinction. In the case of the public sector having monopolistic character: can the Government machinery be applied in the same way as it is applied in other cases?

SHRI K. B. LALL: More so in that case than in the case of other undertakings. I do not say fully.

SHRI Y. B. CHAVAN: For example, the Electricity Boards and the State Transport Corporations. They are monopolistic; what do you think about them?

SHRI K. B. LALL: I would say that over the greater field of their activities, the same criterion should be applied as to a government servant. There may be some areas of their working which I would wish to see excluded from the application of this criterion.

SHRI SAMAR GUHA: In Calcutta, for instance, when the buses were under the private concern, the conductors and the drivers were cordial, but as soon as they were taken over to the public sector, we found that they began to misbehave with the passengers. Does it not mean that the passenger is entitled to bring forward the grievances against them?

SHRI K. B. LALL: Our experience in Delhi is quite the contrary, if I may say so.

SHRI SAMAR GUHA: It may be anywhere in India, in any place. I just quoted Calcutta as an instance.

SHRI K. B. LALL: The point that I was trying to make is that the complaint in regard to rudeness or improper behaviour does not arise from the fact that it is a public sector or a private sector. But it arises from the supplier of the service being placed in a dictatorial position; whether it is a public sector person or a private sector person, both are manned by human beings and I am sorry to say that they conduct in the same way. I need not go into the details, and I am only making the point for whatever it is worth. Therefore, what Parliament is concerned with, and what the public authorities

are concerned with, is to provide a remedy against this type of behaviour from the servants of undertakings which are managed by the State and which are accountable to Parliament.

SHRI SAMAR GUHA: I have given an illustration, because specifically a point was raised before the Minister whether there should be any scope for the redressal of the grievances in the public sector also. It is not an all-embracing one; but I only quoted an instance in the Calcutta transport; take the tramways and the bus service there. When the transport comes under the public sector, immediately the attitude of the conductor or the driver radically changes. The citizens must have some redress for these grievances. Unless there is scope to redress their grievances, how can they be redressed? That is the point.

SHRI K. B. LALL: With due respect Lokpal is not a solution for this problem. There is something very wrong with the public authority which is running the trams and buses in Calcutta. And, therefore, this cannot be corrected by the Lokavukta or Lokpal. There should be some other way.

SHRI SAMAR GUHA: That is one illustration. If you want I can give dozens of illustrations, if I had the time.

SHRI AKBAR ALI KHAN: According to you, corporations that deal with production should be treated slightly differently from those who are dealing with services. Am I right?

SHRI K. B. LALL: That is an element in the distinction which I am trying to make. The main distinguishing feature is that where a public sector undertaking or its work has the same character of power and responsibility and the danger of abuse is the same and the criterion of fairness and equity need to be applied in public interest, then it must be treated on par with government. But

where it is not so, it should not be treated on par with government.

MR. CHAIRMAN: If you want to make some other points you may do so. On the other hand, if you want to submit a memorandum like the other departments, you may do so.

SHRI K. B. LALL: If this point is examined in greater detail by us, maybe some solution may emerge.

SHRI S. S. DESHMUKH: From the commercial side if I were to put the same question as we did to Shri Wanchoo, in a growing public sector which has not acquired all the good or bad characteristics of a monarch or monopoly for that reason, certain practices are followed which benefit only the private individuals or private sector industries for certain periods which ordinarily would not have taken place if proper exercise of discretion had been resorted to. Would such cases come under impropriety or allegation though the grievances that would be made out could only be by, let us say, a taxpayer?

SHRI K. B. LALL: This is the crux of the problem we are trying to face. I am glad you are putting the question to me. I shall quote from the experience of a Corporation which is not particularly popular at this moment. The difficulty in that Corporation is that for acquiring the efficiency of a commercial operation I have no doubt in my mind that the Corporation has to choose its associates, it has to enter into contracts with them through negotiation, has to conduct its relationship with them on a continuing basis and when the associate is not fully carrying out the obligations, in the interest of the business itself the Corporation has to be somewhat considerate and yet somewhat harsh. Now, those who have not had the benefit of this association, or who did not offer themselves to be associated at the time when the offer was a more general

one, after a year or two when it appears that being an associate of the STC is after all profitable proposition, these gentlemen bring up a complaint or a grievance. Now, if you apply to them the normal considerations of fairness and equity, it is quite easy to say that it is quite wrong for the Corporation to enter into the kind of relationship which, as I was saying a little while ago, is essential for their business efficiency. But if, on the other hand, you say that the really important function of the STC is to make purchases efficiently, to effect exports efficiently, then the chief criterion should be this. But where a difficulty arises, the same people may take the view that in a particular relationship it is not the efficiency which is counted but it is something else which weighed with those who have taken the decision. When it comes to a question of allegation in the sense that some officer or set of officers by taking a decision has made dishonest gains out of it, or has caused the Corporation dishonest losses out of it, then it is an offence and the CBI, Lokpal or Lokayukta can look into it and nobody can object. But what is sought to be defended here is that you do not make an allegation of dishonesty and you do not make an allegation of dishonest loss; what you say is "I know that the business associate of STC is so and so, I wrote to the Chairman and the Chairman did not pay any attention to what I was saying; this is my complaint". Then, if the Lokpal or Lokayukta looks into it, (a) it would be a waste of time and (b) looking into means sending for cases, sending for people for three or four months and the impact of this on the mind of the Corporation and those who are dealing with it would be such that they would go very very slow and they would say that business efficiency is not important; for everybody self-preservation is the most important thing, whether it is an employee of the STC or of Government and he will say "efficiency or no efficiency, 2081(E) LS-4

let me keep my record clean". It is the difficulty of not merely STC but of all of us and we have to find a solution which does not hamper the efficiency of the STC and yet does not place individuals in a position where they may make dishonest gains or dishonest losses or exercise their powers so improperly and in such a manner that only their friends benefit and nobody else benefit. To my mind the solutions really lie in the organisation itself or in those who supervise the organisation and in public pressure. Such criteria should become the norm of public life. That is the solution.

SHRI S. S. DESHMUKH: You take specifically the example of the STC. There may be cases where continuity of the contract is essential; on a long-term basis the continuation of the relationship which was initiated is essential. How do you suggest that the STC should benefit not merely on the basis of the continuity of association or contracts but also out of the competitiveness of some class of firms, at the same time protecting the basic interests of the STC and being in a position of getting efficient service?

SHRI K. B. LALL: This would involve a lot of discussion on the working of the STC. But it is a matter of commercial judgment, which may be right or wrong. There is no other way; you have to trust him. If you are sitting in judgment over his judgment, he is not autonomous; he cannot function.

SHRI S. S. DESHMUKH: It can be said that if he exercised his discretion in a particular manner, the beneficiary would have been a public undertaking; if he did not, the public sector undertaking would lose in terms of money and efficiency. In such cases where you are in a position to lay a definite charge of corrup-

tion but can conclusively prove that the public sector undertaking is at the losing end solely because of the exercise of this discretion, would you like the Lokpal to go into it?

SHRI K. B. LALL: This is a matter which the Minister concerned will settle because if one public undertaking suffers because of the activities of the official of a sister public undertaking, I dare say that this matter will be dealt with far more quickly than an application to the Lokpal.

SHRI TENNETI VISWANATHAM: You say there is a fear that efficiency will be hampered if the Lokpal goes into every aspect of the administration of the public sector undertaking.

SHRI K. B. LALL: It is not the fear that if Lokpal goes into it efficiency would suffer. If too many frivolous and vexatious complaints are made and the Lokpal is under an obligation at least to satisfy himself whether they should be investigated further or not, it will inevitably lead to loss of efficiency. But if somebody else comes and looks into it periodically, goes into the whole working of the organisation, that will add to the efficiency of the organisation and not impair it.

SHRI TENNETI VISWANATHAM: Would you not agree that if the administration of the Corporation is watched, complaints would be few?

SHRI K. B. LALL: I would not agree. When you give me an opportunity to complain even, I may complain.

SHRI TENNETI VISWANATHAM: You feel that the institution of Lokpal will be like a fifth wheel to the administration which has four wheels.

SHRI K. B. LALL: I do not say it will be the fifth wheel. I am submitting to the Committee that the functioning of the Lokpal and the

making of complaints to him and their investigation should be so laid down as to increase efficiency. There are different criteria to be applied to the working of the Government department and the working of industrial and commercial undertakings.

MR. CHAIRMAN: I think we should allow Mr. Lall to go now as he said he has to attend to some important work. We shall now hear Mr. Govindan Nair from the Finance Ministry.

(Shri Lall then withdrew)

SHRI GOVINDAN NAIR: I have sent a note already which is more or less a repetition in some way of what Mr. Wanchoo had already mentioned here. I do not have much to add. But I shall mention one or two points as far as public sector undertakings are concerned.

One of the points that had been raised here relates to some general complaints of maladministration leading to loss in the public sector undertakings, inefficiency—matters of general interest which probably affect the whole public sector undertakings. I do not know whether it has ever been thought that a machinery like the Lokpal was intended to go into this aspect of the working of the public sector undertakings because these questions are subject to other checks. One such check is audit. If any act had led to a loss in the public undertaking by wrong exercise of powers, etc. the audit para would bring it out. There is also the Parliamentary Committee on public undertakings which goes into the details of the working and management of these undertakings.

As far as I gather, the present discussion in the Committee relates to what is called the citizens' grievances against the management of the public sector undertakings. Here a distinc-

tion has been drawn between the Government and the public sector undertaking; a citizen's grievance against the government servant comes within the purview of Lokpal whereas as far as the public sector undertaking is concerned, it has been kept out of the purview of the Lokpal. The question raised by the Members is whether we should not extend the jurisdiction of Lokpal to cover cases of citizen's grievances against public sector undertakings.

Here, as Mr. K. B. Lall mentioned we may draw a distinction between certain types of public sector undertakings. There are public sector undertakings which are public utility services. For instance, the railways are not kept out; any complaint which a citizen may have would be part of the Lokpal's jurisdiction. In the same way, a purely public utility undertaking like the transport undertaking or power or any of these fields where the cases are on par as far as the grievances are concerned, could be perhaps brought within the Lokpal's jurisdiction. But the other sector on which my colleagues have already expressed their opinion, I think, relates to those units which work purely in the field of industrial and commercial production. Here, let us look at the areas in which these come into contact with what we might call the normal citizens, say, for instance, the Hindustan Steel or a fertiliser company which comes into contact with the normal citizen. These would be the normal business transactions. It would be either letting out a contract to somebody or giving a selling agency or supplying goods to one of their agents and various matters like that.

Here, in the first place, they are in the same position, as far as these business transactions are concerned, as a private sector undertaking. The Hindustan Steel would be in the same position as the Tatas and a fertiliser company in the public sector would be in the same position as a private

factory. There are no special governmental powers vested in the officers of these public sector undertakings. They have to serve quite often in competition with the private sector. They have to follow the same business practices. In this area where there is a contact with the citizens, somebody could come forward and say, "I have a grievance against the Hindustan Steel because the supply of steel is of sub-standard quality" or he may have a grievance that the Hindustan Steel is not purchasing coal from him, but purchasing coal from his neighbour while he has promised to give better coal. Certainly, this is an area where the discretion should be left to the public sector companies. It would not really be conducive either to efficiency or to getting a fair price, as they have to compete with the private sector, to say that if anybody brings forward such a complaint, it should as such be referred to the Lokpal or Lokayukt.

The various reasons have already been explained in some detail by my colleagues. So, I do not want to go into them. I would only say that in many cases these are contractual obligations. He may enter into a contract for the supply of certain goods which may not be of the required quality or he may enter into a contract for selling something which he may not be able to fulfil. In these cases, as in the private sector, the normal remedy would lie in a court of law. As far as I can see—of course, subject to correction—the main reason why, as far as the Government servant is concerned, we do talk of a separate machinery is that under the present conditions there is a very large amount of discretionary power vested in a Government servant in the use of his executive functions. In many cases, there may be a remedy in a court of law. But it will be a very long and cumbersome process. In some cases there may not be a remedy in a court of law. Therefore it is felt that there should be some machinery which would look into

these types of grievances in order to secure quick redress for the citizens. I submit this does not apply in the case of public sector undertakings and the type of business transactions.

This in brief, is my submission.

SHRI AKBAR ALI KHAN: You have stated in your note that distinction should be made between the Mints, Security Press, Security Paper Mill and Life Insurance Corporation, Reserve Bank of India, State Bank of India, Industrial Finance Corporation and IDBI. What is the distinction?

SHRI GOVINDAN NAIR: These are purely departmental undertakings, that is, Security Press, etc. They are not public sector undertakings. They have no dealings with the public. The Security Press prints notes only.

SHRI AKBAR ALI KHAN: Why not Life Insurance Corporation be taken as a Corporation where the Lokpal will have jurisdiction?

SHRI GOVINDAN NAIR: It is certainly, according to some thinking, a monopoly organisation and it is a Corporation in the sense it is a Corporation in the same sector as a public sector undertakings.

In the Life Insurance Corporation the normal type of complaints—I agree there are complaints and we do receive quite a number of complaints—mainly related either to saying, “My claim under certain policy has not been admitted by the LIC” or “There has been a very undue delay in the settlement of my claim.” As far as the actual settlement of a LIC policy is concerned, it is a contractual obligation between the LIC and the policyholder. If a policy is not payable because of certain reasons, it is according to the terms of the policy. It could be taken into a court of law.

As far as delays are concerned which I do agree do occur quite often and we do get many complaints, it is

certainly a matter of grievance for the citizen. But I do not know whether this kind of delay is something which should be looked into by the Lokpal or the Lokayukt. It is a matter really for much more efficient gearing of the efficiency of the internal organisation of the LIC. There are a large number of offices all over the country. A recommendation has been made by the Estimates Committee that we might split up the LIC in order to make it more efficient. It is under consideration of the Government. It might induce a more competitive spirit in the LIC and also lead to more efficient working.

SHRI S .S. N. TANKHA: Am I to understand that if the Lokpal is entrusted with this work of looking into the affairs of the Corporations it will lead to deterioration in the functioning of the Corporations.

SHRI GOVINDAN NAIR: I made a distinction between the two types of Corporations. Firstly, it is those dealing with public utility services where I said that there would be a case for the Lokpal or the Lokayukt to look into them. As far as the Corporations which deal purely with business transactions are concerned, I do feel that this a matter which is between one businessman and another. It is a matter of the interpretation of the contract or a matter against the type of goods or services supplied or *vice versa*. Here, I do feel that if you entrust this kind of looking into to the Lokpal or the Lokayukt, it would not be conducive to the efficient working of these undertakings. These things can be settled in terms of a contract or in terms of an agreement between them and in many cases it could be taken to a court of law. In a business transaction, it is not really a citizen's grievance in that sense of the word because a grievance has to be established that somebody has failed. Where there is an allegation that a certain contract has not been observed, there is a remedy which lies in the hands of these peo-

ple. If a business transaction between a coal company which supplies coal to the Hindustan Steel becomes a citizen's grievance, it might hamper, in my opinion, the efficient working of such commercial public sector undertakings.

SHRI S. S. N. TANKHA: At present there is some provision for looking into the affairs of the corporations existing already. If that is not hampering the working of those institutions, why should the Lokpals' or Lokayukts' looking into their affairs create some difficulties or greater difficulties in the way of the working those corporations?

SHRI GOVINDAN NAIR: I presume you are referring to the Committee on Public Undertakings or the Parliament or Audit which goes into the affairs of the Corporations. As I said earlier, it is very necessary that both Audit and the Parliamentary Committee should go into the affairs of individual corporations to see whether they are being efficiently managed, what are the difficulties, what are the complaints and so on. But I am drawing a distinction between this type of study and this type of reporting, which is very necessary and what is called or what I termed at the beginning, redressal of a particular citizen's grievance against a certain corporation.

SHRI S. S. N. TANKHA: All complaints need not be looked into by Lokpal. He will determine which of those complaints are such as should be looked into. So, he will himself sort out which of the complaints need to be looked into and which need not be. Why should you fear that the Lokpal's taking over the function will be to the detriment of the corporations?

SHRI GOVINDAN NAIR: I presume that you are not referring to the distinction between 'allegations' and 'grievances.' As far as 'allegations' are concerned, the Lokpal will look into them and it is already in the Bill. I take it that you are referring

to this: even in 'grievance' the Lokpal would exercise a certain amount of discretion. What I would submit, first as a point of principle, is that the kind of business transactions which normally arise in this area is something in which the Lokpal should have no jurisdiction. In the private sector also the same thing arises but there is no jurisdiction there.

Secondly, in many of these cases, proper remedy could be had in a court of law for any violation of agreement. Surely, the remedy should lie there because it is a matter which certainly the corporations will fight out; the corporation would consult its legal advisers and say, "I have a good case in court of law; why should I submit to the judgment of Lokpal?"

SHRI S. S. N. TANKHA: In the Bill as it is drafted, there is already sufficient safeguard for protecting the contractual obligations. If there is a contractual obligation or if it is possible for either of the parties to go to a court of law, then the matter will not be taken up by the Lokpal. If that condition exists and is allowed to remain as a part of the Act, then where do you find the difficulty?

SHRI GOVINDAN NAIR: Apart from contractual obligation, suppose there is a complaint that certain things which do not come upto the standard have been supplied and there is no contractual obligation, then it will be a question of fact and that can be settled in a court of law.

SHRI S. S. N. TANKHA: Possibly the Lokpal will not look into this; he may think that it is a matter which is likely to go to a court of law.

SHRI GOVINDAN NAIR: If the jurisdiction of the Lokpal is extended to him and we say that all those transactions should come within his jurisdiction—of course he may exercise his own judgment—, as my colleague said, this would certainly lead to certain apprehensions in the minds of public sector undertakings and it

might lead to delay, in making decisions; they might feel that somebody will go there and play up the thing. Thus there would be a certain hampering of efficiency of the public sector undertakings.

H. H. MAHARAJA P. K. DEO: As pointed out by Pandit S. S. N. Tankha, I would like to draw your attention to item (e) of the Second Schedule which clearly says:

“Action taken in matters which arise out of the terms of a contract governing purely commercial relations of the administration with customers or suppliers, except where the complainant alleges harassment or gross delay in meeting contractual obligations.”.

I think, adequate safeguard has been provided and, therefore, there should be no apprehension on the part of the public sector that they will be put to unnecessary harassments. Why should there be any such fear at all?

SHRI GOVINDAN NAIR: Suppose in a particular case a contract is awarded to party 'A' and there is no violation of that contract but, as I said, a complaint comes from somebody else saying that the contract should have been awarded to him. There may be a case, and there could quite often be a case, where the award of the contract to party 'A' has been made on grounds which are justified; there might have been the question of time or there might have been the question of the quality, and so on. But this would be properly considered a grievance as far as party 'B' is concerned which has not got the contract. So, it is not a question merely of violation of contract in such cases but cases could often arise where contracts for purchases and sales are made that somebody might consider that he has a grievance, and that is also brought within the jurisdiction of the Lokpal. I think, this is a point which I made earlier and my colleague also made.

H. H. MAHARAJA P. K. DEO: I feel that such cases would be very few. Even if such cases come in, we could amend the Lokpal Act at a later stage based on the experience of its working in a few years. Why should we have any apprehension at this stage and make these things inoperative so far as public sector undertakings are concerned?

SHRI GOVINDAN NAIR: I would only submit with due respect a very general point. To some extent the failures of public sector undertakings have often been attributed to the fact that they work under certain rules and regulations which hamper them in making decisions, which hamper them in the use of certain discretionary powers. As you are probably aware, there is usually a complaint made of the public sector undertakings that compared to such and such an enterprise in the private sector, they are working with a handicap and the reasons attributed in most of the cases—I am talking purely of commercial and industrial concerns—are that they do not have sufficient autonomy and that their activities are hampered by various rules and regulations. Here I would certainly plead against any tightening of this kind of control over the public sector undertakings.

SHRI S. S. DESHMUKH: What exactly is your conception of autonomy and efficiency? Does it mean complete protection from accountability?

SHRI GOVINDAN NAIR: Accountability is always there to Parliament and to the parliamentary committees. The public sector undertakings are subject to the control and audit of the CAG and they are subject to any Government directives which may be issued in the light of larger policy. Subject to these overall parameters, I would certainly say that autonomy means that in the day-to-day working of the public sector undertakings and in the taking of decisions on matters which arise every day, there could be complete freedom to managements.

SHRI S. S. DESHMUKH: In the present set-up of working of the parliamentary system, Parliament cannot be burdened with details of administration and Parliament is not meant as the forum to go into such cases of straight grievances, though real and substantial. So, the background and the very basis of the present Bill is that a machinery should be evolved which would be in a position to act as a *via media* between parliamentary control and a machinery for removal of such types of grievances. As constituted today, the Public Undertakings and the PAC have as their basis of discussion the report of the CAG which again is limited by the code of audit.

For instance, take the case of the Fertiliser Corporation of India. It is their job to arrange for collaboration agreements. Suppose there is a case where even the international technological journals publish that a particular type of plant with a particular capacity is outright on the Turnkey basis for sale at 50 million dollars, and the corporation goes in for a collaboration agreement on the basis of a cost which works out to 300 million dollars. Since, according to you, the Lokpal is the machinery which is to be resorted to by any citizen, I could go before the Lokpal and say that I am a citizen, and am a farmer interested in the proper price of fertilisers, and the price of fertilisers which I purchase has been unnecessarily pushed up by entering into a collaboration agreement which should have cost the corporation only 50 million dollars but which costs 300 million dollars because the corporation has exercised its discretion and thought it better to go in for such a type of plant. Would you still believe that the Lokpal should be precluded from inquiring into such a case?

SHRI GOVINDAN NAIR: I think that this would fall very much within the purview of a body like the Committee on Public Undertakings. The Public Undertakings Committee does not act on the basis of audit reports alone but it is at liberty to take

up and has taken up individual undertakings for examination.

SHRI Y. B. CHAVAN: To a certain extent, it would involve policy decisions. It is not only the Committee on public undertakings but ultimately it is Parliament which is seized of the problem. So, it is not a matter for the Lokpal as he has put it.

SHRI S. S. DESHMUKH: Will it be wise to burden the Lokpal with all details?

SHRI Y. B. CHAVAN: Will it be wise also to burden the Lokpal with all the policy matters which really speaking are the responsibility of Parliament?

SHRI S. S. DESHMUKH: Even at present, the petitions under article 226 or article 32 are such that in the present circumstances, they are almost cent per cent gamble. When that is the position, would you still believe that the Lokpal should be precluded from undertaking investigation of such types of cases?

SHRI GOVINDAN NAIR: I do not think that I went into that.

SHRI SAMAR GUHA: One common point in all the memoranda submitted by the different witnesses is that they have shown too much of susceptibility about grievances against the public undertakings. I am glad that at least a distinction has now been made between utility services and the truly commercial and industrial concerns.

Regarding public grievances, I would like to point out one thing. It is known that in almost all important public concerns, there are public relations officers. They deal with public grievances on the one hand and earn public good-will on the other. Applying the same argument which you are now raising, do not these public relations officers create any difficulty in the speed and efficiency of working of these public concerns?

SHRI GOVINDAN NAIR: The public relations officers are part of the

concern. Their duties, as far as I could see it, are part of the duties of the concern. In some public sector concerns, as for instance, the LIC, there is a complaints officer; he is not called a public relations officer but a complaints officer. If anybody has a complaint the idea is that it should be dealt with quickly and speedily, and there should be some method by which it should be disposed of quickly and without delay and if necessary it should be brought up to the highest level of management in order to see that it should be dealt with quickly and speedily. I do not think that this sort of internal arrangement will hamper the working of the public sector concern. It is really a method of seeing that there is more efficient working of the enterprise; it is a method by which we have an internal machinery to which anybody who has a complaint may refer that complaint and which can deal with that complaint quickly and efficiently, and if it is a very serious matter, could bring it to the notice of the top management. I do not think that that will hamper the working in any way.

SHRI SAMAR GUHA: Though such arrangement provides scope for redressal of public grievances against the public undertakings, yet it would create an element of self-preservation thought among those men.

Qualitatively you are not objecting to there being a machinery or arrangement for dealing with public grievances in a private or public concern. The only question is whether that machinery should be an internal part of the organisation or an external machinery.

The Lokpal can deal with such public grievances quickly and speedily. That being so, I think it will increase the efficiency of the public concerns.

SHRI AKBAR ALI KHAN: He would not deal with it so speedily as the department or the undertaking.

MR. CHAIRMAN: Thank you, Mr. Govindan Nair.

(The witness then withdrew)

MR. CHAIRMAN: Now, we shall take up the examination of Mr. N. K. Mukerji. He is from the Department of Administrative Reforms in the Home Ministry.

SHRI AKBAR ALI KHAN: In your note, you have stated that considering all these factors it does not appear necessary to go further than what is already covered in the Bill so far as the public sector undertakings and Government companies are concerned.

So, you agree that in matters of grievances there should be no scope so far as these corporations are concerned, but allegations should be looked into by the Lokpal and Lokayuktas.

SHRI N. K. MUKARJI: I would draw your attention to the fact that the Ministry of Home Affairs is actually the sponsoring Ministry for this Bill, and, therefore, naturally, we agree with whatever is contained in the Bill. So, the answer to your question is 'Yes'.

H. H. MAHARAJA P. K. DEO: In your original Bill, you never tried to differentiate between allegation and grievance. I am referring to the original Bill which formed part of the report of the ARC. But the Home Ministry has come forward with a Bill which tries to differentiate between allegation and grievances, what is your reaction to it?

SHRI N. K. MUKARJI: My first reaction is this. I may with respect object to the word 'your', because you said 'your original Bill'. Actually it was the Bill of the ARC and it was not that of the Home Ministry. I think Government's Bill truly reflects the spirit underlying the ARC's Bill, because what was important in the report of the ARC was the idea underlying what they were suggesting.

H. H. MAHARAJA P. K. DEO: Is it an improvement or a retrograde step?

SHRI N. K. MUKARJI: It is not a question of improvement or retrograde. The question is what makes for greater clarity. The Bill proposed by the ARC leaned heavily on the Parliamentary Commissioner's Act of Britain, which did not specifically deal with corruption but was meant to deal with the grievances of individual citizens. The intention of the Government here is to make the new machinery responsible for both the functions—redress of the grievances of individual citizens and enquiry into allegations of corruption.

SHRI FRANK ANTHONY: What would have been the effect if you had eliminated 'grievance' and the definition you have given. If there is some kind of allegation, there will be some application and then investigation. But if it is a grievance, what happens? There has been some maladministration, let us assume. It is established. If it is found that there is no improper motive or *mala fides*, what would happen? If you eliminate grievance, perhaps it would have the advantage of eliminating certain number of frivolous complaints.

SHRI N. K. MUKARJI: I think that whichever way you define allegations and grievances, there would be some overlapping. A point made by an earlier witness was that the definition of allegation should be such as to reduce the scope of this overlapping. Still it would not really be possible to do away with this completely. A person who has only a grievance can convert his grievance into an allegation, although I think there is a considerable area where the individual citizen may wish to represent his point without necessarily having to write that so and so did such and such thing with a corrupt motive. He may know that his application has been delayed for a year or something like that but he may not wish to impute

any motive to anybody; he is only conscious of his own grievance. That kind of case would be covered by the word 'grievance'.

SHRI AKBAR ALI KHAN: So far as grievances are concerned, if they are kept in so far as the Government servants concerned—and eliminated so far as corporations are concerned—will it make much difference?

SHRI N. K. MUKARJI: It will make a difference; that is why we have provided for the difference. Much of what could be said has already been said by previous witnesses but I wish to make one general point. Public sector corporations are as much part of the Government from one angle as any government department, financed and controlled as they are by the Government. But they are organised as companies and corporations to subserve a certain objective that we have in mind; this is better served if there is some autonomy. There are three objectives one has in view; eradication of corruption, autonomous functioning, attending to the grievances of citizens. The order of priority in which these things come in the case of corporations is somewhat different from the order in which they come in the case of Government departments. Eradication of corruption and citizens' grievances come right at the top in the case of government departments, whereas removal of corruption comes at the top and next, in between, comes autonomous functioning in the case of the public sector corporation. That is their range of priorities.

SHRI FRANK ANTHONY: He made one point which is important; Apparently, he referred to clause 20 as being ouster of the jurisdiction of the courts. You can never oust, as far as I am aware, the jurisdiction of the high courts or the Supreme Court, and that is one of the difficulties we are going to face. Many of the decisions or even rulings of the Lokpal or the Lokayukta might be taken to

the high courts and the Supreme Court. What is there to prevent it? There is nothing to prevent it. You can never oust the jurisdiction of the courts. You will have to change the Constitution if you want to.

SHRI N. K. MUKARJI: I agree.

SHRI S. S. N. TANKHA: In view of the fact that the main criticism from the point of view of the corporations and the public sector undertakings is that there is too much interference on the part of the department with those undertakings, which is really hampering the working of those institutions, may know how far you agree with that point of view. But even if you do not, whatever be the present practice for the department to control those undertakings, I would like to refer you to page 3 of your statement in which it is said:

"An inquiry into a complaint of grievance, unlike that in the case of an allegation of corruption, is in most cases, in the nature of a quasi-judicial review. If decisions taken in the public sector undertakings are made liable for such a review, it will result in interference in their day-to-day administration."

According to me, the present day practice of day-to-day interference by the department is hampering efficiency. How do you say that if this present practice is discontinued and if Lokpal or Lokayukta is to hold enquiries in respect of those undertakings also it will result in serious inroads into speedy and efficient function of the public sector undertakings or corporations?

SHRI N. K. MUKARJI: On the question whether there is too much interference or not, I think you cannot generalise, because the situation varies from Ministry to Ministry and from corporation to corporation. But I think a general view is available to us in the report of the ARC public Undertakings, and I think the Commission's views are more or less in line with what you are saying. In fact, that report suggests devolution

of authority to the public sector undertakings. In spite of that devolution, the Ministries may still wish to intervene on many occasions; very often that wish may be because of a feeling that what is required to be done is to be done because of the Ministries' accountability to Parliament. I do not think that it can be argued that because the Ministries rightly or wrongly intervene for that reason the possibility of intervention from still another authority is justified.

SHRI S. S. N. TANKHA: Supposing it is provided that the departmental functioning in these matters will be restricted in future or stopped in future, it will only be looked after in future by the Lokpal or Lokayukta. Will that be all right?

SHRI N. K. MUKARJI: That would mean that you would not in Parliament, be able to haul over the coals a Ministry under whose charge a public sector undertaking has not been functioning very well. If you say they cannot intervene at all, they will take that plea in Parliament. I do not think anyone would wish that to happen.

SHRI YOGENDRA SHARMA: Your predecessors have deplored that a distinction should be made between the economic sphere and the non-economic sphere in order to make out a case that a grievance should be excluded from the jurisdiction of the Lokayukta. As I understand, the popular complaints about corruption and such things are mostly in the economic sphere and the last 20 years of our development in this country have brought out one thing: that government or semi-government activities have taken place mostly in the sphere of economics. The activities of the corporations and the public sector undertakings are becoming, if they have not already become, a major and a quite substantial part of the governmental activities, and that is one of the reasons for the growing complaints about corruption relating to the scope of the economic activities. That being so, why do you want to restrict the

scope of the Lokayukta? That will go again at the very purpose of the Bill.

SHRI N. K. MUKARJI: I do not have any such views.

SHRI YOGENDRA SHARMA: Do you deny the fact that during the last 20 years, the economic activities of the Government have come down?

SHRI N. K. MUKARJI: I do not desire to restrict the scope in regard to allegations of corruption which you are mentioning. The Bill already provides that these should be covered.

SHRI YOGENDRA SHARMA: The whole discussion this morning has been as to whether the scope should be restricted so far as the allegations are concerned. For allegations, they agree that it should be within the power of the Lokpal. So far as the grievances are concerned. I think it is one of the restrictions. I am unable to understand whether this view is accidental or otherwise: because all the evidence tendered before this Committee this morning on the question of grievances, by all the departmental authorities is common. Is it only accidental that they have all taken a common stand?

SHRI N. K. MUKARJI: I would say that it is no accidental at all, because we have a community of interest, and there has been consultation amongst us to clarify each other's mind, because we do not wish to take up the time of the Community by unnecessary points.

SHRI A. D. MANI: On the question of the Lokpal's authority being restricted to exclude public servants, a suggestion is made that the private commercial enterprises cannot function like the government departments. I want to give some illustrations. It is common practice in commercial concerns to make presents on the occasion of Christmas Eve or New Year's Eve or New Year Day, such as, to give two cases of whisky. This happens even in the public sector undertakings. I do not want to give evidence

before this Committee, but I do know of public sector undertakings where this practice is followed. This is to promote business. This is also done in our Embassies abroad. These things happen. If somebody takes up an item like this and says, "This is an instance of corruption and I want to investigate," you would be putting a curb on the enterprise of our public sector undertakings which come under Parliamentary vigilance, namely, the Committee on Public Undertakings. And formerly, they came under the Public Accounts Committee. Why can't the Lokpal be excluded from going into the affairs of public sector undertakings? One may ask that. I am only mentioning it because we will be getting a crop of complaints from every public sector undertaking: Bhilai, Bhopal, Durgapur, Rourkela. Every day there are so many complaints of corruption against officials by those who are aggrieved, and these are brought to our notice. We do not want a Lokpal to investigate into this. It will put a curb on the public sector undertakings. What is your reaction to the Lokpal being excluded altogether from the public undertakings in view of the supervision by a special parliamentary committee over them?

SHRI N. K. MUKARJI: Parliament has at various times expressed its great concern over corruption even in public sector enterprises. It is a question of relative priority. Government has followed the lineset by Parliament in this matter that even in public sector corporations, eradication of corruption must be treated as a top priority problem. The British Parliamentary Commissioners Act excludes public undertakings completely, but that act does not deal with corruption allegations. It only deals with citizens' grievances. In this Bill also, we are excluding grievances against public undertakings. Much depends on how you regard the Lokpal or Lokayukta. Will they provide harassment or protection? It is a question

of approach. If we regard them to be super-policemen, they will provide harassment and Mr. Mani's doubts may be well-founded. But if they are going to do things in a judicious way, they may well provide the very protection that is needed.

SHRI A. D. MANI: Suppose there is a complaint that a certain tender from Bombay for the supply of air coolers for a certain plant was rejected, although it was better than the other one. Is the Lokpal going to enquire into all these allegations? Do you think the Lokpal will do any good to the public undertaking by having star chamber investigations from time to time over frivolous and flimsy allegations?

SHRI N. K. MUKARJI: If it is a pure grievance, it will be outside the scope of the Lokpal. If it is frivolous or vexatious, the Lokpal and Lokayukta have specifically been given the authority to drop it. It is assumed the Lokpal and Lokayukta apply some kind of selectivity in their work, because the sheer volume will be so heavy. I think if we choose these functionaries carefully, we can trust them to apply their good judgment.

SHRI A. D. MANI: Suppose there is a false charge against a government official. He suffers untold tortures, goes about consulting lawyers preparing his defence, etc. Ultimately the Lokpal dismisses the complaint as frivolous. Would you like the Lokpal to award costs to the person who has been injured?

SHRI N. K. MUKARJI: When it was suggested that penalties should be provided for false and frivolous complaints, an hon. member said it might act as a deterrent to make complaints. The present provision in the Bill is that every complaint is expected to be accompanied by an affidavit. I concede it is not a powerful provision. It is for the committee to consider whether there should be a more powerful provision.

H. H. MAHARAJA P. K. DEO: To avoid frivolous complaints, can you

provide that there should be a deposit of Rs. 1000 with every complaint, which will be forfeited if it is proved to be false?

SHRI N. K. MUKARJI: If the committee feels a more powerful provision should be there, there are alternatives like deposit, awarding cost, etc.

SHRI S. S. DESHMUKH: Instead of monetary restrictions would it be wiser to have penal restrictions?

SHRI N. K. MUKARJI: Two of the State Government have ventured into legislation in this sphere. There was an ordinance in UP which lapsed in due course. A Kerala Bill is still awaiting the President's assent. In both legislations there was a provision for deposit. I think it was Rs. 1000 in UP and Rs. 500 in Kerala.

SHRI S. S. DESHMUKH: Instead of statutorily ousting the jurisdiction of Lokpal, will it not be safer to leave it to his complete discretion? Would not this, along with the safeguard of deposit or penal provision, take care of frivolous complaints?

SHRI N. K. MUKARJI: Within the sphere of allegations, the principle you mentioned can operate. But so far as grievances are concerned, they should in the case of public undertakings, remain excluded from the jurisdiction of Lokpal and Lokayukta.

SHRI TENNETI VISWANATHAM: A lot of distinction has been made between 'allegation' and 'grievance'. Can there be an allegation without a grievance and a grievance without an allegation?

SHRI N. K. MUKARJI: I would say, yes. In many cases the allegations may be in the nature of grievance, but there is a sort of free area in both.

SHRI TENNETI VISWANATHAM: Is there no provision in the Criminal Procedure Code which says that a man is punishable for six months if he alleges that a government servant is guilty of corruption?

SHRI N. K. MUKARJI: I am not aware that there is any such provision in the Criminal Procedure Code. If you are referring to the law on corruption, I think there is such a provision.

SHRI S. S. DESHMUKH: It is only the Penal Code which provides for such punishments. The Criminal Procedure Code only prescribes the procedure.

MR. CHAIRMAN: We have finished for the day, I thank you, Mr. Mukar-

ji, and also your colleagues from the other Ministries for having come before the Committee and helped us with your valuable evidence.

We shall be meeting again during the Session period on every Saturday so that we can examine more witnesses. Our next meeting will be on the 27th for which the regular notice will come to you. This meeting is now closed.

(Shri N. K. Mukarji then withdraw)

(The meeting then adjourned)

**MINUTES OF EVIDENCE GIVEN BEFORE THE JOINT COMMITTEE ON THE
LOKPAL AND LOKAYUKTAS BILL, 1968.**

Saturday, the 27th July, 1968 at 10.00 hours.

PRESENT

Shri M. B. Rana—Chairman.

MEMBERS

Lok Sabha

2. Shri K. Anbazhagan
3. Shri C. C. Desai
4. Shri Gangacharan Dixit
5. Shri Samar Guha
6. Shri Kanwar Lal Gupta
7. Shri Hem Raj
8. Shri Thandavan Kiruttinan
9. Shri Bhola Nath Master
10. Shri V. Viswanatha Menon
11. Shri G. S. Reddy
12. Shri Vidya Charan Shukla
13. Shri Ramshekhar Prasad Singh
14. Shri S. Supakar
15. Shri Tenneti Viswanatham.

Rajya Sabha

16. Shri Gurmukh Singh Musafir
17. Pandit Sham Sunder Narain Tankha
18. Shri Purnanand Chetia
19. Shri Akbar Ali Khan
20. Shri K. S. Ramaswamy
21. Shri V. T. Nagpure
22. Shrimati Pushpaben Janardanrai Mehta
23. Shri Balachandra Menon
24. Shri A. D. Mani.

LEGISLATIVE COUNSEL

**Shri R. V. S. Peri-Sastri—Additional Legislative Counsel, Ministry of
Law.**

REPRESENTATIVES OF THE MINISTRY OF HOME AFFAIRS

1. **Shri N. K. Mukarji—Joint Secretary, Deptt. of Administrative Reforms,
Ministry of Home Affairs.**

2. Shri S. P. Mukherjee—*Joint Secretary (V), Ministry of Home Affairs.*
3. Shri S. P. Mukerji—*Director, Department of Administrative Reforms.*
4. Shri A. P. Veera Raghavan—*Deputy Secretary, Ministry of Home Affairs.*
5. Shri S. M. Chikermane—*Under Secretary, Department of Administrative Reforms.*

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

WITNESS EXAMINED

Shri K. Santhanam—*Ex.-M.P.*

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

MR. CHAIRMAN: We welcome Mr. Santhanam for coming all the way for the purpose of giving evidence before the Committee. I think hon. Members will remember that we passed a Resolution condoling the death of Shri H. C. Mathur. There is a letter from his son expressing his thanks to the Committee in response to the resolution passed by our Committee. (Chairman then read out that letter to the Committee). I wish to tell the Committee that further comments and suggestions on the provisions of the Bill received from the following organisations/individuals were circulated to the members of the Joint Committee:

- (i) Govt. of Maharashtra
- (ii) Shri K. Santhanam
- (iii) Southern Millowners' Association, Coimbatore.
- (iv) Prof. P. Tripathi Delhi University.
- (v) Delhi Administration.
- (vi) Bar Council of West Bengal
- (vii) Govt. of Madhya Pradesh.

I wish to inform the Members that the following parties have no comments to offer on the provisions of the Bill:

- (i) Govt. of Nagaland
- (ii) Andhra Pradesh High Court.
- (iii) Advocate-General, Nagaland.

- (iv) Advocate General, Madras.
- (v) Administrator, Laccadive, Minocoy & Amindivi Islands
- (vi) Administrator, Dadra and Nagar Haveli.
- (vii) Gujarat High Court.
- (viii) Shri S. C. Lahiri, Ex-chief Calcutta High Court.
- (ix) Rajasthan High Court.
- (x) Chief Commissioner, Andaman & Nicobar Administration.

The Chief Minister of Kerala as expressed his inability to offer comments on the provisions of the Bill. He has however stated that he is getting the matter examined in his department and the comments are still awaited.

The following individuals have expressed their inability to appear before the Committee.

- (i) Dr. C. D. Deshmukh.
- (ii) Shri S. R. Das.
- (iii) Governor of West Bengal.
- (iv) Shri S. Dutt, Vigilance Commissioner, West Bengal.
- (v) Shri P. G. Gajendraadar.
- (vi) Shri G. S. Pathak Governor of Mysore.

They have also not submitted their comments.

In Pursuance of the decisions of the Committee at their sitting held on the 4th July 1968, the following individuals were invited for oral evidence on the dates indicated against them:

- (1) Shri K. Santhanam 27-7-68.

- (2) Shri P. Chakravarti 3-8-68.
- (3) Shri C. K. Daphtary 10-8-68.
- (4) Dr. H. N. Kunzru. No date was given but willingness asked for.

Sarvashri P. Chakrawarthy and C. K. Daphtary expressed their inability to appear before the committee on 3rd and 10th August, 1968, respectively due to their preoccupations.

Shri Chakravarti who was informed that the revised date will be intimated to him in due course after it is decided by the Committee on the 27th July, 1968 has since intimated that he cannot come to Delhi due to his preoccupations and has requested that his name may be dropped. Shri C. K. Daphtary has been requested to appear before the Committee on Saturday the 24th August, 1968 at 10.00 hrs. His confirmation is awaited. Dr. H. N. Kunzru is willing to appear before the Committee and has been invited on 3rd August, 1968.

In pursuance of the decision of the committee at their sitting held on the 6th July, 1968, Shri P. N. Sapru was requested to indicate his willingness to appear before the committee. His reply is still awaited.

Prof. P. K. Tripathi Dean, Faculty Law, Delhi University had expressed a desire to appear before the Committee for oral evidence and has been invited on the 3rd August, 1968 at 1500 hrs.

Prof. P. K. Tripathi Dean, Faculty of Justice, Bombay High Court who was requested to give his comments on the provisions of the Bill and also to give oral evidence intimated that he was not willing to come under the stipulated conditions. He was therefore invited for oral evidence on payment of TA/DA (with Chairman's approval) on the 3rd August, 1968 but he expressed his inability due to preoccupations. He was again requested to indicate whether it would be possible for him to appear either on 10th or 17th August. He has since intimated that he cannot come and has requested to drop his name from the list.

Memorandum received from the Committee on Petitions on the provisions of the Bill is placed before the Committee.

Shri K. Santhanam has now appeared before us for giving his oral evidence today. Before Mr. Santhanam proceeds, I would like to read out to him about this. He knows all about that. Direction No. 58 of the Speaker states that where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence tendered by them is to be treated as confidential. It shall however be explained to the witnesses that even though they might desire their evidence to be treated as confidential, such evidence is liable to be made available to Members of Parliament. Now, Mr. Santhanam, I would request you to give a general idea of what Lokpal should be and what your ideas are on Lokpal and then we shall ask a few questions to clarify certain points.

SHRI K. SANTHANAM: Mr. Chairman, I thank you for inviting me to give evidence before this Committee. I have already sent a detailed Memorandum on the Bill which I hope has been circulated among Members. As I have stated in that Memorandum I am in whole-hearted agreement with the principles and purposes of the Bill. But I feel that unless the Lokpal and Lokayuktas have got the constitutional status like the Election Commission, the Supreme Court judges or the Auditor General, they will not command the prestige that is essential for performing their very difficult and onerous task. The Lokpal's business is, according to the Bill to look into the allegations of corruption and also complaints of grievances of mal-administration against the ministers and secretaries. This Bill is confined only to the ministers and public servants serving in the Govt. of India. But the problem of mal-administration and corruption is not

something which can be confined to the Central Govt. alone, unless the same standards of honesty and good administration can be established for the entire Government of the country whether it is the Union or the States, I do not think the purpose of the Bill will be fully achieved. Therefore, it is my feeling that there should be a brief Article in the Constitution providing for the setting up of the LOKPAL and LOKAYUKTAS and stating their functions and giving Parliament the power to fill up the gaps about procedure and other matters. That is one of my major suggestions to this Committee.

I think it is not quite right to club the Minister and the Secretary together. They are different categories of public servants. Minister is a person elected by the people and he has to be judged by the code of political conduct and morality. Secretary is a public servant who has to conform to the rules of conduct of a public servant. To put the Secretary in a higher pedestal than the Deputy Secretary or a Director or other officials seems to me not quite logical. But a full-time Lokpal only to look into the grievances and complaints against Central Ministers may be too much. Therefore, unless my suggestion that the Lokpal should be one who will have jurisdiction over all the Ministers, whether of Union or of the States, is adopted, there may be some justification in extending the jurisdiction of the Lokpal to Secretaries and some other high officials like the Governor of Reserve Bank or Managing Directors of public undertakings.

So far as appointment goes, I think the procedure provided in the Bill for appointing the Lokpal is satisfactory. But so far as Lokayukta is concerned, I do not think it is right that he should be appointed in consultation only with the Lokpal. I think the President must consult the Chief Justice also. We want Lokayuktas not to be mere subordinates of the Lokpal. We want them to be equally independent persons. I strongly object to the 2981 (E) LS—5.

giving of a second term to the Lokpal or Lokayukta. That will make them dependent on the Central Government. It is the essence of these two offices—even more than other offices such as the Election Commissioner—to be entirely independent of the executive. So long as the bait of a second term is held out, to that extent their independence is bound to be compromised. Therefore, I hope the Committee will consider my suggestion.

Then, once the Lokpal or a Lokayukta has made a *prima facie* finding that a Minister or a public servant has committed some acts which are corrupt, then it should not be open to the executive government to sit over him and decide whether they should accept the *prima facie* finding of the Lokpal or the Lokayukta and should take any action accordingly. *Prima facie* findings of the Lokpal or Lokayukta should be binding on the executive and they should proceed to the next step. If it is a Minister, he should resign and there should be a proper commission of inquiry to go into the allegations. If it is a public servant, he should be suspended and a departmental enquiry or an inquiry by a Commissioner or criminal prosecution should follow. Unless the *Prima facie* finding of the Lokpal or a Lokayukta is treated as a high-level finding, they will merely be considered as advisory officers and they will lose all status and nobody will think of approaching them. Therefore, their report should be treated as binding on the executive government.

Then, the Lokpal or the Lokayukta should not be left high and dry. They should have the statutory right to requisition the services of the CBI, the Vigilance Commissioners and other organisations and officers whose business is to look into matters of mal-administration and corruption. They should be able to give them directions as to what they should do. Perhaps the Committee will look into the traditions established between the Central Vigilance Commission and the

vigilance officers of the various Departments. You know that as a result of the report of the Committee on prevention of corruption—of which I had the privilege of being the Chairman—the Central Government established the Central Vigilance Commission and vigilance officers in all the Departments. Though the Central Vigilance Commission has no jurisdiction over the Ministers—it was not made a statutory office because we thought that it might take some time—it has established a good tradition and evolved a big organisation. I do not know if the Central Vigilance Commission has been asked to send you a memorandum. If not, I may suggest that you may consider the desirability of obtaining it. It should be brought into the scope of the present Bill. All the work which has been done for four years should not be allowed to be wasted. The Vigilance Commission has got direct jurisdiction to entrust a case to the CBI. According to the Bill, the Lokpal and the Lokayukta will have to go through the Home Ministry in order to get the services of the CBI or other agencies. The working of the offices of the Lokpal and Lokayukta should not be dependent upon the goodwill or the good intentions of the Home Ministry or any other Ministry.

These are some of the major points which I have in mind. There are, of course, some minor points. For instance, according to the Bill, the Lokpal has jurisdiction over the President and Governors. It is only a drafting mistake. You cannot make the Lokpal and Lokayukta look into the affairs of Governors or President. There are other minor matters which I have already indicated in the memorandum. I do not want to take the time of the Committee by repeating them here. Now, I would like to answer your questions.

MR. CHAIRMAN: Thank you I would suggest to all the members to confine themselves to the clauses of the Bill while putting questions to the

witness—especially such an able witness like Mr. Santhanam. Before I pass on to you, I would like to put one or two questions to him.

I understand from you that you are entirely for the institution of the Lokpal. That is one thing. Actually we are starting this work from where he has left over viz. the report on corruption. Now we are going on with the Lokpal Bill. You believe in the institution of Lokpal. Do you think that the Ministers also should be included with the public servants?

SHRI K. SANTHANAM: I think Lokpal should have jurisdiction over the Ministers both at the Centre as well as the States.

MR. CHAIRMAN: We feel that Lokpal is not too strong to be treading on other people's toes. To start with he may be going out of his jurisdiction to go into the judicial and other matters.

He should be within his limits?

SHRI K. SANTHANAM: I accept the limits of the Second Schedule. I think it is all right. I have already suggested that he should have nothing to do with the President or the Governors.

MR. CHAIRMAN: Now, let us know about the status. Actually, we have given him the status of a Chief Justice of the Supreme Court. What do you think about it?

SHRI K. SANTHANAM: I think it is a good thing that he should have the status of the Chief Justice of the Supreme Court because he has to look into the allegations made against the Central Ministers including the Prime Minister. Therefore, he should have the status of the Chief Justice of the Supreme Court.

MR. CHAIRMAN: You don't think that the other judges would object to this.

SHRI K. SANTHANAM: How can they object to this so long as there is nothing derogatory to their status?

MR. CHAIRMAN: You feel that they should not continue beyond 65 years.

SHRI K. SANTHANAM: I think there should be no period except the age limit. They should be appointed and they should retire at the age of 65. Their term of office whether it is five years, ten years or whatever it may be, it should be from the date of their appointment upto 65. They should not go beyond that. They should not be evicted from office except by a procedure of impeachment which is already incorporated in the Bill.

MR. CHAIRMAN: In the Bill, there is a provision for issue of a Certificate by the Secretary that this matter would not go to the jurisdiction of the Lokpal. Do you think that that is sufficient? You know that in the Administrative Reforms Commission's Report it has been stated that it is a Minister which certifies that so and so matter does not come within the jurisdiction of the Lokpal. Do you think whether such a certificate should be given by the Secretary or the Minister?

SHRI K. SANTHANAM: Will you please indicate the relevant clause? I do not think that any such certificate is provided for in the Bill.

MR. CHAIRMAN: It is provided for.

SHRI K. SANTHANAM: Is it regarding a particular document which cannot be produced?

MR. CHAIRMAN: That is very important because that certificate might exclude the jurisdiction. Do you think that the certificate given by the Minister as suggested by the A.R.C. or a certificate given by the Secretary as suggested in the Bill would be enough?

SHRI K. SANTHANAM: Will you kindly let me know the actual clause in the Bill?

MR. CHAIRMAN: You will please refer to pages 13-14, sub-clause (3) of clause 14.

SHRI K. SANTHANAM: Clause (3) does not deal with disclosure of documents or information or of documents or information which would be only contrary to the General public interest. If the document pertains to the security of the nation, it cannot be disclosed. Similarly a document connected with the Cabinet meeting cannot be disclosed if it involves public interest or security of the nation. A Secretary cannot refuse to produce a particular document on the ground that it is of public interest unless it is connected with defence. If a Defence Secretary says that it should not be disclosed in the interest of the security of the nation, I think it will have to be accepted. We cannot allow our Defence matters to be disclosed. Similarly the cabinet proceedings are also sacrosanct and I do not think that they should be open to the scrutiny of Lokpal or Lokayukta. Barring that, every other document will have to be produced at the request of the Lokpal or Lokayukta.

MR. CHAIRMAN: Suppose we say that in the interest of the security of the country, a particular document should not be disclosed. If this is kept out of the jurisdiction of Lokpal, what do you think about it?

SHRI K. SANTHANAM: Probably public security is very wide term. Probably the word 'security' may be replaced by the word 'defence'.

MR. CHAIRMAN: Now, this is my final question as far as I am concerned. That is regarding Second Schedule, clauses (b), (e) and (f). What do you think about that?

SHRI K. SANTHANAM: (b) is about Extradition Act. It is a judicial proceeding. I do not think the executive has got the power of extradition. They have to produce the person before a judicial authority. And the judicial authority has to ap-

prove of the proceedings. Therefore, we cannot have the Lokpal and Lokayukta sitting over the judgment of the court. There is nothing in (d) and (e). (e) is about the contract. (e) deals with action taken in matters which arise out of the terms of a contract governing purely commercial relations of the administration with customers or suppliers, except where the complainant alleges harassment or gross delay in meeting contractual obligations. For almost all contracts ordinarily there is a provision for arbitration, if there is a dispute between the two parties. I think Lokpal cannot decide as to whether the railway contract about a road or anything is right or not, or whether it is too much or whether it is too little. I think it should be exempted.

MR. CHAIRMAN: What do you say about (f)? I think it is all right this being purely a departmental action.

SHRI K. SANTHANAM: It is purely an administrative action. If at all in respect of appointment there is any allegation of corruption or anything of that sort, it comes under the general conduct.

SHRI AKBAR ALI KHAN: You have suggested that there should be an amendment to the Constitution. I agree with you. But, I would like to know whether we can proceed with this Bill or whether we should take up amendment to the constitution also simultaneously. Otherwise, there is likelihood of our Bill being delayed.

SHRI K. SANTHANAM: Here comes the politics. I have already given a draft amendment of the Constitution. This is to be judged in the light of practical politics. As I said, I would certainly accept this Bill as the second best.

SHRI AKBAR ALI KHAN: In this matter I do not think there will be much difficulty in getting a constitutional amendment passed. Anyhow you think, without the constitutional

amendment, we can proceed with this Bill.

SHRI K. SANTHANAM: Yes, Sir.

SHRI AKBAR ALI KHAN: The other thing is: you have very kindly given a memorandum and draft also and you have suggested referring to the Entries in the List, that we could pass this Act and apply it to the States as well. I very much doubt and I think there will have to be a specific provision when we want to apply any such Act to the States.

SHRI K. SANTHANAM: I do not think so because all employees come under either the Federal List or the Concurrent List. The provisions of the Constitution are that the Parliament has power to enact any legislation on any matter referred to in the Concurrent List and when the Parliament makes any legislation, it is binding on all the States and I think it is better if these inquiries are put in this Bill under the entry in the Concurrent List as Parliament can deal with it. I do not think any further constitutional amendment is necessary to enable Parliament to enact such laws. Whether it can extend to Ministers, there may be a point of some doubt. But so far as public servants are concerned, I have not the least doubt that the Parliament can extend the application of the Bill to all public servants throughout the country whether they are public servants in the Union or the States.

SHRI AKBAR ALI KHAN: You think that the Bill which is for the Union only, should be extended to the States?

SHRI K. SANTHANAM: I have already pointed out one difficulty in this Bill. It does not make it clear about All India Services. There is an IAS man. He is really, technically a servant of the State. He may be serving the State to-day, but tomorrow he may be under the Government of India. Now either the Lokpal or the Lokayukta should look into the

complaint. If he is Secretary, the Lokpal comes in; if he is only a Govt. servant, the Lokayukta. He is merely a servant of the State and so long as he is serving the Government of India, this Bill may apply. While the Lokayukta is looking into his affairs, he can go back to the parent State. Then, what is the position?

SHRI AKBAR ALI KHAN: You have made it clear.

SHRI K. SANTHANAM: At least the All India Services should be brought in, because if they are subject to one jurisdiction here and another jurisdiction in the State, the Central Services will get demoralised.

SHRI AKBAR ALI KHAN: So your view is that it should not apply only to the Union Ministers or Union servants only but also to the State Ministers and State servants.

SHRI K. SANTHANAM: Yes.

SHRI AKBAR ALI KHAN: If we are able to do that, the other question does not arise.

SHRI K. SANTHANAM: We can have it extended to the whole of India. If you cannot do it, at least extend it to the Central Services.

SHRI AKBAR ALI KHAN: I would also ask you one thing. You said that the Minister and the Secretary should not be clubbed together. As you had been yourself a Minister and in the Administration, you know there are many cases where the Minister acts on the advice of the Secretary. There then the point of legal liability. I think that is one reason why the framers of this Bill have thought fit to put the Secretary only, not the Joint Secretary or Deputy Secretary—only Secretary and such Additional, Secretary who has the independent power. So I think that will achieve the objective of the Bill. Do you agree with me?

SHRI K. SANTHANAM: I do not. Because, if it is a question of judgement or policy I can understand the Minister and the Secretary being taken together because the policy is formulated on the advice of the Secretary by the Minister and there may be a case for judging whether the Secretary has advised the Minister properly. But, here is a question of mal-administration or corruption, I do not think you can say that the Minister and the Secretary go together in corruption. If it is nepotism and other things on the part of the Minister, then the Secretaries are not a party to it. Therefore, I do not know why the Secretary should be clubbed with the Minister. The Joint Secretary may become Secretary tomorrow. Where will you draw the distinction? Suppose, some allegation of corruption is made against the Secretary with regard to an act done by him when he was Joint Secretary. Then who will inquire into him? Will it be the Lokpal or the Lokayukta?

SHRI AKBAR ALI KHAN: Do you think any limitations should be put in as suggested by some persons that the person levelling the charge should deposit some money or there should be some guarantee. How to check frivolous complaints or allegations? What would you suggest to control frivolous allegations in this connection?

SHRI K. SANTHANAM: In our report that is why we considered this very carefully and we came to the conclusion that for all and sundry to put in a petition may mean an enormous number of frivolous as well as malicious petitions. That is why we suggested that ten members of either the State legislature or of Parliament should take the responsibility for endorsing any allegation before it comes in for investigation. Now we have opened the floodgates as it were and probably there will be a lot of complaints against the Lokayukta and Lokpal that 90 per cent of the com-

plaints are being put into the waste-paper basket. They may do so justifiably. Still it will affect their reputation on the public. So I would suggest that every such petition or complaint should be endorsed by some responsible people and I think the only persons who may be treated as responsible from this point of view are the people who have been elected to the legislature, or Parliament and so, if not 10, at least 3 or 4 members of some legislature or Parliament should say, 'I have looked into this and this is a fit case worth investigation.' A certificate like that to the Lokpal or Lokayukta will save a lot of trouble.

SHRI AKBAR ALI KHAN: Will you favour imposing any penalty if ultimately the complaint was found frivolous?

SHRI K. SANTHANAM: Not frivolous. But if it is deliberately malicious, then it should be open to the Lokpal or Lokayukta to send the man for prosecution.

SHRI AKBAR ALI KHAN: You know this inquiry will be for administrative lapses, grievances, etc. In that connection would you like this inquiry to be like a regular court inquiry or you will put some limitations. What should be the nature of the inquiry before the Lokpal and the Lokayukta?

SHRI K. SANTHANAM: The nature of the inquiry will differ in the case of complaints of mal-administration and in the case of allegations of corruption. In the case of allegations of corruption, they will have to get the CBI or somebody to find out whether they can get hold of the facts.

SHRI AKBAR ALI KHAN: Probably I am not clear. I want to know whether it should be a regular judicial inquiry or it may be an administrative inquiry. That is what I want to know.

SHRI K. SANTHANAM: In the case of mal-administration it has to be ad-

ministrative enquiry and in the case of corruption it must be something like judicial enquiry or criminal investigation.

SHRI AKBAR ALI KHAN: In that case Articles 226 and 32 will be attracted and the proceedings will be hit by those provisions.

SHRI K. SANTHANAM: I don't think those articles are attracted. No enquiry can be prevented by any article of the Constitution. When the stage of final decision is reached, those aspects come into the picture.

SHRI SAMAR GUHA: According to the concept of our Constitution, the Office of the Chief Justice of India has been conceived as the highest judicial authority. In this Bill of Lokpal and Lokayukta there has been made an attempt to equate the status of Lokpal and the Chief Justice. In some sense even the authority of the Lokpal has been made more comprehensive, not only in terms of the conditions of service, salary etc. Don't you feel that this will create serious conflict in the judicial authority in our country and there will be confusion as to which will be the supreme judicial authority? If you feel so, I want to know whether it is not necessary to have a certain clause showing that the supreme judicial authority of the Chief Justice of the Supreme Court is preserved.

SHRI K. SANTHANAM: If they were judicial officers, I would agree with you, but they are not judicial officers. There is nothing to prevent our appointing other people of any status. For instance, the President has the highest status, even higher status than the Supreme Court Chief Justice. The President is only the executive head. This officer is not a judicial officer but he is an officer who will have to investigate any allegation against the Prime Minister of India. Therefore I don't see any thing wrong in the status; it is not function. If he has any judicial functions, and they are

likely to come in conflict with the authority not only of the Chief Justice of the Supreme Court of India but any judicial authority, I shall agree with you. It is only a convenient description of a certain arrangement that so and so will have status similar to so and so and it does not equate their functions. The Chief Justice of Supreme Court remains supreme in the judicial matters irrespective of the appointment of Lokpal and Lokayukta.

SHRI SAMAR GUHA: There should not be any scope for conflict or confusion in regard to the status and function of these two authorities. The status and functions of the Lokpal and Lokayukta should be defined independently without having any reference to the Chief Justice of Supreme Court.

SHRI K. SANTHANAM: I have no objection to that.

SHRI SAMAR GUHA: According to the provisions that have been made in this Bill regarding the appointment of Lokpal, it has to be made by the President in consultation with the Chief Justice of India and the leader of opposition in the Lok Sabha. The word 'consultation' may lead to the conflict as to who will be the real person to hold the office of Lokpal, etc. If certain provisions are made to the effect that the Lokpal should be selected principally from among the retired Chief Justices of the Supreme Court and also of the High Courts and also instead of having one single person selected by the three agencies as has been suggested there should be a panel of five from among whom the President will choose.

SHRI K. SANTHANAM: I don't agree with that. First of all, I don't want any retired Chief Justices of the Supreme Court to be in the field for selection as Lokpal or Lokayukta because that will undermine the integrity of the Supreme Court. No Chief Justice or the Justice of the Supreme Court should hope for any

high appointment after retirement. Then, I accept that the Chief Justice of the Supreme Court and the President will normally look among the functions of retired Justices of the High Courts, who have held their posts in distinction, for these appointments. I don't also favour a panel of five as you suggested . . .

SHRI SAMAR GUHA: A panel of five from among whom the President will select one.

SHRI K. SANTHANAM: That will give too much discretion to the President. The President will make an effort to settle a common name in consultation with the Chief Justice and the Leader of the Opposition and in that effort the best man will be appointed. Even if there is some difference of opinion, at least two of them will have to agree on a person. The present proposal seems to be better than what you suggest.

SHRI SAMAR GUHA: The word 'consultation' does not mean that in case there is any conflicting opinion among the three, the opinion of the two will be final.

SHRI K. SANTHANAM: In order to keep it outside the Court the general formula is that the President shall appoint in consultation with the Chief Justice and the Leader of the Opposition, and of course, technically the President can disregard the opinion of both the Chief Justice and the Leader of the Opposition and appoint whomsoever he likes. That is the literal interpretation, but nowhere things happen like that. I don't think the President will under take the responsibility of appointing a person against the opinion of the other two.

SHRI AKBAR ALI KHAN: The ultimate responsibility is that of the President and the President will act on the advice of the Cabinet and the Cabinet will be responsible to the Parliament.

SHRI K. SANTHANAM: I agree that the President means Home Ministry.

SHRI SAMAR GUHA: Ultimately it comes to this that the Home Minister is the final authority so far as the appointment of these Officers are concerned. Then, the very purpose of the Bill is defeated if Lokpal is allowed to be appointed by the Home Ministry.

SHRI K. SANTHANAM: In order to checkmate the Home Ministry, the representative of the Opposition is provided for. In case of undue interference from that side, the representative of the Opposition will move a Resolution in Parliament and the Home Minister will have to defend his action. No Home Minister will take the odium of appointing a person on his own.

SHRI SAMAR GUHA: Isn't it that the function of Lokpal will be relating to a very specialised subject, mostly concerning law?

SHRI K. SANTHANAM: It is not judicial. These are not judicial functions at all. You may call them quasi-judicial appointments. They have no power of judicial decision. They only investigate and see that things are not done improperly, and if something is done improperly he would bring it to the notice of the Parliament and the public and give an opportunity to the Government to rectify this.

SHRI SAMAR GUHA: I agree with you that unless the Union Territories are also included in the Bill, then the very purpose of the Bill will be defeated. If it is so amended as "Minister means a member of the Council of Ministers, by whatever name called, for the Union, the States and Union Territory" If these three words are included, will it in any way conflict with the Constitutional privileges that have been given to the States?

SHRI K. SANTHANAM: I don't think it will. As I have suggested, the best way to remove this is to put in a new article in the Constitution and to make the Lokpal and Lokayukta not independent of the executive Government, like the Election Commission, the Finance Commission, etc.

SHRI KANWAR LAL GUPTA: You have just stated that the Lokpal should not be dependant on the Ministry of Home Affairs, and Lokpal should be authorised to issue orders directly to the CBI and other investigating authorities. Do you feel that because these appointments and transfers of CBI officers and other Police officials depend on the Ministry of Home Affairs, some independent agency for investigation should be there under the Lokpal?

SHRI K. SANTHANAM: It will be open to the Lokpal to have one or two officers who can make some preliminary enquiries. But if you want to have some detailed enquiries it is not possible to build up a rival institution to the CBI. Therefore, it is my suggestion that wherever he feels necessary it should be open to him to demand an enquiry by the CBI.

SHRI KANWAR LAL GUPTA: Don't you feel that the Home Minister will be having some influence on the CBI authorities?

SHRI K. SANTHANAM: He may have to make appointments but the Lokpal does not appoint anybody. So, there is no conflict between the two.

SHRI KANWAR LAL GUPTA: Suppose there are some allegations against the Home Minister. Then do you like that the Lokpal should ask the CBI to make enquiries? The Home Minister can influence the CBI.

SHRI K. SANTHANAM: That's why I have suggested that he should not give any notice to start with. He must first be given the power to investigate secretly in case of corruption. It is only at the final stages

that he should give notice. The Home Minister will not know that any matter has been referred to the CBI in the first instance. It is only when he is to make a report, he should say: "It appears to me that you are committing corruption. These are the facts. What have you to say?" And on that basis the Lokpal should submit a report to the Prime Minister.

SHRI KANWAR LAL GUPTA: You have just stated that the findings of the Lokpal should be more or less binding. What do you mean by 'more or less binding'?

SHRI K. SANTHANAM: I would rather take away that "more or less".

SHRI A. D. MANI: I would like to refer to your remarks made in answer to a question from this side,— Supreme Court judges being made ineligible for the appointment as Lokpal. Now, you will see that the Bill requires on the part of Lokpal and Lokayukta a very deep knowledge of the procedure and law in respect of evidence, because evidence has got evidence, because evidence has got to be taken under the Civil Procedure Code. Now, would you have any objection to a serving judge of a High Court, Chief Justice who is 60 years of age who is due for promotion as a Supreme Court Judge, being appointed?

SHRI K. SANTHANAM: I have no objection to the Chief Justice or a retired or existing judge of the High Court being appointed. Even in the case of Supreme Court, the functioning judge may be appointed as Lokpal. On retirement he does not get any benefit.

SHRI A. D. MANI: Now, please refer to your memorandum and your comments on clause 2(b). You have suggested: "or has used his influence to secure to any member of his family or other person special preference in the matter of appointment, promotion or other advantage." If a Minis-

ter or a Secretary comes within the purview of a 'subordinate' and that subordinate has also been an erring subordinate any harm caused to that subordinate would not be against the public interest. Would you like to qualify this sub-clause by saying "legitimate interest of any other person..."? Causing harm is not a crime.

SHRI K. SANTHANAM: I have no objection. The Secretary does not get his son appointed by his department or by any private interest whom he deals with. He always does it through some other secretary and he, in turn, obliges the latter. In fact, in certain firms high appointments are practically reserved for the sons of secretaries. It is only to cover such instances that I have suggested that if somebody has got a job for which he is not apparently the best person the Secretary and others will have to explain to the Lokpal as to how he managed to get it.

SHRI A. D. MANI: Referring to your memorandum page 3 paragraph 16:

"I don't think it should be open to the competent authority to sit in judgement over a finding of the Lokpal or Lokayukta that an allegation can be substantiated either wholly or partly. Such a report should be automatically followed either by a Commission of Enquiry or a departmental enquiry or criminal prosecution."

This is a slight contradiction because in departmental enquiry that is also sitting in judgement on the Lokpal

SHRI K. SANTHANAM: In the case of very high officials there are Commissioners—practically independent judicial officials to conduct the enquiry. Only cases of minor nature are taken for departmental enquiry. Supposing a Lokayukta finds there is a case against a Superintendent then he will only say that there is a *prima facie* case and then the usual proce-

procedure of departmental enquiry will be conducted because though the Lokayukta is higher in status than the man who is making an enquiry he has not conducted the judicial enquiry. The other man will have to conduct a proper judicial enquiry giving an ample opportunity to the accused to clear himself.

SHRI A. D. MANI: I am raising this point because you have had an example—I hope—of the Public Accounts Committee making certain observations on the Steel deals in which Mr. Subramaniam and Shri Roothalingam were involved. The matter was referred to a departmental semi-judicial enquiry.

SHRI K. SANTHANAM: It was not referred to any departmental enquiry at all. A departmental enquiry is an administrative judicial enquiry. It was only an advisory opinion of certain people which was called for.

SHRI A. D. MANI: Paragraph 17. Why should you object to the Public Service Commission scrutinising the recommendation of the Lokpal or Lokayuktas? Why should you say the Public Service Commission should not sit in judgement on the Lokpal?

SHRI K. SANTHANAM: I am afraid you have not understood my suggestion. At the *prima facie* stage the Union Public Service Commission has no business to come in. When the departmental enquiry or criminal prosecution has finished then disciplinary action is taken and then the matter is referred to UPSC. But here when the *prima facie case* is made out UPSC has no means to judge about the *prima facie case*.

SHRI A. D. MANI: Even in regard to the disciplinary case the UPSC makes a preliminary enquiry. It calls for statements from both sides. It gives an opportunity to the aggrieved person to state his case.

SHRI K. SANTHANAM: Even today the procedure is if there is any complaint against an officer first de-

partmental enquiry is conducted and the recommendations of the departmental enquiry regarding disciplinary action are referred to the UPSC. But here the Lokayukta simply gives a *prima facie* opinion. Unless you convert the *prima facie* opinion into an opinion to be followed by disciplinary action the UPSC should not come in the picture at all. I have no objection that before disciplinary action is taken the case of the official may be referred to the UPSC.

SHRI A. D. MANI: Paragraph 15. You have said that clauses 10 and 11 should be re-drafted. There are certain doubts—public doubts—about the suitability or the necessity of such clauses 10 and 11. Now, is it proper to give investigating powers to make secret enquiries to the Lokpal because the Supreme Court judge does not have investigating powers?

SHRI K. SANTHANAM: He is not a judicial officer. In fact, the whole basis of the Bill is that Lokpal is somebody who keeps a general supervision over integrity and good administration. He comes to certain conclusions but he does not award punishment. Investigation and report are his only functions.

SHRI A. D. MANI: That investigation is done on the basis of complaints before him and not on his own initiative. Now, we Members of Parliament hear all sorts of rumours going about Cabinet Ministers, State Ministers and many of them are wholly false or many of them are exaggerated. If the Lokpal gets himself mixed up....

SHRI K. SANTHANAM: What he has to do is to find out whether it is frivolous or not; and secondly, if there is any basis he has to judge whether that basis is of sufficient importance and finally he has to give the final report that *prima facie* there is mal-administration or corruption. These are the three things he has to do.

SHRI A. D. MANI: There may be so many frivolous complaints referred to the Lokpal or Lokayukta. Every man who has got a grievance will file a complaint and many of them may be frivolous. You must see the position of the official who will have to undergo the mental torture by going through all these complaints. Would you suggest that an allegation should be accompanied by a deposit of Rs. 250 so that the deposit is forfeited if the allegation is frivolous; secondly, in all such enquiries an official concerned has to take legal assistance also to prepare his defence. Would you like him to be reimbursed in respect of legal fees if the allegations are found to be wholly frivolous.

SHRI K. SANTHANAM: Suppose the allegation is frivolous we expect the Lokpal to put that complaint in the waste-paper basket and simply post a postcard saying that the complaint is frivolous. The question of the official suffering will come only when the Lokpal or Lokayukta sends a finding that there is a *prima facie* case against him. Then, of course, the other enquiries come in and if he is acquitted then he is entitled to reimbursement. That comes not at the stage of Lokpal but at the time of criminal investigation.

SHRI A. D. MANI: At some stage after a departmental enquiry starts on the basis of *prima facie* findings you do not mind the cost being given. I am talking about deposits because there will be many complaints—Members of Parliament get many complaints—and there should be some kind of limit, say, of Rs. 100 or Rs. 200. Some deposit should be stipulated.

SHRI K. SANTHANAM: I have no objection to that. But, as I have already made a suggestion, no complaint should be entertained unless it is supported by a certificate from three to five legislators in this country that this complaint had been looked into by them and there is some *prima facie* basis in this complaint.

SHRI TENNETI VISWANATHAM: Now, Sir, since the publication of your report, do you think that the conditions have improved or have gone worse?

SHRI K. SANTHANAM: Well, of course, there is no means of giving positive information on such matter, but I believe that the Government officials, particularly of the Government of India, are very vigilant and careful and only those who are very very clever, dare to indulge in corruption. That is the impression I have got.

SHRI TENNETI VISWANATHAM: Do you think that corruption is both wide and deep?

SHRI K. SANTHANAM: It is little less wide after the appointment of Central Vigilance Commission.

SHRI TENNETI VISWANATHAM: There are at present several kinds of remedies provided under various laws both for improving administration as well as checking political corruption. Do you think they are not adequate?

SHRI K. SANTHANAM: They are not adequate in the sense that generally the citizen has no means to get records, documents, etc. which will be necessary to prove acts of corruption or even mal-administration. It is only the authority which can summon documents and evidence wherever it may be which can deal with them effectively.

SHRI TENNETI VISWANATHAM: In this state of affairs will the Lokpal with powers given under this Bill meet the situation?

SHRI K. SANTHANAM: To some extent he will. If my recommendations are accepted to give him constitutional status and other suggestions are accepted, I think he may be able to do very well.

SHRI TENNETI VISWANATHAM: There is a provision that if ordinary remedies are available, the Lokpal should not take up the matter in his own hands.

SHRI K. SANTHANAM: Ordinary remedy—that is for mal-administration. For instance in the case of corruption there is no remedy at all. It is only in the case of certain administrative acts there is appeal and even in that case there is a provision that if the ordinary process of administration is not satisfactory, the Lokpal or Lokayukta should come into the picture.

SHRI TENNETI VISWANATHAM: I want to look more closely into that. He can take the matter *suo motu*. At what stage can you think the present machinery is not working satisfactorily

SHRI K. SANTHANAM: Let me give an illustration. If a person who has retired is unable to get his pension within six months of retirement, I think it is a legitimate case to go to Lokpal and Lokayukta and say that I retired so many months ago but have not got pension so long; at once he will certainly issue a notice to the Department concerned as to why there is delay and he will instruct the Government to see that his pension orders should be issued immediately.

In the first instance you will have to apply for inspection. If there is undue delay in such matters as that of Income Tax and others, he can easily look into that.

Refusal of information: Many Department do not give information, and this itself is a case of maladministration. In the case of corrupt officers it is a sort of criminal investigation.

SHRI TENNETI VISWANATHAM: If there is undue delay Lokpal can take up the matter himself. But the officers opinion of the length of delay may be totally different from the opinion of the man.

SHRI K. SANTHANAM: Lokpal or Lokayukta has to judge as to which conception is the proper.

SHRI TENNETI VISWANATHAM: So, when a man applies or makes an

appeal against an order or suppression of information or something like that and he does not get any reply within a month or two do you suggest that he could go to the Lokpal in that case?

SHRI K. SANTHANAM: Lokpal or Lokayukta will have to frame some conventions or rules as to the normal time that may be necessary for the disposal of administrative business. In fact at the very first time the complaint will have to be discussed with the Government of India and others and a sort of time table will have to be framed. That will be the great achievement of this Institution.

SHRI TENNETI VISWANATHAM: So you want the present rules to be slightly amended to give right to the aggrieved officer to go to the Lokpal (by framing the rules) if the present machinery does not seem to move within 30 days or so?

SHRI K. SANTHANAM: It is not only framing the rules. Rules are not often implemented at all. Higher authorities do not move and things go on. Finally, the very existence of these authorities will make the Departments work a little more conscientiously.

SHRI TENNETI VISWANATHAM: Some time after the promulgation of the permanent settlement in this country, there were complaints to the House of Commons that there was too much of corruption in this country and the House of Commons appointed a Secret Committee of Corruption. Have you gone through that Report? On the recommendation of that Report several officers were summarily dismissed and the first man dismissed was the Governor of Madras in 1823. Can there be any milk and water business? Do you feel some radical change should be made?

SHRI K. SANTHANAM: In a particular case you can have a particular remedy. You want a general watchdog. If a proper person is put and proper authority given there is no reason why he should not become a

powerful watch dog as in Denmark or Sweden or Australia.

SHRI C. C. DESAI: You suggested that the retirement age for Lokpal should be 65. The Minutes provide for five year term.

SHRI K. SANTHANAM: According to the Bill he may be 80 or 85.

SHRI C. C. DESAI: Would it not be better not to mention the age of retirement at all and simply make the period fixed as five years—subject to no fresh appointment or not being eligible for fresh appointment. Five years' tenure be given to secure stability and continuity of the work.

SHRI K. SANTHANAM: The real difficulty is if a comparatively young man of 50 is appointed Lokpal (I can imagine brilliant people of 50 are there who deserve to be appointed), then he will have to retire at the age of 55. He will not be eligible for any other appointment either in the Government of India or States or any where else and then it will be very difficult. At whatever age he may be appointed, that must be the tenure office. Afterwards, he may be given satisfactory pension which will enable him to live decently without going in for other appointment. If you allow Lokpal or Lokayukta to hold another appointment, then you cannot expect him to deal with corruption free'y.

SHRI C. C. DESAI: Should the man be allowed to work upto 65 only irrespective of the period he may hold office?

SHRI K. SANTHANAM: He will retire at the age of 65. It may be that he may hold office for 5 years or 3 years.

SHRI C. C. DESAI: If he is 62, he will serve for three years. Would it not affect continuity and stability?

SHRI K. SANTHANAM: We must assume that people with at least 5 years term will be appointed. You

will have to give little discretion to the people who appoint them.

SHRI C. C. DESAI: To give greater status to the office of the Lokpal, how do you arrive at some finality regarding the finding of the Lokpal, because, ordinarily what happens is this, namely, under the provision of the Bill the Lokpal is merely an investigating authority. It makes recommendations. It goes to the departmental enquiry or the UPSC and to some extent the status of the Lokpal will be denigrated and so how will you provide that the finding of the Lokpal will have final status? That is, is he having authority to award final punishment and to that extent can the constitution be amended; if so will it not impinge upon the UPSC jurisdictions?

SHRI K. SANTHANAM: In the matter of administration the findings of the Lokpal and Lokayukta will be followed in practice, but in the matter of corruption.

SHRI C. C. DESAI: Even in the departmental matter the jurisdiction of the UPSC cannot be intarferred with. UPSC will come in. To that extent status of Lokpal is reduced.

SHRI K. SANTHANAM: UPSC comes in only at the stage of punishment. Lokpal does not suggest any punishment. Lokpal's business is to go up to the stage of *prima facie* finding. He will be the only authority to find out *prima facie* finding where there are no people to look into those things at all, whether it is mal-administration or corruption and after that *prima facie* finding it is the government which will have to take necessary action. It is they who take the disciplinary action and whether the punishment is right or wrong, the Lokpal does not go into it at all. The criminal court or departmental enquiry or Commissioner may say this man should be dismissed. Whether he should be dismissed or he should be degraded or something else, that will be matter to be decided by the Government in consultation with UPSC.

SHRI C. C. DESAI: If Govt. of India is to be guided by the UPSC in regard to the finding of the Lokpal, to that extent the status of the Lokpal is very much reduced.

SHRI K. SANTHANAM: Unless you convert him into a high-level judicial authority he cannot give a judicial finding or decision. Therefore he goes upto the stage of finding *prima facie* case. If you invest him with judicial authority, you will be investing him with the judicial authority outside the scope of the bill.

SHRI C. C. DESAI: Even the charge is not proved, UPSC will say. In spite of a *prima facie* finding UPSC can say such and such charge is not proved. What will happen?

SHRI K. SANTHANAM: Where there is no judicial enquiry, such enquiry has to follow. If you convert Lokpal's investigation into judicial enquiry the finding is absolute. If it has to stop at certain investigating stage after establishing a *prima facie* case, the executive authority will have to arrange for a regular enquiry to award the punishment. Whatever the status of a judicial authority, its decision will stand unless it is reserved by an appellate authority.

SHRI C. C. DESAI: Shou'd the CBI be under charge of Prime Minister to get over the difficulty referred to by Mr. Kanwarlal Gupta there may be allegation against home Minister.

SHRI K. SANTHANAM: There may be an allegation against the Prime Minister and so that does not help, unless you put the CBI under the Lokpal himself. That will not be practical.

SHRI C. C. DESAI: You said Lokpal jurisdiction is to be extended to state ministers as well State Governments have more or less reacted against this bill. So, to enlist their cooperation what do you suggest?

SHRI K. SANTHANAM: Suppose they don't cooperate with Election commission.

SHRI K. SANTHANAM: What do you do? Suppose they don't cooperate with Auditor General. What do you do? There won't be allegation against the State Government as such. It will be against an official or particular minister. What happens is, at present they have a fear of the Home Minister or Central Ministry doing something. Once the Lokpal and Lokayukta are put above the Union Ministry and made independent they will have the same position as Election commission or Auditor-general.

SHRI K. ANBAZHAGAN: I would like to start with last point mentioned by the previous hon. Member, Shri Desai: This refers to the bringing in of the Ministers of the State Government within the purview of the Lokpal. You have mentioned that the respective State Ministers can be brought in there. Now, under the present constitution the State has got its own law and order power in its own hands; the Centre does not come in there. It is the State Ministers who are elected there, who represent the legislature there and if at all anybody has to take any action against any minister, it is the Chief minister of the State and not the Prime Minister at the centre. Under the present political context even if the Prime Minister wants to take any action against any Minister of any State, it is not possible. So under the present circumstances do you think that Lokpal appointed by the advice of the opposition leader in the Lok Sabha and Prime Minister with the advice of these people will be able to control the Ministers at the States? What is your view on that?

SHRI K. SANTHANAM: I have not fully drawn up the implication of my proposal. But when once the State Ministers are included, Lokpal will not send the report about the State Minister to Prime Minister. He will send that only to Chief Minister or Governor concerned. It is only at that stage that they will take action against the official concerned or minister concerned. The Lokpal will be like Auditor

General Auditor General does not send audit reports of States to Parliament. He send it to State Legislature. So far as Central Government is concerned he send it to Parliament and so far as State legislature is concerned it goes to State legislature and State Government. I think, it will be like the Election Commission and Auditor General. The state autonomy is not affected. The point is this. Just judges of the high courts are appointed by the President in consultation with certain people for Lokayukta in the State, the State Government may be consulted and it is for the Home Ministry of the Central Government to evolve suitable procedure. This is more or less ancillary to my recommendation and so far as the States are concerned, he will function like the Auditor General. He will be doing a type of audit on integrity and good administration, that is all.

SHRI K. ANBAZHAGAN: Appointment of Lokpal is done by the President and power is given by Parliament either by legislation or by amending the constitution. It is the opposition leader who renders some type of advice for Lokpal. He enquires into *prima facie* cases etc. Don't you think that the Lokayukta should have the same parallel authority in respect of the States, as the Lokpal?

SHRI K. SANTHANAM: No. Because it is the Parliament which makes criminal laws and civil laws, do you think that they should not be binding on the States? This is something in extension of a civil law or a criminal law. Parliament functions for the whole country in many matters and exclusively for the Union Government in some other matters.

SHRI K. ANBAZHAGAN: Don't you discriminate between the authorities of Parliament members and State Assembly members?

SHRI K. SANTHANAM: Yes. For instance, if a complaint against a State

Minister comes, I shall insist that it will come through the members of the State legislature. Similarly, if there is any complaint against an official of the State, I shall insist that it should get endorsed by the State legislatures. If there is a complaint against a complaint against a Central Minister, it should come through the Parliament members. All that is ancillary to the acceptance of my suggestion. Because that suggestion is not embodied in the Bill. I do not go into other details. If you accept it, I shall be willing to draw all the other conclusions.

SHRI K. ANBAZHAGAN: Even though Lokpal is considered to be the highest authority to look into the grievances of the people, don't you think that it will be proper for the legislative assembly to have their own Lokayukta with same authority for every State?

SHRI K. SANTHANAM: There will be a Lokayukta for each State. If you see my Constitutional amendment you will know that I have suggested that there will be a separate Lokayukta for each State. His report will be submitted to the legislature of that State. It will not come to Parliament.

SHRI K. ANBAZHAGAN: You suggested that Ministers and Secretaries should not come under the same categories and that the Lokpal may enquire into the complaints against Ministers. Who, according to you, should be the proper authority to inquire into complaints against Secretaries?

SHRI K. SANTHANAM: It will be Lokayukta because he will be concerned with all public servants other than Ministers.

MR. CHAIRMAN: Before I ask Mr. Supakar to put questions, I want to ask you one question myself. In para-

20, page 4, of your memorandum, you have stated:

"I think it should also be obligatory to the Lokpal or Lokayukta to investigate any grievance or allegation made in writing by any ten Members of Parliament or the Speaker of Lok Sabha or the Chairman, Rajya Sabha.

Do you think it is correct to allow any ten members to bring in allegations that so and so Minister is corrupt?

SHRI K. SANTHANAM: It is just possible that any ten members may put in frivolous complaints. But I expect that in due course every Member of Parliament will realise the dignity of his office and will not put his signature to any frivolous allegation. We have to go on that assumption. Then, it will be the duty of the Lokpal or the Lokayukta to investigate and say whether there is any *prima facie* case.

SHRI SUPAKAR: I am a little worried about the scope and the extent of power that is proposed to be give to the Lokpal.

There can be no dispute about the fact that there is a large amount of corruption in our country. While that is true on the one hand, if you look at the other side you will find that during the last few years, after the report of the Committee on Prevention of Corruption was published, in some States at least there has been such a spate of allegations supported by a member of Members of Parliament against the Ministers of all parties that practically you do not find any body against whom there is no charge of corruption. I would draw your attention to the definition of 'allegation' in the Lokpal Bill. We must ensure that the administration or the Minister must come to a decision of alternatives and they must not shirk their responsibility to come to a definite conclusion on account of fear that some people in a multiparty poli-

tical system that we are subjected to who can never hope to come to power may make some allegation that such and such Minister is guilty of lack of integrity or guilty of impropriety or improper conduct which can be defined in a manner which may differ from man to man. Under such circumstances don't you think that there is the necessity of rigidly defining the scope within which the Lokpal and Lokayukta—especially the Lokpal—should deal with the conduct of Ministers and their functions? You know that the line of demarcation between matter of policy and matter of administration is very thin and opinion may differ whether it is within the policy of the Party or Government or the Ministry on the one hand and whether a Minister has performed the duty in exercise of his discretion. In that context do you not think that the definitions of the scope so far as allegations and grievances are concerned should be further restricted?

SHRI K. SANTHANAM: While it is true that there has been a spate of allegations, I think the political atmosphere in the country has been vitiated by the fact that these allegations have not been inquired into and people have not been told whether there was any basis for these or not. Unenquired allegations by responsible people, especially by Members of Parliament and Members of state Legislatures, are more harmful than any inquiry or final judgment by a proper authority. So far as the Central Vigilance Commissioner and other people are concerned, I have yet to know that one good officer has been penalised as a result of this institution, though there have been many complaints. Actually, the Central Vigilance Commission organisation has been a protector of the honest officials. Similarly, I believe the Lokpal will become the protector of honest ministers. It is only the dishonest ministers who should be afraid of them. I have read the clause carefully. I don't think that any policy decision can possibly come under any of these three such clauses. The Lok-

who bring frivolous charge and at the same time deposit some money, or the discretionary power of Lokpal or Lokayukta should be adhered to?

DR. KUNZRU: The work will become impossible if it is very heavy. It will be impossible to be looked after by anybody and discretionary power of the Lokpal in this matter should therefore remain unfettered.

SHRI K. ANBAZHAGAN: You said, Lokpal should have under his jurisdiction also the State Ministers and Secretaries of State Government. Under present constitutional provisions States are fully autonomous. Ministers are responsible to respective State Legislatures. As such how can Lokpal go into the complaints against the State Ministers?

DR. KUNZRU: That is a constitutional matter and as I have said the Bill can't be extended to deal with complaints against State ministers and Secretaries of departments without agreement with the States. That is quite clear.

SHRI S. S. DESHMUKH: The Lokpal is a judicial man who is having judicial background and judicial training and has functioned in a judicial way. It is a principle of jurisprudence that in 99 cases a guilty may go unpunished, but even in one case where a person has not committed an offence, should not be punished. That is the cardinal principle on which we function. Don't you think this training itself could be quite adequate to take care of this malicious prosecution because under the common law also if a man prosecutes another person for an offence under malicious grounds such person has right under common law which empowers him to proceed against for perjury and so do you not think that in such cases they will function properly under the supervision of judicial men?

DR. KUNZRU: Judicial officer is not all-knowing. He has to depend upon the facts placed before him. I have

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already told you that the present Central Vigilance Commissioner was the Chief Justice of the Mysore High Court. He authorised the prosecution in 1966-67 of at least 3 persons. When a person of that standing finds it necessary that people making deliberately false complaints should be prosecuted we need have no doubt that power will be properly exercised.

SHRI S. S. DESHMUKH: Here there is provision of Leader of Opposition being associated for appointment of Lokpal. In UK it is a well-understood practice that Leader of Opposition is Chairman of PAC. It is for this reason, those in the administration, if they are to explain lapses of administration, financial lapses etc. then the possible person who would be in a better position to go into it would be the Leader of Opposition but today in our country what happens is that, the leader of opposition being in politically motivated charges against the Chief Ministers and Ministers of State and even Ministers in the Government of India, and so, in that particular background obtaining in our country presently, may I know what is your idea of associating the leader of the opposition with the appointment of Lokpal? I think you have still confidence in the opposition as well?

DR. KUNZRU: A man of that standing should be appointed by the President, after consultation with the Chief Justice of India. I see no reasons for consulting the Leader of the opposition. As regards complaints to be brought to light, there are reports of the Public Accounts Committee.

SHRI S. S. DESHMUKH: So far as the Schedule is concerned, you said it is all right. The so-called contractual and commercial relations of the Government of India give rise to a spate of public complaints. Will it not be in the fitness of things to allow these sorts of complaints also to be investigated and looked into by Lokpal?

DR. H. N. KUNZRU: Are you referring to the Second Schedule?

SHRI S. S. DESHMUKH: Yes. It is item (e). It reads:

Action taken in matters which arise out of the terms of a contract governing purely commercial relations of the administration with customers or suppliers, except where the complaint alleges harassment or gross delay in meeting contractual obligations.

DR. KUNZRU: If a man does not fulfil the terms of the contract, I do not see how any proceedings by the Government of India against him can come within the purview of the Lokpal. Here it is said that these matters can be considered by the Lokpal where the complaint alleges harassment or gross delay in meeting contractual obligations.

SHRI S. S. DESHMUKH: Will that be a sufficient rider? It is a matter of common knowledge that in all such matters there are uncalled for practices though under the garb of law they may be defended. Yet, there are many complaints of genuine injustice to customers and persons who enter into contractual obligations involving considerable amounts of money.

DR. KUNZRU: This is a different thing altogether. The permission given for a contract can always be gone into by the Lokpal if a complaint is made before him. But the question is whether the contractor, if I may say so, can bring a complaint against the Government of India for compelling him to carry out the contract unless he can allege harassment or gross delay in meeting contractual obligations.

SHRI S. S. DESHMUKH: The wording as it stands, I do not mean to say, can put civil action out of jurisdiction. The breaches of the contract or damages can be taken care of by the civil court. How a contract is arrived at? That cannot go there. There may be cases where a person is favoured in preference to another. That comes under the exercise of discretion. That

discretion cannot be dealt with in a court of law. They will say: We are not entitled to enter into it; it is the discretion of a particular officer. This results in injustice to some. If you exclude it from the jurisdiction of the Lokpal, will it not amount to greatest injustice?

DR. KUNZRU: If a contract has been improperly given, I think a complaint can be made, according to my reading of the Bill, to the Lokpal. If the Lokpal thinks that the matter is one which can go easily before a court of law, then he will take no cognizance of it. But if he is satisfied that there are reasons why the complaint cannot go to a court of law, he can deal with the complaint himself.

MR. CHAIRMAN: Thank you very much for having come all the way and given us the benefit of your experience and advice.

DR. KUNZRU: Thank you very much.

(The witness then withdrew)

II. Prof. P. K. Tripathi, Dean, Faculty of Law, Delhi University.

(Prof. Tripathi was called in and he took his seat)

MR. CHAIRMAN: Thank you very much for coming here. I would now request you to give your opinion on the Lokpal Bill briefly in about ten minutes. Afterwards, hon'ble Members will ask you some questions for clarifying some of the points. You may start now.

PROF. P. K. TRIPATHI: I am grateful for this opportunity of being permitted to be present here. My opinion about the Bill will be in the first part on questions of broad policy and in the second part on details of the provisions. So far as questions of broad policy are concerned—not political policy, but policy as I, as a technical man, understand it—I think what

appears to be a very dangerous feature of the Bill is the provision here for investigation into actions of Ministers particularly. It appears to me that it requires more thought whether we should have an authority who will look into the actions of Ministers and fix responsibility on them because this authority will replace to a great extent the functions that Parliament itself has been performing in our system, and which, in my very humble opinion, the Parliament should continue to perform. It is very difficult to make a distinction between even an administrative action and a matter of policy and I have tried to say in the brief that I have submitted that it will be difficult sometimes for the Lokpal and also for the Minister to avoid conflicts on matters of policy. A Minister should be responsible only to Parliament and Parliament has sufficient machinery for controlling that if a Minister goes too far away from the principles laid down by Parliament in the various enactments.

There is another danger—we are giving a very high status to the Lok Pal; we are conferring on him the status of the Chief Justice of India; we are also giving him powers of investigations which the Chief Justice himself does not possess; we are giving him access to files and material to which a judge of the Supreme Court or any other Court has no access.

This Officer, when he is in a position to investigate the complaints, as we contemplate, on the actions taken by a Minister, may start the investigation on his own and then makes a report to Parliament. It appears to me quite plain that this report, in many cases, will in effect be a report of the Opposition. That is what I have tried to say in the article. If a Minister has taken some action which somebody does not like, this officer is not bound to wait until a complaint comes. He makes an investigation of his own accord and then makes a report to Parliament. If the Government agrees with the policy which the Minister has followed in taking the actions complained—and it should

be so in the normal case—then, his report to Parliament is merely a Report of the Opposition. There is nothing wrong in the Opposition being supplied with facts regarding any governmental action which may attract criticism. That is quite normal. But, here we are doing something more. We are giving this criticism the stamp of approval by an impartial looking authority. The Lokpal is not a Member of Parliament; he is not responsible like the Opposition. Because of the Opposition, Government can say 'All right, you take over the Government and you fulfil the policies which you are advocating and which we do not approve'. And in our form of Government, the Opposition has the moral and constitutional responsibility to carry out the policies on the basis of which it criticises the Government. But, the Lokpal has no such obligation. He will be a critic whom no one can remove from his office. He will enjoy all the immunities of the High Court and the Supreme Court Judges and he will have none of the responsibility of the Members of Parliament, of Government or of the Opposition. I had to go to the extent of saying in the article which I have submitted, that in a well-chosen critical time in the political history of the country, an evil minded Lokpal can even turn down the Government. There are many occasions when the country is quite sore on certain issues, and the Opposition does take advantage of such occasions ultimately for its own purposes. On such occasions as long as it is an argument between the Government and the Opposition, it is a fair debate. But, to my mind, it ceases to be a fair debate when a seemingly judicial or semi-judicial verdict of a very high official of the status of the Chief Justice of India is flung on the side of the Opposition. At a delicate moment, this will turn down any Government. My submission therefore, is that so far as the Ministers are concerned, matters on which action has been taken by them should not be reviewable by any person other than the Members or a Com-

mittee of Parliament. Only Parliament should be the custodian of this power of criticising or even taking action against the minister.

Now, we have divided into two categories the action that the Lokpal will take. Firstly, when there is an 'allegation'. The term allegation has a tinge of criminality or at least of moral turpitude. And secondly, where there is some grievance that somebody has suffered an injustice. Injustice is a very vague term—vague in this situation. So far as the question of allegation is concerned, firstly, I think, the allegation against the Minister should be examined only in very extreme cases; and, secondly, it should be examined by a Commission. The advantage is that the personnel of the Commission is not known beforehand. I do not know who will be appointed in the Commission to investigate into the particular action. The person therefore does not have that political potential in his hands which he will have if he is already known to be the person who will investigate into the action. The Commissions have this advantage; and, then, they generally are headed by men of great legal experience—retired supreme court or high court judges. They bring in the judicial mind to bear on the problems. Even in the case of persons other than the Ministers, in the case of allegations, the Bill perhaps goes too far because, we have, in the case of persons other than Ministers, Article 311 of the Constitution. It guarantees a certain procedure to the Civil servants. To my mind, the Courts have further enlarged these guarantees and they bind us. And unless we give the Civil servants all these guarantees, it will not be constitutional to make the investigations into the allegations.

In other words, these investigations might fall foul of 311 if they are meant to lead to any result. The provision in article 20 in effect says that there should be no *ex-post facto* criminality and no one should be punished for an act which was not an offence when it was committed. These

are very vague expressions that we have used in Section 2(b), in the definition part of it. It says: (1) has abused his position as such to obtain any gains or favour to himself or to any other person or to cause undue harm or hardship to any other person." If this is an offence for which a person is going to be punished, he will be entitled to know what are the contours of the offences for which punishments are contemplated. We are going to appoint the Lokpal for the first time and we are conferring on him this power. We are perhaps violating article 20 of the Constitution. My submission is that the whole idea of investigations into allegations is very ambitious and is also unnecessary because, as long as it is an allegation of any act prompted by improper motives on the part of the civil servant, we have a departmental machinery which we can tighten up and can amplify also. It is unnecessary to set up another machinery. Probably the real difficulty in taking action against the public servants springs from the Constitution itself. There is so much protection given to the civil servants. Those who are administering find it sometimes impossible to take any action. And any action will take such a long time; it requires so much of details and so much of recording and so much of delicate observance of technicalities. Ultimately, some mistake is committed somewhere and the courts crack down upon the department for this mistake. We will have to wait until our Courts sense that the administration must be run by persons who are taking on their shoulders the responsibility of the administration. They are to be treated leniently and are not to be quibbled as long at least as they are proceeding honestly and with a reasonable diligence. But by making this provision we cannot delete the provisions of Art. 311. In New Zealand where they have a parliamentary form of Government like our own they have tried this experiment only with what I would consider to be parallel to our investigation into 'grievances'. In-

investigation into a grievance is a very different matter because there is no allegation or moral turpitude involved here and there also I submit the Minister should be kept out. But, in the case of other civil servants there will be enough opportunity for rendering service to the public by a Lokpal who looks into 'grievances' as distinct from 'allegation'. There are all kinds of grievances. People write to a Department and they do not get replies. This is a grievance. This is a very realistic grievance. There are grievances by women doctors in medical departments that they are being over-burdened with work; that the administration being in the hands of male doctors they fail to understand the difficulties of women doctors. They send all women patients to the women doctors; they are in larger number especially in the C.G.H.S. Scheme and yet the male doctors have less work compared to the women doctors. There are grievances like this. Unfortunately, the Act again excludes a grievance like this. Again there can be a grievance as to how many holidays people should have. There are hundreds of complaints which can be taken care of under grievances and if the Lokpal is confined in his operation to looking after grievances, he will certainly create a climate of understanding and faith between the administration and the people because, perhaps, 90 per cent of the complaints are mere grievances and only a very small proportion of them really involve allegations of dishonesty. Then I particularly feel that it should not be possible for the Lokpal to proceed without a complaint, and I should even say without a complaint from a person who has some interest. As the Bill is drafted, it permits the Lokpal either to proceed on a complaint or by himself and the complaint need not be from a person who has an interest in it. This can lead to very grave annoyance and almost paralysing of the administration. In some Departments the subordinate may not be happy with his superior and he can make a com-

plaint. I know he cannot himself make the complaint but he can ask a friend of his to put in a complaint against his officer and perhaps the complaint will be against something this man himself might have done under the signature of his superior. This way the subordinates will make the superiors get into hot waters by making their friends to make a complaint to the Lokpal.

It is my submission, further that the Lokpal should, before he commences the investigation, satisfy himself that the grievance has been placed before the concerned authority and the authority has failed or refused to meet that grievance. There is no such provision here in this Bill. So a person might feel a grievance for the first time and spring it on the head through the Lokpal. If it had been presented to the concerned authority, a fair-minded officer might have taken action on the grievance and tried to remove it.

Then there is no provision here to fix the responsibility on the complainant. The complainant is left free to make any kind of wild allegations. He may make any number of allegations. They may all be found false. But nothing happens to him. This is, I feel, unfair to those against whom allegations are made.

To come to some of the individual provisions I find the preamble it is said that the Bill deals with 'administrative action', it will be perhaps better if we repeat not only 'action' but 'administrative action' in the Act also. Then that is not sufficient because "administrative action" is a very wide expression and it can include many matters of policy for example to impose rationing, to lift the rationing of sugar, etc. There must be some distinction between this kind of decision and a decision in the case of a man who applies for a permit and the permit is refused to him. A decision that permits should not be granted in the following circumstances is a decision of a normative character. It is a policy decision and it is clear

that this decision should not be ordinarily questionable. A decision that 'X' should not be given licence is an adjudicative decision. Here it can be a question of injustice. We may give some relief. First of all 'administrative decision' is what we should refer to in the Act. Then attempt should be made to clarify that normative administrative decisions are not intended to be questioned.

Clause (b) of Section 2 we say:

"allegation, in relation to a public servant, means any affirmation that such public servant" etc.

'Affirmation' is a good word here. But when we come to (d) it is said "grievance" means a claim by a person. " etc. I thought the word 'claim' in (d) may be replaced by 'Affirmation' because 'affirmation' is what we have used earlier. 'Grievance' is hardly a claim. It is just a complaint. It is affirmation of a fact. There is no justification of the change from 'affirmation' in the case of 'allegation' to 'claim' in the case of 'grievance'.

Then according to 2(c) the competent authority in the case of a Minister or Secretary is the Prime Minister. According to the Constitution the Prime Minister is one of the Ministers and I shall be very happy if this provision implied that the Prime Minister should be excluded from the persons against whom complaints can be made to the Lokpal. But, if that is the intention, it should be brought out more forcefully, I mean, expressly.

Or we may expressly say that is not the intention.

Then we have to say who is the competent authority in the case of the Prime Minister could not be the President or somebody else because the Prime Minister could not be the competent authority in the case of the Prime Minister. But he or she will be the competent authority in the case of other Ministers.

MR. CHAIRMAN: If you have finished, then there are Members who want to ask some questions.

SHRI BHOLA NATH MASTER: In the first paragraph of the article Lokpal: the proposed Indian Ombudsman written by Prof. Tripathi—it has been circulated to the Members also—it is observed:

"In the words of the Commission the Lokpal, as proposed, was 'an institution analogous to that of Ombudsman for India' and was expected 'to serve the same purpose as it has done in the Scandinavian countries and in New Zealand or is intended to do in the United Kingdom.' Understandably, the Commission has underscored the desirability of riveting attention to the peculiar social needs of our own country and of endeavouring to evolve a pattern suited to those needs rather than following slavishly the institutions obtaining in other countries."

What do you mean by "rather than following slavishly the institutions obtaining in other countries"? It looks you are not in favour of this institution.

PROF. TRIPATHI: I am only stating what the Commission has said—the Commission has underlined the need for doing this, rather than following slavishly what is done in other countries. We should adopt this institution to the extent it suits our country.

SHRI BHOLA NATH MASTER: On page 151 under CONCLUSION, you have stated:

"Finally, we venture to suggest that the creation of the office of the Lokpal with powers to review, criticize and report upon the actions of ministers should be avoided."

PROF. TRIPATHI: Yes. I am opposed to the Lokpal having power

to review the actions of the Ministers.

SHRI BHOLA NATH MASTER: It is also stated in the same page:

"Further, the institution of the Central Vigilance Commission with its ancillary machinery should not be abolished but should be utilized, instead, with slight modification, for discharging the functions contemplated for the Lokayukta as proposed by the Desai Commission."

You suggest that the Central Vigilance Commission should be entrusted with the work of going into the grievances or allegations.

PROF. TRIPATHI: If you will kindly read further on you will find that I have said that so far as allegations are concerned, with respect to civil servants, the Vigilance Commission should be enough for that. As regards the allegations I have taken this position—(a) there should be no allegations examined either by the Vigilance Commission or by Lokpal when they are against Ministers, and (b) when they are against the civil servants, then the Vigilance Commission is sufficient. If necessary, we may strengthen it.

SHRI S. S. DESHMUKH: That means, the Lokpal is not necessary.

PROF. TRIPATHI: As far as grievances are concerned, the Lokpal can discharge a very important function. I am not opposed to the institution of Lokpal. I opposed to the very wide jurisdiction that we are giving to him particularly in the field of allegations.

MR. CHAIRMAN: I think this Article of Shri Tripathi was published immediately on the publication of ARC Report in April—June, 1967. That is not his opinion on this Bill. The note which he has submitted now is his impressions on this Bill. We should as far as possible confine ourselves to his latest note which he has submitted after studying this Bill. In

passing we may make a reference to his article.

SHRI S. S. DESHMUKH: There is very little to choose between the two. The opening sentence in his note says:

"I seek the indulgence of the honourable Joint Committee to state only very briefly the points I should like to make regarding the various provisions of the Bill without elaborating the reasons in support of the points. The reasons are detailed in an article published by me in the Journal of the Indian Law Institute, Vol. 9, No. 2—April—June, 1967 under the title: Lokpal: PROPOSED INDIAN OMBUDSMAN."

So one is inseparable from the other.

MR. CHAIRMAN: Let us confine ourselves to his latest impressions and get his opinions on them.

SHRI BHOLA NATH MASTER: You also feel that the Lokpal and Lokayukt institution will become so big or so uncontrollable as is the case with the Vigilance Commission. Then, you feel that in a country with 45 crores of people so many grievances will come and mostly the bureaucracy will be going into all such allegations. You have also stated that this institution has been tried in small countries like New Zealand, which is not even at our Zilla level of population.

PROF. TRIPATHI: My submission on that point is that we did not intend the Vigilance Commission, as far I see, to go into the actual investigations of civil servants. But the Departments developed the practice of throwing the entire thing on the Vigilance Commissioner rather than doing the enquiry themselves. As soon as a complaint is made, the Department says 'you make the enquiry'. The Vigilance Commission has become, instead of a matter a servant of the departments in the sense that it has to carry on the enquiries for them. Now, if the Lokpal is asked to investigate every matter that is

referred to him, he can give some reasons and get rid of it and there is no one who can call him to book for those reasons. It depends upon his personality. He may be a lover of deskwork, a person who shies away from publicity. Even in the U.K., this problem was considered to be a very serious problem. Only when a Member of Parliament refers it to him he makes investigation. This is just to save him from numerous complaints. But in India the Lokpal will have complaints, and he will have more false complaints than he will have good complaints; and it will be difficult for him to manage unless he rejects them outright. That problem will be very much there.

SHRI G. S. REDDY: You have suggested that the Lokpal may be a man equivalent to the Chairman of Union Public Service Commission, and not equal to the Chief Justice of India. What is the specific reason for your recommendation?

PROF. TRIPATHI: I think it is a very important principle in our Constitution to maintain the dignity of the courts and to maintain the constitutional balance that we have between the three organs, viz., the judiciary, the legislature and the executive. Now, to create a new organ and give its head the same status as that of the Chief Justice of India will on the one hand be derogatory to the status of the courts

AN HON. MEMBER: Even if their spheres are different?

PROF. TRIPATHI: Yes. That is my submission. The Lokpal's spheres are unlimited. When the Chief Justice of India decides an issue there are so many safeguards that we have. He shares his decisions with his colleagues who are men of ability like him own. He will be assisted by the best lawyers we have in the country. He will ordinarily, except in some cases, benefit from the judgments of High Courts already being delivered on that question. But the Lokpal will not have these advantages.

He will have nobody to help him. He may not hear anybody or discuss with anybody. There is no appeal from him. I do not see how the Lokpal is comparable to the Chief Justice of India or any judge of the Supreme Court of India. If I may submit, with your permission, here is danger of dictatorship itself. If you permit me, I will read out certain extracts from the lectures delivered by Mr. Justice R. B. Mukherjee of the Calcutta High Court. This is a 1968 publication. These lectures were delivered in 1967. At page 178, this is what the Judge has stated:

"An Ombudsman is contrary to the basic letter and spirit of the Indian Constitution and unless one is prepared to throw the whole Indian Constitution, lock, stock and barrel overboard, an Ombudsman cannot have entry into the Indian Constitution. It will disintegrate the Constitution. It will disintegrate the Judiciary. It will disintegrate Parliament and the State Legislatures. Soon after the Ombudsman we will have to have an Ombudsman for the Ombudsman. An ombudsman in India will be a new 'Star Chamber' with a different Indian—nordic name."

This may be an over-statement, but he goes on to say:

"The whole idea is impractical and is bound to fail to achieve the purpose. It is not only impractical but it is also against the whole tenor and set-up of the present Indian constitution and will involve undesirable re-adjustment of existing constitutional values in relation to Parliament, State legislatures and judges of the Supreme Court and the High Courts. This Ombudsman will in time be the super Parliament, the super Judiciary, the super Minister and in the name of Indian democracy, God forbid, the super Judge. He will pave the way to dictatorship in India, a reign of espionage under

the cover of bureaucratic tyranny and grievance oriented State, constitutionally encouraging a society of grumblers and critics. It is expected that the authorities will think twice and reflect wisely before taking such a disastrous step

AN HON. MEMBER: What is his name?

PROF. TRIPATHI: Chamanlal Setalvad Lectures; On the critical problems of Indian Constitution by Hon'ble Mr. Justice B. P. Mukherjee, University of Bombay publication, 1968.

श्री भंडारी : मैं एक सवाल पूछना चाहता हूँ। जो व्यवस्था हुकूमत इस बिल के द्वारा कर रही है, वह एक नये प्रकार की व्यवस्था है, इस के सम्बन्ध में जैसा आपने कहा कि यह भारत के संविधान के अनुकूल नहीं बैठती है—इसके बारे में आपका क्या स्पष्ट मत है। क्या इस प्रकार की व्यवस्था की आवश्यकता नहीं है, जिस प्रकार की शिकायतों या जिस तरह की बातों की जांच की आवश्यकता इस बिल के द्वारा अनुभव की गई है, जो व्यवस्था आज इस देश में जारी है, क्या इन सब बातों के लिये वह पर्याप्त है तथा सरकार से इस तरह की कोई प्रलय व्यवस्था की आवश्यकता नहीं है ?

यदि आप ऐसा समझते हैं कि किसी व्यवस्था की आवश्यकता है तो क्या इस बिल के द्वारा उस व्यवस्था के निर्माण तथा समय समय पर इसमें किये जाने वाले संशोधनों के द्वारा—उस की नियुक्ति, उसकी योग्यता उसके कामों की पद्धति का निर्धारण आदि का इस से काम चल जायेगा ? इसमें यह बात भी है कि जिस तरह से हमने न्यायालयों के लिये एक अलग व्यवस्था की है, उसी प्रकार से जांच की इस व्यवस्था के लिये

संविधान में कोई चीज जोड़ दी जाए और एक प्रतिष्ठा प्रदान की जाए और इस कार्य को करने के लिये कुछ अधिकार भी निश्चित किए जायें ताकि राजनीतिक नेता आवश्यकतानुसार उसे परिवर्तित न कर सकें, इसके बारे में आपकी क्या राय है ?

PROF. TRIPATHI: The first question, as I understand, is whether we really need this institution or the machinery as it exists is sufficient for meeting the needs of the times. I do not believe that it is an unnecessary institution. My submission is that this institution is unnecessary and even harmful in so far as the investigation into allegations is concerned. And as far as I understand Justice Mukerjee's criticism of it is also directed towards investigation of 'allegations.' But, I think, it is a good institution and it can serve very useful purpose so far as investigation into grievances is concerned provided that we do not give it the jurisdiction to go into grievances against Ministers and we also put in some safeguards, namely, that there should be no investigation unless there is a complaint by the person aggrieved, and unless the person who puts forward the grievance has some responsibility fixed upon him about the statements and allegations that he makes in connection with the grievance. If we have a Grievance Commissioner (which we hoped the Vigilance Commissioner would be,—we failed in this because he became an investigator into matters of mal-administration) if we have, as they have in New Zealand, a Pure Grievance Commissioner, a person says I have suffered injustice which fall short of allegations of dishonesty or abuse of power, who confines himself to grievances where the person says I have suffered injustice because of mal-administration as defined in the Bill. I should recommend its creation. Mal-administration is very ably defined in this Bill. whereas there are cases of unreasonable or oppressive or improperly discriminatory use of existing law, there

are also many instances when people who complain are wrong. I may have an understanding of a certain rule which may be wrong. I understand a rule to mean a particular thing and I go on applying it in issuing licences or in refusing permits or doing a number of things. Somebody should tell me this is wrong and I will do the right thing. It happens that nobody tells me. As far as grievances are concerned it is a useful institution. I cannot give a blanket answer—whether we need or we do not need—but as far as investigation of grievances is concerned it will serve a useful purpose.

The second question is answered along with the first. If we insist that this new institution should have the power of investigating 'allegations' then we have to make big changes in the Constitution not only in its Articles but even in its spirit. We have certain conventions determining the relationship between the Minister and Parliament and although these conventions are not written conventions yet they are binding. We observe them. What will happen to all of them when we have a person outside Parliament who gives a notice to the Minister and afterwards reports it to the Parliament. This will kill the entire working of the Parliamentary system. It will be mutilating all the institutions that we have. Therefore, I say if we really want to have it at the cost of the Constitution we have to make the changes in the Constitution, but if we confine him to grievances then the Act will be sufficient and no amendment of the Constitution will be necessary.

श्री अंडारी : फिर आपके हिसाब से इतने बड़े कानून की जरूरत नहीं है, ग्रीवांसेब के सवाल के रहते हुए भी ?

PROF. TRIPATHI: Even if it is a question of grievances some law will have to be there because that law will enable the officer to get the material and also to examine persons, specially those who are not Government servants. Some law will have to be made to give access to files, to make appearance obligatory and then to protect the Lokpal from insults and obstruction and so on. Some Act will be necessary but it will be quite a different Act from this proposed one.

SHRI S. S. DESHMUKH: On the question of allegations and grievances: Do you or do you not believe that allegations with a twist of words could be converted into grievances and vice versa even in the present scheme of the Act as it is envisaged?

PROF. TRIPATHI: Allegation can be converted but then we can so define the functions of the Lokpal that as soon as he finds that an allegation is made then he leaves it and reports the matter to the Department or to the appropriate authority. I am all the way talking on the assumption that the Minister is not under the jurisdiction of the Lokpal because I cannot conceive of a Minister in our system of Government being answerable to a person outside. The only persons to whom he should be answerable outside should be the court or a special commission appointed. As we know as soon as a commission is appointed a Minister has to resign ordinarily because he cannot while in office be appearing before a commission and answering these allegations. Now those who want to make allegations against the Minister either have honest, firm and proveable allegations or they do not. If they have honest allegations what prevents them from going to the court. But they do not want to go to the court because they have not allegations which could be proved in the court. They want to

Reforms.

put allegations before a man who will not demand the proof which a court demands. This unfair. This mutilates the whole system.

SHRI S. S. DESHMUKH: Let us take the law as it stands today. If a Minister out of corrupt motive, let us say, as a result of exchange of good amount of money passes an order in favour of a particular firm and if this allegation were to go under the present law of corruption before any court the standard of proof required by the court is so much that it becomes difficult for a person to go to the court. But still a man may honestly believe that what he alleges is true. The man may have an intimate personal knowledge of the fact that good amount of money has really exchanged hands and yet he may not be in a position to prove the same in a court of law.....and get conviction against a particular Minister. What according to you should that man do? Should he keep quiet or go to court?

PROF. P. K. TRIPATHI: It is a very important question. But I would like to know why is it that our courts require this proof? If the courts are unnecessarily requiring this kind of proof, why not change the course of the courts. Is there sound specific reason for requiring this proof?

You cannot first call a man a cheat and convict him. Human being is bound to err. Why is it that the court requires this proof. Is it because it wants to protect dishonest people or does it require for the simple reason that no honest person should be convicted?

SHRI S. S. DESHMUKH: It is on the basis of jurisprudence that 99 persons may go scot free and one innocent man may not go to gallows.

PROF. P. K. TRIPATHI: If you are going to declare that a Minister has taken bribe, when you do not have the quantum of proof are you not taking the risk of saying that an honest man who in fact has not taken bribe has taken the bribe? Risk may be 1:10. Would you like to take that risk? Why so? Do you want to be in a hurry through the Lokpal to convict a Minister of dishonesty even though you do not have that proof I cannot understand how I can be sure that he has taken bribe even though I cannot establish this fact. As my wife told me so. Some times I am sure merely because somebody whom I trust has told me.

The court when it convicts a person knows that it is trading on a very delicate ground.

My submission is if a Minister has taken bribe and it is not possible to prove it, it is a case for a Parliamentary Committee to consider. It is not a case for a person who has the status of a Supreme Court Judge to say that he has taken bribe. This is where we are unjust because we give him the status of Supreme Court Judge and we deliberately do not put on him the responsibility of deciding the matter like a Supreme Court Judge.

SHRI SHIVAJIRAO S. DESHMUKH: According to your present thinking it would be necessary to insist for the same standard of judgement. When we conceive that he has taken bribe should we allow him to continue or his action be quashed?

PROF. P. K. TRIPATHI: When we come to the conclusion that he has probably taken bribe and then allow him to remain a Minister, this to me appears to be a very difficult proposition. Therefore, the distinction that we are trying to draw between a case where surely he has taken bribe and he should be convicted by the Court of Law and a case where he has most probably taken bribe and yet he may remain a Minister though his action

may be quashed on the ground that he has most probably taken a bribe is an unreal distinction. I cannot imagine the latter remaining a Minister after this judgement. When a judge decides that 'A' has committed murder, it is implied that all he is saying or that it is improbable that he has not committed a murder. The Judge has not seen the murder. In effect, he says that he is satisfied.

SHRI SHIVAJIRAO S. DESHMUKH: Who could be the best judge?

PROF. P. K. TRIPATHI: Investigation by a Committee or investigation by the Parliament will be the only solution. People will judge for themselves. The critics will say whatever can be said against, the Minister and his supporter will say what can be said in his favour. It may be, as it happens in many cases, that he realises he is guilty and even then he goes on reasoning to defend himself. But that is a different matter.

MR. CHAIRMAN: Proofs required in judiciary, as you say, are very technical and on certain grounds. In many cases, as you know, departmental enquiries are held. Judicial enquiries are held. So many enquiries are held and whatever proofs are available are made use of by the people. Orders and judgments are given. Man in a Departmental enquiry is convicted but it seems when he goes to a Court of Law, he may not be convicted because there are not sufficient proofs to convict him.

Everybody knows about a case of the Railway Officer who had stolen something but was acquitted by the Court. It is felt that the man might have approached somebody and got justice. That is the idea.

PROF. P. K. TRIPATHI: We take departmental action even though we may not be able to prove some things before the Court of Law.

Under Article 311, now the courts require us to have the same standard

of judgment. We must give him all the grounds. He has a right to bring witnesses and cross examine the witnesses which Government puts. Again he has a right to question the findings and say that the findings should not be what they are and he should not be given punishment. If there is no relevance between evidence and the findings the court definitely comes in. The findings must be related to evidence. Court will not interfere if it feels that with this evidence a reasonable person could come to this conclusion. But to say, if I were there, I would not have come to that conclusion is a different thing. For removing a person we hold the enquiry, and if it is proved, he can be removed. It is perfectly all right. Even there when court comes in, he can get relief from the court. We do not attribute to him moral turpitude without proof and if we do attribute, he can go to the court.

A civil servant who has gone to court can return to you after 5 years when the court has given a decree. What will the Minister do? If you declare him to be guilty of moral turpitude, he lose his office, he loses his constituency and if after 10 years the court upholds him and says, you were wrong in declaring him to be guilty, what would happen? What about the irreparable loss to him. In case of a civil servant you give 5 lakhs or 1 lakh or 15,000 or whatever it is. What do you do in the case of a Minister? Are we really very sure that we have now evolved an institution where such things will not happen? What tremendous power this is in the case of a Minister, for any particular man to handle? He can bring any charge against the Prime Minister or a Minister or anybody and even a Government can be thrown out and there will be necessity of re-elections. Should we give such great powers to an individual? I think it is a very great power to be entrusted to one single person.

SHRI SHIVAJIRAO S. DESHMUKH: Leaders of opposition and various political parties have been filing charges and allegations politically motivated. There are brought forward certain grievous charges of maladministration against ministers and so on. Those charges are turned down by Chief Ministers and Prime Ministers being politically motivated. Even that Chief Minister or Prime Minister may not have political strength to do away with that even if he is or she is convinced that such and such a person is guilty of charges levelled against him. There is another set of circumstances and Parliament or Assemblies cannot devote considerable amount of their time for debating individual grievances because Parliament and Assemblies are expected to devote time for larger issues of public importance and policy matters which affect millions of our people rather than devoting their time to cases of misdemeanour or certain allegations of corruption. What machinery is there which would take care of these two sets of circumstances I just mentioned?

PROF. P. K. TRIPATHI: The only machinery I can think of is the machinery that you have been using, the appointment of Commissioners—you appointed a commissioner in the case of the Chief Minister of Punjab once and you also appointed a commissioner in the case of Chief Minister of Jammu and Kashmir. If we assume that large numbers of Ministers are corrupt and so on, what remedy is there, except to conclude that we are all a corrupt people and we cannot have so many corrupt ministers without ourselves being corrupt. In my own small way, when I was doing administration in the Faculty, boys were complaining about the union office bearers and they did make fantastic complaints and I found that 95 or 99 per cent of them were politically motivated and false. Of course, boys grow up and become men; this is how the world goes on. If we have many Ministers who are corrupt very humbly and very seriously, I

would suggest, we need do nothing about it. We deserve them. There cannot be so many corrupt men in Administration without large sections of the people in India being corrupt. We may have some corrupt people here and there. They can be punished. But to make it a big issue as if corruption is a big national shortcoming is not correct. That will not solve the problem. Whenever any corruption charge comes we can appoint a Commissioner, a special commissioner to go into it and deal with it. The difference between the commissioner and Lokpal is this, namely, one does not know who the commissioner will be to deal with a particular matter, whereas it is not so in the case of a Lokpal. The person who is appointed Commissioner for a particular subject does not have the potential for political mischief which the other different person in the capacity of Lokpal will have because he knows that he can turn tables against anybody in any State or in the Centre at any time he likes. This is my reading of the situation. I can very easily illustrate this if you give me the time for it.

SHRI S. S. N. TANKA: In para 1 of your Memorandum you have objected to the appointment of a person outside the Parliament as Lokpal and you have stated that the actions of Ministers can be judged only by Parliament itself. You are perhaps right in that view but don't you think that the Lokpal himself will be an officer of Parliament? And therefore, will be considered as its representative.

PROF. P. K. TRIPATHI: If he is Member of Parliament.....

SHRI S. S. N. TANKHA: No he is appointed by Parliament and he works on its behalf. If instead of appointing a Commission of enquiry to go into various complaints and allegations, what we do is, we appoint a person known by the name of Lokpal to go into all those cases where complaints and allegations are brought

forward before the Parliament and so he functions on behalf of Parliament and he reports to the Parliament. What do you say to that?

PROF. P. K. TRIPATHI: In England they have contemplated this kind of institution. They call it "Parliamentary Commissioner". If we want him to act on behalf of Parliament we should make such provisions which make it sure that he is acting only on behalf of Parliament. That is to say, he should look into grievances which have been presented to him through MPs. This should be made clear. He should not have the Chief Justice's status. He is an instrument of Parliament. He should never have the status of Chief Justice. If he is equal to the Chief Justice of India that will be a stigma on the Minister against whom something is found. So let it be known that here is something which is found against some minister by a person employed by Parliament a competent men employed by Parliament looking into matters not by the Chief Justice. If an officer of Parliament finds that somebody is corrupt, then Parliament proceeds and sees what it can do about it.

SHRI S. S. N. TANKHA: Today the Auditor General enquires into the work of the various Ministries or public undertakings. He then reports to Parliament and Parliament entrusts the work to the Public Accounts Committee. In the same manner, Lokpal will initially enquire into the allegations or grievances and then report to Parliament directly. Supposing we make rules to the effect that he will report to Parliament and then Parliament will decide the whole question. What do you think do not this?

PROF. P. K. TRIPATHI: He will work on behalf of Parliament?

AN HON. MEMBER: Even now there is a provision that he will report to Parliament.

SHRI S. S. N. TANKHA: As it is the provision is that he will submit an annual report to the Parliament. Supposing we say that all the enquiries made by him are reported to Parliament and then Parliament may decide which of them should be pursued and which of them should be dropped. Does it satisfy you?

PROF. P. K. TRIPATHI: That will satisfy me largely. As I understand the suggestion is that he will act for Parliament and he will be like the Auditor General looking into the affairs of administration and making reports to Parliament. Then, he will not have the status of the Chief Justice of India.

SHRI S. S. N. TANKHA: What is your objection to that? Auditor General is of high status so that nobody may say that injustice is done to this man or to that man. Therefore the person to be appointed should be of a very high status—as high as the Chief Justice of India. We do not say that he should be the Chief Justice of India.

PROF. P. K. TRIPATHI: The difference is this: The Auditor General goes into the account as an expert in the line points out what is wrong with the accounting. I do not know to what extent the Auditor General fixes responsibility on individuals for corruption.

SHRI S. S. N. TANKHA: In his reports he states that such and such an irregularity has been committed and that such and such person seems responsible. Then, of course, it is for the Public Accounts Committee to determine whether any action should be taken against that person or persons.

PROF. P. K. TRIPATHI: If the Auditor General makes a report that certain person is responsible and if we take action on that basis against that person without making a formal inquiry, then I am afraid this action is challengeable under Art. 311 of the Constitution. Auditor General can

very well say that the accounts should have been kept in this manner, this much money should not have been spent, etc. If he says that so and so has been responsible for this mistake or that irregularity and therefore he should be punished, then it is a different matter.

SHRI S. S. N. TANKHA: It is the Public Accounts Committee, which after receiving his report, goes into the entire matter and determines as to who is responsible.

PROF. P. K. TRIPATHI: My submission is that unless the person concerned is given the opportunity of defending himself and has been told what the charges are and given the

opportunity of cross-examining the witnesses and producing his own witnesses, demanding documents and then again given the opportunity of showing cause why the proposed punishment should not be given, he cannot be punished by way of removal.

MR. CHAIRMAN: We are not going to put any more questions to you. Thank you very much for having come all the way and given us the benefit of your experience.

The meeting is now closed.

(PROF. P. K. TRIPATHI then withdrew.)

(The Committee then adjourned).

MINUTES OF EVIDENCE GIVEN BEFORE THE JOINT COMMITTEE ON THE LOKPAL AND
LORAYUKTAS BILL, 1968.

Tuesday, the 20th August, 1968 at 16.00 hours.

PRESENT

Shri M. B. Rana—Chairman.

MEMBERS

Lok Sabha

2. Shrimati Jyotsna Chanda
3. H. H. Maharaja Pratap Keshari Deo
4. Shri C. C. Desai
5. Shri Shivajirao S. Deshmukh
6. Shri Gangacharan Dixit
7. Shri Kinder Lal
8. Shri Bhola Nath Master
9. Shri G. S. Reddi
10. Shri Yogendra Sharma
11. Shri Ramshekhar Prasad Singh.

Rajya Sabha

12. Shri Gurmukh Singh Musafir
13. Pandit Sham Sundar Narain Tankha
14. Shri Purnanand Chetia
15. Shri Akbar Ali Khan
16. Shri K. S. Ramaswamy
14. Shri Purnanand Chetia
18. Shri A. D. Mani.

LEGISLATIVE COUNSEL

Shri R. V. S. Peri-Sastri—Additional Legislative Counsel, Ministry of
Law.

REPRESENTATIVE OF THE MINISTRY OF HOME AFFAIRS

1. Shri N. K. Mukarji—Joint Secretary, Deptt. of Administrative Reforms,
Ministry of Home Affairs.
2. Shri S. P. Mukherjee—Joint Secretary (V) Ministry of Home Affairs.
3. Shri S. P. Mukerjee—Director Department of Administrative Reforms.
4. Shri A. P. Veera Raghavan—Deputy Secretary, Ministry of Home
Affairs
5. Shri S. M. Chikermane—Under Secretary, Department of Administrative
Reforms.

pal or Lokayukta will not go into the question or come to a conclusion as to whether a particular policy endorsed by a Legislature is right or wrong. It is absolutely outside his jurisdiction. I cannot imagine any Lokpal or Lokayukta going into a policy matter and coming to a conclusion that this policy is wrong or right. I do not think that clause (2), sub-clause (b) is too wide or that this can be abused.

SHRI SUPAKAR: My second and final question is this. I think it is necessary to differentiate as between the allegations made against the ministers and the allegations made against the officials. The allegations against the officials do not get wide publicity whereas the allegations against the ministers get publicity through papers or through questions raised in Parliament. Once an allegation is made against a Minister, it is difficult to wash off the mud. More especially, it is very difficult to wash off when a verdict is given by a Lokpal. Therefore, from the experience of the working of the Vigilance Commission or the Central Bureau of Investigation, I think that so far as investigations against the officials are concerned, they are not very helpful. In judging the allegations against the ministers and the public servants concerned, should we not therefore make any distinction?

SHRI K. SANTHANAM: I have already said that the Minister and the Secretary stand on an entirely different footing. Take for instance the question of going in for collection of money. The minister, as a party leader, has some justification in going about collecting money for the party fund or other purposes. They may be legitimate provided that is done openly and subject to proper conditions; but we cannot allow any Secretary to go about collecting money for any purpose whatsoever. You will find that it is not a question of policy but it is a question of individual action. If it is a question of policy, both the Minister and the Secretary will have to be put together in the same dock.

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If it is a question of corruption or tampering with administration, that will have to be judged independently in respect of each person. Even if that comes to Lokpal, he will have to judge the Minister as an individual and the Secretary as a separate individual and then come to a finding.

SHRI SUPAKAR: I think I have not made myself quite clear to you. I just want to know whether the scope of allegations against a minister and against an official should be kept separate because, as you say they cannot be put on the same footing.

SHRI K. SANTHANAM: Yes, Sir. Definition of corruption is just like definition of any other crime. There is no need to change the definition. An act of corruption on the part of an official may not be corruption in the case of a Minister—take for example the collection of funds. If you can give me an alternative draft, I shall be willing to consider that. If the Committee considers that a separate formulation should be made, I have no objection. But, personally speaking, I do not feel any change is needed at all.

SHRI S. S. N. TANKHA: Some witnesses who have previously appeared before us suggested that the Lokpal should also enquire into the conduct of Members of Parliament and of State Legislatures. What is your view about this matter?

SHRI K. SANTHANAM: I think it is very difficult to answer. I would not like that. Every legislative body should judge the conduct of its Members in its own way. I think it should be the Privileges Committee or some other Internal body of Parliament that should investigate into such cases. In the Report of the Committee on Corruption, we have suggested that a code of conduct should be framed and the breach of the code by a Member should be treated as a breach of privilege and the Privileges Committee should judge and deal with the

conduct of the Member. It should be able to recommend to the President that the membership of the concerned Member may be terminated and he may be disqualified for six years. I think the President should be empowered with that power and on the basis of the report of the Privileges Committee, he should disqualify his membership. I would rather keep the Members of Parliament or Legislatures outside the scope of Lokpal and Lokayukta.

SHRI S. S. N. TANKHA: May I know whether, in the course of the enquiry regarding the report which you have given, has it ever come to your knowledge of people complaining to you against the working of the Members of Parliament? Had their conduct been subjected to challenge? If that is so, should not some method be found for putting that in order?

SHRI K. SANTHANAM: Cases came to our knowledge. Members have indulged in grave misconduct by exploiting self-interest of big business men etc. for putting questions and so on and so forth. But the Member of Parliament has no personal power or authority and he cannot directly commit any abuse of power. He has got some status and influence. That can be misused. I think Parliament should devise its own internal checks to deal with it. Otherwise, by bringing in cases of M.Ps. the Lokpal will be subjected to criticism by Members. Members will put questions and make speeches criticising the Lokpal and Lokayukta. They should be kept out of his purview.

SHRI S. S. N. TANKHA: You have suggested in your memorandum that the Lokpal should be given one term of office only which is to expire whenever he attains the age of 65. May I know what you think should be the maximum age to which he should be allowed to carry on?

SHRI K. SANTHANAM: I have already said 65. He must retire at

65. You may appoint him at the age of 50 but I want him to retire at 65.

SHRI S. S. N. TANKHA: Why is it that you consider that he should retire at 65? Do you consider that at the age of 70 or 68 a man becomes useless physically and mentally and therefore, he should not continue?

SHRI K. SANTHANAM: For the same reason that the Supreme Court Judges retire at the age of 65. It is quit possible for some Judges to have very good health at that age. But about this age of 65, after a great deal of discussion and consideration we considered in the Constituent Assembly that under Indian conditions people become senile after 65. It is better to be on the safe side and put the limit at 65. But I do not want any senile man as Lokpal or Lokayukta.

SHRI S. S. N. TANKHA: You know, Mr. Santhanam, efforts are being made throughout the country that the age of retirement of the Supreme Court Judges and the High Court Judges should be raised. Instead of 65, they should be allowed to work till 70.

SHRI K. SANTHANAM: I do not know. These days nobody wants to retire and probably the Supreme Court Judge themselves have raised this matter. If the age of retirement of the Supreme Court Judges and High Court Judges is raised, then correspondingly the age of retirement of Lokpals and Lokayuktas will be raised. But I do not want any retired Judge of the Supreme Court to be appointed. The integrity of the Supreme Court I even consider as more important than the integrity of Lokpal.

SHRI S. S. N. TANKHA: Would you fix any minimum age for this appointment also?

SHRI K. SANTHANAM: Nobody below 50 is likely to be appointed. The position in the country even as it is, is that young people are not very much favoured. There is always a

tendency to favour old people. Even if a man of 49 or 50 is appointed, I will welcome it.

SHRI S. S. N. TANKHA: Will you agree when I say that the term of office may initially be for a period of 8 years or 10 years instead of 5 years?

SHRI K. SANTHANAM: Fixed period means that you have no regard to the age at which he is appointed. But my plea is that retired Judges of Supreme Court should not be appointed. If you appoint a man at the age of 65 for 10 years, then he will retire at 75. For 4 or 5 years he may remain there doing nothing just as in the case of the United States some Judges become a big liability and they do not know what to do with them. They could not be retired. We do not want such a position to arise here.

SHRI S. S. N. TANKHA: Suppose the appointment is made at the age of 50 or 51 and he is allowed to go on for 10 years, do you agree?

SHRI K. SANTHANAM: I want that he should retire at the age of 65. I want that once he is appointed, he should not aspire for any office either in the private sector or public sector. He must be given no option and after retirement he must continue to be one of the dignified non-official watchdogs of the honesty and integrity of our public life. So, if you retire him early, then that trouble comes. If you retire a Lokayukta at the age of 61, he may be appointed as Lokpal for 4 years but the better thing is to make them independent and go to the end.

SHRI S. S. N. TANKHA: In your memorandum on page 2, last line, paragraph 12 you have stated that you do not see any justification for sub-clause (3) of clause 8.

SHRI K. SANTHANAM: It exempts the officials of the local bodies and others. After all they are Central Government servants. I do not

see why any distinction should be drawn between the Central Government servants of one type and another.

SHRI S. S. N. TANKHA: Lokpal is to be one person only throughout the country. There should not be two Lokpals. Now if all this work is entrusted to him, will it not add a lot of work for him which it may be difficult for him to cope with and moreover, it will result in delay in investigation and finalisation of finding?

SHRI K. SANTHANAM: Lokpal will have nothing to do with that because Lokpal will have to do only with the administrator of the Union territory or somebody who is of the rank of Secretary or parallel to it, but it is the Lokayukta who will have to do. There is provision to appoint more than one Lokayukta. Otherwise, there will be no authority at all unless you make special arrangements for looking into the allegations of corruption and mal-administration. Why should you leave them alone? All persons coming under the jurisdiction of the Union should be subject to the Lokayuktas.

SHRI S. S. N. TANKHA: You will have no objection if some special officer is appointed for undertaking that work.

SHRI K. SANTHANAM: Once you put an institution like the Lokayukta, if one is not adequate, you appoint two. If two are not sufficient then three. One of them may be in charge of Union Territories and public undertakings. But why a special officer?

SHRI G. S. REDDI: You have been stating that the *prima facie* finding of the Lokpal should be taken as the initiative for action. Now is it not possible that the *prima facie* finding is also faulty?

SHRI K. SANTHANAM: May be. That is why it is called a *prima facie* finding. *Prima facie* means that ul-

timately after fuller judicial inquiry it may be found faulty.

SHRI G. S. REDDI: Then the finding of the Lokpal will not be final.

SHRI K. SANTHANAM: It is not final in the sense that action can be taken on that.

SHRI G. S. REDDI: That means it can be revised.

SHRI K. SANTHANAM: It could be set aside by a proper inquiry. It

should not be superseded or set aside by the executive authority. It will have to go through some judicial process. That is the point.

MR. CHAIRMAN: Mr. Santhanam, we thank you very much for your coming over here all the way and giving us your valuable advice and opinion.

(The witness then withdrew)

(The Committee then adjourned)

**MINUTES OF EVIDENCE GIVEN BEFORE THE JOINT COMMITTEE ON THE
LAKPAL AND LOKAYUKTAS BILL, 1968.**

Saturday, the 3rd August, 1968 at 15.00 hours.

PRESENT

Shri M. B. Rana—Chairman.

MEMBERS

Lok Sabha

2. **Shri K. Anbazhagan**
3. **Shri C. C. Desai**
4. **Shri Shivajirao S. Deshmukh**
5. **Shri Samar Guha**
6. **Shri Kanwar Lai Gupta**
7. **Shri Bhola Nath Master**
8. **Shri G. S. Reddi**
9. **Shri Ramshekhar Prasad Singh.**

Rajya Sabha

10. **Shri Gurmukh Singh Musafir**
11. **Pandit Sham Sunder Narain Tankha**
12. **Shri Awadheshwar Prasad Sinha**
13. **Shri Purnanand Chetia**
14. **Shri K. S. Ramaswamy**
15. **Shri Sunder Singh Bhandari**
16. **Shri A. D. Mani**

LEGISLATIVE COUNSEL

Shri R. V. S. Peri-Sastri—Additional Legislative Counsel, Ministry of Law.

REPRESENTATIVES OF THE MINISTRY OF HOME AFFAIRS

1. **Shri N. K. Mukerji—Joint Secretary, Deptt. of Administrative Reforms, Ministry of Home Affairs.**
2. **Shri S. P. Mukherjee—Joint Secretary (V) Ministry of Home Affairs.**
3. **Shri S. P. Mukerji—Director, Department of Administrative Reforms.**
4. **Shri A. P. Veera Raghavan—Deputy Secretary, Ministry of Home Affairs.**
5. **Shri S. M. Chikermane—Under Secretary, Department of Administrative Reforms.**

SECRETARIAT

Shri M. C. Chawla—Deputy Secretary.

WITNESSES EXAMINED

1. Dr. H. N. Kunzru—*Ex-M.P.*
2. Prof. P. K. Tripathi—*Dean, Faculty of Law, University of Delhi.*

I. Dr. H. N. Kunzru, Ex-M.P.

(Dr. H. N. Kunzru was called in and he took his seat.)

MR. CHAIRMAN: Thank you very much for having appeared before us to give us the benefit of your views. I request you to give your opinion, first and after 10 or 15 minutes I shall request the other members to ask some questions of seek some clarification taking advantage of your long experience in the political life. Thank you very much. You may start with your own opinion about the Lokpal Bill.

DR. H. N. KUNZRU: I do not know whether I have fully understood the Bill, but in so far as I have understood it it seems to me to be a little too ambitious. It brings together two things in one bill, complaints regarding corruption and complaints regarding maladministration. Now I am afraid that the burden that will be thrown on the Lokayukta will be too heavy for any one man. As regards the Lokpal he can look into complaints about mal-administration and corruption because he will have to deal only with ministers and secretaries and officers of a very high rank. But the Lokayukta will have to deal with a large number of complaints. Some time ago, as you all know, the Santhanam Committee made certain recommendations for the redress of grievances on account of mal-administration and checking corruption. Government considered those recommendations and came to the conclusion that it would be unwise to ask any one officer to deal with the redress of general grievances and at the same time to deal with complaints about corruption. At present the Central Vigilance Commission which has been set up in accordance with the recommendations of the

Santhanam Committee has to deal with a fairly large number of cases. Then there are Chief Vigilance Officers in the various Ministries or departments and Vigilance officers in the subordinate and attached offices and in the various public sector undertakings. In addition to this, there is a Director-General of Vigilance in the Railway Board. I know that the Director-General of Vigilance who deals only with complaints about corruption in the Railways has to deal with about 12,000 cases. If he has to deal with complaints about maladministration of improper exercise of powers by the various officers, I am sure that the number of complaints will be much larger. The Central Vigilance Commission itself has to deal with a fairly large number of cases. It seems to me, therefore, that to ask the Lokayukta not merely to deal with complaints about corruption, but also to deal with general complaints and grievances relating to mal-administration will be to throw too heavy a burden on him. I know there could be more than one Lokayukta. But I do not know how many Lokayuktas Government will be prepared to appoint in view of the status of the people who are wanted and the expenditure that the expansion of the machinery requires to deal with matters that are mentioned will entail.

Before the Santhanam Committee reported, the question of corruption was dealt with by the Kripalani Committee, but on the Railways only. I was curious to find out what was the change in the railways on account of the supersession of the arrangements made after the Kripalani Committee reported and the arrangements made after the Santhanam Committee reported. I find that by the adoption of

certain recommendations of the Santhanam Committee, the Railways have not derived much advantage. So far as I remember—I am speaking from memory—there used to be departmental arrangements for checking Corruption and the total number of cases was about 12,000. The number of people punished were more than the number of people punished now as a result of the scrutiny of cases sent to it by the Central Vigilance Commission. It seems to me, therefore, from experience that the elaboration of arrangements will not necessarily lead to an improvement over the existing machinery. The Central Commission has been in existence for the last four years and it does not seem to be wise that the existing arrangement should be unnecessarily changed. If, however, Government desire that all cases of corruption should be dealt with by statutory authorities, I have no particular objection to it except that there is no need for it. However, if Government thinks that it will give better psychological satisfaction to the people, if it can say that there is a law governing prevention of corruption in all departments, well, it can bring the Central Vigilance Commission roughly speaking within the ambit of the Bill. But it will not be wise to ask the Lokayuktas to deal with general grievances also because their number will not be smaller than the number of cases of corruption that are dealt with by the machinery that has been set up already by the Government. This is a work—and here I agree with the Administrative Reforms Commission—that ought to be done primarily by the departments themselves. If the Ministers and the Secretaries know that complaints against them can be dealt with by a high ranking officer of the status of the Chief Justice of India, I think they will be much more careful in future than they may be at present. If they are careful, we may take it that the officers directly under them will also be more careful. Again, I think that the task of preventing maladministration should be assigned primarily to the heads of Ministries

and departments. Take the Secretary of any Ministry. It should be primarily his duty to see that the rules and regulations are observed and that the officials exercise their discretion properly so as not to cause any unnecessary grievance to the public which comes into contact with them in connection with various matters. There should be—to use the language of the Administrative Reforms Commission—an inbuilt machinery in the various departments to deal with the redress of general grievances. A man may be appointed with the rank of Joint Secretary for this purpose. So far as his power to deal with the cases of grievances is concerned he should be in my opinion an independent officer. He should be given a high degree of independence and he should not have in every matter to take the sanction of the Secretary in order to discharge his duties.

I have so far been dealing with clause 7 of the Bill. I have still one more point to deal with in connection with that clause. Clause 7 says that the Lokpal may investigate any action of the kind mentioned in the clause. That is, any complaint of maladministration or of corrupt or improper motives against the Ministers and the Secretaries. The Lokpal can investigate any action taken with the general or specific approval of the officers mentioned by me in any case where a complaint involving a grievance or an allegation is made in respect of such action. I should like to draw your attention particularly to the words "or such action can be or could have been in the opinion of the Lokpal, the subject of a grievance or an allegation."

I wonder—I ask myself—how a high officer like the Lokpal, is going to know whether there is any other action which can be or could have been the subject of a grievance. It seems to me—I may be wrong—that he will depend on outside information, which somebody comes and whispers something in his ear. He will not mere-

ly deal with written complaints filed before him by the persons who feel-aggravated but also with the complaints made perhaps privately and orally by people who themselves are not grieved.

Again, these people may be persons employed in the departments or ministries. If you refer to clause 9, Mr. Chairman, you will find that it says:

"An allegation is to be made by any person other than a public servant." I think this is a very wholesome restriction and if the Lokpal or for that matter, the Lokayukta, who is to have a similar power, gets information from outside agencies or from persons employed in the various departments secretly, how will he enjoy the respect of the public whatever status that you may give him by legislation? You want to assure the public that all complaints will go before the Lokpal who will deal in a very fair manner and you want to assure the officers against whom complaints may be made that they need not be afraid of any unfair dealing on the part of the Lokpal. But, if you give him this power, it has to be exercised in the manner that I have just mentioned. I don't think that the Lokpal will then be able to give general satisfaction in the cases which he will have to examine.

There are two or three things more which are general in nature that I should like to say before I finish. The rules laid down by Government with regard to the working of the Vigilance Commission contains a rule which says:

"The Central Vigilance Commission will take the initiative in prosecuting persons who are found to have made false complaints of corruption or lack of integrity against public servants".

I do not find any such clause in the Lokpal and Lokayukta Bill. It is true, Sir, that the Central Vigilance

Commission has not prosecuted many men for giving false evidence. I think very few persons have been prosecuted. So far as I remember, in the years 1966 to 1967, only three or four people were prosecuted. It may be so. Yet, this power ought to be given in the Bill. It may be that in future, the Lokpal or Lokayukta may be a little more strict and may want to discourage vexatious or malicious or dishonest reports. I therefore think that this provision should find a place in the Bill. I think the Administrative Reforms Commission was also of the view that people giving false evidence should be regarded as having been guilty of contempt of court. They could therefore be prosecuted.

We should not allow the people with immunity to bring a grave charge against the Ministers or other public servants. They should realise their responsibility for making such charges. They should understand that if the charges are malicious or false, they will be severely dealt with. If a provision like the one that I have mentioned is introduced in the Bill, it will provide, what I may call, an *ex-post facto* remedy. I think something more than that is necessary in order to prevent the people *ab initio* from making false reports. My suggestion is that the persons who bring in complaints against the Ministers and the officers of the rank of Secretaries should be asked to make a deposit of not less than Rs. 1,000/- which will be returned to them if their complaint is found to be true but it will be confiscated in case it proves to be untrue. I think this will be a very wholesome provision for the discouragement of vexatious or false reports and for reducing the number of cases which the officers to be appointed under the Bill may have to deal with. In fact I regard the question of deposit as a very important questions.

So far I have dealt with superior officers only. But there may be complaints against subordinate officers—

i.e., non-gazetted officers. They will be very large. At present the Departments concerned deal with these cases. In the Railways certainly, it is the individual Zonal Railway and I believe the General Manager that deals finally with the cases that are sent up to him by the Vigilance Officers of the Railways. If they are to be dealt with by the Lokayukta, I do not know how he will ever be able to discharge his duties properly. I think, therefore, that some method should be found—the necessary modification may be made in the Bill—to allow the cases of non-Gazetted officers to be dealt with in the concerned Ministry or Department itself.

MR. CHAIRMAN: Thank you Dr. Kunzru. Would you be willing to answer some questions to be put by hon. Members—questions relating to this Bill only—so that we may get more information from you?

DR. KUNZRU: In so far I can answer them, I shall be glad to do so.

MR. CHAIRMAN: Members will ask you a few questions and I hope you will be able to answer them with your wide experience in politics and administration.

SHRI A. D. MANI: I would like to refer you to page 9, Clause 10, sub-clause (4) which says:

“The Lokpal or Lokayukta may, in his discretion, refuse to investigate or cease to investigate any complaint involving a grievance or an allegation....”

You said that a deposit may have to be called for from those who make allegations to the Lokpal or Lokayukta. May I ask you whether you are in favour of costs being levied against a complaint if the complaint is found to be wholly false and frivolous? For example, when the Lokpal or Lokayukta conducts an inquiry, the aggrieved person may have to consult lawyers to prepare his defence. He

may have to pay money. Would you like the costs also to be saddled on the complainant if the allegations were found to be false?

DR. KUNZRU: Or lawyers may be called. I am not against your suggestion. But whatever the findings of the Central Vigilance Commission may be, it cannot do away with Art. 311 of the Constitution.

SHRI A. D. MANI: The point is this: any proceeding under this Act will be a judicial proceeding in terms of the Civil Procedure Code or the Criminal Procedure Code. Any person who is complained against has to prepare his defence. He has to consult some lawyers. He has to put himself to a lot of trouble. If the complaint is found to be false, would you like the costs to be saddled on the complainant?

DR. KUNZRU: If the complaint is found to be false, certainly the complainant must realise that he cannot give vent to his own grudge or ill-will against any officer because of the appointment of the Lokpal or Lokayukta.

SHRI A. D. MANI: Now I go on to something not mentioned in the Bill but which has been discussed when witnesses appeared before us to give evidence. Would you like the public sector undertakings also to be brought within the ambit of this Bill—Govt. public sector undertakings like the Bhilai Steel Plant, Durgapur Steel Plant, Hindustan Insecticides. So many complaints are being made about the contracts being given to wrong persons. There are grievances. Would you like the public sector also to come within the ambit of this Bill?

DR. KUNZRU: At present the Central Vigilance Commission covers public sector undertakings also. And I see no reason why any arrangements

to be made in future should exclude the public sector undertakings.

SHRI A. D. MANI: There is one consideration. In the public sector undertakings the managements deal with contracts and tenders, etc. and it is quite possible that a person who presents a complaint may be free to harass the official. So would you like the public sector undertaking which is a very sensitive apparatus to be brought within the jurisdiction of the Lokpal and the Lokayukta?

DR. KUNZRU: As I have said, there are Vigilance arrangements regarding public sector undertakings also. The question is about the proper exercise of the discretion and it has been stated here in the Bill in clause 8(5):

"In the case of any complaint involving a grievance, nothing in this Act shall be construed as empowering the Lokpal or a Lokayukta to question any administrative action involving the exercise of a discretion except where he is satisfied that the elements involved in the exercise of the discretion are absent to such an extent that the discretion cannot be regarded as having been properly exercised."

It is true that it is for the Lokpal or the Lokayukta to decide whether the discretion has been properly exercised or not. But I hope that clause 8(5) would be observed in the spirit by the Lokayukta and the Lokpal; otherwise the work of the public undertakings would be brought to a halt; I mean that if it is regarded as misuse of discretion in regard to a contract on the ground that the lowest tender has not been accepted or some such ground that would make the working of the undertakings impossible. It is not always that the lowest tender should be accepted. There are other things too.

The discretionary powers of the officers against whom complaints are made should not be unduly curbed otherwise, it will be a great disadvantage to the administration. I give an example. A man has to give an order which involves some expenditure. In fact, it is happening in some cases at present that the officer does not want to accept the sole responsibility for it; he wants to get the approval of a higher authority or the approval of the Finance Officer concerned and so on. The exercise of his discretion should therefore be allowed fairly free scope and it is only in cases where there is reasonable ground to fear that it is not properly exercised that it should be questioned.

SHRI A. D. MANI: Can I refer you to page 2 of the Bill? Sub-clause (b) (i)—Definition of allegation—reads:

"has abused his position as such to obtain any gain or favour to himself or to any other person or to cause undue harm or hardship to any other person."

Suppose, a person in the course of his administrative conduct is punished by a superior officer; then the superior officer does inflict hardship on the person concerned, whether he deserved or not is a different matter. But it may be necessary in the interest of discipline to punish a person. Though it may mean hardship, it cannot become a subject of grievance.

DR. KUNZRU: It may be a grievance, but I don't think it should be made a subject of an allegation. It should not be regarded as corrupt action.

SHRI A. D. MANI: To include that would bring in a large number of administrative actions within the ambit

of allegation. Any person who is punished will say, "I have been wrongfully punished; he has inflicted harm on me and therefore the Lokpal should conduct an investigation".

Then, subclause (b) (iii) reads:

"is guilty of corruption, lack of integrity of improper conduct in his capacity as such public servant."

I am referring to the definitions because they are very important to this Bill. I can understand "guilty of corruption" and "lack of integrity." But, "improper conduct" may mean that a man does not stand up in the presence of a Member of Parliament or a Minister. That may be an improper conduct. This should be dealt with in departmental rules. Why should we include this in an Act like this?

DR. KUNZRU: No officer is bound to get up when he finds that a Member of Parliament is standing before him. I don't think any Lokpal or Lokayukta will really convict a man of corruption if he causes hardship to somebody. Really these things should be subject matter of complaints or grievances and not corruption. We should not make the definition of corruption as wide as we can make it. The whole history of the penal law shows that the severity of the penalties has never checked the growth of crime. It is only when the penalties are light, that crime goes down.

SHRI A. D. MANI: Can I refer to the witness to page 4 of the Bill—Proviso to clause 3(1), which reads as follows:

"(a) the Lokpal shall be appointed after consultation with the Chief Justice of India and the Leader of the Opposition in the house of the People, or if there be no such Leader, a person elected in this

behalf by the Members of the Opposition in that House in such manner as the Speaker may direct;"

What is your opinion about the Leader of the Opposition being dragged into this?

DR. KUNZRU: I really see no point in consulting the Leader of the Opposition or somebody elected by all the Opposition parties in this matter. What you want is a man who has held high judicial status and who can be trusted by the public and by the officers whose cases he will have to investigate. I don't see why any Leader of any Party in the opposition elected by or a group of parties should be consulted. I cannot really understand why this provision has been put in. The Administrative Reforms Commission too has made a similar recommendation. I could not understand the reasons for it. It seems to me that the Government is quite competent to appoint an officer of this kind. If the Parliament is dissatisfied with the quality of the officer appointed, it can deal with the matter in ways familiar to us when the time comes for it.

SHRI SAMAR GUHA: Respectfully differing from your views about consultation with the Leader of the Opposition, I would like to know from you, from a man of your experience and wisdom, if there is a conflict as to the final choice of Lokpal or Lokayukta what will be the machinery for resolution of such a conflict? Supposing the President, the Opposition Leader and the Chief Justice of the Supreme Court do not agree with one another in the matter of selection, how can that conflict be resolved?

DR. KUNZRU: I don't see why a conflict should arise. No party, neither the ruling party nor the opposition parties should be asked to advise the Government in this regard.

SHRI SAMAR GUHA: Taking it for granted that the provision in the Bill about consultation is approved, if there is such a conflict is it to be resolved?

DR. KUNZRU: The Government will make the choice and recommend the selected person to the President for appointment.

SHRI SAMAR GUHA: Here the President will refer the matter to the Home Ministry and the Home Ministry will select the person. So it will normally be left to the Home Ministry or the Minister and the President will simply ditto it, in consultation with the Chief Justice. But there should be an impression that the person who constitutes the Lokpal or Lokayukta will be absolutely independent person from all influences from any quarter whatsoever.

DR. KUNZRU: If the Government and the Chief Justice agree, I think you may be fairly certain that any person selected by them is fit to be trusted by the whole country.

SHRI SAMAR GUHA: I also want to know from you the qualifications of such person to be nominated as a Lokpal. Can you just give certain characteristics?

DR. KUNZRU: To lay down the qualification of such a person is not easy for me; other people may be able to do it. But I find that the Government has appointed a Central Vigilance Commissioner and whatever the defects in the Central Vigilance organisation may be, I find that the Central Vigilance Commissioner personally is respected by all those persons whose cases he has to deal with. Well, he was, as you know, Chief Justice of Mysore High Court. Probably you should take a man of that kind, a man who has held a very judicial position, has made his mark as a judge of the Supreme Court, a man who sometimes has had to deal with investigation of cases involving complaints of the kind referred to in this Bill. It should

not be very difficult to find out the man with the necessary qualifications. But as regards the allowances and all that, it ought to be comparable to that of the salary and allowances received by the Chief Justice of India. I suppose this condition is due to the fact that the Lokpal will deal with the cases of Ministers, Secretaries and other officers of a very high rank.

In the public mind, no officer can be regarded as equal to the Chief Justice of India; The Chief Justice has a position all his own which may not be rivalled by any other officer, by whatever name we may call him.

SHRI SAMAR GUHA: You have stated that it may so happen that with the motive of maligning an officer or anybody some false complaint may be lodged, and as a check you have suggested that Rs. 1,000 should be deposited before such complaint may be made. I want to draw your attention to the background of this thing. Our country today is almost sick; there is corruption, malpractice, harassment and various grievances by people. And it is our day to day experience also. The whole purpose of this Bill is, firstly, to create such an atmosphere where such practices are done away with. Therefore, I would request you to enlighten whether if such a deterrent clause is included, will this purpose not be defeated?

DR. KUNZRU: What I said was that we should check their responsibility on the part of the complainants. I particularly wanted that nobody, merely because he had a grudge against some other person, should make a complaint against him. If you examine the cases that are now dealt with by the Director-General, Vigilance, in the Railway Board or the Vigilance Officers and so on, you will find that between 65 to 75 per cent of the cases are dropped either without an enquiry or after some enquiry. It shows, therefore, that there is some reasons for caution

here, especially when you are going to deal with high placed officers. We should not regard them as culprits; we should not start with the assumption that they are culprits. If they go wrong, let us examine their conduct, let the Lokpal or a Commission of Inquiry go into what they have done. But people who are dissatisfied with them should not think that this is a good opportunity for them to harrass these people. We should be careful in this matter, so that the administration may not be adversely affected. I am not so keen about the persons concerned,—though that too is an important point,—I am thinking of the effect of this on the administration, on the exercise of discretion by the officers, on the quick disposal of cases and so on. If you allow a person to make any complaint that he likes, without fearing that any action will be taken against him, I do not think that it will be in the public interest. It will be on the contrary to the detriment of the public interest.

MR. CHAIRMAN: There are two ways of preventing frivolous and malafide complaints. One way is of putting a very heavy deposit on one side as you suggested, say of Rs. 1,000 and there is another way, that is, of punishing the man, giving some sort of punishment, if he complains frivolously. What would you favour of the two?

DR. KUNZRU: If I were to choose between the two I would favour a deposit. You know, Mr. Chairman, that at present in election cases the man who files an election petition has to deposit a sum of Rs. 1,000 with the Election Commissioner as a guarantee that he has not brought a frivolous complaint against the person who has been elected either to the Lok Sabha or to the Vidhan Sabha. I think I should insist on that. That would be a better check.

SHRI C. C. DESAI: Taking the same point as raised by the Chairman further would not the requirement of deposit of Rs. 1,000 mean purchase of

justice? Would it not look like purchasing justice. If a man has to make a complaint why should he beg, borrow or steal Rs. 1,000 for making his complaint. Then only rich people will be able to make complaints.

DR. KUNZRU: May I explain what I mean. Perhaps, I have not explained myself fully yet. I am not dealing with cases which are regarded by the examining authority as frivolous and which are dropped without any enquiry. They do not require to be dealt with. The cases that are required to be dealt with are those that really cause harassment to the officer complained against, where a man brings charges against an officer which seemingly are correct but which are found afterwards to be completely false. He should be punished, I think. It is in the interest of public administration. It is necessary to make your officers feel that this Bill does not proceed on the assumption that everyone of them is dishonest.

SHRI C. C. DESAI: I am in entire agreement with the deterrent requirements but only when a complaint is found to be false. Then should only the man be punished, whether by prosecution or by any other means. But I do not like the idea of being required to pay a deposit before a complaint is considered.

DR. KUNZRU: I mean the deposit should be confiscated in those cases only where complaints are found to be false.

SHRI C. C. DESAI: But you have got to find first Rs. 1,000 to file a complaint.

DR. KUNZRU: If a person makes a complaint against a Minister or Secretary. I think, he should make a deposit of Rs. 1,000. If a man who files an election petition can find Rs. 1,000 in order to make a deposit with the Election Commissioner he can also find money for making a complaint here.

SHRI C. C. DESAI: Now you said the Lokpal should be appointed by the President in consultation with the Government and Chief Justice of India whereas the Bill says that the Lokpal shall be appointed after consultation with the Chief Justice of India and the Leader of the Opposition. There is no mention of the Government although perhaps because of the Constitution the President is bound to consult the Government of the day but as the Bill says the consultation is only with the Chief Justice of India and the Leader of the opposition. And there is, of course, understandable reason behind this because these complaints will be against Ministers. Therefore, Ministers should not be in a position to appoint a person who may be required to investigate their own complaints. Whereas, the Leader of the Opposition is not under his check and he is interested in the cleanliness of the public life.

DR. KUNZRU: I do not understand why the Leader of the Opposition should be taken into consultation.

SHRI C. C. DESAI: Some of the witnesses of the Bill have provided for it.

DR. KUNZRU: I do not know the history of the Bill but I see no rational ground for consulting the Leader of the Opposition. Merely because there is a demand on the part of the Opposition does not justify this procedure.

SHRI C. C. DESAI: Some of the witnesses who came before the Committee have said that the jurisdiction of the Lokpal and Lokayukta should be extended to the States. The Bill does not extend the scope of the legislation to the States. It applies only to the Central Government or the Government of India. What would you advise and what are your views on the subject. A person like Mr. Santhanam said that the jurisdiction should be extended to the States as well although the States are opposed to such an extension.

DR. KUNZRU: You cannot under the Constitution extend it to the States, that is, to the Ministers and Secretaries of State Government. It is not possible. You can do it only with their consent and if they are against this it cannot be done. But for my part I should like the Bill to be extended to complaints against Ministers and Secretaries of State Governments. In fact, if I may speak quite frankly, I feel that such legislation is more necessary in the case of the States (at least some of the States) than in connection with the affairs of the Government of India.

SHRI C. C. DESAI: Under the present Bill, the findings of the Lokpal or Lokayukta have not the final authority. They are the results of investigation. If a Government servant or Secretary has to be punished, the matter has still to go before the Public Service Commission. They may reject or modify it. There is no finality or sanctity of the findings of the Lokpal. Lokpal is actually the superior officer than the Public Service Commission. How will you get over this anomaly?

DR. KUNZRU: Unless Article 311 of the Constitution is amended, you cannot get over this difficulty.

I have already said that so far as the Bill is concerned, it is ambitious. It deals with the redress of the general grievances and with complaints regarding corruption. I do not think this is a sound policy. I suppose this is being resorted to because sometimes the enquiries reveal facts which make the officers concerned themselves ready to acknowledge their mistake and perhaps to resign. There are officers who have been compulsorily retired or who have been advised to retire and so on and who have followed the advice given by the Central Vigilance Commissioner.

Take the case of a Minister. No complaint need be made in a Court of Law. If the Lokpal finds that the Minister has exercised his discretion or his powers improperly or that the Minister in his (Lokpal's) opinion has been guilty of having acted through

corrupt motives, the Minister must resign. It is Prime Minister's duty to ask him to go.

SHRI S. S. N. TANKHA: It has been suggested by one of the previous witnesses before us that actions of the Judiciary and the Members of Parliament should also be brought within the purview of the Lokpal and Lokayukta for his scrutiny. Do you favour such a proposal?

DR. H. N. KUNZRU: We cannot have an authority above the judiciary. It will be the ruin of the country.

SHRI S. S. N. TANKHA: Certain matters or jurisdiction have been excluded from the purview of Lokpal which are specified in Schedule II. Would you want any of these matters specified under Schedule II, to be brought under the Lokpal's purview?

DR. H. N. KUNZRU: I think the Schedule is quite all right.

SHRI S. S. N. TANKHA: What is your proposal regarding the term of office of Lokpal? Should he get five years term initially or it should be longer period and whether a second term should be given to him or not?

DR. H. N. KUNZRU: I am glad you have put this question to me. I am not in favour of the Lokpal being given a second term. My reason for this is clear. Suppose when the term of the Lokpal is over, Government and the President may think that one of the Lokayukta's be appointed Lokpal. He might have already served for five years or under this Bill even for ten years. When he becomes Lokpal he will serve for five years and if given another term he will serve for 20 years. We should not make the office of Lokpal on the Lokayukta a profession. We should take sufficiently competent men and they should be appointed for a certain period only. I think Parliament should be content with that. A second term should not be allowed to the Lokpal.

There is also another reason. The Lokpal must be a man of absolute independence who will act in accordance with his conscience. Humanly speaking a man's judgment may be affected by the thought that his term is coming to an end and if he can gain favour of the Government, his term might be extended. I, therefore, think that five years term as prescribed in the Bill is quite enough.

SHRI S. S. N. TANKHA: Would you like any maximum age to be fixed or not upto which these persons may be allowed to work?

DR. H. N. KUNZRU: No, I am not in favour of that. Take for instance the Chief Justice of India who has retired and if you think that he is an independent man, he will go into complaints against Secretaries, Ministers thoroughly and impartially, I see no reason why you should not have him for 5 years.

One thing more. I had expressed the view that the person bringing a complaint of corruption against a Minister or Secretary or a person of an equally high rank should be asked to deposit Rs. 1 000. I have said nothing so far with regard to those men who make complaints against public servants of a lower rank. I think a certain deposit should be asked for in their cases also. Let it be Rs. 750 if not Rs. 1,000. But some deposits should be asked for.

I said I would like the Bill to be extended to the States so far as the Ministers and the Secretaries of the Departments are concerned but I am not in favour of extending this Bill to charges against officers of a lower rank because then the work will be too heavy for any number of people and this responsibility should be thrown directly on the shoulders of the State Governments.

SHRI S. S. N. TANKHA: A view had been expressed that retired judges of the Supreme Court or High Courts should not be appointed to

these posts of Lokpal or Lokayukta. What is your view?

DR. H. N. KUNZRU: I have been generally against the appointment of retired judges to various posts which are within the discretion of the Government but there are certain laws which require that some Committees or Commissions should be presided over by the Retired High Court Judge—for instance Delimitation Commission. Law requires that it should be presided over by a High Court Judge. I do not approve of these things.

SHRI S. S. N. TANKHA: Generally you are not in favour of these eminent judges being appointed on the posts, but in other places where the appointment itself provides for such a person to be appointed you have no objection.

DR. KUNZRU: I can't change the Act. If I had the power I would change the Act. At the same time I would improve the salaries and particularly the pensions of the judges after retirement. That is very important. If pensions are substantially improved there would be no hankering on their part after appointment to some post after retirement.

SHRI S. S. N. TANKHA: Thank you very much.

SHRI K. ANBAZHAGAN: I would like to have a clarification for understanding certain matters. Now, you have said, any complainant against ministers or secretaries should deposit at least Rs. 1,000 so that the complaint may not be frivolous or false. But I would like to say, in the case of Election petitions the deposit amount is necessary because the case is to be enquired into completely in all detail. But here some people may make complaint against a Minister or Secretary. The Lokpal has got authority to say whether there is *prima facie* case or not. If there is *prima facie* case he may go and enquire into it. He may take evidence necessary for the purpose. He has also got every right to

reject any petition on the face value of itself. Such being the case, is it at all necessary that there must be deposit amount to be deposited by a complainant in case he makes a complaint against Ministers or Secretaries. There are interested parties who may like to pay to him not only 1,000 but even 10,000 rupees. It is easy to deposit any such amount and also bring in frivolous charges against ministers and other persons. Therefore, do you think, the discretionary power given to Lokpal whether to proceed with a case or not should be there, or whether the deposit amount will be the main basis to continue the enquiry? What should be the criterion?

DR. KUNZRU: If you ask the officers who have now to examine charges of corruption against public servants they will tell you that they will be very happy if there was some way of preventing frivolous complaints from being made. There are some other complaints in which a preliminary enquiry is made which are dropped after the enquiry and it appears that the time of those officers who are appointed to look into charges of corruption is just wasted. It is in the public interest therefore that the large number of these frivolous or vexatious complaints ought to be reduced considerably. In the second place if a man brings a charge of corruption against a public servant which is found after enquiry to be false—the enquiry caused a great deal of harassment to the officer—surely the complainant should be punished for his false complaint.

SHRI K. ANBAZHAGAN: Discretionary power is given to the Lokpal and Lokayukta. That discretionary power—whether to proceed with a case or not—is there. Is that discretionary power to be there, or simply the furnishing of the deposit amount should make a case fit enough to be taken up by the Lokpal or Lokayukta? What is your view? Somebody may deposit some money and bring up frivolous case—it may not be a genuine complaint. So, I want to know whether opportunity should be given to those

SECRETARIAT

Shri M. C. Chawla—Deputy Secretary.

WITNESSES EXAMINED

- I. Shri N. Sreenivasa Rau—Central Vigilance Commissioner.
 II. Ministry of Railways (Railway Board)

Spokesmen:

1. Shri G. D. Khandelwal—Railway Board.
2. Shri B. C. Ganguli—Member (Staff), Railway Board.
3. Shri S. W. Shiveshwarkar—Director General, Vigilance, Railway Board.

I. Shri N. Sreenivasa Rau, Central
 Vigilance Commissioner

(The Witness was called in and he
 took his seat)

The chairman drew his attention to
 Direction 58.

MR. CHAIRMAN: Mr. Rau we are very glad to have you here this afternoon and take advantage of your experience because the Lokpal Bill is almost the same as your vigilance work and your advice, your help and your opinion will be of great value to us. As is usual, when we take evidence, we first request the witness to give his general opinion on the Bill under discussion within ten minutes or so and then the Members here will ask you some questions and clarifications. I hope you will agree to this suggestion.

SHRI SREENIVASA RAU: Most certainly. Mr. Chairman, I am also very glad that I have been given this opportunity and I am grateful for it. But I think I owe a word of apology before I proceed further. I was asked to submit a memorandum in advance. Unfortunately, I could not prepare such a memorandum.

So far as general observations are concerned, I take this opportunity of saying that I am happy that this Bill has been introduced. In this connection, I may recall your attention to the circumstances under which the Central Vigilance Commission itself came into existence. It was in consequence of the recommendations of an interim report of the Santhanam Committee. Their proposal was that this Commission should consist of three Directorates: one Directorate to deal with matters where the question of corruption, that is, lack of integrity
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on the part of public servants was involved; the second Directorate was to consist of the Special Police enlarged into what they called the Central Bureau of Investigation to help the Central Vigilance Commissioner in regard to matters of investigation; the third was to be the Directorate of Grievances. The Government examined the proposal and then they came to the conclusion that as things stood in this country and in their assessment the problem of corruption required immediate attention. They also felt that if the Commission were also to deal with matters of public grievances it might be overwhelmed with work. Therefore, they came to the conclusion that for the time being the Central Vigilance Commission should interest itself only with matters relating to the integrity of public servants. They also realised the importance of public grievances and felt that that matter should be examined in detail. On account of the very fact that it was very important, they thought that a special machinery for this purpose should be evolved. As all of you are aware, a Commissioner of Grievances was appointed with this difference that he was inside the governmental set-up of the rank of Additional Secretary in the Ministry. That was on an experimental basis. If the original proposal had been accepted, the Central Vigilance Commissioner would have functioned like a Lokpal or Lokayukt dealing with grievances involving both the question of integrity and those which did not involve the question of integrity; in other words, he would have acted like the Ombudsman but he would deal only with matters in which permanent pub-

lic servants figure. Even according to the suggestions of the Santhanam Committee the function of looking into corruption at the political level was not to come within the purview of the Commission. They said that they would go into that matter in greater detail and would make their recommendations in their final report in regard to the manner in which the political corruption was to be dealt with. Later on they did make a recommendation in their final report about this. Meanwhile the Administrative Reforms Commission went into this question and submitted its report on the basis of which this Bill has been formulated. I might state here one matter of importance. It was realised by all that in the absence of any machinery to deal with what may be called corruption at the political level, though not the whole work but at least a good part of work being done by this Commission, or for that matter any machinery dealing with only corruption on the part of permanent government servants, would be rendered ineffective. I, myself gave expression to the need to bestow attention on having machinery to deal with corruption at the political level also. Now, this Lokpal Bill has been introduced and seeks to fill the gap. This is a matter for satisfaction. That is so far as general observations are concerned.

Now, in regard to the contents of the Bill, that is, dealing again generally in regard to it, I should like to mention that the Vigilance Commission was established, as I was mentioning, to deal no doubt, with complaints that come to its notice from any aggrieved person in respect of matters which affect questions of integrity relating to permanent public servants. But, actually, it is intended to function not only in regard to such complaints but also independently of any complaint. You are aware the Auditor General looks into the accounts of the Government in order to see that the State's money, the people's money, is properly spent, independently of any complaint coming before him. Under the

scheme of the Santhanam Committee, the Central Vigilance Commission was to examine the conduct of permanent public servants from the point of view whether it came to its notice by way of a complaint or not. In other words, it functions as auditor of the work of public servants from the point of view of maintaining integrity amongst them. A very important part of the Scheme is that when any matter relating to the conduct of a public servant comes to the notice of administration itself, that particular branch of administration, that particular Ministry, is under an obligation to bring it to the notice of the Central Vigilance Commission. So the Central Vigilance Commission, examines it and then tenders advice. Thus under the scheme these matters have to be brought to the notice of the Central Vigilance Commission. For example, supposing there is a complaint or allegation, no functionary, whosoever it may be dealing with the matter, can simply file it without referring it to the Central Vigilance Commission, the idea being that there should be no occasion for matters being suppressed. Even if the authority concerned comes to the conclusion that there is no substance in it, the matter cannot be closed without reference to the Vigilance Commission, which looks into it and then tenders advice whether the matter should be gone into further or not and also tenders advice in regard to the further course of action, whether disciplinary action under the rules should be taken or not or if it discloses something more than misconduct and the matter comes under the Prevention of Corruption Act as, for example, when bribe is taken. If a *prima facie* case has been established, the matter has to be referred to the CBI to look into. The point to be noticed is that whatever might be the position in regard to what you may call residuary grievances, where the aggrieved party figures as a complainant, there is really no aggrieved party in a case of corruption. The person who pays the bribe and the person who receives

the bribe, both are content with what has happened. If there is a complaint it is only some outside party who generally makes a complaint. Therefore, if it is a question of checking this sort of corruption, solely to depend upon complaints would be a very ineffective way of dealing with corruption. For example, in the course of running the administration, suppose you find things that have not been done in a proper way. It may be that in 90 per cent of the cases some rule might not have been followed or some procedure might not have been conformed to and there may be no improper motive. But in some other case the head of Administration may suspect that it may be due to some improper motive. Of course, I may submit in this connection—you all know—that corruption does not consist merely of cases where money passes from one person to another. It really consists of cases where the position or power is improperly used with an ulterior motive. Therefore, when a Head of a Department while dealing with some matter sees that that some subordinate has not done something in a proper way which indicates improper motive, he is bound to bring it to the notice of the Commission.

Then, again, you, gentlemen, all are aware, that the Central Bureau of Investigation has Police officers whose functions have now been enlarged. Even before the Santhanam Committee report was submitted, the Government had taken the decision to enlarge it and these functions are not confined merely to investigate the offences which are mentioned in the Schedule to the relevant Act; they also have powers, so to speak, to keep their fingers on the pulse of the morale of public servants. They have to submit these reports also to the commission in addition to reports in matters enquired into at the instance of the Committees. Now, this Lokpal Bill is grievance complaint based. What I called the auditing of the work of public servants to ensure integrity does not come within any specific pro-

visions of the Bill. There is a residuary provision, clause 17, which may perhaps give scope for it. I consider this function to be very essential part. Whether it is this organisation or some other organisation under this nomenclature or some other nomenclature that will carry out the function, it is immaterial. It is exceedingly important; that so far as corruption is concerned, these measures should continue in the manner those are being taken, independently of any complaint. We have statutory corporations, some of which come within the function of the Commission. These are looked into by the Commission, independently of any complaint being made. Of course, we also look into it when there is a complaint. The Commission has powers to look into all such matters *suo motu*. In the exercise of these powers what the Commission has been doing is to keep in touch with, for example, what appears in newspapers all over the country. The Commission looks into the reports of the Public Accounts Committee, of the Public Undertaking Committee, the various reports of the Auditor General, various administrative reports. They all are very carefully scrutinised to see if they contain anything bearing on the conduct of any public servants involving their integrity.

Now, as the Bill now stands, there is nothing explicit in it. There should be scope in it to deal with this very essential and important part, because as I said in the beginning, this matter of corruption generally does not manifest itself as the grievance of any of the concerned parties. So that is one thing to which I would like to invite your attention. That is a basic point which has to be thought about, because in the normal course, it would not come within the ambit of a Bill which is grievance based.

Now, what I have said is by way of general statement let me say once again that, I welcome the Bill. May I now just invite your attention to a few points that I have noted in regard to the provisions. They are not many.

MR. CHAIRMAN: I think members will ask you questions and you may clarify and if there is anything more you may tell us.

SHRI SREENIVASA RAU: In the context of the questions put to me or independently?

MR. CHAIRMAN: In the context of the questions put to you.

SHRI AKBAR ALI KHAN: Mr. Rau, you should pardon me if I, in view of my ignorance, ask you some questions. I would like to know before you became the Vigilance Commissioner what work were you doing?

SHRI RAU: Well, immediately before that I was not doing any work because I had retired from my office. I retired as Chief Justice of the Mysore State.

SHRI AKBAR ALI KHAN: You were Chief Justice of Mysore State and afterwards you were appointed C.V.C. Now, I need not go on that. I think we are really, at least I am, in difficulty and your evidence will help us considerably. I hope you have been working in this post for couple of years.

SHRI RAU: For about four years and a half.

SHRI AKBAR ALI KHAN: The first thing I want to know: what was the quantum of work that came to you initially? Was it a big rush or no case was coming? What was the position? Some doubt has arisen in my mind that the scope is so big that many complaints—no doubt, your scope was limited to allegations, that is, corruption, want of integrity; am I right?

SHRI RAU: That is so.

SHRI AKBAR ALI KHAN: So, even in that scope, I would like to know what was the amount of work that you got? My second question will be: How you tackled it? Did you ask the man also or did you give him an opportunity to explain or you did it on your own? These are the two questions and I would be grateful if you enlighten us on these.

SHRI RAU: In fact, I am very glad. You put the question and I shall be glad to answer them. Indeed while giving you the idea about the functioning of the Commission I should have mentioned some of these points. These are very vital points. As the Scheme stands the C.V.C's jurisdiction extends to the whole gamut of permanent public servants right from class IV upto Secretaries, Lt. Governors, Chief Commissioners, etc.

SHRI AKBAR ALI KHAN: Except Ministers.

SHRI RAU: Yes. It does not include those functioning at the political level.

Even if a very small fraction of these gentlemen misconduct the number would be very large. For example, the Railways have got 30 lakhs of persons working. Therefore, under the Scheme I was mentioning, it was obligatory on the part of the Ministries to refer to the Commission cases relating only to officers about a particular level, say, gazetted officer. Now, such cases are bound to be referred to the Commission; but cases may occur in which it happens that in the case of mis-conduct not only a gazetted officer but some other officials also are involved or the cases are of a very important character, even though the persons involved are below gazetted rank. Since the Commission has got full jurisdiction it looks into such cases also. In addition to these, we call for reports, returns and statistics in order to keep in touch with what is happening in various branches of administration in respect of all ranks of public servants.

Now, I am coming to the amount of work. It is not merely complaints but as I was saying all these are under obligation to refer all these matters which come to their notice in the course of day-to-day administration. The result is that almost right from the beginning of the establishment of this Commission well, I am afraid, the work has never been wanting. It is a round the clock affair. There is plenty of work.

SHRI AKBAR ALI KHAN: Could you tell us as to how many cases you got?

SHRI RAU: At the moment, I do not remember the exact figures but normally I deal with the something like about 100 files a day, but they would consist of matters at different stages. Then I have got five Commissioners for departmental enquiries who go into cases of mis-conduct and after they enquire into the cases their report that comes to me. I have to examine those reports and give my views as to whether the findings are to be accepted or not and also recommend the appropriate punishments. Taking all these into account the work is something of the order mentioned by me.

SHRI AKBAR ALI KHAN: But it is not unmanageable.

SHRI RAU: I was coming to feel it involved quite a lot of strain and I was wondering whether it could really be performed by one individual. Here you cannot delegate power to any other person. I have got secretarial assistance and it is very helpful but, nevertheless, when I tender advice I have to look into the original material myself because not only does it involve the maintenance of morale and discipline in the Administration, but, in regard to the particular individual concerned, it is everything for him. Actually, the work is more or less of the same character as that of any tribunal which is judicial or quasi judicial in character.

I have no investigating agency in my Organisation. Under the Scheme, there are in all the Ministries what are known as Vigilance Cells headed by Chief Vigilance Officers. These are responsible to keep watch on the integrity and morale of the employees and when any matter comes to their notice they look into it. In a certain sense. They are as much part of my organisation as of the concerned Ministry. They function as a liaison and they look into matters concerning in-

tegrity and their report comes to me. It has been the invariable practice that whenever there is any complaint or anything appearing in the conduct of an official an opportunity is given to him to explain by the persons in the Vigilance Cell who go into the matter. So, when the report comes I also get the version given by him and if I find that full opportunity has not been given then I suggest that such an opportunity should be given.

Similarly before the CBI submits the report, they invariably examine the accused. In cases where examination has not been done fully or any other matter remains to be looked into and proper opportunity has not been given, I ask them to give an opportunity so that before I tender my advice, the version which he gives at the preliminary stage is available to me. I consider it very important that no proceedings should be initiated unless there is a real reason for it, because even if at the end of two or three years the man is to be exonerated, the period will have been out of agony. All possible care is taken to see that these enquiries and prosecutions are not initiated unless an opportunity is given to the person at that stage and the whole thing is properly looked into.

I would like to add that in regard to matters of prosecution, under the Scheme, before the Government accords prosecution, it has to obtain the advice of the Commission.

SHRI AKBAR ALI KHAN: Witnesses and legal advice is generally not allowed.

SHRI SRINIVASA RAU: Normally it is not done but there is no bar.

SHRI AKBAR ALI KHAN: During the past four years how many senior officers have you recommended for punishment and how many were implemented?

SHRI SRINIVASA RAU: I think they come to hundreds.

I am glad to say there has not been any case in which my advice and recommendation has not been accepted. I, of course, acknowledge the cooperativeness and responsiveness.

SHRI AKBAR ALI KHAN: Thank you.

SHRI A. D. MANI: Your valuable advice is sought in regard to clause 11.5 (a) on pages 10 & 11, viz., no person shall be required or authorised by virtue of this Act to furnish any such information or answer any such question or produce any document as might prejudice the security or defence or international relations of India including India's relation with the Government or any other country or with any international organisation or the investigation or detection of crime.

(b) As might involve the disclosure of proceedings of the Cabinet or the Union Government or any Committee of that Cabinet.

I have a case before me i.e. libel suit filed by Thakersay in Bombay which was heard by the High Court Judge.

SHRI SRINIVASA RAU: There was a special provision in Income Tax Act which I think they are now seeking to amend.

SHRI A. D. MANI: Many questions come up in Parliament as there is corruption in regard to income tax assessment. Proceedings are suppressed and in some cases arrears are written off.

If I pay income tax, I establish relationship with the income tax authority and I disclose certain matters to income tax authority which ought not to be disclosed, as they are confidential.

SHRI SRINIVASA RAU: That provision in Income Tax Act was introduced long long ago to make people disclose information regarding property, etc., only for the purpose of

assisting Income-tax and it was thought that such information should be protected. That conception was different from what it seems to be.

SHRI A. D. MANI: In the ordinary course if this Bill is passed as it stands now, the Lokpal may call for information regarding income tax matters, while in the Court of Law the Income Tax authorities will say that these documents are confidential and, therefore, we cannot produce it. Would you like to consider the insertion of clause involving matters which are secret by the very nature. There are many things in regard to income tax assessment which the tax paying public would not like other people to see. Why should not some protection be given?

Would you like to amend the clause and put in as (c) on page 11 'or involving matters which by the very nature are secret'.

SHRI SRINIVASA RAU: I do not think that that would meet the requirement. I may put it this way. You see, the Lokpal or Lokayukt (Vigilance Commissioner as an adviser) perform functions which even in their absence any Government is bound to perform. Supposing it is the case of an Income Tax Officer who is suspected. In the absence of Lokpal or Lokayukt or C.B.I. (Central Investigation Commission, the Head of the Department would have investigated. How is he going to find? He will have to look into the records which are confidential. The Lokpal, Lokayukt, Vigilance Commission perform the function to the extent which the Head of the Administration performs in order to safeguard the morale. Whatever cannot be shielded from his sight, need not be shielded from the eye of the Lokpal because the Lokpal performs the same functions to keep the integrity and moral.

SHRI A. D. MANI: There is one point of difference. The man who wants to abuse has access to records

which cannot be disclosed in the Court of Law as we find in Thakersay's case in Bombay. It involves matters which by the very nature are secret. I do not see any reason why the citizen should not be given protection of the secrecy.

SHRI SREENIVASA RAU: I do not know what stage has been reached in regard to the proposal that that particular provision of the Income Tax Act (Secrecy Clause) should be abrogated. Notions in regard to secrecy have changed to-day. That proposal was before Parliament. I gather it has been repealed.

SHRI A. D. MANI: You must have, as a Central Vigilance Commissioner, come across a large number of petty, frivolous, malicious complaints. When investigation is in progress, the man goes through mental agony. Some kind of deterrent device in this Bill like a deposit of Rs. 250 or Rs. 500 from the complainant is necessary. Can it be provided in this Bill? The other party in the quasi-investigation has to depend on lawyers. If the complaint is frivolous that amount may be awarded to him as the cost of Defence. The amount may be as a security and cost of defence if the complaint is malicious. What is your reaction to the suggestion?

SHRI SREENIVASA RAU: As far as the Central Vigilance Commission is concerned, I may say that in its scheme there is a provision enabling the commission to advise in regard to action to be taken against persons who, as you have put it, gives frivolous complaints or unfounded complaints. That is one thing. The second thing is this. I might have given the impression that when the matter is referred to the Commission, it only looks at it from the point of view of action being taken. I should like to say that in a large number of cases, after looking into the complaints in the initial stage, and also after the preliminary report, there have been many cases where the Commission has advised that the

matter may be dropped. Even though a man may be exonerated after two or three years, he has to suffer agony and suspense during those two or three years. Therefore action should be initiated only after very carefully examining whether it is justified.

SHRI A. D. MANI: The question of prosecuting a man who furnishes a false complaint is provided for in the relevant Penal Code. You also know that once a complaint of this type is made the Lokpal will have to be examined as a common witness in the court of law. Nobody would like the person to be cross examined in the court of law. So, would you like that authority to deposit some money, say, Rs. 100 or Rs. 200 or Rs. 500 should be prescribed. That is, every complaint must be accompanied by a deposit. If the complaint is false, apart from prosecution, the costs will have to be awarded to the man concerned who has been injured. In respect of defamation this is the position. So, I am asking for your opinion in this regard.

SHRI SREENIVASA RAU: My inclination is in the opposite direction. I do not think we should introduce any measure which acts as an inhibition because, I think, quite a large proportion of the people who may have very legitimate grievances may not actually be in a position to give the deposit money. That is the position. Asking them to give a fee before they approach any authority would be against the public interest. Whatever steps have to be taken to weed out these complaints, we have got to think of other measures. I agree that there should be effective measures to weed out frivolous and false complaints. But levy of a monetary toll is not the appropriate method.

SHRI A. D. MANI: My next point is this. Please refer to page 14, sub-clause (4). It says that no person shall publish any proceedings relating to an investigation which is pending before the Lokpal or a Lokayukta as the case may be, nor shall any person publish such proceedings after the in-

vestigation is completed unless prior permission for the publication is obtained from the Lokpal or the Lokayukta as the case may be. Now, as you are aware, the proceedings in the Lokpal will attract the supervisory jurisdiction of the Supreme Court. Now, Lokpal is a kind of a tribunal. He can demand attendance of witnesses under the code of civil procedure. This is bound to happen in a country which is litigation-minded. The Times of India, or the Statesman, for instance, may say that such and such a complainant has gone before the Supreme Court. Who will prevent the publication of news of supreme court proceedings? So, should this clause be allowed to stand as it is? What is your own view?

SHRI SREENIVASA RAU: The function of Lokpal and Lokayukta is not the function of tribunals. They function only in an advisory capacity. Though these days any one can take matters before the supreme court, the functions performed by the Lokpal and Lokayukta being purely advisory may not attract the jurisdiction of the supreme court or the High Courts under article 32 and article 226. Basically the functions of the Lokpal or Lokayukta is not in the character of decisions and therefore they are not liable to go before the Supreme Court.

SHRI A. D. MANI: The complainant makes an application that the Prime Minister should appear. The application is refused. He can go on appeal to the court. He says, Prime Minister's presence is necessary for establishing my innocence. He may go to the Supreme Court, saying like this.

SHRI SREENIVASA RAU: Whatever proceedings may be there, before the Lokpal or Lokayukta, they are really preliminary proceedings. They lead to what I might call, formal proceedings. They are more or less pre-formal proceedings. Once a *prima facie* case is established, there has to

be formal action, either by way of prosecution, or by way of disciplinary enquiry, and all that. Prosecution might take place in a public court. Then whatever transpires is accessible to the public. And, in the case of the disciplinary enquiry it may be that it is not so in all the States, and it may be that there is no harm in its being open to the public. Now, under the disciplinary rules framed under Article 310 of the Constitution, they are not open to the public. In some States there are statutory disciplinary tribunals, as in Madras, as in Andhra Pradesh and there, they may be open to the public. As you know, under the Public Servants Enquiry Act which has been in existence for over a hundred years the enquiry has to be a public enquiry. But, in regard to this matter there is no uniform procedure and what the Lokpal looks into is during the preliminary stage before any formal proceedings are taken and he does not give decisions.

He advises the appropriate authority. He scrutinises in the preliminary stage, and publication of those proceedings may give the impression that even at that stage a man is branded as guilty and it may prejudice his cause. It is therefore right that protection from publicity should be given at that stage.

SHRI AKBAR ALI KHAN: Regarding the writ petition to the High Court and the Supreme Court will the proceedings before the Lokpal be hit by these provisions? What is your view?

SHRI SREENIVASA RAU: They are not so. They are purely advisory.

SHRI AKBAR ALI KHAN: It is some form of tribunal.

SHRI SREENIVASA RAU: It does not perform the functions of a tribunal. It performs the functions of the adviser.

SHRI AKBAR ALI KHAN: Can he not take evidence?

SHRI SREENIVASA RAU: He can, but only in order to advise.

On the point Mr. Mani mentioned, I have something to say. He was drawing our attention to clause 11. At the end of this clause something is said about security. Then in the very end there is a reference to investigation or detection of crime'. I think that should be omitted. In other words it should be made accessible to the Lokpal. Take the example of investigation of a particular case. Suppose the allegation is that the investigation itself is conducted wrongly on account of improper motive.

SHRI A. D. MANI: Now Dharam Teja investigation is going on. When it is going on, nobody would like to place the cards on the table, whatever may be the stature of the Lokpal because disclosure of information means many things. You know the country is a whispering gallery. It is bound to be raised in Parliament and other places. Therefore, nowhere in the world is any information given when the investigation is in progress.

SHRI SREENIVASA RAU: You are right. But here the Lokpal or the Lokayukta is himself the investigating agency.

SHRI A. D. MANI: You know in our country we talk too much.

SHRI SREENIVASA RAU: You will be preventing the Lokpal from performing his function if you place a ban on his getting information which is necessary for him to make up his mind. In regard to security and all that, I can understand because in various contexts certain matters should be kept secret. But in regard to investigation or detection of crime, it is different. I may mention one thing. I was saying that the CBI is a part and parcel or an arm of my organisation. Whenever I want a matter to be investigated, I first ask the Vigilance Cell of the Department. In more complicated cases, I request the CBI to look into them. Then I have to

advise on the future course of action on the basis of the result of investigation. Whenever I want, I send for investigation papers. And they have no feeling that they are disclosing to me something which they ought not to disclose. Therefore, it seems to me logically that it is anomalous that the very agency which can direct investigation into cases should be deprived of the materials on the basis of which it has to come to the conclusion. I want only the last part of the clause to be omitted.

H. H. MAHARAJA P. K. DEO: From the information supplied to us by the Lok Sabha, mainly based on the report, we find that in 1964-65 as many as 5,920 complaints were received; in 1965-66, 2,302 complaints were received, but in 1966-67 only 1,454 complaints were received. Most of these complaints have been disposed of. From the trend of complaints, I would like to know from you what is the percentage of frivolous complaints?

SHRI SREENIVASA RAU: That also has been given in the report. The bulk of them turn out to be—I won't say frivolous—complaints not substantiated even for purposes of carrying on an inquiry. A small residue remains which is significant and important.

H. H. MAHARAJA P. K. DEO: From these figures you can judge that there is a continuous decrease from 6,000 to 1,000. Is it due to the fact that the people are losing faith in the Central Vigilance Commission?

SHRI SREENIVASA RAU: I might perhaps explain the position. It is not a gradual decrease, as you will notice. To start with I was inundated with complaints. Considering the way in which complaints have been dealt with—whenever I found they had no substance in them, without any compunction I put them in the wastepaper basket and the public being intelli-

gent go and find out how fair complaints have been dealt with—the number came down, but in the second and third years you will see that the fall is not as steep as in the first year.

H. H. MAHARAJA P. K. DEO: It is steep.

SHRI SREENIVASA RAU: From 5,000 to 2,000, the fall is very steep; but not so steep subsequently. This is because some 6,000 complaints were waiting for me, when I came and took charge of this office. I looked into them, I found there were all sorts of complaints against all sorts of people without much substance in them. Because of the way in which I dealt with these complaints, the number gradually diminished. This is the position to the extent one could surmise.

H. H. MAHARAJA P. K. DEO: We find that there are various vigilance units in the various Ministries. Do they take guidance from you at the various stages of investigation?

SHRI SREENIVASA RAU: They do, though I should add that it varies with the Ministries and Departments because there is also a personal factor in this. Some vigilance officers are very enthusiastic. It also depends on whether a particular department is a sensitive area or not. For example, Railways, Import and Export and customs and Excise are sensitive areas. Education, is not sensitive. Therefore, the amount of guidance or discussion would depend on these various factors. In addition, it also depends on the personality and the amount of zeal which the Vigilance Officers show.

H. H. MAHARAJA P. K. DEO: After the Lokpal and Lokayukta start functioning, do you think that you will still have these various vigilance units in various Ministries and if so to whom will they be responsible in regard to their promotions, appointments, etc.?

SHRI SREENIVASA RAU: My personal view is that they should continue to form an integral part of the

Ministry or Department for which they function while the advice and guidance of the Lokpal or Lokayukta should be available to them.

H. H. MAHARAJA P. K. DEO: Do you think that this diarchy will function and don't you think that it may defeat the very purpose for which these posts are going to be created?

SHRI SREENIVASA RAU: There is no doubt this anomaly and we are confronted with a dilemma. The position is this: There is a difference between the way in which the Auditor General functions and the Commission or the Lokpal functions. It is possible for a group of persons to look into the accounts in regard to any financial transaction and find out what is right or wrong. But, if I send persons from my establishment in connection with the examination of the conduct of persons in a Ministry, my men cannot effectively find out facts because they are outsiders. If, on the other hand, they are part and parcel of the department concerned and are in touch with these things, it will be possible for them not only to get any information but to keep their figures on the pulse.

H. H. MAHARAJA P. K. DEO: So, according to you they will be responsible to the Ministers and Secretaries of the various Ministries.

SHRI SREENIVASA RAU: You are perfectly right. Merely because I am associated with this organisation, I should not for a moment minimise the fact that for maintenance of morale and discipline the real and ultimate responsibility must lie with the heads of the Departments and the Lokpal or Lokayukta or Vigilance Commission should function only as adviser. Therefore, it is right and proper that this machinery for investigation should be placed under the Ministries with, of course, liaison with our organisation. They will get guidance from us. But ultimately they must be accountable to the Ministry. The way in which they function is like this: The Chief Vigilance Officer assists the Secretary

or the Head of the organisation in vigilance matters and acts as liaisons between the Ministry and the Commission. The Vigilance Unit also carries out any inquiry desired by the Commission. But when any very important matter has to be discussed at the level of decision, I don't discuss with the Vigilance Officer but the person who is really responsible for vigilance, namely, the Secretary because, he is the head of the Department. Therefore, when I discuss what has got to be done or the advice that I propose to tender, I don't ask the Vigilance Officer where he will not be in a position to take the responsibility for the final decision. So, I request the Secretary to come and discuss with me the matters and I tell him tentatively—to me it appears to be so—that this is the advice that I propose to tender. Will you please tell me as to how it will react on the Administration of the Department? You know that if my advice is not accepted I mention that in my report and place it before Parliament saying that this is a case in which the advice has not been accepted so that the Ministry concerned is put upon explanation. But I must remember at the same time that the responsibility to run the administration is that of the Ministry and I must try to understand their views and their difficulties and then tender advice. The maintenance of integrity by keeping constantly in touch with these things cannot be effectively done by any outside agency.

H. H. MAHARAJA P. K. DEO: May I take it that the present arrangements as you are having in the Ministry now should continue even if we have the Lokpal and Lokayukta?

SHRI N. SREENIVASA RAU: That is right. I was mentioning that the vigilance units are supplemented by an agency outside the Ministries' that is, in important cases or cases where it is something more than a misconduct, that is where it amounts to a criminal offence, we have the C.B.I. for enquiry and investigation.

H. H. MAHARAJA P. K. DEO: I am coming to the C.B.I. I entirely agree with you that with regard to the C.B.I. the notion of secrecy has been changing for the good. Sometimes we find that as a compulsion of public duty, we have to expose some of the C.B.I. Reports even though they are kept secret. Probably, you are aware that in the last Lok Sabha I and Shri Kamath placed a C.B.I. Report regarding the Orissa Ministry whose authenticity could not be challenged by the Treasury Benches. And in spite of our repeated request, the C.B.I. Report could not be placed and when a Commission of Enquiry was appointed, as evidence that report had come up. So, don't you think that the C.B.I. report also should be made available whenever a complainant feels that he must have the C.B.I. report to substantiate his charges and that it should not be kept as a secret document?

SHRI N. SREENIVASA RAU: It cannot be done.

H. H. MAHARAJA P. K. DEO: No, Sir. Here the persons involved were the Ministers to which field you cannot transgress your authority in the absence of Lokpal.

SHRI N. SREENIVASA RAU: The C.B.I. is a Police force. Therefore they can go and investigate and register a case under the provisions of the Criminal Procedure Code. For a moment, you forget the particular matter which you have in mind. Take for instance any ordinary offence. I can tell you that the investigation report is not a document which is normally accessible even to the accused in a criminal case because it represents something tentative on which no reliance can really be placed. No reliance ought to be placed on a police report, for, it is primarily meant as an aid to investigation.

H. H. MAHARAJA P. K. DEO: But, in the absence of an institution like the Lokpal, who could look into the conduct of the ministers when the Prime Minister himself or the Cabinet

itself is to arrogate to themselves the authority of the Lokpal and pass judgment on the conduct of the Ministers? And what alternative can there be with regard to the misdeeds except by making the C.B.I. report public? But, it will have its own evidentiary value.

SHRI N. SREENIVASA RAU: But the law does not contemplate that its having any evidentiary value. You are aware that there is a provision in the Criminal Procedure Code which, in a certain sense, says that it is an unreliable document. It says "whatever has been recorded in the course of investigation, shall not be admissible in evidence except only to the advantage of the accused by way of his relying upon contradictions in cross-examinations". In other words, the Legislature, right from the date when the British were here, thought that the statements that were recorded by the police were recorded only for the purpose of helping them in the investigation. But, it should not be relied upon. This is the view of the Legislature. The police Report is based on those statements.

H. H. MAHARAJA P. K. DEO: So, do you think that this report should be kept secret and should only be available to help the investigation and nothing beyond that?

SHRI N. SREENIVASA RAU: Yes.

MR. CHAIRMAN: I want to ask you only one question. That is about the status and position of the Lokpal. The status as suggested in the Bill is of the status of the Chief Justice of India for the Lokpal while that of the Lokayukta, the status should be that of the judge of the Supreme Court. What do you think about it? By putting the Lokpal in that status, is there any danger of the judges of the Supreme Court or the Chief Justice being annoyed of the status given to the Lokpal?

SHRI N. SREENIVASA RAU: I don't think that it should annoy

any sensible Chief Justice. As a matter of fact, the status that you give depends upon the functions. At the risk of taking a little more time, I shall mention something which is very basic and important in connection with such matters. What happened was this. I have issued a circular in pursuance of which all cases relating to officers above a particular level should be inquired into by one of my Commissions of Departmental Enquiry.

In the case of one officer whose conduct had to be enquired into, it was suggested by the Ministry that as he was of a higher official status and drawing a much higher salary than our Commissioner for Departmental Enquiry, it would not be proper to appoint any of them as Enquiry Officer and that some one of a higher status than the accused official should be appointed. Normally what happens when an enquiry takes place is that the head of the department appoints some one under him as Enquiry Officer. The accused official is also in the same Department. Therefore, it would be wrong to appoint a man who is junior to him or even at his level to enquire into the case. But the Commissioners for departmental inquiry are outside any departmental set-ups. These people are something like judges in the way in which they function. Why should you depend upon the status of the accused officer can have no bearing on such circumstances. If you go on challenging the principle, it will affect the functioning of public functionaries. Suppose a Minister commits a theft. A police constable can go and arrest him. That should be the outlook. If the Lokpal is invested by Parliament with certain functions and they are distinct and are not derogatory of the functioning of the Chief Justice. It is a different matter whether the Lokpal is paid more or less than the Chief Justice. You have got a number of experts to whom you pay much more than what you pay to the Chief Justice. Does any one say that there is any thing wrong with that?

SHRI AKBAR ALI KHAN: In your opinion the report of Lokpal will be nothing more than a report of the investigating officer. Am I right?

SHRI SREENIVASA RAU: Well, as the Bill stands now.

SHRI AKBAR ALI KHAN: Do you think that it is right?

SHRI SREENIVASA RAU: I think that it is right. They have not spelt out the details because as far as I am able to gather from the scheme, both the Lokpal and Lokayukta only come in the preliminary stage. As I mentioned, I come under the present scheme at a much later stage also because as a matter of fact almost everyday I look into the reports of finally decided cases. I go through the recorded evidence as one would do while sitting in appeal. As far as I can see, unless you bring it under clause 17, the Lokpal and the Lokayukta do not come into the picture in scrutinising the final reports of disciplinary inquiry after a formal charge is framed. Under clause 17 it is possible for Parliament to invest Lokayukta with other functions. Supposing they are invested with these functions, they would not only advise at the investigating stage but also at the later stage. As things stand now, it is only a question of advice at the investigating stage. Nothing beyond that will happen even at the hands of any other agency that you employ. There are Commissions of Inquiry. Justice Sarkar presided over a Committee. Then there was the Justice Vivian Bose Commission. Justice Chagla presided over a Commission. Their reports were all, if you look at the substance, preliminary in nature, on the basis of which you went and took further action. But that would not in the least take away the value that you are going to attach to them. What happens in the case of Union Public Ser-

vice Commission and State Public Service Commissions? They come at various stages. They do not decide; they advise. A convention is established that their advice is normally accepted. That is precisely what happens in the case of these Commissions also and it is the same thing in regard to Lokpal and Lokayukta.

SHRI AKBAR ALI KHAN: In the case of Justice Bose and Justice Chagla there was regular judicial inquiry; evidence was taken, cross-examination was held and advocates were allowed to argue.

SHRI SREENIVASA RAU: Nevertheless, they were preliminary.

SHRI AKBAR ALI KHAN: It was advisory.

SHRI SREENIVASA RAU: That is what I said: not decisive, but advisory.

SHRI C. C. DESAI: How exactly would the Lokpal investigate a complaint against a Minister? Say, a letter is written to the Lokpal saying that such and such Minister is reported to have taken so much from such and such person. How would you investigate the complaint? What machinery would you use, in what context and with what knowledge the Government had?

SHRI SREENIVASA RAU: That is one of the points on which I wanted to say something. For example, I have no investigating machinery of my own. Actually I rely upon the Vigilance Cells in the various Departments and Ministries and the CBI. Nothing is spelt out in the Bill except that the Lokpal and Lokayukta would appoint whatever persons are necessary for the purpose.

SHRI C. C. DESAI: Can you use CBI for that purpose? Can it act independently of the Home Ministry on a complaint of corruption against a Minister?

SHRI SREENIVASA RAU: That is an exceedingly important point.

That is one of the points I was going to mention. While they should be enabled to make use of the CBI and what I might call....

SHRI C. C. DESAI: Independently of the Home Ministry?

SHRI SREENIVASA RAU: Yes. There should be no need for the Ministry's consent. In most cases it may suffice for you to make use of the CBI and existing agencies and the Lokpal or Lokayukta should be enabled to take an independent agency also in cases of the character that you are mentioning.

SHRI C. C. DESAI: Would you mean the duplication of the investigating staff—the Lokayukta, CBI and the Enforcement Directorate?

SHRI SREENIVASA RAU: It is a matter of practical detail. So far as the Lokpal is concerned, there will be very few cases since they will be mostly concerned against Ministers. So far as the Lokayukta is concerned, he will have hundreds of cases and the CBI will serve the purpose. The cases that will come up will not be of such a character where the CBI cannot be expected to function with detachment. It is necessary to have independent investigating agency for the type of cases which you have in mind.

SHRI C. C. DESAI: Could you give a second term to the Lokpal?

SHRI SREENIVASA RAU: I am entirely against it. He should not be given.

SHRI BHOLA NATH MASTER: Shou'd the Opposition Parties be consulted at the time of appointment of the Lokpal?

SHRI SREENIVASA RAU: There is a provision there. I have no particular objection. But I do not see why it should not be done by convention—not by statutory provision. Theoretically the administration should be responsible for taking decisions in regard to all matters and you should

formally consult only people who are part and parcel of the apparatus of administration. For example, the Chief Justice of India and the Governor are consulted in the appointment of Judges because they are part of the machinery. The opposition is not in a position of responsibility. Tomorrow something goes wrong. Who will be hauled up? It is the Minister. It is opposed to the theory that every responsible decision constitutionally and legally should be only of those in the apparatus of administration and not of those outside.

SHRI SHIVAJIRAO S. DESHMUKH: Excuse me. Would you agree with this proposition that mostly complaints of corruption against the Ministers would naturally come from the members of the Opposition and on the equitable principle that a complainant should have full faith that justice is being done, will it not be proper to statutorily prescribe that Lokpal and Lokayukta should be nominated in consultation with the Chief Justice but also it is discussed with the Leader of the Opposition.

SHRI SREENIVASA RAU: I said by convention you can do so.

SHRI SHIVAJIRAO S. DESHMUKH: Convention would be adequate according to you?

SHRI SREENIVASA RAU: I think so. If you could appoint a Chief Justice of India without formally consulting anybody in the world and our Chief Justices have acquitted themselves well, I do not think the Lokpal and Lokayukta will not similarly do well.

SHRI S. S. N. TANKHA: Could you tell me whether you undertake any inquiries on your own initiative and on your own private information?

SHRI SREENIVASA RAU: Oh, Yes. I do. I am entitled to do. The fact is that soon after, about a month or so after I took charge of the office, I felt that I should have a home

office for this purpose so that people might come to me and give information without any inhibition. I think it can quite legitimately be called private information. I have initiated inquiries on the basis of that.

SHRI TANKHA: No objection has been raised by any one to the procedure adopted by you to act on your own initiative.

SHRI SREENIVASA RAU: No. Under the scheme I am entitled to act *suo motu*.

SHRI TANKHA: I want to know whether you have undertaken any enquiry on anonymous complaints.

SHRI SREENIVASA RAU: Well, I do that. I have found that 90 per cent of such complaints have proved baseless. In cases where I felt that they deserved further investigation, I have had that done. Later on the Home Ministry issued a circular that no anonymous or pseudonymous complaint should be the basis of any investigation. Obviously it would not bind the Commission.

MR CHAIRMAN: Thank you very much, Mr. Rau, for having come and given your valuable advice.

[The witness then withdrew]

II. MINISTRY OF RAILWAYS (RAILWAY BOARD) Spokesmen:

1. Shri G. D. Khandelwal, Chairman, Railway Board.
2. Shri B. C. Ganguli, Member (Staff), Railway Board.
3. Shri S. W. Shiveshwarkar, Director General, Vigilance, Railway Board.

[The witnesses were called in and they took their Seats]

The Chairman drew their attention to Direction 58 of the Directions by the Speaker.

MR. CHAIRMAN: Mr. Khandelwal, I welcome you and your colleagues here for this meeting. I hope you will give us your valuable advice in regard to this Bill. As you are probably aware, whatever you say is liable to be published. With that in mind you may say what you like. Normally everything is confidential. I have pointed out this thing because if something goes out you may not hold us responsible for that later on. You have sent us the note which we have gone through. We want your general impression on the Bill for about ten minutes as to how the Bill could be improved or made effective. After that the Members would like to ask you some questions or clarifications.

SHRI BHOLA NATH MASTER: I wish to point out that the Director-General of Vigilance is to be examined first. It is stated here that he is accompanied by the Chairman, Railway Board and the Member (Staff), Railway Board.

MR. CHAIRMAN: We will leave it to the Chairman, Railway Board. Mr. Khandelwal, what is your opinion about this Bill? How could it be improved upon?

SHRI KHANDELWAL: So far as the principle of the Lokpal and Lokayukta Bill is concerned, I would certainly agree that it is a very worthy and a sound proposition. As things stand in a democracy, not only should the Government and the senior functionaries of Government dispense justice but the public should have confidence that justice is being done. Therefore, the conduct of everybody is answerable. The only point that the forum where the answer ability can be answered should be such as will inspire confidence in the functionaries of Government to the extent that it will not inhibit the officers and the senior functionaries of Government who are to take decisions. The thing should not become such that the people are afraid of taking a decision and taking responsibility; if that

happens, the damage that will be done to the Governmental machinery and the administration of the country will be immense. Therefore, in our remarks which we have sent to this Committee we have mentioned there that it would be better to spell out the qualifications of the Lokpal and Lokayuktas. Although it is provided that the Lokpal will be appointed after consulting the Chief Justice of India and the Leader of Opposition, even then we feel that the man, whoever is appointed, should be of a very high judicial standing. That is our feeling in the matter.

Another thing is that this particular person should be above all pressure. That also is very essential. There should be nothing that he can expect in return for any weighty decision. We have expressed the opinion that there should be no second term either for the Lokpal or for Lokayukta. There should not be even this provision that Lokayukta should be promoted as a Lokpal. When the term is about to expire or when he is about to retire, if there is an inkling that he would possibly get a second term, then he can be pressurised; after all, human nature being what it is, he can also be subject to this pressure. We expect that a person with very high judicial standing would be above this pressure. Only in a rare case something may happen. Somebody may start a propaganda that he was about to retire and this thing happened. The reputation of the dignitary may also be harmed. Therefore we have suggested that there should be no second term for these high functionaries. And not only this, the hon. Committee will also consider if after retirement he can be given any other assignment, whether there may be this question of remuneration or you can utilize him in a honorary capacity. Well, my personal impression is that an office-room, a stenographer and a telephone is an attraction to an officer who has spent his life in a very busy way, surrounded by work; this sort of thing is a temptation.

SHRI C. C. DESAI: Even a house.

SHRI KHANDELWAL: Yes, After food and clothing the most important thing is shelter. That's true. From my personal experience I can say that even this is something for which people hanker. These are the realities of the life today. It has become so difficult. There you have people who help you in so many ways, say, for example, in depositing your road tax. And if you have personally to stand in a queue you will feel lot of hardships or, I should say, indignities. Then these things become temptations. So to keep the reputation of the man that nobody can point his finger that he can be pressurised or there are any loopholes, I would like this committee to consider this particular aspect also.

MR. CHAIRMAN: May I ask you a little explanation about the second page of your memorandum, where you say "there will be redress against political predatoriness interfering..." What are the implications of this?

SHRI KHANDELWAL: This is what I submitted earlier that people, the general public do have a feeling today that unless there is some source they will not get justice. That is a fact today. And when that feeling develops then it can be the other way round also, viz., to deprive somebody else of justice who would otherwise have it. So this specially applies in our democratic set-up where the Minister himself has to depend on votes; every five years he has to go to the general public and ask for votes and approach the common man. There is that thing which I have personally also seen that even Ministers feel that because this problem concerns their constituency, something out of the way would be quite justified. I think if somebody from your constituency comes, not merely do you serve him tea, perhaps a 'khaana' and perhaps a night shelter, but you have to show lot of consideration. Well, some are very adroit and they can parry and send him away somewhat happy but things do happen in which sometimes there is a temptation to yield and to oblige. Well, if

somebody can be helped without harming anybody else, there is no objection. But if it is going to harm somebody else then it is definitely wrong. And therefore, it should be the business of the Lokpal or the Lokayukta to look into that matter.

MR. CHAIRMAN: Don't you think it is a very strong word, for the political parties especially?

AN HON. MEMBER: That is his opinion. We may or may not agree. Probably he has stated that after some experience, after considering the pros and cons.

MR. CHAIRMAN: Alright. Carry on.

SHRI KHANDELWAL: Another point we have raised here is the relationship between the CBI or the SPE and the Lokpal. The fact that an officer is being investigated by the SPE itself can be very demoralising. Now, in fact the Government have come to a decision that anonymous and pseudonymous complaints shall not be taken cognizance of, except in very special cases, and then again under the orders of very senior officers of the Government. For example, take the Railways. On the Railways there had been a convention that the SPE could not start investigations against a gazetted officer without first consulting the General Manager of the Railway concerned. They had to meet him, put before him all the relevant data. The General Manager had the opportunity of explaining that it was not proper, that this officer is not to blame, etc. In case of difference of opinion between the General Manager and the SPE the matter used to be referred here and the Director CBI would then discuss with the Chairman, Railway Board, and this matter would be finalised here. Now, that was apparently a solitary exception only in the case of the Railways. It was, I understand, not applicable to other Ministries. Apparently it was so because the Railways are such

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a vast organization and the officers in the field have to take spot decisions and it was perhaps felt at that time that nothing should be done which impaired the morale of the officers, his ability, his moral fibre to take responsibility and take a decision. That convention or that direction was taken away after the Santhanam Committee Report. Therefore, we have suggested that before the SPE can start investigations, they must take permission from the Lokpal or the Lokayukta, as the case may be, because then these particular functionaries will be able to see whether there is any substance which needs to be looked into, and in any case, there should be these preliminary checks. Otherwise it may be that the SPE may start their own things and it may become difficult for the Lokpal because here also a certain procedure is prescribed. When he gets a complaint then he will follow a certain procedure. So in order to enable him to follow that procedure the SPE should not be allowed to start any investigations on any case without taking permission from Lokpal.

There are various other points. To mention one or two there is certain amount of discrepancy between certain clauses about 'what should be published' and 'what should not be published' and then, of course, the question of the Lokpal or Lokayukta calling for an explanation from the accused. Regarding this, as soon as the complaint has come if he were to disclose the complaint to the accused the accused could in certain cases even make the evidence disappear because he is in his seat and unless the documents are seized the accused may be in such a situation as to influence the decision and, therefore, we have submitted for the consideration of the Committee that this may be at a later stage and not immediately.

Further, so far as the law of limitation is concerned here it is prescribed that so far as grievances are concerned it is one year and so far as allegation it is five years. So far as grie-

vances are concerned it is all right. But so far as the allegations are concerned only in certain specific cases—this limit of five years is very healthy because if something is raked from very hoary past well the poor accused officer may himself have forgotten—the Committee would consider those. We do not have very strong opinion on this subject. We have only tried to draw the attention of the Committee because in one or two types of cases like mis-declaration of age as we had a case where a judge was involved that his age was misdeclared. Now, in this type of mis-declaration, it may be that it is discovered long after the act and, therefore, this five year rule does operate to help him escape. There again such cases are very very few and I would not personally like that you should scuttle this very healthy provision that you have put in here merely for the sake of these rare cases. If you wish to make an exception by mentioning one or two types of such cases that will be all right but if you feel any difficulty I would like to keep this limit and not withdraw this healthy safeguard.

SHRI G. S. REDDI: Is this Bill an improvement on the Central Vigilance Commissioner's office?

SHRI KHANDELWAL: Yes, Sir, it is. The CVC institution does not touch the politician. It does not cover the Minister. It covers only the officials and, therefore, to that extent it is an improvement.

SHRI G. S. REDDI: It is the opinion of some Law Professor of a University that if Ministers are included in the Lokpal Bill it will be a death blow to the democracy because Ministers are always responsible to the Parliament. Therefore, they are hauled up in the Parliament. Whereas if you subject them to the Lokpal as is the case of Secretaries and gazetted officers it will be a death blow to the democracy.

SHRI KHANDELWAL: Perhaps this particular Professor might include the Members of Parliament within the jurisdiction of the Lokpal.

SHRI G. S. REDDI: The question is about the strong word that was used. The Minister or the Member of Parliament remain only for five years whereas the official has a longer life. Therefore, their action is required to be placed before the Lokpal.

SHRI GANGULI: Sir, I am incharge of staff matters.

The question that you have raised is as to why to provide a remedy against a Minister and this would mean the burial of democracy. The conception of a Minister in our Government, in democracy, is that he is the highest Executive and all the executive functions of the Government are undertaken on behalf of the President under the orders of the Minister and therefore he is answerable for the period of five years. We function on the delegated authority. The Minister, once he is the Minister, he functions for the President. He has got to answer to the people for his actions and to-day there is no forum provided in the whole of the Constitution of India, where through, where a citizen can get a redress for a grievance against the highest executive. This seems to be the purpose of the Lokpal Bill.

Every Minister has been allocated business by the President on the advice of the Prime Minister. Once the business is allocated to the Minister—say for Industry—the Minister discharges Presidential power on the allocation and the Prime Minister has no jurisdiction over that Minister in the matter of the allocated subject, except where this is provided for.

SHRI G. S. REDDI: You are wrong.

SHRI GANGULI: I beg to submit that the highest executive is the Minister on behalf of the President. The Constitution has not provided any remedies for his actions and I as a citi-

zen cannot take my grievance to the Parliament. I should have some forum where I can take my grievance. There I can say that I am suffering from such and such decision of the Government.

SHRI AKBAR ALI KHAN: That can be done through questions in Parliament, through call attention notice, through many other motions.

SHRI GANGULI: I have got to go to a Member of Parliament to sponsor my grievance. If he agrees then only he will put the question. But in this case, I submit an application to the Lokpal and he will consider the matter and take necessary action.

SHRI KHANDELWAL: I do not think it is going to be the burial of democracy, it is going to be the glory of democracy.

SHRI PURNANAND CHETIA: In the British Parliament if there is any allegation of corruption against the Minister, then there is a Commission of Enquiry constituted by the Government. So far as our country is concerned if there are such allegations against a Minister a Commissioner of Enquiry can also be constituted as in the case of Pratap Singh Kairon.

SHRI KHANDELWAL: The machinery of such a kind should be easy of operation. The law courts are there. In that sense, one may ask: why should the Ombudsmen or Lokpal be there when the law courts are there. It is very difficult to go to the law courts for everything and so we have to have a certain machinery.

SHRI PURNANAND CHETIA: In the case of Shri Pratap Singh Kairon it was done.

SHRI KHANDELWAL: It is only when, something very very big happens, in a big way. It is only in such cases can Parliament be expected to devote its time and energy. In a big case the Commission of Inquiry is appointed, not in small matters. That

poor man or poor person may not have sufficient influence to put through his case. You have a constitutional provision that anybody can put a petition to Parliament. Have you been able to deal with all of them? To what extent they have benefited? The pure and simple machinery is to provide for a Lokpal and that will be much simpler and more effective.

MR. CHAIRMAN: In respect of petitions about ninety-nine per cent have been able to get their grievances redressed.

SHRI KHANDELWAL: Numbers how much? That is the thing.

MR. CHAIRMAN: Shri Deshmukh wanted to put a question.

SHRI SHIVAJIRAO S. DESHMUKH: The basic purpose of the Bill is to wage the war against corruption. As an official, you have got long experience, and you have spent many years in the Administration. So, I want to ask one or two questions. What steps should be taken to give a dent in the way of organised types of corruption which are prevalent in the Department of Railways, in the Department of Revenue, in the Department of Registrar of Documents, in the department of Institution of Engineers, working under Railways, or even the CPWD or the State PWD where the corruption is of frequent nature. A police official whose job it is to watch the prohibition offences gets regularly some weekly payments. A registrar of documents whose duty it is to register documents does not register any document unless he is paid personally a prescribed percentage. In case of Railways one of your commercial managers has expressed publicly, when Railways were asked to face the tremendous situation of moving large quantities of wheat from surplus areas to the deficit States, that if you give me twenty lakhs of rupees, I will give you 10 lakhs of wagons at the rate of Rs. 2 a wagon. In case of

Engineers, unless a percentage of the Bill is paid to the Engineers to pass a bill, things are not sanctioned. Do you think that mere enactment of this type or even execution of laws through the Lokpal or Lokayukta will succeed in curtailing corruption in the country? What is your view?

SHRI KHANDELWAL: It is a very interesting question that you have raised. You said about some commercial manager having said that if he was given Rs. 20 lakhs he would give 10 lakhs wagons at the rate of Rs. 2 per wagon or some such thing. Now, I may tell you, I have not at all come across such a case and I have not heard such a thing from anybody. With 34 years of service, I can say that if any such fellow was talking like that, he should be foolish, it is sheer non-sense. Nobody can produce a lakh of wagons or ten lakhs of wagons in a day or two. The entire loading of the Indian Railways per day on broad gauge is about 22,000 wagons per day. This includes coal, iron ore and so many things. So, the position is like this. But you have raised a very interesting problem. As far as corruption is concerned, the attitude to corruption is concerned, somehow or other it is prevailing. It is called

ऊपर की आमदनी business: The old lady in the village asks the boy: बेटा तन्हा कि नी मिलेगी He says he gets so much pay Then she asks और ऊपर को? I may pose another problem to answer the question. You have hanged people for murder. That has not stopped murder—murders are still committed. You have a provision, and therefore, at least there is a deterrent to some people. But still you will find that some people commit murder. I would submit that all these institutions, the Lokpal, the Lokayukta etc. would be just like that. If you expect that by the appointment of the Lokpal or Lokayukta the whole administration will be cleaned up, it will not succeed. That is based on the character of the people, of a country, of a nation. As a Railway man, I can tell you one thing. I can tell you about this. I went to a

conference in Europe in the month of June. I had the occasion to travel on the European Railways. I had occasion to talk to the people. Travel without ticket is something which is never thought of by those people. They will commit burglary, they will hold up a bank, they will murder, they will commit all sorts of things, but travelling without ticket is never thought of. If anybody for some reason has to travel without ticket, it is assumed that he has come at the last moment and could not purchase ticket and actually there is no penalty prescribed. He just pays the exact fare because it is assumed that knowingly he will not travel without a ticket. But what is the situation in our country today? Our latest estimate is that more than 5½ per cent of people are travelling without ticket on Indian Railways, in certain sections, in certain railways it is even 12 per cent. The assessment is at least 12½ crores are lost per year. My personal opinion is, it is probably 25 crores or so, due to ticketless travel. It all therefore depends upon the general outlook of the people, the general character of the people. In other countries nobody asks this:

नजराना या ऊपर की आमदनी

This is your trouble today. While mentally, or shall I say I say spiritually, you have not accepted that as a crime, politically you are accepting that it is something to be put down. Today there is a difference in our action and thinking or desire. This Bill is only just to check the tendency.

SHRI S. S. DESHMUKH: Your opinion requires a small amendment. For instance, the law prescribing penalty of death for murder is not supposed to be operative against organised murders by millions, say, in the event of a war. It is only supposed to check individual commission of offences here and there. My question specifically related to prevalence of organised type of corruption in the form of something like upar ki amdani. To

curb that type of corruption what specific machinery you have in mind?

SHRI KHANDELWAL: After the last war, there was war Crimes Tribunal. Murder of millions of jews was treated as crime and some people were punished. But today's thinking is different. I am trying to be realistic. You will never succeed in eliminating this type of thing. There can be no machinery which will eliminate this. As the saying goes, even by counting waves, people can make money. You will never be able to eliminate it unless the attitude and psychology of the nation changes.

SHRI S. S. DESHMUKH: Administrative excesses or injustices in individual cases usually result because of mechanical treatment to petitions and revisions. If a man at the lowest ladder is done some injustice, no amount of revisions or petitions to higher authorities can have any effect. My point is that this institution of Lokpal or Lokayukta, by passage of time, will revert to the mechanisation of justice.

SHRI KHANDELWAL: You are probably referring to the fact that the volume will be such that the Lokpal or Lokayukta would be snowed under and he cannot possibly look into every case. You are right. It is quite likely to happen. The only thing that you are trying to create is the fear of accountability. It is like somebody picking pocket in the bus. Probably 90 per cent of the pickpockets get away and in ten cases they may be punished. I think this is all that we can hope to achieve.

MR. CHAIRMAN: Can we have some idea of the volume of work done by the Director of Vigilance in the Railways so that we will know whether you are overwhelmed by the volume. The other witness who appeared before us said that the volume was there to start with and gradually it dropped down. In the beginning he was afraid that the work might be too much. But contrary to expectations, after a couple of years it went

down. In the Railways, what is the position?

SHRI SHIVESHWARKAR: I might be able to give you an idea. I have not got the exact figures with me. I can give you the approximate figures. Complaints are of two kinds. One type comes under grievances as the Bill calls them. Our Vigilance organisation does not deal with them. They go to the respective administrative directorates of the Board where they are examined. We in the Vigilance organisation deal with complaints which have a vigilance angle, namely, corruption, nepotism or any other aspect which involves a private motive for a public act, so to speak. On an average in a year probably we have over 10,000 such cases, maybe arising out of preventive checks which we ourselves conduct in the departments which we call sensitive or out of complaints. Some departments are more sensitive, e.g. engineering stores, than some other departments. Information is also gathered from various sources.

Coming to the gazetted and non-gazetted classification, it is easy to count cases relating to gazetted category because every such case, after investigation, has to be referred to the Central Vigilance Commission for advice. On an average probably we have been sending more than one case per day to the CVC for advice. It comes to about 40 cases a month.

SHRI S. S. DESHMUKH: On the background of this volume of vigilance cases arising out of Railways, I would like to ask you one question. You invite tenders. One tenderer feels that injustice has been done to him inasmuch as his rates were the lowest and he was in a position to undertake the work. But for some God's own reasons, he has not been awarded the contract. There are many such cases where commercial or contractual relations arise between the President of India and a private citizen. These relations have been exclusively left out of the present scheme of Lokpal and Lokayukta Bill. On the back-

ground of the volume and type of cases which you have in mind, do you think that it will have a salutary effect if these cases are also included within the purview of this Bill?

SHRI SHIVESHWARKAR: If I have read the Bill correctly, what have been excluded from the jurisdiction of Lokpal are grievances in regard to such matters, not probably allegations in regard to such matters. There is a distinction between allegation and grievance.

MR. CHAIRMAN: Mr. Mukherjee from the Ministry wants to say something.

SHRI MUKHERJEE: What you have said is correct. Only the stage after the transaction is entered into is excluded because that becomes a justiciable issue. The stage before that has not been excluded.

SHRI AKBAR ALI KHAN: Suppose a tender should have been given to a particular person but not been given, can he also apply to the Lokpal?

SHRI MUKHERJEE: If he has a grievance that he should have been given the tender, that point is not excluded. If the person who has been awarded the contract has a grievance in regard to the fulfilment of the terms of the contract, that grievance is not included because . . .

SHRI S. S. DESHMUKH: That is the normal civil liability. That is clear. What I want to emphasize is, normally any law court will refuse to entertain any dispute about what transpired between private citizens and the State before entering into contractual obligations. This is a type of case where after finalisation of tender or after the occurrence of the event, a person is left with the feeling that injustice has been done to him by the concerned official. He may not be in a position to prove in a court of law to what exactly is the nature of the grievance. Do you think that such types of cases—whether it is allegation or grievance—let us not go into

those niceties because we have been arguing that one is not distinguishable from the other—are covered by the existing provisions?

SHRI KHANDELWAL: Mr. Ganguli is a Civil Engineer by profession. He would like to answer this question.

SHRI GANGULI: As Mr. Mukherji explained, the provision here in the Bill is that you can always take these things to Lokpal except that you cannot take up actions arising out of the terms of the contract. If you have grievance regarding the award of contract, you can take it to the Lokpal. There is already certain in-built machinery in the award of contract which is quite comprehensive. From the second schedule of this Bill you will find that you can take the grievance against the award of contract to the Lokpal if you want to. But you cannot take the actual working of contract to Lokpal. For your information I may tell you that all contracts in the Railways are not just given out like that. There are tender committees where three officers sit—one from the Finance, one from the contracting branch and another from a third department. They go into all the details of the tenders and after that they make their recommendation. Then only a tender is accepted by the appropriate authority. It is not that this is left to the whims of any single man.

SHRI SHIVAJI RAO S. DESHMUKH: Rule of three is no different from the rule of one.

SHRI GANGULI: A rule of thousand and also is no different from the rule of one. You can extend it as much as you like. There is already an inbuilt machinery for this purpose as explained by me earlier. On top of that, there is the statutory audit which goes into these things.

SHRI SHIVAJI RAO S. DESHMUKH: Yet the Public Accounts Committee is flooded with so many things.

SHRI GANGULI: Out of an expenditure of Rs. 400 crores if only an item

or two of Rs. 200 s questioned by the Public Accounts Committee, there is nothing basically wrong. You should take into account the totality of the figure.

SHRI S. S. N. TANKHA: From page 4 of your memorandum, in the middle of the page I find you are against any extension being given to Lokpal or Lokayukta. According to the present Bill his term of office is 5 years. In the event of our deciding not to give him further extension, would you agree that his term of office may be made slightly longer than what is provided in the Bill, say 6 or 7 years so that his office may not come to an end with the end of one life of Lok Sabha or do you think that even five years is a long enough period and neither an extension of this period by one or two years nor re-appointment for another term need be considered?

SHRI KHANDELWAL: I must frankly admit that I have not applied my mind to this aspect of the thing. You are aware that the term of the Auditor General is five years. There are other cases also like that. I thought that perhaps that is the way the mind of the legislature is working. All that I can say on the spur of the moment is that the persons whom you appoint to these posts will naturally be aged people, in the sense men with plenty of experience behind them and all that. If you give them unduly long period, the health of these persons may fail in the middle. Supposing a man's health breaks down and he is not in a fit condition, how can he function?

SHRI S. S. N. TANKHA: He may have to retire.

SHRI KHANDELWAL: You have no provision to sack him. You can only remove him when he has misconducted himself.

SHRI S. S. N. TANKHA: It is the view of some of us that if you are giving him only one term it should be for a longer period than five years.

SHRI KHANDELWAL: It is stated somewhere in the Bill that the Lokpal or a Lokayukta shall notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office. That is a marginal thing.

SHRI S. S. N. TANKHA: Do you agree that only a five year term should be given or a slightly longer period of 6 or 7 years may be considered?

SHRI KHANDELWAL: On the balance a five year term may be considered as a very fair assignment.

SHRI S. S. N. TANKHA: In your memorandum on page 8 in para 7, you have stated that you don't favour the appointment of Lokayukta as Lokpal. Why so?

SHRI KHANDELWAL: Exactly for the similar reason of being pressurised. We should not leave any scope or any latitude for anybody to suspect that there can be any pressures brought on these people.

SHRI S. S. N. TANKHA: We have not made any rule about the minimum age for this appointment. A junior man may be appointed at the age of 40 or 45 as Lokayukt. If he gets only 5 years and is not allowed to carry on in any other job, would it not be a great hardship on him?

SHRI KHANDELWAL: You have to balance the two things. Just now an hon'ble Member said that the corruption is so wide-spread and rampant. Nobody can expect that this man will meet with success in all the cases and root out once and for all the corruption that is so rampant. Actually, the effort of this Bill is to build up an image and confidence in the public in general that everybody is accountable and answerable. I think it will militate against that objective if you leave any allurements of promotion in any shape or form.

SHRI S. S. N. TANKHA: May I remind you that the Judges of High Courts are given promotion as Supreme Court Judges. The Chief Justices of

the High Courts are promoted as Chief Justice of the Supreme Court. Now is it not an allurements for them? Do they go wrong?

SHRI KHANDELWAL: The point is that that is a career. They are paid servants of the country in a way and it is a career. Here the Lokpal or the Lokayukta should not be treated as a career.

SHRI S. S. N. TANKHA: Then who will care to take up this office?

SHRI KHANDELWAL: You will have to select them. He may be a Judge of the Supreme Court, may be a Judge of the High Court, who has done his normal term.

SHRI S. S. N. TANKHA: Once you say that a judge of the High Court can be appointed, and he cannot go back to the High Court, then will it not be a disincentive for him?

SHRI KHANDELWAL: You have, for example, the post of Auditor General. He is appointed for five years. After that he cannot hold any office.

SHRI S. S. N. TANKHA: Auditor-General is not a junior man. I am saying the Lokayukta can be a junior man.

SHRI KHANDELWAL: Do not appoint a junior man as Lokayukta. Lokayukta is a very responsible position and a position of great dignity. You should appoint only senior and mature people.

SHRI BHOLA NATH MASTER: You have got a very elaborate machinery for vigilance even for the clerks in your Department and this has become a regular cadre of service, a regular allurements for the appointment to the posts in the Vigilance Department. As Mr. Khandelwal has said that this Lokpal and Lokayuktas Bill is simply for instilling fear that no corruption should prevail among the Ministers and high officials as has been in your office. The appointment of a Director

of Vigilance has not reduced even an iota of corruption. Don't you think like that?

SHRI SHIVESHWARKAR: First of all as regards the cadre or strength of the Vigilance organisation, well, actually there is no cadre because all the officers are on a fixed tenure basis. Most of the Vigilance Inspectors come on a three year tenure basis. It is extended to five years in some exigencies like investigations remaining pending or on the basis of merit. But there is no permanent cadre of vigilance at all.

SHRI BHOLA NATH MASTER: But you have got permanent machinery.

SHRI SHIVESHWARKAR: Permanent machinery with temporary hands. Even the posts are not permanent.

SHRI BHOLA NATH MASTER: The posts may not be permanent but the machinery is permanent.

SHRI SHIVESHWARKAR: So long as the posts are not permanent, the machinery is not permanent.

SHRI BHOLA NATH MASTER: What is your experience? Whether after your appointment as Director-General of Vigilance has corruption decreased or increased?

SHRI SHIVESHWARKAR: This question is directly related to the question as to the extent of corruption. If it is measurable, then we can say that it was so much in 1963 and so much in 1964 but the measure and the extent of corruption has been found rather not very tangible. I believe there have been statistical surveys sometimes into some Departments by the Statistical Organization attached to the Cabinet Secretariat. But unless some kind of statistical survey is made, we cannot say. Otherwise it will simply depend on one man's opinion against another whether corruption is increasing or decreasing.

MR. CHAIRMAN: What the hon. Member has asked you is whether after the appointment of the vigilance Directorate is there no check on the corruption and to what extent?

SHRI SHIVESHWARKAR: In our opinion there has been a considerable check. For instance we have been regularly making preventive checks by surprise visits in accordance with the programme which has been drawn out at high level between the Home Ministry and the CBI. The very fear of surprise checks reduces to a certain extent the incidence of corruption. After all in an organization like the Railways with its 1.5 million employees there is a large block of honest people. There is a little block of incorruptible and honest people. Then there is a block of incorrigible people. There is a large middle group which can be swayed here and there. Our investigations, our punishments, our various processes that we do are aimed at keeping these people in a controlled position. But the incorrigible ones we try to remove.

SHRI BHOLA NATH MASTER: Mr. Khandelwal was quite frank. There is a human weakness amongst all of us. Don't you think the appointment of an Anti-Corruption Department is appointment of Corruption Department?

SHRI GANGULI: As Mr. Shiveshwarkar is trying to explain, if you take the cross-section of any country's population, there are three distinct groups. One is the incorruptible group. Their ethics is highly developed. You cannot corrupt them. There is one group which is always corrupt. Whatever you do, you cannot reform them. There is a middle group of people which can be swayed this side or the other.

SHRI AKBAR ALI KHAN: What is the extent of that middle group?

SHRI GANGULI: That depends upon the economic and other conditions prevailing in the country. During my father's time, the man who was the Deputy Chairman of the Constituent

Assembly, stated his life on Rs. 100 or so. He had a big family. He found that this Rs. 100 was not enough but he lived on that. We have come to a stage when this Rs. 100 need cannot be met by Rs. 5000. So the extent of the middle group has become large today.

SHRI SHIVAJIRAO S. DESHMUKH: May I have the opinion of the hon. member that the type of corruption which I have in mind is: take the case of Engineers. He is liberally paid in the existing economic conditions still he expects '*Oopar ki amdani*' at the rate of 1 per cent. This is corruption which is neither related to the scales of pay nor related to qualifications nor related to the conditions prevailing in the country.

SHRI GANGULI: I am an Engineer who in his life executed contract for over Rs. 100 crores. Even in the engineers group I can give examples of a large majority who are incorruptible. If you think that by any salary paid to them, they can manage their affairs, you are wrong. I am paid the highest salary; still I cannot make both ends meet. The incorruptible percentage increases if you can increase the middle cross-section. It depends upon the economic pressure and other factors. The ethically developed portion will always remain constant. You cannot corrupt them. There is only the one section, the middle section, which will start leaning towards the incorruptible side depending upon the economic conditions of the country. Today the economic condition in the country is one of the primary reasons for all talks of corruption that we hear. Otherwise, we would not have heard even one-fourth of it.

SHRI BHOLA NATH MASTER: That means the Lokpal will be a simple addition to make the people feel that they should not be liable to be corrupted. Do you think that no useful purpose would be served by this Bill?

SHRI GANGULI: As we have explained before, this is another machinery of accountability that we are creating to see that even under the adverse conditions whether we cannot add a little bit more people to who are incorruptibles and nothing more. We should try our best, with all the limitations put by the economic conditions, to provide another machinery of accountability, that is all.

SHRI C. C. DESAI: In paragraph 7 of your memorandum, you have stated that the grounds of investigation should not be conveyed to the person concerned until a later stage. Now, the procedure adopted is this. The Lokpal or the Lokayukta, as the case may be, receives a complaint or an allegation. He tries to find out whether there is a *prima facie* need for investigation or not. If he finds that there is a *prima facie* need for it, it is all right. Then, we should send a copy of the grounds of investigations of the persons concerned. But, he should not set in motion any investigation until the person concerned has been advised of the investigation. I do not follow that exactly. Do you want to hold the investigation behind the back of the person concerned?

SHRI SHIVESHWARKAR: Sir, investigation involves gathering of facts, taking of statements of witnesses and gathering of documentary evidence and so on. Therefore, if the Investigator or any authority like the Lokpal sees that there is a *prima facie* ground for sanctioning investigation and if he comes to that conclusion, then he starts the investigation. He must also think in a far-sighted manner as to how best that investigation will succeed. If he launches upon an investigation in a manner which will leave loopholes for the evidence from witnesses etc. being tampered with, then it will not succeed. Therefore, we have suggested that a copy of the complaint need not be given to the accused person in the very first instance. As a matter of fact, in all

the investigations as at present exist, normally, the accused is in the dark about investigation until the material is gathered, as it is fair to the accused if he is asked to give his views at some later stage.

SHRI C. C. DESAI: Nothing is done in secrecy or in dark. Even the Cabinet secrets are out. You know when there is collection of papers or gathering of evidence or asking of questions, then he comes to know that something is going on against him. That is demoralising him. It is not fair to him or to the administration of which he is a member. So, once you start an investigation and once you have come to the conclusion that a proper case has been made out that the investigation should be started, then the grounds of investigation should be communicated to the person. This is what I feel.

SHRI SHIVESHWARKAR: I have had quite a lot of experience about the vigilance investigations in the railways. I know that sometimes investigations do leak out. You will be surprised to know that only a small number leaks out. But a number of investigations do remain secret. These days quite a number of things leak out. And people talk about them. On the other hand the other risk is rather too much—it should be nipped in the bud—namely the investigation which we want to launch by informing the accused first. He then tries to do everything to counter the moves. After the investigation starts, we want to avoid that situation. I have my own experience and I can say from the series of investigations which we have made, that we could not have done that if we had disclosed to the accused in the very first instance as to what we are doing about it.

SHRI C. C. DESAI: Anyway, I won't argue with you any more on this. My next question is this. Do you wish to retain the jurisdiction of the Union Public Service Commission in regard to punishment to officers or

would you vest that final authority in the Lokpal? Or should there be a small investigating authority within the U.P.S.C.?

SHRI SHIVESHWARKAR: What the existing provision of the Bill provides for is that the Lokpal will send his report to the competent authority. Thereafter, it is for the competent authority to take action on that. It is only when the Lokpal is dissatisfied with the action taken that he sends a report to the President.

Now, when the competent authority acts on such a report, then the competent authority has to act in accordance with the law under the Constitution. Therefore, where the Constitution provides for consultations with the Union Public Service Commission. I do not see how that obligation on the competent authority to consult the U.P.S.C. is removed by any of the sections of the present Act.

SHRI C. C. DESAI: My question is this. What is the right thing to do? Whether the power should vest finally in the Lokpal or should it vest with the U.P.S.C. as at present?

SHRI SHIVESHWARKAR: In our view the present provisions of consultations with the U.P.S.C. should remain.

SHRI C. C. DESAI: There is one more point. Mr. Khandelwal says that the extent of loss on account of ticketless travelling is something like Rs. 24 crores. You don't give statistics about this. How do you arrive at this loss to the public exchequer?

SHRI KHANDELWAL: We make sample surveys. For example, every five years or so, we appoint an officer in the Railway Board to make certain sample surveys and make certain surprise checks. At present such an officer has been functioning for about a year. He has already made a sample survey of many railways. So, this is like any statistical information. But, I cannot say that I have done

100 per cent checking. We have made sample surveys in railways. On certain days, the officer concerned goes there and catches the people. Of course, the penalty is levied or the fine is imposed and so on and so forth. In more than one case the checkers have had to flee for their lives.

SHRI GANGULI: Statistically the loss is Rs. 12 crores and not Rs. 25 crores!

SHRI AKBAR ALI KHAN: Of course. Substantially, I am glad that you agree with the fundamentals of the Bill. You think that this will further improve the conditions as they exist to-day.

Now, I would like to know—you said in reply to Mr. Desai's question that a sample survey is made with regard to the ticketless travelling—whether you have made any sample survey regarding the loss suffered by the purchase of stores in any way. You know that millions of rupees are spent in the purchase of stores. And do you think that by and large everything is quite all right in the railways? I would also like to put another question. Apart from the purchase of stores under the contracts and other matters, as Shri Shivaji Rao referred, are you satisfied, as the Chairman of the Railway Board or have the members of the staff realised that by and large the railway is above all these things? Or is the loss very negligible? I want a specific answer to this because, as things come before us, this is one of the departments where there is a lot of complaint of corruption—I may be wrong and our information may be wrong—and so I would like to know about it.

SHRI GANGULI: With your permission, Sir, I would like to explain. There are losses through bad purchases, there is no doubt about it. We have a machinery in our organisation itself what we call inspections. There is also the Inspection Wing of

DGS&D which also we use for certain purposes. Certain purchases we make through our own inspection. And on top of that, we have what may be called the preventive checks. I would not say that we are all above board; it would be a false claim to make that we are all above board. There are shortfalls in our stores purchase organisations also. But my personal view is that you probably hear these complaints on Railways so much because we touch you in every sphere of your life; that is, we come in contact with you every day, in some form or other.

SHRI S. S. DESHMUKH: Mainly because of accidents.

SHRI GANGULI: Anyway, I do not want to take your time on this today. I will give you a long story if you come to my office one day! Anyway, I do not think we need be worried or alarmed about our stores; because if they were so bad, we would not be able to keep our assets moving. Our assets are not, after all, stationery assets. A lot of our stores go into moving things. I may tell you that we are not that bad as you might think.

SHRI AKBAR ALI KHAN: We are at present all concerned and are deeply interested in this thing, otherwise this Bill would not have been brought. But what I want you to appreciate is that the responsibility of such higher officers as you are, is much greater and you cannot just say "Well, Sir, we are not so bad". Our information may not be quite correct. Even 50 per cent or more than 50 per cent may be wrong. We are trying even to catch hold of Ministers if there is anything wrong. For example, at Bombay, Calcutta and Madras there are people who can supply you tickets at black market rates. There may also be an exaggeration in this. But what I want to impress upon you is the idea of this Bill and that our effort should also be supported and corroborated by your efforts so that things may improve and our country may be in a better condition.

SHRI GANGULI: Every one of our top officers has spent his life on the railways. And I can assure you that it is our effort, honest efforts, to see that we leave the Railways in a better condition than we got it. Our endeavours are there. Every day we are trying. And I can assure you that there will be no lack on our part to bring an improvement. That much I can assure you.

SHRI PURNANAND CHETIA: So far as high rank officers are concerned, there is nothing to complain. But so far as lower levels are concerned, there is something wrong. This is our view.

SHRI KHANDELWAL: I may very humbly submit that as people who have devoted all our life to the Railways, in fact, we are emotionally involved with the success of the Railways. I can tell you that senior rank officers feel as if it is their personal, family business, and if things go wrong they feel unhappy. And you will find officers in every Divisional Headquarters who, if something goes wrong, would not hesitate to go even at 2 o'clock in the morning to leave their home, their family, and go to the scene and do something to set things right. This is the reputation that the average railway man has built up today. But, unfortunately, this is being eroded and this erosion comes because outside influences are coming into play. And the feeling that junior should look to their seniors for punishment as well as rewards is being interfered. This is being eroded. I wish to point out that we are all old; we have very little time left. We are going to retire. And it pains it hurts and makes us almost weep to realise as to what is going to happen to the Railways. Officers should

SHRI AKBAR ALI KHAN: Officers should not pay heed to 'irregular' requests from MPs'.

SHRI KHANDELWAL: With lot of pain in my heart and with great humble submission I would say that

what is happening is that on the floor of the House officers are named. Unfortunately, if officers are named in the House, demoralisation is inevitable. It can work both ways. If, say, an officer is approached by an hon. Member of Parliament for something, he always has the fear that if he does not agree he is liable to be named and his name will be published in the newspapers the next day. I remember Mr. Bhim Sen Sachar's article where in he said that "Official hairarchy is a body; the soul is provided by the political set up". That is the real situation.

SHRI S. S. DESHMUKH: Where is the brain?

SHRI KHANDELWAL: Well, if you trust the official hairarchy it will supply the brain and carry out your policies.

SHRI G. S. REDDI: May I draw attention to the words used by the Chairman, Railway Board, viz. "there will be redress against political predatoriness interfering . . ." This is a great reflection on the Member of Parliament and the Ministers, made by the Chairman. In fact, this is a very bad reflection on the Members of Parliament. Kindly modify that word.

SHRI KHANDELWAL: I am extremely sorry. I would like to point out that we have used this both for official and political bodies. But if you feel that this should be withdrawn we certainly have no objection to withdraw it. Thank you very much.

MR. CHAIRMAN: Thank you for coming all the way to give evidence before the Committee.

(The witnesses then withdrew)

(The Committee then adjourned)

**MINUTES OF EVIDENCE GIVEN BEFORE THE JOINT COMMITTEE ON THE LOKPAL AND
LOKAYUKTAS BILL, 1968.**

Friday, the 23rd August, 1968 at 17.00 hours.

PRESENT

Shri M. B. Rana—Chairman.

MEMBERS

Lok Sabha

2. Shri C. C. Desai
3. Shri Gangacharan Dixit
4. Shri Gunanand Thakur
5. Shri Hem Raj
6. Shri Thandavan Kiruttinan
7. Shri Bhola Nath Master
8. Shri V. Viswanatha Menon
9. Shri G. S. Reddi
10. Shri Yogendra Sharma
11. Shri R. K. Sinha
12. Shri S. Supakar

Rajya Sabha

13. Shri Gurmukh Singh Musafir
14. Pandit Sham Sunder Narain Tankha
15. Shri Purnanand Chetia.

LEGISLATIVE COUNSEL

Shri R. V. S. Peri-Sastri— *Additional Legislative Counsel, Ministry of Law.*

Representatives of the Ministry of Home Affairs

1. Shri N. K. Mukarji—*Joint Secretary, Department of Administrative Reforms, Ministry of Home Affairs.*
2. Shri S. P. Mukherjee—*Joint Secretary (V) Ministry of Home Affairs.*
3. Shri S. P. Mukerji—*Director, Department of Administrative Reforms.*
4. Shri A. P. Veera Raghavan—*Deputy Secretary, Ministry of Home Affairs.*
5. Shri S. M. Chikermane—*Under Secretary, Department of Administrative Reforms.*

SECRETARIAT

Shri M. C. Chawla—Deputy Secretary.

WITNESS EXAMINED

Shri P. N. Saprū—Ex-M.P.

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

The Chairman drew his attention to Direction 58 of the directions by the Speaker.

MR. CHAIRMAN: Mr. Saprū, it is very kind of you that you have taken the trouble of coming over here to give your valuable advice on the Lokpal Bill. I need not read out to you the Speaker's direction as you are an ex-M.P. Whatever you say will be taken down and may be liable to be published. What you say may not be confidential.

SHRI P. N. SAPRŪ: Thank you very much, Sir, for inviting me. I consider it a great honour to appear before this Committee. I am very grateful to you for having invited me to do so. May I just explain one thing: There is a paper which has been circulated in my name. What actually happened was, I was just going to leave for a meeting of the National Herald in Delhi and I hurriedly dictated something. I could not dictate the whole thing. Secondly, I found that the copy of the Bill with me was missing. Therefore, I could not give you my written Memorandum. My note gives to you some sketchy ideas.

MR. CHAIRMAN: What we usually do is that you give us your ideas in short as to what a Lokpal should be and then the Members will ask you some questions for clarification.

SHRI P. N. SAPRŪ: You know this idea of a Lokpal in political theory is a contribution of the Swedish Constitution. This model was followed in a modified form by Denmark, Norway, New Zealand and even Britain which has got a Parliamentary Commissioner.

Modern States have become a vast leviathan and have got many welfare

activities and therefore administration has become a complicated task. Therefore, it is thought that there should be a person of high stature to look into the grievances or complaints of the people.

Corruption is more rampant than it was before. We have to deal with also.

I thought it, therefore, desirable to have an institution of the Lokpal. He is like the Comptroller and Auditor General. In a very illuminating document Mr. Justice White in the organ of the Commission of Jurists, it was pointed out that the idea of the Lokpal is an extension of the idea found in the British Constitution in the person of the Comptroller & Auditor General. Therefore, I would say that his position should correspond more or less to that of the Comptroller & Auditor General. His position should not correspond with the Chief Justice of India. Otherwise I think that would create complications because we have got a Constitution which is controlled by an instrument and the interpreters of that instrument are the Supreme Court, and its Chief Justice is the Court President of the Supreme Court. Therefore, it would not be right to make him at par with the Chief Justice of India. I think, he should be at par with the Comptroller & Auditor General.

It is essential that the Lokpal should be a person who is above parties. He should be trusted universally by all sections of the House. How can we get that unanimity of opinion? In Britain they have got the institution of the Privy Council, and there are

Commissions of the Privy Council or Committees of Privy Council. We have not got any institution like that. When I look into the matter, my suggestion is this, that the Lokpal should be appointed by Parliament on the recommendation of the Prime Minister and Leader of the Opposition, or, if there is not one leader of the Opposition, then a leader selected by the opposition leaders to represent them. If you want you may have the Chief Justice of India. I am not a very great believer in having Chief Justices for these purposes, but you may have the Chief Justice of India. I wish it could be possible for us to substitute. The Speaker or the Chairman of the Council of State in place of the Speaker, but you know, the Chairman and Speaker hesitate to take that responsibility. I said that when we had the Press Bill. Therefore we may have the Chief Justice of India.

Another thing is this. The Chief Justice of India must not be made to look forward to any appointment as Lokpal after his retirement, after his term, because that will finish whole judicial independence. The British theory is that Judges must be independent. Now, how are you to secure that independence? The only method which the English could discover is life tenure. Once appointed you are a judge. But here we can't have that. Life tenure does not work in this country. In other countries people resign when they feel that they are unfit to do certain jobs. I will give you one instance. There was a very great judge in Britain Sir Fitzgibbon Leslie Stephen. He was a Law Member in India and he was the author or the framer of the Indian Evidence Act, a barrister of great reputation. He became a judge of the English high court. In the later years of his life he used to come completely drunk and questions were asked in Parliament whether it is a fact that Mr. Justice Stephen comes drunk in court and all that. There is no provision in the British constitution against questions being asked of this kind. Mr. Justice Ste-

phen was not in a position to deny the allegations. Immediately he resigned. He tendered his resignation. The Lord Chancellor paid him a very high tribute. He made references to the great contributions that he had made to the scientific development of the law and the thing ended there. But here unfortunately that is not the case. We go on working until we are actually driven out and even when we are driven out we think of returning by some other way, by hook or crook. I would like to emphasise also that there should be to the utmost extent possible openness, impartiality and fairness. These are the three principles which we must remember. Then I would like to go into the provisions of the Bill and make my comments on it. The one thing that strikes me is this. This is regarding the heavy penalty for what is called contempt. There is a lot of feeling in legal circles that the law of contempt requires drastic changes. Until a person apologises you have given High Courts powers to sentence to a period of 6 months. If you want you can have 6 months, but I think that two years is far too high. Actually, I would have sent you a written memorandum on the various clauses of the Bill, had it not been for the mishap which I mentioned.

MR. CHAIRMAN: You could send written memorandum. That will be helpful to us.

SHRI C. C. DESAI: I have gone through this memorandum.

SHRI P. N. SAPRU: This memorandum should not be taken too seriously. I have explained to you why.

SHRI C. C. DESAI: As one of the concepts it has been stated here that the purpose is to control the vagaries of bureaucracy. Actually, as you will remember, the Bill was conceived to curb or control the vagaries of politicians. Even before this Bill, there was the Vigilance Commission to control the vagaries of bureaucracy. Then it was felt that the vagaries of politicians should also be controlled. Then this Bill was conceived.

SHRI P. N. SAPRU: So far as the situation in Norway, Sweden, Newze-land and Britain as conceived, they are more concerned with the vagaries of the bureaucrats—and you know about the Crichton Down case.

SHRI C. C. DESAI: This is intended to control the vagaries of both.

SHRI P. N. SAPRU: That is right.

SHRI C. C. DESAI: In the second paragraph you have said that in recommending the name of Lokpal, the Prime Minister should take into consultation the Leader of Opposition. Actually, the conception of Lokpal as envisaged in the Bill is that the President will take the initiative in consulting the Prime Minister on the one side

SHRI P. N. SAPRU: I agree with you. It is clumsily put. The President should take into consultation the Prime Minister, the Leader of Opposition and if you like the Chief Justice of India.

SHRI C. C. DESAI: Then, on page 2 you have said that the Lokpal will have to busy himself with matters of injustice, unfairness, nepotism, favouritism, casteism and communalism. Do you think that casteism and communalism should also come within the purview of the Lokpal?

SHRI P. N. SAPRU: There may be such cases also. For example, there may be an indication that a particular district officer has in a particular situation behaved in a manner so as to favour his caste or community.

SHRI C. C. DESAI: There may be allegations that a particular Chief Minister in a State appoints people only from his own community. This type of allegation could well be made and it will be really difficult if these allegations are to be examined by the Lokpal.

SHRI P. N. SAPRU: I agree with you that there are difficulties. But my whole difficulty is that here we 2981 (E) LS—10

think either in terms of caste or community. Therefore, I use these words. In the context of Indian life, caste plays a very important part.

SHRI C. C. DESAI: I am afraid so. But to make caste a subject-matter of investigation by the Lokpal

SHRI P. N. SAPRU: I agree with you. But cases are imaginable where a third class man who belongs to Kayasta community has been preferred to a first class man who belongs to the Brahmin community?

SHRI C. C. DESAI: That will come under favouritism.

SHRI P. N. SAPRU: Favouritism and Nepotism are wide enough to include the ideas of both casteism and communalism.

SHRI C. C. DESAI: Coming to specific provisions of the Bill, one of the points about which there has been considerable difference of opinion is whether the Lokpal should have one term of five years or he should be eligible for appointment for one more term after the expiry of his first tenure. So many people have said that we should not hold out this banana in front of him.

SHRI P. N. SAPRU: I am clear in my mind. I am emphatically of the opinion that he should have only one term. There should be no reappointment—no question of reappointment should be there. If you do not like five years, make it six, if you like. But he should never be reappointed. Further, he should not look to any further appointment. That must be adhered to both in letter and in spirit. What is happening is this. You have got a rule like that in regard to members of the Public Service Commissions. I know where the services of members of public service commissions have been requisitioned for chairmanships of public sectors concern or similar jobs. You pay your Lokpal well; if you like, you give him a good pension too. But on no account must he be given any further extension.

SHRI C. C. DESAI: In clause 10(2) which relates to publicity during investigation, it is said that the results of the investigation shall not be disclosed to the public or the press whether before or during or after the investigation. Before and during, one can understand. But why should there be a bar on such publicity after investigation? After the investigation, a man is either convicted or acquitted.

SHRI P. N. SAPRU: If you will read the report of Lord Shawcross—I think he presided over it—you will see that he emphasized three things, namely, openness, fairness and impartiality. Therefore, at some stage or other, you must disclose the material on which the Lokpal has arrived at his conclusion.

SHRI C. C. DESAI: After the investigation is completed, the facts should be available to the public . . .

SHRI P. N. SAPRU: I agree certainly.

SHRI PURNANAND CHETIA: It is said that the Lokpal should be empowered to receive complaints from individuals who have any grievance, whether personal or private. Suppose a person out of malice or personal prejudice lodges a complaint which after enquiry proves to be false. What is the remedy? Do you suggest some sort of a penalty to be imposed? For example, the complainant should be required to deposit a certain amount which should be forfeited after the complaint is found to be false.

SHRI P. N. SAPRU: In other countries, for example, I think that in Sweden and in New Zealand, the Lokpal does not receive complaints direct from the public but he receives them from Members of Parliament. And personally, I should go to the extent of sayings that there should be some such provision in the Bill but to start with he should receive direct a complaint. To start with you allow the public to come forward with the

stories later on, you may find it very difficult to investigate. We know what our country is. To start with we should receive complaints from Members of Parliament or Members of State Legislatures only. But, this Bill does not deal with State Legislatures. To me, it appears, it should be like that.

SHRI HEM RAJ: Mr. Sapru, you have told us that a man who is to be appointed must be very impartial. He should then look after for no future appointments further on when he retires. For that, don't you think that this post should be made pensionable?

SHRI P. N. SAPRU: Of course, it should be made pensionable. And the pension should be reasonable.

SHRI HEM RAJ: At the same time, are you also of the opinion that his status should not be that of the Chief Justice?

SHRI P. N. SAPRU: I am clear in my mind in this respect. I will tell you the reason for that.

SHRI HEM RAJ: In the scheme of things, nowhere it has been stated that the status will be that of a Chief Justice. But, his pay should be equal to the pay of the Chief Justice.

SHRI P. N. SAPRU: I may tell you why it should be so. Whatever you do, you have got a controlled Constitution and you cannot take away the jurisdiction of the High Court under Article 226. However, I read with some amusement, if I may say so with all respect, the reports of the Select Committee on the question whether the ruling of the Supreme Court was right or wrong. But, as I see it, the question is very simple. We have got a controlled Constitution. I am not in favour of the majority view of the Supreme Court. But, this Parliament is not like that of British Parliament but it has a controlled instrument and of that instrument the judges interpret. You cannot exchange fundamental rights by that decision.

SHRI HEM RAJ: Under the scheme of this Act, it is the machinery of the Government that will help the Lokpal and Lokayukta for the purpose of investigation. So, do you think that there should be a separate machinery?

SHRI P. N. SAPRU: It is very difficult to evolve an entirely separate machinery. At a time or other there will be overlapping of the two machineries and therefore, why not make the machinery as that of Government?

SHRI HEM RAJ: Are you of the opinion that everybody should be at liberty to give his complaint direct to the Lokpal or Lokayukta or do you consider that it should be confined only to Members of Parliament as is the case in U.K.?

Or should it be left open to each and every Member?

SHRI P. N. SAPRU: I may tell you that I have revised my thinking on this point. Originally I started with the idea that every one should be able to file complaints. Then, I worked out difficulties as everyone does. Then, I came to the conclusion that it should be confined to Members of Parliament or Members of State Legislatures. Of course, as you know, Parliament has no control over State Legislatures. But, this Bill should cover State Legislatures also.

SHRI SHIVAJIRAO S. DESHMUKH: Pursuant to a question which has been put by my esteemed colleague, Mr. C. C. Desai, I would like to have a very small clarification on from you because, as you say, open justice, fair justice and impartial justice are the three criteria that have been given for a proper justice. And it is on those three criteria where justice involved is mostly either of a criminal or of a civil nature thereby implying that it is almost a case of an individual grievance where, society, as such, is only interested in maintenance of law. But, here, under the scheme of Lokpal and Lokayukta Bill, as it stands, Lokpal or Lokayukta is supposed to be

enquiring or investigate into the allegation which can be a case of an individual allegation or an individual grievance but where largely a society as such would be involved here also in a sense, the investigations are done by Lokpal and Lokayukta, would you not agree that it may not be advisable to publish everything that transpires or to publish every shade of evidence on which Lokpal comes to a particular finding?

SHRI P. N. SAPRU: Well, my personal feeling is, in favour of everything being published. But, I would modify my view having regard to the conditions that obtain in our country to some extent.

SHRI SHIVAJIRAO S. DESHMUKH: Under the scheme of the Bill, as it stands, Lokpal or Lokayukta has not been burdened with the procedure of a lawcourt as to what procedure he has to follow and to what extent he would be empowered to call for evidence. But, generally, it has been laid down that he will follow common law principles of evidence. Now it is a common law principle of evidence that the State is the repository of executive and is empowered to claim a privilege of filing a particular document or agreeing or disagreeing with a particular fact as it comes in the record either in a criminal trial or in a civil suit or for that matter in everything. Would it be your piece of advice to this Committee to empower the Lokpal to arrive at its own independent judgment whether or not this privilege to the State is permitted?

SHRI P. N. SAPRU: I hope that the States will help him to discharge his duties properly and they will not take advantage of the fact that they can refuse to help him with documents which he needs or which he considers necessary.

SHRI SHIVAJIRAO S. DESHMUKH: My fears are that ultimately these powers of privilege will have to be administered by officials of State,

many of whom may be even petty officials. So in these circumstances what is your advice to the Committee to ensure that nothing that is reasonably due and could be put forward before Lokpal is shut out under the claim of privilege?

SHRI P. N. SAPRU: I think the Lokpal should have discretionary power. I think if he is not allowing a document to be placed, he should give his reasons for that.

SHRI S. S. N. TANKHA: One of the witnesses who have appeared before us has explained that since the conduct of Ministers is to be gone into by the Lokpal, this cannot be done and it should not be done by the Lokpal because Ministers are responsible to Parliament and as such unless we evolve some method whereby the Parliament comes into the picture, it should not be allowed.

SHRI P. N. SAPRU: The Lokpal will be appointed by Parliament.

SHRI S. S. N. TANKHA: I am sorry. It is your suggestion that he should be appointed by the Parliament, but under the present Bill his appointment is not by Parliament but by the President.

SHRI P. N. SAPRU: I would say that he should be appointed by Parliament on the advice of the Prime Minister, the Leader of the Opposition and the Chief Justice of India.

SHRI S. S. N. TANKHA: That is your suggestion and supposing the suggestion is not accepted by the Committee, then what would you say regarding the plea put forward by the witness who appeared before us that the conduct of the Ministers cannot be judged by an outsider. It should be done only by the Parliament.

SHRI P. N. SAPRU: I do not agree with that view. I think it is stretching the doctrine of responsibility to Parliament too far. Supposing a Mini-

ster gets involved in a private litigation of his own, can he take advantage of the fact that he is a Minister?

SHRI S. S. N. TANKHA: We are not concerned with the private conduct. Here we are concerned with the public conduct and public career. Complaints are brought forward and then according to that witness, he should not be judged by the Lokpal because the Lokpal has no standing in Parliament.

SHRI P. N. SAPRU: He is an authority appointed by Parliament. He is responsible to Parliament. He will submit his report to Parliament. He will give his reasons.

SHRI S. S. N. TANKHA: He will not submit report on each matter, but it will be an annual report submitted to Parliament through the President.

SHRI P. N. SAPRU: He is not precluded from submitting a special report to Parliament.

SHRI S. S. N. TANKHA: So I take it from you that you do not recognize the validity of that argument.

SHRI P. N. SAPRU: Of course, there is an anomaly here. Ministerial responsibility means responsibility to Parliament and we are in a transitional stage and we cannot adopt the conventions of the British Constitution in such a manner as to make ineffective the working of our Government.

SHRI S. S. N. TANKHA: We thought that this was the reason why in Britain the matter has been placed in the hands of the Parliament itself.

SHRI P. N. SAPRU: Here, unfortunately, Parliament is not as vigilant as it should be. There have been instances in Britain where the Prime Minister just ask for the resignation of a Minister because he has done something dishonourable and immediately he resigns. I will give you a concrete case. Sir Fitzjames Stephen is one of the most honoured names in the history of British jurispru-

dence. He was a Law Member of India and later he became a Judge of the Queen's Bench Division. Towards the end of his life when he was a Judge, he began drinking heavily and used to come to Parliament heavily drunk. Questions were asked in Parliament about him. There are no Rules such as we have. Questions were asked in Parliament about Sir James Stephen. James Stephen was not in a position to deny those allegations. He knew those allegations were true. He submitted his resignation the next day and the Lord Chancellor paid him a very high tribute and the whole thing was over. We do not do that sort of thing. Some allegations were made about a junior Minister in Mr. Attlee's Government and one of the allegations was that he and his wife had been going out for dinner with foreign capitalists who wanted to establish firms. Immediately Mr. Attlee asked for his resignation and the resignation was tendered. Take again the Profumo case. The charge against Profumo was that he lied to the House of Commons. The charge was not that he slept with a woman. That was not the matter which worried the Commons. What worried the Commons was that he lied to the Commons and at first Profumo denied having done that. Then when he found that he could not substantiate his view-point, he tendered his resignation and people thought no more of it. It was not regarded as a Party matter. The Conservative Party did not use Profumo's case as a weapon to beat Labour or Liberal Party. These are conventions of the British Constitution. We need to develop those conventions. Few of us care to develop those conventions or to live up to those conventions.

SHRI S. S. N. TANKHA: It is suggested that the functions of the Lokpal should be more or less like that of the Auditor General. You are aware that the Auditor General looks into the accounts of the Ministries and then draws up his report and that report is discussed by a Committee of Parliament known as the Public Accounts Committee. It is suggested

that the report of Lokpal should also be similarly scrutinised by the Parliament and a Committee for that purpose may be constituted. What have to say to that?

SHRI P. N. SAPRU: I have no objection to that.

SHRI S. S. N. TANKHA: Would that will be a better method or the present method as embodied in the Bill I would like to have your opinion on the point.

SHRI P. N. SAPRU: A Committee will be able to go into the matter more thoroughly.

SHRI S. S. N. TANKHA: It will be more or less a permanent body.

SHRI P. N. SAPRU: Yes. One little thing I wanted to say and that is this. On page 6 under clause 6(1) there is a proviso which reads as follows:

"Provided that the inquiry required to be held under clause (2) of the said article before such removal shall be held by a person appointed by the President, being a person who is or has been a Judge of the Supreme Court of India or the Chief Justice of a High Court."

So far as the Constitution is concerned, the Constitution knows no distinction between a Judge and Chief Justice. The Chief Justice has got some administrative functions. Those administrative functions he performs in the name of the Court. There were Judges of great eminence who never rose to become Chief Justices. You cannot find a greater name in the history of Indian judiciary than that of Sir Asutosh Mukherji. So I would substitute the word "Judge" by "Senior Judge". I will give you another example. For example we have to certify to the Accountant General that we draw our salary ourselves; the Chief Justice cannot do it for us. I think that is something which is vital for the independence of Judges.

SHRI S. S. N. TANKHA: We should take note of that. There is another small point. What is your view about the Lokayukta being appointed as Lokpal?

SHRI P. N. SAPRU: I would not like it to be a sort of promotion post for Lokayukt. But a Member of the Public Service Commission can be appointed as Chairman of the Public Service Commission. I don't mind a Lokayukta being appointed Lokpal. He is a man of eminence.

SHRI S. S. N. TANKHA: Will you like the appointment of Lokpal and Lokayukta to be for a period of five years only initially or do you think there is any harm in extending the initial period itself to 6 or 7 years?

SHRI P. N. SAPRU: 6 or 7 years does not matter, but the important thing is "no second term".

SHRI S. S. N. TANKHA: What do you think about the Lokpal also having jurisdiction over the affairs of Members of Parliament—I mean going into the affairs of the Members

of Parliament—if any complaints are received against them? In the Bill we have not given that power.

SHRI P. N. SAPRU: I don't think we should give him that power also. I hope that Members of Parliament are honourable men. The President of the Congress at one time appointed a Committee of which I was a member. We never had a case; people may or may not have been submitting their returns. If you cannot trust a Member of Parliament you cannot trust anybody.

SHRI S. S. N. TANKHA: What do you say about the Lokpal scrutinising the affairs of the judiciary?

SHRI P. N. SAPRU: Yes, he may. But I would rather leave it to the Chief Justice and the Courts themselves.

MR. CHAIRMAN: Thank you very much, Mr. Sapru, for having come and given us your valuable advice.

(The witness then withdrew)

(The Committee then adjourned)

**MINUTES OF EVIDENCE GIVEN BEFORE THE JOINT COMMITTEE ON THE LOKPAL AND
LOKAYUKTA BILL, 1968.**

Saturday, the 24th August, 1968 at 09.30 hours.

PRESENT

Shri M. B. Rana—Chairman.

MEMBERS

Lok Sabha

2. Shri H. H. Maharaja Pratap Keshari Deo
3. Shri C. C. Desai
4. Shri Shivajirao S. Deshmukh
5. Shri Gangacharan Dixit
6. Shri Hem Raj
7. Shri Kinder Lal
8. Shri Thandavan Kiruttinan
9. Shri Bhola Nath Master
10. Shri Narayan Swaroop Sharma
11. Shri Vidya Charan Shukla
12. Shri R. K. Sinha
13. Shri S. Supakar.

Rajya Sabha

14. Shri Ram Niwas Mirdha
15. Pandit Sham Sunder Narain Tankha
16. Shri Purnanand Chetia
17. Shri Akbar Ali Khan
18. Shri K. S. Ramaswamy
19. Shrimati Pushpaben Janardanrai Mehta
20. Shri Balachandra Menon.

LEGISLATIVE COUNSEL

1. Shri V. N. Bhatia, *Secretary, Legislative Department, Ministry of Law.*
2. Shri R. V. S. Peri-Sastri, *Additional Legislative Counsel, Ministry of Law.*

REPRESENTATIVES OF THE MINISTRY OF HOME AFFAIRS.

1. Shri N. K. Mukarji, *Joint Secretary, Department of Administrative Reforms, Ministry of Home Affairs.*
2. Shri S. P. Mukherjee, *Joint Secretary (V), Ministry of Home Affairs.*
3. Shri S. P. Mukerji, *Director, Department of Administrative Reforms.*

4. Shri A. P. Veera Raghavan, Deputy Secretary, Ministry of Home Affairs.
5. Shri S. M. Chikermane, Under Secretary, Department of Administrative Reforms.

SECRETARIAT

Shri M. C. Chawla—Deputy Secretary.

WITNESSES EXAMINED

- I. Shri C. K. Daphtary, Attorney General of India.
- II. Shri M. C. Setalvad, M.P.
- III. Shri S. Dutt, Vigilance Commissioner, West Bengal.
- IV. Dr. L. M. Singhvi, Ex-M.P.

I. Shri C. K. Daphtary, Attorney General of India,

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

The Chairman drew his attention to Direction 58 of the Directions by the Speaker.

MR. CHAIRMAN: Mr. Daphtary, we welcome you to this Committee and I am thankful to you for giving us the time and an opportunity for your valuable advice. We are discussing the Lokpal Bill and we had sent you a copy of the Bill but we have not received any note from you. But today your presence will be good enough and we shall take advantage of it. What we usually do is that we finish within one hour or so. Firstly, the witness gives his idea of the Lokpal Bill for about 10 minutes and after that Members ask the questions and clarifications.

SHRI C. K. DAPHTARY: Mr. Chairman, Sir, I may tell you at once and frankly that I have not given my mind really to the Bill because I have been rather busy in the past few weeks. I have gone through its general structure. It is something which is an experiment and which must be tried. In a country like ours—as big as it is—it is a big experiment. One is told of England and Newzealand. These are small countries. In Newzealand it has worked well. I am not quite sure about England. Generally speaking the Bill is sound. There are one or two things which strike me. First is this question of secrecy: "Any

information, obtained by the Lokpal or the Lokayuktas or members of their staff in the course of, or for the purposes of any investigation under this Act, and any evidence recorded or collected in connection with such information, shall be treated as confidential and notwithstanding anything contained in the Indian Evidence Act, 1872, no Court shall be entitled to compel the Lokpal or a Lokayukta or any public servant to give evidence relating to such information or produce the evidence so recorded or collected." I have not examined it vis-a-vis. Evidence Act. But this is not a court. It has not been given the status of a court and what does require examination and thinking about is whether this is constitutionally not rather on the border line as in excess of what is permissible under Article 19. But, of course, if I may express a personal opinion a provision like this is quite futile in substance because in this city—apart from anything else—nothing is secret and nothing is confidential. You may have ten sections of this kind yet everything that is stated and written will be known to everyone. But as a matter of form if it is intended to put it I might require a little consideration. I have not considered it in detail.

The second thing is the question of re-appointment for another period. The scheme is that the authority is to be appointed for a period of five years with a further renewal of not more than one period. I am not quite sure why there should be any renewal at

all. You may change the period; make it longer. Further there can never be a hundred per cent certainty of selecting the right person but it is a chance that everyone takes when they appoint a High Court Judge. But this question of renewal always brings in an element of patronage, possible favour and so on. Having regard to the high position which he is going to occupy—really speaking equivalent to the Chief Justice of India roughly—I do not see why there should be any provision for renewal.

SHRI C. C. DESAI: In your answer to this question about re-appointment you said the term of the office might be extended. At present it is five years. Would you think 7 years will be a reasonable period as there would be no re-appointment and the individual concerned is prohibited from taking up any appointment afterwards?

SHRI C. K. DAPHTARY: What I feel is the period should be a little longer if there is to be no re-appointment. In any event even if there is re-appointment the first period of five years is not enough because this is an entirely new job, something which nobody has done before and it requires that the person should familiarise himself with the things at the initial stage. At any rate the person will have to—as it were—make the office go. He will have to lay down the methods and the manner in which things have to be done. I am not sure that five years period is enough for a man to be able to put in useful work. It will take a considerable time to get the whole thing going. I think it should be, as suggested, perhaps seven years.

SHRI C. C. DESAI: One of the points which has arisen is what shall be the relationship between the recommendation of the Lokpal and Lokayukta on the one hand and the UPSC. As at present no punishment can be given to any officer without the prior consultation and concurrence of the UPSC. When we have

an institution like the Lokpal, who is supposed to be equal to the Chief Justice of India in remuneration and status, if he is merely to submit a report and that report has to be considered by the Chairman of the UPSC and the Home Ministry that would really detract from both authority and the independence of the Lokpal and Lokayukta. So it has been suggested that by an amendment of the Regulation under 320 of the Constitution provision should be made that any recommendation coming from Lokpal should be accepted or should not have to go before the UPSC. How would you ensure the independence of the Lokpal as against the UPSC?

SHRI C. K. DAPHTARY: The provision under the Bill at present is:

"The competent authority to whom a report is sent under subsection (1) shall, within one month of the expiry of the term specified in the report, intimate or cause to be intimated to the Lokpal or, as the case may be, the Lokayukta of the action taken for compliance with the report."

Now the Lokpal will say that on those facts I say such and such a thing should be done. It may involve any kind of thing. It may involve demotion, penalty, punishment but it is ineffective. I agree if it is going to be subject to anyone's veto and consultation from somebody else it is detracting from his authority... But the Section does not contemplate. It is only the Article that requires it. So something will have to be done.

Supposing, on investigation, the Lokpal says that this has resulted in injustice to the complainant. Further the Lokpal is satisfied that such allegation can be substantiated either wholly or partly, he shall by a report in writing communicate his findings along with the relevant documents, materials and other evidence to the competent authority. The competent authority shall examine the report forwarded to it and intimate within

three months of the date or receipt of the report, the Lokpal or, as the case may be, the Lokayukta, the action taken or proposed to be taken on the basis of the report.

So, it is contemplated that on the report an action is to be taken. Supposing the action to be taken is dismissal or demotion of a particular person, then one has to think of 311. If some one is to be demoted, reduced in rank, he will insist upon Article 311. Enquire into it as is required under the Constitution. This is not in the nature of such an enquiry and this is on an administrative action. So, that has to be provided for in some way. Either that has to be eliminated or whatever is recommended is subject to further enquiry under the particular Article.

SHRI C. C. DESAI: Would you examine it in detail and let the Committee have a note as to how you will preserve the independence and what consequential amendment will have to be made?

SHRI C. K. DAPHTARY: I shall be glad to do that. In fact I had thought of putting in written Memorandum but various things have occurred in the last few weeks and I have been occupied.

SHRI C. C. DESAI: The tendency for the Executive is to take action to suit its own whims and fancies. It is not in this Government's case but it applies to all the Governments. So, apprehension has been expressed that where there is a likelihood of an adverse decision against a Minister, the Executive may refer the matter to a Commission of Enquiry rather than bringing under the jurisdiction of the Lokpal or Lokayukta. It is suggested that before any Commission of Enquiry is appointed by the Government, previous consultation with or even concurrence of the Lokpal should be prescribed so that the Lokpal jurisdiction is not bypassed for political purposes.

SHRI C. K. DAPHTARY: I have looked at it from every point of view.

SHRI C. C. DESAI: Prior consultation with the Lokpal is necessary before the Commission of Enquiry is appointed or before the alternative method is resorted to. That is not in the Bill.

SHRI C. K. DAPHTARY: Are you assuming that Commission of Enquiry will be less effective than the Lokpal?

SHRI C. C. DESAI: Yes. The man is selected by the Executive. The choice of the judge rests with the accused. That is my contention.

SHRI C. K. DAPHTARY: Has it been found that the Commission of Enquiry is unsatisfactory in that respect?

SHRI C. C. DESAI: I am visualising the possibility of that.

SHRI C. K. DAPHTARY: There is always the possibility but one is aware of the number Commissions of Enquiry. I do not think it has been said anywhere that they have been unsatisfactory.

SHRI C. C. DESAI: If you have the institution of Lokpal, why should we have the Commission? Why do we circumvent it?

About the relationship between the Lokpal and the Central Bureau of Investigation, should they have direct relationship or should there be intervention of the Home Ministry? Should the Lokpal issue direct instructions asking for investigations and to submit a report or whether the Home Ministry should be brought into the picture?

SHRI C. K. DAPHTARY: This provides for direct enquiry.

SHRI C. C. DESAI: Proviso to Clause 13(3) provides that the Lokpal or Lokayukta shall obtain the consent of the Central Government for the purpose. Obtaining the consent does not mean simply referring. It

should be that Lokpal should issue instructions to C.B.I. with a copy for information to the Central Government.

SHRI C. K. DAPHTARY: So far as I can see, the proviso provides a safeguard against the possible precipitate enquiry being made.

SHRI C. C. DESAI: Does it mean that he has to subject himself to the Home Ministry? Does it not take away the power far off for an institution of enquiry from the Lokpal?

SHRI C. K. DAPHTARY: I am sorry, I cannot answer off hand.

SHRI SHIVAJIRAO S. DESHMUKH: This institute of Lokpal is supposed to be the receptacle of purity, truth and purifies the general social structure. So, in that respect Commission of Enquiry Act has been resorted to time and again by the Executive, largely as a result of Parliamentary pressures and alleged complaints of corruption against certain Ministers. By the very nature of the scheme, could you not agree that a man would be coming before the Lokpal and being equipped as he is, he may not be in a position to give specific allegations in the specified spheres of responsibility and yet, he may make out a case wherein, if properly investigated, persons responsible for that act of corruption may be brought to book. So in such borderline cases what provision should be made in the Act to safeguard these cases from prosecutions against malicious allegations.

SHRI C. K. DAPHTARY: Do I understand you to say that there should be some sort of safeguard against allegations or complaints which may be frivolous?

SHRI SHIVAJIRAO S. DESHMUKH: There should be some media of making a distinction between outright malicious, frivolous allegations and generalised allegations without any specific charges.

SHRI C. K. DAPHTARY: There is a provision, first of all, for rejection of complaints for allegations which are frivolous. The clause says: Completely frivolous or false or not made in good faith.

SHRI SHIVAJIRAO S. DESHMUKH: I may say that the organisation of Steel controller is responsible for these administrative excesses. There are grounds to believe that these excesses were indulged in for considerations in favour of parties who have been favoured. There is a general complaint, but not specified.

SHRI C. K. DAPHTARY: That is, without specific particulars.

SHRI SHIVAJIRAO S. DESHMUKH: What safeguards you have in mind to see that such complaints do not result in action for malicious complaints?

SHRI C. K. DAPHTARY: If there are sufficient grounds for investigation then it cannot be rejected. No doubt there will be lots of complaints against specific individuals for some specific action taken. The greater portion of them will be of a general nature which you have mentioned.

SHRI SHIVAJIRAO S. DESHMUKH: Regarding the definition of allegations and grievances, we have been toying with the idea that any expert legal assistant would be able to convert allegations into grievances and vice-versa. What specific safeguard you have in mind to change the definition to prevent this thing?

SHRI C. K. DAPHTARY: I am afraid that is a larger question. I would like to consider that.

SHRI SHIVAJIRAO S. DESHMUKH: The Lokpal is an institution, not a court of law. They have been generally armed with the power to

call the witnesses and to follow the procedure followed by the law courts.

SHRI C. K. DAPHTARY: Yes, it is provided for.

SHRI SHIVAJIRAO S. DESHMUKH: I have my own doubts. The General Law of Evidence in India has got provisions which empower certain State authorities to claim privilege. In respect of all complaints or some complaints that may be enquired into by the Lokpal, if there is a claim towards privilege don't you think that the Lokpal would be in wilderness?

SHRI C. K. DAPHTARY: I think there is provision in this act preventing the disclosure of certain specified grounds of information. Is not the inference to be drawn from that that even everything else can be compelled? There are things like foreign affairs and defence; that is provided for. There is a schedule also. Certain items are excluded under Section 8(1) (a). The second schedule provides for exclusions. I would like to mention item (f). This is about action taken in respect of appointment, removal, discipline and other matters relating to conditions of service. Now, our experience shows that there is more hanky-panky in the matter of seniority, appointments, promotions etc. than in other matters. We are constantly faced with writs where A complaints that B, C, D etc. have been promoted over him, that some rule has been changed in such a way that where he was senior he was made comparatively junior and so on and in quite number of cases the courts have upheld the whole thing, on the ground that it was either not legal strictly or that was not honest. My own feeling is that is one of those things which require constant supervision by an agency like Lokpal.

MR. CHAIRMAN: The very fact that there have been writs and other things in the high courts and other places shows that they have a recourse. The person aggrieved has a recourse to other methods, to courts

etc. Lokpal comes in where the man has no recourse.

SHRI C. K. DAPHTARY: There is provision to that effect—where there is any other remedy open to him.

MR. CHAIRMAN: And secondly, this is to solve the grievance of a citizen, the public man, against an officer or a minister. That is the fundamental thing.

SHRI C. K. DAPHTARY: Yes, not inter-departmental thing.

MR. CHAIRMAN: That we must keep in mind....

SHRI SHIVAJIRAO S. DESHMUKH: I would draw your attention to provision (c) and (d). This relates to action taken for the purpose of investigating crime etc. and action taken in the exercise of powers in relation to determining whether a matter shall go to a court or not. These two actions seem to have been excluded from the purview of Lokpal. It has been a common experience that in many matters investigating authorities either out of corrupt motivation or under political influence give a particular direction to the investigation of a crime. Instances are not lacking where law courts have passed strictures against investigating officers and that has often led to further investigation and filing of supplementary chargesheets. In these circumstances, would it be prudent to exclude everything that takes place by way of investigation of crime strictly from the purview of the Lokpal?

SHRI C. K. DAPHTARY: On the supposition that in every department and everywhere things may be done wrongly or with wrong motives, should everything go to the Lokpal? Why clutter him with matters which normally can be decided properly. Whether action should be taken or not or investigation should take place or not are matters which are ordinarily considered properly on the materials available.

SHRI S. S. DESHMUKH: There are innumerable instances where discretion is vested with the authorities whether to permit or not a particular individual to prosecute a Government servant. Government servants are a fraternity by themselves. If there is a watertight case against a particular Government employee, yet a citizen cannot file a complaint against him or prosecute him unless the Central Government or State Government, as the case may be, permit him to do it under the C.P.C. Under the authority of giving sanction or exercising the discretion of giving sanction for prosecution he may go wrong. If it is a wrong exercise of discretion, will it be prudent to exclude this from the purview of Lokpal? For instance, there is the well-known case of Poona Municipal Corporation where a well-made out case of corruption against two top officials of the Corporation could not be proceeded with. On the basis of investigation by CBI, the Maharashtra State Government was alleged to have sat over it for more than two years. Will it not be safer to leave it to the Lokpal rather than to preserve it as a privilege of the Government?

SHRI C. K. DAPHTARY: I have the same Government in mind. A number of people came right upto the Supreme Court on charges of defrauding the Government lakhs of rupees. It is a gross case. They were sentenced to considerable terms of imprisonment. . . .

SHRI S. S. DESHMUKH:...but subsequently let off.

SHRI C. K. DAPHTARY: Within two months they were all let off. One of them never even went to jail because of illness and the letting off order was passed.

SHRI S. S. DESHMUKH: That strengthens my case. Such administrative excesses or wrong administrative action or *mala fide* exercise of discretion which are protected under the present law should be exposed to action by Lokpal.

SHRI C. K. DAPHTARY: Are we going to take up all matters of discretion before Lokpal?

SHRI S. S. DESHMUKH: I think Lokpal should be given the discretion of interpreting such matters, he being the highest man with a judicial mind.

SHRI C. K. DAPHTARY: Next will be the question of pardon.

SHRI S. S. DESHMUKH: That can be left out for the moment. For instance, you cannot file a civil suit against a ruler of a princely State. You cannot file a prosecution against a Government employee either of the State Government or the Central Government, unless and until the Government concerned permit you to do so. This is a field where discretion has to be exercised. Will it be prudent if Lokpal is denied the privilege of looking into their case?

SHRI C. K. DAPHTARY: You can put it on him if you like. That means you are going to by-pass the Civil Procedure Code section or substitute Lokpal in the place of Government. Similarly there is a section in the Cr. P.C. providing for sanction being given by Government in certain cases. You will be substituting Lokpal for that. There are numerous other Acts where sanctions and permissions are to be given. They all may be exercised wrongly and therefore they must go to the Lokpal, according to you.

SHRI S. S. DESHMUKH: Only in cases of allegation of misuse. If Lokpal is allowed to look into those cases, what serious damage it will cause to the Government?

SHRI C. K. DAPHTARY: Charity Commissioner in various Acts has power to sanction filing of suits in respect of charities. He may do it wrongly or with *mala fide* motive. Should it go to the Lokpal? Why not restrict ourselves to the present and see how it works. Then, if necessary, increase the burden on him. Once you start on this question of discretionary powers under statute, then you will have to

rope in a number of statutes, and there will always be the plea to include this, that and everything.

SHRI VIDYA CHARAN SHUKLA: I do not understand how there could be any misuse of this because in case where the Government sits over the suggestion made by the Lokpal and does not take any action, when the report of the Lokpal goes to Parliament, they can take cognizance of this fact and take Government to task. Secondly, whenever a prosecution is to be launched by the Government, the case will have to be referred back to the Lokpal or Lokayukta. Thus it will be seen that the scope for misuse or any *mala fide* action does not seem to be there.

SHRI S. S. DESHMUKH: My objection is not that. I do not say that Lokpal *suo motu* should be made a sort of appellate authority over the Government. But will it not be prudent to empower Lokpal to enquire into or look into questions of wrong or *mala fide* exercise of discretion which the statute vests with certain authorities?

SHRI VIDYA CHARAN SHUKLA: I do not think anything can bar Lokpal to make observations in his annual report.

SHRI S. S. DESHMUKH: It is specifically excluded under the Act and on matters which have been excluded, if he is to report he will not only be committing impropriety, but....

SHRI VIDYA CHARAN SHUKLA: What is excluded?

SHRI S. S. DESHMUKH: "Action taken in the exercise of powers in relation to determining whether a matter shall go to a court or not". This is excluded. Action taken for the purpose of investigating a crime is also excluded.

SHRI VIDYA CHARAN SHUKLA: He will be consulted before the matter goes to the court.

SHRI MUKHERJEE: This Second Schedule actually relates to exclusions in the grievance field. If there are *mala fide* actions and so on, they become allegations. Where there is *mala fide*, Lokpal's jurisdiction is fully there. In regard to (d), the grievance about this could arise only in the mind of the person who is to be prosecuted. Either the Government decides not to prosecute in which case there is no grievance, or it decides to prosecute in which case it is a matter of *sub-judice*. In either way it has to be excluded. That is the rationale behind it.

SHRI C. K. DAPHTARY: There can be grievance on the part of complainants also.

SHRI MUKHERJEE: There are two types of cases. There would be prosecutions which are launched on the basis of the work done by Lokpal or Lokayukta.

Then, of course, as the hon. Minister mentioned just now, there is a provision for all these. But, there is no laid down machinery in reporting to Parliament and so on. I don't think these are the cases in which they are consulted. There are really other cases which the hon. Member has in mind where there may be some other provisions of the Act.

SHRI SHIVAJIRAO S. DESHMUKH: May I make my question clear? I do not have any other case in mind. That I have in my mind is the Second Schedule to Section 8. (Page 7 of the Bill). It says:

"8(1) Except as hereinafter provided the Lokpal or a Lokayukta shall not conduct any investigation under this Act in the case of a complaint involving a grievance in respect of any action,—

(a) if such action relates to any matter specified in the Second Schedule,

You please read the Schedule along Sec. 8. The thinking is that for purposes of action, it should be a grievance. But, if everything is a grievance then it is a larger issue where allegations can be converted into a grievance.

Take for example permission to lodge a civil suit. In fact I applied for permission to lodge a civil suit against a British Ruler. I have got the full facts of the case with me. I am even prepared to convince the Government that my grievance is genuine. After permission I filed a civil suit against the British ruler. Simply because the British ruler has certain privileges under the Constitution, it does not mean that no prosecution can be filed against him. The suit against him was filed with the permission of the Central Government. If the Central Government does not permit me, then I cannot lodge the suit. I say that this is *mala fide* exercise of discretion because I feel that there is a genuine case for me to file a civil suit. But, if it is turned down by Government, what remedy can there be? Will it be prudent to continue to exclude that from the purview of the Lokpal and Lokayukta?

SHRI MUKERJEE: I wish to point out that the relevant clause relates to 8(5) in the Bill. This is for consideration of the Committee. It says:

"In the case of any complaint involving a grievance, nothing in this Act shall be construed as empowering the Lokpal or a Lokayukta to question any administrative action involving the exercise of a discretion except where he is satisfied that the elements involved in the exercise of the discretion are absent to such an extent that the discretion cannot be regarded as having been properly exercised."

That means, in a matter where discretion is to be exercised, this kind of thing comes in and about which Mr. Daphtary was explaining.

SHRI SUPAKAR: Mr. Chairman, it is better we may discuss this amongst ourselves. We will make use of the time by getting the opinions from the Attorney General.

MR. CHAIRMAN: All right. It is better that we discuss this amongst ourselves. Otherwise we shall lose the advantage of taking the benefit of advice from the Attorney General.

SHRI C. K. DAPHTARY: With reference to what I was saying, I shall have a word. There has to be a discretion by Lokpal and Lokayukta. And there may be certain things which may not be right in the sense that they are *malafides* and so on. Take the case of cast iron. I may put it up to Government for sanction. The Government looks into it and say that this is not a case for investigation by Lokpal. Even if it is received by him, he cannot sit in judgment.

SHRI SUPAKAR: I just want to ask two brief questions. Would you prescribe any minimum qualification for the Lokpal and Lokayukta, that is to say, whether the judges of the Supreme Court or any other high ranking officer will be jealous about their position having regard to the complexity of duties involved?

SHRI C. K. DAPHTARY: I may tell you there is no provision with regard to their qualifications. Suppose you want a man. He may not necessarily be a lawyer but he may be a man of business knowledge, administrative knowledge and so on.

SHRI SHIVAJIRAO S. DESHMUKH: And politics as well?

SHRI C. K. DAPHTARY: But, how are you going to define that? There was a time when it was considered that the high court judge was qualified for everything. He could hold rail-

way enquiries and so on. And there was also a time when the I.C.S. officer was considered to be qualified to conduct any enquiry. But, to-day, when you have got undertakings like Rourkela and what not, we find in them that this is a false proposition. Similarly, it is the case with the judges. I think it should be left as it is. How will you define his qualifications.

SHRI SUPAKAR: I want to know whether you can make any suggestions on this point.

SHRI NARAYAN SWAROOP SHARMA: He should be matriculate at least.

SHRI SHIVAJIRAO S. DESHMUKH: My second question is this. Between Lokpal and Lokayukta, would you say that each should be independent of the other?

SHRI C. K. DAPHTARY: It is better to have one organization and not several different organisations. There should be one organisation consisting of Lokpal and Lokayukta, Lokpal being at the top. Lokayukta should function under the general superintendence of the Lokpal.

SHRI AKBAR ALI KHAN: I am sorry, Attorney General, I was a little late. Mr. Chairman, if I say anything you will pardon me. You will please stop me if I repeat a question which has already been answered. I am rather anxious to know from you Mr. Attorney General about one thing. Do you think that the work that will go to Lokpal will be of such a measure and such a width that he won't be able to keep pace with it?

SHRI C. K. DAPHTARY: I think he will slow down and there is no doubt about it.

SHRI AKBAR ALI KHAN: Will you suggest some ways and means? You know we all talk about this minister, that minister, this officer, M.P., M.L.A. and so on and so forth. You said that

such a hanky-panky is going on to come to the court and then to take all those measures. The people also feel that something is going on; some enquiry is going on. And they are afraid of it. On the lines of Ombudsman or the Commissioner for the U.K., our Government has brought forward this measure. Our objective is limited. We want to see that those people about whom they talk about should also be projected by this irresponsible talk. At the same time, if there is anything wrong and if there is anyone really bad, he should be exposed.

So, what would you suggest? And how would you limit it?

SHRI C. K. DAPHTARY: Surely Lokpal will see if there is purely a general allegation without anything to support it. And on the face of that, he will say that it is no use investigating the case. Merely because there is an allegation, it does not mean that he will start investigation immediately. But this will have to be left to the discretion of the Lokpal.

SHRI AKBAR ALI KHAN: The second thing I would like to know from you is this. What kind of enquiry should he conduct? Should it be a quasi-judicial enquiry?

SHRI C. K. DAPHTARY: No, Sir. It should be a summary enquiry as he thinks fit. And the procedure is to be laid down by himself under the Act.

SHRI AKBAR ALI KHAN: If it is a quasi-judicial enquiry, it will lead to writs etc.

SHRI C. K. DAPHTARY: May be.

SHRI AKBAR ALI KHAN: He will report to Parliament. This is what we contemplate.

SHRI C. K. DAPHTARY: This Bill does not envisage. This is a contest between parties. There's no question of quasi-judicial functioning involved. And there is no question of natural

justice involved. It is a complaint which he investigates in the manner which he has to lay down for himself and I think we should leave it at that.

SHRI AKBAR ALI KHAN: Obviously it should be summary.

SHRI C. K. DAPHTARY: Obviously summary. If he wants to get his work done, it has to be summary.

SHRI AKBAR ALI KHAN: Do you think this inquiry can be interfered with by the High Court or the Supreme Court under the provisions of Writ—Art. 226 or 32?

SHRI C. K. DAPHTARY: There are conceivable cases where it might be.

SHRI AKBAR ALI KHAN: If it goes, then the whole thing will be taken out. We want to safeguard that also as far as possible to see that he goes on expeditiously and reports the matter to Parliament.

Now regarding the mode of appointment, do you approve of it? We have said—Chief Justice, Prime Minister and the Leader of the Opposition.

SHRI C. K. DAPHTARY: The President and the Leader of the Opposition.

SHRI AKBAR ALI KHAN: In fact it is the Home Minister. What I am anxious to know is: is it necessary to bring in the Chief Justice there. Should he be entangled in this?

SHRI C. K. DAPHTARY: Then you will leave it only to the Government and the Leader of the Opposition? I think the Chief Justice should be there.

SHRI AKBAR ALI KHAN: It will give certainly a dignity and decorum and the man should be a High Court Judge.

SHRI C. K. DAPHTARY: If collusion and *malafides* and all things are being suggested, why the Govern-
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ment and the Leader of the Opposition collude and *malafide* appoint some man! The Chief Justice should be there.

SHRI AKBAR ALI KHAN: So far as selection is concerned, should it be confined only to Judges?

SHRI C. K. DAPHTARY: No, I do not think so.

SHRI AKBAR ALI KHAN: Any eminent lawyer, any eminent jurist?

SHRI C. K. DAPHTARY: Why even a jurist? Why not a non-jurist, provided he has got the experience, knowledge of the world and commonsense?

SHRI AKBAR ALI KHAN: And good reputation.

SHRI C. K. DAPHTARY: Of course, integrity. After all take the High Court Judge and if you take a top class business man and put him, in nine out of ten cases, he will be as good as a High Court Judge. Only in extreme cases where really fine points of law are involved, you may go in for High Court Judges.

MR. CHAIRMAN: I want to get one point cleared. The Leader of the Opposition is mentioned in selection. That would be understood as Leader of Opposition in Lok Sabha only. That has to be made clear. It is not clear. What do you think?

SHRI C. K. DAPHTARY: It should be of both Houses. That is a matter of policy. There is a tendency to push out the Rajya Sabha in every thing!

MR. CHAIRMAN: In order to reduce the number of false, perverse or *malafide* complaints, there has been some suggestion that in case of every complaint there should be some deposit of say Rs. 1000 or Rs. 250.

SHRI C. K. DAPHTARY: I do not agree with that.

SHRI HEM RAJ: Under clause 8(4) a time limit has been put for the purpose of submitting the grievances and allegations. For grievances it is 12 months and 5 years for allegations. Do you think they should be left like that.

SHRI C. K. DAPHTARY: There must be some time.

SHRI HEM RAJ: Do you think that this is the proper period.

SHRI C. K. DAPHTARY: That is a different point. 12 months after it becomes known—that should be sufficient. Five years from the date the action complained against is alleged to have taken place. It involves knowledge also.

SHRI HEM RAJ: It may be difficult for a man to know the inside of a wrong.

SHRI C. K. DAPHTARY: Five years is a long enough time. Surely he should not require more. Some action is supposed to have taken place and if you file an allegation 4 years 364 days afterwards, is it not a hardship on those against whom the complaint is filed that the matter should be raked up four years afterwards?

SHRI HEM RAJ: It will be difficult for an outsider to know from the file.

SHRI C. K. DAPHTARY: Five years I think is surely a long enough period. How long do you suggest?

SHRI HEM RAJ: Is there any other way? He might get information from certain sources. Those sources may take some time.

SHRI C. K. DAPHTARY: Fixing up time is to some extent arbitrary like fixing up the rates of taxes.

SHRI C. C. DESAI: The Vigilance Commissioner of West Bengal has recommended 10 years in the light of his experience as Vigilance Commissioner.

SHRI HEM RAJ: In answer to Mr. Desai you told us that so far as cases of Government servants, they have to be given charges under Art. 311. Certain allegations against Govt. servants have to be looked into by the Lokpal. Then he will be harassed twice. Any way out would you suggest his opinion. Isn't he? We are a free trial twice?

SHRI C. K. DAPHTARY: That means the Lokpal has to hold an inquiry and inquiry, takes months. This is supposed to be summary thing. He never gets through his work

SHRI RAM NIWAS MIRDHA: We sometimes see that the High Court and the Supreme Court, in exercise of their writ jurisdiction, take on a very liberal, if not a lax, attitude of their powers.

SHRI SHIVAJIRAO S. DESHMUKH: They are most conservative.

SHRI RAM NIWAS MIRDHA: They are not conservative. I will give you a few instances. When a man receives a show cause notice regarding tax, he immediately goes to a Court and gets stay order which lasts for years. I can multiply instances in which very good decisions against blackmarketees, delinquent officers and others, which we would normally approve, have been set at naught or delayed to a considerable extent by Courts. I have a fear that the Lokayukt and Lokpal would come under the jurisdiction of Courts because the High Courts and the Supreme Court can issue writ orders on any authority or any person. It is so wide that even against Lok Sabha they may issue a writ order. This is what they seem to feel. Since we are creating an authority of this nature, would it not be advisable to exclude specifically that authority from the purview of Courts, if necessary even by amending the Constitution for that purpose so that this sort of thing is not repeated at least in respect of this

institution and it is allowed to freely act. The Supreme Court and the High Courts are to be excluded from exercising the writ jurisdiction so far as the activities of Lokpal and Lokayuktas are concerned.

SHRI C. K. DAPHTARY: This is a difficult proposition. The Constitution contemplates the supremacy of the Courts in various matters, over every authority, etc., etc. This is their jurisdiction. Is it advisable to make an exception of one particular functionary? This has to be considered very carefully because this will be a precedent and it will involve in any event some amendment of the Constitution.

SHRI V. N. BHATIA: Including Article 32 which might be doubtful in view of Golak Nath's case.

SHRI C. K. DAPHTARY: 19 also as I pointed out earlier. I agree that if possible it should be done because of this scandal of delay. All that is to be done today is to file a petition and obtain an injunction so that the matter is not heard for three years. A petition is filed very often knowing that ultimately it will fail. But it is done only with a view to get that injunction which will help him to go for another two, three years without trouble. This is a general observation. Some High Courts follow certain procedures and give injunctions as a matter of course and leave it at that. There are others that exercise great discrimination in the matter of giving injunction. It varies from Court to Court. But I know a fairly senior and highly-placed officer being reverted to his own State did not want to go; he filed a writ petition. It is nearly 2 years now and he is still here.

SHRI V. N. BHATIA: He will retire by the time his petition is disposed of.

SHRI C. K. DAPHTARY: That is the whole idea.

MR. CHAIRMAN: I suggest that you give us a short memorandum on this point, which will be useful to the Committee.

SHRI C. K. DAPHTARY: I am sorry that I could not be more useful. I will give a note on this point.

MR. CHAIRMAN: On this particular point asked by Mr. Mirdha.

SHRI BHOLA NATH MASTER: This Bill was originated by the Administrative Reforms Commission. This institution is analogous to the institution of Ombudsman in other countries. We have received a memorandum from the Advocate General, Mysore stating that the Ministers should not come under the category of public servant as they are not so in the real sense of the term. He has suggested that a separate provision including the Ministers and other Government servants should be there.

SHRI C. K. DAPHTARY: If a Minister could be enquired under the Commission of Inquiry Act, why not under this? Why Mysore is so worried about it?

SHRI BHOLA NATH MASTER: Some eminent jurists have said that this Lok Pal will in time be the Super-Parliament, the Super-Judiciary, the Super-Minister and the enemy of Indian Democracy and God forbid, the Super-Judge. He will pave the way to dictatorship in India or a reign of espionage under the cover of bureaucratic tyranny and grievance oriented State, etc. etc.

SHRI C. K. DAPHTARY: That is an opinion.

SHRI BHOLA NATH MASTER: That is an opinion of an eminent jurist.

SHRI C. K. DAPHTARY: It assumes democracy and it assumes that he will be superior to that democracy. All these are assumptions.

SHRI BHOLA NATH MASTER: There was a suggestion that complaints received through the members of Parliament alone should be entertained, as it is the case in the House of Commons. The Santhanam Committee also made a reference to this. The point is that all sorts of complaints may not burden this Lokpal.

SHRI C. K. DAPHTARY: I take it that the reason behind this suggestion is that it is a kind of filter or bar.

SHRI BHOLA NATH MASTER: This office of Lokpal is like the office of Ombudsman in Sweden, Norway, Finland, the U.K., New Zealand. In all these countries the term of office is four years; it is for the duration of Parliament in Denmark. In Finland also it is four years. In the U.K. the Commissioner will vacate his office attaining the age of 65. But these countries are small countries. The population of Sweden is 7.7 million; Denmark 4.6 million, Norway 3.7 million; Finland 4.2 million; the U.K. 5.46 million. In India we have 40 crores of population.

SHRI C. K. DAPHTARY: The greater the population the longer the term of Lokpal—I don't think that is the suggestion.

SHRI BHOLA NATH MASTER: Can one person do this much work?

SHRI C. K. DAPHTARY: There could be more Lokayuktas and Lokpals. You can have more of them.

MR. CHAIRMAN: We could have more than 2 Lokayuktas.

SHRI C. K. DAPHTARY: Lokayuktas may be any number.

SHRI S. S. N. TANKHA: What is your view about Lokpal holding *suo motu* enquiry and also holding an enquiry on anonymous complaints?

SHRI C. K. DAPHTARY: I don't like anonymous things. Normally I

think it is very bad. I know that much notice is taken of them. There are cases where they are useful.

SHRI S. S. N. TANKHA: Would you leave it to his discretion so that wherever he considers it necessary he can take action by himself?

SHRI C. K. DAPHTARY: I can conceive of one type of case where he may exercise his discretion to take up an enquiry *suo motu*. Supposing there is a complaint before him by X or Y, and in the course of investigation of that matter he finds that there has been an injustice which no one has brought to his notice. How to investigate it? You must leave it to his discretion. It may be left to him.

SHRI S. S. N. TANKHA: Would you like the retired judges of the High Courts and the Supreme Court to be appointed as Lokpal? Or only serving judges?

SHRI C. K. DAPHTARY: I see no objection to that. We are leaving it open to appoint anyone,—judges, ex-judges or anyone. Proper discretion will be exercised. After all, Sir, it occurs in five years or seven years. Why should you put any bar?

SHRI S. S. N. TANKHA: Would you object to the promotion of a Lokayukta as Lokpal?

SHRI C. K. DAPHTARY: No.

SHRI S. S. N. TANKHA: Will you place any age limit, at which period he must retire?

SHRI C. K. DAPHTARY: That is already at 65. Seven years will make it 72.

SHRI V. N. BHATIA: It is five years.

SHRI C. K. DAPHTARY: Yes. That is a moot point. It is a little difficult to answer.

MR. CHAIRMAN: Thank you very much, Mr. Daphtary, for coming. Please give a memorandum.

SHRI C. K. DAPHTARY: Yes. I will do so. I know this is not very satisfactory.

MR. CHAIRMAN: I hope you know of our Speaker's direction that whatever is stated by the witness is liable to be published. As you yourself stated in the beginning, there is nothing as secret here.

SHRI C. K. DAPHTARY: I take full responsibility for what I have stated. I am not afraid of anything being published.

MR. CHAIRMAN: Thank you.

Members are requested that they should be present here at 3 o'clock. We are having Mr Setalvad at that time. I request you all to come and take advantage of his presence.

(The witness then withdraw)

(The meeting then adjourned till 15.00 hours)

II. Shri M. C. Setalvad, M.P.

The Committee re-assembled at 15.00 hours.

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

The Chairman drew his attention to Direction 5.8 of the Directions by the Speaker.

MR. CHAIRMAN: Mr. Setalvad, the Committee welcomes you and thank you for having taken the trouble of coming over here and giving us an opportunity for your valuable advice. The practice we follow is that we request the witness to give his opinion on the Lokpal Bill for ten minutes and after that we shall ask some questions and clarifications. Would you start now?

SHRI M. C. SETALVAD: My friend here told me the other day in the Rajya Sabha that I should, if possible, put forward a memorandum so that members of the Committee may

know my views in advance. Well, I tried to do it but I found it difficult because the Bill is essentially a Bill which concerns details. All that I could say was something general which has already been said by the Administrative Reforms Commission in their report recommending the enactment of the Bill. But one thing which struck me while reading the provisions is that we must not by enacting this Bill create a sort of dilatory and expensive tribunal for persons who approach it because the basic idea is that a very high and respected person like Lokpal could be approached informally and could deal with grievances or allegations. If you are going to make procedures which are complicated both for approaching him and for his hearing the grievance or the allegation then we will really be creating a type of a court or tribunal which will defeat the very purpose of the legislation. That is one general comment which I had to make.

MR. CHAIRMAN: There is one very important question which we discussed this morning and to which I would like to draw your attention. It is: would the Bill come in conflict with the jurisdiction of the High Court or supposing some person who is aggrieved applies to Lokpal and Lokpal issues instructions to a certain officer in authority and that officer approaches the Supreme Court or the High Court saying that . . .

SHRI M. C. SETALVAD: As I understand the provisions of the Bill, the Lokpal or the Lokayukta would have jurisdiction only to make recommendations or findings. There is no question of their issuing any directions or orders to any officer—may it be a Minister or public servant. They have no such jurisdiction.

SHRI AKBAR ALI KHAN: Except to get information.

SHRI M. C. SETALVAD: They will ask for the information or the papers and on that they will make recommendations to the officer and to the competent authority. If the recommendations are not carried out, ultimately the Lokpal can make a special report or mention the fact in the annual report to Parliament. That is how he will function. I do not think any conflict can arise. The court will direct. He does not direct. He recommends or records.

SHRI AKBAR ALI KHAN: In this enquiry should he take some evidence or allow some body to appear through a Lawyer? What is your view about that?

SHRI M. C. SETALVAD: I would like the Lokpal or Lokayukta to avoid lawyers as far as possible.

He may take evidence, but the Evidence Act should not apply. It should be informal. He should elicit information from the complainant and other witnesses. He may examine some officials, if he wishes. But all this should be very informal because his finding and recommendations are not the finding of the court which can be enforced by anybody.

SHRI AKBAR ALI KHAN: Is any amendment of the Constitution necessary? If we pass the Bill?

SHRI M. C. SETALVAD: I do not think so.

So far as legislative power is concerned, unless you interfere with the State List (which you do not) you are quite all right. I do not see any conflict with any specific Article of the Constitution in this legislation.

SHRI AKBAR ALI KHAN: Do you agree about the choice/method of selection i.e. the President in consultation with Chief Justice and leader of the opposition should do it?

SHRI M. C. SETALVAD: I think on the whole it is satisfactory. You

could not have a better authority for the selection of the persons than the Chief Justice of India and it is advisable to get the consent of the leader of the opposition because you want a person in which every one has confidence. He is ex-facie a person who inspires general confidence and that is the essential requisite of his appointment.

SHRI AKBAR ALI KHAN: Need this gentleman necessarily be a judge or a lawyer or any person of established reputation and standing capability be appointed as a Lokpal or Lokayukta? Would you like to put some condition?

SHRI M. C. SETALVAD: I do not like to put such a condition. A person who may have a very wide administrative experience though he may not have been a judge of the High Court or Supreme Court he may still be a very useful person for this purpose provided we have integrity of character and respect for him. These are essential. Not so much, knowledge of Law but integrity and respect for him are the essential parts of it.

SHRI S. SUPAKAR: The Lokpal has to enquire into certain allegations or grievances. Those allegations may be of a very serious nature and the Lokpal finds them to be true and then some follow up action like suspension or dismissal may be necessary. In that case Article 311 of the Constitution is naturally attracted and even if it is a mere recommendation from the Lokpal, it has to be followed up by some action. Otherwise, the mere recommendation has absolutely no meaning. Will it not be necessary ultimately either to amend or modify some way Article 311 of the Constitution so as to keep with the scheme of things that we propose to make under this Bill?

SHRI M. C. SETALVAD: I take it. Article 311 would come into application not so much in the case of grievances as in the case of allegations which would be allegation of corrup-

tion. Now all that the Lokpal or the Lokayukta would record, would be the finding that in his opinion there has been some corrupt act. After that 311 is gone because the Lokpal would give an opportunity to be heard and that is provided in the Bill. That would not be in consonance with the requirements of Article 311.

SHRI S. SUPAKAR: So, you think it is not necessary to modify Article 311.

SHRI M. C. SETALVAD: No, it is not necessary. If you only modify Article 311, then you really make Lokpal a sort of an authority which is not the purpose either of the Administrative Reforms Commission's Report or of this legislation.

SHRI S. SUPAKAR: Do you propose that this Bill should provide for any minimum qualifications either for the Lokpal or for the Lokayukta as, for example, you prescribe some qualifications for High Court and Supreme Court Judge?

SHRI M. C. SETALVAD: I do not think that it is necessary to prescribe minimum qualifications for the appointment of Lokpal or Lokayukta.

We know, in the courts, in the case of appointment of judges bad appointments have not been prevented nor have they resulted in good appointments. In some cases people whose income in practice was Rs. 300 p.m. have been appointed as judges. They had just been on the rolls. Actually as the matter came up before the Supreme Court in which the appointment of a gentleman was challenged on the ground that he had not good practice and he had been merely on the rolls for the prescribed period. But the Court held that the tests were satisfied. These tests are not a good way of selecting persons.

You have got Chief Justice to recommend the appointment of a Lokpal and then you have the leader of

the opposition to give his consent. With these safeguards everything should be all right.

SHRI S. SUPAKAR: Last question about the appointment and the status of the Lokayukta. It has been suggested that he should be quite independent of the Lokpal. He should not be under him and so far as the appointment of Lokayukta is concerned it should not depend on the Lokpal. Do you think, should he be under the administrative or some other control of the Lokpal or should he be completely independent?

SHRI M. C. SETALVAD: I think the scheme of the legislation is, that there should be a composite administrative machinery for the redress of grievances and allegations. If there is to be such a composite machinery it is best to have the Lokpal as the head of it.

SHRI C. C. DESAI: The writ proceedings are being utilized to obstruct or stifle the proceedings before the Lokpal—that point was discussed this morning with Mr. Daphtary. The man comes to know that proceedings are going on against him and goes to a high court and applies for a writ petition and obstructs the proceedings for so many years. That was the point raised by the Chairman also.

SHRI M. C. SETALVAD: On what ground can he go to the court?

SHRI C. C. DESAI: The presumption is that you apply for a writ on any subject on earth. The proceedings are stayed. You get the injunction.

SHRI M. C. SETALVAD: It is open to the party to walk into the court.

SHRI C. C. DESAI: The person concerned will apply.

SHRI M. C. SETALVAD: I take it, within reasonable time if such a writ is filed the court will take the writ up and throw it out in the preliminary stage straightway.

SHRI C. C. DESAI: Can we include a provision in respect of such proceedings coming up before the Lokpal?

SHRI M. C. SETALVAD: That will need amendment of the constitution. You will have to amend the constitution. The whole idea is to enact legislation without amending the constitution.

SHRI C. C. DESAI: Should there be a provision in the Bill that before Government proceeds to appoint a Commission of inquiry in respect of any particular action against minister or individual the prior consultation or approval of Lokpal is necessary? The argument is that if the person complained against is a prominent member of Government party, then, instead of sending the case to Lokpal the executive may proceed to appoint a Commission of Inquiry presided over by a person of its own choice. That may not create that confidence in the minds of the opposition; and that is why the institution of the Lokpal is being set up. Should not the appointment of Commission of Inquiry be barred until the Lokpal has been consulted? How is jurisdiction of Lokpal to be preserved against possible appointment of Commissions of Inquiry?

SHRI M. C. SETALVAD: That does require some thinking. There has to be some provision of this kind. That is my first and *prima facie* answer to your question. But this is a matter which I would think over before I finally deal with it.

MR. CHAIRMAN: Could you send your views? It will help us.

SHRI M. C. SETALVAD: Yes, I have made a note of it.

SHRI C. C. DESAI: Regarding the relationship between the UPSC and the Lokpal, the Lokpal is to hold investigation and make recommendation it should not be subjected to further scrutiny and inquiry or fur-

ther opinion by the UPSC which may not have the same status as the institution of the Lokpal. What is your view?

SHRI M. C. SETALVAD: I thought there was some provision preventing conflict between the UPSC and Lokpal.

SHRI C. C. DESAI: That is not specific. The recommendation of Lokpal should go to Government. Government should act on them rather than that they should be submitted to the UPSC for formal compliance with the procedure . . .

SHRI AKBAR ALI KHAN: Then the inquiry by the Lokpal would have to be very thorough.

SHRI C. C. DESAI: The Inquiry must be thorough. It is presumed that he will make thorough Inquiry.

SHRI C. C. DESAI: The inquiry before he makes any recommendation. He has available at his disposal the Central Bureau of Investigation. He should be in a position to make a thorough inquiry. That is presumed.

SHRI M. C. SETALVAD: What you are saying applies to Government servant in respect of whom the Lokpal has to make a recommendation and that Government servant will have again to go through the stages of Article 311. If that article applies to him the proposed action to be taken against him . . .

SHRI C. C. DESAI: This requires further thought. I would request you to give a clear note on that subject.

SHRI VIDYA CHARAN SHUKLA: This point was raised in the morning and immediately I went to the office, I tried to find out whether the Government have powers to exclude the jurisdiction of the UPSC in certain matters. I am told, there is a provision in the Constitution under which

Government has the authority to exclude the jurisdiction of the UPSC in certain matters. That power is there. This difficulty would not arise, which Mr. Desai is pointing out. Government by an order or notification can say that UPSC shall have no jurisdiction as far as the Lokpal or Lokayukta is concerned, if it is desirable to do so.

SHRI C. C. DESAI: In an informal discussion with Mr. Damle, he said that no authority, under no circumstances could be punished without first the case going to him.

SHRI VIDYA CHARAN SHUKLA: The Constitution is over the Chairman of the UPSC. There is provision to do so under the proviso of Article 320, sub-clause (3).

SHRI B. N. BHAT: Secy. Leg. Dept: The proviso says:

"Provided that the President as respects the all-India services and also as respects other services and posts in connection with the affairs of the Union, and the Governor as respects other services and posts in connection with the affairs of a State, may make regulations specifying the matters in which either generally, or in any particular class of case or in any particular circumstances, it shall not be necessary for a Public Service Commission to be consulted."

SHRI C. C. DESAI: Shri Setalvad said that he would not like a lawyer to be associated with the Inquiry. How can a man defend himself against malicious allegations in difficult cases without the aid and advice of a lawyer. The man is not in a position to defend himself. He needs the advice of a lawyer.

SHRI M. C. SETALVAD: Once you have lawyer, then you will have all the procedures and paraphernalia such as examination, cross-examination, re-examination, etc.

SHRI HEM RAJ: You have said that the scheme of the Act is that the public should be in a position to approach the Lokpal or Lokayukta easily. On the one hand there is an apprehension that he may be flooded with so many complaints that he may not be able to deal with them. In the U.K. only a Member of Parliament is given the right of presenting grievances or allegations on behalf of the public. Do you think that that procedure will be better for us instead of allowing the public to present them themselves?

SHRI M. C. SETALVAD: That remedy is even now open to any citizen. The public can always approach their representatives in Parliament or some other representative and put across their grievances. If the Member thinks that the grievance is legitimate, he could put a question in the House or go ahead in some other manner. The purpose of this Bill is to make an easier and informal remedy available to the public. That is what I understand that this legislation is intended for.

SHRI HEM RAJ: In that case the Lokpal or Lokayukta can *suo motu* proceed with any allegation or grievance which comes to his notice.

SHRI M. C. SETALVAD: As the language of the Bill stands, he is competent to do so *suo motu* also though that term is not used as such here. He can look into any case which could be subject-matter either of grievance or allegation.

SHRI HEM RAJ: So far as frivolous allegations are concerned, do you think that any provision for security should be made?

SHRI M. C. SETALVAD: That would defeat the very purpose of the Bill. All sorts of payments and procedures will come in. That would destroy the efficacy of the remedy. Lokpal is given power to reject frivolous matter. He will have a proper

staff. Many of the complaints will be rejected straightway.

SHRI HEM RAJ: There is a provision that when the complaint is received, then a notice should be issued to the person against whom the complaint is received. Do you think that before issuing the notice and before the enquiry starts a private investigation through the C.I.D. should be made?

SHRI M. C. SETALVAD: I would not have the C.I.D. there at all. The investigation should be by the Lokpal or the Lokayukta himself. We do not want to bring in the C.I.D. here.

SHRI HEM RAJ: Clause 10(1) lays down that where the Lokpal or a Lokayukta proposes to conduct any investigation under this legislation, he shall forward a copy of the complaint or in the case of any investigation which he proposes to conduct on his own motion, a statement setting out the grounds therefor, to the public servant concerned. Before starting this enquiry, should he make any investigation through the Police or should he start it straightway?

SHRI M. C. SETALVAD: If that is the case, you again throw it on to the ordinary channel—once you bring in the Police. The whole idea is to have a very respectable and eminent citizen dealing with these grievances in an informal manner. It is open to him, if he wishes, to seek the assistance of the Police. Powers have been given to him to elicit information himself from Government Departments. He has all the powers of a civil court.

SHRI S. S. DESHMUKH: First I want to apologise for my late arrival. Because of my late arrival, if some of the questions I am going to put are repetitive, please stop me. Do you agree with the definitions of allegations and grievances as they stand in the definition clause? Are not allegations likely to be converted into grievances and *vice versa*?

SHRI M. C. SETALVAD: Let me see the definitions.

SHRI S. S. DESHMUKH: 'Grievance' is defined in sub-clause (d). What I said becomes relevant when you read Schedule II which excludes certain matters from the purview of the Lokpal. My particular anxiety relates to (c) and (d). In (c) I am concerned only with one part, namely, "action taken for the purpose of investigating crime". This and the whole of (d) are excluded unless they are allegations. Instances are not wanting where strictures have been passed on investigating officers by the Judges as a result of which supplementary chargesheets have been filed. What I say is: Will it be prudent to preclude citizens from approaching Lokpal and telling him that there has been a theft or burglary at his place, but out of personal motive the Police officer did not take any interest either in tracking down the offenders or finding out the stolen property? Would it be prudent to exclude such type of cases from the purview of the Lokpal?

SHRI V. N. BHATIA: If it is out of personal motive, it is an allegation in which case it is not excluded because Schedule II refers only to clause 8 which refers to grievances. If there is any charge of allegation, notwithstanding it may fall under the Schedule, it can be enquired by Lokpal.

SHRI M. C. SETALVAD: This completely answers my honourable friend's point.

SHRI S. S. DESHMUKH: I had my own privations. Let us imagine some concrete cases. In the last two years not less than ten thefts have taken place in North Avenue and not in a single case anybody has been detected. In such cases should you not allow the affected people to approach the Lokpal? The Police people seem to have formed an unlawful brotherhood and even though it

may be difficult to prove, yet it may be a fact that the Police machinery does not take any interest either in the detection of the crime or in the finding out of the stolen property.

SHRI M. C. SETALVAD: If I understand the hon. member, he is thinking of a general grievance, not against any particular official or officer.

SHRI S. S. DESHMUKH: General and special—both.

SHRI M. C. SETALVAD: The Lokpal is not intended to deal with a general grievance as I understand it. He is really created for the purpose of dealing with the allegation or a particular grievance by the aggrieved persons. That is the scheme of the Bill. If there is a general grievance, courts and other methods such as the State Legislative Assemblies and Parliament are there to ventilate such grievances.

SHRI SHIVAJI RAO S. DESHMUKH: If an individual grievance is of such a nature that the machinery of law itself has failed, which course would you expect to take? Let us say that a citizen comes for and with all facts at his disposal that might warrant him to be able to lodge a complaint with a particular official and on whom that official might be personally interested. He also exercises his discretion even though the facts may not warrant that. Yet, it may be a genuine complaint of the aggrieved individual. Should that be excluded from the purview of the Lokpal?

SHRI M. C. SETALVAD: I do not quite follow this for this reason. Suppose there is a case of some officer incharge of a particular police station somewhere who is the subject-matter of the complaint. That would then fall within the meaning of the definition of 'allegation.'

Then of course, you can proceed against him.

SHRI SHIVAJI RAO S. DESHMUKH: If it comes under the purview of the allegation then, under the scheme of law, as has been submitted by my learned friend, that may not be excluded. But, what I mean to say is that a citizen has all the facts at his disposal but he may not be in a position to level specific allegations of personal interest or lack of favouring a particular party. And yet he may have a genuine case of personal injustice having been done to him. Would it be prudent to exclude that? In that case, it would be grievance and not an allegation.

SHRI M. C. SETALVAD: Then, the grievance would be against the particular person.

SHRI SHIVAJI RAO S. DESHMUKH: It may be against a particular person and yet, it would be based on *malafides* and it may not be possible for you to lodge a complaint that this has been done in favour of 'A' on whom the officer is personally interested.

SHRI M. S. SETALVAD: Let us take the definition of "grievance". Is it under the definition of 'grievance'?

SHRI V. N. BHATIA: If it falls under the definition of grievance, then it would be excluded from that clause—clause 8.

SHRI M. C. SETALVAD: What you have in mind is the criminal complaint and so on. I think that appears to me to be a little far-fetched if I may say so.

SHRI V. N. BHATIA: You can go to the court of law if the police does not take action.

SHRI SHIVAJI RAO S. DESHMUKH: There are innumerable instances of legal requirements where, a citizen under the normal law of the land, is precluded from resorting to the process of law courts and if you want to prosecute the Central Government or the State Government employees, you cannot do so unless

there is sanction from the State or the Central Government.

For instance, if you want to file a civil suit against the Ruler of the British State, you cannot do that unless you get the permission from the Central Government. In such an event, will it be prudent to exclude refusal to cases involving exercise of discretion also from the purview of the Lokpal?

SHRI M. C. SETALVAD: As I understand the Bill, at the moment, in fact discretionary matters are excluded generally excepting in cases where the discretion has not been exercised *bonafide* or something of that kind has occurred.

So, discretionary acts generally are excluded from the purview of the Lokpal or the lokayukta unless they fall in certain categories. Therefore, I suppose that this is in accord with the principles laid down in the Bill.

SHRI P. K. DEO: I want your opinion regarding the subordinate staff under the Lokpal who will get guidance from the Lokpal at various stages of investigation. At the moment, the Central Vigilance Commissioner has various Vigilance Units in various ministries and through those various units, he carries on investigations. But, those units are not independent units in the sense that they are not responsible to the Central Vigilance Commissioner. Rather they are responsible to the various Secretaries in those ministries for their promotions or for other things. In these circumstances, there is a diarchy.

Do you think that same thing should continue in the case of the Lokpal because you envisage an absolute and independent authority to him who will have his own means of investigation? So, instead of making use of various Vigilance Units at the moment in the various ministries, you are responsible to the Ministers and to the Secretaries. In this case, Lokpal will have an independent organisation of his own which will be responsible only to him and nobody else.

SHR M. C. SETALVAD: Which particular provision are you referring to?

H. H. MAHARAJA P. K. DEO: This is from the evidence of the Central Vigilance Commissioner. This is how it projects.

SHRI M. C. SETALVAD: This Bill contemplated that the Lokpal or Lokayukta will be quite independent.

SHRI V. N. BHATIA: The Central Vigilance Commission will no longer be there as soon as this Bill is passed.

H. H. MAHARAJA P. K. DEO: The Vigilance Commissioner may not be there. But what will happen to the Vigilance units which have been established and which are responsible directly to the Ministers and to the Secretaries and not to the Vigilance Commissioner?

SHRI M. C. SETALVAD: They will be functioning under the direction of the Lokpal.

SHRI MUKERJEE: Under clause 17 the intention is to pass on the function of the Central Vigilance Commissioner to the Lokpal.

H. H. MAHARAJA P. K. DEO: If you pass on the function to the Lokpal, then he will have to take the help of the various Vigilance Units in the various ministries. At the moment those units are responsible to the various ministers and secretaries. So I think it is not a very healthy state of affairs as there is diarchy there. Rather, they should act independently and should be directly responsible to the Lokpal.

SHRI M. C. SETALVAD: May I know to which clause you are referring to?

SHRI MUKERJEE: Please refer to sub-clause (1) and (2) of clause 17.

THE MINISTER OF STATE FOR HOME AFFAIRS (SHRI VIDYA CHARAN SHUKLA): You are raising a matter of administrative arrangement.

H. H. MAHARAJA P. K. DEO: Don't you think that it should find a place in the Bill?

SHRI MUKERJEE: I may read clause 17(2).

SHRI M. C. SETALVAD: Please read it out.

SHRI MUKERJEE: It says:

"The President may, by order in writing and after consultation with the Lokpal, confer on the Lokpal or a Lokayukta such powers of a supervisory nature over agencies authorities or officers set up, constituted or appointed by the Central Government for the redress of grievances and eradication of corruption."

There is a provision under which the powers of the supervisory nature are conferred on him. This is, I believe, what you have in mind which is to be passed on to the Lokpal and Lokayukta. That provision is there.

H. H. MAHARAJA P. K. DEO: Those various units now working in the various ministries should have nothing to do with the Secretaries or the Ministers in those respective ministries, but they should be directly responsible to the Lokpal and Lokayukta.

SHRI VIDYA CHARAN SHUKLA: I think it would be much better if you take up this point when this clause is under discussion.

H. H. MAHARAJA P. K. DEO: Then we cannot have the valued opinion of Mr. Setalvad at the moment.

SHRI M. C. SETALVAD: If the hon. Member is thinking that in this way the independence of the Lokayukta or the Lokpal will be affected by making inquiries or using units

which are subordinate to the Ministers or the officers, then I agree with you that that should not happen. That is the point.

SHRI S. S. N. TANKHA: What is your view about the appointment of retired Judges of the Supreme Court or High Court or a working Judge of the High Court as Lokpal?

SHRI M. C. SETALVAD: As I see it, the Bill contains no bar. He may be selected. But as I have already said earlier, qualification of being a Judge or a retired Judge is not necessarily a satisfactory qualification for being appointed Lokpal or Lokayukta. It may be in the nature of a disqualification. Having spent his life in the courts of law and being sort of tied himself up with procedures and technicalities, he may not be a very fit person for being Lokpal or Lokayukta.

SHRI S. S. N. TANKHA: Would you like his term of office to remain as five years?

SHRI M. C. SETALVAD: That is quite right.

SHRI S. S. N. TANKHA: Some of the witnesses who have appeared before us were against the idea of giving a second term and also some of the eminent persons who have sent in their memorandum to us on the Bill have said that a second term should not be given in any case. In that case what is your opinion? Would you like a second term to be given? If a second term is not to be given, will you favour the extension of the term of 5 years to 6 or 7 years?

SHRI M. C. SETALVAD: I should think that the period of five years is long enough and I personally feel that there is no reason why a second term should not be given because it is not easy to find men of character and integrity and public inspiring confidence that one needs for this appointment. There are not too many men available.

SHRI VIDYA CHARAN SHUKLA: The point that was made by certain eminent witnesses was that if a provision of extension is made then it might introduce an element of patronage somehow or the other because every kind of employment after this is barred. Then the persons who would be occupying this high position would be persons of high integrity and normally they would not be influenced. But human beings being as they are there would be some chance of this element creeping in. That was why it was suggested to us that rather than keeping another term of five years, if necessary, five years could be made 6 years or 7 years but no provision for any extension should be made. We would like to have the benefit of your views about this point.

SHRI M. C. SETALVAD: There is a great deal of force in what was suggested—about the point of patronage—but in no case should you extend the duration of the appointment beyond five years.

SHRI S. S. N. TANKHA: The view taken by some of the witnesses is that the period of five years is not long in the sense that it will take some time for a person to get conversant with the procedure and then he would like to work. So, a five-year period may not be sufficient in that case. That is what the witnesses thought.

SHRI M. C. SETALVAD: I still think that for any competent person five years is a long enough period. He will only require a few months to get himself acquainted with his work. Perhaps the initial Lokpal and Lokayuktas who will be setting the pattern will take some time, but later officials will have no difficulty at all to carry on.

SHRI S. S. N. TANKHA: Do you favour the appointment of High Court Judges or Supreme Court Judges as Lokpal? The opinion was that he should be a man of high integrity and perhaps if he is not a High Court Judge or Supreme Court Judge, the

Lokpal's position will not be so high in the public eye as it should be. Therefore, it was thought that it is better to have a Supreme Court Judge or a High Court Judge appointed as Lokpal.

SHRI M. C. SETALVAD: I still remain of the view that the more these officers get away from the regular judicial routine, the better for us.

SHRI AKBAR ALI KHAN: Do you not think that if we take the Judges who are already working, it is a great disadvantage to the High Court or the Supreme Court. In any case if we take sitting Judges, then the arrears will pile up.

SHRI M. C. SETALVAD: This is a matter which the administration can take care of before appointing them. If the court is pressed with work, they would not appoint from that court; they would appoint from some other court.

SHRI S. S. N. TANKHA: It is stated that Cl. 17 will bring the Vigilance Commission under the control of the Lokpal and the Lokayukta.

SHRI M. C. SETALVAD: This has been discussed and it may happen or it may not happen because as we have seen already, bringing in the resent cells in the various Ministries who represent the Vigilance Department may affect the independent character of investigations made by the Lokpal or the Lokayukta. We do not wish that to happen.

SHRI S. S. N. TANKHA: Upto this time we have been examining important witnesses. They say that it is an improvement on the Vigilance Commission Act because the Ministers are being brought under the control of Lokpal for investigation. That is the only improvement. Otherwise services can be examined by the Vigilance Commission. They say this will be like an institution of Ombudsman in India.

SHRI M. C. SETALVAD: It is a kind of Ombudsman.

SHRI BHOLA NATH MASTER: One important witness cited your observations that this will prove, if Ombudsman is given so much power without being examined with the help of lawyers....

SHRI M. C. SETALVAD: I do not recollect having made any such statement.

SHRI MUKERJEE: (Home Ministry): It was Mr. Justice Mukherji's observation.

SHRI M. C. SETALVAD: Those were lectures founded in my father's name. Delivering that lecture he might have made that observation. I have nothing to do with the lecture.

SHRI BHOLA NATH MASTER: Justice Mukherji has said that Ombudsman in India will be a minister chamber with a different Indian name.

SHRI M. C. SETALVAD: That is a matter of opinion. He is entitled to his opinion. In't he? We are a free country.

SHRI BHOLA NATH MASTER: So I request you to throw some light on the point that the Lokpal should investigate those complaints only which come from the Members of Parliament.

SHRI M. C. SETALVAD: I have already dealt with this point. I don't agree because I think there is not enough machinery available to investigate matters received through the Members of Parliament. A different kind of machinery is to be provided for this purpose.

SHRI SHIVAJI RAO S. DESHMUKH: You must be familiar with the famous case which led to a lot a criticism in the Maharashtra State Legislature. This case involved the Municipal Commissioner and the Transport Department Chief of Muni-

cipal Corporation. These two officers were investigated by the C.B.I. on allegations of corruption and a cast-iron charge-sheet was prepared by the C.B.I. Technically no prosecution can be launched unless the State Government agrees to it. In this particular case two Officers, the State Government did not agree first till it was forced by very strong criticism in the Assembly. There are cases where this exercise of discretion is used as a shift to protect particular officials or particular individuals. In the light of that background, would you still think that it will be prudent to exclude certain things?

SHRI M. C. SETALVAD: All I can say is, in any measures we may devise, we cannot provide for everything in the world and there must be some sort of difficulties arising in working each piece of legislation. Let us leave that alone. This is my view.

MR. CHAIRMAN: Mr. Daphtry stated before the Committee that articles 226 and 32 are the very basis of working of our Constitution and the independence of judiciary is involved in the unfettered powers of the High Court and the Supreme Court to issue writs and to have any fetters even in terms of exclusion of Lokpal's enquiries from the purview of Articles 226 and 32 would be dangerous and fraught with other implications. We would like to have your views.

SHRI AKBAR ALI KHAN: He also said that he would consider it carefully and submit his views.

SHRI M. C. SETALVAD: *Prima facie* I also feel like that. I would also consider it further and send my views in writing to you.

MR. CHAIRMAN: Thank you very much, Mr. Setalvad, for having come and given your valuable advice. Kindly send us your memorandum on this point.

(The witness then withdrew)

III. Shri S. Dutt, Vigilance Commissioner, West Bengal.

(Shri S. Dutt was called in and he took his seat.)

The Chairman drew his attention to Direction 58 of the Directions by the Speaker.

MR. CHAIRMAN: Mr. Dutt, thank you very much for having come to us. We request you kindly to give us your valuable help and guidance and advice with your experience in the Vigilance Department. For ten minutes or so you will kindly give your general opinion about this Bill, after which some of our Members may like to ask some questions and clarifications.

SHRI S. DUTT: I have already sent a memorandum giving my detailed comments on the various clauses of the Bill and I have said in the concluding paragraph what my general observations are; they are as follows:

The Bill does not adequately recognise the fact that in respect of matters falling within their respective competence the Lokpal and the Lokayukta should function independently. By placing the Lokayukta under unqualified administrative control of Lokpal the Bill unnecessarily reduces the status of Lokayukta and virtually placed him in a position of subordination even in the discharge of what should essentially be judicial functions.

The relations between the two should be similar to that existing between the Chief Justice and the Judges of the Supreme Court and the Chief Justice of the High Court, Secondly,

The Bill does not take sufficient account of the fact that the procedure of dealing with "allegations" has necessarily to be different from that of dealing with "grievances". Speaking generally in respect of grievances, the Lokpal/Lokayukta will have to conduct

the investigation personally;

'in respect of 'allegations', the Lokpal/Lokayukta might have to depend in most cases on a Government investigating agency| Government officer and later, on receipt of report of the investigating agency, on Commissioners for Departmental Inquiries for holding formal inquiries on definite charge sheets."

My general impression on reading the Bill is that the authors have borrowed it from the pattern of the New Zealand Act and similar Acts relating to Ombudsman regarding grievances and even there they have not paid sufficient attention to the need for distinguishing a case or complaint received and the cases where the Lokpal take action *suo moto*. Now, the model Bill attached to ARC Report itself provides in Chapter III on the Functions and Powers of Lokpal:

"7(1) (a) where a written complaint is duly made to the Lokpal...

(b) information has come to his knowledge otherwise than on a complaint under clause (a) that such action is of the nature mentioned in that clause."

Sir, this specifically provides for action *suo moto* by the Lokpal.

The New Zealand Act, which I have got here, regarding the functions of the Commissioner says: "The Commissioner may make any such investigation either on a complaint made to him by any person or of his own motion and where if a complaint is so made he may commence any such investigation..." I attach considerable importance to empowering Lokpal in this respect. I personally think that the Ombudsman the Grievance Commissioner should not ordinarily take action except on a complaint. I do attach the highest importance to this. From my experience as Vigilance Commissioner—I have been Vigilance Commissioner W. Bengal since its start since February 1965.

I can say that there are very few cases where a person who has derived an advantage has made a complaint against a corrupt public servant and the reasons are obvious. He has got his advantage; why should he come and complain? It is really that we have taken action either on a complaint made by somebody else who feels that he has been denied the advantage and the other fellow has got it. Very often there are anonymous complaints. I may say that the Govt. of India have issued a circular that no notice need be taken of anonymous complaints. In West Bengal where the Vigilance Commissioner is entirely independent of the control of the State Government, I have taken notice of complaints which are anonymous. But I am sorry to say that 95 per cent of the anonymous petitions contain absolutely fantastic and false allegations. Nevertheless, we should try to sift the grain from the chaff. Therefore, the Lokpal should be authorised to act *suo moto*, particularly in respect of allegations. The Bill itself, as I notice, does envisage action *suo moto*, but in its provision the power is not given in a direct manner. For example, in clause 7 it is said: "...in any case where a complaint involving a grievance or an allegation is made in respect of such action or such action can be or could have been in the opinion of the Lokpal.....". Probably the last portion refers to action *suo moto*, without a specific complaint. Similarly, clause 10(1) (a) says: "forward a copy of the complaint or, in the case of any investigation which he proposes to conduct on his own motion...." Then there is the mention of a statement setting out the grounds. But I do suggest that there should be a specific provision as in the New Zealand Act. As in the draft Bill attached to the ARC Report this matter should be placed beyond any doubt.

On the second point, about administrative control, as I have submitted in my memorandum, it is not enough merely to say that the Lokpal would have no authority to question any finding, conclusion or recommenda-

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tion of a Lokayukta. The Lokpal should have no authority, for example, to issue any instruction as to how investigation should be conducted. Even the Chief Justice cannot take away cases from other judges of the High Courts. The Chief Justice has no authority over the Judges as to how they should dispose of their business. The question is important. The Lokayukta should not be made merely staff officer of the Lokpal. Only his functions should be separated. He should function independently of the Lokpal.

The other point is that sufficient attention has not been paid to the procedure to be followed in respect of an allegation. If an allegation is made that so and so has accepted money and has taken advantage of granting any request to somebody else, in the first place, there is not likely to be any complaint but the information may come in some other manner. As I have stated in my memorandum, the Central Vigilance Commissioner can refer a complaint to the CBI for investigation. The Central Vigilance Commissioner does not conduct the enquiry himself. In fact, during the last three-and-a-half years I have been Vigilance Commissioner of West Bengal, not a single case have I enquired into, because it is not possible to do that. That would involve examining witnesses, making enquiries or visiting probably Bombay, Calcutta, etc. So that is not feasible.

Now, the Central Vigilance scheme says specifically:

"The Vigilance Commissioner take under direct control any complaint as he may consider necessary for further action which may either be to ask the CBI to register a regular case or investigate it."

Now, the Vigilance Commissioner does not require the permission of the Home Ministry to refer to CBI. Unfortunately, I think this is a very serious defect in this Bill. It is stated here in clause 13(3):

"Provided that the Lokpal or a Lokayukta shall obtain the consent of the Central Government before utilising the services of any officer for agency of that Government."

Supposing there is a complaint against a Minister or a senior officer and if the Lokpal has to depend on the consent of the Home Department for asking the services of the CBI that will be a handicap. The executive Government may be interested in not pursuing a case. They may hold up consent. That should not be provided. The only thing that can be provided is that when the Lokpal calls on an agency he should inform the Home Department. It should not depend on the consent or sweet will of the Government. Otherwise there will be serious difficulties about cases in which the executive Government is really interested in protecting the person against whom allegations are made.

Then again it is stated that the Lokpal shall not take action in a case which has been referred to Commission of Inquiry. Under the Commission of Inquiry Act; there may be two stages involved if there is serious allegation. Take, for example, Raja-adhyaksha Commission against Bakshi Ghulam Mohammad. The Commission of Inquiry submitted the report to the State Government. Then the report comes to CVC as to what action should be taken and he gives his advice. The Bill says: "The Lokpal or a Lokayukta shall not conduct any investigation in the case of any complaint involving a grievance or an allegation in respect of any action inquired into by, or referred for inquiry to a Commission of Inquiry under the Commissions of Inquiry Act, 1952." Now, I can even understand that when it is referred to a Commission of Inquiry the Lokpal should not interfere, but when the report comes it should be referred to the Vigilance Commissioner, in this case to Lokpal, if it involves some complaint of allegation. Otherwise what happens is that if a serious complaint is made against a Minister or a senior officer,

Government can immediately set-up a Commission of Inquiry and remove the case from the jurisdiction of the Lokpal.

Similarly, there is another very important point. It is said the Lokpal will not make a report in a case where action has been taken on the advice of the Public Service Commission. I have said in my memorandum on page 4.

"The proviso would prevent the Lokpal|Lokayukta from making a special report to the President in respect of any action taken by an authority in consultation with the UPSC. The possibility of a conflict of advice of the Lokpal|Lokayukta with that from the UPSC should be eliminated not in the manner proposed but by regulations to be made under the proviso in Article 320 of the Constitution specifying that it shall not be necessary for the Public Service Commission to be consulted in respect of matters falling within the definition of "allegation" in respect of Public servants. As envisaged in the Bill, the Lokpal|Lokayukta will be persons of very high status and authority and there is no particular reason why in respect of matters falling within the competence of the Lokpal|Lokayukta a reference to the UPSC should be necessary. The possibility of the Executive Government by passing the jurisdiction of the Lokpal|Lokayukta by making a reference to the UPSC should be eliminated.

In any case, the Lokpal|Lokayukta should not be prevented from sending a report to the President on the ground proposed."

My suggestion is that allegations of corruption and dishonesty against public servants which come within the jurisdiction of the Lokpal should not be referred to the UPSC again for opinion. I made a similar suggestion to the West Bengal Government.

H. H. MAHARAJA P. K. DEO: Mr. Dutt, I was given to understand from your evidence that the findings of the Commission under the Commissions of Inquiry Act may be referred to the Lokpal. Is that so?

SHRI S. DUTT: When a Commission of Inquiry report discloses ground of action against public servants, the Lokpal should be competent, as in respect of allegations received from other sources, to take action on them.

H. H. MAHARAJA P. K. DEO: I believe taking action under the Commission of Inquiry Act is a positive action taken by the Government after a *prima facie* case is established say by the Lokpal or by any other competent authority. So whatever action will be taken under the Commission of Inquiry Act will follow after the finding of the Lokpal and not *vice versa*. Is it so?

SHRI S. DUTT: No. What I have said is that if the allegations involve public servants Government should not set up a Commission of Inquiry and thus exclude the Lokpal's competence but at least should consult the Lokpal before setting up a Commission of Inquiry, and in any case if the Government sets up a Commission of Inquiry, Government in taking action on the report of the Commission of Inquiry should be guided by the advice of the Lokpal as in the case of allegations received from other sources has not abridged the authority of the Lokpal. On the advice of the Lokpal a Commission of Enquiry may be instituted under the Enquiry Act.

SHRI S. DUTT: It is not that way. I have not said that. Before Government decide to appoint a Commission of Enquiry in respect of matters falling within the definition of allegations, Government should at least consult the Lokpal and after the Commission of Enquiry's Report is received, if they disclose *prima facie* a case against the public servant, the jurisdiction of the Lokpal should not be excluded.

Under the Bill once the case has been referred to the Commission of Enquiry, Lokpal has nothing to do.

H. H. MAHARAJA P. K. DEO: How do you investigate various complaints in your State?

SHRI S. DUTT: In the Government of India the principal agency for investigating allegations is C.B.I. which is not under the Central Vigilance Dept. but under the Home Ministry.

In West Bengal, if I feel there is a case, I send the same to anti-corruption Bureau which is under my control and they submit the report to me. If I am satisfied that there is a case for prosecution or departmental action. I ask Government to take action.

I do not think C.B.I. should be under the control of Lokpal because that will mean unnecessary burden. Moreover, the Lokpal in that way will become the prosecutor and the Judge. It should not be so. C.B.I. should be under the Government but the Lokpal should have unrestricted right to use the agency for investigation and report.

H. H. MAHARAJA P. K. DEO: My fear is that if that agency would be directly under the administrative control of the various Ministries, they will be responsible to them....

SHRI S. DUTT: There are not more than one agency—C.B.I. only and I do not envisage different agencies of the Government of India. I had a talk with the Chief Vigilance Commissioner—Shri Srinivas Rao. The CBI acts in an independent manner and is not liable to influence. It is most impracticable and expensive to set up a separate organisation under the Lokpal. Secondly it would be objectionable in principle to have an investigating agency under the Lokpal. Lokpal will then take responsibility directly or indirectly for the work of the C.B.I. and

in fact he will be both a judge and the prosecutor. In Bengal there is a small unit to deal with anti-corruption under the vigilance commissioner. I leave everything to them. If at times they want extra staff they come to me.

H. H. MAHARAJA P. K. DEO: Suppose there is an allegation against the Home Secretary. CBI is directly responsible to the Home Secretary. Do you mean to say that the Lokpal will entrust the investigation against the Home Secretary to the C.B.I.?

SHRI S. DUTT: I see your point, Sir. But what is the alternative? In that case one might say that there might be a small organisation or an agency of competent people to deal with the case against Home Ministry. That would be impracticable. Moreover, those people will stay for all the time in the C.B.I. That is one of the problems I am facing in Bengal. When a man is due for promotion, he looks for the same in regular police. It is very difficult.

C.B.I., in this way, will not be able to function independently. These are the difficulties which will have to be faced.

SHRI C. C. DESAI: Supposing you were Lokpal, do you think that this Bill will give you enough powers to act independently and to have the finality of recommendation which ought to be attached to in finding or in recommendation or in decision of a Lokpal?

SHRI S. DUTT: Certainly not. It has very serious defects.

SHRI C. C. DESAI: Taking the same point I would like to know whether it is still possible for the Lokpal to make use of C.B.I. without reference to the Home Ministry. For the purpose of the Lokpal, the C.B.I. is attached as it were to the Lokpal. For other duties C.B.I. will be attached to the Home Ministry. Is it not possible to bifurcate the functions for discharging of duties by the C.B.I. because it is not possible to set up an independent organisation under the

Lokpal? At the same time CBI must have direct access to the Lokpal without interference from the Home Secretary.

SHRI S. DUTT: Central Vigilance Scheme envisages that and its functions on the same basis.

Without taking the legislative view of this whole matter, I think it is not a sensible way for the Government to interfere.

SHRI C. C. DESAI: About the finality of the recommendation of the Lokpal, do you think that recommendations of the Lokpal should be accepted by the Government? If not accepted, those should be reported to Parliament. For those recommendations they go to the UPSC who will again examine.

SHRI S. DUTT: It is not necessary. It is undesirable. The Lokpal is sufficiently independent authority. They should not be referred to UPSC.

MR. CHAIRMAN: How much percentage of cases is accepted and how much percentage is rejected by the Government?

SHRI S. DUTT: Large majority of the cases have been accepted.

SHRI C. C. DESAI: In the Bill it is provided that this will not be disclosed to the press or the public during or after the investigation. Where is the difficulty in disclosing the grounds of a case after the investigation whether the man is acquitted or convicted? Is there any difficulty or objection to disclosure of grounds after the investigation whatever may be the result? Why should not the grounds be disclosed after the decision was taken.

SHRI S. DUTT: There is no objection. It should be publicised widely. Even gazette publishes saying so and so is removed from service, etc.

SHRI C. C. DESAI: The identification of the person etc. should not be disclosed whether during or after the investigation—why after the investigation?

SHRI S. DUTT: I see no reason why it should not be disclosed.

SHRI C. C. DESAI: Please see clause 10, sub-clause (2) at page 9.

SHRI S. DUTT: It refers to the stage after investigation before action is taken. Suppose there is a case for normal departmental enquiry against a public servant. At that stage disclosing information is not right. The case has not yet been proved. After the departmental enquiry and after action is taken, the final result should be published.

SHRI C. C. DESAI: Is there any case of conflict between your finding and final decision of the PSC?

SHRI S. DUTT: I have said so. There are a few cases. Government said we have consulted you at earlier stage and we have got to consult the public service commission at later stage. On the same facts I advised and the UPSC advised, that kind of thing.

SHRI S. S. DESHMUKH: We would like to benefit by your experience. There are various organised types of corruption in certain notorious departments like excise, prohibition, registrar of documents, public works etc. Certain percentage is supposed to be fixed to be given at regular intervals to the officials dealing with the case. What is your experience? Has your presence been able to give a dent in the case of preventing organised corruption?

SHRI S. DUTT: I am afraid not. I was the first vigilance commissioner there. When I went to take up the job there was a general atmosphere of fright among the dishonest public servants. But they knew that the vigilance commissioner cannot really effectively deal with this problem. How can he? Our system is such, and

we cannot simply hang a man on mere suspicion. We have to follow the rules of fair justice. There should be evidence and all that. Who will give that evidence? A man gives money. He is not coming for evidence. He is equally culpable like the other fellow. Money is not given in public. The whole thing is like this. There are these inherent difficulties involved. That is why I told my Government, that you must root it out at the source. Somebody applies for half a ton of cement for repair of house when the house is collapsing and he does not go it for months and months; he gives some money to somebody and gets the permission. When he gets the advantage, why should he come to give evidence? It is such a difficult thing. I have said certain things in my annual report to the Government. I would like to read out what I have said in the course of my annual report to the Government. It says:—

“The vigilance commission has to state with regret once more that for reasons beyond its control it has not proved as effective as it would have liked. There are inherent difficulties in detecting and proving corruption in public service. Bribes are not given in public and a person who pays illegal gratification to a public servant either under compulsion of circumstances or to get a special favour not due to him cannot be expected to complain or give evidence in a departmental enquiry. Government servants even junior in rank have considerable powers of mischief if they are inclined to abuse their authority, and ordinary people who may be under periodical necessity of approaching them for permits, licences, etc. do not dare displease them. An accused person cannot be punished on mere suspicion and very often adequate circumstantial evidence is not forthcoming.”

SHRI S. S. DESHMUKH: The very purpose of the institution of the Lok-

pal and Lokayukta is to make a battle against the institution of corruption. What structural changes you have in mind which would enable the institution to check if not completely uproot this type of organised corruption?

SHRI S. DUTT: I have said, the task is very difficult. Apart from the registrar's office, there are some others, subordinate officers, bench clerks etc. who are doing this. To my surprise also, I found that in hospitals corruption has been rampant, also, for getting grant from the DPI's office. There are many cases where by delaying certain things, people extort money from others. If a man applies for licence, if he does not get it in 15 days or so, he should have the right to come to the Lokpal or Lokayukta. He can say that he has not been given a licence although he fulfills the conditions. The Lokpal or Lokayukta can call for the record and see.

SHRI C. C. DESAI: Why not abolish the licences themselves?

SHRI S. DUTT: That is a point on which I cannot pronounce any opinion.

SHRI S. S. DESHMUKH: Our being an economy of scarcity, we altogether cannot do without controls. There are innumerable cases where controls are either imposed or lifted to suit certain individuals. Do you think if sub-clause (e) in schedule II is allowed to stand as it is, it will amount to legal sanction to or a premium on corruption? In spite of the exceptions that are provided, do you or do you not think that the departments of DGS & D, CCI & E and Excise Departments and also the office of the person whose job it is to see to the supply position of essential commodities, will indulge in acts of corruption? Under the present scheme in order to bring them to book before Lokpal, you will have to prove harassment or, gross delay in meeting contractual obligations. What structural changes you propose to this sub-clause or in the general scheme of the Bill to ensure that such acts of corruption are

promptly brought to the notice of Lokpal and curbed?

SHRI S. DUTT: As regards the first one, I have no specific suggestion. Lokpal cannot go into the terms of the contracts. But I want to say that delay is one of the fruitful sources of corruption. By holding up the contractor's bill, a Government employee extorts money. Licences and contracts of which you have said are new sources of graft. Apart from the traditional sources such as Registrar's Office, there are new sources like admissions to hospitals though they have nothing to do with corruption in the traditional sense. This is due to our general standard of morality.

SHRI S. S. DESHMUKH: The specific case I have in mind in respect of (e) is this: A, B, and C apply for a tender as suppliers of article X. A's is the lowest of all the quotations. According to the rules of tender, if the lowest tenderer has to be rejected certain reasons should be recorded in writing. To fulfil this rule, the officer concerned records in writing: I do not like the look of A and that is why I prefer B. The result of this can be as obnoxious as anything. But still that fulfils the rules. Now, A wants to bring this fact before Lokpal. He cannot allege gross negligence. He cannot also say—unless he is equipped with certain facts—that he has acted out of corrupt motive. What can he do . . .

SHRI S. DUTT: The answer lies in not burdening the Lokpal with this. Government must set up a separate tribunal to look into allegations of this kind. It will not be practical for the Lokpal to deal with similar complaints.

SHRI MUKHERJEE: This is not excluded. What is excluded under (e) is something else.

SHRI PURNAND CHETIA: There is a band of officials working under you. These officers have been appointed or drawn from different departments on the basis of their efficiency, honesty and integrity. If a case re-

lating to one of them having been indulged in corrupt practice comes to your notice, will that case be investigated by you—the man of that department under whom he is working?

SHRI S. DUTT: I have only the Police officers on the anti-corruption side. I have had to borrow them from the parent department. We cannot have an entirely separate organisation. In practice, during the last few years they really have acted quite independently. In a case involving one of the most senior officers of the Department, on my advice it was remitted to the CBI so that my police officers who were junior did not have to deal with it. But there is no answer to that kind of problem. I cannot have a self-contained organisation which will attract people of the right type. People will not be attracted unless there are prospects of promotions.

SHRI HEM RAJ: You have been in the service for a long time. You have given the example of certain types of cases which you had to deal with as the Vigilance Commissioner. You have said that some cases have cropped after five years and you were able to award punishment. In the Bill itself for the purpose of grievance a period of 12 months is prescribed under clause 4 (a). For allegation a period of five years has been fixed. You have suggested 10 years.

SHRI S. DUTT: First take grievance. Where action is taken on a complaint, 12 months period is a reasonable time. But if action is taken *suo moto* then one year is an inadequate period. I have said in my note that in the case of grievances, Lokpal need not take action *suo moto*. I have revised my opinion since, because I find that both under the New-Zealand Act and the ARC report, even in respect of grievances the Lokpal can take action, *suo moto*. If so, for action taken *suo moto* the time limit should be two years rather than one year in respect of grievance. In respect of

allegations, the period of five years is all right whenever action is taken on complaints made. But if something comes to the notice of Lokpal and he takes action *suo moto*, I said five years period is not adequate; it should be ten years. I have known of cases where a fellow had made a big house quite sometime ago and yet we have gone into it and taken action. In the case of action taken *suo moto* the period should be ten years; on complaints five years time is alright. For action taken *suo moto* that is not enough.

SHRI HEM RAJ: Definitions of 'grievance' and 'allegation' are given here. Is it not possible that a grievance may become sometimes allegation? How far have you been confused in the course of your practical working?

SHRI S. DUTT: I have no authority to look into the grievances because I have limited functions. The Vigilance Commissioner deals entirely with the allegations. The Central Vigilance Commissioner is not functioning as a Grievance Commissioner or Ombudsman.

SHRI HEM RAJ: The Lokayukta should be independent and/or under the control of Lokpal.

SHRI S. DUTT: The Lokpal should not interfere with the work of the Lokayukta. Suppose Lokpal asks the Lokayukta to go to Bombay and do the investigation ordinarily that must be excluded. Lokpal has no business to direct him as to what he should do or what procedure he should follow or how he should conduct the investigation. That is what I have said in my note. The provision that is made—that Lokpal cannot interfere with the Lokayukta's recommendations is not adequate.

SHRI S. S. N. TANKHA: Do you permit a lawyer or an agent to be represented before you?

SHRI S. DUTT: Actually I do not hold any enquiry myself. The enquiry is held by the Commissioners of Departmental Enquiries who are generally retired District Sessions Judges on my staff. Our general practice is not to permit the lawyer. In special circumstances, they can permit.

SHRI S. S. N. TANKHA: Is there ever a case where the people complained against feel handicapped because they are not represented either by an agent or by lawyer?

SHRI S. DUTT: I do not think there is any real handicap in any case. The difficulty as it is that it takes time to process the whole case. I do not think there is any real injustice or unfairness involved.

SHRI S. S. N. TANKHA: I am looking at it from another point of view. Since you have been working as a Vigilance Commissioner for so long, I want to know as to what is your experience in this regard? Do the people feel any handicap?

SHRI S. DUTT: I do not think there is any real handicap. There may be odd cases involving a detailed examination of accounts, which may need a lawyer. But there is no handicap at all.

SHRI S. S. N. TANKHA: My second question to you relates to your experience. You have said that you do not favour a second term to be given to the Lokpal. In that event, do you think that this period of five years which has been provided for in the Bill here is sufficient or should it be extended?

SHRI S. DUTT: I think so. If I may be permitted to say so, the Lokpal has the status of a Chief Justice of India. Normally, people who have held very high offices—judicial or other offices—are to be appointed and if they are appointed at the age of 62

65, five years' period is enough for our country. Considering the conditions in our country, I think that this five year period is quite sufficient.

SHRI S. S. N. TANKHA: One point of view was that the period of five years is rather short if it is not to be extended because the man takes some time to get acquainted with the things and then he begins to work in earnest after a year or two. But some time after he begins to relax as he knows that he has to go away after another two or three years.

SHRI S. DUTT: If you select the Lokpal of that status, it should not take two years for him to learn the work. What is there to learn about?

SHRI AKBAR ALI KHAN: I want to know from you one thing. For the Lokpal, what kind of enquiry do you contemplate?

SHRI S. DUTT: I do not say that. In case of grievance a sort of administrative lapse or whatever it is he should look into it himself. In respect of an allegation, he should have powers to conduct an enquiry, through others.

SHRI AKBAR ALI KHAN: It is on that alone he can conduct the enquiry. Here I am not talking of the Vigilance Commissioner but of Lokpal. In your opinion, Lokpal should not take evidence in that way. Like a lawyer, should he go into preliminary enquiry?

SHRI S. DUTT: I have not used that expression. Normally, he should not be expected to enquire in an allegation personally. If in a particular case, he feels that there is something—he should go into. There is nothing in the Bill to prevent him from doing so. But, the Act should take sufficient note of the fact that in most cases involving allegations he will not have facilities to conduct the enquiry himself. For that there must be provisions in the Act.

SHRI AKBAR ALI KHAN: The provision of Conducting an enquiry into the grievance is there.

SHRI S. DUTT: In the case of allegations the C.B.I. is there.

SHRI AKBAR ALI KHAN: What other methods should there be?

SHRI S. DUTT: If a man has applied for a license for something, if the Department sets over it for two years and no reply has been sent to him, the Lokpal can ask the Secretary for a report. He should not ask the C.B.I. to enquire and obtain a report from Secretary. In respect of allegations, he should ask CBI.

SHRI BHOLA NATH MASTER: In the light of your experience in West Bengal, whether it is feasible proposition that the Opposition party should be consulted for the appointment of Lokpal?

SHRI S. DUTT: I think so.

SHRI BHOLA NATH MASTER: If there is no Opposition Party?

SHRI S. DUTT: There is provision here in the act.

MR. CHAIRMAN: Thank you Mr. Dutt for coming over here and giving us your views.

(The witness then withdrew)

IV. Dr. L. M. Singhvi, Ex-M.

(the witness was called in and he took his seat).

MR. CHAIRMAN: Dr. Singhvi, I thank you for having come here to give this Committee the benefit of your valuable opinion.

I need not explain to you the Speaker's Direction as to the evidence which is liable to be published.

Shri Akbar Ali Khan wants to go early. He will ask you some questions. After that you will make your general observations on the Bill.

SHRI AKBAR ALI KHAN: I am grateful to you as also to Dr. Singhvi who has agreed to answer my questions before he makes a general statement.

Dr. Singhvi we are very happy that you are with us and I have seen your note and this has been your pet

subject, if I may say so and after all, the Government of India and the Parliament are now thinking on that line of having somebody who would look into these grievances and allegations. But what I feel is that there will be this difficulty that once we establish this institution, don't you think the work and the representations will be in such a vast amount that it would be difficult to do justice to it?

DR. L. M. SINGHVI: There is this danger. As a matter of fact, you would recall that in Denmark before the institution of Ombudsman was established in that country in consequence of the recommendations made by a Committee after they began to revise their constitution in 1946, this Committee, Mr. Chairman, consisted of every distinguished members, men in public life, including a number of Ministers, and one of the difficulties that was put before they brought into existence the institution of Ombudsman in that country was that this institution would be swamped by public complaints some of which were bound to be frivolous and cranks would take opportunity of lodging complaints before this institution. In that country after the establishment of the institution it has been found that the apprehension was not well-founded. In our country certainly different circumstances prevail and one would not be willing to vouch wholly that certain number of perverse complaints may not be lodged. On this consideration, but, largely, on another consideration, namely, to enable Members of Parliament to continue to help their constituents in an effective manner and not to deprive them of their representational powers, in England, they adopted a system in which complaints would necessarily have to be routed through Members of Parliament. I do not think that the consideration that the institution might be swamped by numerous complaints was really the decisive factor in England, but it was also mentioned in that country. After all Sweden, Denmark and New Zeland are much

smaller countries and they thought theirs is a big Country, with many times the population of those small countries and it might create problems. So they wanted, at least to begin with, to confine the routes through which the complaints would come. But there is no better way of finding than by experiment. To a certain extent one can make changes. To a certain extent one can provide institutional safeguards. But one would have to make a beginning in this country. It is true that some safeguards should be provided to see that frivolous complaints may not be made and the institution may not be swamped with frivolous complaints. This is so in the countries in which this institution has functioned. One of the main reasons for its success is the personal attention that the Ombudsman is able to give. In Denmark and Sweden I have seen this institution at work. I happened to have met distinguished men including the Ombudsman in some of the countries and in each case they emphasised that the success of Ombudsman institution in their countries was largely due to the fact that they were able to give a lot of personal attention, which if you have too many complaints an Ombudsman cannot give. It is true therefore that perhaps some effort would have to be made to safeguard the institution against being flooded by complaints which may be frivolous. The question is how it should be done. There are many possible ways. One of them is that which is adopted in England, namely the complaints must be routed through the Members of Parliament. Some such suggestion in somewhat different context was made by Mr. Santhanam and his panel. This was of course in respect of corruption complaints. He wanted that the Members of Parliament should make the corruption complaints. There are many other ways of doing it also. But the basic thing is, institutionally speaking, if you provide judicial and other remedies which are not now available to the public, then this fear may not be altogether well-founded.

This is what is now being provided. Of course, in matters such as this, when you are beginning to embark on an experiment, a certain measure of experimentation is necessary and we have to learn from experience so as to improve this particular piece of legislation. In this context I would make a suggestion.

This is again a legislation the working of which should be reviewed, not in the routine way when the Annual Report comes to be presented to Parliament, but by constituting a special committee for this specific review. After one or two years of review recommendations should be made specially by this Committee. We are not creating an institution merely for the purpose of window dressing. Here is an institution which goes to the very heart of democratic processes. Therefore it is necessary to see that it is officacious and works well.

SHRI AKBAR ALI KHAN: The other thing is this. I was a little worried and I want your guidance on this as to whether this inquiry should be of a very superficial nature or it should be a thorough enquiry. Don't you think that if this is a thorough enquiry it will violate Articles 32 and 226 of the Constitution?

DR. L. M. SINGHVI: It should necessarily be a thorough enquiry if it is to have any meaning. If it is to inspire confidence. If I were to narrate to this august Committee the experience of Ombudsman in Denmark, which I consider to be a good example of Ombudsman institution in the whole world, one would find a remarkable preoccupation with details and even minute details. This is necessary because without doing this it would not inspire necessary amount of public confidence. In view of the existing elaborate administrative procedures, I consider this to be an important part of the functioning of this institution. If anything is done superficially, we might land ourselves in greater complication and difficulties. Therefore, it should be a thorough enquiry.

About the second part of the question regarding Articles 32 and 226, the point to be considered is that anything that can be taken cognizance of by courts would not be taken cognizance of by this institution. Secondly, a declaration should be obtained from every person who lodges a complaint or grievance or allegation before the Ombudsman institution, before the Lokpal and Lokayukta. It should be incumbent on such persons to make a declaration that he has not gone to any court of law, he must make a declaration that the matter is not pending before a court of law. It should be treated as an affidavit so that if he has acted in any manner which is contrary to prescribed rules, he can be proceeded with.

SHRI AKBAR ALI KHAN: How can we prevent a person against whom a complaint is to be enquired into from going to any court of law?

DR. L. M. SINGHVI: In actual practice the difficulties which are envisaged may not present themselves in very large number. In most cases where a person has come to this institution making a complaint, normally the Courts would not exercise any jurisdiction; in fact, they would be debarred from exercising any jurisdiction over this institution. Once a person has chosen a form of enquiry, it should be allowed to proceed. Even assuming that he has remedies through a Court of law, until the Court throws out a particular matter, you don't know whether there is any remedy or not. Assuming that he has remedies in both forums, he has to make a definite choice for one of them. Even now many enquiries are conducted by departmental committees. Articles 226 and 32 are not shut out by this legislation. I am quite sure that when this particular Bill becomes law, the courts of the country will try to build up jurisprudence in which they would not interfere with references pending before this institution. Even now, self-restraining procedures are built by the judiciary,

which does not entertain anything against pending matters before a domestic tribunal. This is much more than a domestic tribunal. This is almost an ultimate remedy that the members of the public can have.

SHRI AKBAR ALI KHAN: I am thinking of the person against whom the enquiry is to start. If he says that this matter which is a sort of allegation he would have it decided by a court of law, not by the Lokpal, do you mean to say that the choice will be his?

DR. L. M. SINGHVI: In matters of allegation, except those that are covered by the Prevention of Corruption Act, the person concerned has no such option even at the present time. If the allegation against an officer is not covered under the Prevention of Corruption Act, he will not say that he will want to have it referred to a Court of Law. In such cases enquiry committees are constituted by the department concerned. In cases of corruption where a specific statute applies, I do concede that this difficulty would arise.

SHRI AKBAR ALI KHAN: So far as the appointment of Lokpal and Lokayukta is concerned, do you agree that the President in consultation with the Chief Justice and the Leader of the Opposition should appoint such a person?

DR. L. M. SINGHVI: Except that I have suggested some changes which may appear on the surface to be minor changes, but in fact they are substantially important.

Clause 3 on page 4 of the Bill says: "The Lokpal shall be appointed after consultation with the Chief Justice of India and the Leader of the Opposition in the House of the People, or if there be no such Leader, a person elected in this behalf by the Members of the Opposition in that House in such manner as the Speaker may direct". I have suggested a small, but I think

crucial, amendment. I have suggested that the Lokpal shall be appointed 'in' consultation with the Chief Justice, not after consultation. 'After consultation' is the term which has been used to enable Executive of the country to do precisely what it likes. If it is 'in consultation' there would be greater authority for them. I would suggest that instead of 'after' it should be 'in consultation'.

MR. CHAIRMAN: In this matter should we route it through members? We have a Committee of Petitions in the House, as you know.

DR. L. M. SINGHVI: I have made a very specific suggestion, and I would like to draw your attention particularly to page 5 of my memorandum in this connection. I have stated: "As I conceive it, the institution of Lokpal and Lokayukta is essentially an extended arm of the parliamentary apparatus in the cause of redressing public grievances. Complexities of modern administration, limitations of parliamentary procedure and modalities, increasing proliferation of administrative functions and the accompanying dangers of abuse of discretion and finally the immense public advantage of an impartial and objective apparatus for the investigation and redress of grievances and allegations all point to the pressing need for an institutional framework which finds a meaningful expression in the Bill. Obviously, the Lokpal and Lokayukta institutional complex is not founded on the Civil Service ethos and orientation underlying the conseil d'état in France, which has been a conspicuous success in its own way. The Lokpal and Lokayukta idea which belongs to the parliamentary context, cannot afford to drift outside the parliamentary constellation. That indeed is the concept implicit in the Bill. And therefore, I am of the view that while scrupulously and absolutely safeguarding the independence of the proposed set-up, we should nevertheless provide for effective links between the Lokpal institution and the Parliament. I would respectfully suggest

that there should be Standing Committee of the two Houses of Parliament to be known as the Joint Committee for Petitions and Public Grievances which should be entrusted with the task of pursuing the implementation of the recommendations of the Lokpal and the Lokayuktas and also of examining the explanations of the Government, if any, in cases where the Government have not implemented the recommendations. The relationship between the Lokpal and the Committee for Petitions and Public Grievances would be some what on the lines of the relationship between the Comptroller and Auditor General and the Public Accounts Committee. I may add that precedents and examples for such an arrangement are not wanting."

However, what you have been pleased to mention is a different concept, that is, the route for grievances should be through the Members of Parliament to the Parliamentary Commissioner. If that is so, then I would not advocate the Grievance Committee, because if you have the same members making complaints or forwarding complaints then I think we should not have a committee of Parliament to look into the final outcome of how these complaints have been dealt with. I think the object I have in mind is somewhat better because this enables this particular committee to make reports and then to see to the observance and implementation of the recommendations made by the Parliamentary Commissioner; otherwise he would function in his splendid isolation. If they are not implemented, at the most Government will lay on the Table of the House certain explanations which, in any case would be met with different and inconclusive reactions among the members. Therefore, it would not be pursued in an adequate way. I think, Sir, perhaps in our country this is a far more desirable modality to adopt, that is to say, Parliament ultimately concerning itself with the recommendations of the

Lokpal and thereby becoming interested in due implementation of those recommendations or in examining the reasons given by the Government for not implementing these recommendations rather than providing that Members of Parliament should forward the complaints to the Ombudsman. In any case, that is not such a great safeguard. As a matter of fact, men in public life have many pressures on them and therefore they may very often be prevailed upon to forward a complaint without really coming to a judicial or quasi-judicial conclusion. There are other methods for the purposes of limiting the number of complaints but I think to start with if there are too many procedural hurdles put in the way of the prospective complainant it may undermine the confidence of the public in this piece of legislation and this is for worse than the other possibility. It should be easy for them to expeditiously deal with them. I think it is necessary, therefore, that instead of routing complaints and allegations through Members of Parliament they constitute a joint committee of Members which is able to concern itself with the recommendations made by the Ombudsman from time to time and then also to pursue it to a certain extent. In other countries, Mr. Chairman, for example, in Sweden, the Ombudsman functions effectively not so much because of what he does but because of his very nature, operating as a chastener or as psychological controlling factor. Now, this, I don't think is likely to happen in that decisive and ample measure in our country. In our country, I think unless we are able to enforce the implementation of the recommendations made by this institution, even pursue them through public pressure this may not happen, and therefore it is necessary that there should be a committee such as I have urged you to recommend. That might be a better way.

MR. CHAIRMAN: Your point is that there should be a joint committee.

DR. L. M. SINGHVI: Yes. My submission is that a new joint committee on petitions should be constituted with entirely new functions. You would notice, if a close study is made of the work done by the Committee on Petitions—I would like to preface it by saying that I am one of those who are deeply committed to the Parliamentary form of government in our country—I think you cannot overlook the fact that the Committee on Petitions has not been particularly effective body. This is the feeling of those who have belonged to it, this is the feeling of those who have observed its working and studied it. I have made a close study of the work done and the results achieved, and I am of the view that the Committee on Petitions which exists now is not a very effective body for the purpose for which it might have been conceived. I think that the joint committee of the two Houses which will be a standing committee would function for more effectively like the Public Accounts Committee which examines the reports of the Comptroller & Auditor General. As a matter of fact, I think, there is a close and striking parallel between the functions of the Comptroller and Auditor General and the functions of the Lokpal and Lokayuktas. As a matter of fact, what the Comptroller & Auditor General does in the field of finance, in the field of public grievances the Ombudsman should strive to do. I think it would be far better to have a committee which can pursue the recommendations made by the Lokpal and Lokayuktas, otherwise what will happen is like this: for example, the Union Public Service Commission says something, makes certain recommendations and in spite of its recommendations, in spite of its reports, something also is done by the Government. It is not done always; but it is done occasionally. Even in these occasional cases there is not very much that is said on the floor of the House. Occasionally a Member may take up the complaint and the explanation of the Government and may criticize the Government for

what it has done or failed to do, but as a matter of fact there is not a great deal of interest, there is not as much committed pursuit of the recommendations made. So, like the Public Accounts Committee, let there be a Joint Committee on Petitions and Grievances, and it should be its primary and particular duty to see that the recommendations are implemented as far as possible.

SHRI S. SUPAKAR: Dr. Singhvi, I would pose some fundamental problems which are very peculiar to our country. Unlike the Scandinavian countries and England we have too many parties in our country and we have found from experience that in some States at least allegations and counter-allegations have been made. After the Santhanam Committee submitted its report petitions with signatures of Mps have been presented against the Ruling Party and after the Ruling Party has been thrown out of the power there are allegations against the new party that comes into power so that ultimately a condition has reached when practically nobody is left in the State who can command the respect after so much of mud throwing against the people who are really competent to run the Administration. In view of this if similar things occur after the Lokpal has been established and allegations are made against almost all the Ministers because everything can come under the definition of 'allegation':

" 'allegation,' in relation to a public servant, means any affirmation that such public servant,—

(iii) is guilty of corruption, lack of integrity or improper conduct in his capacity as such Public servant."

Therefore, so far as the definition is concerned and so far as the scope of the duty and functions of the Lokpal are concerned would you suggest any restrictions so that only those cases which are really fit—apart from the

political wranglings in the States or at the Centre—come under his jurisdiction?

DR. L. M. SINGHVI: The basic facts from which this question arises are certainly facts which have to be taken into consideration. For example, the distinguished member has spoken of the climate of allegations and counter-allegations; the general state of public morals; the fact that there are too many parties leading to certain temptations and inducements to add to this climate of allegations and counter-allegations. All this is true. As a matter of fact, it is my belief that this Institution if it works well should be able to clear the climate somewhat. Of course, I would not say that we can expect No, but it is necessary for us to take this to be a *sine cure* institution. Into consideration the facts which are recognised in public life and which have been in certain cases demonstrated to be true. It is true that allegations and counter-allegations are made but once in a while these allegations of corruption in high places have been borne out by inquiries made by public authorities in which there is great deal of confidence. It is very unfortunate. In Sweden after 1854 there has not been a single case in which Ombudsman had to inquire into an allegation against a Minister. It was the last time when he looked into the conduct of a Minister.

It is true that conditions differ from one country to another and therefore, some people have even gone to the extent of suggesting that since different conditions prevail let us not have this highly developed institution. I respectfully disagree with that view for the simple reason that because we are less developed it is all the more necessary to safeguard to climate of our public life, the context in which public morals exist. It is all the more necessary that when allegations are made and unless they are investigated these

allegations remain as question marks on the careers of the persons concerned—sometimes very unfairly so. With the existence of this institution when allegations can be inquired into at least the man can claim after the inquiries are over that he was in the clear. I have, Sir, taken pains to emphasise at the end of my memorandum: "The Lokpal-Lokayukta set-up would really be both a sword and a shield. It could protect the Ministers and Civil servants from calumny and character-assassination. At the same time it is necessary to ensure that the institution does not undermine the morals and the confidence of the civil service and does not hamper or hamstring them in taking administrative decisions boldly and expeditiously. An error of judgement should, in no case, be permitted to be punished by those other officials or criticise who have had the advantage of attaining wisdom by hindsight. The basic Pastulate of the proposed institutional framework is to help the common man who for want of resources is unable to obtain redress. The idea must always be to make the strong just and the just strong." You will find in the Justice Committee's report in England—it was headed by Sir John Whyte whom I had the privilege of knowing personally and talking in great detail. He was the architect of the idea of Ombudsman in England—that there are areas in which courts and the judicial process offered no remedial process. They cannot give any relief even if they so desire because the laws do not exist to cover each situation. The movement for Ombudsman arose after the Crichton Down case which demonstrated the above fact. Secondly, in several cases the man without resources finds it impossible to pursue a remedy. So because of the difficulties of the common man we should have such an institution which will make available cheap and easy remedies. This is, I think, the basic pastulate and, therefore, what I am suggesting is that the Lokpal should not function in a partisan way

and should not lend support to this party or that party.

Then the basic thing will come down to the choice of the man who happens to occupy this position. I for one am a great believer in the personal factor. As a matter of fact no institution can function effectively if the man who occupies that status is not worthy of the objectives sought to be obtained. Therefore, only the best and the atleast persons should be entrusted with the working of this institution. If that is done many of the difficulties and apprehensions that are now in our mind would not have any chance of materialising in actual facts.

SHRI S. SUPAKAR: Next comes the problem of implementation of the recommendations of the Lokpal and Lokayukta. We have to make the recommendations for the Government to implement them. Now when the stage of implementation comes, then there is a scope of its coming into conflict with Articles 31f and also the Writ Articles 226 & 32. At that stage, is it not possible or necessary to modify these Articles?

DR. L. M. SINGHVI: No, not at this stage. I answered a part of this question while I was answering Mr. Akbar Ali's question. It may be necessary after we acquire some experience of how judiciary functions in these matters and that is why I suggested that after one or two years or three years we must have a high power committee of Members of Parliament and Jurists to look into the working of this piece of legislation. As a matter of fact it is my personal feeling that in the working of legislation, in most of the fields, once legislation is enacted, it is unfortunate that the legislators do not concern themselves as to how it is being administered. The Parliament and the legislators must concern themselves with the working of legislation, but particularly in the case of this enactment after it is on the Statute Book, a Review Committee

would have to be set up to go into various questions which would arise as a result of our experience to see to this enactment.

SHRI S. SUPAKAR: The Lokpal and Lokayukta have to consider questions which are political, administrative and judicial in nature—all the three.

DR. L. M. SINGHVI: I would not say 'political' but I would agree with the rest.

They may be public questions but not questions of politics.

SHRI S. SUPAKAR: Would you like to prescribe any minimum qualification for the person to be appointed as Lokpal or Lokayukta?

DR. L. M. SINGHVI: For this office, I would prescribe the highest qualifications. But I do not think prescription of qualification would necessarily secure the results we have in mind, though prescribing certain qualifications may be useful and necessary but this is not all. But whatever be seen in this novel device which has been suggested by the ARC which is a worthy contribution to the institutional thinking would work in such a way that the choice of the man would be motivated by no other consideration than the highest public good. You should really secure a choice which is unimpaired by political motivation. The appointment of the highest intellectual and the ablest person should be made, I would not like to limit to a man in the field of Law though I myself belong to that field. I should say it should be open to the best man in the field of Law and Administration. For example, the retired Comptroller & Auditor General might be a very good choice for an office like this or a former Chief Justice or a leading lawyer may be a good choice.

It should not be an office under the Government. That is not what it is supposed to be.

For appointment, experience at the bar of experience as a judge should not be the only criteria. It should be open to distinguished administrators.

My fear is that the executive has somewhat greater prospect of access to such a person and that is where I think this Committee would have to exercise utmost caution in their judgement. Care should be taken of the perversions of human mind. It is not possible to take care of all that. All you can hope is that the choice made by this Committee would be one which is above partisan consideration.

SHRI SHAM SUNDER NARAIN TANKHA: Shri Singhvi is of the opinion that a Committee something like the Public Accounts Committee should be formed. In the working of the Public Accounts Committee, the Comptroller & Auditor General during the course of his scrutiny of the papers of the various Departments comes across certain irregularities which he collects together. He places them in a Report of the Department which is automatically transferred to the P.A.C. The P.A.C. together with the C.A.G. goes into all the aspects of the matter and then they come to some conclusion. Is it your intention that the Lokpal should not report to the President but he should report to the Parliament and that report of his should go before a Parliamentary Committee?

DR. L. M. SINGHVI: That is precisely my intention.

SHRI SHAM SUNDER NARAIN TANKHA: Is it not so, that after the scrutiny, if necessary, the Committee may hear further witnesses also as is done by the Public Accounts Committee?

DR. L. M. SINGHVI: It is not contemplated in the Act.

SHRI SHAM SUNDER NARAIN TANKHA: Therefore, whatever conclusions are arrived at may be forward to Parliament and Parliament will then deal with them and during this process some such stage will have to be provided where after the presentation to the Parliament, the Government will see what action it is prepared to take and where it finds that it is not prepared to take any action, it should have to explain its point of view.

DR. L. M. SINGHVI: No, Sir. Last part—I do not contemplate it. Before the report of the Lokpal or Lokayukta is presented to the Committee, a copy of the report is sent to the Government who would submit its explanation to the Committee which will then in consultation with the Lokpal prepare its report for submission to the Houses of Parliament. That is what I conceive.

SHRI SHAM SUNDER NARAIN TANKHA: That is a slight departure from the procedure adopted by the Public Accounts Committee.

I would like to know what your view is. Have you said that provisions made in the Bill regarding appointment of Lokpal should remain in the manner in which they are provided.

DR. L. M. SINGHVI: I have suggested certain changes in Clause 3 of the Bill. I would draw your attention to the page 4 of my memorandum. I have stated there that in Clause 3 (page 4) of the Bill, line 6, the following should be substituted:

“(a) The Lokpal shall be appointed on the recommendation of a Committee consisting of the Prime Minister of India.”

And then it goes on, the Chief Justice of India and the Leader of the Opposition in the House of the People. Now, it is my view that the Prime Minister of India should be a Member of this
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Committee. The present position is this. The Chief Justice of India and the Leader of the Opposition in the House of the People make a recommendation. It is obvious that this would be sent to the President, who, it is expected, would act on the aid and advice of the Council of Ministers. That is bound to happen because that is the view the Presidents have taken so far with a few exceptions in a few stray cases. It would be noticed, it is really interesting to notice, that the proviso does not make any provision for the advice of the Government of the day. I would not like that the Government is not consulted. Nor is that the intention of the Bill. The intention of the Bill is this. Government of the day has the final word in the choice. I would not like that but I would like a committee consisting of the Prime Minister, the Leader of the Opposition and the Chief Justice of India, to make a recommendation as a committee which should be submitted to the President and which should be considered as binding on President. That is what I am suggesting. The Bill as framed at present signifies that the Chief Justice and the Leader of the Opposition would make a recommendation to the President and then the President will make the appointment. In clause 3 it is in the reverse order. That is how it will actually happen. Clause 3(1) of the Bill says that ‘For the purpose of conducting investigations in accordance with the provisions of this Act, the President shall, by warrant under his hand and seal, appoint a person to be known as the Lokpal and one or more persons to be known as the Lokayukta or Lokayuktas’. He should be appointed under the hand and seal of the President. He is the appointing authority for such persons, after consultation with the Chief Justice of India and the Leader of the Opposition in the House of the People, or if there be no such Leader, a person elected in this behalf by the Members of the Opposition in that House in such manner as the Speaker may direct. Then, if I may

use the expression, there is a brooding presence of the Council of Ministers headed by the Prime Minister behind that appointment, but the Bill does not exclude that. I would like their presence to be more explicit and the Prime Minister to be made a member of the Committee, which, as a Committee, makes a recommendation to the President which is binding on the President, rather than the Prime Minister being in the ultimate position to choose the person to be appointed. Now, as framed, clause 3 can be interpreted to mean two things. One thing is this: all that is necessary is that the Chief Justice and the Leader of Opposition would be asked, 'whom do you want?' The words used are 'after consultation', not 'in consultation with' not 'on the recommendation of'—the words used are 'after consultation with'. They will be asked "Who do you think should be appointed?" In terms of the strict interpretation as framed in the Bill, all that the Chief Justice or Leader of the Opposition could do in this case is to suggest names or to indicate that such and such a person should not be appointed—but the decision would naturally be that of the President as aided and advised by the Council of Ministers, headed by the Prime Minister. So, what I suggest is very much better than the present position. Let him or her be on this committee which will make recommendation to the President which should be considered as binding. In choosing this person, if allegations are made against the Prime Minister, and I think, these are bound to be made because politics makes the office very much vulnerable, if the Prime Minister acts in a Committee, the Committee will not be so vulnerable, and this will fortify the appointment of the person.

SHRI C. C. DESAI: What is the guarantee that the recommendations of the committee will be accepted by the President? The Prime Minister will say, no.

DR. L. M. SINGHVI: As between the two alternatives of leaving the Prime Minister outside this Committee and having the Prime Minister on this committee, I choose the alternative of having the Prime Minister on this Committee because there is even in public life the doctrine of equitable estoppel. If the Prime Minister is Member of this committee and something happens and she or he goes back on the recommendation the other person, at least one person, is not bound to keep silent and he will then be able to comfort the Prime Minister with an embarrassing situation. That is where I find greater safety in relying on a provision which makes the Prime Minister a Member of the Committee rather than keeping the Prime Minister out of the committee.

SHRI BALACHANDRA MENON: It is a domestic enquiry, you have said...

DR. L. M. SINGHVI: No, what I said was domestic enquiry is protected from judicial process to an extent if it is not covered by the Prevention of Corruption Act.

SHRI BALACHANDRA MENON: I have followed what you have said. We have the right to recommend. The matter is taken up by the Committee of Parliament and again the politics comes into play. The programmes and policies of various parties are there. Will it be possible for any person to take action, say, in case of corruption against a Minister? Now, what would happen? Will it not be better that, at a certain stage, with the permission of our Parliament, this Lokpal himself becomes something like a Judge? Should we not make a provision like this? We should not allow it to be a plaything of political parties. He gets the permission of Parliament. He becomes something like a judge and his decision is final. Will not that be better than the machinery which you have suggested? I do not know whether I have made myself clear.

DR. L. M. SINGHVI: I have faith in politics. There is no one who can believe in democracy and not have faith in politics. Therefore I think ultimately one would have to have faith in politics, the calibre of politicians, their sense of responsibility and appreciation of public duties. Mr. Chairman, I know that the highest crimes are judged by a team of jurors. On what considerations? These are men who are not armed with any specialised knowledge of law, and yet their verdict of a person being guilty or not guilty is binding on a judge. Why is this so? There is a very fundamental principle involved here. The principle is this. The layman ultimately is the arbiter of his destiny and the politician is the representative of the laymen. It is true that politicians have not always behaved with due sense of responsibility, but then, Mr. Chairman, who has? After all, minor lapses in one's conduct can take place anywhere. In this particular case, why I would not opt for a rigid judicial institution is because judiciary would act in a far more rigid way. Then you would not need this Bill at all. If you want something like that, I would have suggested some better devices. There is, for instance, a supreme administrative court which you find in Germany or the Council d'etat in France which functions as the administrative authority for review. It has not merely jurisdiction to make recommendations, but also the jurisdiction to effect annulment of decisions. Their jurisdiction to annul goes much farther than the contemplated jurisdiction to make recommendations here.

The Lokpal-Lokayukta is an institution which belongs really to the Parliamentary constellation. This is an institution which is intended largely for the redress of public grievances for which after all the Parliament itself exists. That is the *raison d'être*; that is the whole purpose for which Parliament exists. You would recall that the Constitution itself makes several provisions in respect of griev-

ance, and the redressal thereof. We have, I think, in these twenty years advanced further in this direction. If grievances have to be redressed, one could say that it is the essential duty of Parliament. Therefore, I think this institution should have some link with Parliament. I am not suggesting that Parliament itself should exercise judicial powers. By its very nature judiciary will not be able to go into questions which are sought to be covered by this.

SHRI BALACHANDRA MENON: Let Lokpal have all those powers; I have no objection. If he feels that there is a question which should be taken up and a decision given, why should he refer it to a committee which will naturally consist of representatives of political parties? In that committee the matter will be decided on the basis of majority-minority. That question will come in. You know the mud-slinging that is taking place today. Therefore, only in extraordinary circumstances...

DR. L. M. SINGHVI: My understanding of the norms of working of Committees is—I do not say that these norms are always adhered to, but they should be adhered to—slightly different. Participation of members in the Committee must necessarily cut across Party lines. When I was a member of the Lok Sabha, I found that on occasions there were certain Party pressures. I think Parliament, as an institution, must resist any such pressure from the Parties while Members of Parliament are functioning in Committees. There, they should have complete freedom. That is the whole rationale of the Committee system. If the Committee has to function on non-Party considerations, you have to appoint the highest people in Parliament known for their ability and integrity to this Committee. Then I do not think that they would tend to lend their support to any mudslinging or any partisan consideration. I would reiterate the proposition that the Lokpal and Lokayukta, though they would function as links with this Committee, are not subordinate to this

Committee. Those are independent holders of office on par with holders of Constitutional offices.

In the matter of impeachment, as I have already pointed out in my memorandum, the provisions made in the Bill undermine the authority and integrity of Lokpal and Lokayukta, if the system which is adumbrated in the Bill is finally approved by this Committee and the two Houses of Parliament. My opinion is that you must provide for a procedure identical to the procedure adopted in respect of impeachment of Judges. Article 124 lays down a special procedure for that purpose. You will find that this Bill makes provision for enquiry into the conduct of Lokpal and Lokayukta very much on the lines of a very pernicious provision which was contained in the Judges Inquiry Bill when it was first introduced in the House. Then I and distinguished member, Mr. H. V. Kamath, fought against that particular provision and ultimately that was referred to the Select Committee. I am proud to say that true to the traditions of Parliamentary democracy in this country, the Select Committee did not consider it appropriate to accept the Bill as introduced by the Government. They found that the procedure provided there would confer uncanalised, un-restricted arbitrary powers on the executive of the country to go into the conduct of Judges and this would undermine the independence of the judiciary. The Bill which was recently passed by the House was changed very substantially from the one which was then introduced. Unfortunately that very provision which was thrown out by the Committee and the House finds sneaking presence in this Bill. I would very respectfully submit that this would be a kind of Damocles' Sword over the head of the Lokpal and Lokayukta and would destroy the very purpose of this institution and the very basis of its independence and impartiality. I have actually mentioned this in my memorandum. May I draw your attention to page 6 clause 6 of the Bill which reads:

Subject to the provisions of article 311 of the Constitution, the Lokpal or a Lokayukta may be removed from his office by the President on the ground of misbehaviour or incapacity and on no other ground:

Provided that the inquiry required to be held under clause (2) of the said article before such removal shall be held by a person appointed by the President, being a person who is or has been a Judge of the Supreme Court of India or the Chief Justice of a High Court.

The person appointed under the proviso to sub-section (1) shall submit the report of his inquiry to the President who shall, as soon as may be, cause it to be laid before each House of Parliament.

You would find that in clause 6 the Lokpal is put more or less on the footing of any civil servant in this country and his only safeguard is Art. 311. As a matter of fact, I think that is demeaning that high office. My submission is that in a case like this, the President may in the given circumstance threaten any Lokpal or Lokayukta with the appointment of such a Commission of Inquiry. That is sufficient to destroy a man's reputation. This is a power sought to be given to the Executive. I submit that this is arbitrary, uncanalised, untrammelled and unfettered, and therefore it destroys and undermines the concept of this Bill. This is one provision which goes ill with the whole idea of Ombudsman and which, if adopted, would reduce the institution to nothing more than a mere additional institutional advice not effective enough and not respected enough.

SHRI C. C. DESAI: In Clause 3, we are talking of appointment of Lokpal. Certain suggestions have been made by Dr. Singhvi also. Would it not be better to use the words "that the President shall appoint in his personal dis-

cretion so as to oust the discretion of the aid and advice."

DR. L. M. SINGHVI: I have considered this alternative.

SHRI C. C. DESAI: Should it not come before the Government of the day?

DR. L. M. SINGHVI: Though it may appear to be a better provision, I would draw your attention—I am glad that the hon. Member asked me this question—that if this is a question of conferring a power and if it is put down in this legislation, even then is the President bound by the aid and advice of the Prime Minister and his Council of Ministers? No legislation can possibly change the constitutional effect or the understanding of the constitutional effect. On this also opinions differ.

SHRI C. C. DESAI: According to the Constitution, there is a provision where in certain cases, the President can act in his discretion without referring to an aid or advice of the Council of Ministers.

DR. L. M. SINGHVI: You know Mr. Chairman there are many persons in this country—many distinguished and eminent jurists in this country—who believe that it is possible for the President to act without the aid and advice of the Council of Ministers at least in certain circumstances. However, this is not the view taken by the last three Presidents. A controversy arose in the matter of assenting to the Hindu Code Bill and you would find that the President Dr. Rajendra Prasad at that time did not wish to assent to this Bill. He expressed his difference of opinion by writing a letter to the Prime Minister. This has now been published. He had stated that he had the right not to assent.

SHRI C. C. DESAI: That is specifically put in the legislation.

DR. L. M. SINGHVI: Even so, at that time, the Attorney General, Mr. Setalvad advised the President as well

as the Government that the President had to act in this case on the aid and advice of the Council of Ministers. Now, that advice may or may not be correct; and it is possible to take another view. The point is that in the present state of things that obtain in this country, is it possible to bind any President by any mandate—in a legislation? If there is a contrary mandate in the Constitution, the President is to function on the basis of that mandate in the constitution the aid and advice of the Prime Minister and the Council of Ministers. That is why I think that would be a very precarious kind of a provision which may or may not offer solution for the intentions which we have in mind. That is why I mentioned that the Prime Minister should herself or himself be a member of the Committee so that the selection of the Committee would be final and binding.

SHRI C. C. DESAI: What is the procedure that you think should be suitable here whether the grievance should be brought to the notice of the Lokpal and Lokayukta by Members of Parliament in their individual capacity?

DR. L. M. SINGHVI: I would prefer that a Joint Committee should be constituted. I have submitted that if there is a Joint Committee of Members of Parliament, then grievances should not be forwarded by Members of Parliament; because you belong to certain fraternity, you have access to certain things. Access is very important in this matter.

SHRI C. C. DESAI: The Committee will have to sit from day to day as there may be so many cases of complaints.

DR. L. M. SINGHVI: Not necessarily so. But, it may have to work hard to begin with until we have found a situation where the administration itself is such that the need for complaints is reduced. This may take a long time. I think it is true that the Committee may have to work very hard. But, by and large, when

the Committee starts, functioning more and more, they will lend support to the Lokpal's recommendations. The Committee will pursue the recommendations. They will also call for the explanations so as to know whether he may find it worthwhile to pursue the investigation.

SHRI C. C. DESAI: If the Lokpal makes a recommendation that he agrees with the Committee that the matter need not be examined, what solution can there be?

DR. L. M. SINGHVI: I only say that the Joint Committee will not examine any complaints at the initial stage. They will look at the recommendations of the Lokpal and after the recommendations are made, they should be communicated to Government who will send their explanations.

MR. CHAIRMAN: It is just like an Audit Report.

SHRI C. C. DESAI: It would be an investigating agency which would be used by the Lokpal for investigation into the cases.

DR. L. M. SINGHVI: This is a very important question particularly in a country like ours where the facts are not always visible or readily admitted. They are like 9/10th of an iceberg which is beneath the surface of the water. Facts have to be found out. In order that the facts may be found and in order that the institution may be able to function effectively, it should be able to have the aid and assistance of all public authorities.

It should also have an agency of investigation entirely of its own and to supplement its agency of investigation, it should also be able to use the other public agencies on a specific basis. It should verify the facts. I think it is necessary for this institution to function so effectively and I hope that Parliament will not grudge any money that it appropriates for it. Unless you give them ample resources and ample and competent staff you cannot expect the results from an institution like this.

SHRI C. C. DESAI: I tried to find out how the name of Lokpal and Lokayukta has come to be used. Could we know what is the meaning of it? The hon. Home Minister has used this without knowing the real meaning.

DR. L. M. SINGHVI: The distinguished Member of this Committee knows that at one time I moved a Resolution in the Lok Sabha. It was drafted as most resolutions are drafted while one is pre-occupied with a number of other things, but I gave considerable thought to the question of name and as to what it should be. I did not want to call it 'Ombudsman'. Then, as I mentioned, I might recall what the late Prime Minister, Shri Jawaharlal Nehru said viz., "In what zoo does this animal live?" He did not find the word easy to understand. I kept on sending him a lot of literature. And to my gratification, he became an admirer of this institution after he knew about it. My inspiration came from the word 'Ombudsman'. There is *Ombudsman* in Sweden and in Denmark. But, the word used in England is 'Parliamentary Commissioner'.

I wanted something between a 'People's Tribunal' and a 'Parliamentary Commissioner'. Parliamentary Commissioner must be linked with Parliament. As I conceived, it must be an extended arm of Parliament but at the same time, I wanted to reflect the public confidence, to describe it as a kind of tribune to which the public would look to. "Lok" is a word in our country which is used for the people e.g. Lok Sabha. This is a well known word. Ayukta means Commissioner—the person who is carrying out the commission. Ayukta is not an agent; ayukta is carrying out or executing independently a commission on behalf of somebody. Lokpal means a People's Commissioner; Lokayukta is the word which is often used for commission. Commissions are called ayuktas. I coined this word in order to reflect the concept that this would be an extended arm of Parliament and would be the People's Tribunal. There-

fore, I thought that the word Lokayukta and its later adaptation "Lokpal" are the proper expressions for this kind of institution.

SHRI C. C. DESAI: On page 4 of his memorandum he has said that he would like to supplement when he tenders evidence or submit additional material. We will be happy if it would be possible for him to let us have additional material, particularly specific amendments to this Bill, before we take up clause by clause consideration towards the end of September, especially because Dr. Singhvi is a knowledgeable person in regard to *Ombudsman* and we have not been able to come across such a knowledgeable person as Dr. Singhvi. We will be grateful if he could let us have this additional material and specific amendments before the middle of September.

DR. L. M. SINGHVI: I will be very glad to do that. I have already submitted many of the amendments which I have referred to and there will be others which I will submit. I am also glad to submit additional literature on this subject particularly because there is very considerable literature on this subject. When I started this campaign in 1962 there was very little literature available. Thereafter the world has been—what my hon. friends and scholars interested in this institution would call—overwhelmed idea. It is a popular concept which has caught the imagination of the people throughout the world and having engaged in—what I would call,—Ombudsmanship for these 6 or 7 years actively, I have now collected a very comprehensive bibliography on the subject and I will be glad to furnish it to this Committee except that I cannot supply 50 copies.

MR. CHAIRMAN: One copy will be sufficient.

H. H. MAHARAJA P. K. DEO: We have been greatly benefited by the evidence of a distinguished authority on the subject. I would draw his at-

ention to page 15 of the Bill, clause 17(2) which says:

"The President may, by order in writing and after consultation with the Lokpal, confer on the Lokpal or a Lokayukta such powers of a supervisory nature over agencies, authorities or officers set up, constituted or appointed by the Central Government for the redress of grievances and eradication of corruption."

As you know, the Central Vigilance Commissioner takes the aid of the various vigilance units that have been set up in the various Ministries for the purpose of investigation. As you know these various units are under the administrative control of the various Ministries and they are responsible to the Secretaries and through the Secretaries to the Ministers. So, he cannot say that they could act in an independent way and in this regard may I suggest that as they are going to aid the Lokpal for the purpose of investigation, they should be absolutely independent and they should be directly responsible to the Lokpal and not to the Departmental heads for their promotion, service conditions etc. Take the case of CBI. It is under the administrative control of the Home Ministry. Suppose there are serious charges and allegations against the Home Secretary or the Home Minister, the Lokpal cannot possibly entrust the work of investigation to the CBI because its finding may not be independent. In the circumstances I would like to have the views of the distinguished witness regarding my proposal that all the various agencies and instruments of investigation should be absolutely independent from the executive and they should be directly responsible to the Lokpal.

DR. L. M. SINGHVI: I agree and I have already mentioned earlier that we must have an agency which is responsible to the Lokpal and Lokayukta and not to the Government, but, perhaps—I hope this will be so—the Lokpal and Lokayukta will not have

enough work for an over-organized investigating agency and, therefore, there may be occasions when it may want to use in addition to its own agency of investigation other agencies which exist. In the circumstances which the Hon'ble Member pointed out, of course, the Lokpal and Lokayukta would not use such an agency. There may be other cases where it may want to use as a supplemental agency, agencies like CBI. If it does so, I do not see any harm in it particularly because finding out facts and disclosure of actual facts is the most important aid for the functioning of this institution. The Lokpal may not at all times have such a big organization as to be able to aid it in all respects in the matter of investigation. Therefore, this is what I conceive to be supplemental and additional agencies available to it. For example there are many redress procedures provided in the Government itself. It is a good thing because the existence of such an institution produces a result in the Government. They would themselves think that they would not want the Lokpal to go into the matter and pass strictures against them; they do not want to be put on the mat by the Lokpal. If there are such grievance procedures and such bodies and if they can report to the Lokpal as to what they have done, I see no harm. Lokpal is still independent and is still having an independent agency to report to it and these would function as an additional aid. I would only agree with the distinguished member that this would be only supplemental and additional aid and not exclusive aid at the disposal of the Lokpal.

H. H. MAHARAJA P. K. DEO: To put an end to this diarchy, if I would suggest that the entire CBI organisation is placed directly under the control of the Lokpal, how will it function?

DR. L. M. SINGHVI: I would not support that proposal for administrative reasons. It will create a number of administrative problems. CBI will

be required for a number of purposes other than investigation of allegations before the Lokpal and the Lokayukta. CBI is a general investigating agency but on any matter the CBI is entrusted with the investigation, CBI shall be answerable to the Lokpal and Lokayukta. I would say that. But to make the CBI a subordinate and integral investigating organization of the Lokpal is fraught with a number of administrative complications and difficulties. I would, therefore, not support it.

SHRI PURNANAND CHETIA: We have heard patiently your various suggestions about the provisions of the Bill. Rightly or wrongly there has been an impression gaining ground in the country that there is corruption in high places and I think you are one of the persons who originally thought of the desirability of bringing such a legislation as is brought now. There was the Santhanam Committee and there were many Commissions of Inquiry. But there is one important aspect which I want to know from you. In the present Bill Ministers have been included. That should be there. They should not be excluded from the per-view of inquiry. Would it not be desirable to make a provision that the Lokpal should make an inquiry and then Chief Justice of the Supreme Court and Lokpal combined together constitute a court of inquiry. And then their final decision against the allegations on Ministers the Government will implement decisions. How do you like this idea?

DR. L. M. SINGHVI: There are two difficulties in this. One is that any such extraneous conferment of additional political jurisdiction on the Chief Justice or the Judges of Supreme Court is not binding on the Supreme Court. The present incumbents may accept, but the future Judges may say that they will not perform these functions because these are not the functions intended to be performed by the Chief Justice and the Judges of the Supreme Court as laid down in the

Constitution. For example, in the Press Council Act, we have made a provision that certain nominations have to be made by the Chief Justice of India. I happened to be a member of that Committee at that time. The Chief Justice who happened to occupy that position at that time said that it was all right. He accepted the responsibility of making such nominations. But his decision will not bind his successor. At a future time a Chief Justice might say: "I am not required to perform these functions; this is none of my business." Then you are left with a kind of vacuum. A number of such difficulties may arise. In one particular instance, when allegations against a Minister of Central Government were referred to a Judge of Supreme Court considerable amount of legal objections and constitutional objections were raised. I refer to the case of Shri K. D. Malavia which was enquired into by Mr. Justice S. K. Das, one of the most eminent and distinguished jurists; he constituted an informal one man commission of inquiry. There was considerable objection to this procedure. The objection was a very fundamental one. It was said that even the Prime Minister has no right to ask any judge of the Supreme Court to be his legal adviser.

Of course, in this case it is possible to confer additional judicial functions on the Supreme Court by means of a statute or the Constitution or a special court of complaint can be set up when it comes to deal with allegations against Ministers. I agree that this might be one possible way out. But I don't see why it would be particularly necessary to do so. After all, the *Ombudsman* whom you are going to appoint, you would normally trust him with performance of such important functions. No distinction need be made which might be considered invidious in respect of Ministers. A Civil Servant placed in a high position may also say that the Special Committee with the Chief Justice and Lokpal should look into the complaints

against him. Why should it be confined only to the Ministers? Since you are going to arm this particular institution with only recommendatory functions, to provide any further unit of hierarchy, I think, would serve no particular purpose. I think it would make it top heavy and unnecessary. As long as you choose the man with great care and caution and above partisan consideration, this man should function not for any popularity or for partisan consideration and the interests of all concerned should be safeguarded. The man whom you are going to choose as Lokpal will be equivalent in rank to that of the Chief Justice of India. That is why his removal also should be regulated by the same procedure as is prescribed for the removal of Judges of Supreme Court and High Court.

SHRI PURNANAND CHETIA: So far as the Government servants are concerned, if there is any injustice done to them in whatever case it may be, they can appeal to a Court of Law. But in case of Minister, there is no such redress.

DR. L. M. SINGHVI: In this, the highest court of appeal is Parliament. They can appeal to Parliament. If it satisfies the sense of propriety of Parliament that is good enough. In public life there can be no bigger discipline, no higher discipline than the discipline of the esteem in which one is held, the reputation one enjoys, the support one is able to command in the Parliament. After all, the Parliament is a very august body, as august as any institution you can conceive of.

SHRI BHOLA NATH MASTER: In Clause 17(2) it is stated that the President may by order in writing and after consultation with the Lokpal, confer on the Lokpal or a Lokayukta such powers of a supervisory nature over agencies, authorities or officers set up, constituted or appointed by the Central Government for the redress of grievances and eradication of corruption. It is probable that the Grievances Commissioner will come under

Lokpal and other vigilance agencies will be abolished. Will it be possible for the Joint Committee of Parliament to look into such voluminous work?

DR. L. M. SINGHVI: I am glad that this question has been asked. On page 6, in para 2 of my memorandum I have given my tentative views. I have said: "I am of the view that the possibility of integrating the vigilance functions at present exercised by the Chief Vigilance Commissioner within the Lokpal and Lokayukta framework should be explored. In concrete terms I would suggest that the Committee should consider whether it is feasible to confide the functions of the Chief Vigilance Commissioner to one of the Lokayuktas. I am making this proposal somewhat tentatively at this stage and would urge the Committee to study the possibility in depth and detail."

SHRI C. C. DESAI: There is such a provision in this Bill—Clause 17(2) I think.

DR. L. M. SINGHVI: The hon'ble Member is perhaps referring to an enabling provision. I have said this very cautiously because I would not like to clothe the office of Lokayukta and Lokpal with too many functions. I realise this difficulty. Unless you increase the number of Lokayuktas it will be very difficult. One of the Lokayuktas should become the Chief Vigilance Commissioner and he should function under the jurisdiction of Lokpal. That part of the investigation recommendations need not be referred to the Joint Committee of Parliament. I think that might be the best division of functions so that everything will be absorbed in this institutional framework.

SHRI HEM RAJ: It is provided in the proviso to Clause 13 that the Lokpal and Lokayukta shall obtain the consent of the Central Government before utilising the services of any

agency of the Government. You told us that the Lokpal and Lokayukta can use the agency of the Government, but here he has been bound down not to use it before he gets the permission of the Central Government. Do you think that this provision will be helpful?

DR. L. M. SINGHVI: I think it should be open to the Lokpal to order any public authority to assist him in the manner in which he desires that assistance. It should not be open to the Government to refuse that assistance. It should not be open to the Government to obstruct the procedures which the Lokpal wants to adopt. He should be unhampered in his work.

SHRI HEM RAJ: In this Bill we have defined "Ministers" also as "public servants". What method will you suggest so far as Ministers are concerned, for the purpose of taking any action?

DR. L. M. SINGHVI: It is clear, I think, that if there is a specific case of corruption or dereliction of duty of a nature which involves any prosecution, it should be possible for the Lokpal and the committee to recommend prosecution. In some countries, they have gone to the extent of providing for prosecutions against Ministers. In Sweden, the *Ombudsman* is the chief prosecution in case against Ministers. But there they have a different system of bureaucracy. Then, the bureaucracy is not bound to follow any and every instruction given by a Minister. Bureaucracy is independent there. It is a unique framework there. But so far as Ministers in our circumstances are concerned, I think it should be open to the Lokpal to recommend prosecution. However, in the present set up where you are putting it in the context where you want to provide for recommendatory or advisory character of Lokpal, you cannot say that any recommendation would necessarily be implemented. I can only say that the public opinion and the pressures in Parliament and the recommendations made by the Committee would perhaps

carry such cases to their logical conclusion. That is the hope, which I expect, would be fulfilled by and large in this country.

I also have to mention two or three other points. Clause 2(d) on page 4 of the Bill says: "'grievance' means a claim that he sustained injustice in consequence of maladministration". This is very fundamental and, I think, it goes to the root of the matter. But I would like to change it slightly. I would say: "'grievance' means a claim made by a person that he sustained injustice in consequence of maladministration, or was subjected to humiliation or undue hardship". This, I think, is the essence of this institution. As a matter of fact, many of these grievances arise not merely because of maladministration but also because there is humiliation and undue hardship which is caused by a public official. For example, certain delays, you may say, have not caused injustice. But if there is wilful delay that is also cognizable by the institution. This is the very essence of the functioning of the Ombudsman institution in the Scandinavian countries where undue hardship and humiliation is always cognizable by the Ombudsman. A public official cannot act in a high-handed manner or in a manner which is humiliating harmful to a person. That is the absence of democracy. I have a right as a citizen to be treated with courtesy; I have a right not to be subjected to any undue hardship. I think this is very important. I think this should be inserted in the definition of 'grievance'.

SHRI S. S. N. TANKHA: If a man is passed over in the gradation that is a humiliation? That is what you mean?

DR. L. M. SINGHVI: That is not that I am contemplating. I am contemplating humiliation by a public official in the discharge of his duties, which he metes out to any citizen, or occasionally even to more distinguished persons in public life. Of course,

some of them have been made actionable at least in terms of administrative circulars. But a certain amount of complaints procedure should be available to a citizen also who has been subjected to humiliation and that is not actionable in any way. I think it is of importance to the quality of the fabric of the democratic processes which function in this country that we provide that such humiliation or hardship caused by public officials can also constitute a legitimate grievance on the part of the citizen. The mere fact that there is a provision, I think, would also act as a deterrent to public officials from acting in an arbitrary or rude or discourteous manner.

Sir, I also want to mention my sense of certain misgivings to which I gave expression. I feel that it is necessary to ensure that this institution works in a manner which does not impair, obstruct, or hamper effective administration. In any case mere error of judgment should not be punished. This is very important because, I think, whatever we may do for redress of public grievances should not undermine the effectiveness of administration.

I have mentioned, Sir, that it is very important for the success of this institution that the Lokpal and the Lokayuktas should devote personal attention to the cases before them. The whole idea is to humanise the administration. This should be specially considered in greater detail. This has to be investigated not merely in a vacuum but in the context of the procedures which exist in this country, in the context of what has been done in other countries. Various alternatives have been tried with different measures of success, in different countries.

SHRI BHOLA NATH MASTER: What are the safeguards that you suggest?

DR. L. M. SINGHVI: I would like that so far as allegations are concerned they can be freely made and the Lok-

pal and Lokayuktas for investigating must have adequate authority. One's feeling that he has been dealt with unjustly is enough to justify making a complaint. That's why I think some kind of bodies must be constituted. Even if the aid of voluntary organizations is taken, I think that would be a good thing. We must make it compulsory and necessary that these complaints are at least supported by a certain number of citizens—even ordinary citizens so that a man who might be on the lunatic fringe might not waste the time of the Lokpal. If a citizen wants to make a complaint, at least 15 or 20 other citizens should support that complaint. It is not enough to provide for a Member of a Municipality, etc. to support it, because in that case if a complaint happens to be on inimical terms with the Municipal Councillor of that area, his complaint would not be endorsed. We should provide a number of alternatives to him. Any one of them would be enough to justify a complaint being lodged with the Lokpal; that would be something to consider. The statute should also provide for a General Counsel to assist the Lokpal and Lokayuktas in jurisdictional and other matters.

This problem of irresponsible allegations does not exist in other countries in any significant measure. In New Zealand we read in report after report that there is no such problem. In Denmark there is no such problem. In Sweden there is no such problem. In Great Britain there is no such problem. In Great Britain they have pro-

vided certain safeguards. Certain screening machinery has been provided for. Members of Parliament are supposed to forward complaints. I would say that in this case the complaint should be supported at least by a certain number of citizens. That would be something worth considering. At least persons on the lunatic fringe would be precluded from making this complaint. Even that is not a sufficient safeguard for the simple reason that in this country one can obtain signatures without much difficulty and citizen might often appeal signatures indiscriminately and without bestowing much thought. I think, it is necessary, therefore, that in certain cases of false allegations made before the Lokpal—if it is sufficiently of a grave character—should be punishable by prosecution. After all, where gravely irresponsible allegations are made before the Lokpal it should be within the discretion of the Lokpal to make the order for prosecution. This will provide a penal check against the person making wholly irresponsible allegations.

I am very grateful to the Committee for giving me this opportunity.

MR. CHAIRMAN: Thank you very much, Dr. Singhvi. Please send us the notes on the points as requested by the Members and agreed to by you. Thank you, very much.

(The witness then withdrew)

(The Committee then adjourned.)

MINUTES OF EVIDENCE GIVEN BEFORE THE JOINT COMMITTEE ON THE LOKPAL AND
LOKAYUKTAS BILL, 1968.

Saturday, the 31st August, 1968 at 09.30 hours.

PRESENT

Shri M. B. Rana—*Chairman.*

MEMBERS

Lok Sabha

2. Shri S. A. Agadi
3. Shri K. Anbazhagan
4. Shrimati Jyotsna Chanda
5. Shri C. C. Desai
6. Shri Gangacharan Dixit
7. Shri Hem Raj
8. Shri Kinder Lal
9. Shri Thandavan Kiruttinan
10. Shri Amiya Kumar Kisku
11. Shri Bhola Nath Master
12. Shri G. S. Reddi
13. Shrimati Uma Roy
14. Shri S. Supakar
15. Shri Tenneti Viswanatham
16. Shri Kanwar Lal Gupta.

Rajya Sabha

17. Shri Gurmukh Singh Musafir
18. Shri Ram Niwas Mirdha
19. Pandit Sham Sunder Narain Tankha
20. Shri Purnanand Chetia
21. Shri Akbar Ali Khan
22. Shri K. S. Ramaswamy
23. Shri M. Ruthnaswamy
24. Shri Balachandra Menon.

LEGISLATIVE COUNSEL

Shri R. V. S. Peri-Sastri, *Additional Legislative Counsel, Ministry of Law.*

REPRESENTATIVES OF THE MINISTRY OF HOME AFFAIRS.

1. Shri S. P. Mukerji, *Director, Department of Administrative Reforms.*

2. Shri A. P. Veera, *Deputy Secretary, Ministry of Home Affairs.*
3. Shri S. M. Chikermane, *Under Secretary, Department of Administrative Reforms.*

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

WITNESS EXAMINED

Shri A. N. Mulla, *M.P.*

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

The Chairman drew his attention to Direction 58 of the Directions by the Speaker.

MR. CHAIRMAN: Mr. Mulla, thank you very much for giving us an opportunity to take your advice for the Lokpal Bill. Your evidence is liable to be published. Of course, you being an old Member of Parliament know the Speaker's ruling. What we usually do is we request the witness to give his opinion of the Lokpal Bill for about 10 minutes and after that some Members would like to ask some questions.

SHRI A. N. MULLA: Mr. Chairman, I thank you for inviting me to offer my suggestions before this Committee and I believe it would serve no useful purpose if at this stage I start raising a doubt whether we should proceed with this Bill or not. The matter has gone far ahead. We are now discussing as to what should be the rights of a Lokpal; what should be the procedure which should be followed under this Act. So it would be idle to raise this question that we are entering into an adventure—I should say, into a very new experiment which has not been tried anywhere. Please, do not try to think that what has been done in the small Scandinavian countries is any precedent for what we are doing here today. Even America which has been toying with this idea for a large number of years has made a very cautious approach and they are thinking of having the Lokpal only

in the big cities as an experimental measure. Obviously this new proposal will add a new burden on the tax payer and, therefore, when we are out to burden the tax payer, with absolutely a new burden, surely we should get some return and it should not be a waste of money. I feel that even if this system of having a Lokpal succeeds, you will only touch the fringe of the problem. In the corruption or mal-administration which is present today may be a very fractional gain might be made by you and that too depends upon the quality of the Lokpals and the Lokayukatas that you succeed in finding. So, I only want to sound this note of caution at this stage and then I proceed to give you as to what is the image of the scheme in my mind and what should be done with this Bill if the powers which are being vested in the Lokpal are to be exercised in a way from which any benefit should accrue to the country as a whole.

The objectives are the most important things, for all laws are governed by the objectives in one's mind. What do we expect the Lokpal to do and it is this question which we should answer in our own minds and this will determine our suggestions as to what should be the powers of the Lokpal and what should be the procedure which he should follow under this Act. Now, I will give you what I think is the objective in my mind because my suggestions would be governed by that objective. The objective in my mind is that we want to create an institution to protect and

safeguard the rights and interests of the common citizen against mal-administration and corruption which is becoming more and more pronounced under an ever-expanding public administration and against which the courts of law and administrative tribunals have not proved to be an adequate remedy because if the administrative tribunals and the courts of law had been an adequate remedy there would have been no necessity to introduce the Lokpal in our body politic at all.

Now the courts of law and the administrative courts fail to give us proper relief because the courts of law prove to be too expensive and dilatory and the normal rules of securing evidence are quite insufficient to deal with the problem and they are bound by those normal rules and procedures which are prescribed in our statutes. The administrative tribunals, over and above the handicaps mentioned above, have also failed to project an image that they are manned by such independent persons that the group in power cannot influence their decisions. We do not place that trust on the administrative tribunals and how can we place that trust when we find that almost every responsible public servant, after he has retired from a senior post, is an applicant to be on some sort of administrative tribunal and when it is a question of employment for persons who are retiring, obviously, they cannot be independent and they cannot give justice in that way. They depend upon the favours of the groups in power. Therefore, if this experiment is to succeed even fractionally (for it would be futile to expect more) the following five conditions must be fulfilled:-

1. There should be some men, not of ordinary clay but of superior China available who should possess three outstanding qualities—**independence, integrity and efficiency** and that too

of the highest order. I would like to remove the misapprehension which many people have in their minds, viz., that a Judge of the Supreme Court or of the High Court fulfils these requirements. The judges are made of the same stuffs as other citizens and these qualities if in this period of crisis of character, etc., exist at all they exist as much outside as in the judicial ranks. There are a few, I should say very few, in this country who have the courage to take decisions which may be unpleasant to people in authority and power and to stick to those decisions even by risking their displeasure.

I think the Lokpal and Lokayuktas in our country will have to deal far more with corruption than merely with mal-administration which in most cases is merely the consequence of corruption. So, the very difference between our country and the other countries where this experiment has been tried is that while corruption is present in every other country also, but the main task of the Lokpal there is to cure mal-administration and not so much corruption. I think that for mal-administration, Lokpal could certainly be of help but it is the question of corruption here. We have to see whether the Lokpal can deal with the question of corruption. It may become necessary that after some time this Committee would be meeting again and saying we should have a super-Lokpal to see whether the Lokpal is functioning properly or not. Therefore, I say it is the question of corruption which should be tackled. Whether this machinery is sufficient to tackle with this question or not, I am no doubtful about it. The character of the Lokpal, the stuff of which he should be made is the first essential condition out of the five things which are necessary if this scheme is to succeed, at all.

2. The second thing is that there should be no interference with the investigations done by the Lokpal or Lokayuktas under this Act and no legal or other hurdles should be plac-

ed in their way. The Lokpal or Lokayuktas should have access to every information and evidence with only two exceptions that the disclosure of that information will obviously affect the external or internal security of the State. That should be one restriction. The other restriction should be that it is a question of policy and not of administration. If it is the policy of the ruling group which adversely affects some persons, it cannot be a question of maladministration, though this should be kept in mind at the time that the executive authorities are very likely to turn every maladministration into a question of policy. So, there should be safeguards that the executive authority should not very lightly put forward this plea that this is a question of policy and not of administration. While we should exclude the question of policy from being considered by the Lokpal under this Act, we should be careful. We have the framework of a democratic State. In a democratic State the policy is the thing for which only the Cabinet is responsible and no one except the Cabinet has a right to know what the policy is and what should be the results of this policy. Therefore, no administrative tribunal—whether it is the Lokpal or any one else, should be permitted to question the policy of the State.

3. The third point which I think is necessary, is that the process of investigation under this Act should be streamlined. It should be quick and cheap and all dilatoriness should be avoided. It should not be burdened by any set of laws or formalities and the Lokpal should have the full right to collect evidence in his own manner from all sources subject to two conditions:

(i) the full opportunity should be given to the authority complained against to defend himself;

(ii) the final decision should contain all those particulars which are necessary for the judgment of

a Court of Law. A sketchy decision will not satisfy people it will be almost like an arbitrary decision, it will not advance either the interest of justice or interests of purification from corruption.

The judgement should be well reasoned giving its conclusions well considered and that will inspire confidence. At the same time as I said it should be cheap and not dilatory, therefore, the necessary corollary is that there should be no permission that lawyers should appear before the Lokpal or the Lokayuktas. The persons who would be involved in the case would be senior public officers. If they are not capable of defending themselves, they are not worthy of the place which they are occupying.

4. The fourth condition which is necessary is that the Lokpal and the Lokayuktas should be armed with State agencies to help them in their investigations without any hindrance and they should be given the right to have their own private agencies also to secure information. The Lokpal should not be denied the services of any public agency if the State is asked to give the same. Denial should not be on any ground whatsoever either on the ground that this agency cannot be permitted to investigate the case which he is investigating. The last condition for the successful functioning of the Lokpal would be that there should be no contact between the Government and the Lokpal and the Lokayuktas of a nature which will make them in some way dependent upon the help of the Government or its protection which will make them seek the Government's cooperation for his work. They should be completely independent. They should not have to lean upon the help of the government. They should have the right to demand all assistance from the Government which should be freely given and no obstacles should be raised. So, if you arm the Lokpal with these powers, if

you find the man with the required stuff we may successfully attack the fringe of the problem of corruption which exists today.

These are the general observations and with your permission now I will take up the Lokpal Bill and give my suggestions about various clauses and sections that are given in the Bill.

In Section 3(a) it has been provided that the leader of the opposition in the House of the People and if there be no such leader, a person elected in this behalf by the members of the opposition in that House in such manner as the Speaker may direct, shall be consulted. Now, this is a procedure which may be right for a democratic State where democracy has become mature where parties have crystallised, where there is a ruling party, where there is an opposition, and where there may be a few independents and some others in the legislatures. In the existing condition of our country actually no opposition exists. We may give the name of opposition to the biggest party against the government but even that party does not fulfil the requirements of an opposition. So while there are quite a number of people against the government actually there is no opposition. So we have to frame a rule for these conditions and the question of the leader of the opposition does not arise. The only second alternative is that a person elected from amongst those who are against the government may be consulted and in this not only the members of the lower House but the Members of the Rajya Sabha in opposition should also form that block from which such a man should be selected or elected. Therefore, all the opposition members in Lok Sabha and Rajya Sabha together should elect a person who should be considered to be the representative of the opinion of the opposition and he should be consulted; and naturally when the members of the Rajya Sabha are also to be included for giving their opinion in this matter then I personally think that instead of the

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Speaker being made the chief man to direct this election it should be the Vice-President of India who should see as to how this would be done, how the consultation would be done, etc. and not the Speaker. My suggestion in respect of 3(a) is that instead of the Speaker it should be the Vice-President of India and the opposition in both the Houses should elect and there is no question of any leader of the opposition. Then I come to section 5(1). It has been mentioned in the Bill like this.

SHRI C. C. DESAI: If there is a Leader of the Opposition, then what do you say? If there is a leader of the opposition in the Lok Sabha then what would you say to that?

SHRI A. N. MULLA: I have already said that we should wait for that time. We have to frame rules according to present conditions.

SHRI AKBAR ALI KHAN: Till we have that.

SHRI A. N. MULLA: The moment you develop an opposition, the Opposition Leader comes to occupy this place.

MR. CHAIRMAN: Let us hear Mr. Mulla. Then we will ask questions. Otherwise he will break his chain of thoughts.

SHRI A. N. MULLA: I am accustomed to it. Now, under section 5(1) it has been mentioned that Lokpal and Lokayukta will be eligible for reappointment for one more term. I think there should be no 2nd term either for Lokpal or Lokayukta and I say so because it is covered by the general observations I made. There should be no possibility of any favour which can be extended either to the Lokpal or Lokayukta. There should be not even a shadow of doubt about this. But for the Lokayukta I would make one exception. In my opinion the Lokpal should not be appointed unless he is 60 years of age. The Lokayuktas should not be appointed un-

less they are 55 years of age. And for the Lokayukta, I will say, they may be eligible for being appointed as Lokpal provided there is a gap of a term before they have finished their work as Lokayukta and then they are appointed as Lokpal. There should be no continuity. It is just like the Mohammadan divorce law—if the husband divorces his wife. There should be an intervening period of 5 years (just like that there should be an intervening marriage) before the Lokayukta could be eligible for becoming a Lokpal. In the same section under clause 1(c) it is mentioned that these officers shall continue to hold office till the successors enter upon the offices. In my opinion it should be clearly stated that this period shall not be more than a year under any case. There must be a replacement, and the maximum period permissible should be a period of one year. Similarly in Section 5(2) (a) and (b) there is provision for continuing with the Lokpal or Lokayukta in case of the occurring of a vacancy and here also it should be clearly stated that such a vacancy must be filled within a period of 6 months. A vacancy should not be kept pending for a period of more than 6 months.

Then in this section 5(4) (a) and (b) the salaries and allowances, conditions of service etc. of Lokpal and Lokayuktas have been mentioned and it is stated that regard shall be had to the salaries and allowances of the Chief Justice of India in the case of Lokpal and of the Judges of the Supreme Court of India in the case of Lokayuktas. I think the Lokpal should not be equated with the Chief Justice of India. I think so because in my opinion the real picture of law in a democratic state would become dim if we have some rival authority, just as strong, just as dominant, as the Chief Justice of India. The Chief Justice of India must retain overall dominance so far as the field of law is concerned. And you know, the thing started in Sweden. Sweden has

now this system for over 160 years, since when this Ombudsman is functioning. And there the status of Lokpal is that of supreme court judges and not the Chief Justice of Sweden. I agree with that position that the status of the Lokpal should be that of a judge of the supreme court of India and certainly not that of the Chief Justice of India. It should be seen that the Chief Justice of India is one of the persons who is consulted when the Lokpal is appointed. When he is consulted, obviously he should be placed at least one step above the person who is being appointed on his advice. I do not think that the image of the Lokpal will be adversely affected if he is not placed quite as a rival of the Chief Justice of India. In my opinion this is a matter for the Committee to consider whether the status they give to the Lokpal should be the same as that of the Chief Justice of India or he should be brought down slightly from that status and placed on the status of a Judge of the Supreme Court of India. Similarly it has been said that the Lokayukta should be of the status of the Judges of the Supreme Court. I would like him to have the same status as that of the Chief Justice of the High Court. Both should be placed on the same status.

SHRI AKBAR ALI KHAN: Not that of the Judge of the High Court?

SHRI A. N. MULLA: No, but of the Chief Justice of the High Court.

SHRI AKBAR ALI KHAN: The same objection will arise there also.

SHRI A. N. MULLA: No because the Lokayukta will not be recommended by the Chief Justice of the High Court.

Then, clause 6 makes provisions for the removal of Lokpal and Lokayukta. There is some sort of indication—perhaps the intention might not be there as if the supervisory control of the Supreme Court contained in Articles 32 and 311 would not apply to the

Lokpal. If that is the intention, then I do not agree. I think this supervision under Articles 32 and 311 of the Constitution of India should remain even against whatever is done by the Lokpal. The other legal hurdles may be removed, but the final legal hurdle of 311 and 32 should not be removed even in the case of any decision given by the Lokpal. As I said, the supremacy of the Supreme Court should be there. After all it is not as if you want to create two rival legal institutions. The supremacy of the Chief Justice of India and the Supreme Court of India should be there.

Under clause 8 provision has been made for investigating complaints which the Lokpal or the Lokayukta receives. In my opinion sub-clause (2) of clause 8 should be deleted because it can easily be abused to defeat an enquiry by the Lokpal or the Lokayukta. I will come to sub-clause (2) of clause 8. It says:

The Lokpal or a Lokayukta shall not conduct any investigation in the case of any complaint involving a grievance or an allegation in respect of any action inquired into by, or referred for inquiry to, a Commission of Inquiry under the Commissions of Inquiry Act, 1952.

If the Lokpal has to function in the manner in which we want him to function, then it is the Lokpal's inquiry which should have precedence over all the other inquiries and no other inquiry should be a hurdle in its way. Otherwise, you will be defeating the very purpose of having a Lokpal. You will only give an arm to the executive authority who will say: This case is going before a court of inquiry and then the Lokpal's enquiry should be delayed for months or years. In such a case the Lokpal is ousted and cannot take notice of that particular complaint because it is a public court of inquiry. It will be so easy for the executive Government to refer the matter to a court of inquiry and prevent the Lokpal

from inquiring into that particular complaint. As I said, there should be no possibility of the Government in power interfering with the functions of the Lokpal or the Lokayukta. Therefore, clause 8(2), in my opinion, should be deleted.

In clause 9(2) it is proposed that the complaints shall be made on some form and they shall be accompanied by affidavits and other documents. While I have no objection to there being a prescribed form or even to ask the complainant to put in his complaint on that form and give certain documents, I want it to be made clear that no complaint shall be barred because it is not on the prescribed form or it does not contain the affidavits or documents prescribed for filing such a complaint. I am in favour of entertaining even anonymous complaints, what to say about complaints which are not on the prescribed form. As a matter of fact, the complaint, after all, is a secret communication made by the aggrieved party to the Lokpal for investigation. Even if he goes and says: "Give me a prescribed form", the very fact of his demanding it would be to a certain extent a disclosure that he wants to forward a complaint or somebody else is going to forward the complaint and that somebody is closely associated with the person who has come to take the form. So, I think that this formality of sending the complaint on a prescribed form will hinder the complainant's voicing his complaint in secrecy to a certain extent. Even this hindrance should not exist.

Under clause 10, sub-clause 1(a) it has been proposed that as soon as the Lokpal or the Lokayukta proposes to conduct an investigation, a copy of the complaint shall be supplied to the public servant concerned or the competent authority concerned. This, in my opinion, will again defeat the inquiry to be made by the Lokpal. The Lokpal receives a complaint. Now it is upto the Lokpal to lay down his own procedure. It is true that an accused has the right to know the whole charge against him and to get

a full opportunity to defend himself. Nobody can take away that right and at least in a democratic State, this right cannot be taken away because it is a fundamental right that he possesses. But at what stage the accused should be associated with the inquiry should be left to the option of the Lokpal himself. Even in the case of complaints which are filed in courts of law, it is open to the Magistrate to have some inquiry in the absence of the accused before the accused is summoned. The danger is that if a complaint is given to the Lokpal and before the Lokpal collects his material a copy is sent to the public authority or the public officer, at the moment the public officer is entrenched in power, he will immediately take steps to tamper with the evidence and destroy the documents. If the Lokpal is given a free hand at that stage, he may collect his evidence in his own way; let him collect his materials and then, if he finds that it is a matter which needs a serious investigation, at that stage, he may associate the public authority and seek his explanation and give him a copy of the complaint and charges. Therefore the immediate handing over of the complaint would be inadmissible and it would be against the purpose for which this Bill is being enacted. It will warn the public servant. I feel that this should not be done.

I think the amendment in sub-clause (b) should be something like this:

“(b) afford to the public servant or the public authority concerned an opportunity to offer his comments during the course of the enquiry on the grievances or allegations contained in the complaint under investigation a copy of which should be supplied to the public servant or the competent authority concerned at a time considered suitable by the Lokpal or the Lokayukta.”

Similarly, in sub-section (2) of section 10 it is stated that the enquiry shall be conducted in private. I think that at least a part of the enquiry

should be conducted in private. But, there are certain other provisions in the Bill which seem to be in connect with this desire. I would refer to the provisions of sections 12(8) and 14(6). The moment you say that it would be laid before the Parliament—on the Table of the House—where is the secrecy? Either you want secrecy or you do not. But, if you have provided that in the Act, the report will have to be laid on the Table of the House. Then, there is no question of secrecy.

SHRI AKBAR ALI KHAN: Should it be secret during the pendency?

SHRI A. N. MULLA: You have not put it in the bill.

SHRI AKBAR ALI KHAN: Will you agree that it should be secret during the pendency?

SHRI A. N. MULLA: Even during the pendency there should be no secrecy. In the U.S.A. some years back there was a Committee appointed—Legislators' Committee—known as Kefauver Committee. When they sat, anybody could see on television and hear the evidence tendered by the gangsters. The Committee had the right to examine anybody as a witness. That created a popular interest with the result that even in the cinema and other places of entertainment, there was an appreciable decline in the number of people attending them; the people used to sit near the television sets and listen to the evidence given by the gangsters as also the questions that were put to them. I have raised this point because you have put a question with regard to this. I am not against secrecy during pendency and I am not concerned whether it will remain secret or not during the pendency of the case. But it is not clear from the Bill whether during the pendency it should remain secret. Anyway, I have nothing to say against it.

Again, in sub-section 4 of section 10, an option has been given to the Lokpal and the Lokayukta to exercise their discretion in investigating

the complaints—they may entertain them or throw them out or they need not proceed with the investigation of that complaint. But, this absolute right has been limited by the provisions of section 17(3) where it is stated that the Lokpal, by orders of the President, may be directed to investigate a complaint, if it is to recommend a particular case. An exception in favour of a direction given by the President, should not be there because, the President, at best, is a mouth-piece of the party in power and you are giving the party in power a chance to penalise their political opponents. For example, take the case of corruption charges against certain political rivals. After all corruption charges are rampant against all groups of politicians. It is open, under the existing bill for the Lokpal to find out whether there is any substance in the charge of corruption levelled at the political party. But, the party in power, in order to discredit or victimise the rival political group, through the President, may direct that this complaint should be investigated and in that case, the Lokpal becomes helpless. I think that this power should not be given to the President because it can be politically abused. Therefore, the Lokpal should not be the final arbiter whether a complaint is to be investigated or not.

Then, under section 10, sub-section (6) it has been stated that a simultaneous action can be taken by other authorities also while the Lokpal is investigating a complaint. I think that this should be made clear that simultaneous action is permissible only to the extent that it does not interfere with the investigation of the Lokpal. So long as no hindrance is placed before an investigation by the Lokpal, I have no objection to any other authority having simultaneous proceedings taken in the matter. But, if any simultaneous enquiry or proceedings is to delay the investigation by the Lokpal, I certainly say that it should not be there.

Then, under Section 11 guide-lines are given as to how the evidence shall be collected by the Lokpal and the Lokayukta and what are his powers to compel the people to furnish information or produce documents. This is the most important section, in my opinion, in the whole Bill and the powers given to the Lokpal and Lokayukta in my opinion are not very specifically mentioned in this article and they should be clearly stated. The Lokpal and Lokayukta must be given full and unfettered powers to tap all sources of information barring the restrictions contained in sub-section (5). The Lokpal and the Lokayukta should have the right to seek their information and summon documents irrespective of any law which may be pleaded for not giving such information or for non-production of such documents. They should have access to all information and documents. They should also have the right to examine the person or persons against whom the investigation is proceeding on oath and cross-examine them. Therefore, for all these things if you want the Lokpal to be effective, you should give him the right to examine the persons against whom the complaint is filed on oath. The normal rules of procedures should not apply. The appointment of Lokpal is a desperate remedy for a grave melody in the body politic. Under the normal rules, you have the courts of law. By these procedures, at least the Lokpal should not be fettered; he should be given the right to examine the witnesses—cross-examine them—and seek for his information from all locked up places and against him there should be no right of private property or private document. He should have no access to secret documents involving the security of the State. For this restrictions are printed but having this he should have unfettered rights to gather his information.

Then, in sub-section (5) it is proposed that the certificate will be issued by the Secretary certifying

that any information, answer or portion of a document is of the nature specified in clause (a) or clause (b), shall be binding and conclusive. I think that the Secretary should not be authorised with this power. This certificate should come either from the Prime Minister or a Cabinet Minister authorised by the Prime Minister. It should not be the Secretary who should issue this sort of certificate to the Lokpal. After all, the position of Lokpal has to be maintained. The person whose conduct itself may be questioned by the Lokpal should not be the person to stand in his way. It is true that the Lokpal can question even the conduct of the Prime Minister. But the Prime Minister and the Cabinet are responsible for the administration of the country. Therefore, the Prime Minister can be excluded for this particular purpose in determining whether a certain thing affects the security of the State or not, whether it would be in the interest of the public to disclose it or not. The Prime Minister or a Cabinet Minister authorised by the Prime Minister may issue such a certificate, but the Secretary should not be permitted to issue this sort of certificate.

Now I come to sub-section (6). This should be deleted, for it can defeat the entire purpose of this proposed enactment. Sub-section (6) says "Without prejudice to the provisions of subsection (4) no person shall be compelled for the purposes of investigation under this Act to give any evidence or produce any documents which he could not be compelled to give or produce in proceedings before a Court. What are you doing? Are you going to have parallel courts? What is the purpose of this enactment? Without additional powers this will be negatory. This spoils the whole scheme of having a Lokpal, if you retain this section.

Coming to Section 13 it is stated therein that the Lokpal or Lokayukta may utilise the services of any officer or investigating agency of the Central Government for the purpose of

conducting an investigation under this Act. Here again the powers of Lokpal and the Lokayukta are sought to be fettered by the authority of the Government in power. It should be kept in mind that the Lokpal or the Lokayukta should be given complete independence and any provision which gives the Government any sort of power and which restricts the nature of the investigation or the manner of investigation will make the Lokpal to that extent subservient to the ruling group. In my opinion the Central Government must permit the Lokpal to utilise any officer or investigating agency of the Central Government and the consent of the Central Government if necessary at all should only be formal. There is no question of denying the request of Lokpal. I have already said that the Lokpal sitting in his Chamber cannot investigate crimes merely on some complaints without the assistance of investigating agencies or without sufficient material or without necessary evidence. What is the use of creating this new institution if you don't give it the necessary facilities to function effectively? If Lokpal is to depend upon any private agency, it would mean a heavy burden on the State. Secondly, if they are to be introduced, how can the private agencies have access to State files which would be in the possession of the persons against whom grievances or allegations have been made. So it would destroy the whole fabric of the Act, if the Lokpal is not empowered to utilise the services of the public agency whenever and wherever he wants. It should be at his disposal so that whenever he wants its assistance he can get it.

In section 15 it has been stated that the complaints shall be filed by the Public Prosecutor only with the previous sanction of the Central Government. It is an extraordinary provision. The Lokpal has been defamed, contempt has been committed against the Lokpal. But the Government must give the green signal for the Public Prosecutor to act; otherwise

a complaint cannot be filed. This is again a protective provision. The Central Government should not act as the protector of either Lokpal or Lokayukta. The Lokpal should be empowered to look after himself. The moment he certifies that a complaint should be filed, the Public Prosecutor must file that complaint. Similarly, if any contempt has been done against a Lokayukta, the directions of the Lokpal should be final and the Public Prosecutor should file the complaint on those directions. The Central Government should not be anywhere near it, even upto a mile.

In Section 16 there is a sub-section (2). I have failed to understand the full meaning of this phrase "on the ground or jurisdiction". What is the jurisdiction of Lokpal, I have not understood. Here it is said: No proceedings of the Lokpal or the Lokayuktas shall be held bad for want of form and except on the ground of jurisdiction no proceedings or decision of the Lokpal or the Lokayuktas shall be liable to be challenged reviewed quashed or called in question in any court. If this means the taking away of the right of review under Articles 32 and 136 of the Constitution, then I am not in its favour. The power of review by the Supreme Court must be there. If it means what is mentioned in Clause 20 (that is the only place where I find that certain officers would not come under the orbit of his investigation) then it is understandable. If it means something else, as I mentioned just now, then it is a matter on which I would like some further elucidation from the persons who drafted the Bill.

SHRI AKBAR ALI KHAN: What about Article 226? The power of High Courts to issue writ orders.

SHRI A. N. MULLA: I am not keen about Article 226. I would prefer that it does not exist in this case. But Articles 32 and 311 should be kept in force.

Under Section 19(2)(c) it is proposed that a me fees may also be

charged for filing a complaint before the Lokpal or Lokayukta. I am clearly against this because even a small charge would in a way act as a deterrent and the complaints may not be filed. Therefore, I am against this provision. I have already said that even anonymous complaints should be entertained. I would also say that even *suo motu* the Lokpal and the Lokayuktas should have the right to start investigations. The powers that are given to criminal courts should be given to Lokpal also. Under the Criminal Procedure Code a Magistrate is given the power to start an investigation under section 200-201 and 202 under any sort of communication. Why should the Lokpal be denied this right?

Under Section 20 there are certain high authorities or actions taken with the approval of some high authorities which are not within the purview of Lokpal. I am of the opinion that this needs a little curtailment; we have been too generous with this list.

Now, in (b) I will retain the Chief Justice or a judge of the High Court or a Judicial Commissioner and Additional Judicial Commissioner, but I will delete Assistant Judicial Commissioner in any Union Territory or the District Judge in a Union Territory. I feel no difference between the sub-judges and the District judges. I do not understand that when sub judges are to be subject to the investigations done by the Lokpal, why the District Judges should be excluded from the jurisdiction of the Lokpal. The rule should be not of exclusion, but of inclusion. You should exclude only if you must. Therefore, you should exclude persons from the operation of the Lokpal's investigations very strictly.

Then, under (e) I will exclude only the Chief Election Commissioner and would delete other names. As a matter of fact, you find that occasionally complaints have been filed against some Election Commissioners. There-

fore, to exclude Election Commissioners from the ambit of this Bill will not be fair. You may exclude Chief Election Commissioner, but not the other Election Commissioners.

Under section 21 it has been proposed that the other remedies will not be affected or limited by a complainant's electing to file a complaint before the Lokpal or the Lokayukta. But this should be clearly stated that no other remedy will in any way place the investigation under this Act in cold storage or place any fetters on the rights of the Lokpal and the Lokayukta to proceed with the investigations.

Lastly, I have gone through the Schedule also. I am not satisfied that (g) should be included in the Second Schedule. (e) should be excluded from the Second Schedule.

Now, I shall answer any questions put to me.

MR. CHAIRMAN: Thank you very much. You have given us a very sound picture of what a Lokpal should be.

SHRI AKBAR ALI KHAN: A very good picture.

MR. CHAIRMAN: It will be of great use to us when we discuss it clause by clause. Now, I would request hon. Members to put their questions very briefly. We have already spent nearly one hour.

SHRI AKBAR ALI KHAN: Justice Mulla, we are very grateful to you. I just wanted to know that when you say that except policy matters and security matters, everything else should be within the power of the Lokpal, do you think the Lokpal will be able to deal with all these matters?

SHRI A. N. MULLA: As I said in the beginning, that would be the fringe of the problem. You cannot have the taxpayer pay so much in such a vast country. As I said, even in America, because the country is so

vast they are only experimenting with Lokpals in big cities alone and nowhere else.

SHRI AKBAR ALI KHAN: That power will relate to all those who are in the service of the Government of India or the Ministers of the Government of India?

SHRI A. N. MULLA: Yes.

SHRI AKBAR ALI KHAN: Then this power is very wide.

SHRI A. N. MULLA: In Sweden they have the Ombudsman. He has two Deputies and there is the panel of 10 jurists to assist him. Here, the officer that you are appointing is really a Parliamentary officer. And the Parliamentary officer will have to depend upon some private agencies also to help him. There they have got a panel of 10 jurists. Here also either you have an association of people well-versed in law to help the Lokpal or you can have a group of Parliamentary members to assist the Lokpal, on whom he may fall back upon. But, still, as you stated, even that staff would be too insufficient to deal with the problem that is facing us.

SHRI AKBAR ALI KHAN: You say that the enquiry should be thorough. Do you mean to say that he should be allowed to have examination, cross-examination, either himself or through a lawyer?

SHRI A. N. MULLA: Not through a lawyer. Lawyers should be debarred. He should himself be competent. Or, if he alone cannot cope with the matter he should associate jurists or Members of Parliament for that purpose.

SHRI AKBAR ALI KHAN: Thank you very much.

SHRI PURNANAND CHETIA: You have stated that the present Act is very stringent Act or it is unnecessary, if I understood you correctly...

SHRI A. N. MULLA: Not unnecessary, but that it will not achieve its purpose.

SHRI PURNANAND CHETIA: My impression is that you have considered it Extraordinary. I think there has been an impression gaining ground in the country that there is corruption in high places. Do you think that the present agencies, such as the Vigilance Commission, CBI or the Anti-Corruption Department are not sufficient to do the job?

SHRI A. N. MULLA: Corruption certainly has become very rampant. We all know it today. We are all worried about this fact: how to control this corruption. Perhaps this Bill has been brought with a view to check this rise of corruption. One thing about corruption should be well understood, and that is: you cannot get the better of corruption if you start treating the legs, the feet and the hands. It is the 'head' that must be treated. If you want to make any headway, it is the head which should be treated; you forget the limbs for the time being. We started with the idea of having the Anti-Corruption Act. I am not against the idea or the objectives which has been expressed in this Act. But I have great doubts whether you will succeed in your desire even after you have brought this Bill, firstly because I am a little doubtful about the stuff which this country provides, and secondly, I am afraid, even in the final analysis I don't know on what considerations you will appoint the Lokpal who can stand up to the Government, who will fight with the Government. How many such men have you got in this country? It is that which makes one feel pessimistic that you have not got the stuff to make-up the Lokpal, and the Lokayuktas and if they are not of the stuff the danger is that they will become white-washing tribunals. Instead of punishing the officers they will white-wash them and side with them. That is my feeling.

SHRI PURNANAND CHETIA: You said that the Lokpal had been given extraordinary power to deal with the matter. Would it not be desirable that the Lokpal and the Chief Justice of the Supreme Court both should combine together and constitute a court of inquiry specially about allegations against Ministers and their final decisions should be binding on the Government?

SHRI A. N. MULLA: I do not agree with that because the Chief Justice of India and the Supreme Court should remain an absolutely independent and separate body. It should not be associated with any other institution. It has its own dignity. It has its own position and that dignity and aloofness must remain otherwise the whole picture of administration will get distorted.

SHRI A. K. KISKU: I would like to have some more clarification because on the one hand you persist in saying that the status and the position of the Chief Justice of the Supreme Court have to be maintained and on the other hand the position and the unique status of Lokpal has also to be maintained in such a way that they do not become rival institutions. In other words, there is bound to be a line of demarcation so that no conflict arises. I would like to know from you in detail in what way would you like this Institution of Lokpal should be distinct body from the....

SHRI A. N. MULLA: I think in my statement before this Committee I had stated that the status of the Lokpal, his salary and allowances and other things should be equal to that of a Judge of the Supreme Court and not of the Chief Justice of the Supreme Court. I think that gives him status high enough to preserve his dignity and just a little above him is the head of the judiciary that is the Chief Justice of India. I do not think the image of the Lokpal suffers if he is not put absolutely on the same level as Chief Justice of India.

SHRI A. K. KISKU: Secondly, with regard to Section 3(a) you have mentioned that in the case of leader of the Opposition in the existing circumstances as we do not have a united opposition therefore somebody should be elected by the Members of the Opposition, both of the Lok Sabha and also of Rajya Sabha. That is all right. But you did not justify that the Speaker should be there. On the other hand, you proposed that the Vice-President should come into the picture. I would like to know what is in your mind that you do not put that confidence in the Speaker and you want Vice-President to come into the picture.

SHRI A. N. MULLA: It is not a question of confidence. It is a question of the precedence that exists at the moment in our country. The Vice-President and ex-officio Chairman of the Rajya Sabha in the protocol comes before the Speaker and, therefore, if two persons are there both Presidents of the two Houses the person who is higher up in the protocol should be the directing authority.

SHRI G. S. REDDI: In the Bill it is provided that the complaints against the Ministers also will be taken up by the Lokpal. Do you consider it healthy from the point of view of the present state of democracy in India?

SHRI A. N. MULLA: I do not consider anything wrong with it and as a matter of fact if you do not take into account complaints against the Ministers then better tear off this Bill.

SHRI G. S. REDDI: You have proposed five conditions which the Lokpal should possess before his appointment. Don't you consider it to be an ideal proposal?

SHRI A. N. MULLA: When we give a statement or when we present an idea obviously we have to have some picture before us. Some image before us. We may fall away from that image or we may not be able to realise that image but certainly that

should be before us and we should try to reach it. I have already said that we have not got that human material.

SHRI S. S. N. TANKHA: Whether you would like any maximum age to be fixed for the Lokpal as to when he should necessarily be made to retire?

SHRI A. N. MULLA: When there is only one term to be given to the Lokpal then the question of his physical and mental condition at the time of appointment is relevant. Then there is no question of maximum age.

SHRI S. S. N. TANKHA: Why I asked this question is that you are not opposed to retired high court judges or supreme court judges to be appointed.

SHRI A. N. MULLA: I am not opposed. As a matter of fact the retired high court judges and the retired supreme court judges have one advantage over the other persons that by the way they have spent their life they have acquired a capacity to assess evidence to sift it and come to conclusions. Others may also possess this capacity but this lifelong training helps them to come to certain decisions which are necessary in the final analysis in giving judgement.

SHRI S. S. N. TANKHA: Quite right. If this class of people are to be appointed it means they will be appointed at the age of 60 or 65. If you give five years that means the age of 70 years. Would you like them to continue upto that age.

SHRI A. N. MULLA: There would be a person who will fulfil the functions of a Lokpal even at the age of 75 while there may be a person who cannot fulfil it even at the age of 55.

SHRI S. S. N. TANKHA: The second question is that some witnesses who appeared before us have suggested that the judiciary and the

Members of Parliament should also to be brought within the Lokpal's enquiry and investigation. Do you agree?

SHRI A. N. MULLA: No. I have said a panel of Parliamentarians or Jurists may assist as a private agency the Lokpal. This may be considered. If the Lokpal feels that he himself alone is not capable of coping with the matter he can call upon that panel. There may be a permanent panel of Parliamentarians for this purpose.

SHRI S. S. N. TANKHA: Should the Lokpal enquire into the allegations against the Members of Parliament and the judiciary?

SHRI A. N. MULLA: Surely M.Ps. should be brought under the Bill. I am not worried if judges are excluded as embodied in Clause 20 of the Act but I am worried if M.Ps. are excluded.

SHRI HEM RAJ: Ministers have been brought within the ambit of this Act. Commissions of Enquiry have been set up by the Government but after the findings no concrete action has been taken against the Ministers who have been found to be corrupt. What suggestion will you make to incorporate in this Act that the Lokpal and Lokayuktas instead of being advisory in character should also recommend some action to the Government so that some action may be taken against them?

SHRI A. N. MULLA: The role of the Lokpal at best is advisory. That role is not that of the Court of Law who sentences any person to anything. Therefore, if the advice of the Lokpal is not accepted then the Lokpal should resign. He should say that it is useless to function in this capacity. He does not want to act as a Lokpal.

SHRI HEM RAJ: Instead of being advisory, can he suggest that such and such action i.e. prosecution, etc., should be taken?

SHRI A. N. MULLA: I think you can put in that suggestion but what would be the legal binding affect of it after you have put it?

SHRI HEM RAJ: If the Government in power does not take any action, it will not have any meaning.

SHRI A. N. MULLA: If the Government does not take action it will have political repercussion.

SHRI HEM RAJ: Can you suggest any other method which may be incorporated in the Act so that action is taken?

SHRI S. S. N. TANKHA: Lokpal will report to the Parliament that no action has been taken on Lokpal's suggestion.

SHRI HEM RAJ: Under section 8(4), time limit has been put as five years. Do you think any time limit is necessary?

SHRI A. N. MULLA: So far as *suo moto* action is concerned, no time limit should be there. The Lokpal can take up any question if in his discretion the matter is important.

On complaint involving an allegation the time limit for 5 years is there. But he can take up the complaint after five years if he feels that the matter is important.

SHRI HEM RAJ: In the Anti-Corruption Act we have made the giver and the taker responsible and they can be proceeded against. Do you think that this Act itself has given rise to corruption or it has in a way paved the way to bring the cases to light?

SHRI A. N. MULLA: If you want to ask my opinion as a citizen, I may tell you that you are not going to curtail corruption in any way. There will be a spiral of corruption even though you may have one lokpal or ten. If you put the question to me in the capacity in which I am to-day, I would say all would depend upon:

what image the Lokpal projects. If you really get a Lokpal of the right stuff and he has power to stand against even the party in power, one or two decisions made by the Lokpal would create tremendous impact.

SHRI HEM RAJ: Under the present Act both the giver and the taker become offenders. If any person comes before the Lokpal or Lokayukta and gives any information, then he himself is bound and he himself becomes an offender. Has this provision helped in checking corruption?

SHRI A. N. MULLA: The Lokpal will obviously exercise his own discretion whether he should investigate the matter against the giver at all. As the giver has himself confessed, there is no question of investigation against him. He will naturally investigate against the person who has received the bribe and the giver becomes one of the witnesses and helps him in investigation.

SHRI HEM RAJ: So, in that case, that portion of the ordinary law should not apply to the Lokpal and Lokayukta.

SHRI A. N. MULLA: I am not associated with any Committee or with any penal law-making body. As far as Anti-Corruption Act is concerned, I feel a great deal of amendments are necessary because it is this Act which can give relief to the common man and not the Lokpal. The common man is more interested in improvements of procedure in the Anti-Corruption Act. Government is giving as a Lokpal, but no suitable amendments are being made in the Anti-Corruption Act though so many things can be done. A few of the provisions of this Bill can be introduced in the Prevention of Corruption Act to improve and to streamline the administration of justice, to give more powers to the Court, to collect information and documents and evidence. That should be done as that would be the real relief for the common citizen.

SHRI S. SUPAKAR: Sir, so far as ministerial responsibility is concerned, you have said that the question of policy should not be enquired into or investigated by the Lokpal. The distinction between the administration and policy is very thin. Do you consider desirable to make it more explicit in Bill?

SHRI A. N. MULLA: A certificate should be issued either by the Prime Minister or a Cabinet Minister authorised by the Prime Minister claiming this exception that it comes within the ambit of policy. The distinction is thin but his certificate would be at least a commitment on the part of the group in power. A grievance which the other group might call maladministration but the Government claims that this is a question of policy will at least give rise to political consciousness and at least in Parliament and other places you can say that such and such exception was claimed in such and such a case. The final decision in this matter may be left to the Prime Minister or the Minister authorised by the Prime Minister that this is a question of policy.

SHRI S. SUPAKAR: The second question is this. Do you think it should be necessary to amend Art. 311 even though the scope of the function of the Lokpal is something like investigating authority and not that of condemnation of the person?

SHRI A. N. MULLA: The question of amending Art. 311 arises when certain powers are to be given to the Lokpal which militate against the provisions of Art. 311, but when no such powers are given the question of amendment does not arise. Therefore, if you claim that such powers should be given to the Lokpal and his decision should be final that there should be no review of his opinion I am not in favour of that stand. I have said that the reviewing powers of the Supreme Court must be retained.

SHRI S. SUPAKAR: The power of Lokpal is a mere investigation power. It is not in the sense that we use the Criminal Procedure Code. There is no thorough probe in which this judgement should have some sort of authoritative or binding nature and all that. I hope I have made myself clear.

SHRI A. N. MULLA: There are certain basic fundamental human rights and one of them is that no person should be convicted or sentenced unless he has the full right to defend himself. There are principles which are applicable for assessing evidence for finding a man guilty. Now, if the Lokpal does not observe these principles and permits his own strong bias or his own feelings and comes to the conclusion that this man is guilty, it is not correct. I have functioned as a judge I know that a certain accused has committed murder. But the evidence does not prove it. The evidence is completely faulty. It is not one man that is before you, it is the entire system of laws that is before you. You cannot convict a man on faulty evidence merely because you have a conviction that the man is guilty. Similarly the Lokpal has not only to convince himself, but he has to convince the people at large—that his decisions is right. He should create that type of confidence. He has to give the picture that he is not acting on his own whims. He should function in a judicial, independent manner and all this involves a certain way of assessment of evidence and there should not be any deviation from such assessment. He may not be in the strict sense, a court of law; but there are certain basic requirements which must be fulfilled in order to convince the people that justice is being done.

SHRI S. SUPAKAR: As a concrete question has arisen, I am asking this. The publication by the CBI can be produced in a court of law regarding the *prima facie* allegations that are made against persons in high offices. That question has arisen in respect of the investigation of a case recently. In respect of cases of investi-

gations that have to be conducted by the Lokpal, what would be its value—whether it is investigation or inquiry? I hope I have made myself clear.

SHRI A. N. MULLA: I have understood your point. I have already stated this. The method of securing information and evidence before a court of law is restricted by certain rules of procedure and statutes. The procedure before Lokpal should be entirely his own, he is not to be fettered in any way by any other considerations and he should have access to all the documents. Therefore the Lokpal would be in a better position than a court of law because various pieces of evidence would be before him which will not be before courts of law and various aspects can be considered by him though they cannot be considered by courts of law. The Lokpal has access to all the documents and he tries to utilise that information, those documents which a court of law cannot do. Therefore in the same case, the courts may not come to the conclusion that a man is guilty but the Lokpal can rightly come to the conclusion that the man is guilty because the evidence before him is fuller.

SHRI S. SUPAKAR: That is all. Thank you.

SHRI T. VISWANATHAM: Please see clause 8 regarding matters which cannot be enquired into by Lokpal, relating to any matter specified in the 2nd schedule....

SHRI A. N. MULLA: I have stated that (e), should be deleted in the 2nd schedule.

SHRI T. VISWANATHAM: Clause (a) states about action taken in a matter certified by a Secretary as affecting the relations or dealings between the Govt. of India and any foreign Government or any international organisation of States or Government. We have got several dealings, not merely diplomatic dealings, but trade dealings, commercial dealings etc., going on from State to State and com-

mercial dealings are the worst points where corruption is likely to occur. Now, that is excluded. Clause (c) also says about action taken for the purpose of investigating crime or protecting the security of the State including action taken with respect to passports and travel documents. There can be any amount of hiding or sheltering criminals who may be the favourites of the administration.

SHRI A. N. MULLA: My view of these exceptions is this: Broadly speaking they come under the head 'policy'. It is very difficult to say where the policy ends and where corruption begins, and in my opinion, as the policy should not be the matter to be investigated by Lokpal some area of corruption also escape his jurisdiction.

SHRI T. VISWANATHAM: Suppose a policy decision is taken with regard to partial decontrol of sugar. Suspicion has been raised on the floor of the House. Suppose there is a similar action. Will that go before the Lokpal? Can Lokpal enquire into it?

SHRI A. N. MULLA: There are two aspects of that question. There is the policy decision and if as a result of this policy there is a complaint that in some particular way a corrupt deal was entered into, I think that it will come in as part of corruption and it will not be excluded, it will not be covered by the head 'policy'. The moment it is not covered, the Lokpal steps in. In order to escape the jurisdiction of the Lokpal, the executive authority is likely to raise the question of policy very lightly. That is why I say that I do not want the Secretary to do it. In every such case it should be the Prime Minister or on her or his behalf a Cabinet Minister who should claim exemption.

SHRI T. VISWANATHAM: You please see the various clauses under the Second Schedule. They are just things on which questions are raised in Parliament. Policy is arrived at after a certain event takes place. It

is those events that are sought to be questioned. If those questions are taken away from the purview of the Lokpal, do you think that there is much utility in having a Lokpal Clause 8(b) says that if there is any ordinary remedy available, then Lokpal should not come in.

SHRI A. N. MULLA: I have already said that alternative remedy cannot be a plea for Lokpal not carrying on his investigation.

SHRI T. VISWANATHAM: Don't you think that the omission of clause 8 will improve the position of Lokpal and perhaps give him a little greater utility?

SHRI A. N. MULLA: After all you should also see that you should not make the Lokpal such a menace to the country. If by any chance the Lokpal develops political aspirations, he may, with accessibility to all sorts of things, play havoc in political life. You should not arm him with such powers that he may be tempted to play this game.

SHRI T. VISWANATHAM: If clause 8 is to remain, Lokpal will only be adding to various other institutions which are already existing. He will be one more clog in the wheel.

SHRI A. N. MULLA: I have looked into it rather deeply and I find that though, as you say, there are certain weaknesses, by and large, the exceptions which are made need not frighten us. We are against these exceptions because of the corrupt atmosphere that prevails today. But when I look at these powers in the proper perspective in the context of relations between the State and the Lokpal, I do not see anything seriously wrong with it.

SHRI T. VISWANATHAM: Will you kindly look at clause (d) in the Second Schedule? "Action taken in the exercise of powers in relation to determining whether a matter shall go to a court or not".....

SHRI A. N. MULLA: I have said that it should be deleted.

SHRI T. VISWANATHAM: Clause 8 read with the Second Schedule makes the Lokpal absolutely superfluous personage in the various machineries of the administration. If clause 8 is removed, he may be of some use provided he is given powers to entertain grievances and complaints and inquire into them even if there is some other remedy provided for by statute.

SHRI A. N. MULLA: From my experience, I can assure you that it will be the personality of the Lokpal that would determine whether he will be of use or not. Give all the powers to him, and still he will be useless if he is not made of the stuff with which a Lokpal should be made. On the other hand, if he is of the right stuff put more and more restrictions on him, still he will see his way to assert himself and help the people.

SHRI T. VISWANATHAM: I will take you to another aspect. Lokpal can enquire into any action taken by or by the order of a Minister. Supposing he comes to the conclusion that the order of the Minister was a *mala fide* order. The Act does not give any indication as to what action should be taken and by whom against the Minister.

SHRI A. N. MULLA: I believe the purpose of the Lokpal is that if there has been any mal-administration or if there has been any corruption and people have complained against it or he himself has come to know about it, then he should disclose it in his report to the President who will cause it to be laid on the table of the House. His duty finishes there. He is not concerned with what action should be taken or who should take it.

SHRI T. VISWANATHAM: Therefore, this will be only adding to the literature of the country.

SHR A. N. MULLA: You are supplementing something which I said in the beginning.

SHRI K. S. RAMASWAMY: On page 11, sub-clause (6) deals with disclosure of information. This sub-clause deals with persons other than Government servants. It is sub-clause (4) that refers to Government servants. Sub-clause (6) covers persons other than Government servants. So, there is no contradiction there.

SHRI A. N. MULLA: There is a contradiction. This says that no person shall be compelled for the purposes of investigation under this Act to give any evidence or produce any document which he could not be compelled to give or produce in proceedings before a Court. It is the procedure to which I object. Why should any person be excluded from this compelling process?

SHRI K. S. RAMASWAMY: Even under the court procedure it is so.

SHRI A. N. MULLA: Court procedure should not apply to proceedings before the Lokpal. After all, the discretion should be of the Lokpal.

SHRI K. S. RAMASWAMY: Sub-clause (3) makes it clear that any proceedings before the Lokpal shall be deemed to be judicial proceedings within the meaning of section 193 of the Indian Penal Code.

SHRI A. N. MULLA: I do not agree that the private citizen should escape the compelling power of the Lokpal to give information or to give evidence.

MR. CHAIRMAN: You have given a very good picture of what a Lokpal should be. We shall consider all your suggestions. Thank you very

much for giving us the benefit of your experience.

SHRI A. N. MULLA: Thank you. I hope you may be able to give the country at least one Lokpal or Lokayukta of the type I want.

MR. CHAIRMAN: Why? There are plenty of men in India, who are fit for this job. Thank you.

(The witness then withdrew)

(The Committee then adjourned)

MINUTES OF EVIDENCE GIVEN BEFORE THE JOINT COMMITTEE ON THE LOKPAL AND
LOKAYUKTAS BILL, 1968.

Thursday, the 24th October, 1968 at 09.30 hours.

PRESENT

Shri Akbar Ali Khan—*In the Chair.*

MEMBERS

Lok Sabha

2. Shrimati Jyotsna Chanda
3. H. H. Maharaja Pratap Keshari Deo
4. Shri C. C. Desai
5. Shri Kanwar Lal Gupta
6. Shri Gunanand Thakur
7. Shri Hem Raj
8. Shri Kinder Lal
9. Shri Amiya Kumar Kisku
10. Shri Bhola Nath Master
11. Shri G. S. Reddi
12. Shri Narayan Swaroop Sharma
13. Shri Yogendra Sharma
14. Shri Vidya Charan Shukla
15. Shri R. K. Sinha
16. Shri S. Supakar
17. Shri Tenneti Viswanatham
18. Shri Y. B. Chavan
19. Shri S. A. Agadi
20. Shri Shashi Bhushan.

Rajya Sabha

21. Shri Gurmukh Singh Musafir
22. Pandit Sham Sunder Narain Tankha
23. Shri Ganeshi Lal Chaudhary
24. Shri Purnanand Chetia
25. Shri V. T. Nagpure
26. Shrimati Pushpaben Janardanraj Mehta
27. Shri M. Ruthnaswamy
28. Shri Balachandra Menon
29. Shri A. D. Mani.

LEGISLATIVE COUNSEL

Shri R. V. S. Peri-Sastri, *Additional Legislative Counsel, Ministry of Law.*

REPRESENTATIVES OF THE MINISTRY OF HOME AFFAIRS

1. Shri N. K. Mukarji, *Joint Secretary, Department of Administrative Reforms.*
2. Shri J. M. Lalwani, *Joint Secretary (V), Ministry of Home Affairs.*
3. Shri S. P. Mukerji, *Director, Department of Administrative Reforms.*
4. Shri S. M. Chikermane, *Under Secretary, Department of Administrative Reforms.*

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

WITNESSES EXAMINED

Petitions Committee, Lok Sabha.

Spokesmen:

1. Shri D. C. Sharma, *Chairman.*
2. Shri Prakash Vir Shastri, *Member.*
3. Shri Onkar Lal Berwa, *Member.*
4. Shri S. C. Samanta, *Member.*
5. Shri P. C. Adichan, *Member.*

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

SHRI AKBAR ALI KHAN: I thank you, Mr. Sharma, and your two colleagues for taking the trouble to come over here and give us the benefit of your valuable advice. You know the purpose behind this Bill. As experienced parliamentarians, we thought your contribution will be of great help to us. Will you kindly give your reactions to this Bill?

SHRI D. C. SHARMA: The idea which we have brought to your notice originated with Shri Prakash Vir Shastri. We have committee on Petitions in the Lok Sabha and a similar committee in the Rajya Sabha. Our idea is that both these committees should be amalgamated and there should be one Joint Committee to be known as the Committee on Petitions and Public Grievances.

In other countries where the Ombudsman exists his report goes to what is called the First Law Committee in some countries. After it has been scrutinised there, it goes to Parliament. Though there is no bar to its discussion in parliament, it is seldom

discussed there. Our idea is that this Committee on Petitions and Public Grievances should scrutinise the reports of the Lokpal and Lokayuktas and after that it should be sent to the Lok Sabha and Rajya Sabha, along with the findings of the committee. We have the Public Accounts Committee and the Comptroller and Auditor General. They scrutinise our accounts and give us the benefit of their advice. Their reports are placed before Parliament. This Committee on Petitions and Public Grievances can serve the same purpose.

Our Committee on Petitions is handicapped in certain ways. We are told that we cannot discuss public undertakings and we cannot deal with service conditions and other things. I submit that if the scope of the committee is enlarged, there would be lesser chance of any clash with the authorities so far as the demands of the employees in various sectors are concerned. We are told that this committee cannot deal with those problems which are within the purview of the ministries concerned.

SHRI AKBAR ALI KHAN: That is not correct.

SHR D. C. SHARMA: I stand corrected. The committee is handicapped very much by some of the limitations put upon it. We want that this Committee on petitions and Public Grievances should serve as a bridge between the Lokpal and Lokayukta and the public. It will be a bridge of goodwill and understanding. With these words, I would request Mr. Samanta to add whatever he wants to say.

SHRI S. C. SAMANTA: I have nothing more to add. This was brought before us by Mr. Prakash Vir Shastri. He is also present. I would request him to add whatever he wants to say.

श्री प्रकाशवीर शास्त्र : सभपति महोदय, पिटिशनस कमेटी क चयरमैन, श्री शर्मा, ने काफी विस्तार से हमारी पिटिशनस कमेटी के सामने जो चर्चिये आई, उन को रख दिया है। उस में मैं केवल एक बात सम्मिलित करना चाहता हूं। हमारे राजनीतिक और सामाजिक जीवन को शुद्ध बनाये रखने के लिए जो महत्वपूर्ण निर्णय पार्लियामेंट लेने जा रही है, देश में उसकी बड़ी उत्सुकता से प्रतीक्षा हो रही है कि किस तरह से हम अपने सामाजिक और राजनीतिक जीवन को शुद्ध रख सकते हैं और जो हमारे भाग्य विधाता हैं वह इस सम्बन्ध में कितनी निष्पक्षता से निर्णय लेते हैं।

हमारी कमेटी के सामने जब चर्चा आई, उस समय सब लोगों ने उस पर काफी विचार किया। जो कुछ श्री शर्मा ने कहा है उस में मैं एक चीज और सम्मिलित करना चाहता हूं। हमारा कदापि यह तात्पर्य नहीं है कि कमेटी आन पिटिशनस फार पब्लिक ग्रीवान्सेज के बारे में हम ने जो सुझाव रखे हैं उन से लोकपाल या लोकायुक्त की जो निष्पक्षता है उस पर किसी

तरह का आघात हो। यह हम बिल्कुल नहीं चाहते। उनकी स्थिति इस प्रकार की रहे कि उनकी जो तटस्थता है उस को बरकरार रखते हुये कमेटी आन पिटिशनस फार पब्लिक ग्रीवान्सेज, या जो भी नाम आप उस को दें, जो की दोनों हाउसेज की मिली जुली कमेटी हो, के समाने मामला जाये। उस के पास समय भी काफी होगा, और वह उस की तह में जाकर अच्छी तरह से जांच करेगी। चूंकि मामला बहुत नाजुक होगा इस लिये लोकपाल या लोकायुक्त की रिपोर्ट पार्लियामेंट के सामने सीधी न जाये। पहले कमेटी के सामने जाये और वह उसकी छान धीन करके अपनी रिपोर्ट पार्लियामेंट को दे। इस में यह भी है कि जो चीज गवर्नमेंट स्वीकार कर लेनी है उसको कमेटी के सामने लाने की शायद आवश्यकता न हो, लेकिन जिसके सम्बन्ध में गवर्नमेंट को कुछ कठिनाई हो, उस के सम्बन्ध में कमेटी विचार कर सकती है और अपने सुझाव पार्लियामेंट को दे सकती है।

श्री अकबर अली खान : प्राविजन्स आफ दि बिल पर भी क्या आप कुछ इर्शाद फरमायेंगे ?

श्री प्रकाशवीर शास्त्री : हमने तो अपना एक सुझाव दे दिया है आप के सामने, और वह भी इस दृष्टि से की इस बिल को उस तरह से ऐडजस्ट किया जा सकता है। बाकी क्लोजेज के सम्बन्ध में क्या करना चाहिये शायद उस सम्बन्ध में कुछ कहना हमारे लिये उचित नहीं होगा।

श्री तन्खा : मैं जानना चाहूंगा कि लोक सभा में साल में ग्रीवान्सेज के बारे में कितनी दरख्वास्तें गुजरती हैं और आप कितनी कम्प्लेंट्स को डिस्पोज आफ कर पाते हैं ?

SHRI AKBAR ALI KHAN: This secretariat will supply that information.

SHRI S. S. N. TANKHA: There is very likelihood that Lokpal and Lokayuktas will be flooded with complaints at least for some years to come. Will it be possible for the Petitions Committee of the two Houses to deal with a matter of this nature?

SHRI D. C. SHARMA: The Committee on Petitions and Public Grievances (if it is renamed like that) will be able to do justice to the complaints that come to it. We also call people for tendering evidence and we try to give as much time to this work as possible.

SHRI S. S. N. TANKHA: You will realise that the recommendations of the Lokpal and Lokayukta will need immediate study and decision thereon. If your committee takes three or four months to deliberate, the decisions will be delayed and public will have another grievance on this point.

SHRI D. C. SHARMA: May I submit that our Committee meets once a week and sits for two to three hours, depending on the nature of the work. I think our Committee will help the working of the Lokpal and Lokayukta. As I have said, it will be an accelerator and not a brake.

SHRI S. S. N. TANKHA: If a Joint Committee of the two Houses is formed separately for the purpose of this work, apart from the Petitions Committee of the two Houses, have you any objection to it?

SHRI D. C. SHARMA: No, but what I would say is that the multiplication of committees will not help us very much. When there is one committee already doing this kind of work it would be much better to entrust this work to that committee. That is my view.

SHRI S. S. N. TANKHA: Do you not think that the nature of work of the two committees will be different? One will be dealing with complaint of a general nature and the other will deal with specialised complaints ag-

ainst particular individuals. So, the work of the two committees will be altogether different.

SHRI D. C. SHARMA: We receive both kinds of complaints. For instance, sometimes we receive a complaint from the pensioners that they are not receiving adequate pension. This is a general one. We also receive complaints from individuals. Suppose somebody has not been paid his compensation by the Rehabilitation Ministry and we receive a representation, we take up his case and get redress of his grievance. So, our Committee acts on both those cases—grievances of a general nature and private grievances. But it does not take into account the service conditions of Government employees.

SHRI S. S. N. TANKHA: The work of the Lokpal will relate to that particular aspect also.

SHRI D. C. SHARMA: We can deal with that also. The terms of our committee would be enlarged or widened.

SHRI S. S. N. TANKHA: I have no doubt that you will deal with it. I have been the Chairman of the Petitions Committee of Rajya Sabha for two years. According to our rules—I do not know about the rules in Lok Sabha—we could not take up individual cases. We could take up only those cases which were of a general character and did not appertain to particular individuals.

SHRI D. C. SHARMA: We have found one way out of this difficulty. We have got petitions and representations. Petitions mean general cases and representations mean individual cases. Suppose I get some representation from some person or the Speaker sends me some representation received by him that is passed on to the Minister concerned and we very often get very adequate and satisfying replies.

SHRI S. S. N. TANKHA: There you do not decide the case. You pass it on to the Minister for his remarks, receive the remarks and pass them on to the petitioner. That is all.

SHRI D. C. SHARMA: Of course, we act in such cases only as a post office. We send the representation to the Ministry concerned, receive the replies and see whether they meet with the needs of the situation.

SHRI S. S. N. TANKHA: I am sure that you would like that the recommendations of the Lokpal or Lokayukta, or the committee which may be appointed to go into these matters, they should be binding on the government. At present, the recommendations of the Petitions Committee of the two Houses are only recommendatory in nature and I think it is seldom that government really follow those recommendations. I do not know what your experience is. For instance, you gave the example of the pensioners asking for increased emoluments. A similar petition was presented to the Rajya Sabha also and we decided in the Committee and recommended to the government that some increase should be made in the pensions. But I am sure nothing has been done and nothing will be done. Therefore, don't you think that the recommendations of the Lokpal and Lokayukta should be of a character which should be binding on the government, which the government should be obliged to follow rather than sidetrack them?

SHRI D. C. SHARMA: I may submit very respectfully that nothing can be binding on the government. Even the recommendations of the Public Accounts Committee, Estimates Committee and other committees are sometimes set aside by government.

SHRI AKBAR ALI KHAN: But generally they give due weight to those recommendations.

SHRI D. C. SHARMA: But they also have the right to set aside those re-

commendations. Therefore, if they set aside our recommendation sometimes, I do not think that our committee should take it so seriously.

SHRI S. S. N. TANKHA: That is not my point.

SHRI D. C. SHARMA: In a democracy nothing is binding; everything is recommendatory. The concept of democracy is not that it is something which is authoritarian which can dictate to anybody. No, it is not like that. Democracy is government by consent or by consensus. Suppose we make a recommendation. It may take some time for the government to come to some conclusion. I think most of the recommendations which our committee have made have met with very good response from the Ministries concerned.

SHRI S. S. N. TANKHA: According to the scheme of the Bill, the recommendation of the Lokpal will be forwarded to government. If the government refuse to follow them, then the matter can be brought before the Lok Sabha. So, in a way, it contemplates that if the government feel that it cannot accept a particular recommendation, it will have to give its own reasons for it. Personally, I am of the view that it would be better if a separate committee is set up consisting of Members of both the Houses of Parliament, as the Public Accounts Committee is, and that should deal with it more closely.

SHRI D. C. SHARMA: You are the Chairman of the Committee on Petitions. If you are prepared to commit suicide, how can I prevent you from doing so? I will not be a party to that.

SHRI S. S. N. TANKHA: I am no longer the Chairman of that Committee.

SHRI D. C. SHARMA: I would like that the functions and the dimensions of the Committee on Petitions should be extended and that it should include

the Members of the Lok Sabha and also of the Rajya Sabha. I do not know much about Rajya Sabha. But I know about Lok Sabha. We have hardly any time for Bills. Every day, there are No-Confidence Motions, Adjournment Motions, Call Attention Notices and so many other things. Of course, democracy has to work through these channels. Formerly, we used to have an opportunity of having the No-Date-Yet-Named Motions. For instance, I could discuss the Report of the Committee on Petitions; I could discuss the Annual Report of the Vishakhapatnam Shipyard; I could discuss any Report. But now the time at our disposal is so short on account of the vigilance of the Members of the Lok Sabha that those things get out of focus.

SHRI AKBAR ALI KHAN: If a Committee is to be channeled through, it makes little difference whether the Petitions Committee is recast or some independent Committee is formed. The main question is whether we should have something in between the Government and the Lok Pal.

SHRI D. C. SHARMA: May I draw your attention to the First Report which was submitted by the Committee on Petitions? We received 102 representations and all were disposed of.

SHRI AKBAR ALI KHAN: What steps were taken on them?

SHRI D. C. SHARMA: They were accepted.

SHRI AKBAR ALI KHAN: I think, that is enough; we have got the idea.

SHRI Y. B. CHAVAN: May I ask some questions? It is just to clear the ideas. You know we are introducing this institution of the Lok Pal and Lok Ayukt for the first time. We really do not know exactly how it is going to work. Are we not rather introducing too many checks and counter-checks by having this idea of Petitions Committee getting involved

with the work of the Lok Pal and Lok Ayukt? Don't you think it will be worthwhile considering this aspect after having the experience of the institution of Lok Pal and Lok Ayukt for two or three years and then go into it? I will tell you why I feel so.

First of all, the Lok Pal and Lok Ayukt are supposed to look into grievances and allegations. If we allow the Committee to look into the allegations, the means we want the Lok Pal to sit over the judgment of the Committee itself. That is so far as the allegations part is concerned. You can argue that it may not be necessary to ask them to look into the allegations and that they can look into the grievances only. But the experience that we have on these matters is, even when they go into the question of grievances it is quite possible that the Committee may go into the allegations also. Supposing in the case of public servants, we go into the allegations part, there is the danger of politicalising the service also. It is quite possible we may take the side of one officer and may not take the side of the other officer. There is the danger of the politicalising of the Government services. Don't you think if at all a Committee is to be thought of, it has to be confined only to the grievances part, not the allegations part?

Then, you have drawn a comparison between the Public Accounts Committee and the functions of the Committee, the Auditor General, etc. I would give you another analogy. We submit the Annual Report of the UPSC for the consideration of Parliament. There we do not expect any Committee to go into it. By having a Committee for ever, aspect, for every Report to be submitted to the Government, possibly we may be overdoing it. These are some of my basic doubts.

SHRI D. C. CHARMA: I will be the last person to differ from you because you have much more experience than I have. But I would say that you

cannot equate the UPSC with the Committee on Petitions. The UPSC is a part of the nature like the Supreme Court and so on and you cannot question it. Therefore, the UPSC stands on a class by itself. The Committee on Petitions cannot be equated with the UPSC. You may have noticed sometimes that we have also found fault with the UPSC recommendations on the floor of the House. Of course, that is not relevant to this issue. Therefore, if the UPSC Report can be considered on the floor of the House, I think, this Report also can be considered...

SHRI Y. B. CHAVAN: I am not against the consideration of the Report by Parliament. My question is whether it is necessary to be examined by the Committee.

SHRI D. C. SHARMA: Why have you appointed the Joint Committee on the Lok Pal and Lok Ayukt Bill? It is only to see that the Bill is piloted through both the Houses easily and smoothly.

SHRI AKBAR ALI KHAN: The other purpose is to discuss and find out how to improve it.

SHRI D. C. SHARMA: I understand that. Why do you want to improve it? Why do you try to find out lacunae in the Bill? It is only to see that it has the easy and smooth passage in both the Houses of Parliament. Similarly, it will be a kind of Joint Select Committee on Petitions.

SHRI Y. B. CHAVAN: It will not be a Joint Select Committee.

SHRI D. C. SHARMA: It will make for smooth and easy passage of the recommendations of the Lok Pal and Lok Ayukt.

SHRI KANWAR LAL GUPTA: What is his answer to the first part of the Home Minister's question? He has not replied to that. Does he propose to deal with allegations also or does he want to deal with grievances only?

SHRI D. C. SHARMA: I submit very respectfully that it is very difficult to demarcate allegations from grievances and grievances from allegations.

SHRI Y. B. CHAVAN: Then, I am afraid, you have not read the Bill.

SHRI AKBAR ALI KHAN: In an allegation, there is a charge against a person. So far as a grievance is concerned, it is only mal-administration.

SHRI Y. B. CHAVAN: My fear is that grievances will come into the allegations.

SHRI D. C. SHARMA: The difference between those two words is only as much as there is between Tweedledum and Tweedledee.

SHRI Y. B. CHAVAN: I am afraid, you have not read the Bill.

SHRI D. C. SHARMA: I have read the Bill.

SHRI M. RUTHNASWAMY: I understood from Mr. Sharma's remarks that he wanted to build a bridge between the Lokpal and the Parliament and the public. Is this bridge to be open throughout the year or only when the Lokpal submits his annual report to the Parliament?

SHRI D. C. SHARMA: The Lokpal will be submitting interim reports. We have now come to be in favour of interim reports. Take the case of the Administrative Reforms Commission; it is submitting interim reports. I think, in the same way, the Lokpal and Lokayuktas will be submitting interim reports and we will be discussing those interim reports.

SHRI M. RUTHNASWAMY: Our understanding has been that the Lokpal will submit an annual report to the Parliament like the Union Public Service Commission and the Scheduled Castes and Scheduled Tribes Commission. Mr. Sharma seems to contemplate not only a bridge but a channel between the Lokpal and the Parliament. In other words, he would like individual cases or groups of cases to

be submitted to the Committee, which he contemplates, from time to time. I think, this will be putting a 'great strain both on the Lokpal and on the Committee—submitting individual cases or groups of cases to the Committee to screen them before they go to Parliament. I do not think, it is a workable scheme.

SHRI D. C. SHARMA: It is not that the Lokpal and the Lokayuktas are going to be easy-going persons and are going to take their job as an arm-chair job. They will be invariably working persons. There will not be any trouble between them and the Committee.

SHRI M. RUTHNASWAMY: There are going to be investigating officers. Investigating officers cannot submit interim reports to any committee or Parliament. It is only an annual report that can be considered by Parliament and the annual report could be submitted to this committee which Mr. Sharma contemplates for scrutiny and for preparation for discussion by Parliament. Submitting individual cases or groups of cases will defeat the purpose of the appointment of the Lokpal because the Lokpal is a kind of investigating officer and no investigating officer submits interim reports to a committee or to any supervisory body.

SHRI D. C. SHARMA: Whether we have to discuss one report or half a dozen reports, that does not matter; that does not change the situation, So far as I am concerned.

SHRI Y. B. CHAVAN: Please refer to page 2 of the Bill. You said that there was no difference between 'allegation' and 'grievance'. I would like to refer you to (b) on page 2 of the Bill where the term 'allegation' is defined. It reads:

“‘allegation’ in relation to a public servant means any affirmation that such public servant,—

- (i) has abused his position as such to obtain any gain or favour

to himself or to any other person or to cause undue harm or hardship to any other person,

- (ii) was actuated in the discharge of his functions as such public servant by personal interest or improper or corrupt motives, or

- (iii) is guilty of corruption, lack of integrity or improper conduct in his capacity as such public servant.”

Then, please refer to (d) where the term 'grievance' is defined. It reads:

“‘grievance’ means a claim by a person that he sustained injustice in consequence of maladministration”.

Again, 'maladministration' is defined in (g):

“‘maladministration’ means action taken or purporting to have been taken in the exercise of administrative functions...”, etc., etc.”.

So, the Bill contemplates specific connotations for these two terms, namely, 'allegation' and 'grievance'. They have two different connotations; they are two different concepts. You may not, in your common parlance, make any difference between 'allegation' and 'grievance', but the Bill has made a very clear distinction. Really speaking, they cannot mean one and the same thing.

SHRI D. C. SHARMA: You can take it as you like, but I think that the difference that you have made between 'allegation' and 'grievance' is only to have two words instead of one.

SHRI Y. B. CHAVAN: Anyway, you are entitled to your views, Mr. Witness.

SHRI G. S. REDDI: It was said that the Lokpal should submit his report to the Petitions Committee. Are both these bodies not parallel bodies? Is

it advisable that the Lokpal should submit his report to the Petitions Committee?

SHRI D. C. SHARMA: I have said that the report of the Lokpal should be routed through the Committee on Petitions—grievances and allegations also, if you like; I do not want to fight shy of that word.

SHRI G. S. REDDI: Are both these bodies not parallel bodies? Is it not derogatory for the Lokpal to submit his report to the Petitions Committee?

SHRI D. C. SHARMA: I don't think so. For instance, the Public Accounts Committee gets reports from the Ministries. That is not derogatory to them.

SHRI PURNANAND CHETIA: India is a vast country. There will be innumerable complaints or grievances or allegations against officials or Ministers. Suppose there are as many as 1,000 or 2,000 cases coming to the Committee. How will it be possible for the Committee on Petitions and Grievances to deal with such a huge number of cases?

SHRI D. C. SHARMA: It only means that the Lok Sabha Secretariat will have to be enlarged. Now we have a cell which can deal with about 200 cases. If we have 1,000 or 2,000 cases, then that cell in the Lok Sabha Secretariat will have to be enlarged.

SHRI AKBAR ALI KHAN: Then you will have two establishments—one Lokpal establishment and another establishment to deal with those cases so far as the Committee is concerned. It will be a burden on the taxpayers.

SHRI D. C. SHARMA: The burden on account of Lokpal will be there and not on account of the Committee on Petitions where the members do honorary work.

SHRI A. D. MANI: I want to ask Mr. Sharma why he should think of a bridge at all between the Lokpal

and the Parliament. Already there are so many bridges like Public Accounts Committee and Public Undertakings Committee. I am one of those who feel that these committees have fettered the right of free Parliamentary discussion. When the Lokpal submits a report and that is placed before Parliament, why should the Parliament not have the right to discuss it straightway? We are concerned with corruption as much as the members of the Committee on Petitions. Why should there be an intermediate authority? This intermediate authority may develop into an appellate authority. We do not want an unofficial court of appeal to be set up over the Lokpal. The Lokpal submits his report to Parliament and the court of appeal should be the public opinion and not any committee that is set up by Parliament. The third point is this. I would like to ask one more question instead of speaking again. When the Lokpal comes into being and the Lokayukta is functioning there must be a bridge between them and Parliament, and not anybody, excepting with one restraint; and this idea is being canvassed before this committee informally. Various allegations are made against MPs also. There should be some authority for that. We don't want MPs to be investigated by Lokpal when somebody makes allegation. Suppose an allegation is made that somebody is misusing his facility and privilege and all that. I need not go into details. You know the kind of allegations that are made. Suppose such allegation is made, that should go to a committee like this, committee on petitions. The committee on petitions sits in judgment on that. That could play a useful part, it has been said. Here, what it comes to is this: You are allowing people who are not qualified to sit in judgment on a person who occupies the position of supreme court judge or chief justice of high court. This is a very indivious position. And the way the committee is constituted it may not be a committee of great judicial competence that will sit in

judgement on the Lokpal. It will make the position of Lokpal and Lokayukta extremely difficult and many may not be willing to accept the responsibility of holding this position. I want your views on the three points that I have put forth. Also, you wanted to make things easy for Parliament. We would like to make things difficult for government including Parliament and there should be free discussion always and making things easy is not particularly of importance in our parliamentary life. We should make things difficult where things should be made difficult. Why should you put forward smooth flow of parliamentary business as a scheme towards which we should progress?

SHRI D. C. SHARMA: Your approach is idealistic. My approach is pragmatic. I have based my observation on what I have seen during the last so many years in Lok Sabha and also what I have been reading from the proceedings of Rajya Sabha. It is not necessary to make things difficult but necessary to make things easy for the public, for democracy, for everybody. You have mentioned that Lokayukta should be supreme court judge, high court judge and all that. There are retired judges of the high court also in the Lok Sabha. There are retired judges of high court also in Rajya Sabha. Therefore if you want judicial committee and not a committee of non-judicial persons like me you can rope in person with that judicial talent which is available in Lok Sabha and Rajya Sabha. I come from Punjab and I went recently to my constituency Gurdaspur which is on the border of Jammu and Kashmir State and Punjab. Where there was one bridge before, they are now having two bridges. They are building that bridge only to have more public good, more public welfare and all that. If we want to build that bridge it is for the public good and for nothing else.

SHRI AKBAR ALI KHAN: Do you agree with the idea that MPs should

also be drawn under the scope of this bill?

SHRI D. C. SHARMA: Why not? Every Government servant should be brought, and every public servant should be brought within the scope of this bill; there is no harm in that.

SHRI S. SUPAKAR: Persons can put petitions to the petitions committee on any subject. I just want to know how many cases of allegations/grievances came before the petitions committee every year.

SHRI D. C. SHARMA: The information can be supplied to you afterwards. But I would submit that we got a lot of cases of grievances and allegations.

SHRI AKBAR ALI KHAN: Do you take evidence also?

SHRI D. C. SHARMA: Yes. We call for parties and we call for representatives of the Ministries also to shift evidence.

SHRI S. SUPAKAR: Has the Petitions Committee been able to redress the grievances without reference to Government?

SHRI D. C. SHARMA: How can we? After all we are a committee of the Parliament. Parliament has also to leave these matters to Government.

SHRI S. SUPAKAR: You said the report of Lokpal/Lokayukta should be processed through Petitions Committee. Do you suggest that they can report to Parliament in cases which they feel fit enough, and even they may not report to Parliament in cases where they do not deem fit?

SHRI D. C. SHARMA: If the committee is seized of this problem it would have to report on all cases. It will not try to shirk its responsibility.

SHRI S. SUPAKAR: Should it be mere processing committee, or should they make comments of their own

also, with their appropriate comments and recommendations also?

SHRI D. C. SHARMA: I think its functions will be as follows:

- (1) It will prepare a gist no doubt as you have stated;
- (2) It will look to the recommendations; and
- (3) It will give its own recommendations.

If those recommendations do not suit it.

SHRI S. SUPAKAR: When there is a conflict between the recommendation of the Lokpal and Lokayukta and the recommendation of the Committee on Petitions, do you envisage such a contingency?

SHRI D. C. SHARMA: I think the functioning of the Lokpal and Lokayukta will not be as good as it would be if in the Committee on Petitions the grievances and allegations are brought into the picture.

SHRI S. SUPAKAR: I am afraid I have not been able to make my question clear. Do you envisage a conflict between the recommendation of the Lokpal and Lokayukta and the recommendation of the Committee on Petitions?

SHRI D. C. SHARMA: Sometimes it can happen. But, the conflict is resolved like any other democratic conflict.

श्री कंबर लाल गुप्त : इस बिल में 'मैलएडमिनिस्ट्रेशन' की डेफिनीशन इस प्रकार की गई है :

"Maladministration means a claim by a person that he sustained injustice in consequence of maladministration;

- (i) where such action or the administrative procedure or practice governing such action

is unreasonable, unjust, oppressive or improperly discriminatory; or

- (ii) where there has been negligence or undue delay in taking such action, or the administrative procedure or practice governing such action involves undue delay."

क्या यह ठीक है कि आप एलीगेशन्स के केसिज नहीं लेते हैं और अगर लेते हैं, तो मैलएडमिनिस्ट्रेशन के सब केसिज नहीं लेते हैं, उस के कुछ हिस्से लेते हैं, ऐसे केसिज लेते हैं, जिसमें गवर्नमेंट की इनटेन्शन या पसनल फ़ेवर की बातें न हों ?

श्री बीबान चन्द शर्मा : हम मैलएडमिनिस्ट्रेशन के सब केसिज लेते हैं। कई बार अफ़सर कहते हैं कि इस बारे में आपका अधिकार नहीं है, तो हम ऐसे केसिज को छोड़ देते हैं। हमारे पास मैलएडमिनिस्ट्रेशन, एलीगेशन्स और ग्रीवेंसेज के केसिज आते हैं। हमारी कमेटी एक आमनीबस कमेटी है, जिसमें सब बातें आती हैं।

श्री कंबर लाल गुप्त : क्या पेटीशन्स कमेटी के रूलज़ के तहत आपने एलीगेशन्स के केसिज डील किये हैं ?

श्री बीबान चन्द शर्मा : किये हैं।

श्री कंबर लाल गुप्त : आपने अपने मेमोरेण्डम में कहा है :

"The foremost justification for providing that the annual report of the Lokpal and Lokayukta should be sent to the Committee on Petitions (which may be re-named as Committee on Petitions and Public Grievances) is that the report of the Ombudsman and the explanations of the administration necessarily requires scrutiny at the hands of a Committee of Parliament. Such matters cannot, by their very nature, be discussed profitably on the floor of the House."

आपने यह जस्टीफिकेशन दी है कि लोकपाल और लोकायुक्त की रिपोर्ट की पेटिशन्स कमेटी द्वारा स्कूटनी होनी चाहिए।

श्री बीवान चन्द शर्मा : सवाल यह है कि जो लोकपाल और लोकायुक्त बनाए जा रहे हैं, वे खुदाबन्दे-ताला हैं या हमारी डेमोक्रेसी के लिम्ब हैं। अगर उनको खुदाबन्दे-ताला बनाया जा रहा है, तब तो मुझे कुछ नहीं कहना है। लेकिन गर वे सुप्रीम कोर्ट के जजों वगैरह की तरह डेमोक्रेसी के लिम्ब हैं, तो मेरा खयाल है कि इसमें कोई हर्ष नहीं है कि हम उनकी रिपोर्ट पर दूसरी दृष्टि डालें और उनके का मको देखें।

श्री कंवर लाल गुप्त : मैं आपसे सहमत हूँ कि उनको खुदाबन्दे-ताला नहीं बनाया जाना चाहिए। क्लॉज 11(2) में कहा गया है कि लोकपाल और लोकायुक्त को सिविल कोर्ट की पावर्ज होगी। इस हालत में क्या यह ठीक होगा कि कोई कमेटी उसकी इनवेस्टीगेशन रिपोर्ट को फ़रदर एग्जामिन करे? इस बिल के प्राविजन के मुताबिक लोकपाल या लोकायुक्त अपनी इनवेस्टीगेशन रिपोर्ट गवर्नमेंट को देगा। गवर्नमेंट के लिये यह बाइंडिंग है कि उस पर कार्यवाही करे। अगर लोकपाल कार्यवाही के बारे में गवर्नमेंट की रिपोर्ट से सेटिसफ़ाइड नहीं है, तो उस को एक स्पेशल रिपोर्ट प्रैजिडेंट को देनी पड़ेगी, जिसको प्रैजिडेंट पार्लियामेंट के सामने रखेगा। अगर यह कमेटी उस रिपोर्ट को देखेगी, तो और डिले होगी। किसी शिकायत के आने पर लोकपाल मिनिस्टर्ज के बारे में भी कुछ कह सकता है। क्या इस बात का डर नहीं है कि मिनिस्टर्ज के खिलाफ़ के केसिज आने की वजह से बीच में कहीं पार्लिटिक्स न आ जाये? क्या इन सब बानों को देखते हुए भी आप यह सजेस्ट करेंगे कि लोकपाल की रिपोर्ट की पेटिशन्स कमेटी स्कूटनी करे?

श्री बीवान चन्द शर्मा : सिविल कोर्ट के राइट्स तो हम बहुत से लोगों को देते हैं।

सिविल कोर्ट के राइट्स देना कोई बड़ी बात नहीं है। अगर हमने लोकपाल को सिविल कोर्ट के राइट्स दे दिये, तो वह खुदाबन्दे-ताला नहीं बन गये। यह समझना कि वे इनफ़ालिबल हैं उनका बर्ड बिल्कुल ग़ासपेल ट्रुथ है, उन्होंने जो कुछ कहा है, वह आसमान से उतरा है, यह बात हिन्दुस्तान में, पार्लियामेंट में, लोक सभा या राज्य सभा में नहीं चलेगी। लोकपाल और लोकायुक्त की इज्जत को बचाने के लिये, उनके बर्षों को बढ़ाने के लिये यह जरूरी है कि उनकी रिपोर्ट पेटिशन्स कमेटी के सामने जाये।

SHRI Y. B. CHAVAN: Arising out of this question, he said that the Petitions Committee can go into all and sundry cases. The hon. Member Shri D. C. Sharma is a veteran Member of Parliament. He knows the Rules of Procedure of the House. And he is the Chairman of the Petitions Committee. In the Rules of Procedure and Conduct of Business in Lok Sabha, the Parliament itself has thought it wise advisedly to confine the scope of the Committee to the petitions. Now, I may read certain parts of it. In Rule 160 of the Rules of Procedure and Conduct of Business in Lok Sabha it is said:

"Petitions may be presented or submitted to the House with the consent of the Speaker on—

- (i) a Bill which has been published under rule 64 or which has been introduced in the House;
- (ii) any matter connected with the business pending before the House; and
- (iii) any matter of general public interest provided that it is not one:
 - (a) which falls within the cognizance of a court of law having jurisdiction in any part of India or a court of enquiry or a statutory tribunal or authority or a

quasi-judicial body, or a commission;

- (b) which should ordinarily be raised in a State Legislature;
- (c) which can be raised on a substantive motion or resolution; or
- (d) for which remedy is available under the law, including rules, regulations, by-laws made by the Government of India or an authority to whom power to make such rules, regulations, etc. is delegated.

So, advisedly Parliament also wanted this Committee to confine itself to specific types of petitions.

Again in the Directions by the Speaker under the Rules of Procedure there is a direction, Direction 95, which reads as follows:

"The Committee shall also meet as often as necessary to consider representations, letters and telegrams from various individuals, associations etc., which are not covered by the rules relating to petitions, and give directions for their disposal:

Provided that representations which fall in the following categories shall not be considered by the Committee, but shall be filed on receipt in the Secretariat:—

- (i) anonymous letters or letters on which names and/or addresses of senders are not given or are illegible; and
- (ii) endorsement copies of letters addressed to authorities other than the Speaker or House unless there is a specific request on such a copy praying for redress of the grievance."

Really speaking not all and sundry can come before the Petitions Committee.

SHRI D. C. SHARMA: I have the highest regard for you and for your . . .

SHRI Y. B. CHAVAN: You may not have the highest regard for me but to the Rules you should have some regard.

SHRI D. C. SHARMA: . . . for the understanding of the matter pertaining to Parliamentary work. In the very beginning I said that the scope of this Committee has got to be enlarged and in the very beginning I said that unless you enlarge the scope of the Committee, it remains what it is.

SHRI Y. B. CHAVAN: Your description of the Committee's work that all and sundry can come before the Committee is not a fact.

SHRI D. C. SHARMA: You will quote the Rules against me but I want you to read its reports.

श्री कंबर लाल गुप्ता : मैं एक आखिरी सवाल यह पूछना चाहता हूँ कि जब आप इसमें ब्रीवास भी लाना चाहते हैं और एलोगेशन भी, दोनों ही चीजें लाना चाहते हैं तो आप यह नहीं समझते हैं कि इस कमेटी का स्कोप बहुत ज्यादा वाइड हो जायेगा और इसमें और ज्यादा डिले होगी कार्यवाही करने में ?

श्री बीबान चन्द शर्मा : इस का स्कोप एनलार्ज होगा लेकिन डिले कोई नहीं होगी और डिले तो तभी होगी अगर हम डिले करना चाहेंगे तो । लेकिन जो कमेटी के मेम्बर हैं वह नहीं डिले करना चाहते तो डिले कैसे होगी ?

SHRI YOGENDRA SHARMA: would like to have their valuable opinion in respect to the provisions of this Bill. I would draw their attention to Sec. 12, sub-sections 5, 7, and 8. These sub-sections deal with the power, these sub-sections tell us that the Lokpal will make special or an-

nual report to the President and the President will cause a copy of these reports to be laid before the Parliament with an explanatory memorandum. Now is it the opinion of the distinguished Members of the Petitions Committee that in the place of Lokpal submitting a special or annual report to the President, these reports should be submitted to the Petitions Committee and the Petitions Committee should submit this report to the Parliament with an explanatory memorandum, a function which is given to the President?

SHRI D. C. SHARMA: I have not come here to say whatever is said in your Bill. I have not come here to approve of every clause and every section that is given in this Bill. I have come here to make suggestions for the improvement of this Bill. You can take them or you need not take them. I know and I must say that the Lokpal and Lokayukta should be responsible to the Parliament and when this Bill comes up for discussion I will make that point.

SHRI AKBAR ALI KHAN: It is there. They are responsible.

SHRI D. C. SHARMA: They may submit the report to anybody on this earth. They must be made responsible to Parliament and in order to increase the quantum of responsibility to Parliament I suggest that the report should be routed through this Committee on Petitions, Grievances and Allegations.

SHRI YOGENDRA SHARMA: This Petitions Committee is a Committee of the Parliament and even according to the provisions of this Bill the annual report or the special report should be submitted to the Parliament and the Parliament will be competent under the Rules of Procedure to discuss them. These reports will relate to both types of cases, that is grievances as well as allegations. So, if the Parliament can discuss both types of cases, that is, allegations and grievances, what is wrong if a Committee of Parliament discusses it?

SHRI D. C. SHARMA: You are supporting me. I thank you very much.

SHRI YOGENDRA SHARMA: Since he was talking of principles and philosophy of democracy as rule by consent, in a democracy government is run by majority and not by unanimity. My position is that under the existing provisions of the Bill the Parliament is competent to enact the Bill as it is. With these provisions it is competent to discuss the causes of allegations as well as causes of grievances. If the Parliament is competent, why should there be any objection to to a Committee of the Parliament discussing it? How do political questions come in?

SHRI Y. B. CHAVAN: There he is supporting you.

SHRI D. C. SHARMA: All the time he is supporting, but what can I do? I submit respectfully to my hon. friend and to the Chairman that I agree with him that these reports be presented to Parliament. There is no doubt about it. I have nothing to say against it. I hundred per cent approve of it. I want to ask one thing. I do not know whether my hon. friend belongs to the Lok Sabha or Rajya Sabha. Anyhow both the Houses are of equal importance. I would like to ask him whether he would not like that the burden on the Lok Sabha should be lessened and whether the weight of deliberations of the Lok Sabha should become more fruitful. I think this Committee on Petitions will perform all these functions.

SHRI YOGENDRA SHARMA: As it is, it is provided in the Bill that the Lok Pal will submit his annual report to the President. Now do you want the Petitions Committee to receive this report and then submit it to the Parliament? I have been trying to follow him. Or, should the President instead of causing the report to be laid on the Table of the House, send it to the Petitions Committee?

SHRI D. C. SHARMA: What I am submitting is that the report will come to the Committee on Petitions. They will process the report and then, if you like, it can go to the President. I have the highest regard for the President. But ultimately it has got to go to the Parliament.

SHRI A. D. MANI: May I ask what is meant by processing the report? If the Committee on Petitions agree with the report, then it is a superfluous body. If they do not agree with the report of the Lok Pal, then they will be entrenching on the powers of the Lokpal and reducing his status. Can you tell us: What do you mean by 'processing'?

SHRI D. C. SHARMA: I am sorry I used a word which is ordinarily used in industrial sphere. But the word 'process' has become a common word and therefore I used it. What I meant by processing was to lighten the burden of the President and the Parliament.

SHRI HEM RAJ: How could it be possible?

SHRI D. C. SHARMA: It could be possible. That is what I say, I do not bother whether it reaches the Committee through the Home Ministry or through the Parliament or through the President. I have the highest regard for the President.

SHRI YOGENDRA SHARMA: I would invite your attention to sub-clause (8) of clause 12 which says:

"On receipt of a special report under sub-section (5) or annual report under sub-section (6), the President shall cause a copy thereof together with an explanatory memorandum to be laid before each House of Parliament.

Is it your contention that instead of the President who will cause a copy thereof together with an explanatory memorandum to be laid before Parliament, the Petitions Committee should prepare the explanatory memorandum. Probably that is what you meant by processing.

SHRI D. C. SHARMA: These are small details. Why are you putting these questions to me? They can be looked into by your Joint Select Committee. Why are you placing your burden upon my shoulders? These small details can be looked into by your Committee. I am not in charge of it.

SHRI YOGENDRA SHARMA: But these are vital details.

श्री गुणानन्द ठाकुर : शर्मा जी, आप ने यह सुझाव दिया है कि पेटिशन कमेटी में पहले बहुरूपत आये फिर उस के बाद पार्लियामेंट में जावे । इस में आप कहते हैं कि पार्लियामेंट का काम हलका हो जायगा तो क्या आप इस बात को महसूस नहीं करते हैं कि एक्शन लेने में देर होगी और जनता के कार्यों में विलम्ब हो जायगा और जो पेटिशन कमेटी के सदस्य हैं उन की कार्यक्षमता में भी वृद्धि होने के बजाय ह्रास ही होगा ? क्या यह इस बात का सबूत नहीं है कि आप पार्लियामेंट का जो काम है उस को पेचीदा बनाना चाहते हैं ?

श्री बीबान चन्द शर्मा : माननीय सदस्य ने जो प्रश्न किया है उस से यह साफ़ मालूम पड़ता है कि मैंने जो कुछ कहा है उस का उन पर कोई असर नहीं हुआ है । अब मैं उन्हें क्या जवाब दूँ ? लेकिन यह जो उन्होंने प्वाएंट रेज किया है कि इस में देर होगी तो उस के लिए मेरा बड़ा आसान जवाब है कि डिले को रोकने के लिए वह कह सकते हैं कि 15 दिन में या 20 दिन में आप अपनी सिफारिशें भेज दीजिये । इस तरह की टाइम लिमिट रख देने से वह डिले नहीं हो पायेगी ।

श्री हेमराज शर्मा : साहब ने फरमाया है कि यह इमदादी कमेटी बनेगी क्योंकि वह पहले देख लेगी कि वह जो रिपोर्ट हुई है वह दुस्त है या नहीं । इस एक्ट के तहत जो स्कीम रक्खी गई है उस में यह रक्खा गया है कि जिस बक्त वह रिपोर्ट करेंगे तो जो आफिसर, कौम्पिटेंट एथारिटी होगी, उस

को वह रिपोर्ट भेजेंगे और वह उस पर ऐक्शन लेंगे। अब जैसे कि हमारी पब्लिक एकाउंट्स कमेटी है और उस में पोस्टमार्टम होता है अर्थात् गवर्नमेंट जो कार्यवाहियां करती है उन का उस में पोस्टमार्टम होता है तो उस लिहाज क्या यह जरूरी नहीं है कि जो कमेटी शर्मा साहब यहां पर तजवीज कर रहे हैं वह भी उसी तौर पर वर्क करे जिसमें कि गवर्नमेंट ने कोई एक्शन लेना है जिसकी कि लोकपाल या लोक आयुक्त ने सिफारिश की है और वह एक्शन अगर उस में नहीं लिया तो वह कमेटी उस के बाद उस का पोस्टमार्टम किया करे ? उन का इस बारे में क्या सुझाव है अर्थात् पहले वह देखे या जैसा मैंने कहा बाद में उसे वह देखा करे ?

श्री बीबान चन्द्र शर्मा : प्रश्नकर्ता महोदय मेरे विद्यार्थी रहे हैं। उस वक्त भी वह मेरी बात को नहीं समझते थे और अब भी मेरी बात को नहीं समझ रहे हैं। मैं उनकी सेवा में यह अर्ज करना चाहता हूं कि अगर वह उस कमेटी को नहीं बनाना चाहते और यह कहते हैं कि कमेटी में 25 मੈम्बर्स न हों तो वह इस के लिए कोई और कमेटी बना लें मुझे उस में कोई एतराज नहीं होगा। यह पेटिशन कमेटी क्या कोई मेरे बाप की जायदाद है ?

श्री अकबर अजी खान : शर्मा साहब खफ्रा न हों।

श्री बीबान चन्द्र शर्मा : बिलकूल नहीं हूं वह मेरे बड़े अजीज हैं।

श्री हेमराज : मैं केवल इतना अर्ज कर रहा था कि यह जो पेटिशन कमेटी है और जैसा कि आनरेबल मिनिस्टर ने भी फरमाया कि उस के अखत्यारात बड़े लिमिटेड हैं लेकिन जो अखत्यारात वह इस कमेटी के लिए चाहते हैं वह बड़े वाइड अखत्यार चाहते हैं तो क्या मैं समझ सकता हूं कि इस पेटिशन कमेटी के बजाय कोई एक एसी

कमेटी इस एक्ट के मातहत बनाया जाना चाहते हैं जैसा कि बहुत सी बिटनैसज ने कहा भी है कि एक कमेटी बनानी चाहिए जो कि उस का पोस्टमार्टम किया करे तो मैं शर्मा साहब से जानना चाहूंगा कि आप वैसी कोई कमेटी बनाना चाहेंगे या जो पेटिशन कमेटी है उस को ही आप अखत्यारात दिलाना चाहेंगे ?

श्री बीबान चन्द्र शर्मा : मैं क्या जवाब दूं ? जब मैं पढ़ाया करता था तो कई लड़के सबक पढ़ कर नहीं आया करते थे ऐसे ही मुझे कहना पड़ रहा है कि माननीय सदस्य ने न तो मेरा मैमोरेण्डम पढ़ा है और न ही जो मैंने कहा है उसे ध्यान से सुना है। मैं तो कहता हूं कि कोई भी कमेटी बना लो और उस का कोई भी नाम दे दो लेकिन जैसा मैंने कहा लोकपाल और लोक सभा के बीच कोई एक ऐसी बौद्धी अवश्य रहनी चाहिए।

SHRI C. C. DESAI: I am not quite clear as to at what stage you want the Petitions Committee should interpose itself. There are two stages. Once the Lokpal or Lokayukt submits the report, it goes to Government, the competent authority to take action. Another stage is when they submit the Annual Report which goes to the President and then it is submitted to the Parliament. If your suggestion is that the Petitions Committee should come before the action is taken on the Lok Pal's report by the Government, then there will be serious objection to that. The Petitions Committee is a political body which reflects the composition of Lok Sabha. For that matter, all the Committees of Parliament reflect the composition of the House. Though the whips are not issued in the Committees, nevertheless, one cannot forget the fact that these Committees reflect the composition of the Parliament. In other words, they are really political committees. The whole object of this Bill is to have an independent judicial investi-

gation into serious complaints against misdemeanours of high functionaries of the Government, the Ministers, the Secretaries etc. There will be objection to the suggestion that a political committee should go into such complaints or into the Report of the Lokpal; then, justice is likely to be done according to political inclinations. If the suggestion is that after the Report is submitted to the Parliament this Committee should consider the report like the Public Accounts Committee going into the reports of the Comptroller and Auditor General, then there is a certain sense in that suggestion. If the suggestion is that the Petitions Committee should come in before action is taken on the report of the Lokpal by the Government, I am afraid it will be both unpractical and improper. So I would like to know at what stage you contemplate that the Petitions Committee should come in.

SHRI D. C. SHARMA: We are living in the world of interim reports.

SHRI C. C. DESAI: : There is no such thing as interim report in the case of Lokpal.

SHRI D. C. SHARMA: The Administrative Reforms Commission, the white elephant for our Government, are submitting interim reports. Sometimes, such interim reports can come to us. So far as the point that these are political bodies is concerned, I wonder if anybody in this world is not political or a political or unpolitical.

SHRI C. C. DESAI: The Lokpal as conceived by the Bill is to be a non-political body.

SHRI D. C. SHARMA: In the Committees, members of different political parties get together. Of course, in the Swatantra Party only persons of one type get together.

SHRI C. C. DESAI: I am a member of the Joint Select Committee and there is no question of Swatantra Party or Congress Party here. The

hon'ble Member is a witness before the Committee.

SHRI D. C. SHARMA: I am sorry. I am a great admirer of the Member. In my Committee there are Left Communists, Right Communists, Swatantra, Jan Sanghis, Congressmen. All the Parties are represented on the Committee. Therefore, decisions based on consensus are taken.

SHRI C. C. DESAI: There will be sense in the suggestion that the Petitions Committee should come in when the report of Lokpal is presented to the Parliament by the President, and not before action is taken by the Government.

SHRI D. C. SHARMA: You have much more administrative experience than I. You have held high positions and you know the world much more than I do. If that is possible, you do it. I do want that there should be some kind of a Committee between the Lokpal and Lokayukta and the Parliament. You can have it anywhere you like.

SHRI C. C. DESAI: That is reasonable and the suggestion has some force, if the Petitions Committee should consider the Report after it is presented to the Parliament; the report should be remitted to the Petitions Committee just like the reports of Comptroller and Auditor General remitted to the P.A.C. What is the practice by which a party ventilates his grievances before the Petitions Committee? There is a Petitions Committee in the Rajya Sabha and another Petitions Committee in the Lok Sabha. The grievances are everywhere same in the country.

SHRI D. C. SHARMA: The Chairman of Rajya Sabha sends the petitions to the Committee of Rajya Sabha and the Speaker of Lok Sabha sends them to the Committee of Lok Sabha.

SHRI C. C. DESAI: Don't you think that there is a good case for combining the two Committees, because the grievances and petitions are same everywhere? The complaints should

not be allowed to play one Committee against the other. There should be one common body for both the Houses of Parliament.

SHRI D. C. SHARMA: I agree with you that both the Houses should form one Joint Committee and should do this work.

SHRI C. C. DESAI: The whole object of this Bill is not only to have individual investigation but also quick justice. When you agree that the Petitions Committee can come in at the time of submission of Annual Report to Parliament, I have nothing to say.

SHRI D. C. SHARMA: May I submit respectfully that quick justice means no justice. I have seen quick justice. A gentleman files a petition and it is rejected by the Election Tribunal. He files an appeal at the High Court, which also rejects it. Then he files an appeal at the Supreme Court and the Supreme Court says that the appellant is perfectly justified in having filed an appeal. Where is quick justice in a democracy? You can have quick justice if you have a Hitler or a Castro here or a dictator like anyone of them. Justice in a democracy is a slow-going process. As soon as it ceases to be a slow-going process, it ceases to be justice.

SHRI AKBAR ALI KHAN: But we should make efforts to expedite things.

SHRI Y. B. CHAVAN: Professor Sharma has his own philosophy.

SHRI D. C. SHARMA: I want things to be expedited.

श्री नारायण स्वरूप शर्मा : कुछ लोगों का यह कहना है कि लोकपाल बनने के लिए व्यक्ति को काफी उत्तरदायी होना चाहिए और उस के लिए मैजोरिटी आफ माइंड होना जरूरी है और इसलिए एज उस की कम से उस की कम से कम 60 साल होनी चाहिए तो मुझे शर्मा साहब से पूछना है कि उन के विचार से लोकपाल की कम से कम और ज्यादा से ज्यादा उम्र क्या होनी चाहिए ?

श्री दीवान चन्द्र शर्मा : मेरा जाल यन कि उन की उम्र 55 साल से ज्यादा है होनी चाहिए । ऐसा मैं इसलिए कहता हूँ कि आस्ट्रेलिया के प्रधान मंत्री श्री मेंजीस ने प्राइम मिनिस्टरशिप रिजाइन की थी, हमारे हिन्दुस्तान में तो कोई भी प्रधान मंत्री रिजाइन नहीं करता है लेकिन आस्ट्रेलिया के मेंजीस ने रिजाइन किया था और उस वक्त उन्होंने यह कहा था :

"My pace has slowed down."
After a certain time your pace slows down; my pace has slowed down. Some may admit this and some others may not admit. The gentleman who is to be a Lokpal or Lokayukta should not be a person whose pace has slowed down. He has got to take quick decisions and to do things expeditiously.

श्री नारायण स्वरूप शर्मा : आपने अभी अभी कहा था कि इस लोकपाल वाली कमेटी के सामने एम०पीज० और एम०एल०एज०के अलावा सभी अन्य पबलिक फीगर्स और सर्विसैज की कार्यवाहियां स्क्रूटिनी के लिए आ जानी चाहिए अर्थात् जिस किसी के भी पास एकजीक्यूटिव ऐथारिटी हो और वह कोई इस तरीके का काम करता है कि जिसके खिलाफ आरोप हो और इनक्वायरी हो तो यह एम०पीज० और एम०एल०एज० को भी क्यों नहीं इस कमेटी के नीचे लाना चाहते अगर उन के खिला भी किसी तरह आरोप आदि हों ?

श्री दीवान चन्द्र शर्मा : माननीय सदस्य कृपया मेरी बात को समझें । अब जो हमारी एकजीक्यूटिव, जूडिशियरी या दूसरी सर्विसैज के मैम्बर्स हैं और उन का पबलिक के साथ वास्ता पड़ता है उनके बारे में यह कमेटी स्क्रूटिनी करे । यह ठीक है कि एम० पीज० और एम० एल० एज० का भी पबलिक से वास्ता पड़ता है और वह भी पबलिक के सामने उत्तरदायी है लेकिन फर्क यह है कि अदर सर्विसैज के पास जबकि एकजीक्यूटिव

ऐधारिटी होनी है वैसे कोई ऐधारिटी उन के पास नहीं है लेजिस्लेटिव पावर्स अलबत्ता होनी है । लेकिन ऐसे विधायकों के लिए जिनके कि खिलाफ इस तरह के कोई आरोप होंगे तो उन के खिलाफ कार्यवाही करने के लिए वह कोड आफ कंडक्ट बना हुआ है और उस के लिए कोड आफ कंडक्ट में जो व्यवस्था होगी उस के मुताबिक उस एम० पी० या एम० एल० ए० को सजा मिलेगी ;

श्री नारायण स्वरूप शर्मा : अपने अपने मैमोरेण्डम में लिखा है कि पेटिशन कमेटी इस काम को बड़ी इफैक्टिवली कर सकती है लेकिन अभी अभी आपने यह भी मान लिया है कि पार्लियामेंट की कोई भी कमेटी उस काम को इतनी इफैक्टिवली नहीं कर सकती है जितना मैमोरेण्डम में सजेस्ट किया गया है—इन दोनों को कैसे रिक्साइल करें ?

श्री बीवान चन्द शर्मा : बात यह है कि Democracy is a game of the open mind. It is not a game of the closed mind. अगर हमारी कमेटी यह काम नहीं कर सकती है तो कोई और कमेटी बना लीजिये लेकिन कमेटी जरूर होनी चाहिये ।

श्री नारायण स्वरूप शर्मा : आपके मैमोरेण्डम से हम यह समझते हैं कि आपकी कमेटी यह काम नहीं कर सकती है । आपने यह कहा है कि उस को इम्पूव करना पड़ेगा, राज्य-सभा के सदस्य लेने पड़ेगे ।

श्री बीवान चन्द शर्मा : सब देखिये अंग्रेजी की बातें न कीजिये ।

श्री नारायण स्वरूप शर्मा : मैं तो हिन्दी की बात कर रहा हूँ ।

श्री बीवान चन्द शर्मा : उस में अंग्रेजी का इन्टरप्रेटेशन आजायेगा ।

MAHARAJA P. K. DEO: Sir, even though the Petitions Committee re-

flects the composition of the Lok Sabha we would like that the discussion on the merits of the recommendations of the Lokpal should only be made in the Parliament and not in the Committee because the deliberations in the Committee are behind the door whereas the discussions and deliberations in the Parliament are public discussions in which the public can come to the Gallery of the Lok Sabha and watch the happenings. So, whatever should be discussed on the merits of the report of the Lokpal or Lokayukta the proper forum should be the Parliament. Taking into consideration this aspect I request Prof. Sharma, if he would reconcile to this position that this Committee of Petitions instead of being the routing Committee should be the post-mortem committee and could only look into the implementation part of the various recommendations of the Lokpal and they could give a report on action taken to the Parliament on these recommendations on the analogy of Public Accounts Committee instead of going into the merits of the case.

SHRI D. C. SHARMA: Sir, my humble submission is this that I would not mind if the proceedings of the Committee of Petitions are thrown open to the Public or thrown open to the Press. I think that would serve our purpose much more than it is serving our purpose today. The post-mortem aspect is also useful, no doubt, and perhaps you will agree to give us the post-mortem part of it. But I would like that some time we should be allowed to look into the process of doing these things also.

H. H. MAHARAJA P. K. DEO: It will not only further delay the process but at the same time the Lokpal will not feel that independence of expressing his views on certain matters when he comes to know that there is a Screening Committee which has a political composition.

SHRI D. C. SHARMA: It can be. But I ask you one question: Is there any body in this world who is independent?

H. H. MAHARAJA P. K. DEO: As Prof. Sharma is anxious to prescribe the age limit of Lokpal may I ask his opinion about prescribing the age limit of the Members of the Petition Committee on Public Grievances because they are the persons who will go into the various recommendations of the Lokpal.

SHRI D. C. SHARMA: I do not mind that. If I am to go out, I do not mind that. I will find something else to do.

SHRI TENNETI VISWANATHAM: Prof. Sharma, your idea is that the recommendations of the Lokpal as they are embodied in the Annual Report should be first discussed by a Committee of the Parliament before they are discussed by the Parliament itself and that would lighten the work of the Parliament. Is it not?

SHRI D. C. SHARMA: Yes.

SHRI TENNETI VISWANATHAM: And that is a very sensible suggestion, if I may say so, which finally has emerged out of today's discussion. May I Mr. Chairman, with your permission congratulate Prof. Sharma for having withstood all this cross-examination and then has practically come to the conclusion—as all of us have come to the conclusion—that a Parliamentary Committee should be able to look into the report before it is actually discussed by the Parliament. That is what he has agreed. Therefore, let us congratulate him.

SHRI AKBAR ALI KHAN: I join with you in congratulating Prof. Sharma, Chairman of the Petitions Committee....

SHRI Y. B. CHAVAN: I do not think we have come to any conclusion as such. The Committee has not come to any conclusion. One point I would like to raise for consideration of Prof. Sharma and also the Committee that I found a very easy compa-

ison between the Public Accounts Committee and this sort of a Committee is being made. The functions of the Public Accounts Committee are basically different from the working of this Committee. Public Accounts Committee visualises to see that the expenditure which the Parliament sanctions is done for the purposes for which it was sanctioned. That was the basic idea. Really speaking the function starts from the Parliament, goes to the Administration, Administration acts on it and whether it is done according to that is within the jurisdiction of the Public Accounts Committee. Here specific allegations are made which will be gone into and then the report is made. Whether really speaking asking some other committee to go into it is an obstacle in the way of the Parliament or an aid to the Parliament, I doubt very much.

SHRI AKBAR ALI KHAN: Once again I thank you Prof. Sharma for your experience as a Professor and your experience as veteran parliamentarian. We had the benefit of it and I thank you and your learned colleagues for having come here and giving us your views.

(The witness then withdrew)

SHRI A. D. MANI: Since it is a unique experiment that we are trying, I would suggest that we might have the views for three eminent persons, namely Shri Koka Subba Rao, Shri Rajamannar and Shri Kumaramangalam, who are people who have got brilliant ideas on different subjects, and particularly in regard to Lokpal.

SHRI M. RUTHNASWAMY: We have already had enough evidence on record. I do not think it is necessary to have any further evidence. Moreover, these persons are members of the judiciary and they may not like to express any views.

SHRI C. C. DESAI: I am inclined to agree with Mr. Mani. This is a very important Bill. Once the Bill is

enacted, the Bill can be changed only by circuitous procedure of amendment. So, even if we have to take a little more time, we should not grudge it. We should have the evidence of these three important people also.

SHRI AKBAR ALI KHAN: Shri Gajendragadkar has already expressed his inability to come. As regards the other persons, I would say that we have had enough number of witnesses and learned people as that.

SHRI A. D. MANI: There are certain matters on which we would like to have the evidence of these three persons. They are discerning thinkers. We should have the benefit of their views and we shall only be enriching the parliamentary records by having their evidence. I would add the name of Shri C. D. Deshmukh also.

SHRI AKBAR ALI KHAN: We have already had evidence from eminent persons like Shri M. C. Setalvad, the present Attorney-General, Shri Sapru and Mr. Mulla and so on. But I am in the hands of the committee.

DEPUTY-SECRETARY: The chairman of the committee has gone abroad to study the system in UK. He has already met the Parliamentary Commissioner in the UK and he will

be able to apprise us of the position there.

SHRI TENNETI VISWANATHAM: We might have the evidence of somebody who has already served as an Ombudsman elsewhere.

DEPUTY-SECRETARY: At the instance of the Home Minister, we wrote to Denmark and other countries but they have said that they have no comments to offer.

SHRI AKBAR ALI KHAN: I think the sense of the Committee is that we should have the benefit of the evidence of Mr. Koka Suba Rao, Shri Rajamannar and Shri Kumaramangalam.

SHRI HEM RAJ: After that we should have no further evidence.

DEPUTY-SECRETARY: The Committee may authorise the chairman to seek for extension of time till the second day of the second week of the next session.

SHRI AKBAR ALI KHAN: I would also like to put it on record that the chairman of the Committee on Petitions of Rajya Sabha was addressed by me to appear before us, but we have not received any communication from them.

(The Committee then adjourned)

MINUTES OF EVIDENCE GIVEN BEFORE THE JOINT COMMITTEE ON THE LOKPAL AND
LOKAYUKTA BILL, 1968.

—————
Saturday, the 7th December, 1968 at 15.00 hours.

PRESENT

Shri M. B. Rana—*Chairman.*

MEMBERS

Lok Sabha

2. H. H. Maharaja Pratap Keshari Deo
3. Shri C. C. Desai
4. Shri Gunanand Thakur
5. Shri Hem Raj
6. Shri Thandavan Kiruttinam
7. Shri Amiya Kumar Kisku
8. Shri Bhola Nath Master
9. Shri G. S. Reddi
10. Shri Vidya Charan Shukla
11. Shri S. Supakar
12. Shri Tenneti Viswanatham.

Rajya Sabha

13. Shri Ganeshi Lal Chaudhary
14. Pandit Sham Sunder Narain Tankha
15. Shri Purnanand Chetia
16. Shri Akbar Ali Khan
17. Shri K. S. Ramaswamy
18. Shri V. T. Nagpure
19. Shri Sunder Singh Bhandari.

LEGISLATIVE COUNSEL

Shri R. V. S. Peri-Sastri, *Additional Legislative Counsel, Ministry of Law.*

REPRESENTATIVES OF THE MINISTRY OF HOME AFFAIRS.

1. Shri N. K. Mukarji, *Joint Secretary, Department of Administrative Reforms.*
2. Shri J. M. Lalwani, *Joint Secretary (V), Ministry of Home Affairs.*
3. Shri S. P. Mukerji, *Director, Department of Administrative Reforms.*
4. Shri S. M. Chattermane, *Under Secretary, Department of Administrative Reforms.*

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

WITNESS EXAMINED

Shri S. Mohan Kumaramangalam—*Advocate, Madras.*

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

MR. CHAIRMAN: Mr. Kumaramangalam, we are grateful to you for having come all the way to give advantage of your valued evidence today. The usual course we follow is that you give your general idea of the whole Bill within 10, 15 minutes and then the Members will ask questions and some clarifications so that we finish within an hour or so. In this connection, there is a Direction of the Speaker which reads as follows:—

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

I suppose you know all this. We would like to have your valued views on the general picture of the Bill.

SHRI MOHAN KUMARANMANGALAM: Mr. Chairman, may I thank you and the other Members of the Committee for giving me the opportunity of expressing my views on what I think to be a very important Bill pending before the Parliament. I do not propose to express my views clause by clause because I do not think that really serves any purpose as many of the clauses are merely

routine clauses. What I shall try to do in my introductory remarks would be to cover what I consider to be the major features of the Bill as I see it.

The main purpose of establishing this institution is to provide a forum where decisions taken in the process of departmental work of Government are opened up for scrutiny by an independent authority. It would obviously be impossible to afford an opportunity for an appeal against every discretionary decision taken in the course of the ordinary administration of the Government. Yet, at the same time, with the increasing extent of State intervention in all fields of the life of citizens it is being widely felt that the ordinary provision for judicial review is not a sufficient safeguard. In a very wide area of administrative operation, there is in effect no check or supervision at all.

Now, the existing powers of the Courts are in Article 226 of the Constitution. But, here again, the power is limited by the introduction in that Article of the old English Writs of Certiorari, Mandamus and so on. These Writs are quite technical and do not really afford the Courts the opportunity to interfere on the merits of any issue even when the Courts feel that the issue has been wrongly or unjustly decided by Government. That this jurisdiction of Court is not enough is obvious from the fact that in England itself in 1967 the institution of Parliamentary Commissioner was brought into existence and many of the powers suggested to be given to the Lokpal are similar to the powers given to the Parliamentary Commissioner in England.

It is interesting however to know that so far as the English Act is concerned, even in the course of the last one year, there have been a number of criticisms of the way in which the Act is being operated. One of the leading writers on Administration, Mr. S. A. De Smith, has commented that there are conspicuous gaps in the terms of reference of Parliamentary Commissioner in England. He points out, particularly, that the exclusion of the Police is hard to justify when no immunity is accorded to the prison service; the case for excluding Government contracts is weak. He virtually attacks the exclusion of External Affairs and anything arising in that field. He particularly points out what he considers to be erroneous the exclusion of Police and also Government contracts.

We have in this Bill also imposed similar restrictions and I think that this is really one of the weaknesses, particularly in our country. Undoubtedly, if the Lokpal is given powers to investigate complaints against Police, there will be an outcry from the side of the Police and they will say that if they were continuously subjected to the supervision by the Lokpal then all discipline and the sense of solidarity would disappear; all those usual arguments will be thrown up. But, at the same time, I don't think that anybody will be able to deny that there is a very large area where there is maladministration, where the Police go beyond the law and act, to put it mildly, in a manner which violates the ordinary rights of citizens and there is no way for the ordinary man to get any relief from that. I personally think that the Police must be brought in. I think this one of the major weaknesses in the Bill as it stands. I do not think that can lead to any harmful effects, so long as the persons who is appointed as Lokpal understands the position of the police in our country and the need also to preserve its discipline, solidarity, etc. etc. And there is no reason why we

should apprehend that the person who is appointed as Lokpal should not keep this in mind, and therefore when he is investigating complaints against the police he will keep in mind that he is investigating complaints against the police which has so many consequences because the police have got certain heavy responsibilities in our country. It seems to me that the extension of the power of the Lokpal to investigate complaints of maladministration by the police is very important.

I also agree with Mr. Smith's criticism of the exclusion of commercial contracts, because though we are not concerned with the commercial contracts or such contracts, viz. what is the exact rate at which a particular thing has been auctioned or the lease entered into, we are concerned that the terms of such contracts are not vitiated by any corrupt motive on the one hand or even favouritism or nepotism on the other, and things of that character, and I think we can leave it to the good sense of the Lokpal to know where to draw a line.

The third point which I think is important and where, I think, the Bill is weak, is in relation to the failure of the Bill to give any power to the Lokpal to take legal action in a case where he considers that legal action is necessary. This really is a very important weakness, because it takes the teeth out of any possible action that he may wish to take. The first Ombudsman in Newzealand, Sir Guy Powles, after his first year of office only made one recommendation for an additional power and that is that he felt that there should be a power for Ombudsman to take legal action in appropriate cases. This would appear to be the case in Denmark where the scope of the Danish Ombudsman's duties are expressed in widest terms "to supervise all State administration... to keep himself informed as to where any person unlawfully commands or takes arbitrary or unreasonable decision or where it

is act of negligence in the discharge of his duties”.

I am not asking that we should change our definition which is also quite wide in respect of both “grievance” and “allegation”. But I think we should give the power to the Lokpal whether he considers it necessary to institute appropriate legal proceedings.

Of course, I think that this is not a matter which you can ensure by way of a Bill. But I think—and I would like to emphasize—that very much will depend on the character and the personality of the first person who is appointed as Lokpal. You see this is an area where lot of discretionary power is being given to a person occupying a very high office. And I found in whatever reading I have done on this question during the last few years that almost all writers emphasize the need for appointing a person who is really competent to occupy the office. S. A. De Smith comments thus: “First, much will depend on the experience, tact and good sense of the early occupants of the office. If the Commissioner is unable to establish easy relations with departmental heads or higher officials by identifying them unnecessarily in his reports, friction will be generated in the administrative process and frankness in putting opinions and advice on paper will be inhibited. He should be a man of great integrity, who, in particular, is able to fit in to the present Constitutional system as we have in our country, and at the same time remove the grievance of the ordinary man. In fact, the admitted success of the Ombudsman in Newzealand was considerably due to the suitability of the first incumbent Sir Guy Powles. He has been described thus: “He combines an intimate knowledge of his country’s Government and leading political and administrative personalities with profound belief in freedom and democracy; he is shrewd, tolerant, good humoured, imbued with a sense of the value of the limits of his office and without vanity or self-

importance.” It is likely enough that the institution would be accepted and operate successfully anywhere if its first incumbent had these qualities.

A last point. I think our Bill has rightly avoided the English limitation on the powers of the Parliamentary Commissioner by which all complaints have to go through Members of Parliament. This would prevent easy and direct access to the Lokpal and as Smith has put it there is always the possibility of the pre-condition of a report to an M.P. becoming a method for the M.P. to make political capital out of the complaint. I think, therefore, it is better to have this direct approach to the Lokpal.

In conclusion, I do not think we should have too many illusions about the character of this reform and expect radical and far-reaching action by the Lokpal. The experience in England shows that 816 complaints were received by the Parliamentary Commissioner in the first seven months. He dealt with 616, out of which he found 405 were outside his jurisdiction and the investigation of another 86 was discontinued. Ultimately, in only 10 out of the remaining 125 cases was there any finding of mal-administration.

In New Zealand also, in his first year, Sir Guy Powles received about 800 complaints, of 300 were investigated, the remainder being excluded from jurisdiction or declined on discretionary grounds. 68 of cases investigated were found to deserve remedial action; half of them were attended to by the relevant department and another quarter took considerable time.

Our country, of course, is a far bigger country and with a vast population. We may perhaps get many more complaints but much will depend on the seriousness with which the first Lokpal approaches his duties and the respect which is accorded to him by the departments of Government and by Parliament.

Thank you very much.

SHRI G. S. REDDI: Do you think it proper that Members of Parliament should be brought under the Lokpal's jurisdiction?

SHRI MOHAN KUMARAMANGALAM: I have not given any thought to it but it appears to me that it would not do any harm to the Members of Parliament if they are brought under the jurisdiction of the Lokpal. Lokpal is not an instrument of political harassment.

AN HON. MEMBER: The inclusion of Police within the jurisdiction of Lokpal seems to be wide area in view of the fact that Police was treated more or less to be a department where any kind of enquiry or investigation was taken up. Now, in that case, don't you think if Police is brought within the jurisdiction of Lokpal there might be some demoralisation or some mental or psychological disturbance in the Police Deptt. and it will put the Government machinery also in a somewhat awkward position? I would agree that Police Deptt. also should be brought within the jurisdiction of Lokpal but my question is whether it could be sort of a phased approach or approach straightaway.

SHRI MOHAN KUMARAMANGALAM: Personally, I think a little psychological or mental disturbance in the Police would not do any harm. I would like to see a little bit of disturbance because from my experience as a lawyer I think that very often police think they can get away with anything. Of course, when I speak about the need to bring the police within the jurisdiction of Lokpal I really mean the police in the States. So far as police at the Centre is concerned the Union Home Ministry maintains a considerable higher tradition but as a prelude I think it would be better. I think there is no need for police to be afraid because ultimately it will depend on the character of

the Lokpal. I expect he will have an understanding of the height of his office and the purpose for which he has been placed in that office. He would not be a proper Lokpal if he pokes his nose in small things. He must have a sense of proportion as to what is the character of the complaint; what is the type of action he should take and how he should interfere and so on and so forth.

SHRI G. L. CHAUDHARY: May I know if the Ministers are included under this Act then do you not feel the efficiency of the Department will get marred as the decisions will not be taken immediately because Ministers will fear taking decisions?

SHRI MOHAN KUMARAMANGALAM: I do not think so. It depends on the Minister because after all the Lokpal is not concerned with mistakes committed by Ministers. A Minister may take an erroneous decision. The Lokpal is not concerned with that. Lokpal is concerned, with that which vitiates or something extraneous coming in the decision or the Minister taking decision without full information and takes a wrong decision. So long as he is a *bona fide* Minister he need not fear.

SHRI PURNANAND CHETIA: The present practice is proposed to be confined to the Ministers who work in the Central sphere. Do you think it would be desirable to expand the level to State sphere?

SHRI MOHAN KUMARAMANGALAM: If you ask my opinion, I do. Whether Parliament should do it now; probably, better not. It is a political question rather than a legal question.

SHRI S. S. BHANDARI: I would like to know having conceded that Members of Parliament should also be in the jurisdiction of Lokpal and the Minister are also there what is your opinion about including the Prime Minister also in this list and if the Prime Minister is included then in that law there is no mention about the competent authority.

Secondly, what is your opinion about deposits to be made in case of allegations to be made by individuals to the Lokpal?

SHRI MOHAN KUMARAMANGA-LAM: So far as the question of the Prime Minister is concerned I do not appreciate how the Prime Minister is excluded because as a matter of principle if other Ministers can be subject to the jurisdiction of the Lokpal I do not see why the Prime Minister should not be. The Prime Minister is like other Ministers. The only thing is that he or she is the first Minister.

I am against deposits. I think it is wrong to make a deposit of a particular amount of money as a precondition for the complaint being taken on record. Even so far as writ petitions are concerned the court fee in some courts is quite prohibitive. That stops the individual taking advantage of the remedy to which he is entitled. A frivolous complaint may be thrown out, I do not mind that.

SHRI V. T. NAGPURE: You said commercial contracts should be brought under the jurisdiction of the Lokpal. Will it be feasible to look into all these complaints taking into consideration the large number of complaints he will receive.

SHRI MOHAN KUMARAMANGA-LAM: I think that it depends again on the character of the Lokpal, his capacity and his approach to the problem because a person who is fairly experienced both in administrative and judicial procedures should be able to make out very quickly whether a complaint need or need not be pursued at all. That is why I quote the examples of New Zealand and Britain. Something like 75 per cent of the complaints were being turned down. With all that look at the percentage. 75 per cent was thrown out. You will find more in our country. So many people have confusion. As a lawyer I myself was inundated with so many complaints. 99 per cent I have to put in a waste paper basket. Some grievances are imaginary one.

SHRI V. T. NAGPURE: You said that there should be no provision for deposit.

SHRI MOHAN KUMARAMANGA-LAM: I said so because many serious complaints may be stopped or prevented because of poverty.

SHRI AKBAR ALI KHAN: There are very serious doubts whether the amount of complaints will be such which could be tackled by the Lokpal if some other controlling factor is not introduced? What do you think in the conditions as they are, will Lokpal be able to deal with all these complaints and how long it will take to deal with them.

SHRI MOHAN KUMARAMANGA-LAM: I would say let us start. If the Lokpal within a period of three months finds that so many complaints are there that the matter needs revision, he will come to his masters, Parliament.

You have fears. I also have fears. But that is not enough to make me change my opinion. There is no arithmetical method by which we can arrive at an answer, it is a matter of one's opinion. It is not an irresponsible opinion. Nothing is going to happen if the Lokpal gets more complaints. He will come to his masters. Let us see how it can be restricted, he may say. It is very difficult to judge at this stage.

SHRI AKBAR ALI KHAN: Do you not think that the real complaint may be about a Joint Secretary, Head of the Department and the Ministers?

SHRI MOHAN KUMARAMANGA-LAM: I do not mind if one limits so far as there is an allegation against a public servant (person like J.S.). But so far as mal-administration is concerned that is very difficult. Mal-administration may have been supervised by junior authority though it may have been on the instructions of the senior authority. The individual concerned may suffer as a result of that order. I would not object to your taking this allegation. Allegation

is in regard to an individual and there is some charge. I make anybody and everybody subject to that. Action should be taken against mal-administration. That may be taken at any level. We may consider a particular thing as a small affair, but for the citizen, whose rights have been encroached upon it may be a question of life and death for him. So far as the office is concerned, you can put some limitation. But I am also interested for getting the big fish who escapes.

SHRI AKBAR ALI KHAN: What have you suggested about the selection of the Lokpal? Should we involve Chief Justice?

SHRI MOHAN KUMARAMANGA-LAM: I do not think there is anything wrong.

SHRI AKBAR ALI KHAN: In Press Council we had his advice.

SHRI VIDYA CHARAN SHUKLA: In Press Council, Chief of Press Council was not appointed in consultation with Chief Justice. Chief Justice himself was the appointing authority. That was the difference.

SHRI AKBAR ALI KHAN: We have said in consultation with the Chief Justice'.

SHRI MOHAN KUMARAMANGA-LAM: I do not think there is anything wrong.

SHRI AKBAR ALI KHAN: Would you like if the Lokpal is taken with the consultation of the opposition party?

SHRI MOHAN KUMARAMANGA-LAM: I think that is a good safeguard. It may be difficult to find a person. But let us see how it works.

SHRI AKBAR ALI KHAN: Deciding Authority will be the Government.

SHRI MOHAN KUMARAMANGA-LAM: Government will have to be careful.

SHRI SHAM SUNDAR NARAIN TANKHA: May I know if you would like the provisions of this Bill to apply to the States also?

SHRI MOHAN KUMARAMANGA-LAM: I think it will have to come through the States. For the growth of Administrative Law it is necessary to have some authority other than the authority of the court.

SHRI SHAM SUNDAR NARAIN TANKHA: Should judiciary be brought under Lokpal?

SHRI MOHAN KUMARAMANGA-LAM: Personally I would have no objection. But there will be absolute outcry among the lawyers if such a suggestion was put forward. Lokpal merely recommends. I personally feel that even in relation to allegations it may some times be worthwhile because we have very far flung judiciary and quality varies from individual to individual and court to court. I must also state that I do not think it will be welcomed by any judge, anybody at the bar. But I myself am in favour if it is brought under Lokpal.

H. H. MAHARAJA PRATAP KESHARI DEO: There might be contempt of court.

SHRI MOHAN KUMARAMANGA-LAM: You can rely on the Lokpal not to contempt.

SHRI SHAM SUNDAR NARAIN TANKHA: You think judiciary may be included.

SHRI MOHAN KUMARAMANGA-LAM: Yes.

SHRI SHAM SUNDAR NARAIN TANKHA: The term of office has been fixed as five years with a provision of another term to be given. Most of the witnesses are against the idea of fixing any term. Do you think that five years term is sufficient?

SHRI MOHAN KUMARAMANGA-LAM: I am not against the second term. The fear probably is that if a

person has the prospects of getting a second term, he may not act independently during the first term. That will be checked by the method of appointment, for instance, the appointment is made in consultation with the Chief Justice and the Leader of Opposition. If the Government is going to act in such a way as to ride roughshod over the views of the Leader of Opposition, then it is not worthwhile having a Lokpal. We expect the Government to behave with a certain amount of decorum and good sense in a matter like this. If that is so, I think the Lokpal will function very well. If he becomes too subservient to the Government, then he is not a good Lokpal. But if he is really a good Lokpal why should we not have him for ten years? As the New Zealand gentleman who has been described, if he is a good man, let us have him for another term.

SHRI TANKHA: The fear is that the man would be looking up to Government for favours and to that extent he would not be upright.

SHRI MOHAN KUMARAMANGALAM: I do not think so because the method of his appointment will look after that.

SHRI TANKHA: Do you think that a public man who is not conversant with the law or has not been in the judiciary should be appointed to this post?

SHRI MOHAN KUMARAMANGALAM: My own opinion is that any person endowed with commonsense can understand law. Law is not something mysterious which an ordinary layman is not able to follow. Any person who is endowed with a reasonable amount of intelligence and commonsense can fully appreciate the law.

SHRI AKBAR ALI KHAN: Should the nature of inquiry by the Lokpal be a full and thorough one taking evidence, if necessary with lawyers appearing before him?

SHRI MOHAN KUMARAMANGALAM: Under clause 11 he has been given the powers of a civil court and that is quite rightly so. It has been left to him also to follow procedure. I think we should leave it at that.

H. H. MAHARAJA P. K. DEO: While appreciating the sentiments of the learned witnesses that the Police should also come under the purview of the Lokpal, I would invite his attention to the definition of the word "officer"—'a person appointed to public service or post in connection with the affairs of the Union'. Now, Police is a State subject and therefore it cannot be covered by this Bill because of this definition. Police will naturally come under the purview of a similar authority which the States will appoint at a later stage. Am I right?

SHRI MOHAN KUMARAMANGALAM: There are police officers working under the Union Home Ministry, such as CBI, Special Police Establishment and CRP. I think they would come under the Bill. Of course, it is important that the State Police is also covered. But unfortunately we cannot do it now. But when such persons or authorities such as Lokpal are set up in the States, they will be covered.

H. H. MAHARAJA P. K. DEO: I appreciate the feeling that the Prime Minister should also come under the purview of the Lokpal. What about Governors? They are not even impeachable like the President. They hold office at the pleasure of the President or the Home Ministry. There has been a lot of controversy regarding the functioning of Governors lately and it is alleged that they are used as a lever to topple down non-Congress Ministries. At the moment, they are only answerable to the Home Ministry through the President. I would like to know if you would consider that the actions of Governors should also be scrutinised by the Lokpal if they do not behave properly.

SHRI MOHAN KUMARAMANGALAM: I do not think that the Governor has any executive power at all.

H. H. MAHARAJA P. K. DEO: He has got lot of discretion under the Constitution.

SHRI MOHAN KUMARAMANGALAM: But the complaints against a Governor are not due to exercise of his powers against citizens. Complaints against Governors have been against their use by the Centre as the agents of the Centre. I am putting it very briefly. These complaints have nothing to do with mal-administration with which we are concerned in this Bill. We are concerned only with an action by an authority which affects the rights of citizens or interests of the citizens.

H. H. MAHARAJA P. K. DEO: Interests of the citizens are directly affected when the verdict of the electorate is not respected by the Governor.

SHRI MOHAN KUMARAMANGALAM: That is a political question and as such we are not concerned with that. And I do not think the Lokpal is the proper forum for that. Let not the poor Lokpal be thrown from one end to the other in a political battle. Once you do it, that is the end of the Lokpal functioning effectively.

H. H. MAHARAJA P. K. DEO: Regarding the investigating agency to be employed by the Lokpal, the Bill says that he may employ any agency under the Central Government. Suppose the conduct of the Home Minister is to be inquired into and for that he employs the CBI as the investigating agency. The CBI being directly under the Home Ministry, they may not possibly do this work well. If the Lokpal is to have a separate investigating agency, it may not have full work. Do you suggest that this agency should be independent and should not be under the administrative control of the executive?

SHRI MOHAN KUMARAMANGALAM: In answering this question probably I am somewhat a biased witness. I may frankly say that the CBI will inquire into the conduct of the Home Minister with happiness and they will do that job properly and thoroughly.

SHRI BHOLA NATH MASTER: Mr. Kumaramangalam, as the present Bill stands, Lokpal will be supervising the authority of the Lokayukta also. You cited instances of New Zealand and the U.K. where there were a large number of complaints received of which only a few dozens were attended to. When he will be supervising the authority, how can he do justice to the complaints in a country with such a vast population by entertaining them especially when you say that the complaints were to go through Members of Parliament?

SHRI MOHAN KUMARAMANGALAM: I have answered that question. I said that perhaps it is better that the Lokpal first starts functioning and then we shall see how that works. My experience about complaints of this nature is—I have experience for a number of years—that many of them can easily be dismissed as not necessary to investigate at all. Many citizens who have got imaginary ideas of wrongs having been done to them complain about that. We can take it that the Lokpal and his assistant Lokayuktas will be experienced enough as to distinguish these complaints. If he finds ultimately that he is overwhelmed with these complaints, then he can review them as to whether it is necessary to take them up for investigation at all. The Lokpal in fact comes up to Parliament with his report in which case Parliament will undoubtedly hear him and take the necessary remedial action.

We are starting something new. Of course Denmark is a small country which is not much bigger than Greater Calcutta. New Zealand also is not as big as Bombay. England is

also a small country. I am conscious of it that there are certain dangers. Let us see how it works in practice here. Let us not start putting in too many limitations. We can do that if we are forced to do that. Let us not begin with limitations.

SHRI BHOLA NATH MASTER: He will be doing the work of an Investigating Officer. He can take legal action on that. He would first submit the case to the competent authority and then he will take action. Do you want any legal authority to be placed in this Bill?

SHRI MOHAN KUMARAMAN-GALAM: I do not see how he will take legal action as such—I do not want you to put it in the Bill in respect of every matter. But, if he considers that legal action is necessary, he can recommend to the proper authority to take it. He will also have the power of taking action. It is not a question of allowing him to take legal action as a judge under certain circumstances. But, I think the Lokpal should have some sharper teeth. At the moment, his teeth may not be sharp enough. He cannot use his powers as he likes. You invest him with powers to enable him to do a certain kind of investigation of complaints. But, I think that would have no salutary effect in India of 1968 to bring in the persons within the ambit of this Bill.

SHRI BHOLA NATH MASTER: Would you favour a second term also for the Lokpal?

SHRI S. MOHAN KUMARAMAN-GALAM: I agree that he should be appointed for the second term also if he is a suitable man. I do not think that it would be easy to find many competent people. After five years experience if we find that the Lokpal has really done well, why should we deprive of this country of his services for another five years?

SHRI BHOLA NATH MASTER: What should be the age limit of the person to be appointed as the Lokpal?

MR. CHAIRMAN: 65 is the age limit at present.

SHRI S. MOHAN KUMARAMAN-GALAM: I think it must be somewhere in the region of 65. After that the physical labour involved will also be quite heavy and therefore he may find it difficult to take up such a work.

SHRI SUNDAR SINGH BHANDARI: At the age of 65 do you think that he can continue for a third term?

SHRI MOHAN KUMARAMAN-GALAM: He can. But I do not think you will appoint him beyond 65. Unfortunately in our country only old people are considered as competent enough!

SHRI S. SUPAKAR: You know that the Lokpal is going to be an investigator in the sense that it is understood. Now you want to have his teeth sharpened. Do you mean to say that he should have punitive powers, that is to say, that in addition to reporting it to Parliament or to Government, he should have some authority to recommend certain punishments or something of this nature?

SHRI MOHAN KUMARAMAN-GALAM: When the Lokpal reports to Parliament, he should make a recommendation. You do not give him the power to punish anyone. When you use the word 'punitive power' that means that he has got the power to take action against somebody.

SHRI S. SUPAKAR: Then what do you mean by saying that his teeth should be sharpened?

SHRI MOHAN KUMARAMAN-GALAM: He should have the power in cases where he thinks it necessary to take legal action against the offending individual. That is all.

SHRI S. SUPAKAR: Is it like a Commission of Enquiry?

SHRI S. MOHAN KUMARAMAN-GALAM: You make a complaint to

the court when some allegations have been made against the public servants of abuse of power. That comes under the Prevention of Corruption Act. And he should have the power to make a complaint against that particular official if he considers that that official has committed an offence. If he considers that the allegations made against him is of substance, then he can lodge a complaint in the court.

SHRI S. SUPAKAR: You said something about the qualities that is expected of an ideal Lokpal. Would you recommend a sort of a minimum qualification, that is to say, whether he should be from High Court or he should have a judicial background or some political background or both or anything of this nature?

(The reply was not recorded as ordered by the Chair)

My last question is this. It has been suggested that the Lokayukta should be totally independent of the Lokpal both administratively as also functionally? Do you think that that would be a better proposition?

SHRI S. MOHAN KUMARAMAN-GALAM: I do not think so. I would like to have a single unified administration to deal with this area. And in this area if you have different authorities, each will be going in his own way. And if you allow each man doing his job in his own way, it would not be a well administered law as we expect it to be. As we progress, we will not be able to develop that properly.

SHRI HEM RAJ: You have suggested that the elected representatives, M.Ps. or M.L.As. also may be brought within the purview of this Bill. As per the Bill, this institution of Lokpal and Lokayukta is being created by Parliament itself. Don't you think that in that case, if the MPs are brought within the purview of this Bill, the Lokpal and Lokayukta will be put in a very embarrassing position whenever they give any finding against an M.P.?

SHRI MOHAN KUMARAMAN-GALAM: I gave the answer when I was asked. Here there is a certain danger. Suppose the Lokpal finds that an M.P. has behaved in a manner which he should not have behaved. Then what is the next step to be taken? Certain conclusions will necessarily follow such as disqualification from being a Member of Parliament or something of this kind being mooted by the House. Possibly some way has to be explored. Practically I have not thought about it earlier. But I do feel that it would be worthwhile exploring the matter further. At the present moment there are complaints which we are here faced with by the citizens that the M.Ps. are not acting in a manner that is in consonance with the dignity of the high office that they hold. This is just like a complaint against a judge. That is why I am referring them as the Judges. I would like some independent authority here who would be able to investigate these complaints which are there. From my experience I can say that there are certain M.Ps who have not behaved as well as they should. There are certain of them who have not acted properly even though they have taken the oath of office. Really speaking, it is not proper on their part if the citizens themselves find that they have behaved in this way.

I would not like to comment further on it. But, as I said, I would qualify this by saying that it would be better to explore the matter more and then come to proper conclusions on how to bring them within the purview of this Bill. For the question remains: What you are going to do if an M.P. has misbehaved?

SHRI HEM RAJ: In some cases, the Central Government sends its officers on deputation to the States and in others the State Government sends its officers on deputation to the Centre. Under the scheme of this Act, this is only applicable to the Central service. How are we to deal with such persons coming on deputation either

from the Centre to the State or from the States to the Centre?

SHRI MOHAN KUMARAMANGALAM: I have not thought about it. It is better that I do not speak about it offhand. This is a question of details which would require some thinking.

SHRI C. C. DESAI: Taking up the question of bringing the Members of Parliament within the jurisdiction of Lokpal and Lokayuktas Bill, may I suggest that this Bill really applies to public servants and so far as I can see, a Member of Parliament is not a public servant within the definition of public servant. Secondly, there is a forum where the conduct of a Member of Parliament can be judged, that is, the Committee of Privileges of Parliament. If he commits an offence, under civil laws he can be prosecuted and sued against in a court of law. There is that remedy available. I don't see any justification or any basis for thinking that this Bill, which is intended for public servants, should be made applicable to the Members of Parliament. I could not quite follow that.

SHRI MOHAN KUMARAMANGALAM: I don't think that the remedies you have suggested are effective in practice. That is why I thought that it would be quite useful if we extended this Bill to include also the conduct of the Members of Parliament.

SHRI C. C. DESAI: If you understand the definition of public servant that way, then everybody will come under that definition. Lokpal can inquire into the conduct of anybody.

SHRI MOHAN KUMARAMANGALAM: Not necessarily. Probably, if you want to bring the Members of Parliament, you will have to make a separate clause for them completely, because the consequential action, as I said earlier, will have to be quite different. It is worth considering. Under the existing conditions it will not be useful to do that.

SHRI C. C. DESAI: Coming to the extension of jurisdiction of the Bill to the Police and Judiciary, so far as I can see, the Police Officers working under the jurisdiction of the Central Government and the Judges working under the Central Government are included within the scope of this Bill. Supposing there is a complaint against a Judge on charges of corruption I don't think if it could be excluded from the jurisdiction of Lokpal. I don't know the justification for holding the view that either the Police or the Judiciary is not intended to be included within the scope of the Bill. What is not included is Police excesses, as happened on September 19 in Indraprastha Bhavan. Misconduct or maladministration or corruption against Police is not excluded, so far as I can see, from the scope of the Bill.

SHRI VIDYA CHARAN SHUKLA: Allegations are included. But grievances are not included.

SHRI MOHAN KUMARAMANGALAM: See the Second Schedule.

SHRI MUKHERJEE (Ministry of Home Affairs): The Second schedule relates to grievances.

SHRI MOHAN KUMARAMANGALAM: That is important so far as grievances are concerned. So far as the Judges are concerned, Section 20 will exclude them.

SHRI C. C. DESAI: Is there any justification for this exclusion? Supposing there is a complaint of corruption against a Judge—it is not impossible to conceive of—should he not be brought under the purview of Lokpal?

SHRI MOHAN KUMARAMANGALAM: There is another method by which it can be done. A complaint is made to the President who refers it to the Chief Justice. I may be somewhat unorthodox in holding my view. I would say that Lokpal should extend his influence over that area also.

SHRI C. C. DESAI: Where do you think that the respective jurisdictions of Lokpal on the one hand and the Union Public Service Commission on the other should begin and end? Take the case of a senior officer and there is a charge of corruption against him. A complaint has been made and has been investigated into by the Lokpal. Supposing he is found guilty, what should be the procedure? Should he himself say that this officer has been found guilty and he should be punished this way or should he merely say that *prima facie* there is a case against him and further action should be taken by the Government in consultation with the U.P.S.C.?

SHRI MOHAN KUMARAMANGA-LAM: Under the Bill, as it stands today, he is not empowered to take any action.

SHRI C. C. DESAI: If the Lokpal finds an officer guilty, then he should have the power and the case should not have to be referred to the UPSC, because between the two, the status of Lokpal is somewhat higher; in fact he is a much more important functionary of Government than others.

SHRI MOHAN KUMARAMANGA-LAM: You are then making the Lokpal or giving the Lokpal the authority to act. Whereas, the Lokpal, as I conceive him under this Bill,—and as he is in other countries also—essentially is a sort of supervising and recommendatory authority. He is not an acting authority. He looks into things and says why don't you do this and why don't you do that. He reports, and if people in authority do not take note of his recommendations or do not listen to him, then the Parliament or the Queen-in-Council or whatever it may be, takes action. He never acts. He is more a person who recommends rather than who acts. Once you bring him under 226, then all points like quasi-judicial decision, etc., will arise. That we should avoid and keep him away.

SHRI C. C. DESAI: Would not that be derogatory to him, if his decision was questioned by a junior officer?

SHRI MOHAN KUMARAMANGA-LAM: If you appoint a person who really commands respect, then other persons will be afraid of going against his views. Public opinion itself will very quickly come down on the Government, if his suggestion is not accepted. If you appoint a person who commands the confidence of people as Lokpal and if the Government neglects to implement the recommendation of Lokpal, then the public opinion will come down on the Government. Much depends on the way in which the incumbent uphold the dignity of his office. Take the case of Election Commission. By and large we can say that the Election Commission has commanded very high respect in our country. That is due to the conduct of the incumbents of the Commission. It is not as though there are not many political issues which had not come in the course of Election Commission's work. But the way in which the Election Commissioners have conducted themselves, has gained them the confidence of the public. It all depends on the conduct of the incumbent of the office.

SHRI C. C. DESAI: You expressed in favour of the second term for Lokpal. If second term is to be sanctioned although in the name of the President, yet it will ultimately be with the concurrence of the Prime Minister which means the Government of the day. When his term is about to expire and if he is looking for extension or re-employment, then he must so mould his decisions as not to displease the authorities. Would not that detract from his independent judgment? And that is why most of the witnesses who have come here have said that "whatever may come, five years or seven years, but do not give a second term." What do you think?

SHRI MOHAN KUMARAMANGA-LAM: I think that he is to be appointed after consultation with the Chief Justice and the Leader of the Opposi-

tion. He has also to satisfy them to some extent. If he does something wrong, then I would expect the Chief Justice and the Leader of Opposition undoubtedly to take a position against his appointment.

SHRI C. C. DESAI: But that is for the first term.

SHRI V. C. SHUKLA: It is also for re-appointment.

SHRI MOHAN KUMARAMANGALAM: Undoubtedly, the power lies with the Government. It is only a consultation. If the Government is going to exercise this power in a partisan manner then this Parliament has the power to question it. It is a very high standard which we expect of him. If he is a man of high standard, he is not going to lower that standard in five years. And if that is so, then there should be nothing wrong in giving him a second term.

SHRI V. C. SHUKLA: You have given your opinion that the exclusion that is provided for in the Second Schedule relating to Police should be removed. But here the question is of excluding the police for investigation of crimes or protecting the security of the State, including action taken, which involve top secret documents and, may be, top secret matters which impinge on the security of the State as such. But as it has been clarified, allegations against the police are allowed. There may be a grievance of a particular party that an investigating officer or the SPE investigating into a matter at a particular time did not do it properly. Would it be proper for an outsider to go into it?

SHRI MOHAN KUMARAMANGALAM: My experience is that usually mal-administration in the course of investigating crimes arises not from the lower officers but starts much higher up. That is my experience. And that is why I favour outside intervention of a party as high as this. I do not mind if you make the Lokpal entirely responsible for it. The number of complaints may not be many. So far as the protection of the security of the

State, etc., is concerned, I quite agree with you. But 'action taken' should be included within the purview of the Lokpal. And I think the Lokpal will have the wisdom to act properly.

SHRI V. C. SHUKLA: Regarding the contracts you kindly see para (e) of the Second Schedule. The contract is not excluded. It is only the working of the contract, the contractual obligation which of course may be governed by the Contract and things like that. It reads "Action taken in matters which arise out of the terms of a contract governing purely commercial relations....."

SHRI MOHAN KUMARAMANGALAM: I understand. I would like to think over it. It may be difficult to bring it under the contract.

SHRI V. C. SHUKLA: It also says: "except where the complainant alleges harassment or gross delay in meeting contractual obligations" The award of a contract itself is not excluded. It is only the working, the terms and conditions.

SHRI MOHAN KUMARAMANGALAM: Perhaps that is so.

SHRI V. C. SHUKLA: You have stated about the Prime Minister being not excluded. When we considered this matter, we were wondering whether we could not trust even one individual in the country to be above all these things, and whether the remedy embodied in the political forum like Parliament is not enough. It was thought that even if there was the slightest suspicion of corruption or anything like that which the Lokpal is suppose to look into, the matter would not be allowed to go to the extent where the Lokpal would have to look into and hold an inquiry against the Prime Minister. That is envisaged here. Our own Parliament itself in its united wisdom may take the same action. Do you think that the matters relating to the Prime Minister should be left to the Parliament or the same should also be put before the Lokpal?

SHRI MOHAN KUMARAMANGALAM: I still think it would be better

that it goes to the Lokpal. I think particularly in considering the sort of allegation that is thrown against the Prime Minister himself or herself; the mud just goes on sticking. The Lokpal is not going to allow the mud to stick for nothing it can be looked at from that point of view also. The Prime Minister will have a sort of defence mechanism also. Look into the recent history; the mud has been thrown and it has stuck. Often there is absolutely no basis for the mud being thrown. It has stuck, to put it bluntly, after being thrown in Parliament. And what was the remedy? The Prime Minister had no remedy. I am not talking of any particular Prime Minister. Since Independence, we have had three Prime Ministers. But we know that mud has been thrown against all the three Prime Ministers. I think from the point of the Prime Minister himself or herself, this will be a salutary inclusion. It would not harm but it will help.

SHRI V. C. SHUKLA: About the competent authority for the Prime

Minister, to be included, it has been suggested that the competent authority would be the President. Now, the President as the Constitution goes today has hardly any discretionary powers. He exercises most of the powers on the advice of the Council of Ministers. In case he is to proceed against the Prime Minister who would advise him or some provision is to be made in the Constitution.

SHRI MOHAN KUMARAMANGALAM: I have not thought of it but some method may be found so that Lokpal in that single case may make a direct report to the Parliament if you do not want to drag the President in it.

MR. CHAIRMAN: Well thank you very much Mr. Kumaramangalam for having come and given us your valuable advice. Your ideas of the Lokpal are very good and we hope to adopt most of your points. Thank you, very much.

(The witness then withdrew)

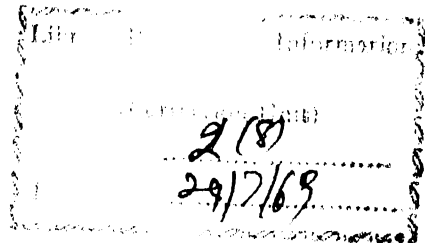
(The meeting then adjourned)

LOK SABHA

JOINT COMMITTEE
ON
THE LOKPAL AND LOKAYUKTAS BILL,
1968

Statement

**Containing a gist of main points made by Witnesses in
their Evidence before the Joint Committee**



LOK SABHA SECRETARIAT
NEW DELHI

March, 1969/Chaitra, 1891 (Saka)

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P R E F A C E

The Statement included in this Volume contains a gist of the main points made by the various witnesses in their Evidence given before the Joint Committee on the Lokpal and Lokayuktas Bill, 1968 at their sittings held on the 4th to 6th, 27th July, 3rd, 20th, 23rd, 24th, 31st August, 24th October and 7th December, 1968. The Statement was prepared with a view to enable the Members of the Committee to see at a glance the main considerations urged by the witnesses in their evidence before the Joint Committee.

2. The Statement contains only some of the important points made by the witnesses for and against the provisions of the Bill. Anyone wishing to make use of the material contained in the Statement should rely on and refer to the verbatim record of Evidence given before the Committee, which has been printed in a separate volume and laid on the Tables of both the Houses of Parliament.

3. This Statement has been printed and laid on the Tables of both the Houses of Parliament in pursuance of the decision taken by the Joint Committee at their sitting held on the 13th March, 1969.

NEW DELHI;
The 26th March, 1969
Chaitra 5, 1891 (Saka)

M. B. RANA,
Chairman,
Joint Committee.

**JOINT COMMITTEE ON THE LOKPAL AND LOKAYUKTAS
BILL, 1968**

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*Appointed w.e.f. 19th August, 1968 in the vacancy caused by the death of Shri Harish Chandra Mathur.

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SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

**Appointed w.e.f. 29th August, 1968 in the vacancy caused by the resignation of Shri Awadheshwar Prasad Sinha.

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	2. Shri Chandu Lall Gupta, Vice-President.		
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JOINT COMMITTEE ON THE LOKPAL AND LOKAYUKTAS BILL, 1968

STATEMENT

Containing a gist of main points made by witnesses in their evidence before the Joint Committee

Serial No.	Name of witness	Date of Evidence	Gist of views
1	2	3	4
i.	Shri D. D. Diwan, Director, Citizens' Advice Bureau, New Delhi.	4.7.1968	<p><i>1. General views</i></p> <p>(a) As the Lokpal had to go into the irregularities committed by the Ministers and others he should be answerable to Parliament and treated as the most powerful limb of Parliament. His emoluments/budget should be scrutinized by Public Accounts Committee.</p> <p>(b) The public servants, who face public enquiries or commissions for some irregularities and felt aggrieved, should also be given equal rights to place their cases before the Lokpal for redressal.</p> <p><i>II. Jurisdiction of Lokpal</i></p> <p>(a) As everybody was liable to commit errors, all public servants, Chief Commissioners, Lt. Governors, Members of Parliament, Judiciary and others should be brought within the purview of the Lokpal. He should have the right to scrutinize everybody's actions even if it might be a statutory body.</p>

- (b) Administrative or discretionary actions, mentioned in the second schedule should also be brought within his purview so as to see whether the discretion had been properly exercised.
- (c) The Lokpal or Lokayuktas should have the right to send for the relevant files immediately on receipt of a complaint because the fear was that many a time the files were tampered with and sometimes even lost.
- (d) He should have the powers of inspection and surprise checks in offices/Police stations in order to see the irregularities and suggest remedial measures/legislation.
- (e) He should take action on Press reports as was done in foreign countries by such institutions.

III. Publicity of the proceedings/Reports before/of the Lokpal

- (a) The Lokpal should have the discretion to decide whether the Press or any other person could have access to any information during the course of proceedings.
- (b) In order to create confidence among the citizens the cases decided by Lokpal—giving details from the beginning to the end excluding matters relating to national security—should be made public. This would alert everybody dealing with different cases and enable the public to see whether everyone entrusted with job was doing it properly and to judge if there was any scope for improving the procedure.

IV. Appointment of Lokpal and First Lokayukta

- (a) For the appointment of Lokpal the Leader of

Opposition must be consulted and the Chief Justice would then make the final recommendation giving his reasons to the President. Cabinet need not be consulted.

- (b) The appointment of First Lokayukta should be made with the approval of Lokpal so that the man so appointed was of his choice whom he considers fit for the job.

V. *Terms of Office of Lokpal*

Lokpal should be appointed for one term and a long term or life term with a minimum age limit of 50 years. There should not be a second term.

VI. *Security deposit for complaints*

People should have free access to the Lokpal in every respect and the fee should be only levied according to the financial or monetary status of the complainant. Before the complaints were taken up for investigation, it should be determined whether they were genuine and if not, they should be scotched straightaway.

VII. *Constitution of a Parliamentary Committee*

The Parliament should constitute a Committee consisting of Leaders of all parties. The Lokpal should send his Report to this Committee for their consideration before it was considered by Parliament.

VIII. *Engagement of Lawyers.*

If the nature of the complaint so required, the services of a Lawyer might be engaged to represent the case.

2. Kendriya Sanatan Dharma Maha Sabha, Delhi :

Spokesmen :

1. Shri Bhagwan Swarup Bhatnagar, President.
2. Shri Chandu Lall Gupta, Vice President.
3. Shri Vidya Bhushan, Member.

5-7-1968 I Jurisdiction of Lokpal

(a) The Lokpal should have supreme and mandatory powers and should be competent to investigate complaints against each and every authority in the country without any exception. He should also have the powers to review the judgements of different courts.

(b) Parliament should not interfere with his judgements except when he did not work satisfactorily and should be punished thereof.

II. *Engagement of Lawyers*

The lawyers need not be engaged and only the documentary evidence should suffice.

III. *Terms of office of Lokpal/Lokayukta*

(a) The Lokpal and Lokayuktas should not be over 60 years of age and no extension beyond the age of 65 should be granted.

(b) He should be a man with social standing and should work honorably. He should also be religious-minded and God-fearing.

IV. *Time limit for complaints*

So far complaints before the Lokpal were concerned, there should be no time limit.

6-7-1968 I. *General views*

3. *Representatives of the Ministries of Government of India :—*

- (i) Shri N.N. Wanchoo, Secretary, Ministry of Industrial Development and Company Affairs.

The definition of the terms "allegations" and "grievances" might be reconsidered so that what were in effect "grievances" were not allowed to be converted into "allegations".

ii. *Extension of scope of the provisions of the Bill to Public Sector Undertakings and Government Companies*

- (a) The senior officers in the Government Companies and Corporation drawing more than Rs. 1,000/- might be brought within the provisions of Lokpal or Lokayuktas. Looking into the grievances of low paid employees by the Lokpal or Lokayuktas would be unwieldy and could better be looked into by the Senior Officers themselves.
- (b) The allegations that something had been done as a result of improper motives or conduct could be enquired into but in the absence of such allegations, if there was a grievance from a party e.g. a contractor had not been awarded the contract for certain reasons—not necessarily as a result of corruption — no useful purpose would be served by referring it for investigation or investigating it.
- (c) Nothing should be done which would come in the way of the public sector undertakings performing their functions efficiently but at the same time it should also be ensured that nothing was done to protect or shield corrupt people.
- (d) In order to discourage frivolous and vexatious complaints, a suitable penal provision should be made in the Bill against those who made such complaints.
- (e) Since the nature of duties and functions of Public Sector Undertakings were different from those of Government servants, there should be a difference in the nature of treatment also.

(ii) Shri K. B. Lall, Secretary,
Ministry of Commerce.

6-7-1968

Extension of scope of the provisions of the Bill to Public Sector Undertakings and Government Companies

(a) Treating different types of Corporations and all Public Sector Undertakings as an extension of Government and consequently liable to the same treatment, criterion and responsibilities would fundamentally go against the basic policy laid down by Parliament itself namely that industrial and commercial undertakings in the public sector should be run on business and commercial lines and not on departmental lines.

(b) If, however, the public sector undertakings had acquired the monopolistic Character, functions and powers of Government, then they should be liable to same restraints and considerations of public propriety as the Government. But in the absence of such characteristic features, they were to be treated differently so that their day-to-day work and efficiency was not hampered.

(c) Again the Government servants had to be judged not only from the point of view of efficiency but also from the point of view of fairness and equity in their treatment but in the case of commercial/ industrial undertakings, the efficiency of operation was more important than fairness as between individuals.

(d) If the Lokpal, with too many frivolous and vexatious complaints, was under an obligation to satisfy himself whether they should be investigated or not, it would inevitably lead to loss of efficiency of the Public Sector Undertakings. But if somebody else watched the working of the organisation periodically, it would add to the efficiency of the organisation.

(iii) Shri Govindan Nair, Secretary (Expenditure), Ministry of Finance.

6-7-1968 Extension of scope of the provisions of the Bill to Public Sector Undertakings and Government Companies

(a) The working of the Public Sector Undertakings was subject to audit by the Comptroller and Auditor General and there was also a Parliamentary Committee on Public Undertakings which went into the details of the working and management of these undertakings.

(b) The Public Sector Undertakings which dealt with Public Utility services such as Railways, transport etc. should be brought within the jurisdiction of Lokpal or Lokayuktas. But to bring such Public Sector Undertakings as dealt purely with business transactions within the purview of Lokpal or Lokayuktas would not be conducive to the efficient working of these undertakings for it would create apprehensions in their minds which might lead to delays in making decisions.

7

(iv) Shri N. K. Mukarji, Jt. Secretary, Department of Administrative Reforms, Ministry of Home Affairs.

6-7-1968 Extension of scope of the provisions of the Bill to Public Sector Undertakings and Government Companies

So far as Public Sector Undertakings and Government Companies were concerned, the allegations against them should be within the jurisdiction of Lokpal or Lokayukta and the complaint of grievances should be excluded. These had already been provided in the Bill and it was not necessary to go further than that.

4. Shri K. Santhanam, ex-Member of Parliament.

27-7-1968 I. General views

(a) The witness favoured the establishment of the institution of Lokpal.

(b) In view of the important role expected to be played by Lokpal and Lokayuktas, they should have the constitutional status like the Election Commission, the Supreme Court or the Auditor General and, therefore, there should be a brief new article *vis. 261-A* as mentioned below in the constitution providing for their appointment and stating their functions :

“261-A—There shall be a Lokpal of India who shall be appointed by the President by warrant under his hand and seal and shall only be removed from office in a like manner and on like grounds as a Judge of the Supreme Court.

(2) There shall be one or more Lokayuktas for the Union and one Lokayukta for each State who shall be appointed by the President by warrant under his hand and seal and shall only be removed from office in a like manner and on the like ground as a Judge of the Supreme Court.

(3) Subject to such provisions as may be made by Parliament by law a Lokpal may investigate any action which is taken by or with the general or specific approval of the Minister of the Union or a State or any other public servant as may be prescribed by or under any law of Parliament in any case where a complaint involving a grievance or an allegation is made in respect of such action or such action can be or could have been in the opinion of the Lokpal the subject of a grievance or an allegation ;

(4) Subject to such provisions as may be made by Parliament by law, a Lokayukta may investigate any action which is taken by

or with the general or specific approval of any public servant not being a Minister or other public servant referred to in clause (3) in any case where a complaint involving grievance or allegation is made in respect of such action or such action can be or could have been in the opinion of the Lokayukta the subject of a grievance or allegation.

(In this Article, the terms "grievance", "allegation" and "maladministration" shall be defined as in the Bill).

(5) The manner of appointment, the salary and other conditions of service of the Lokpal or Lokayukta and other matters relating to their functions shall be such as may be determined by Parliament by law."

The amendment of the Constitution and the enactment of the proposed legislation should go simultaneously but in case amendment of Constitution was not considered feasible, the present Bill should be proceeded with.

II. *Scope of the Bill :*

In order to achieve the purpose of the Bill, it was desirable that the scope of the Bill should not be confined only to the Central Government but should be extended to the State Governments also.

III. *Appointment of Lokpal and Lokayuktas :*

(a) The provision for appointment of Lokpal made in the Bill was satisfactory. But so far as the appointment of Lokayukta was concerned, consultation with Lokpal was not necessary.

(b) The Retired Chief Justices of Supreme Court should not be in the field for appointment as Lokpal or Lokayukta. The serving Judges of Supreme Court and High Courts and retired Judges of High Courts might be appointed against these posts.

(c) The Lokayuktas should not be subordinate to the Lokpal. They should be independent persons.

IV. Terms of Office of Lokpal and Lokayuktas :

No second term should be given to the Lokpal or the Lokayuktas. The lure of second term would make them dependant on the Central Government and would come in the way of their independence. Their term of office should be upto 65 years from the date of their appointment and should not go beyond that. Afterwards they should be given pension to live decently.

V. Action on the Reports of Lokpal or Lokayukta :

In order to maintain the status of the Lokpal or Lokayuktas, their *prima facie* findings should be binding on the executive. If it was found that a Minister or a public servant had committed some corrupt acts, the Minister should resign and a Commission of enquiry should go into the allegations and similarly the public servant should be suspended and a departmental enquiry or criminal prosecution should follow.

VI. Powers of Lokpal or Lokayukta :

They should have the statutory right to requisition the services of Central Bureau of Investigation, Vigilance Commissioners and other organisations who look into matters of maladministration and corruption. They should not be made to go through the Ministry of Home Affairs for the services of these agencies.

VII. Jurisdiction of Lokpal :

- (a) The affairs of President or Governors should not be brought within his jurisdiction.
- (b) He should have the jurisdiction over the Ministers both at the Centre as well as the States.
- (c) All India services whether serving under State Governments or Union Government should be brought within the jurisdiction of Lokpal.
- (d) Members of Parliament and State Legislature should be outside his jurisdiction. The conduct of Members should be investigated by the internal body of Parliament, State Legislature and recommendations made to the President accordingly.

VIII. Complaints :

- (a) In order to discourage frivolous complaints every complaint should be endorsed by at least 3 or 4 members of Parliament or State Legislature with the remark that the case needed investigation.

(b) In case the complaint was found deliberately malicious, it should be open to the Lokpal or Lokayuktas to send the man for prosecution.

5. **Dr. H. N. Kunzru, ex-M.P.**

3-8-1968

I. *General views :*

(a) The Bill was a little too ambitious and had provided for two types of complaints *viz.*, complaints regarding corruption and mal-administration. There would be heavy burden on the Lokayuktas as he would have to deal with a large number of complaints and appointment of a number of Lokayuktas with the required status would entail heavy expenditure. The witness felt that the elaboration of arrangements would not necessarily lead to an improvement in the existing machinery. The Government could bring the Central Vigilance Commission within the ambit of the Bill.

(b) The task of preventing mal-administration should be assigned to the Heads of Ministries and Departments who should see that the rules and regulations were observed and the discretion was properly exercised by the officers.

(c) So far as redressal of general grievances was concerned, a person of the rank of Joint Secretary and with a high degree of independence might be appointed to look into them.

II. *Security Deposit for Complaints :*

In order to discourage vexatious and false complaints there should be a provision for a security deposit of not less than Rs. 1,000/- in

respect of the complaints—likely to be investigated—against Ministers and Secretaries and similarly a security deposit of Rs. 750/- in respect of the complaints — likely to be investigated— against other public servants of a lower rank. These amounts should be confiscated in case the complaints were found to be untrue otherwise refunded.

III. *Extension of scope of the provisions of the Bill to Public sector Undertakings:*

(a) At present the Central Vigilance Commission covered Public Sector Undertakings also. There was no reason why they should be excluded from the arrangements to be made in future.

(b) It should also be extended to cover the complaints against Ministers and Secretaries of State Governments.

IV. *Jurisdiction of Lokpal :*

Judiciary should not be brought within his jurisdiction.

V. *Appointment of Lokpal and Lokayuktas :*

(a) Neither the ruling Party nor the Opposition Parties should be asked to advise the Government in this regard. The Government, in consultation with the Chief Justice of India, should recommend the selected person to the President for appointment.

(b) A person who held a very high judicial position, or had made his mark as a Judge of the Supreme Court or had to deal with investigation of cases involving complaints of the kind referred to in the Bill should be appointed against these posts.

(c) Salary and allowances of the Lokpal should be comparable to that received by the Chief Justice of India.

VI. *Terms of Office of Lokpal and Lokayuktas :*

- (a) Lokpal or Lokayuktas should hold office only for 5 years, and second term should not be given.
- (b) Maximum age limit need not be fixed.

6. Prof. P. K. Tripathi, Dean, 3-8-1968
Faculty of Law, Delhi University.

I. *General Views*

(a) There were two dangerous features in the Bill. One was the provision for investigation into actions of Ministers. This would derogate the very concept of Parliamentary form of Government as the Ministers were answerable to Parliament and to no one else. This would require constitutional amendments.

Secondly, the provision of conferring on the Lokpal the status of Chief Justice of India and clothing him with the powers of investigation and access to files etc. which the Chief Justice of India did not possess. This would mean creation of a new organ with the same status without responsibility. The Lokpal could be compared with the Chairman, Union Public Service Commission and in no case be placed higher than a Judge of Supreme Court.

(b) Action of a Minister should only be investigated by a Committee of Parliament or a Commission.

(c) Investigation into allegations against public servants by Lokpal or Lokayuktas would attract the provisions of Article 311 of the Constitution which laid down certain procedure to be followed. For this purpose the Central Vigilance Commission was sufficient.

(d) As far as investigation into grievances against public servants was concerned, the Lokpal could discharge a very important function. However, before the investigation was taken up the Lokpal should satisfy himself that the grievance had been placed before the concerned authority and the authority had failed or refused to meet the grievance.

(e) There should be a provision to fix the responsibility on the complainants with a view to check false complaints.

7. Shri Nittoor Sreenivasa Rau,
Central Vigilance Commissioner,
Government of India

20-8-1968 I. *Historical background*

Tracing the historical backgrounds of the proposed legislation, the witness stated that the Central Vigilance Commission came into existence on the recommendation of an interim report of the Santhanam Committee. The Government entrusted the Central Vigilance Commission with matters relating to integrity of public servants and excluded matters of public grievances from its purview. Commissioner of grievances inside the Government set-up in the rank of Additional Secretary in the Ministry was also appointed.

Subsequently the Administrative Reforms Commission went into the question and submitted its report on the basis of which this Bill had been formulated. He expressed satisfaction over the introduction of the present Bill.

II. *General Views*

- (a) The Bill should explicitly provide to ensure integrity in public servants so that the power or position was not improperly used by them with an *ulterior* motive.
- (b) In order to come to conclusion, the confidential records should not be shielded from the sight of Lokpal or Lokayukta.
- (c) The various vigilance Units in various Ministries should continue to form an integral part of the Ministry and the advice and guidance of the Lokpal or Lokayukta should be available to them.

III. *Security deposit for complaints*

- (a) Action on complaints should be initiated only after very carefully examining whether it was justified.
- (b) A large number of people, who might have very legitimate grievances might not actually be in a position to pay the deposit money and asking them to pay a fee before they approached any authority would be against public interest.
- (c) Effective measures to weed out frivolous complaints should be taken but levy of a monetary tool was not the appropriate method.

IV. *Functions of Lokpal and Lokayuktas*

The functions of Lokpal and Lokayukta would be in an advisory capacity and not in the character of decisions and, therefore, might

not attract the jurisdiction of the Supreme Court or High Courts under Article 32 and Article 220 respectively.

V. *Publicity of Proceedings* :

Necessary protection from publicity to the proceedings at the preliminary stage of investigation by Lokpal or Lokayukta should be given.

VI. *Status of Lokpal and Lokayukta* :

The Lokpal and Lokayukta would be invested by Parliament with certain functions and if they were distinct and not derogatory of the functioning of the Judges of the Supreme Court, there should be no objection to the status of the Lokpal and Lokayukta being equated with that of the Chief Justice and the Judges of the Supreme Court respectively. So far as payment of salary and allowances was concerned, it was a different matter.

VII. *Term of Office of Lokpal* :

No second term should be given to Lokpal.

VIII. *Appointment of Lokpal* :

The witness stated that he had no particular objection in consulting the opposition for appointment of Lokpal. He, however, preferred it to be done by convention and not by statutory provision.

I. *General Views* :

8. Railway Board (Ministry of Railways) of 2-8-1968

Spokesmen :

1. Shri G. D. Khandelwal, Chairman, Railway Board.
2. Shri B. C. Ganguli, Member (Staff), Railway Board.

The principle underlying the Bill was to build up an image and confidence in the public that everybody was accountable and answerable but it should be implemented in a manner, so as not to inhibit or deter senior functionaries of the Government from taking decisions.

3. Shri S. W. Shiveshwarkar,
Director General, Vigilance,
Railway Board.

Another object of the Bill was to root out corruption but no institution, not even the institution of Lokpal could cleanse the administration of corruption unless the character and the outlook of the people underwent a change.

As compared to law courts or Commissions of Enquiry or petitions to Parliament, the institution of Lokpal would be more effective and much simpler in dispensing justice and would add glory to democracy.

II. Status of Lokpal :

The Lokpal should be a man of a very high judicial standing.

III. Functions of Lokpal and Lokayuktas :

The Lokpal and the Lokayuktas should ensure that nobody was deprived of justice for the sake of favouring another person.

The Lokpal and the Lokayuktas need not send a copy of the complaints to the accused immediately after it was received as that might enable the accused to tamper with evidence and documents.

If a party felt aggrieved as a result of its tender for a contract having been rejected, the matter could be referred to the Lokpal or the Lokayuktas.

IV. *Terms of Office of Lokpal and Lokayuktas :*

There should be no second term for the Lokpal and the Lokayuktas.

The Lokayukta should not be promoted as Lokpal.

V. *Time Limit for Complaints :*

The time limit of one year for grievances and of five years for allegations was all right.

VI. *SPE and Lokpal/Lokayuktas :*

The SPE should not be allowed to start any investigation without taking permission from the Lokpal or the Lokayuktas.

VII. *Provision re. U.P.S.C.*

The existing provision regarding consultation with the U.P.S.C. should remain.

I. *General Views :*

9. Shri P. N. Saprú, Ex.-M.P. . 23-8-1968

The Bill was intended to control and curb the vagaries of bureaucrats and politicians and it was desirable to have an institution of the Lokpal.

II. *Status of the Lokpal :*

The status of the Lokpal should correspond with that of the Comptroller and Auditor General and not that of the Chief Justice of India. The Chief Justice of India must not be made to look forward to any appointment as Lokpal after his retirement.

III. *Appointment of the Lokpal :*

The Lokpal should be appointed by Parliament on the advice of the Prime Minister, the Leader of the Opposition and the Chief Justice of India.

The Lokayukta might be appointed as Lokpal.

IV. *Penalty for Contempt :*

Two years was a heavy penalty for what was called contempt. It might only be six months.

V. *Jurisdiction of the Lokpal :*

Matters arising out of casteism and communalism should also come within the purview of the Lokpal.

Since the Lokpal was to be appointed by Parliament, he could go into the conduct of Ministers. He should not, however, be given the power to go into the affairs of the Members of Parliament.

The Lokpal might scrutinise the affairs of the judiciary though that could better be left to the Chief Justice or the Courts themselves.

The Lokpal should have discretionary power in the matter of not allowing a document to be presented but he should give his reasons for that.

VI. *Terms of Office of Lokpal :*

The Lokpal should have only one term of time or six years. He should be given a good pension thereafter but no extension and no further appointment.

VII. *Publicity of Proceedings :*

Investigation should be conducted with openness, fairness and impartiality and after its completion all the facts should be made available to the public.

VIII. *False Complaints :*

In order to avoid false complaints made out of malice and personal prejudices the Lokpal should, to start with, receive complaints only from the Members of Parliament or Members of State Legislatures and not directly from the public.

IX. *Machinery to help the Lokpal :*

It was very difficult to evolve an entirely separate machinery to help the Lokpal and Lokayukta. The machinery of the Government would suffice to help them for the purpose of investigations.

X. *Report of Lokpal :*

The report submitted by the Lokpal to Parliament should be scrutinised by a permanent Committee of Parliament.

XI. *Amendment in Clause 6 (1).*

In the proviso to clause 6 (1) of the Bill, the word ' Judge ' should be substituted by ' Senior Judge '.

10 Shri C. K. Daphtary, Attorney
(General of India.

24-8-1968 I. *General Views :*

The institution of Lokpal and Lokayuktas was something like an experiment and must be tried. It had worked well in New Zealand. Generally the Bill was sound.

II. *Secrecy of Information obtained by Lokpal or Lokayuktas :*

As the proposed institution had not been given the status of a court the provision made in clause 14 of the Bill was quite futile in substance for there was nothing secret and confidential in this country.

III. *Terms of Office :*

The terms of office might be a little longer i.e. from 5 to 7 years but there should be no re-appointment at all. The question of re-appointment always brought in an element of patronage and possible favour.

IV. *Independence of Lokpal and Lokayuktas :*

If the recommendations made by the Lokpal and Lokayuktas in their reports were subject to anyone's veto and consultation from somebody else, it would detract from their authority. In case the recommendation was for dismissal or demotion of a particular person, the provisions contained in Article 311 of the Constitution were to be taken into consideration and therefore, something would have to be done.

V. *Functions of Lokpal and Lokayuktas :*

The functions of Lokpal and Lokayuktas should be restricted to those matters provided in the Bill at present and it should be observed how they worked. If necessary, these functions could be increased subsequently.

VI. *Qualifications for appointment of Lokpal and Lokayuktas :*

It would not be possible to define qualifications for appointment of Lokpal or Lokayuktas and, therefore, it should be left as it was in the Bill.

VII. *Institution :*

There should be one organisation consisting of Lokpal and Lokayuktas, Lokpal being at the top. Lokayukta should function under the general superintendence of the Lokpal.

VIII. *Mode of Enquiry :*

It should be a summary enquiry as the Lokpal might think fit and the procedure was to be laid down by himself. The question of quasi-judicial functioning was not involved.

IX. *Appointment of Lokpal :*

(a) Lokpal should be appointed by President in consultation with the Leader of the Opposition of both the Houses and the Chief Justice of India.

(b) Selection should not be confined to judges alone. He might be a non-jurist provided he had the experience, knowledge of the world, common sense and integrity.

X. Security Deposit :

The witness did not agree with the idea of some deposit for complaints.

XI. Time-limit.

There should be some time-limit for submitting the grievances and allegations.

XII. Writ Jurisdiction of Supreme Court and High Courts :

The Constitution contemplated the supremacy of the courts in various matters over every authority. If it was intended to exclude the Supreme Court and High Courts from exercising the writ jurisdiction so far the activities of Lokpal and Lokayuktas were concerned, it had to be considered very carefully because this would be a precedent and would involve some amendment of the Constitution.

XIII. Jurisdiction of Lokpal :

Ministers should not be excluded from the jurisdiction of Lokpal.

XIV. Promotion of Lokayuktas :

The witness did not object to the promotion of Lokayuktas as Lokpal.

The Institution should not be made a dilatory and expensive tribunal for persons who might approach it. The basic idea was that a very high and respected person like Lokpal could be approached informally almost and could deal with grievances or allegations. If complicated procedures were made both for approaching and for his hearing the grievances or the allegations then it would really be a Court or tribunal which would defeat the very purpose of the legislation.

II. *Writ Jurisdiction of Supreme Court and High Courts :*

The Lokpal and Lokayuktas would have jurisdiction only to make recommendations and findings. They would have no jurisdiction to issue any directions or orders to any officer. Therefore, the witness stated, there would be no conflict with the jurisdiction of the Courts.

III. *Engagement of Lawyers :*

Lokpal and Lokayuktas should avoid Lawyers as far as possible. They might take evidence but Evidence Act should not apply. It should be informal.

IV. *Appointment of Lokpal and Lokayuktas :*

(a) The method of appointment of a Lokpal laid down in the Bill was satisfactory for it would give general confidence which was the essentiality.

(b) No condition should be put for appointment of Lokpal and Lokayuktas. He should not necessarily be a judge or a lawyer. A

person of a very wide administrative experience might be a very useful person for this purpose provided there was integrity of character and respect for him.

V. *Report of Lokpal and Lokayuktas :*

Before the Lokpal and the Lokayuktas would record their findings, they would give an opportunity to be heard and that would be in consonance with the requirements of Article 311. Hence it was not necessary to modify Article 311.

VI. *Qualifications for appointment of Lokpal and Lokayuktas :*

It was not necessary to prescribe minimum qualifications for their appointment.

VII. *Administrative machinery of the Institution :*

If the Legislation intended to provide for the composite machinery for the redressal of grievances and allegations, it would be best to have the Lokpal as the head of it.

VIII. *Investigation :*

The Lokpal and Lokayuktas could look into any case which could be subject matter either of grievance or allegation.

IX. Security deposit for Complaints :

Any provision for security deposit for complaints would defeat the very purpose of the Bill and would destroy the efficacy of the remedy. The Lokpal and the Lokayuktas had the power to reject frivolous complaints.

X. Investigation through C.B.I. :

The C.B.I. should not be there at all. The investigation should be by the Lokpal or the Lokayuktas himself. It would be open to them to seek the assistance of the police.

XI. Control over Vigilance Units in various Ministries :

If the investigation was to be made with the help of various Vigilance Units, who were subordinate to Ministers or Officers, and if it was likely to come in the way of independence of the Lokpal or the Lokayuktas, then those Vigilance Units should be brought within the control of Lokpal or Lokayuktas.

XII. Terms of Office of Lokpal and Lokayuktas :

Terms of Office for Lokpal and Lokayuktas for 5 years was sufficient and in no case the term should be extended beyond 5 years.

12 Shri S. Dutt, Vigilance Commissioner, West Bengal.

24-8-1968

I. General Views :

(a) The relation between the Lokpal and Lokayukta should be similar to that existing between the Chief Justice

and the Judges of High Court. The Lokayukta should function independently.

- (b) Investigation in respect of 'grievances' would have to be conducted by the Lokpal Lokayuktas personally where as for investigation in respect of 'allegations' they would depend in most cases on Government Investigating Agencies. In view of this, the procedure of dealing with 'allegations' would necessarily be different from that of dealing with 'grievances' and should, therefore, be provided accordingly.
- (c) The Lokpal should be authorised to act *suo moto* particularly in respect of allegations.
- (d) The Lokpal or Lokayuktas should not depend on the consent of the Government for utilising the services of any officer or an agency of the Government.
- (e) The report, submitted by the Commission of Inquiry set up by Government to investigate into a complaint of allegation against public servants under the Commissions of Inquiry Act, 1952, should be referred to the Lokpal for advice.
- (f) Allegations of corruption and dishonesty against public servants which would come within the jurisdiction of the Lokpal should not be referred to the U.P.S.C. again for opinion.

(g) The C.B.I. should be under the administrative control of Government but the Lokpal should have unrestricted right to use the agency for investigation and report.

II. *Publicity* :

The grounds of a case after investigation should be published widely. The identification of a person involved should also be disclosed.

III. *Time-limit for complaints* :

For action taken *suo moto* by the Lokpal in respect of the grievances, the time-limit should be two years and in respect of allegations, the time-limit should be 10 years.

VI. *Engagement of Lawyers* :

Engagement of Lawyers should not be permitted except in very odd cases involving a sort of detailed examination of accounts.

V. *Terms of Office of Lokpal* :

The Lokpal should not be given second term and the period of 5 years for a term was quite sufficient

VI. *Appointment of Lokpal* :

For appointment of Lokpal Opposition Party should be consulted.

13 Dr. L. M. Singhvi Ex-M.P.

24-8-1968

I. *General Views:*

In order to safeguard the Institution from being flooded by frivolous complaints, the witness stated that, as in England, the complaints might be routed through the Members of Parliament. Secondly, the working of the Institution should be reviewed by constituting a Special Committee consisting of either Members of Parliament or Jurists. After one or two years of review the recommendations should be made by this Committee.

II. *Mode of Inquiry :*

- (a) With a view to inspire public confidence, the inquiry should necessarily be thorough.
- (b) So far violation of Articles 32 and 226 was concerned the witness stated that normally this Institution would not take cognizance of the cases falling within the jurisdiction of the courts and *vice-versa*. Besides, it should be incumbent on the persons lodging complaints to make a declaration that he had not gone to any court of law. If the complainant had done so, he should make a declaration that the matter was pending before a court of Law and that it should be treated as an affidavit so that if he had acted in any manner which was contrary to prescribed rules, he could be proceeded with.

III. Appointment of Lokpal :

Appointment of Lokpal should be "in" consultation with the Chief Justice and leader of opposition and not "after" consultation with them. "After consultation." was the term which would enable the President and the Executive of the country to do precisely what they liked.

More appropriately a Committee consisting of the Prime Minister, the leader of the opposition and the Chief Justice of India should recommend the name of a person for appointment as Lokpal to the President and this should be considered as binding on the President.

IV. Report of Lokpal and Lokayuktas :

There should be a Standing Committee of the two houses of Parliament to be known as the joint Committee for Petitions and Public Grievances which should be entrusted with the primary task of pursuing the implementation of the recommendations of the Lokpal and the Lokayuktas and also of examining the explanations of the Government, if any, in cases where the Government had not implemented the recommendations. The relationship between the Lokpal and the Joint Committee for Petitions and Public Grievances would be somewhat on the lines of the relationship between the Comptroller and Auditor-General and the Public Accounts Committee.

If this Committee was constituted then complaints should not be routed through Members of Parliament.

V. Qualifications for appointment of Lokpal and Lokayuktas :

Selection of person to be appointed as such should be motivated by no other consideration than the highest public good. The choice should be unimpaired by political motivation. Persons of highest intellectual and moral should be appointed. It should be open to distinguished persons in the field of Law and administration.

VI. Removal of Lokpal and Lokayuktas :

Procedure for removal of Lokpal and Lokayuktas should be identical to the procedure adopted in respect of impeachment of judges.

VII. Lokpal and C.B.I.

The C.B.I. should be only supplemental and additional aid and not exclusive aid at the hands of the Lokpal. As the C.B.I. was the general investigating agency, it would create a number of administrative complications if it was made a subordinate investigating organisation of the Lokpal but on any matter, the C.B.I. was entrusted with the investigation, C.B.I. should be answerable to the Lokpal and Lokayuktas.

VIII. Powers of Lokpal and Lokayuktas :

It should be open to the Lokpal or Lokayukta to order any public authority to assist them in the manner they might

desire. It should not be open to the Government to refuse that assistance.

IX. Jurisdiction of Lokpal :

Ministers should be brought within the jurisdiction of Lokpal.

X. Definition of 'Grievance' :

The definition of grievance should be slightly changed to read "'grievance' means a claim made by a person that he sustained injustice in consequence of maladministration, or was subjected to humiliation or undue hardship."

XI. Allegations :

False allegations, if sufficiently of a grave character, should be punishable by prosecution. It should be within the discretion of the Lokpal to order for prosecution in respect of grave irresponsible allegations. This would provide a penal check against the persons making wholly irresponsible allegations.

14. Shri A.N. Mulla, M.P. 31.8.1968

L. General Views :

If this Institution of Lokpal and Lokayuktas was to function successfully, the following conditions must be fulfilled:—

- (a) The persons to be appointed as such should of superior calibre, who should possess three outstanding qualities of the highest order viz., independence, integrity and efficiency.
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(b) There should be no interference with the investigations by the Lokpal or Lokayuktas and no legal or other hurdles should be placed in their way. They should have access to every information and evidence excepting information relating to external or internal security of the country and policy matters of the State.

(c) The process of investigation should be quick and cheap. The institution should not be burdened by any set of laws and the Lokpal should have the full right to collect evidence in his own manner from all sources subject to these conditions:—

(i) full opportunity should be given to the authority complained to defend itself; and

(ii) the final decision should contain all those particulars which were necessary for the judgement of a court of law. The judgement should be well reasoned giving its conclusions for that would inspire confidence.

(d) The Lokpal and the Lokayuktas should be armed with public agencies to help them in their investigations without any hindrance and they should be given the right to have their own private agencies, also to secure information.

(c) The Lokpal and the Lokayuktas should be completely independent. They should not have to lean upon the help of the Government. They should have the right to demand all assistance from the Government which should be freely given and no obstacles should be raised.

II. *Leader of Opposition* :

As at present there was actually no opposition, a person from amongst those who were against the Government in both the Houses viz., Lok Sabha and Rajya Sabha, should be elected in such manner as the vice-President of India and not the Speaker might direct.

III. *Terms of Office of Lokpal and Lokayuktas* :

- (a) There should be no second term either for Lokpal or Lokayuktas.
- (b) The Lokpal and Lokayukta should be 60 and 55 years of age respectively.
- (c) Lokayukta should be eligible for appointment as Lokpal provided there was a gap of a term before they had finished their work as Lokayuktas and then they were appointed as Lokpal. There should be no continuity.
- (d) The Lokpal or Lokayukta should in no case hold office for more than a year on the expiration of his term.
- (e) In clause 5(2)(a) and (b) it should be clearly stated that the vacancy of the Office of Lokpal or Lokayuktas must be filled within a period of 6 months.

IV. Status of Lokpal and Lokayuktas :

The Lokpal and Lokayukta should have the status of a judge of the Supreme Court and the Chief Justice of a High Court respectively.

V. Supremacy of Supreme Court :

Supervisory Control of the Supreme Court contained in Articles 32 and 311 of the Constitution should remain in case of any decision given by the Lokpal.

VI. Clause 8(2) :

For the successful functioning of the Institution, the inquiry by the Lokpal or the Lokayukta should have the precedence over all other inquiries and no other inquiry should be a hurdle in their way. There should be no possibility of the Government in power interfering with their functions. Therefore, clause 8(2), should be deleted.

VII. Complaints :

- (a) Formality of sending the complaint on a prescribed form would hinder the complainant's voicing his complaint in secrecy to a certain extent and so this hinderance should not exist.
- (b) Immediate handing over of a copy of the complaint to the public servant of the authority concerned by the Lokpal or Lokayuktas

would be against the purpose for which the Bill was being enacted. There was the danger of the evidence being tampered with and hence it should be left on the discretion of the Lokpal or Lokayukta at what time a copy of the complaint should be supplied.

VIII. Secrecy of Proceedings of Investigation :

Provisions made in Clauses 10(2), 12(8) and 14(6), were not in consonance with each other. It should be clearly stated whether the proceedings would be secret during the pendency of the case.

IX. President's direction [Clause 17(3)].

An exception in favour of a direction given by the President for investigating a complaint by the Lokpal or Lokayukta should not be there for the power could be politically abused.

X. Powers of Lokpal and Lokayuktas :

- (a) The Lokpal and Lokayuktas must be given full and unfettered powers to tap all sources of information excepting the information relating to security of the country and proceedings of the Cabinet (Clause 11(5)).
- (b) They should have access to all information and documents. The certificate relating to the secret nature of the document should come either from the Prime Minister or a Cabinet Minister so authorised and not from a Secretary.
- (c) They should have the right to examine the persons on oath against whom the investigation was proceeding and cross examine them.

(d) Clause 11(6)—The Lokpal or the Lokayukta should have the unrestricted power to collect evidence. The provisions of this sub-Clause would spoil the whole scheme of the proposed institution and, therefore, it should not be retained.

(e) They should have the right to start investigations *suo-moto*.

XI. *Intentional insult or interruption to Lokpal or Lokayuktas (Clause 15):*

The Central Government should not act as the protector of either Lokpal or Lokayuktas. The moment, the Lokpal certified that a complaint should be filed, the Public Prosecutor must file that complaint.

XII. *Fees for complaints :*

There should be no fee for lodging a complaint. Even anonymous complaints should be entertained.

XIII. *Jurisdiction of Lokpal and Lokayuktas :*

Assistant Judicial Commissioners and the District Judge in the Union Territory and the Election Commissioners should not be excluded from their Jurisdiction.

(b) Members of Parliament should be brought within the jurisdiction of Lokpal.

XIV. Engagement of Lawyers :

Engagement of Lawyers should be debarred.

XV. Appointment of Lokpal and Lokayuktas :

There should be no objection to the appointment of retired Supreme court and High court judges as such for there was the advantage of their vast experience in assessing the evidence, sifting it and coming to conclusions.

XVI. Time-limit for complaints :

(a) So far *suo-moto* action was concerned no time-limit should be fixed.

(b) On the complaints involving allegations, the time-limit of 5 years was sufficient but they should not be debarred from investigating a complaint after 5 years if they felt that the matter was important.

XVII. Part (e) of the second Schedule should be excluded.

15 Committee on Petitions,

Lok Sabha :

Spokesmen :

1. Shri D.C. Sharma, Chairman
2. Shri Prakash Vir Shastri, Member.
3. Shri Onkar Lal Berwa, Member.
4. Shri S.C. Samanta, Member
5. Shri P.C. Adichan, Member

24-10-1968 1. General Views :

(a) Committees on Petitions of both the Houses should be merged and renamed as "Committee on Petitions and Public Grievances" consisting of Members of both the Houses.

(b) The Reports of the Lokpal and Lokayukta should be submitted to this Committee on Petitions and Public Grievances for scrutiny. The reports should then be presented to Parliament with the recommendations of the proposed Committee. The Committee would lessen the burden of both the Houses.

- (c) The relationship of the Lokpal and Lokayukta with this proposed committee would be somewhat analogous to that subsisting between the Comptroller and Auditor-General of India and the Public Accounts Committee.
- (d) The recommendations of the Lokpal and Lokayukta and the proposed committee should not necessarily be binding on the Government.
- (e) The Members of Parliament with judicial background could be appointed as Members of this proposed committee
- (f) The Lokpal and Lokayukta must be made responsible to Parliament and their functions watched
- (g) In order that the Reports of the Lokpal and Lokayukta were scrutinized expeditiously, the proposed committee could be asked to submit their recommendations within 15-20 days.

II. Jurisdiction of Lokpal and Lokayukta :

The members of Parliament and every public servant should be brought within their jurisdiction.

III. Age-limit of Lokpal and Lokayukta.

The Lokpal and Lokayukta should not be more than 55 years of age.

The main purpose of establishing the proposed Institution was to provide a forum where decisions taken in the process of departmental work of Government were open for scrutiny by an independent authority. With the increasing extent of State intervention in all fields of life of a citizen, it was being widely felt that the ordinary provision for judicial review was not a sufficient safeguard for the citizen.

2. It was being admitted by all that there was a considerable area where maladministration of the Police, partly due to corruption and partly due to excessive zeal, harmed not hundreds but thousands of citizens. Therefore, the extension of power of the Lokpal to investigate complaints of maladministration by the police was very important.

3. The witness stated that there was no justification for excluding commercial contracts entered into by the Government if there was an allegation that the terms of contract were vitiated by any corrupt motive on the one hand or even favouritism or nepotism on the other.

4. The Lokpal should be given power to take legal action in a case where he considered it necessary to initiate appropriate legal proceedings.

5. Access or approach to Lokpal should be direct and not through Members of Parliament as was prevalent in the United Kingdom.

6. The success of the proposed Institution would however, depend on the seriousness with which the first Lokpal approached his

duties and the respect which was accorded to him by the Departments of the Government and by the Parliament.

II. *Jurisdiction of Lokpal.*

There was no harm if the Members of Parliament, Ministers and the Prime Minister were also brought within the jurisdiction of the Lokpal. The administrative efficiency of the Ministers would in no way be effected for the Lokpal would not be concerned with their mistakes if otherwise *bonafide*.

2. The police in the State should be brought within the jurisdiction of the Lokpal and the scope of the Bill might also be extended to the States.

3. The witness was also in favour of the judiciary being brought with in the purview of the Lokpal.

III. *Appointment of Lokpal :*

The procedure for appointment of Lokpal as provided in the proposed Bill was correct.

IV. *Terms of Office of Lokpal*

The second term of appointment could be given to the Lokpal provided the incumbent was really capable and worth retaining.

V. *Age-limit of Lokpal.*

The maximum age-limit of the Lokpal might be fixed at 65 years of age.

VI. *Qualifications for Appointment of a Lokpal*

Any person who was endowed with a reasonable amount of intelligence and common-sense could fully appreciate the law and hence could be appointed as Lokpal.

VII. *Security Deposit for Complaints :*

There should be no security deposit for complaints. That would stop the individual taking the remedy to which he was entitled.

VIII. *Administrative Machinery of the Institution.*

The Institute should have a unified administration so that conventions were developed and precedents established.
